

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**JAMES LORAN QUINN,**  
**Plaintiff,**  
  
**v.**  
**FRESNO COUNTY SHERIFF, et al.,**  
**Defendants.**

1:10-cv-01617-OWW-SMS  
MEMORANDUM DECISION REGARDING  
MOTION TO DISMISS (Doc. 10)

**I. INTRODUCTION.**

Plaintiff James Loran Quinn "Plaintiff" proceeds with an action pursuant to 42 U.S.C. § 1983 against various Defendants. Plaintiff filed his second amended complaint ("SAC") on October 8, 2010. (Doc. 7).

On October 18, 2010, Defendants David Alanis ("Alanis") and the County of Fresno ("the County") filed a motion to dismiss the SAC. (Doc. 10). Plaintiff filed opposition to the motion to dismiss on November 8, 2010. (Doc. 12). Alanis and the County filed a reply to Plaintiff's opposition on November 15, 2010. (Doc. 13).

On November 15, 2010, Alanis, the County, and Defendant Linda M. Penner ("Penner") filed a second motion to dismiss. (Doc. 14). Plaintiff filed opposition to the second motion to dismiss on

1 January 21, 2011. (Doc. 18). Defendants filed a reply on January  
2 21, 2011. (Doc. 19).

3 **II. FACTUAL BACKGROUND.**

4 Plaintiff pled guilty to driving under the influence on  
5 September 5, 2005, and was sentenced to five years of formal  
6 probation. (SAC at 3). The terms of Plaintiff's probation require  
7 him to file a report each month with the probation department.  
8 (SAC at 3). In October 2006, Alanis was designated as Plaintiff's  
9 probation officer. (SAC at 3).

10 On December 4, 2006, Plaintiff personally delivered his  
11 monthly report form for December to Alanis at the probation  
12 department office. (SAC at 4). Upon turning in his monthly report  
13 form, Plaintiff had a conversation with Alanis. (SAC at 4).  
14 Sometime prior to January 11, 2007, Plaintiff personally delivered  
15 January's monthly report form to the probation department office.  
16 (SAC at 4). Plaintiff spoke with Alanis when he visited the  
17 probation department office to turn in his January monthly report.  
18 (SAC at 4). On or about February 5, 2007, Plaintiff personally  
19 delivered February's monthly report form to the probation  
20 department office. (SAC at 4).

21 **Plaintiff's Arrest**

22 On February 12, 2007, Detective Mark VanWyhe of the Fresno  
23 Police Department contacted Alanis to inquire about Plaintiff's  
24 probation status. (SAC at 4). In response to VanWyhe's inquiry,  
25 Alanis checked the probation department's Adult Probation System  
26 ("APS"), a computer data-base which contains scanned copies of  
27 individuals' monthly report forms. (SAC at 4). Alanis found that  
28 Plaintiff's monthly report forms for December 2006, January 2007,

1 and February 2007 were missing. (SAC at 4). According to Alanis,  
2 he checked Plaintiff's physical probation file and discovered that  
3 it did not contain Plaintiff's monthly report forms for December  
4 2006, January 2007, or February 2007. (SAC at 4). Alanis told  
5 VanWyhe to arrest Plaintiff for violating the monthly report  
6 requirement of his probation. (SAC at 4-5). The SAC alleges that,  
7 at all times, VanWyhe was acting pursuant to Alanis' direction and  
8 was Alanis' authorized agent. (SAC at 6).

9 The SAC alleges that VanWyhe went to Plaintiff's place of  
10 business and announced that he was arresting Plaintiff due to  
11 Plaintiff's failure to file three monthly report forms. Plaintiff  
12 responded he had copies of the three forms in question with  
13 probation department date stamps in his office. (SAC at 5).  
14 VanWhye stated that he would not waste time to consider Plaintiff's  
15 evidence of compliance with the monthly report requirements and  
16 informed Plaintiff that he was going to jail. (SAC at 5).

17 VanWyhe reported to Alanis that Plaintiff told him that  
18 Plaintiff had submitted the three missing reports, but Alanis  
19 instructed VanWhye to perfect the arrest. (SAC at 5). VanWyhe  
20 transported Plaintiff to the booking area of the Fresno County  
21 Jail. (SAC at 5). Alanis took charge of the arrest once Plaintiff  
22 arrived at the Fresno County Jail. (SAC at 5). Plaintiff reminded  
23 Alanis that he had personally submitted his December 2006 report to  
24 him and that Alanis had engaged in a discussion with Plaintiff at  
25 that time. (SAC at 5). Plaintiff then asked Alanis when he would  
26 go before a judge, and Alanis replied "you wont" and then said  
27 something to the effect of "this is a lesson to you." (SAC at 5).  
28 Plaintiff then told Alanis that he had proof in his office that he

1 had submitted the monthly reports in question to the probation  
2 office. (SAC at 5). Alanis refused to listen to Plaintiff and  
3 told Plaintiff he was not interested in Plaintiff's explanation or  
4 proof. (SAC at 5-6).

5 Sometime before being placed with the general population,  
6 Plaintiff, in Alanis' presence, spoke to his former wife, Deborah,  
7 on the telephone. (SAC at 6). Deborah agreed to leave work and to  
8 retrieve the conformed copies of Plaintiff's monthly reports from  
9 Plaintiff's office. (SAC at 6). Deborah subsequently called  
10 Alanis and told him she had found the conformed copies of the three  
11 monthly reports. (SAC at 6). Alanis told Deborah that she didn't  
12 have all of the reports, and that it didn't matter whether she did  
13 or not because Alanis could throw Plaintiff in jail whenever he  
14 wanted to. (SAC at 6).

