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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 FOR  
RECONSIDERATION & 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 Before this court is a motion for reconsideration  
11 (Docket No. 45) brought by defendant California Department of  
12 Corrections and Rehabilitation ("CDCR") and a motion to dismiss  
13 (Docket No. 48) brought by defendants Todd Manes, Kyle Mohr,  
14 Andrew Ballard, Michael Munroe, and Stacy Vue ("individual  
15 defendants").

16 I. Motion for Reconsideration

17 In its prior order (Docket No. 43) on a motion to  
18 dismiss brought by defendants David Baughman and CDCR, the court  
19 previously described the parties and the factual and procedural  
20 background to this lawsuit. In that order, the court denied the  
21 motion to dismiss as to plaintiff's claim for the failure to  
22 summon medical care claim, California Government Code §§ 844.6  
23 and 845.6, against CDCR.

24 Upon reconsideration, the court grants CDCR's motion  
25 and will dismiss the claim for the failure to summon medical care  
26 against CDCR. See Riggle v. State of Cal., 577 F.2d 579, 585  
27 (9th Cir. 1978) (holding that the California did not waive its  
28 Eleventh Amendment immunity in federal court by enacting the  
California Tort Claims Act); Allen v. Cal. Dep't of Corr. &  
Rehab., No. 1:09-cv-0767 AWI GSA, 2009 WL 4163510, at \*3 (E.D.

1 Cal. Nov. 23, 2009), adopted by No. 1:09-cv-0767 AWI GSA, 2009 WL  
2 5197855 (E.D. Cal. Dec. 23, 2009) (finding that CDCR was immune  
3 under the Eleventh Amendment to a pendent state law claim under  
4 California Government Code § 845.6). See also Kirchmann v. Lake  
5 Elsinore Unified Sch. Dist., 93 Cal. App. 4th 1098, 1103 (4th  
6 Dist. 2000) (“Tort actions may be brought against the state or  
7 its agencies in state court under the California Tort Claims Act  
8 (Gov. Code, § 810 et seq.) but may not be brought in federal  
9 court, because the consent to suit contained in the act (Gov.  
10 Code, § 945) is not a waiver of Eleventh Amendment immunity.”).

## 11 II. Motion to Dismiss

### 12 A. Legal Standard

13 On a Rule 12(b)(6) motion, the inquiry before the court  
14 is whether, accepting the allegations in the complaint as true  
15 and drawing all reasonable inferences in the plaintiff’s favor,  
16 the plaintiff has stated a claim to relief that is plausible on  
17 its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “The  
18 plausibility standard is not akin to a ‘probability requirement,’  
19 but it asks for more than a sheer possibility that a defendant  
20 has acted unlawfully.” Id. “A claim has facial plausibility  
21 when the plaintiff pleads factual content that allows the court  
22 to draw the reasonable inference that the defendant is liable for  
23 the misconduct alleged.” Id.

### 24 B. Discussion

25 Individual defendants now seek to dismiss all claims  
26 against them on the following grounds: (1) plaintiffs fail to  
27 allege sufficient facts to state a 42 U.S.C. § 1983 claim against  
28 the individual defendants; (2) plaintiffs’ state law claims fail

1 to allege sufficient facts to state cognizable claims; (3) the  
2 individual defendants are entitled to qualified immunity on  
3 plaintiffs' federal cause of action; (4) the individual  
4 defendants in their official capacities are entitled to Eleventh  
5 Amendment immunity; and (5) plaintiffs' state law claims are  
6 barred by statutory immunities.

7 1. Section 1983 Claims Against the Individual  
8 Defendants

9 Plaintiffs allege that the individual defendants are  
10 liable for acting with deliberate indifference toward decedent's  
11 serious medical needs and safety. Plaintiffs also allege that  
12 defendant Manes is liable as a supervisor.

