

1 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
2 thereof, that may have been paid, the court shall dismiss the case at any time if the court
3 determines that . . . the action or appeal . . . fails to state a claim upon which relief may
4 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 **II. PLEADING STANDARD**

7 Section 1983 “provides a cause of action for the deprivation of any rights,
8 privileges, or immunities secured by the Constitution and laws of the United States.”
9 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).

10 Section 1983 is not itself a source of substantive rights, but merely provides a method for
11 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
12 (1989).

13 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
14 that a right secured by the Constitution or laws of the United States was violated and (2)
15 that the alleged violation was committed by a person acting under the color of state law.
16 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243,
17 1245 (9th Cir. 1987).

18 A complaint must contain “a short and plain statement of the claim showing that
19 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
21 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
22 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
23 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
24 that is plausible on its face.” Id. Facial plausibility demands more than the mere
25 possibility that a defendant committed misconduct and, while factual allegations are
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1 accepted as true, legal conclusions are not. Id. at 677-78.

2 **III. PLAINTIFF'S ALLEGATIONS**

3 Plaintiff complains of acts that occurred during his incarceration at Valley State
4 Prison ("VSP"). Plaintiff names Ikwinder Singh as Defendant.

5 Plaintiff's allegations can be summarized essentially as follows:

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7 In February 2013, Plaintiff developed pain and burning in his lower abdomen and
8 had pain on urination. Plaintiff filled out a California Department of Corrections and
9 Rehabilitation ("CDCR") Form 7362 regarding these medical complaints and saw an
10 R.N. Defendant became Plaintiff's primary care physician and was aware of Plaintiff's
11 medical complaints.

12 Plaintiff continued to file "numerous" 7362 forms regarding these symptoms until
13 February 2014. During this period, Plaintiff suffered "significant and continuous" pain and
14 burning that interrupted his "daily and nightly function." At some point, Plaintiff saw a
15 specialist; however, Defendant did not follow the specialist's recommendations or
16 otherwise cure, stabilize, or effectively treat Plaintiff's medical problems. Defendant
17 eventually arranged for Plaintiff to have bladder surgery as recommended by the
18 specialist.
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20 Defendant caused a year long delay in Plaintiff's treatment and unnecessary pain
21 and suffering. As a result of the delayed treatment, Plaintiff is at risk for further "medical
22 issues."
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24 Plaintiff alleges that Defendant's conduct violated his rights under the Eighth
25 Amendment of the United States Constitution and that Defendant failed to comply with
26 California Government Code § 845.6. Plaintiff seeks general and punitive damages, and
27 "any other relief Plaintiff is entitled to."
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1 **IV. ANALYSIS**

2 **A. Medical Indifference**

3 A claim of medical indifference requires (1) a serious medical need, and (2) a
4 deliberately indifferent response by defendant. Jett v. Penner, 439 F.3d 1091, 1096 (9th
5 Cir. 2006). The deliberate indifference standard is met by showing (a) a purposeful act or
6 failure to respond to a prisoner's pain or possible medical need and (b) harm caused by
7 the indifference. Id. Mere indifference, negligence, or medical malpractice is not
8 sufficient to support the claim. Broughton v. Cutter Labs., 622 F.2d 458, 460 (9th Cir.
9 1980) (citing Estelle v. Gamble, 429 U.S. 87, 105-06 (1976)).

11 Plaintiff's allegation that he suffered "significant" pain and burning that interfered
12 with his daily activities is sufficient to show a serious medical need. Jett, 439 F.3d at
13 1096 (a "serious medical need" may be shown by demonstrating that "failure to treat a
14 prisoner's condition could result in further significant injury or the 'unnecessary and
15 wanton infliction of pain'"); McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)
16 ("The existence of an injury that a reasonable doctor or patient would find important and
17 worthy of comment or treatment; the presence of a medical condition that significantly
18 affects an individual's daily activities; or the existence of chronic and substantial pain are
19 examples of indications that a prisoner has a 'serious' need for medical treatment.").

