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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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M.B. III, a minor, by and  
through his Guardian Ad Litem,  
TITICE BEVERLY, individually and  
as Successor in Interest and  
Personal Representative of the  
Estate of MILTON BEVERLY, JR.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
DAVID BAUGHMAN, individually and  
in his official capacity as  
Warden of California State  
Prison-Sacramento; Sergeant TODD  
MANNES, individually and in his  
official capacity as a  
correctional officer and  
supervisor at California State  
Prison-Sacramento; KYLE MOHR,  
individually and in his official  
capacity as a correctional  
officer at California State  
Prison-Sacramento; ANDREW  
BALLARD, individually and in his  
official capacity as a  
correctional officer at  
California State Prison-  
Sacramento, MICHAEL MUNROE,  
individually and in his official  
capacity as a correctional

No. 2:17-cv-2395 WBS DB

ORDER RE: MOTION TO DISMISS

1 officer at California State-  
2 Prison Sacramento; STACY VUE,  
3 individually and in her official  
4 capacity as a correctional  
5 officer at California State  
6 Prison-Sacramento; and DOES 2,  
7 3, 4, 5, and 10,

8 Defendants.

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10 Plaintiffs M.B. III, a minor, by and through his  
11 guardian ad litem, Titice Beverly, bring this action against  
12 defendants California Department of Corrections and  
13 Rehabilitation ("CDCR"), Warden of California State Prison-  
14 Sacramento David Baughman ("Warden" or "Baughman"), correctional  
15 officer and supervisor at California State Prison-Sacramento  
16 ("SAC") Sergeant Todd Mannes, correctional officers at California  
17 State Prison-SAC Kyle Mohr, Andrew Ballard, and Stacy Vue arising  
18 from decedent Milton Beverly Jr.'s suicide while incarcerated at  
19 California State Prison-SAC. Before the court is CDCR's and  
20 Baughman's Motion to Dismiss portions of the Third Amended  
21 Complaint. (Docket No. 33).

22 I. Facts and Procedural Background

23 Milton Beverly Jr. ("decedent") was convicted of  
24 various crimes.<sup>1</sup> (Third Am. Compl. ("TAC") ¶ 22 (Docket No.  
25 31).) Prior to sentencing and while in the custody of the County

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26 <sup>1</sup> Plaintiff M.B. III is the biological son, successor in  
27 interest, and personal representative of the estate of his  
28 father, decedent. Plaintiff Twyller Weary is the mother,  
successor in interest, and personal representative of the estate  
of her son, decedent.

1 of Los Angeles, decedent attempted suicide. (Id.) Decedent was  
2 transferred to Vacaville Mental Health Facility where he was  
3 supervised with suicide precautions. (Id. ¶ 23.) Decedent was  
4 subsequently transferred to North Kern Prison in Delano,  
5 California, where he again attempted suicide. (Id. ¶ 24.)  
6 Decedent was transferred from North Kern State Prison to a  
7 California Medical Facility where he was placed in an enhanced  
8 outpatient program for mental health care. (Id.) On June 2,  
9 2016, Decedent was then transferred to California State Prison-  
10 SAC. (Id. ¶ 23.)

11 Plaintiffs allege that while decedent was at  
12 California State Prison-SAC, decedent showed signs and symptoms  
13 of suicidal ideation and behavior. (Id. ¶ 25.) Plaintiffs  
14 allege that in October of 2016, decedent's sister attempted to  
15 reach California State Prison-SAC personnel by telephone and  
16 received no response. (Id.) In a letter dated November 1, 2016,  
17 decedent's sister notified California State Prison-SAC personnel  
18 that she feared decedent's condition was getting worse. (Id.)  
19 Plaintiffs allege that while at California State Prison-SAC,  
20 decedent was not provided with proper medical care, supervision,  
21 or suicide precautions. (Id. ¶ 26.) Plaintiffs further allege  
22 that the personnel assigned to perform periodic "cell checks" on  
23 decedent's prison cell failed to perform these cell checks every  
24 hour, as required by prison policy or procedure.<sup>2</sup> (Id.)

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25 <sup>2</sup> Plaintiffs allege that written policy, procedure, and  
26 practice require that corrections officers personally observe  
27 inmates on a regular schedule and not less than once per hour,  
28 and that suicidal inmates should be observed more frequently.  
(Id.)

1 Plaintiffs also allege that decedent was not prescribed or  
2 administered antidepressant medication. (Id. ¶ 29.) On or about  
3 November 24, 2016, decedent committed suicide by asphyxiation.  
4 (Id. ¶ 27.)