15 The SAC alleges that the probation department moved offices in  
16 January 2007, and that at the time he authorized Plaintiff's  
17 arrest, Alanis knew, or should have known, that the APS system's  
18 information was not up to date because staffing shortages prolonged  
19 the scanning process. (SAC at 8).

#### 20 **Plaintiff's Medical Treatment**

21 At the time of his arrest, Plaintiff was suffering from heart  
22 disease and was taking several prescription medications daily. (SAC  
23 at 6). Plaintiff told Alanis that he was a cardiac patient and  
24 needed his heart medications because he had not taken them prior to  
25 his arrest. (SAC at 7). Alanis ignored Plaintiff's request. (SAC  
26 at 7). Additionally, as part of the booking process, Plaintiff's  
27 prescription pain medication was taken from him and never returned.  
28 (SAC at 7). By 2200 hours on February 12, 2007, Plaintiff was

1 experiencing severe and increasing pain in his chest. (SAC at 7).  
2 Plaintiff was given nitroglycerin, which did not address his needs.  
3 Plaintiff submitted an inmate grievance form on February 13, 2007,  
4 requesting medical attention for his unstable heart condition.  
5 (SAC at 7). Plaintiff's associate delivered Plaintiff's medication  
6 to the Fresno County Jail some time on February 13, 2007; the  
7 medication was never given to Plaintiff. (SAC at 7).

8 Plaintiff's request for medical attention was ignored until  
9 the early morning hours of February 14, 2007; by that time,  
10 Plaintiff's cellmate had flagged down the nurse on duty, who  
11 recognized that Plaintiff's condition was very serious. (SAC at  
12 7). An EKG and blood pressure measurement confirmed that Plaintiff  
13 was in extremis, and Plaintiff was immediately transferred to an  
14 emergency room. (SAC at 7). Alanis subsequently learned that  
15 Plaintiff had been hospitalized and contacted the Fresno County  
16 Jail to advise that Alanis would not pursue a formal violation and  
17 would deal with Plaintiff "out of custody." (SAC at 8). Alanis  
18 completed necessary paperwork, and Plaintiff was released from  
19 custody while still hospitalized. (SAC at 8). Plaintiff was  
20 discharged from the hospital on February 17, 2007. (SAC at 8).

### 21 **III. LEGAL STANDARD.**

22 Dismissal under Rule 12(b)(6) is appropriate where the  
23 complaint lacks sufficient facts to support a cognizable legal  
24 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
25 Cir.1990). To sufficiently state a claim to relief and survive a  
26 12(b)(6) motion, the pleading "does not need detailed factual  
27 allegations" but the "[f]actual allegations must be enough to raise  
28 a right to relief above the speculative level." *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).  
2 Mere "labels and conclusions" or a "formulaic recitation of the  
3 elements of a cause of action will not do." *Id.* Rather, there must  
4 be "enough facts to state a claim to relief that is plausible on  
5 its face." *Id.* at 570. In other words, the "complaint must contain  
6 sufficient factual matter, accepted as true, to state a claim to  
7 relief that is plausible on its face." *Ashcroft v. Iqbal*, --- U.S.  
8 ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (internal  
9 quotation marks omitted).

10 The Ninth Circuit has summarized the governing standard, in  
11 light of *Twombly* and *Iqbal*, as follows: "In sum, for a complaint to  
12 survive a motion to dismiss, the nonconclusory factual content, and  
13 reasonable inferences from that content, must be plausibly  
14 suggestive of a claim entitling the plaintiff to relief." *Moss v.*  
15 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.2009) (internal  
16 quotation marks omitted). Apart from factual insufficiency, a  
17 complaint is also subject to dismissal under Rule 12(b)(6) where it  
18 lacks a cognizable legal theory, *Balistreri*, 901 F.2d at 699, or  
19 where the allegations on their face "show that relief is barred"  
20 for some legal reason, *Jones v. Bock*, 549 U.S. 199, 215, 127 S.Ct.  
21 910, 166 L.Ed.2d 798 (2007).

22 In deciding whether to grant a motion to dismiss, the court  
23 must accept as true all "well-pleaded factual allegations" in the  
24 pleading under attack. *Iqbal*, 129 S.Ct. at 1950. A court is not,  
25 however, "required to accept as true allegations that are merely  
26 conclusory, unwarranted deductions of fact, or unreasonable  
27 inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988  
28 (9th Cir.2001). "When ruling on a Rule 12(b)(6) motion to dismiss,

1 if a district court considers evidence outside the pleadings, it  
2 must normally convert the 12(b)(6) motion into a Rule 56 motion for  
3 summary judgment, and it must give the nonmoving party an  
4 opportunity to respond." *United States v. Ritchie*, 342 F.3d 903,  
5 907 (9th Cir.2003). "A court may, however, consider certain  
6 materials-documents attached to the complaint, documents  
7 incorporated by reference in the complaint, or matters of judicial  
8 notice-without converting the motion to dismiss into a motion for  
9 summary judgment." *Id.* at 908.