22 However, the facts of the complaint do not allege a deliberately indifferent
23 response by Defendant. Plaintiff does not allege that Defendant failed to respond or
24 responded in a medically unacceptable manner. Rather, he asserts that Defendant
25 delayed taking action recommended by another and the pain persisted. See Toguchi v.
26 Chung, 391 f.3d 1051, 1058-60 (9th Cir. 2004). Plaintiff does not explain the nature and
27 circumstances surrounding the delay in Plaintiff's surgery, what reason Defendant gave
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1 for the delay, the basis for Plaintiff's belief that Defendant was aware of the need for
2 surgery, the basis for his belief Defendant, rather than some authority beyond his
3 control, was responsible for the delay, and why he feels the delay was intentional or
4 deliberately indifferent. Cf. Wilhelm v. Rotman, 680 F.3d 1113, 1123 (9th Cir. 2012)
5 (doctor's awareness of need for treatment followed by his unnecessary delay in
6 implementing the prescribed treatment sufficient to plead deliberate indifference).
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8 If Plaintiff chooses to amend he must allege facts demonstrating that Defendant
9 knowingly denied, delayed, or interfered with treatment of his serious medical needs, or
10 knowingly provided medically unacceptable care, that caused harm to Plaintiff.

11 **B. California Government Code § 845.6**

12 California Government Code § 845.6 provides in part:

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14 Neither a public entity nor a public employee is liable for injury proximately caused
15 by the failure of the employee to furnish or obtain medical care for a prisoner in
16 his custody; but . . . a public employee, and the public entity where the employee
17 is acting within the scope of his employment, is liable if the employee knows or
18 has reason to know that the prisoner is in need of immediate medical care and he
19 fails to take reasonable action to summon such medical care.

20 In order to state a claim under § 845.6 a prisoner must establish three elements:

21 (1) the public employee knew or had reason to know of the need, (2) for immediate
22 medical care, and (3) failed to reasonably summon such care. Jett, 439 F.3d at 1099.

23 "Liability under section 845.6 is limited to serious and obvious medical conditions
24 requiring immediate care." Id. (citing Watson v. State, 26 Cal. Rptr. 2d 262, 265 (Ct. App.
25 1993)).

26 Plaintiff's complaint does not state a claim for relief based on § 845.6. The
27 allegation that Defendant failed to promptly refer Plaintiff for surgery goes to the
28 reasonableness of the care Defendant provided and does not constitute a failure to

1 “summon” medical care for purposes of liability under § 845.6. See Castaneda v. Dep’t
2 of Corr. & Rehab., 151 Cal. Rptr. 3d 648, 664 (Ct. App. 2013) (“[F]ailure of these two
3 public employees to provide further treatment, or to ensure further diagnosis or
4 treatment, or to monitor Castaneda or follow up on his progress, are all facts which go to
5 the reasonableness of the medical care provided, but do not constitute a failure to
6 summon medical care.” (emphasis in original)). Accordingly, Plaintiff’s § 845.6 claim fails
7 as a matter of law.

9 **V. CONCLUSION AND ORDER**

10 Plaintiff’s Complaint does not state a claim for relief. The Court will grant Plaintiff
11 an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49
12 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts
13 resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff
14 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”
15 Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate
16 that each named Defendant personally participated in a deprivation of his rights. Jones
17 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

19 Plaintiff should note that although he has been given the opportunity to amend, it
20 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th
21 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on
22 curing the deficiencies set forth above.

24 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
25 complaint be complete in itself without reference to any prior pleading. As a general rule,
26 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
27 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no
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1 longer serves any function in the case. Therefore, in an amended complaint, as in an
2 original complaint, each claim and the involvement of each defendant must be
3 sufficiently alleged. The amended complaint should be clearly and boldly titled "First
4 Amended Complaint," refer to the appropriate case number, and be an original signed
5 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
6 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
7 right to relief above the speculative level" Twombly, 550 U.S. at 555 (citations
8 omitted).

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10 Accordingly, it is HEREBY ORDERED that:

11 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights complaint form
12 and (2) a copy of his Complaint, filed March 20, 2014;

13 2. Plaintiff's Complaint is dismissed for failure to state a claim upon which
14 relief may be granted;

15 3. Plaintiff shall file an amended complaint within thirty (30) days; and

16 4. If Plaintiff fails to file an amended complaint in compliance with this order,
17 the Court will dismissed this action, with prejudice, for failure to state a claim and failure
18 to comply with a court order.
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22 IT IS SO ORDERED.

23 Dated: July 1, 2014

24 /s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
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