5 On January 30, 2017 plaintiffs filed their First  
6 Amended Complaint alleging the following causes of action: (1) 42  
7 U.S.C. § 1983 claim for violating the Eighth and Fourteenth  
8 Amendments, against defendants the State of California, CDCR,  
9 Governor Edmund G. Brown Jr. ("Brown"), Secretary of the CDCR  
10 Scott Kernan ("Kernan"), and Baughman; (2) Monell claim under 42  
11 U.S.C. § 1983, against defendants Brown, Kernan, Baughman; (3) 42  
12 U.S.C. § 1983 claim for negligent hiring and failure to train and  
13 supervise, against defendant CDCR and defendants Brown, Kernan,  
14 and Baughman; (4) negligence against all defendants; (5)  
15 violation of California Government Code §§ 844.6 and 845.6,  
16 against all defendants for failure to summon medical care; (6)  
17 violation of California Civil Code §§ 51 and 52.1, the California  
18 Unruh Act and Bane Act, against all defendants; (7) violation of  
19 42 U.S.C. §§ 12101, et. seq., the Americans with Disabilities Act  
20 ("ADA"), against all defendants; and (8) violation of 29 U.S.C. §  
21 794, the Rehabilitation Act ("Rehab Act"), against all  
22 defendants.

23 The court granted in part defendant Baughman, Brown,  
24 CDCR, Kernan's Motion to Dismiss Portions of the First Amended  
25 Complaint. (Docket No. 19.) The court dismissed the following  
26 claims: (1) all claims against defendant Brown; (2) the fourth,  
27 fifth, sixth, seventh, and eighth claims against defendants  
28 Kernan and Baughman; (3) the third, fourth, and sixth claims

1 against CDCR; (4) the fourth and sixth claims against the State  
2 of California; (5) the claims for injunctive relief; and (6) the  
3 claim for punitive damages. In all other respects, defendants'  
4 Motion to Dismiss was denied. The court permitted plaintiffs  
5 leave to amend to file an amended complaint.

6 On June 6, 2018, plaintiffs filed a Third Amended  
7 Complaint alleging the following causes of action: (1) 42 U.S.C.  
8 § 1983 claim for violating the Eighth and Fourteenth Amendments,  
9 against defendants Baughman, Manes, Mohr, Ballard, Munroe, and  
10 Vue; (2) supervisory liability based on customs, policies, and  
11 procedures under 42 U.S.C § 1983, against Baughman and Manes; (3)  
12 supervisory liability for negligent hiring and failure to train  
13 and supervise under 42 U.S.C § 1983, against Baughman and Manes;  
14 (4) negligence against all defendants; (5) violation of  
15 California Government Code §§ 844.6 and 845.6, against all  
16 defendants for failure to summon medical care.<sup>3</sup>

## 17 II. Legal Standard

18 On a Rule 12(b)(6) motion, the inquiry before the court  
19 is whether, accepting the allegations in the complaint as true  
20 and drawing all reasonable inferences in the plaintiff's favor,  
21 the plaintiff has stated a claim to relief that is plausible on  
22 its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The  
23 plausibility standard is not akin to a 'probability requirement,'  
24 but it asks for more than a sheer possibility that a defendant  
25 has acted unlawfully." Id. "A claim has facial plausibility

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26 <sup>3</sup> Plaintiffs no longer allege assert claims under the  
27 ADA, the Rehab Act, the Bane Act, or the Unruh Act.  
28 Additionally, plaintiffs no longer seek injunctive relief or  
punitive damages.

1 when the plaintiff pleads factual content that allows the court  
2 to draw the reasonable inference that the defendant is liable for  
3 the misconduct alleged.” Id. “The issue is not whether a  
4 plaintiff will ultimately prevail but whether the claimant is  
5 entitled to offer evidence to support the claims.” Jackson v.  
6 Carey, 353 F.3d 750, 755 (9th Cir. 2003) (quoting Scheuer v.  
7 Rhodes, 416 U.S. 232, 236 (1974)).

### 8 III. Discussion

9 Defendants CDCR and Baughman move to dismiss all claims  
10 asserted against them in plaintiffs’ Third Amended Complaint on  
11 the following grounds: plaintiffs fail to allege sufficient facts  
12 to state a section 1983 claim against Baughman; (2) plaintiffs’  
13 state law claims against defendants, except for failure to summon  
14 medical care against CDCR, are barred for failure to file a  
15 timely and proper government claim; (3) plaintiffs’ state law  
16 claims fail to allege sufficient facts to state cognizable  
17 claims; (4) Baughman is entitled to qualified immunity on  
18 plaintiffs’ federal causes of action; (5) CDCR and Baughman are  
19 entitled to Eleventh Amendment immunity; and (6) plaintiffs’  
20 state law claims are barred by statutory immunities.

#### 21 A. Section 1983 claims against Baughman

22 Plaintiffs allege Baughman is liable both as an  
23 individual and as a supervisor for acting with deliberate  
24 indifference towards the decedent’s serious medical needs and  
25 safety.<sup>4</sup>

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26 <sup>4</sup> The court notes that “state officers named in their  
27 official capacities are immune from suits for damages in federal  
28 court (for federal or state law claims) under the doctrine of  
state sovereign immunity and the Eleventh Amendment, and are not