#### 10 **IV. DISCUSSION.**

##### 11 **A. Plaintiff's Federal Claims**

##### 12 **1. Statute of Limitations Issue**

13 Defendants contend that Plaintiff's federal claims are time-  
14 barred because the SAC contains factual details not alleged in  
15 Plaintiff's original complaint. Rule 15(c)(1)(B) of the Federal  
16 Rules of Civil Procedure provides in part:

17 An amendment to a pleading relates back to the date of the  
18 original pleading when . . . the amendment asserts a claim  
19 or defense that arose out of the conduct, transaction, or  
occurrence set out--or attempted to be set out--in the  
original pleading

20 Claims arise out of the same conduct, transaction, or occurrence if  
21 they "share a common core of operative facts" such that the  
22 plaintiff will rely on the same evidence to prove each claim.  
23 *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008) (citing  
24 *Martell v. Trilogy Ltd.*, 872 F.2d 322, 325-26 (9th Cir. 1989) and  
25 *Percy v. S.F. Gen. Hosp.*, 841 F.2d 975, 978 (9th Cir. 1988)).  
26 Where an amendment seeks to assert a new legal theory of recovery  
27 based on the same facts alleged in the original pleading, the  
28

1 relation back doctrine applies. See *id.*

2 Contrary to Defendants' frivolous argument that new facts  
3 alleged in the SAC "dramatically alter the factual allegations of  
4 this case and are being utilized to support new theories of  
5 liability," (Motion to Dismiss at 9),<sup>1</sup> the SAC merely contains  
6 additional details regarding the same conduct and transactions  
7 identified in Plaintiff's original complaint. The SAC expressly  
8 relates back to the allegations made in Plaintiff's original  
9 complaint with respect to Plaintiff's claims arising out of  
10 Plaintiff's alleged probation violation arrest and the Fresno  
11 County Jail's failure to provide Plaintiff medical care.<sup>2</sup>

## 12 **2. Unreasonable Arrest Claim**

### 13 **a. Defendant Alanis**

14 Probable cause for a warrantless arrest arises when the facts  
15 and circumstances within the officer's knowledge are sufficient to  
16 cause a prudent person to believe that the suspect has committed an  
17 offense. *E.g. Crowe v. County of San Diego*, 593 F.3d 841, 868 (9th  
18 Cir. 2010) (citation omitted). In determining whether there was  
19 probable cause to arrest, a court reviews the totality of  
20 circumstances known to the arresting officers to determine if a

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21  
22 <sup>1</sup> Defendants also complain that the SAC contains factual allegations that  
23 contradict the allegations contained in the original complaint—specifically, the  
24 SAC alleges Plaintiff received some medical treatment at the Fresno County Jail,  
25 whereas the original complaint alleged he received none. However, Defendants do  
26 not assert that Plaintiff is judicially estopped from asserting the contradictory  
27 allegations, which are actually favorable to Defendants. Nor do Defendants  
28 articulate how the allegedly contradictory statements alter the nature of  
Plaintiffs' unlawful arrest claim.

<sup>2</sup> Plaintiff's medical malpractice claim is the one claim that may be subject to  
dismissal on statute of limitations grounds. As discussed below, dismissal of  
the malpractice claim with prejudice is inappropriate at this time because the  
nature of Plaintiff's medical malpractice claim is unclear as currently pled.



1 prudent person would have concluded there was a fair probability  
2 that the defendant had committed a crime. *Id.* While evidence  
3 supporting probable cause need not be admissible in court, it must  
4 be legally sufficient and reliable. *Id.* Law enforcement may not  
5 disregard facts tending to dissipate probable cause. *Id.*

6 The SAC does not allege facts sufficient to establish that  
7 Alanis lacked probable cause to believe Plaintiff was subject to  
8 arrest under California Penal Code section 1203.2(a), which  
9 provides:

10 [a]t any time during the probationary period of a person  
11 released on probation under the care of a probation  
12 officer pursuant to this chapter... if any probation  
13 officer or peace officer has probable cause to believe  
14 that the probationer is violating any term or condition  
of his or her probation or conditional sentence, the  
officer may, without warrant or other process and at any  
time until the final disposition of the case, rearrest  
the person and bring him or her before the court.

15 Cal. Pen. Code § 1203.2(a). In light of the allegations contained  
16 in the SAC, which do not assert Alanis had specific actual  
17 knowledge of filing of the reports, Alanis could have had probable  
18 cause to believe that Plaintiff had violated the terms of his  
19 probation by failing to file one or more monthly reports. This  
20 appears to be a disputed fact.

21 The SAC alleges that Alanis reviewed both the APS system and  
22 Plaintiff's physical file which revealed that three of Plaintiff's  
23 monthly reports were missing. Although the complaint alleges that  
24 Alanis had reason to know that the information contained in the APS  
25 system was not up to date, and thus of limited reliability, the  
26 complaint does not clearly allege that Alanis had any reason to  
27 know that Plaintiff's physical probation file was unreliable. Nor  
28

1 does the complaint clearly allege that Plaintiff's physical file  
2 contained the three missing monthly reports. Assuming *arguendo*  
3 that Alanis knew that Plaintiff had turned in his December report,  
4 Alanis had probable cause to believe that Plaintiff had not turned  
5 in the January and February reports based on his review of  
6 Plaintiff's physical file and the APS.<sup>3</sup>

