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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ADRIAN ALEXANDER WOODARD,  
  
Plaintiff,  
  
v.  
  
DR. WANG,  
  
Defendant.

Case No. 1:16-cv-01089-SAB (PC)  
  
ORDER DIRECTING PLAINTIFF TO FILE  
AN AMENDED COMPLAINT OR NOTIFY  
THE COURT OF INTENT TO PROCEED  
ON CLAIM FOUND TO BE COGNIZABLE  
  
(ECF No. 1)  
  
THIRTY DAY DEADLINE

Plaintiff Adrian Alexander Woodard is a state prisoner appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate jurisdiction pursuant to 28 U.S.C. § 636(c)(1).<sup>1</sup> Currently before the Court is Plaintiff’s complaint, filed on July 28, 2016. (ECF No. 1.)

**I.**  
**SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §

<sup>1</sup> Plaintiff filed a consent to proceed before a magistrate judge on January 25, 2017. (ECF No. 6.)

1 1915(e)(2)(B).

2 A complaint must contain “a short and plain statement of the claim showing that the  
3 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
4 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
5 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate  
7 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.  
8 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings  
10 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d  
11 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be  
12 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer  
13 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss  
14 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant  
15 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s  
16 liability” fall short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d  
17 at 969.

18 **II.**

19 **COMPLAINT ALLEGATIONS**

20 Plaintiff is a state inmate in the custody of the California Department of Corrections and  
21 Rehabilitation (“CDCR”) at the Corcoran State Prison (“CSP”), which is where the events at  
22 issue here occurred. Plaintiff names Dr. Wang, a doctor at CSP, as Defendant (“Defendant  
23 Wang”). Plaintiff alleges as follows: on September 11, 2015, Plaintiff fell down the stairs and  
24 twisted his right ankle during an adverse cell move.

25 Plaintiff was seen by Nurse Serna at the facility medical clinic and a few hours later was  
26 escorted via wheelchair to the institutional hospital (“ACH”) and seen by Nurse E. Crawford.  
27 After consultation with Defendant Wang, it was determined that Plaintiff would be returned to  
28 his housing unit, he was administered Ibuprofen, and he was discharged.

1 On September 12, 2015, Plaintiff returned to ACH for a follow-up with Defendant Wang,  
2 during which Plaintiff repetitiously complained about pain, loss of sleep, and gravid swelling.  
3 Defendant Wang stated, “[t]here is nothing I can do for you beside prescribe pain medication.”  
4 Plaintiff responded, “[t]he medicine is not relieving my pain.” Defendant Wang then said,  
5 “[g]rown man [sic] handle pain.” Plaintiff was ordered to leave and was returned back to his  
6 housing unit where he endured severe pain, excessive swelling, and loss of sleep. Plaintiff  
7 complained to medical staff, but was denied treatment due to Defendant Wang’s orders.

8 On September 13, 2015, Plaintiff was seen by R.N. Sparlin at ACH and Plaintiff  
9 expressed his pain and requested treatment for his ankle. Plaintiff asked to be sent to a hospital  
10 and stated that he had not slept in over 2 days and that the Ibuprofen was not relieving his pain  
11 and suffering. Plaintiff was sent back to his housing unit.

12 On September 14, 2015, Plaintiff had x-rays taken at ACH and Dr. Shultz’s report  
13 indicates that there was a comminuted fracture of the distal fibula. That same day, Plaintiff was  
14 sent to Mercy Hospital in Bakersfield for treatment. When Plaintiff arrived there, Plaintiff told  
15 Dr. Ahmed that the injury occurred on September 11, 2015.<sup>2</sup> Dr. Ahmed stated, “I wonder why  
16 it took so long to send you, because now the swelling is so bad I cannot set the bone.” Plaintiff  
17 replied, “I don’t know.” Plaintiff was admitted to the hospital and received treatment for the  
18 excessive swelling and in the days that followed received a cast for his ankle.