1           1. First Claim: Individual Liability

2           To state a claim under 42 U.S.C. § 1983 for a violation  
3 of the Eighth Amendment based on inadequate medical care, "a  
4 prisoner must allege acts or omissions sufficiently harmful to  
5 evidence deliberate indifference to serious medical needs."  
6 Estelle v. Gamble, 429 U.S. 97, 106 (1976) (internal quotations  
7 omitted). "A heightened suicide risk or an attempted suicide is  
8 a serious medical need." Conn v. City of Reno, 591 F.3d 1081,  
9 1095 (9th Cir. 2010), cert. granted, judgment vacated sub nom.  
10 City of Reno, Nev. v. Conn, 563 U.S. 915 (2011), and opinion  
11 reinstated, 658 F.3d 897 (9th Cir. 2011). To be deliberately  
12 indifferent, "[a] defendant must purposefully ignore or fail to  
13 respond to a prisoner's pain or possible medical need." McGuckin  
14 v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992), overruled on other  
15 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir.  
16 1997). "[T]he official must both be aware of facts from which  
17 the inference could be drawn that a substantial risk of serious  
18 harm exists, and he must also draw the inference." Farmer v.  
19 Brennan, 511 U.S. 825, 837 (1994).

20           The Third Amended Complaint alleges that defendants  
21 knew or had reason to know of the need for intensive medical care  
22 for decedent because of decedent's prior suicide attempts while  
23 in custody, including one which occurred while decedent was in

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24  
25 'persons' subject to suit under 42 U.S.C. § 1983 (in federal or  
26 state court)." Silverbrand v. Woodford, No. 06-cv-3253-R(CW),  
27 2010 WL 3635780, at \*4 (C.D. Cal. Aug. 18, 2010) (citing Hafer v.  
28 Melo, 502 U.S. 21, 25 (1991)). Therefore, Baughman is not liable  
and the court dismisses the section 1983 claims against him in  
his official capacity. The court proceeds with plaintiffs'  
claims against Baughman in his individual capacity.

1 custody at a CDCR facility, his participation in the Mental  
2 Health Service Delivery System, and his past placement in a  
3 segregated unit. (TAC ¶¶ 28, 44, 77.) Plaintiffs further allege  
4 that decedent's sister notified California State Prison-SAC in  
5 writing that she feared decedent's condition was getting worse.  
6 (Id. ¶ 25.) Plaintiffs claim that Baughman was regularly  
7 provided with reports concerning the treatment of mentally ill  
8 inmates, jail suicides, and violations involving housing, care,  
9 mental healthcare, and treatment of inmates at California State  
10 Prison-SAC. (Id. ¶ 9). Further, plaintiffs allege that  
11 defendants had ongoing knowledge of California's prison system's  
12 failure to provide medical care to the mentally ill. (Id. ¶ 16.)

13 Under section 1983, plaintiffs must demonstrate that  
14 each named defendant personally participated in the deprivation  
15 of his rights. See Henry A. v. Willden, 678 F.3d 991, 1005 (9th  
16 Cir. 2012). Here, plaintiffs' allegations state "defendants knew  
17 or should have known" but contain no facts regarding what  
18 Baughman specifically knew or should have known as compared to  
19 other defendants. Thus, "the complaint falls short in some  
20 places [] tying its factual allegations to particular  
21 defendants." Id. Furthermore, there are no allegations  
22 regarding how Baughman would have learned about decedent's  
23 previous suicide attempts or past placements. Moreover,  
24 plaintiffs do not allege that information about decedent was  
25 contained in the records Baughman was provided with, nor do they  
26 allege that Baughman personally learned about the decedent's  
27 sister's communications with the prison. Plaintiffs cannot  
28 simply rely on the fact that Baughman was the warden at the



1 prison, and argue that because of his position Baughman was aware  
2 or should have been aware that decedent was suicidal. See Vega  
3 v. Davis, 572 F. App'x 611, 618 (10th Cir. 2014) ("[I]t is not  
4 plausible to infer that a warden is aware of everything that  
5 happens to each inmate in his custody."); Sullivan v. Biter, No.  
6 1:15-cv-243 DAD SAB, 2017 WL 1540256, at \*1 (E.D. Cal. Apr. 28,  
7 2017) ("Conclusory allegations that various prison officials knew  
8 or should have known about constitutional violations occurring  
9 against plaintiff simply because of their general supervisory  
10 role are insufficient to state a claim under 42 U.S.C. § 1983.").

11 Thus, plaintiffs' allegations are insufficient because  
12 there are no facts to show that Baughman was aware of decedent's  
13 specific medical needs or to establish how he was personally  
14 involved in the constitutional deprivation. Accordingly, the  
15 court will dismiss plaintiffs' first cause of action against  
16 Baughman.

## 17 2. Second and Third Claims: Supervisory Liability

18 Plaintiffs purport to hold Baughman liable under a  
19 theory of supervisory liability for promulgating or failing to  
20 promulgate proper policies, practices and customs and negligently  
21 hiring and failing to train and supervise his subordinates.