7 The SAC's allegations that Plaintiff and his former wife each  
8 told Alanis that they had conformed copies of the missing reports  
9 are insufficient to render Plaintiff's arrest violative of the  
10 Fourth Amendment. Once an officer has probable cause to effect an  
11 arrest, the Constitution does not require the officer to  
12 investigate independently an arrestee's claim of innocence. See  
13 *Ewing v. City of Stockton*, 588 F.3d 1218, 1227 (9th Cir. 2010);  
14 *Broam v. Bogan*, 320 F.3d 1023, 1032 (9th Cir. 2003). The FAC does  
15 not allege that Alanis was ever presented with evidence of  
16 Plaintiff's innocence; rather, the SAC merely alleges that  
17 Plaintiff and his former wife told him that such evidence existed.  
18 Although law enforcement may not disregard facts tending to  
19 dissipate probable cause, see *Crowe*, 593 F.3d at 868, Alanis was  
20 under no constitutional duty to conduct a further investigation  
21 into Alanis' innocence, *Ewing*, 588 F.3d at 1227 (citation omitted).  
22 Plaintiff's section 1983 claim based on his arrest is DISMISSED,  
23 without prejudice.

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27 <sup>3</sup> The SAC alleges that Plaintiff spoke with Alanis at the probation office when  
28 he turned in his January report, but does not allege that Alanis had personal  
knowledge that Plaintiff turned in his report at that time.

1                   **b. Defendant Penner**<sup>4</sup>

2           The eighth and ninth causes of action alleged in the SAC  
3 assert claims under section 1983 against Defendant Penner.  
4 Defendant Penner was the Chief Probation Officer at all times  
5 relevant to the SAC. The SAC does not allege any direct  
6 involvement by Penner in Plaintiff's arrest.

7           Courts have found supervisorial liability under section 1983  
8 where the supervisor "was personally involved in the constitutional  
9 deprivation or a sufficient causal connection exists between the  
10 supervisor's unlawful conduct and the constitutional violation."  
11 *Lolli v. County of Orange*, 351 F.3d 410, 418 (9th Cir. 2003)  
12 (quoting *Jackson v. City of Bremerton*, 268 F.3d 646, 653 (9th Cir.  
13 2001)). Supervisors "can be held liable for: 1) their own culpable  
14 action or inaction in the training, supervision, or control of  
15 subordinates; 2) their acquiescence in the constitutional  
16 deprivation of which a complaint is made; or 3) for conduct that  
17 showed a reckless or callous indifference to the rights of others."  
18 *Cunningham v. Gates*, 229 F.3d 1271, 1292 (9th Cir. 2000). As the  
19 SAC fails to allege a constitutional violation based on Plaintiff's  
20 arrest, it does not state a claim against Penner under section  
21 1983. The SAC is also deficient because it does not allege  
22 sufficient facts to establish that Penner participated in or failed  
23 to train, supervise, or control Alanis, that Penner acquiesced to  
24 any constitutionally violative conduct, or that she ratified any  
25 wrongful conduct with knowledge. Plaintiff's section 1983 claim

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26  
27 <sup>4</sup> As Plaintiff concedes, the SAC does not comply with the technical requirements  
28 of California law regarding amendment of complaints to name doe defendants.  
(Doc. 18, Opposition at 6-7). Defendants fail to articulate any prejudice  
resulting from Plaintiff's technical error, which is easily cured by amendment.

1 against Penner is DISMISSED, without prejudice.

2 **3. Plaintiff's Medical Treatment Claim**

3 Claims that correctional facility officials violated a  
4 pretrial detainee's constitutional rights by failing to address  
5 their medical needs are evaluated under a "deliberate indifference"  
6 standard. *Simmons v. Navajo County*, 609 F.3d 1011, 1017 (9th Cir.  
7 2010) (noting that standard is the same for pretrial detainees  
8 under Fourteenth Amendment as for prisoners under Eighth  
9 Amendment). A correctional officer cannot be liable for deliberate  
10 indifference unless she "knows of and disregards an excessive risk  
11 to inmate health or safety; the official must both be aware of  
12 facts from which the inference could be drawn that a substantial  
13 risk of serious harm exists, and he must also draw the inference."  
14 *Id.* (citation omitted).

15 Plaintiff's section 1983 claim arising out of his medical  
16 treatment is advanced only against the County of Fresno. There are  
17 three theories of municipal liability under section 1983:

18 First, a local government may be held liable when  
19 implementation of its official policies or established  
20 customs inflicts the constitutional injury...

21 Second, under certain circumstances, a local government  
22 may be held liable under § 1983 for acts of "omission,"  
23 when such omissions amount to the local government's own  
24 official policy. To impose liability on a local  
25 government for failure to adequately train its employees,  
26 the government's omission must amount to "deliberate  
27 indifference" to a constitutional right. This standard is  
28 met when the need for more or different training is so  
obvious, and the inadequacy so likely to result in the  
violation of constitutional rights, that the policymakers  
of the city can reasonably be said to have been  
deliberately indifferent to the need...

Third, a local government may be held liable under § 1983  
when the individual who committed the constitutional tort  
was an official with final policy-making authority or  
such an official ratified a subordinate's

1 unconstitutional decision or action and the basis for it.

2 *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1249-1250 (9th  
3 Cir. 2010). Unlike the deliberate indifference standard applicable  
4 to individuals, the standard applicable to municipal entities is an  
5 objective standard. *Clouthier*, 591 F.3d at 1249, n.9.

