



1 **II.**

2 **LEGAL STANDARD**

3 A motion to dismiss, based on res judicata grounds, is properly made under Federal Rule of  
4 Civil Procedure 12(b)(1). Gupta v. Thai Airways Intern., Ltd., 487 F.3d 759, 763 (9th Cir. 2007).  
5 However, the court applies California law on claim preclusion to cases brought in federal court under  
6 42 U.S.C. § 1983. “Congress has specifically required all federal courts to give preclusive effect to  
7 state-court judgments whenever the courts of the State from which the judgments emerged would do  
8 so.” Allen v. McCurry, 449 U.S. 90, 96 (1980).

9 A motion to dismiss brought pursuant to Rule 12(b)(6) tests the legal sufficiency of a claim,  
10 and dismissal is proper if there is a lack of a cognizable legal theory or the absence of sufficient facts  
11 alleged under a cognizable legal theory. Conservation Force v. Salazar, 646 F.3d 1240, 1241-42 (9th  
12 Cir. 2011) (quotation marks and citations omitted). In resolving a 12(b)(6) motion, a court’s review is  
13 generally limited to the operative pleading. Daniels-Hall v. National Educ. Ass’n, 629 F.3d 992, 998  
14 (9th Cir. 2010); Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007); Schneider v. California Dept. of  
15 Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

16 To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as  
17 true, to state a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing  
18 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)) (quotation marks omitted); Conservation  
19 Force, 646 F.3d at 1242; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The Court  
20 must accept the factual allegations as true and draw all reasonable inferences in favor of the non-  
21 moving party. Daniels-Hall, 629 F.3d at 998; Sanders, 504 F.3d at 910; Morales v. City of Los  
22 Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000).

23 Pro se litigants are entitled to have their pleadings liberally construed and to have any doubt  
24 resolved in their favor. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012); Watison v. Carter,  
25 668 F.3d 1108, 1112 (9th Cir. 2012); Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Hebbe  
26 v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

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1 **III.**

2 **DISCUSSION**

3 **A. Summary of Plaintiff’s Complaint**

4 Plaintiff names Doctors Arakaki and Hanna who are both dentists. When Plaintiff transferred  
5 to Corcoran State Prison (CSP), Dr. Arakaki made an appointment for a root canal to be conducted on  
6 teeth numbers twenty-five, twenty-seven, and twenty-eight. (Sec. Am. Compl. at 4; ECF No. 29.)  
7 However, when Plaintiff arrived at his appoint Dr. Hanna told him to sign a form authorizing  
8 extraction of the teeth instead. (Id.) Dr. Hanna told Plaintiff that if he refused to sign the consent  
9 form, it would be his last appointment. (Id.) When Plaintiff asked why the root canal surgery would  
10 not be conducted, Dr. Arakaki said it was because Dr. Hanna did not want to allow the treatment to  
11 continue. (Id. at 8.) Plaintiff refused to sign the form and refused the extraction. (Id. at 4, 8.) Drs.  
12 Arakaki and Hanna have not fixed Plaintiff’s teeth and insisted only on extracting them. (Id. at 9.)

13 **B. Analysis of Defendants’ Motion**

14 Defendants argue that Plaintiff has alleged no facts to indicate a culpable state of mind on the  
15 part of Defendants or that the course of treatment they offered was medically unacceptable under the  
16 circumstances.

17 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual  
18 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of  
19 “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)  
20 (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two-part test for deliberate indifference  
21 requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure to treat a  
22 prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction  
23 of pain,’” and (2) “the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at  
24 1096. A defendant does not act in a deliberately indifferent manner unless the defendant “knows of  
25 and disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 837  
26 (1994). “Deliberate indifference is a high legal standard,” Simmons v. Navajo County Ariz., 609 F.3d  
27 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown  
28 where there was “a purposeful act or failure to respond to a prisoner’s pain or possible medical need”

1 and the indifference caused harm. Jett, 439 F.3d at 1096.

2 Negligence or medical malpractice do not rise to the level of deliberate indifference.  
3 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-  
4 106). “[A] complaint that a physician has been negligent in diagnosing or treating a medical condition  
5 does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical  
6 malpractice does not become a constitutional violation merely because the victim is a prisoner.”  
7 Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995).  
8 Even gross negligence is insufficient to establish deliberate indifference to serious medical needs. See  
9 Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). Additionally, a prisoner’s mere  
10 disagreement with diagnosis or treatment does not support a claim of deliberate indifference. Sanchez  
11 v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

12 Plaintiff’s allegations that Defendants initially indicated that a root canal would be provided,  
13 but then ordered extraction only without any explanation and without any other dental treatment is  
14 sufficient, at the pleading stage, to state a cognizable claim for deliberate indifference. While  
15 Defendants are correct a mere difference of opinion does not amount to deliberate indifference, the  
16 allegations in Plaintiff’s complaint plausibly amount to more than a difference of opinion based on the  
17 allegations that extraction of his teeth was medically unacceptable under the circumstances. Based on  
18 Plaintiff’s factual allegations, viewed in the light most favorable to him, he states a cognizable claim  
19 for deliberate indifference to his dental needs against Defendants Doctors Arakaki and Hanna. It  
20 remains possible for Plaintiff to prove that extraction was ordered in conscious disregard to his dental  
21 health.

22 Defendants citation to Powell v. Marlais, 2016 WL 5462443 (N.D. Cal. Sept. 28, 2016) and  
23 Dixon v. Bannister, 854 F.Supp.3d 1136 (N. Nev. 2012) in support of their argument that Plaintiff has  
24 shown nothing more than a difference of opinion and lack of subjective knowledge, is inapposite. In  
25 Powell and Dixon, the determinations of whether the dentists were deliberately indifferent to the  
26 plaintiff’s serious dental needs were decided at the summary judgment stage, not the pleading stage.

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**IV.**  
**RECOMMENDATION**

Based on the foregoing, it is HEREBY RECOMMENDED that Defendants’ motion to dismiss be denied.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with this Findings and Recommendation, the parties may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 17, 2018

  
UNITED STATES MAGISTRATE JUDGE