13 a. First Claim: Individual Liability

14 To state a claim under 42 U.S.C. § 1983 for a violation  
15 of the Eighth Amendment based on inadequate medical care, "a  
16 prisoner must allege acts or omissions sufficiently harmful to  
17 evidence deliberate indifference to serious medical needs."  
18 Estelle v. Gamble, 429 U.S. 97, 106 (1976) (internal quotations  
19 omitted). "A heightened suicide risk or an attempted suicide is  
20 a serious medical need." Conn v. City of Reno, 591 F.3d 1081,  
21 1095 (9th Cir. 2010), cert. granted, judgment vacated sub nom.  
22 City of Reno, Nev. v. Conn, 563 U.S. 915 (2011), and opinion  
23 reinstated, 658 F.3d 897 (9th Cir. 2011). To be deliberately  
24 indifferent, "[a] defendant must purposefully ignore or fail to  
25 respond to a prisoner's pain or possible medical need." McGuckin  
26 v. Smith, 974 F.2d 1050, 1060 (9th Cir. 1992), overruled on other  
27 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir.

1 1997). “[T]he official must both be aware of facts from which  
2 the inference could be drawn that a substantial risk of serious  
3 harm exists, and he must also draw the inference.” Farmer v.  
4 Brennan, 511 U.S. 825, 837 (1994).

5           The Third Amended Complaint (“TAC”) alleges that  
6 defendants knew or had reason to know of decedent’s need for  
7 intensive medical care because of his prior suicide attempts  
8 while in custody, including one which occurred while decedent was  
9 in custody at a CDCR facility, his participation in the Mental  
10 Health Service Delivery System, and his past placement in a  
11 segregated unit. (TAC ¶¶ 28, 44, 77.) Plaintiffs further allege  
12 that decedent’s sister notified California State Prison-SAC in  
13 writing that she feared decedent’s condition was getting worse.  
14 (Id. ¶ 25.) Plaintiffs claim that each individual defendant was  
15 either charged with supervising and/or monitoring the area in  
16 which decedent was housed on the day of his death and failed to  
17 perform periodic “cell checks” on decedent’s prison cell as  
18 required by prison policy or procedure.<sup>1</sup> (Id. ¶¶ 13-16, 26.)  
19 Further, plaintiffs allege that defendants had ongoing knowledge  
20 of California’s prison system’s failure to provide medical care  
21 to the mentally ill. (Id. ¶ 16.)

22           Under section 1983, plaintiffs must demonstrate that  
23 each named defendant personally participated in the deprivation  
24 of decedent’s rights. See Henry A. v. Willden, 678 F.3d 991,

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25  
26 <sup>1</sup> Plaintiffs allege that written policy, procedure, and  
27 practice require that corrections officers personally observe  
28 inmates on a regular schedule and not less than once per hour,  
and that suicidal inmates should be observed more frequently.  
(Id. ¶ 26.)

1 1005 (9th Cir. 2012). The court previously found that the TAC  
2 did not allege any facts about what defendant Baughman  
3 specifically knew or should have known. (Order Re: Mot. to  
4 Dismiss at 8.) Similarly, the TAC contains no facts for what  
5 each individual defendant specifically knew or should have known  
6 as compared to other defendants. Thus, "the complaint falls  
7 short in some places [] tying its factual allegations to  
8 particular defendants." Id.

9 Furthermore, there are no factual allegations detailing  
10 how each individual defendant would have learned about decedent's  
11 previous suicide attempts or past placements. Plaintiffs do not  
12 allege that information about decedent was contained in records  
13 that each defendant was provided with, nor do they allege that  
14 each defendant personally learned about decedent's sister's  
15 communications with the prison. Plaintiffs cannot simply rely on  
16 the fact that the individual defendants were responsible for  
17 directly monitoring decedent, as plaintiffs must show that  
18 defendants were personally aware of decedent's suicidal  
19 tendencies. See Simmons v. Navajo Cty., 609 F.3d 1011, 1020 (9th  
20 Cir. 2010) (denial of medical care inquiry is focused on what the  
21 defendants personally knew about decedent's suicide risk).<sup>2</sup>

22  
23 <sup>2</sup> Plaintiffs argue that defendants knew or should have  
24 known about decedent's mental illness because they observed  
25 decedent being offered medication and transported to prison  
26 healthcare facilities. Even if these allegations were detailed  
27 in the complaint, they are insufficient to establish that  
28 defendants knew of, and disregarded, decedent's serious medical  
need: a heightened suicide risk. These allegations do not  
indicate that the individual defendants knew that the medication  
or healthcare appointments were related to decedent's mental  
illness.