6 Plaintiff alleges that the Fresno County Jail had in place  
7 policies which interfered with prisoners' access to vital  
8 prescription medications, and that Fresno County Jail employed a  
9 policy of failing to properly train and supervise jail staff to  
10 ensure provision of vital prescription medications. (SAC at 20).  
11 Plaintiff's allegations regarding the policies in place at the  
12 Fresno County Jail are supported by reasonable inferences drawn  
13 from the SAC's factual allegations, as the SAC alleges that persons  
14 responsible for Plaintiff's custody were on notice of facts from  
15 which they could infer a substantial risk of serious harm to  
16 Plaintiff but deliberately chose to ignore Plaintiff's requests for  
17 help.<sup>5</sup>

18 The SAC alleges that when he arrived at the Fresno County  
19 Jail, Plaintiff told Alanis that he was a cardiac patient, that he  
20 needed heart medications, and that he had not taken his heart  
21 medications prior to his arrest. (SAC at 7). The SAC also alleges  
22 that prescription pain medication was taken from him during the  
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24  
25 <sup>5</sup> Whether such persons actually drew the inference that Plaintiff faced a  
26 substantial risk of serious harm is a question of fact. *E.g. Farmer v. Brennan*,  
27 511 U.S. 825, 842 (1994) ("[w]hether a prison official had the requisite  
28 knowledge of a substantial risk is a question of fact subject to demonstration  
in the usual ways, including inference from circumstantial evidence...a  
factfinder may conclude that a prison official knew of a substantial risk from  
the very fact that the risk was obvious). Plaintiff does not name any individual  
defendants in his medical care claim under section 1983, however.

1 booking process, and that Plaintiff's grievance form requesting  
2 medical attention for his unstable heart condition was ignored.<sup>6</sup>  
3 (SAC at 7). According to the SAC, Plaintiff did not receive any  
4 medical attention until his cellmate flagged down the on-duty nurse  
5 after Plaintiff's condition had become critical. (SAC at 7).  
6 Plaintiff's allegations support a reasonable inference that Fresno  
7 County Jail has a policy of failing to administer prescription  
8 medication even where it appears that such medication is needed to  
9 stabilize obviously serious medical conditions. The SAC's  
10 allegations also support the inference that Fresno County Jail  
11 fails to properly train its staff regarding the urgency entailed by  
12 detainees' requests for medical attention concerning potentially  
13 life-threatening medical conditions.

#### 14 **B. State Claims**

##### 15 **1. Claims Derivative of Plaintiff's False Arrest Allegation**

###### 16 **a. Defendant Alanis**

17 The SAC asserts the following state law claims against Alanis  
18 based on Plaintiff's purportedly unlawful arrest: violation of  
19 California Civil Code section 52.1 (third cause of action);  
20 respondeat superior (fourth and thirteenth cause of action); common  
21 law false arrest (fifth and sixth cause of action); intentional  
22 infliction of emotional distress (eleventh cause of action); and  
23 negligence (twelfth cause of action). As the complaint does not  
24 state facts sufficient to allege that Plaintiff's arrest was not  
25 supported by probable cause, each of Plaintiff's state law claims

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26  
27 <sup>6</sup> Although the fact that Plaintiff's pain medication was taken away does not  
28 reflect deliberate indifference in and of itself, it does support an inference  
that the Fresno County Jail was on notice that Plaintiff was under the care of  
a physician.

1 premised on Plaintiff's arrest must be DISMISSED, without  
2 prejudice. See, e.g., *Wood v. Emmerson*, 155 Cal. App. 4th 1506,  
3 1514 (Cal. Ct. App. 2007) (liability for false arrest under  
4 California Civil Code section 52.1 turns on whether arrest was  
5 violative of Fourth Amendment); see also *Salazar v. Upland Police*  
6 *Dept.*, 116 Cal. App. 4th 934, 947-48 (Cal. Ct. App. 2004) (cause of  
7 action for false arrest foreclosed by existence of probable cause);  
8 *Bulkley v. Klein*, 206 Cal. App. 2d 742, 751 (Cal. Ct. App. 1962)  
9 (noting that probable cause inquiry is essentially coextensive with  
10 negligence inquiry); *Scannell v. County of Riverside*, 152 Cal. App.  
11 3d 596, 615 (Cal. Ct. App. 1984) (noting that unreasonable action  
12 is an essential element of claim for intentional infliction of  
13 emotional distress).

14 **b. Defendant Penner**

15 The first, second, and tenth causes of action assert state law  
16 claims against Defendant Penner predicated on Plaintiff's  
17 allegation of false arrest.

18 **(i) First Cause of Action**

19 The SAC's first cause of action is for negligent supervision  
20 and training. Plaintiff asserts that Penner was negligent in two  
21 respects: (1) Penner "breached her statutory duty to devote a  
22 reasonable and sufficient amount of time and service to training  
23 and supervising [Alanis]...regarding the propriety of arresting and  
24 detaining...probationers...in the absence of exigent  
25 circumstances;" and (2) Penner "breached her statutory duty to keep  
26 a complete and accurate written record of the conduct of  
27 Plaintiff." (SAC at 9-20).

28 ///

1 "Under [California's] Government Claims Act (Cal. Gov. Code,  
2 § 810 et seq.), there is no common law tort liability for public  
3 entities in California; instead, such liability must be based on  
4 statute." *E.g., Guzman v. County of Monterey*, 46 Cal. 4th 887, 897  
5 (Cal. 2009). Where a public entity is under a mandatory duty  
6 imposed by an enactment that is designed to protect against the  
7 risk of a particular kind of injury, the public entity is liable  
8 for an injury of that kind proximately caused by its failure to  
9 discharge the duty unless the public entity establishes that it  
10 exercised reasonable diligence to discharge the duty. *Id.*  
11 (citations omitted). California courts construe the mandatory duty  
12 requirement strictly, "finding a mandatory duty only if the  
13 enactment 'affirmatively imposes the duty and provides implementing  
14 guidelines.'" *Id.* at 898 (citations omitted).