22 A supervisor may be held liable under section 1983 "if  
23 there exists either (1) his or her personal involvement in the  
24 constitutional deprivation, or (2) a sufficient causal connection  
25 between the supervisor's wrongful conduct and the constitutional  
26 violation." Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)  
27 (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)). To  
28 be liable, the supervisor's participation could include his "own

1 culpable action or inaction in the training, supervision, or  
2 control of his subordinates, his acquiescence in the  
3 constitutional deprivations of which the complaint is made, or  
4 conduct that showed a reckless or callous indifference to the  
5 rights of others." Id. at 1205-06 (citing Larez v. City of Los  
6 Angeles, 946 F.2d 630 (9th Cir. 1991)). "A supervisor is only  
7 liable for constitutional violations of his subordinates if the  
8 supervisor participated in or directed the violations, or knew of  
9 the violations and failed to act to prevent them. Taylor v.  
10 List, 880 F.2d 1040, 1045 (9th Cir. 1989).

11 Here, plaintiffs allege that Baughman's affirmative  
12 conduct involves his knowing failure to ensure enforcement of the  
13 specific policies, rules, or directives that applied to decedent,  
14 which set in motion a series of acts that Baughman knew or  
15 reasonably should have known would cause others to inflict  
16 constitutional injuries on decedent. (TAC ¶ 11.) Plaintiffs  
17 allege that Baughman failed to enforce numerous policies and  
18 practices, including the policy that required correctional  
19 officers to personally observe inmates on a regular schedule and  
20 not less than once per hour, with suicidal inmates observed more  
21 frequently. (Id. ¶ 26.) As a result of the failure to enforce  
22 that policy, plaintiffs allege that decedent was unsupervised for  
23 more than three hours, a period of time long enough for decedent  
24 to commit suicide. (Id. ¶ 27.) Plaintiffs also allege that  
25 individuals who monitored decedent were not properly trained or  
26 supervised as to provide the immediate medical care that was  
27 necessary to save decedent's life. (TAC ¶ 80.)

28 Here, for the same reasons as previously stated, there

1 are no facts to show that Baughman was aware of decedent's  
2 specific medical needs. Furthermore, there are no specific facts  
3 to establish that Baughman directed, participated in, or knew  
4 that his subordinates were not following prison policy or that  
5 his subordinates were deliberately indifferent to decedent's  
6 medical needs. Moreover, plaintiffs' assertion that Baughman's  
7 failure to train or supervise his subordinates caused the delay  
8 in response to the incident is conclusory and fails to allege  
9 either his personal involvement or a sufficient causal connection  
10 between Baughman's alleged conduct--failure to train or  
11 supervise--and the alleged constitutional deprivation--inadequate  
12 medical care.

13 Accordingly, the court will grant defendants' Motion to  
14 dismiss plaintiffs' second and third causes of action as alleged  
15 against defendant Baughman.<sup>5</sup>

16 B. State Law Claims

17 1. California Government Tort Claims Act

18 Defendants allege that plaintiffs' state law claims  
19 against defendants, except failure to summon medical care against  
20 CDCR, are barred for failure to comply with the California  
21 Government Claims Act.

22 Under the Government Claims Act, no suit for money or  
23 damages may be brought against a public entity on a cause of  
24 action for which a claim ("government claim") satisfying  
25 California Government Code § 910 has been submitted and denied.

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26 <sup>5</sup> Because plaintiffs have not sufficiently alleged that  
27 Baughman violated a constitutional right, the court need not  
28 decide whether Baughman is entitled to qualified immunity on  
plaintiffs' federal claims.

1 Cal. Gov't Code § 945.5; Blair v. Superior Court, 218 Cal. App.  
2 3d 221, 224 (3d Dist. 1990). Section 910 requires that the  
3 government claim include, among other requirements, "the date,  
4 place, and other circumstances of the occurrence or transaction  
5 which gave rise to the claim asserted" as well as "[a] general  
6 description of the indebtedness, obligation, injury, damage or  
7 loss incurred so far as it may be known at the time of  
8 presentation of the claim." Cal. Gov't Code § 910(c), (d). The  
9 claimant is also required to identify "the name or names of the  
10 public employee or employees causing the injury, damage, or loss,  
11 if known." Cal. Gov't Code § 910(e). "Compliance with the []  
12 Claims Act is an element of the cause of action, is required, and  
13 failure to file a claim is fatal to a cause of action."  
14 Livingston v. Sanchez, No. 1:10-cv-1152 LJO, 2012 WL 3288177, at  
15 \*2 (E.D. Cal. Aug. 10, 2012) (internal quotations and citations  
16 omitted).

17 "Where a submitted claim is deficient in some way, but  
18 the claim substantially complies with all of the statutory  
19 requirements, the doctrine of 'substantial compliance' in some  
20 cases may validate the deficient claim." Gen. Sec. Servs. Corp.  
21 v. County of Fresno, 815 F. Supp. 2d 1123, 1133 (E.D. Cal. 2011)  
22 (Ishii, J.) (citing Sparks v. Kern Cty. Bd. of Supervisors, 173  
23 Cal. App. 4th 794, 800 (5th Dist. 2009)). "However, the doctrine  
24 of substantial compliance cannot cure the 'total omission of an  
25 essential element from the claim, or remedy a plaintiff's failure  
26 to comply meaningfully with the statute.'" Id. (citations  
27 omitted). The purpose of section 910 is "to provide the public  
28 entity sufficient information to enable it to adequately

1 investigate claims and to settle them, if appropriate, without  
2 the expense of litigation.” City of San Jose v. Superior Court,  
3 12 Cal. 3d 447, 455 (1974). “[T]he statute should not be applied  
4 to snare the unwary where its purpose is satisfied.” Gen. Sec.  
5 Servs. Corp., 815 F. Supp. 2d at 1133.

