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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JAMIE PAULETTE WEST,

No. 2:18-CV-0317-MCE-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

CLAYBANK JAIL DENTAL, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
4 allege with at least some degree of particularity overt acts by specific defendants which support  
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

8           Plaintiff names the following as defendants: (1) the Claybank Jail in Solano  
9 County; (2) Dr. Lue, a dentist at the Claybank Jail; and (3) Claybank Jail "medical staff."  
10 Plaintiff claims that defendants were negligent and committed malpractice with respect to dental  
11 treatment.

12           The treatment a prisoner receives in prison and the conditions under which the  
13 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
14 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
15 511 U.S. 825, 832 (1994). The Eighth Amendment ". . . embodies broad and idealistic concepts  
16 of dignity, civilized standards, humanity, and decency." Estelle v. Gamble, 429 U.S. 97, 102  
17 (1976). Negligence in diagnosing or treating a medical condition does not, however, give rise to a  
18 claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a difference of  
19 opinion between the prisoner and medical providers concerning the appropriate course of  
20 treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh, 90 F.3d  
21 330, 332 (9th Cir. 1996). Given this authority, the court finds that plaintiff's medical malpractice  
22 claim is not cognizable.

23           Because it does not appear possible that the deficiencies identified herein can be  
24 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of  
25 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

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1           Based on the foregoing, the undersigned recommends that this action be dismissed  
2 for failure to state a claim upon which relief can be granted.

3           These findings and recommendations are submitted to the United States District  
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court. Responses to objections shall be filed within 14 days after service of  
7 objections. Failure to file objections within the specified time may waive the right to appeal.  
8 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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10 DATED: August 7, 2018

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12 **CRAIG M. KELLISON**  
13 UNITED STATES MAGISTRATE JUDGE  
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