15 With respect to Plaintiff's first theory, the SAC identifies  
16 the source of Penner's purported duty as California Penal Code  
17 section 1203.71. Section 1203.71 provides, in pertinent part:

18 Any of the duties of the probation officer may be  
19 performed by a deputy probation officer and shall be  
20 performed by him or her whenever detailed to perform  
21 those by the probation officer; and it shall be the duty  
22 of the probation officer to see that the deputy probation  
23 officer performs his or her duties.

22 Although section 1203.71 appears to impose an affirmative duty of  
23 supervision on the probation officer, it does not provide  
24 implementing guidelines. Assuming *arguendo* that section 1203.71  
25 imposes a mandatory duty sufficient to give rise to liability under  
26 California's Government Claims Act, the SAC is deficient. The SAC  
27 does not to allege that Penner's alleged breach of her supervisory  
28 duties proximately caused Plaintiff any actionable injury, as the



1 allegations of the SAC indicate that Plaintiff's arrest was  
2 supported by probable cause. See *Salazar*, 116 Cal. App. 4th at  
3 947-48 (cause of action for false arrest foreclosed by existence of  
4 probable cause); *Bulkley*, 206 Cal. App. 2d at 751 (noting that  
5 probable cause inquiry is essentially coextensive with negligence  
6 inquiry). The existence of probable cause was an intervening cause  
7 of Plaintiff's arrest that severed any causal relationship between  
8 Penner's purported lack of supervision and training and Plaintiff's  
9 arrest.

10 With respect to Plaintiff's second theory, Plaintiff's  
11 contention that California Penal Code section 1203.10 imposes a  
12 mandatory duty to maintain monthly reports is dubious. See  
13 *Whitcombe v. County of Yolo*, 73 Cal. App. 3d 698, 707 (Cal. Ct.  
14 App. 1977) ("Next, we examine appellants' contention that Penal  
15 Code section[] 1203.10 impose[s] mandatory duties upon the  
16 county...We fault the argument inasmuch as we find *among other*  
17 *things* the proximate cause requirement of section 815.6 unsatisfied  
18 by the facts in this case.") (emphasis added). Section 1203.10  
19 does not provide implementing guidelines for the preparation and  
20 maintenance of monthly reports. In fact, the plain language of  
21 section 1203.10 does not require the probation officer to prepare  
22 monthly reports at all:

23 At the time of the plea or verdict of guilty of any  
24 person over eighteen years of age, the probation officer  
25 of the county of the jurisdiction of said criminal shall,  
26 when so directed by the court, inquire into the  
27 antecedents, character, history, family environment, and  
28 offense of such person, and must report the same to the  
court and file his report in writing in the records of  
such court. When directed, his report shall contain his  
recommendation for or against the release for such person  
on probation. If any such person shall be released on  
probation and committed to the care of the probation

1 officer, such officer shall keep a complete and accurate  
2 record in suitable books or other form in writing of the  
3 history of the case in court, and of the name of the  
4 probation officer, and his act in connection with said  
5 case; also the age, sex, nativity, residence, education,  
6 habit of temperance, whether married or single, and the  
7 conduct, employment and occupation, and parents'  
8 occupation, and condition of such person committed to his  
9 care during the term of such probation and the result of  
10 such probation. Such record of such probation officer  
11 shall be and constitute a part of the records of the  
12 court, and shall at all times be open to the inspection  
13 of the court or of any person appointed by the court for  
14 that purpose, as well as of all magistrates, and the  
15 chief of police, or other heads of the police, unless  
16 otherwise ordered by the court. Said books of records  
17 shall be furnished for the use of said probation officer  
18 of said county, and shall be paid for out of the county  
19 treasury.

20 Cal. Penal Code § 1203.10.

21 To the extent section 1203.10 gives rise to a mandatory duty  
22 to prepare and maintain the monthly progress reports at issue in  
23 this case, such duty is not "designed to protect against the risk  
24 of a particular kind of injury" Plaintiff complains of.<sup>7</sup> In  
25 supervising a person on probation, and in compiling and keeping the  
26 required records, the probation department acts as an arm of the  
27 court. *County of Placer v. Superior Court*, 130 Cal. App. 4th 807,  
28 814 (Cal. Ct. App. 2005) accord *McGuire v. Superior Court*, 12 Cal.

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<sup>7</sup> At oral argument, Plaintiff's counsel argued that *Sullivan v. County of Los Angeles*, 12 Cal. 3d 710, 715 (Cal. 1974) supports the its contention that section 1203.10 is sufficient to give rise to liability. *Sullivan* is inapposite; the duty at issue in that case was the duty to release a prisoner after expiration of a sentence pursuant to California Penal Code section 1384. *Bradford v. State of California* 36 Cal. App. 3d 16 (1973), discussed in *Sullivan*, is also inapposite. *Bradford* concerned the reporting duties imposed by California Penal Code sections 11116 and 11116.6, pursuant to which the State is obligated to record the dismissal of charges against a defendant. *Bradford* held that the reporting duties at issue were "clearly designed" to avoid the danger of future illegal arrest and incarceration, a point that was in fact conceded by the defendants in that case. *Id.* at 21. To the extent section 1203.10 is designed in part to protect against the harm Plaintiff suffered, it is not clearly designed to do so.