1 Plaintiffs' allegation that the individual defendants  
2 failed to a perform a "cell check" on decedent's cell the day of  
3 his suicide is insufficient on its own to establish liability.  
4 Incarcerated individuals do not have a clearly established  
5 constitutional right "to the proper implementation of adequate  
6 suicide prevention protocols." Taylor v. Barkes, 135 S. Ct.  
7 2042, 2044 (2015). Rather, to establish deliberate indifference  
8 for Eighth Amendment purposes, relevant Ninth Circuit precedent  
9 requires that plaintiffs show that the defendants were  
10 subjectively aware of the risk of harm. Conn, 591 F.3d at 1096.  
11 As explained above, plaintiffs have not alleged sufficient facts  
12 to establish the individual defendants' subjective awareness of  
13 the decedent's medical needs.

14 Accordingly, the court will dismiss plaintiffs' first  
15 cause of action against Manes, Mohr, Munroe, Vue, and Ballard.

16 b. Second and Third Claims: Supervisory Liability

17 A supervisor may be held liable under section 1983 "if  
18 there exists either (1) his or her personal involvement in the  
19 constitutional deprivation, or (2) a sufficient causal connection  
20 between the supervisor's wrongful conduct and the constitutional  
21 violation." Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011)  
22 (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)). "A  
23 supervisor is only liable for constitutional violations of his  
24 subordinates if the supervisor participated in or directed the  
25 violations, or knew of the violations and failed to act to  
26 prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.  
27 1989).

28 The court dismisses plaintiffs' supervisory liability

1 claim against Manes for similar reasons that it dismissed those  
2 claims against Baughman. (See Order Re: Mot. to Dismiss at 10-  
3 11.) Plaintiffs have not alleged facts that show that Manes was  
4 aware of decedent's specific medical needs; directed,  
5 participated in, or knew that his subordinates were deliberately  
6 indifferent to decedent's medical needs; or that his failure to  
7 train or supervise his subordinates specifically caused the  
8 alleged constitutional deprivation: inadequate medical care.

9 Accordingly, the court will grant defendants' Motion to  
10 dismiss plaintiffs' second and third causes of action as alleged  
11 against defendant Manes.<sup>3</sup>

## 12 2. State Law Claims

### 13 a. Fourth Claim: Negligence/Wrongful Death

14 To state a claim for negligence, plaintiffs must  
15 allege: (1) a legal duty to use reasonable care, (2) breach of  
16 that duty, (3) proximate cause between the breach and (4) the  
17 plaintiff's injury. Mendoza v. City of Los Angeles, 66 Cal. App.  
18 4th 1333, 1339, (2d Dist. 1998). Under California law, a jailer  
19 has a special relationship with a prisoner that creates a duty of  
20 care. Love v. Salinas, No. 2:11-cv-361-MCE, 2013 WL 4012748, at  
21 \*15 (E.D. Cal. Aug. 6, 2013) (citing Lawson v. Superior Court,  
22 180 Cal. App. 4th 1372, 1389-90 (4th Dist. 2010); Giraldo v.  
23 Dep't of Corr. & Rehab., 168 Cal. App. 4th 231, 240 (1st Dist.  
24 2008)). Plaintiffs allege that individual defendants had  
25 numerous duties to the decedent.

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26 <sup>3</sup> Because plaintiffs have not sufficiently alleged that  
27 any of the above defendants violated a constitutional right, the  
28 court need not decide whether they are entitled to qualified  
immunity.



1 First, plaintiffs allege that all the individual  
2 defendants had a duty to render appropriate medical care and they  
3 all failed "to provide antidepressant medication and/or other  
4 proper mental health treatment and therapy." (TAC ¶ 68).  
5 Because California Government Code § 845.6 immunizes public  
6 employees for the failure to obtain medical care except as  
7 provided by §§ 855.8 and 856, this allegation will be analyzed  
8 with the plaintiffs' fifth cause of action. See Castaneda v.  
9 Dep't of Corr. & Rehab., 212 Cal. App. 4th 1051, 1070 (2d Dist.  
10 2013).