19 Plaintiff alleges an Eighth Amendment claim for deliberate indifference to serious  
20 medical needs against Defendant Wang. He also alleges a state law claim for a violation of  
21 Section 845.6 of the California Government Code against Defendant Wang. He further alleges  
22 that the failure to immediately treat his ankle condition has resulted in a permanent limp and  
23 chronic pain which seriously affect his activities in prison. Plaintiff claims that he has permanent  
24 damages which could have been prevented if immediate medical care was summoned.

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28 <sup>2</sup> Plaintiff states September 11, 2016, but it appears he intended to state September 11, 2015.

1 **III.**

2 **DISCUSSION**

3 **A. Eighth Amendment Claim**

4 A prisoner's claim of inadequate medical care does not constitute cruel and unusual  
5 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of  
6 "deliberate indifference to serious medical needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.  
7 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for deliberate  
8 indifference requires Plaintiff to show (1) "a 'serious medical need' by demonstrating that failure  
9 to treat a prisoner's condition could result in further significant injury or the 'unnecessary and  
10 wanton infliction of pain,' " and (2) "the defendant's response to the need was deliberately  
11 indifferent." Jett, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent  
12 manner unless the defendant "knows of and disregards an excessive risk to inmate health or  
13 safety." Farmer v. Brennan, 511 U.S. 825, 837 (1994). "Deliberate indifference is a high legal  
14 standard," Simmons v. Navajo County Ariz., 609 F.3d 1011, 1019 (9th Cir. 2010); Toguchi v.  
15 Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was "a purposeful act or  
16 failure to respond to a prisoner's pain or possible medical need" and the indifference caused  
17 harm. Jett, 439 F.3d at 1096.

18 In applying this standard, the Ninth Circuit has held that before it can be said that a  
19 prisoner's civil rights have been abridged, "the indifference to his medical needs must be  
20 substantial. Mere 'indifference,' 'negligence,' or 'medical malpractice' will not support this  
21 cause of action." Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing  
22 Estelle, 429 U.S. at 105-106). "[A] complaint that a physician has been negligent in diagnosing  
23 or treating a medical condition does not state a valid claim of medical mistreatment under the  
24 Eighth Amendment. Medical malpractice does not become a constitutional violation merely  
25 because the victim is a prisoner." Estelle, 429 U.S. at 106; see also Anderson v. County of Kern,  
26 45 F.3d 1310, 1316 (9th Cir. 1995). Even gross negligence is insufficient to establish deliberate  
27 indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.  
28 1990). Additionally, a prisoner's mere disagreement with diagnosis or treatment does not

1 support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

2 Based on Plaintiff's allegations in the complaint, the Court finds that Plaintiff states a  
3 cognizable claim for deliberate indifference to a serious medical need against Defendant Wang  
4 in his individual capacity.

5 **B. State Law Claim**

6 Plaintiff also brings a claim under state law for failure to summons immediate medical  
7 care. Section 845.6 of the California Government Code, in pertinent part, states:

8 Neither a public entity nor a public employee is liable for injury proximately caused  
9 by the failure of the employee to furnish or obtain medical care for a prisoner in his  
10 custody; but, except as otherwise provided by Sections 855.8 and 856, a public  
11 employee, and the public entity where the employee is acting within the scope of  
his employment, is liable if the employee knows or has reason to know that the  
prisoner is in need of immediate medical care and he fails to take reasonable action  
to summon such medical care.