1 App. 4th 1685, 1687 (Cal. Ct. App. 1993) ("the probation officer  
2 keeps the file both for his own benefit and for the benefit of the  
3 court"). The courts' role with respect to the records discussed in  
4 section 1203.10 is to review such records when exercising  
5 discretion to revoke, modify, or change the conditions of a  
6 person's probation. See, e.g., *People v. Segura*, 44 Cal. 4th 921,  
7 932 (Cal. 2008). The applicable statutory framework does not  
8 suggest that records prepared pursuant to section 1203.10 are to be  
9 used by the court to protect probationers from imprudent arrests.

10 Even assuming *arguendo* that Plaintiff's claim under section  
11 1203.10 is legally tenable, the SAC does not allege facts  
12 sufficient to establish Penner's liability. The allegation that  
13 Plaintiff's monthly reports were not properly scanned into the ATS  
14 system or where otherwise mishandled does not, without more,  
15 support an inference of negligence on Penner's part. The SAC is  
16 devoid of allegations regarding Penner's role in preparing and  
17 maintaining Plaintiff's records.

18 **(ii) Second and Tenth Causes of Action**

19 The second (respondeat superior) and tenth (Cal. Civ. Code §  
20 52.3) causes of action are derivative of Penner's liability for  
21 Plaintiff's arrest. As the SAC does not state any claim against  
22 Penner, the second and tenth causes of action fail.

23 Defendants contend that California Civil Code section 52.3  
24 does not provide a private right of action. At least two district  
25 courts in California have held that section 52.3 does not provide  
26 a private right of action. *Garcia v. City of Ceres*, 2009 U.S.  
27 Dist. LEXIS 16165 \*30 (E.D. Cal. 2009); *Akhtarshad v. City of*  
28 *Corona*, 2009 U.S. Dist. LEXIS 10979 \*19 n.4 (C.D. Cal. 2009). In

1 response, Plaintiff cites *Ley v. State of California*, 114 Cal. App.  
2 4th 1297, 1306 (Cal. Ct. App. 2004) and *Cabral v. County of Glenn*,  
3 624 F. Supp. 2d 1184, 1993 (E.D. Cal. 2009), two cases in which  
4 courts implicitly held that section 52.3 creates a private right of  
5 action. As the SAC fails to state a claim, resolution of the  
6 parties' dispute is unnecessary at this time.

## 7 **2. State Law Medical Care Claims**

8 The SAC asserts two state law claims arising out of the  
9 medical care Plaintiff received at the Fresno County Jail: (1)  
10 violation of California Government Code section 845.6 (fourteenth  
11 cause of action); and (2) medical malpractice (sixteenth cause of  
12 action).

### 13 **a. Section 845.6 Claim**

14 California Government Code section 845.6 provides in pertinent  
15 part:

16 a public employee, and the public entity where the  
17 employee is acting within the scope of his employment, is  
18 liable if the employee knows or has reason to know that  
19 the prisoner is in need of immediate medical care and he  
fails to take reasonable action to summon such medical  
care.

20 Cal. Gov. Code § 845.6. The SAC alleges that Alanis was on notice  
21 of facts which gave him reason to know that Plaintiff was in need  
22 of immediate medical care in the form of his prescription heart  
23 medication. The SAC also alleges that Alanis failed to take  
24 reasonable action to summon the medical care required by Plaintiff,  
25 and that the formal medical grievance Plaintiff filed with jail  
26 staff was ignored until Plaintiff's condition deteriorated so far  
27 that his cellmate had to flag down a nurse. The SAC states a claim  
28 under section 845.6.

1 Defendants cite *Lawson v. Superior Court*, 180 Cal. App. 4th  
2 1372, 1375, 1385 (Cal. Ct. App. 2010) for the proposition that  
3 "under California precedent, even if Plaintiff was denied his  
4 prescription medications, said denial, does not amount to neglect  
5 of a serious medical condition." (Motion to Dismiss at 16).  
6 *Lawson* is inapposite. *Lawson* concerned deprivation of a pregnant  
7 prisoner's unidentified pregnancy medications and a breast pump.  
8 *Lawson* did not hold that deprivation of prescription medications is  
9 never sufficient to establish liability under section 845.6 as a  
10 matter of law. Rather, in *Lawson*, the trial court concluded that  
11 denial of medications and a breast pump did not amount to neglect  
12 of a serious and obvious medical condition. 180 Cal. App. 4th at  
13 1385. Here, the facts alleged in the SAC are sufficient to find  
14 that Alanis knew Plaintiff needed daily doses of prescription heart  
15 medications. Plaintiff's need for heart medication is not  
16 analogous to a pregnant women's need for a breast pump and  
17 unspecified pregnancy medications.<sup>8</sup>

18 Defendants also cite *White v. Superior Court*, 225 Cal. App. 3d  
19 1505, 1509 (1990) in support of the contention that "[f]ailure of  
20 a medical practitioner to prescribe or provide necessary  
21 medications or treatment to one he is summoned to assist cannot,  
22 within the plain meaning of the statutory language, constitute  
23 failure to summon medical care." (Motion to Dismiss at 16). *White*  
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25 <sup>8</sup> There can be no doubt that, in some instances, denial of pregnancy medications  
26 to a pregnant prisoner can support liability under section 845.6 where it is  
27 obvious to correctional officials that, given the nature of the medications,  
28 deprivation poses a risk of serious harm to the prisoner. In *Lawson*, however,  
the complaint did not contain the requisite specificity needed to establish that  
deprivation of the plaintiff's unspecified "pregnancy medications" implicated a  
serious risk of harm.