6 Here, plaintiffs filed a timely government claim with  
7 the State as required under section 910.<sup>6</sup> Defendants assert that  
8 plaintiffs did not comply with the Government Claims Act because  
9 plaintiffs’ government claim did not name Baughman, and the  
10 government claim alleges acts and omissions by “personnel at  
11 Folsom State Prison.” While plaintiffs’ government claim does  
12 not mention Baughman or California State Prison-SAC, it does  
13 purport to bring claims against CDCR and the personnel at the  
14 prison where the suicide occurred.<sup>7</sup> Regardless, the Government  
15 Claims Act does not require the claimant to name each defendant;  
16 instead, the statute requires plaintiffs to name individual  
17 public employees “if known.” Cal. Gov’t Code § 910(e). Thus,  
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19 <sup>6</sup> The court takes judicial notice of plaintiffs’  
20 government claim. See Moore v. City of Vallejo, 73 F. Supp. 3d  
21 1253, 1256 (E.D. Cal. 2014) (Mendez, J.) (taking judicial notice  
22 of government tort claim because “[s]uch a document is a matter  
of public record and is necessarily relied on by Plaintiffs in  
bringing their state law claims.”).

23 <sup>7</sup> Plaintiffs initially believed decedent committed  
24 suicide at Folsom State Prison because the Sacramento County  
25 Coroner’s Report listed the decedent’s place of death as “Folsom  
26 State Prison”. (Pls.’ Opp’n at 4-5 (Docket No. 36).) Plaintiffs  
27 originally relied on the coroner’s report in drafting the  
28 government claim, and later learned that the decedent committed  
suicide at California State Prison-SAC. (Id.) The court notes  
that the California State Prison-SAC is a state prison located in  
Folsom. The facility is adjacent to Folsom State Prison, and  
both prisons are located on the same road.

1 plaintiffs' failure to name certain defendants in their  
2 government claim, where those defendants were later named in the  
3 Complaint, does not require dismissal of those state law claims  
4 under the Government Claims Act.

5 Defendants also argue that the government claim does  
6 not comply with the Government Claims Act because the government  
7 claim did not give defendants any reason to investigate negligent  
8 conduct, specifically a failure to train or supervise. (Defs.'  
9 Mem. P. & A. at 10 (Docket No. 33-1).)

10 Here, plaintiffs' government claim states that while  
11 incarcerated at Folsom State Prison, "decedent was showing signs  
12 and symptoms of suicidal ideation and behavior" and that  
13 "decedent was not provided with proper medical and supervisory  
14 care, and appropriate precautions," which lead to decedent's  
15 suicide. (Defs.' Req. for Judicial Notice ("RJN") (Docket No.  
16 33-2).) Moreover, plaintiffs contend "that the agents and  
17 employees of the State of California failed in their statutory  
18 duties under [] California . . . law." (Id.) Lastly, the  
19 government claim alleges that "the State of California and its  
20 employees knew and/or had reason to know that decedent was in  
21 immediate need of medical and other supervisory care yet . . .  
22 failed to take reasonable action to summon such care in order to  
23 protect against decedent's attempted suicide." (Id. at 8.)

24 These allegations in the government claim provide the  
25 public entity with sufficient information to enable it to conduct  
26 an adequate investigation. See City of San Jose, 12 Cal. 3d at  
27 455. Moreover, while the Third Amended Complaint may contain  
28 additional theories of liability not listed in the government

1 claim, those theories are based on the same factual foundation as  
2 those in the government claim. See Gen. Sec. Servs. Corp., 815  
3 F. Supp. 2d at 1134 (quoting Dixon v. City of Livermore, 127 Cal.  
4 App. 4th 32, 40, 42 (2005)) (“[I]t is permissible to plead  
5 additional theories where the ‘additional theories [are] based on  
6 the same factual foundation as those in the claim.’”). Thus, the  
7 government claim put defendants on notice to investigate whether  
8 CDCR, its agents, and employees followed proper precautions to  
9 protect against decedent’s suicide attempt, including failing to  
10 train or supervise their employees. See White v. Superior Court,  
11 225 Cal. App. 3d 1505, 1511 (1st Dist. 1990) (finding that  
12 failure of plaintiff to mention in government claim against city  
13 and county any alleged problems in hiring, training, retention,  
14 and supervision of officer did not bar plaintiff from asserting  
15 such allegations in plaintiff’s complaint where plaintiff’s  
16 complaint and her government claim were predicated on the same  
17 fundamental facts concerning the officer’s conduct).

18 Because the court finds that plaintiffs’ government  
19 claim substantially complies with the Government Claims Act, the  
20 court will deny defendants’ Motion to Dismiss as to plaintiffs’  
21 state law claims for failure to comply with the Government Claims  
22 Act.