12 Cal. Gov't Code § 845.6.

13 An employee is liable for failing to summon immediate medical care under Section  
14 845.6, but any "failure to prescribe necessary medication or, once summoned to provide  
15 treatment, to ensure proper diagnosis, or to monitor the progress of an inmate that the public  
16 employee has been summoned to assist, are issues relating to the manner in which medical care  
17 is provided" and do not subject the employee to liability under Section 845.6 for failure to  
18 summon. See Castaneda v. Dep't of Corr. and Rehab., 212 Cal. App. 4th 1051, 1072 (2013);  
19 Leonard v. Denny, No. 2:12-cv-0915 TLN AC P, 2016 WL 43550, at \*10 (E.D. Cal. Jan. 5,  
20 2016) (noting that liability under § 845.6 for failure to summon immediate medical care does not  
21 apply to situations where medical care was provided, but was deficient). "Failure of a  
22 practitioner to prescribe or provide necessary medication or treatment to one he or she has been  
23 summoned to assist" is medical malpractice and "cannot be characterized as a failure to summon  
24 medical care." Nelson v. State of California, 139 Cal. App. 3d 72, 81 (1982).

25 Here, Plaintiff alleges that he was seen by Defendant Wang on September 12, 2015, but  
26 Defendant Wang failed to summon immediate medical care for Plaintiff's fractured ankle.  
27 Although Plaintiff frames the issue as a failure to summon immediate medical care for Plaintiff's  
28 ankle, Plaintiff's allegations involve deficiencies with respect to the level and reasonableness of

1 the care that was provided by Defendant Wang. Therefore, the Court finds that Plaintiff fails to  
2 state a claim for violation of Section 845.6 of the California Government Code against  
3 Defendant Wang for failure to summon immediate medical care.

4 **C. Official Capacity Claims**

5 “The Eleventh Amendment bars suits for money damages in federal court against a state,  
6 its agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public Safety,  
7 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). However, the Eleventh Amendment  
8 does not bar suits seeking damages against state officials in their personal capacities. Hafer v.  
9 Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003). Accordingly,  
10 the Court finds that Plaintiff may only proceed on monetary claims against Defendant Wang in  
11 his personal capacity, and the official capacity claims are dismissed from the action.

12 **IV.**

13 **CONCLUSION AND ORDER**

14 Plaintiff’s complaint states a cognizable claim against Defendant Wang in his individual  
15 capacity for deliberate indifference to a serious medical need in violation of the Eighth  
16 Amendment. However, Plaintiff has not sufficiently alleged facts for his state law claim under  
17 Section 845.6 of the California Government Code against Defendant Wang for failure to  
18 summon immediate medical care. Plaintiff is granted leave to file an amended complaint within  
19 thirty (30) days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not  
20 change the nature of this suit by adding new, unrelated claims in his amended complaint. George  
21 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

22 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding  
23 only on the claim under the Eighth Amendment against Defendant Wang in his individual  
24 capacity, Plaintiff may so notify the Court in writing, and the Court will dismiss the other claim.

25 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P. 8(a),  
26 but must state what each named defendant did that led to the deprivation of Plaintiff’s  
27 constitutional or other federal rights. Iqbal, 556 U.S. 662, 678. “The inquiry into causation must  
28 be individualized and focus on the duties and responsibilities of each individual defendant whose

1 acts or omissions are alleged to have caused a constitutional deprivation.” Leer v. Murphy, 844  
2 F.2d 628, 633 (9th Cir. 1988). Although accepted as true, the “[f]actual allegations must be  
3 [sufficient] to raise a right to relief above the speculative level . . .” Twombly, 550 U.S. at 555  
4 (citations omitted).

5 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,  
6 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),  
7 and must be “complete in itself without reference to the prior or superseded pleading,” Local  
8 Rule 220. “All causes of action alleged in an original complaint which are not alleged in an  
9 amended complaint are waived.” King, 814 F.2d at 567 (citing to London v. Coopers &  
10 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 13 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
  - 14 a. File an amended complaint curing the deficiencies identified by the Court  
15 in this order, or
  - 16 b. Notify the Court in writing that he does not wish to file an amended  
17 complaint and wishes to proceed only against Defendant Wang in his  
18 individual capacity for violation of the Eighth Amendment; and
- 19 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure  
20 to obey a court order.

21 IT IS SO ORDERED.

22 Dated: March 20, 2017

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25 UNITED STATES MAGISTRATE JUDGE  
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