11 Second, plaintiffs argue that all the individual  
12 defendants breached their "duty of care to observe, report,  
13 monitor, and provide reasonable security regarding Decedent's  
14 condition, and failed to prevent his suicide." (TAC ¶ 70). Under  
15 California law, "[t]he general rule is that a jailer is not  
16 liable to a prisoner in his keeping for injuries resulting from  
17 the prisoner's own intentional conduct." Lucas v. City of Long  
18 Beach, 60 Cal. App. 3d 341, 349 (2d Dist. 1976). A jailer is not  
19 relieved of liability, however, if the inmate's suicide "was  
20 reasonably foreseeable or the failure to foresee such act was a  
21 factor in the original negligence." Id. at 351. As explained  
22 above, plaintiffs have not alleged sufficient facts to show that  
23 the individual defendants were aware or had reason to be aware of  
24 decedent's suicidal tendencies. Plaintiffs do not sufficiently  
25 explain how each defendant would have known about decedent's  
26 prior suicide attempts, decedent's sister's letter to the prison,  
27  
28

1 or decedent's prior placement in a segregated unit.<sup>4</sup> See Bruns  
2 v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)  
3 (a court may not supply essential elements of a claim that were  
4 not pled).

5 Third, plaintiffs allege that defendant Manes failed as  
6 a supervisor to implement adequate policies<sup>5</sup> and conduct  
7 appropriate investigatory procedures regarding suicidal inmates'  
8 medical care. (TAC ¶¶ 68, 72). There are no facts from which  
9 the court could infer that Manes was aware of or did not  
10 adequately investigate his subordinates' alleged failure to  
11 monitor and supervise inmates. Thus, the court is unable to  
12 discern what actions Manes allegedly took or failed to take that  
13 constituted a breach of duty that he owed to decedent. See  
14 Lapachet v. Cal. Forensic Med. Grp., Inc., No 1:17-cv-1226 DAD  
15 EPG, 2018 WL 2564398, at \*10 (E.D. Cal. June 1, 2018). Without  
16 facts showing Manes' specific knowledge about the decedent's  
17

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18 <sup>4</sup> For the same reason, any negligence claim based on the  
19 defendants' failure to conduct a "cell check" fails. Plaintiffs  
20 have not alleged sufficient facts to show that this alleged  
21 negligence was the moving force behind a series of events that  
22 ultimately led to a foreseeable harm. See Campos v. County of  
23 Kern, No. 1:14-cv-01099 DAD JLT, 2017 WL 915294, at \*14 (E.D.  
24 Cal. Mar. 7, 2017). Without those facts, decedent's suicide  
25 would be an intervening and superseding cause. Id. (citations  
26 omitted).

27 <sup>5</sup> Public employees are immune from liability for the  
28 failure to adopt or enforce an enactment. Cal. Gov't Code § 821;  
see also Taylor v. Buff, 172 Cal. App. 3d 384, 389 (3d Dist.  
1985) (holding that defendants, as public employees, were immune  
for liability despite operating a facility in violation of the  
minimum standards for local detention facilities under the  
California Administrative Code). "Enactment means a  
constitutional provision, statute, charter provision, ordinance  
or regulation." Cal. Gov't Code § 810.6.

1 suicidal tendencies, plaintiffs have not sufficiently alleged  
2 that Manes' action or inaction created a foreseeable harm. See  
3 Johnson v. County of Los Angeles, 143 Cal. App. 3d 298, 307-08  
4 (2d Dist. 1983) ("The most important policy consideration is the  
5 foreseeability of the harm: as a general principle a defendant  
6 owes a duty of care to all persons who are foreseeably endangered  
7 by his conduct, with respect to all risks which make the conduct  
8 unreasonably dangerous.")