23 2. Fourth Claim: Negligence/Wrongful Death

24 a. Claim against CDCR

25 Plaintiffs concede that the negligence cause of action  
26 against defendant CDCR should be dismissed. Accordingly, the  
27 court will dismiss plaintiffs’ fourth cause of action for  
28 negligence asserted against CDCR.

1           b.     Claim against Baughman

2           To state a claim for negligence, plaintiffs must  
3 allege: (1) a legal duty to use reasonable care, (2) breach of  
4 that duty, (3) proximate cause between the breach and (4) the  
5 plaintiff's injury. Mendoza v. City of Los Angeles, 66 Cal. App.  
6 4th 1333, 1339, (2d Dist. 1998). Under California law, a jailer  
7 has a special relationship with a prisoner that creates a duty of  
8 care. Love v. Salinas, No. 2:11-cv-361-MCE, 2013 WL 4012748, at  
9 \*15 (E.D. Cal. Aug. 6, 2013) (citing Lawson v. Superior Court,  
10 180 Cal. App. 4th 1372, 1389-90 (4th Dist. 2010); Giraldo v.  
11 Dep't of Corr. & Rehab., 168 Cal. App. 4th 231, 240 (1st Dist.  
12 2008)). Thus, for example, "[a] deputy may be held legally  
13 responsible for a detainee's injuries if the deputy's actions or  
14 inaction are the moving force behind a series of events that  
15 ultimately lead to a foreseeable harm being suffered, even if  
16 other intervening causes contribute to the harm." Campos v.  
17 County of Kern, No. 1:14-cv-1099 DAD JLT, 2017 WL 915294, at \*14  
18 (E.D. Cal. Mar. 7, 2017) (citing cases).

19           Here, plaintiffs allege that Baughman had a number of  
20 duties to decedent including, but not limited to, a duty to  
21 render access and delivery of mental and medical care, treatment,  
22 and emergency services to decedent. (TAC ¶ 68.) Plaintiffs also  
23 allege Baughman had a duty to ensure the competence of his  
24 employees, to observe, report and monitor decedent, and to train,  
25 supervise, and instruct his subordinates. (Id. ¶ 70.)  
26 Plaintiffs allege that Baughman breached his duties, and as a  
27 direct result of the breach of his duty of care to decedent,  
28 plaintiffs have suffered damage. (Id. ¶ 68-71.)



1           At oral argument, plaintiffs' counsel argued that  
2       Baughman had a duty to ensure inmates are adequately supervised,  
3       and that prison employees follow all protocols, policies, and  
4       procedures. Plaintiffs' counsel argued that because an employee  
5       did not supervise decedent as required by policy on the night  
6       decedent committed suicide, Baughman, as warden, was liable for  
7       negligence. Plaintiffs' counsel went on to argue that the warden  
8       may be liable for any harm that results from the negligence of  
9       prison employees. To so hold would amount to a finding of strict  
10      liability for all actionable conduct that occurs in the prison.  
11      That is not the law. As the warden of a large prison, Baughman  
12      was not an insurer of the safety of every inmate.

13           Under California Government Code section 820.8,  
14      "[e]xcept as otherwise provided by statute, a public employee is  
15      not liable for an injury caused by the act or omission of another  
16      person." However, a public employee is liable for injury  
17      proximately caused by his own negligent or wrongful act or  
18      omission. Id. "Supervisory personnel whose personal involvement  
19      is not alleged may not be held responsible for the acts of their  
20      subordinates under California law." Milton v. Nelson, 527 F.2d  
21      1158, 1159 (9th Cir. 1975) (holding that under California law,  
22      including section 820.8, a prison director, warden, and associate  
23      warden could not be held vicariously liable for the actions of  
24      their subordinates). Thus, plaintiffs cannot hold Baughman  
25      liable based solely on his supervisory role as warden of  
26      California State Prison-SAC. Rather, plaintiffs must allege  
27      sufficient facts to allege that Baughman's own acts as a  
28      supervisor proximately caused the injury. See Johnson v. Baca,

1 No. 1:30-cv-4496 MMMA JWX, 2014 WL 12588641, at \*17 (C.D. Cal.  
2 Mar. 3, 2014) (denying defendants' motion to dismiss because  
3 plaintiff alleged facts that, if proved, would give rise to  
4 liability for injury proximately caused by the Sheriff's own  
5 negligent or wrongful act or omission).

