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

HAROLD TAYLOR,

Case No. 2:09-cv-00024-JAM-KJM

Plaintiff,

ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS

v.

STATE OF CALIFORNIA, DEPARTMENT  
OF CORRECTIONS; BENJAMIN LEE,  
M.D.; PARAMBIR SAHOTA, M.D.;  
and DOES 1 through 20,  
inclusive,

Defendants.

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This matter is before the Court on Defendant Paramvir<sup>1</sup>  
Sahota, M.D.'s ("Defendant") motion to dismiss Plaintiff Harold  
Taylor's ("Plaintiff") second cause of action for failure to

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<sup>1</sup> Plaintiff's first amended complaint names "Parambir  
Sahota," not Paramvir Sahota. Neither Defendants nor Plaintiff  
have explicitly clarified Dr. Sahota's name for this Court.  
Plaintiff's opposition names Dr. Sahota as "Paramvir," the same  
as Defendant's motion. Accordingly, for the purposes of this  
order, the Court will use "Paramvir" as Dr. Sahota's first name.

1 summon medical care pursuant to Federal Rule of Civil Procedure  
2 12(b)(6). (Doc. # 19). Plaintiff opposes the motion.<sup>2</sup> (Doc. #  
3 20). For the reasons stated below, Defendant's motion to dismiss  
4 is DENIED.  
5

6 I. FACTUAL AND PROCEDURAL BACKGROUND

7 According to the First Amended Complaint ("FAC"), on  
8 November 8, 2007, at approximately 5:30 a.m., Plaintiff, a  
9 former inmate at Folsom State Prison, sustained injury to his  
10 penis when he rolled over onto his erect penis while sleeping in  
11 his bunk at the prison. FAC ¶ 10. At approximately 7:30 a.m.,  
12 Plaintiff was seen by Dr. Lee, a physician at Folsom State  
13 Prison and named defendant in this case. Id. at ¶ 11.  
14 Plaintiff's penis was bruised and had swelled four to five  
15 inches in diameter. Id. Plaintiff believed he needed to go to an  
16 outside emergency facility, but Dr. Lee determined that nothing  
17 could be done and instructed Plaintiff to put ice on his penis.  
18 Id.  
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21 Plaintiff continued to be seen at the Folsom State Prison's  
22 medical clinic, returning on November 9 and 14. FAC ¶¶ 12, 14.  
23 On November 17, Plaintiff was examined by Nurse Wyman. Id. at ¶  
24 16. Plaintiff believed he needed to be immediately transferred  
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28 <sup>2</sup> Because oral argument will not be of material assistance,  
the Court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 230(g).

1 to an emergency facility to be treated by an urologist for his  
2 injuries, and Nurse Wyman agreed. Id. The Nurse contacted  
3 Defendant, Dr. Sahota, by telephone to approve transferring  
4 Plaintiff to an outside emergency facility. Defendant denied  
5 the transfer without examining or treating Plaintiff. Id. at ¶  
6 16.  
7

8 On November 19, 2007, Plaintiff was sent to UC Davis  
9 Medical Center on a Code 1 basis for emergency treatment. FAC ¶  
10 18. According to the physicians at UC Davis Medical Center, the  
11 Plaintiff needed immediate surgical repair within forty-eight  
12 hours of his injury. Id. at ¶ 19. They explained that too many  
13 days had passed since the injury, and as a result, the soft  
14 tissues and fibers in the penis had likely fused together making  
15 surgical repair impossible. Id.  
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18 Plaintiff's FAC alleges five causes of action: (1)  
19 violation of the Eighth Amendment; (2) failure to summon medical  
20 care; (3) medical negligence; (4) intentional infliction of  
21 emotional distress; (5) negligent infliction of emotional  
22 distress. In the instant motion, Defendant Dr. Sahota argues  
23 that the second cause of action for failure to summon medical  
24 care should be dismissed because Plaintiff's allegations against  
25 him are not cognizable as a violation of California Government  
26 Code section 845.6.  
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1 II. OPINION

2 A. Legal Standard

3 A party may move to dismiss an action for failure to state a  
4 claim upon which relief can be granted pursuant to Federal Rule  
5 of Civil Procedure 12(b)(6). In considering a motion to dismiss,  
6 the court must accept the allegations in the complaint as true  
7 and draw all reasonable inferences in favor of the plaintiff.  
8 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
9 grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto,  
10 405 U.S. 319, 322 (1972). Assertions that are mere "legal  
11 conclusions," however, are not entitled to the assumption of  
12 truth. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009) (citing  
13 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). To  
14 survive a motion to dismiss, a plaintiff needs to plead "enough  
15 facts to state a claim to relief that is plausible on its face."  
16 Twombly, 550 U.S. at 570. Dismissal is appropriate where the  
17 plaintiff fails to state a claim supportable by a cognizable  
18 legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
19 699 (9th Cir. 1990).