9 Accordingly, plaintiffs' negligence claim against the  
10 individual defendants will be dismissed.

11 b. Fifth Claim: Failure to Summon Medical Care

12 Finally, defendants move to dismiss plaintiffs'  
13 failure to summon medical care claim under California Government  
14 Code Section 845.6<sup>6</sup> against all individual defendants.<sup>7</sup>

15 Section 845.6 provides that a public employee, acting

16 <sup>6</sup> Plaintiffs do have standing to bring this cause of  
17 action. Under California law, a cause of action survives a  
18 person's death. Cal. Civ. Proc. Code § 377.20(a). "Where there  
19 is no personal representative for the estate, the decedent's  
20 'successor in interest' may prosecute the survival action."  
21 Tatum v. City & Cty. of San Francisco, 441 F.3d 1090, 1094 (9th  
22 Cir. 2006) (citing Cal. Civ. Proc. Code §§ 377.30, 377.32.).  
23 Defendants do not claim that M.B. III, through his Guardian Ad  
Litem, is not decedent's successor in interest, so plaintiffs  
have standing to bring this claim. See Campos, 2017 WL 915294, at  
\*5 (finding that a decedent's successor in interest may join any  
claims that the decedent would have been entitled to file with a  
wrongful death claim arising out of the same conduct).

24 <sup>7</sup> For the same reasons given in the court's previous  
25 order, defendants cannot claim immunity from liability under  
26 section 845.6 for this cause of action. (Order Re: Mot. to  
27 Dismiss at 19 n.8.) See also Castaneda v. Dep't of Corr. &  
28 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 within the scope of their employment, is liable if the employee  
2 knows or should know that the prisoner is in need of immediate  
3 medical care and fails to take reasonable action to summon such  
4 medical care. See Cal. Gov't Code § 845.6. This section limits  
5 that duty to where there is actual or constructive knowledge that  
6 the prisoner is in need of immediate care. Id.

7 To state a claim under section 845.6, plaintiffs must  
8 establish that: "(1) the public employee knew or had reason to  
9 know of the need (2) for immediate medical care, and (3) failed  
10 to reasonably summon such care." Jett v. Penner, 439 F.3d 1091,  
11 1099 (9th Cir. 2006). "A suicidal state is a serious and obvious  
12 medical condition requiring immediate care." Johnson v. Baca,  
13 No. 13-cv-4496 MMM AJWX, 2014 WL 12588641, at \*18 (C.D. Cal. Mar.  
14 3, 2014) (citing Johnson, 143 Cal. App. 3d at 316-17)).

15 Plaintiffs allege that defendants knew or had reason  
16 to know of the need for intensive medical care because of the  
17 decedent's prior suicide attempts, participation in the Mental  
18 Health Service Delivery System, and the records available to and  
19 generated by CDCR indicating that decedent was an immediate  
20 threat to his safety. (TAC ¶ 78.) Thus, plaintiffs allege that  
21 defendants' failure to provide immediate medical care in the form  
22 of adequate monitoring<sup>8</sup> and mental health care proximately caused  
23 decedent's suicide. (Id. ¶ 76.)

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24  
25 <sup>8</sup> Under California law, defendants as public employees  
26 are immune from liability for any injuries resulting from their  
27 failure to diagnose or prescribe treatment for decedent's alleged  
28 mental illness. Cal. Gov't Code § 855.8(a); see also Estate of  
Abdollahi v. County of Sacramento, 405 F. Supp. 2d 1194, 1216  
(E.D. Cal. 2005) (Damrell, J.) (citation omitted).


1           However, for the same reasons as previously discussed,  
2 plaintiffs have not sufficiently alleged that any defendants  
3 personally knew or should have known of decedent's immediate  
4 medical need. Accordingly, the court will grant defendants'  
5 motion to dismiss plaintiffs' failure to summon medical care  
6 under section 845.6 against all the individual defendants.

7           IT IS THEREFORE ORDERED that CDCR's Motion for  
8 Reconsideration (Docket No. 45) be, and the same hereby is,  
9 GRANTED. The Fifth Cause of Action against CDCR is DISMISSED  
10 WITHOUT PREJUDICE.<sup>9</sup>

11           IT IS FURTHER ORDERED that individual defendants'  
12 Motion to Dismiss (Docket No. 48) be, and the same hereby is,  
13 GRANTED. All claims against defendants Manes, Mohr, Munroe, Vue,  
14 and Ballard are dismissed.

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

18 Dated: October 16, 2018

  
WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

26 \_\_\_\_\_  
27 <sup>9</sup> The court expresses no opinion on whether the  
28 plaintiffs' claim could properly be brought in a California state  
court. See Frigard v. United States, 862 F.2d 201, 204 (9th Cir.  
1988).