6 Furthermore, as previously discussed, "there is nothing  
7 from which the court could plausibly infer that defendant  
8 [Baughman] was aware of [decedent]'s need for medical attention  
9 and failed to respond appropriately to it." Lapachet v.  
10 California Forensic Med. Grp., Inc., No 1:17-cv-1226 DAD EPG,  
11 2018 WL 2564398, at \*10 (E.D. Cal. June 1, 2018). Nor are there  
12 any facts from which the court could infer that Baughman was  
13 aware of or did not adequately investigate his subordinates'  
14 alleged failure to monitor and supervise inmates such as  
15 decedent. Thus, the court is unable to discern what actions  
16 Baughman allegedly took or failed to take that constituted a  
17 breach of duty that he owed to decedent. See id. Moreover,  
18 without sufficient facts regarding Baughman's knowledge that  
19 decedent was suicidal or that his subordinates failed to  
20 adequately monitor, supervise, or treat decedent, plaintiffs have  
21 not sufficiently alleged that Baughman's action or inaction  
22 created a foreseeable harm. See Johnson v. County of Los  
23 Angeles, 143 Cal. App. 3d 298, 307-08 (2d Dist. 1983) ("The most  
24 important policy consideration is the foreseeability of the harm:  
25 as a general principle a defendant owes a duty of care to all  
26 persons who are foreseeably endangered by his conduct, with  
27 respect to all risks which make the conduct unreasonably  
28 dangerous.") Accordingly, plaintiffs' negligence claim against

1 Baughman will be dismissed.

2 3. Fifth Claim: Failure to Summon Medical Care

3 Finally, defendants move to dismiss plaintiffs' failure  
4 to summon medical care under California Government Code Section  
5 845.6 against both CDCR and Baughman.<sup>8</sup>

6 Section 845.6 provides that "a public employee, and the  
7 public entity where the employee is acting within the scope of  
8 his employment, is liable if the employee knows or has reason to  
9 know that the prisoner is in need of immediate medical care and  
10 he fails to take reasonable action to summon such medical care."  
11 Cal. Gov't Code § 845.6. The section "limits the duty to provide  
12 medical care for prisoners to cases where there is actual or  
13 constructive knowledge that the prisoner is in need of immediate  
14 medical care." Id. To state a claim under section 845.6,  
15 plaintiffs must establish that: "(1) the public employee knew or  
16 had reason to know of the need (2) for immediate medical care,  
17 and (3) failed to reasonably summon such care." Jett v. Penner,  
18 439 F.3d 1091, 1099 (9th Cir. 2006). "A suicidal state is a  
19 serious and obvious medical condition requiring immediate care."

20 <sup>8</sup> Defendants argue that section 845.6 immunizes public  
21 employees for injuries caused by the failure of the employee to  
22 furnish medical care for a prisoner. Section 845.6 states that  
23 "[n]either a public entity nor a public employee is liable for  
24 injury proximately caused by the failure of the employee to  
25 furnish or obtain medical care for a prisoner in his custody."  
26 However, a public employee and the entity "is liable if the  
27 employee knew or has reason to know that the prisoner is in need  
28 of immediate medical care and he fails to take reasonable action  
to summon such care." Thus, defendants cannot claim immunity for  
plaintiffs' fifth cause of action for failure to summon medical  
care. See Castaneda v. Dep't of Corr. & Rehab., 212 Cal. App.  
4th 1051, 1071 (2d. Dist. 2013) ("[T]he duty to summon is  
presented as the exception to the broad, general immunity for  
failing to furnish or provide medical care.")"

1 Johnson v. Baca, No. 13-cv-4496 MMM AJWX, 2014 WL 12588641, at  
2 \*18 (C.D. Cal. Mar. 3, 2014) (citing Johnson, 143 Cal. App. 3d at  
3 316-17)).

4 A. Against Baughman

5 Here, plaintiffs allege that defendants knew or had  
6 reason to know of the need for intensive medical care for  
7 decedent because of his recent prior suicide attempts while in  
8 custody, his participation in the Mental Health Service Delivery  
9 System, and the records available to and generated by CDCR  
10 indicating that decedent was an immediate threat to his safety.  
11 (TAC ¶ 78.) Thus, plaintiffs allege that defendants' failure to  
12 provide immediate medical care in the form of adequate  
13 monitoring<sup>9</sup> and mental health care proximately caused decedent's  
14 suicide. (Id. ¶ 76.) For the same reasons as previously  
15 discussed, plaintiffs have not sufficiently alleged that Baughman  
16 personally knew or had reason to know of decedent's need for  
17 immediate medical need. Accordingly, the court will grant  
18 defendants' motion to dismiss plaintiffs' failure to summon  
19 medical care under section 845.6 against Baughman.

20 B. Against CDCR

21  
22 <sup>9</sup> California courts hold that the failure to prescribe  
23 necessary medication or, once summoned to provide treatment, to  
24 ensure proper diagnosis, or to monitor the progress of an inmate  
25 that the public employee has been summoned to assist, are issues  
26 relating to the manner in which medical care is provided, and do  
27 not subject the State to liability under section 845.6 for  
28 failure to summon. Castaneda, 212 Cal. App. 4th at 1074. Thus,  
to the extent that plaintiffs allege defendants provided  
healthcare, monitoring, and treatment to decedent, but that care  
was not adequate, plaintiffs do not state a claim under section  
845.6.