20 Upon granting a motion to dismiss, a court has discretion  
21 to allow leave to amend the complaint pursuant to Federal Rule  
22 of Civil Procedure 15(a). "Absent prejudice, or a strong showing  
23 of any [other relevant] factor[], there exists a presumption  
24 under Rule 15(a) in favor of granting leave to amend." Eminence

1 Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir.  
2 2002). "Dismissal with prejudice and without leave to amend is  
3 not appropriate unless it is clear . . . that the complaint  
4 could not be saved by amendment." Id. Accordingly, a court  
5 should grant leave to amend the Complaint unless the futility of  
6 amendment warrants dismissing a claim with prejudice.  
7

8 B. California Government Code § 845.6

9 Plaintiff's second cause of action alleges that Defendant  
10 breached a duty to summon and provide reasonable medical care in  
11 violation of California Government Code section 845.6.  
12

13 Section 845.6 provides that "a public employee, and the  
14 public entity where the employee is acting within the scope of  
15 his employment, is liable if the employee knows or has reason to  
16 know that the prisoner is in need of immediate medical care and  
17 he fails to take reasonable action to summon such medical care."  
18 Cal. Gov't Code § 845.6. Accordingly, "[i]n order to state a  
19 claim under [section] 845.6, a prisoner must establish three  
20 elements: (1) the public employee knew of or had reason to know  
21 of the need (2) for immediate medical care, and (3) failed to  
22 reasonably summon such care." Jett v. Penner, 439 F.3d 1091 (9th  
23 Cir. 2006) (citing Cal. Gov't Code § 845.6). "Liability under  
24 Section 845.6 is limited to serious and obvious medical  
25 conditions requiring immediate care." Watson v. California, 21  
26 Cal. App. 4th 836, 841 (Cal. App. 2d Dist. 1993). The term  
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1 "immediate medical care" includes both diagnosis and treatment.  
2 Jett, 439 F.3d at 1099.

3 Defendant relies on Watson v. California, 21 Cal.App.4th  
4 836 (Cal. App. 2d Dist. 1993), for the argument that the failure  
5 to summon medical care is not equivalent to a claim for failure  
6 to provide medical care. Dr. Sahota contends that the proper  
7 cause of action for his decision to deny Plaintiff's transfer is  
8 a claim for medical malpractice/negligence rather than a claim  
9 under section 845.6 because Plaintiff was examined by Folsom  
10 State Prison medical staff, namely Nurse Wyman, when Dr. Sahota  
11 denied the transfer. In Watson, a prisoner injured his ankle  
12 playing basketball. A nurse gave him a bandage and medication.  
13 After transfer to state prison, a physician opined that unless  
14 he was screaming in pain he would not examine his tendon. A  
15 later physician noted the tendon was tender. The prisoner  
16 testified in his deposition that he was given medical care each  
17 time he had requested it but that he believed that he had not  
18 been provided reasonable medical care. The Watson court found  
19 that since the state did not have any actual or constructive  
20 notice that the prisoner's achilles tendon was ruptured and  
21 required surgery, there was not any duty to summon medical care  
22 as it had taken over a year for an orthopedic specialist to  
23 diagnose the injury a year later.  
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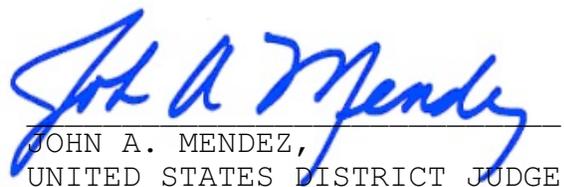
1 Here, in contrast to the Watson case, Plaintiff was  
2 examined by Nurse Wyman who properly concluded that Plaintiff  
3 had suffered a fractured penis and was in need of immediate  
4 medical care. Nurse Wyman contacted Defendant and "requested  
5 immediate transfer for emergency treatment." FAC ¶ 16. Without  
6 examining Plaintiff, Defendant Dr. Sahota denied the transfer.  
7 In accepting the allegations in the FAC as true and drawing all  
8 reasonable inferences in favor of Plaintiff, the Court finds  
9 that Nurse Wyman's recommendation to Dr. Sahota gave him actual  
10 or constructive knowledge of Plaintiff's need for immediate  
11 medical care; Dr. Sahota failed to summon such care; and  
12 therefore Defendant could be liable under section 845.6. Jett v.  
13 Penner, 439 F.3d 1091 (9th Cir. 2006) (citing Cal. Gov't Code §  
14 845.6). Accordingly, the Court finds Plaintiff has plead enough  
15 facts to state a plausible claim for relief against Defendant  
16 under section 845.6.  
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20 III. ORDER

21 For the reasons set forth above, Defendant Dr. Sahota's  
22 motion to dismiss the second cause of action for failure to  
23 summon medical care is DENIED.  
24

25 IT IS SO ORDERED.

26 Dated: May 19, 2010

27   
JOHN A. MENDEZ,  
28 UNITED STATES DISTRICT JUDGE