

1 **I. SCREENING AND PLEADING REQUIREMENTS**

2 A district court is required to screen a prisoner’s complaint that seeks relief against a
3 governmental entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must
4 identify any cognizable claims and dismiss any portion of the complaint that is frivolous or
5 malicious, that fails to state a claim upon which relief may be granted, or that seeks monetary
6 relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2). The
7 court must construe an unrepresented litigant’s complaint liberally. *Haines v. Kerner*, 404 U.S.
8 519, 520 (1972) (per curiam).

9 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
10 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
11 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The short and plain statement “need
12 only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”
13 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Twombly*, 550 U.S. at 555 (internal
14 quotation marks omitted)). The complaint need not identify “a precise legal theory.” *Kobold v.*
15 *Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016) (quoting *Skinner v.*
16 *Switzer*, 562 U.S. 521, 530 (2011)). The plausibility standard does not require detailed
17 allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
18 If the allegations “do not permit the court to infer more than the mere possibility of misconduct,”
19 the complaint states no claim. *Id.* at 679.

20 **II. FACTUAL ALLEGATIONS**

21 In 2014, Plaintiff was incarcerated at California State Prison, Corcoran (“CSPC”).
22 Plaintiff brings this action against defendants Chita Buenafe, a dentist, N. Flores, a dental
23 assistant, and Edgar Clark, a medical doctor who reviewed plaintiff’s inmate appeals. On March
24 10, 2014, defendants Buenafe and Flores performed dental surgery on plaintiff. ECF No. 24 at 3.
25 The surgery caused plaintiff to suffer a left orbital wall fracture. *Id.* Plaintiff informed
26 defendants Buenafe and Flores of the fracture as he felt it, just before he blacked out and fell.
27 *Id.* at 4. Defendants Buenafe and Flores told plaintiff to “put in a dental request to reduce pain
28 and fix injury,” and plaintiff submitted dental requests on March 10 and March 11, 2014. *Id.*

1 Plaintiff was seen again by defendants Buenafe and Flores on March 11, 2014, but they would not
2 provide plaintiff with pain relief, instead instructing plaintiff to submit more medical requests. *Id.*
3 Plaintiff submitted medical requests about his continuing pain and other symptoms but was not
4 treated. *Id.* at 5, 13-15. Plaintiff suffered from “excruciating brain pain” that worsened over
5 time. *Id.* at 17. Plaintiff also experienced hot and cold flashes and temporary losses of vision,
6 which, together with the pain, caused discomfort and loss of concentration. *Id.* at 18. Plaintiff
7 was in pain and discomfort for six months while defendants Buenafe and Flores refused to treat
8 him. *Id.* at 6.

9 In May and July, plaintiff submitted inmate appeal grievances related to his healthcare,
10 including the dental work and subsequent pain. *Id.* at 17-27. On September 22, 2014, defendant
11 Clark reviewed plaintiff’s appeals, then ordered an MRI of the brain and follow-up with
12 plaintiff’s “yard physician.” *Id.* at 36. On October 6, 2014, plaintiff had an MRI that revealed
13 “an old left medial orbital wall fracture.” *Id.* at 11.

14 **III. DISCUSSION**

15 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
16 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
17 state a claim under 42 U.S.C. § 1983, a plaintiff must (1) allege the deprivation of a right secured
18 by the U.S. Constitution and laws of the United States, and (2) show that the alleged deprivation
19 was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48
20 (1988). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
21 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which
22 he is legally required to do that causes the deprivation of which complaint is made.’”

23 *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
24 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).

25 At the outset, we recognize that allegations of medical negligence are insufficient to state
26 a claim for deliberate indifference to serious medical needs. *See Clement v. Gomez*, 298 F.3d
27 898, 904 (9th Cir. 2002). Additionally, a difference of opinion concerning the judgment of
28 treating medical professionals falls outside of § 1983. *See Sanchez v. Vild*, 891 F.2d 240, 242

1 (9th Cir. 1989). However, plaintiff’s allegations against defendants Buenafe and Flores, liberally
2 construed, go beyond mere negligence. Plaintiff alleges that defendants Buenafe and Flores
3 caused a bone fracture during a dental procedure, the refused to treat the fracture. He alleges that
4 their refusal to treat caused him harm in the form of increasing dysfunction and pain. Plaintiff’s
5 allegations state a cognizable claim for violation of plaintiff’s Eighth Amendment rights against
6 defendant Buenafe and Flores. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (a
7 deliberate indifference to serious medical needs claim consists of two parts: (1) a “serious
8 medical need” demonstrated by a failure to treat a prisoner’s medical condition that could result
9 in further significant injury or the unnecessary and wanton infliction of pain; and (2) “deliberate
10 indifference” —demonstrated by (a) a purposeful act or failure to respond to a prisoner’s pain or
11 possible medical need and (b) harm caused by the indifference). Accordingly, the court will
12 allow plaintiff’s claims to proceed against defendants Buenafe and Flores.

13 The factual circumstances regarding defendant Clark, however, are different. Clark was a
14 reviewing physician on plaintiff’s inmate appeal who recommended an MRI and follow-up with
15 plaintiff’s treating physician. Plaintiff has failed to allege facts that, even liberally construed,
16 could support a finding of deliberate indifference on the part of defendant Clark. *See Jett*, 439
17 F.3d at 1096. Plaintiff has been given multiple opportunities to amend his complaint; further
18 amendment would be futile. Therefore, plaintiff’s claim against defendant Clark should be
19 dismissed with prejudice.

20 **IV. RECOMMENDATIONS**

21 The undersigned has screened plaintiff’s complaint and finds that plaintiff states claims
22 against defendants Buenafe and Flores for medical deliberate indifference in violation of the
23 Eighth Amendment. We recommend that the court allow plaintiff to proceed on these claims and
24 dismiss with prejudice all other claims, namely plaintiff’s claims against defendant Clark for
25 medical deliberate indifference.

26 These findings and recommendations are submitted to the U.S. district judge presiding
27 over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the
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1 service of the findings and recommendations, the parties may file written objections to the
2 findings and recommendations with the court and serve a copy on all parties. That document
3 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
4 presiding district judge will then review the findings and recommendations under 28 U.S.C. §
5 636(b)(1)(C).

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7 IT IS SO ORDERED.

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9 Dated: March 8, 2019


UNITED STATES MAGISTRATE JUDGE

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12 No. 204

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