1           “Under the doctrine of respondeat superior, an employer  
2 may be held vicariously liable for torts committed by an employee  
3 within the scope of employment.” Mary M. v. City of Los Angeles,  
4 54 Cal. 3d 202, 208 (1991). “California Government Code section  
5 815.2 provides that, unless the employee is immune from  
6 liability, public entities are liable for injury proximately  
7 caused by an act or omission of an employee of the public entity  
8 within the scope of his employment if the act or omission would .  
9 . . have given rise to a cause of action against that employee or  
10 his personal representative.” Bulgara v. County of Stanislaus,  
11 No. 1:18-cv-804 DAD SAB, 2018 WL 3655434, at \*6 (E.D. Cal. July  
12 31, 2018) (Boone, J.) (citing Cal. Gov’t Code § 815.2(a)). Thus,  
13 “CDCR may be liable for its employee’s failure to summon  
14 immediate medical care to a prisoner under Section 845.6.” Love,  
15 2013 WL 4012748, at \*14.<sup>10</sup>

16           Here, plaintiffs allege that while decedent was at  
17 California State Prison-SAC he showed signs and symptoms of

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18           <sup>10</sup> Defendants assert that CDCR is immune from suit under  
19 the Eleventh Amendment. The Eleventh Amendment states “[t]he  
20 Judicial power of the United States shall not be construed to  
21 extend to any suit in law or equity, commenced or prosecuted  
22 against one of the United States by Citizens of another State, or  
23 by Citizens or Subjects of any Foreign State.” U.S. Const.  
24 amend. XI. To overcome the Eleventh Amendment bar, either the  
25 State must have consented to waive its sovereign immunity or  
26 Congress must have abrogated it; moreover, the State’s consent or  
27 Congress’ intent must be “unequivocally expressed.” Phillips v.  
28 Cty. of Fresno, No. 1:13-CV-0538 AWI BAM, 2014 WL 12768165, at \*3  
(E.D. Cal. May 14, 2014) (citing Pennhurst Sch. & Hosp. v.  
Halderman, 465 U.S. 89, 99-100 (1984)). As previously stated,  
Section 845.6 permits suit against CDCR if an “employee knows or  
has reason to know that the prisoner is in need of immediate  
medical care.” Thus, the Eleventh Amendment does not bar  
plaintiffs’ failure to summon medical care claim against CDCR.  
See id.

1 suicidal ideation and behavior. (TAC ¶ 25.) Plaintiffs also  
2 allege that decedent's sister notified California State Prison-  
3 SAC in writing that she feared decedent's condition was getting  
4 worse. (Id.) Plaintiffs further claim that individuals who  
5 monitored, supervised, treated, and administered decedent as an  
6 inmate and who reported to the chain of command were in a  
7 position to know of decedent's need for medical care. (Id. ¶  
8 78.) Moreover, plaintiffs claim that the staff at California  
9 State Prison-SAC knew and failed to provide antidepressant  
10 medication or other therapies and interventions indicated by the  
11 patient's medical history. (Id. ¶ 80.)

12           Plaintiffs do not have to rely on the actions or  
13 inactions of Baughman to state a claim against CDCR. Instead,  
14 plaintiffs need only allege that a CDCR employee had actual or  
15 constructive knowledge of decedent's need for immediate medical  
16 care, and failed to summon immediate medical care. See Love,  
17 2013 WL 4012748, at \*14 (denying summary judgment with respect to  
18 plaintiff's section 845.6 claim against CDCR where plaintiff  
19 presented evidence that correctional officer failed to summon  
20 immediate medical care to prisoner); Gillian v. CDCR, No. 1:15-  
21 CV-37 MJS, 2015 WL 1916417, at \*7 (E.D. Cal. Apr. 27, 2015)  
22 (finding plaintiff alleged sufficient cause of action against  
23 CDCR where plaintiffs sufficiently alleged a state cause of  
24 action against defendant CDCR employees or agents that were  
25 acting within the scope of their agency or employment). Here,  
26 plaintiffs allege that CDCR employees were notified of decedent's  
27 sister's concerns, witnessed decedent showing signs and symptoms  
28 of suicidal ideation, and failed to provide interventions as

1 outlined in decedent's medical records. Given the foregoing  
2 allegations, the court finds that plaintiffs have sufficiently  
3 alleged that CDCR employees had actual or constructive knowledge  
4 of decedent's need for immediate medical care, and failed to  
5 summon immediate medical care. Thus, because plaintiffs have  
6 sufficiently alleged a section 845.6 claim against an employee of  
7 CDCR, plaintiffs have sufficiently alleged a section 845.6 claim  
8 against CDCR.


9 Accordingly, the court will deny defendants' motion to  
10 dismiss plaintiffs' claim against CDCR for failure to summon  
11 medical care.

12 IT IS THEREFORE ORDERED that:

- 13 1. All claims against Baughman are dismissed.
- 14 2. The fourth claim for negligence is dismissed  
15 against CDCR.
- 16 3. In all other respects, defendants' Motion to  
17 Dismiss is denied.

18 Plaintiffs have twenty days from the date this Order is  
19 signed to file a Fourth Amended Complaint, if they can do so  
20 consistent with this Order.

21 Dated: August 23, 2018

  
22 **WILLIAM B. SHUBB**  
23 **UNITED STATES DISTRICT JUDGE**