1 is not applicable to Plaintiff's allegations. Plaintiff's claim  
2 under section 845.6 is based on his allegation that medical care  
3 was not timely summoned, and that as a result, he was deprived of  
4 his medication. Plaintiff does not allege that medical  
5 practitioner was summoned to provide care, but then failed to  
6 prescribe or provide the proper medication.<sup>9</sup>

7 Finally, Defendants cite *Watson v. State of California*, 21  
8 Cal. App. 4th 836, 842 (Cal. Ct. App. 1993) and *Nelson v. State of*  
9 *California*, 139 Cal. App. 3d 72, 78-9 (Cal. Ct. App. 1982) in  
10 support of the argument that

11 section 845.6 contains a distinction between a public  
12 entity employee who is "lawfully engaged in the practice  
13 of the healing arts" and an employee who is  
not...Defendant COUNTY cannot be vicariously liable for  
any alleged medical malpractice of its employees.

14 (Motion to Dismiss at 16-17). Defendants' attempt to conflate  
15 Plaintiff's cause of action under section 845.6 (fourteenth cause  
16 of action) with Plaintiff's separate claim for medical malpractice  
17 (sixteenth cause of action) is unavailing. As Defendants' own  
18 authorities recognize, a claim for medical malpractice is distinct  
19 from a claim under section 845.6. *See id.* Section 845.6 expressly  
20 provides that "a public employee, and the public entity where the  
21 employee is acting within the scope of his employment, is liable"  
22 for violations of section 845.6. Cal. Gov. Code § 845.6 (emphasis  
23 added).

#### 24 **b. Medical Malpractice Claim**

25 The SAC asserts a claim for medical malpractice against County

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26  
27 <sup>9</sup> The SAC does allege that Plaintiff was given nitroglycerin at some point, but  
28 does not allege that he received it from a physician. Further, the SAC alleges  
that Plaintiff filed a request for medical attention *after* he received the  
nitroglycerin, and that the request was ignored for approximately a day.

1 of Fresno. Defendants point out, and Plaintiff concedes, that the  
2 SAC inappropriately asserts the malpractice claim against the  
3 County of Fresno rather than the health care provider. Plaintiff  
4 contends that the malpractice claim should survive the motion to  
5 dismiss because the claim is cognizable against one or more Doe  
6 Defendants.

7         The SAC fails to allege facts sufficient to state a medical  
8 malpractice claim. The elements of a medical malpractice claim  
9 under California law are: "(1) the duty of the professional to use  
10 such skill, prudence, and diligence as other members of his  
11 profession commonly possess and exercise; (2) a breach of that  
12 duty; (3) a proximate causal connection between the negligent  
13 conduct and the resulting injury; and (4) actual loss or damage  
14 resulting from the professional's negligence." *Avivi v. Centro*  
15 *Medico Urgente Medical Center*, 159 Cal. App. 4th 463, 468 n. 2  
16 (Cal. Ct. App. 2008).

17         The only allegations contained in the SAC regarding medical  
18 treatment given to Plaintiff are: (1) Plaintiff was given  
19 nitroglycerin on February 12, 2007, which did not address his  
20 cardiac condition; and (2) a nurse performed diagnostic testing of  
21 Plaintiff on February 14, 2007, determined he was in extremis, and  
22 immediately transferred Plaintiff to the emergency room of  
23 University Hospital. (SAC at 7). With respect the SAC's first  
24 allegation, the SAC fails to allege that a medical professional was  
25 responsible for giving Plaintiff nitroglycerin and fails to allege  
26 facts sufficient to support an inference that administering  
27 nitroglycerin to Plaintiff breached the applicable duty of care  
28 under the circumstances. With respect to the care Plaintiff was

1 afforded on February 14, the complaint does not allege facts  
2 sufficient to support an inference that immediately transferring  
3 Plaintiff to the emergency room breached the applicable duty of  
4 care under the circumstances.

5 Defendants contend that Plaintiff's malpractice claim is time-  
6 barred. Because the nature of Plaintiff's malpractice claim is  
7 unclear given the deficiencies of the SAC, whether Plaintiff's  
8 claim is time barred cannot be determined at this time.

9 **ORDER**

10 For the reasons stated, IT IS ORDERED:

11 1) Plaintiff's section 1983 claims arising out of Plaintiff's  
12 arrest are DISMISSED, without prejudice;

13 2) All state law claims based on Plaintiff's arrest are  
14 DISMISSED, without prejudice;

15 3) Defendants' motion to dismiss Plaintiff's section 1983  
16 claim for deliberate indifference to his medical needs is  
17 DENIED;

18 4) Defendants' motion to dismiss Plaintiff's claim under  
19 California Government Code section 845.6 is DENIED;

20 5) Plaintiff's medical malpractice claim is DISMISSED, without  
21 prejudice,

22 6) Plaintiffs shall file an amended complaint within fourteen  
23 (14) days of service of the Memorandum Decision. Defendants  
24 shall file a response within ten (10) days of service of the  
25 amended complaint; and

26 7) Defendants shall submit a form of order consistent with  
27 this Memorandum Decision within five (5) days following  
28 electronic service of this decision.



1 IT IS SO ORDERED.

2 **Dated:** February 8, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE

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