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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

JAMES NEUROTH,  
Plaintiff,  
v.  
MENDOCINO COUNTY, *et al.*,  
Defendants.

Case No. [15-cv-03226-NJV](#)  
**AMENDED  
ORDER ON MOTION TO DISMISS**  
Re: Dkt. No. 33

Plaintiff James Neuroth (“Plaintiff”) filed this action against the County of Mendocino and Sheriff Thomas Allen (together “the County Defendants”), California Forensic Medical Group (“CFMG”), Dr. Taylor Fithian, and Jennifer Caudillo. Plaintiff filed a First Amended Complaint (Doc. 31), to which Defendants CFMG, Dr. Taylor Fithian, and Jennifer Caudillo filed an Answer (Doc. 32), and County Defendants filed a Motion to Dismiss. (Doc. 33). Plaintiff filed a Response to the Motion (Doc. 34), to which County Defendants filed a Reply (Doc. 35). For the reasons that follow the court will grant the motion in part and deny the motion in part. Additionally, Plaintiff will be given time to file a second amended complaint.

**FACTS AS ALLEGED**

Plaintiff is the brother of Decedent Steven Neuroth. The First Amended Complaint alleges that Steven Neuroth “was a mentally ill man, having been diagnosed with paranoid schizophrenia, schizo-affective disorder, and depression.” First Amend. Compl. (Doc. 31) at ¶19. On June 10, 2014, at approximately 10:00 p.m., Willits Police Officers encountered Steven Neuroth, who told them that an unknown person was after him, and that all the traffic in Willits was going to hurt him. *Id.* at ¶20. The officers arrested Steven Neuroth on suspicion that he was under the influence

1 of a controlled substance. *Id.* The officers reported that Steven Neuroth was “extremely  
2 paranoid,” “believed someone was out to ‘kill him,’” “was going through a psychosis state,” and  
3 that he was afraid of “snakes” in the police car. *Id.* Steven Neuroth was booked into the  
4 Mendocino County jail as a pretrial detainee. At the time of booking, he had no apparent physical  
5 injuries. *Id.*

6 Mendocino County contracts its correctional healthcare to Defendant CFMG. *Id.* at ¶9.  
7 CFMG employee Defendant Jennifer Caudillo, L.V.N. performed the jail’s intake medical  
8 assessment on Steven Neuroth. *Id.* ¶11, 21. Defendant Caudillo reported in her assessment that  
9 Steven Neuroth’s heart beat was 129 beats per minute, which indicated that he was suffering from  
10 tachycardia. *Id.* Defendant Caudillo noted both that Steven Neuroth’s blood pressure was 151/92,  
11 whereas normal blood pressure is less than 120/80, and that his respiration rate was 18 breaths per  
12 minute, whereas the respiration rate for a normal adult is 12 breaths per minute. *Id.* Defendant  
13 Caudillo also noted that Steven Neuroth was “very paranoid.” *Id.*

14 Defendant Caudillo had actual knowledge that Steven Neuroth was in extreme medical and  
15 psychiatric distress and in need of emergency medical/psychiatric care, but decided not to provide  
16 or request such necessary care. *Id.* Defendant Caudillo also decided not to secure, or request,  
17 such necessary treatment for Steven Neuroth in a hospital. *Id.* At approximately midnight on  
18 June 10, 2014, while jail staff had actual knowledge that Steven Neuroth was apparently  
19 psychotic, paranoid, and suffering from serious medical/psychiatric needs, Defendants acted with  
20 deliberate indifference to those serious medical/psychiatric needs, and denied Steven Neuroth  
21 necessary medical and/or psychiatric care, including necessary emergency care. *Id.* at ¶23.  
22 Steven Neuroth became unable to care for himself or to understand and follow the commands and  
23 directives of jail personnel. *Id.*

24 “When Steven Neuroth allegedly acted paranoid and was uncooperative, jail staff including  
25 deputies used a high level of injurious force,” sufficient to cause Steven Neuroth’s death. *Id.* at  
26 ¶24. Sheriff’s Deputies used control holds to take Steven Neuroth to the ground where they put  
27 restraints on his legs. *Id.* Deputies moved Steven Neuroth to Safety Cell #2, “where they  
28 continued to use excessive and unjustified force against him, including, on information and belief,

1 multiple strikes, blows, and control holds.” *Id.* Defendants also restrained Steven Neuroth in such  
2 a way that he suffered restraint associated asphyxia (or positional asphyxia) and death. *Id.*

3 “According to the official Mendocino County autopsy, injuries that Defendants caused to  
4 Steven Neuroth in the jail included: blunt force injuries [] widespread; fracture, essentially non-  
5 displaced, of the left fifth rib at the costochondral junction; general visceral passive hyperemia  
6 (organ injuries); and Petechiae, epicardial, focal; and other serious physical injuries. *Id.* at ¶25.  
7 Steven Neuroth was transferred to the Ukiah Valley Medical Center where he died, after cardiac  
8 arrest, at about 12:46 a.m. on June 11, 2014. *Id.* at ¶35.

### 9 CLAIMS

10 Plaintiff presents six causes of action against Defendants: (1) a 42 U.S.C. § 1983 (“§  
11 1983”) claim against Doe Deputies and CFMG Doe employees for use excessive force and  
12 deliberate indifference to medical needs under the Fourth and Fourteenth Amendments to the U.S.  
13 Constitution; (2) a § 1983 *Monell* claim against the County of Mendocino, Sheriff Allman,  
14 CFMG, and Dr. Fithian; (3) a Bane Act claim under California Civil Code § 52.1 against all  
15 Defendants; (4) a common law negligence claim against the County of Mendocino, Sheriff  
16 Allman and Doe Deputies; (5) a common law assault and battery claim against the County of  
17 Mendocino and Doe Deputies; and (6) a failure to summon medical care claim, per California  
18 Government Code § 845.6, against the County of Mendocino, Doe Deputies, and CFMG Doe  
19 employees.

### 20 LEGAL STANDARD

21 The purpose of a motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure  
22 is to test the legal sufficiency of the claims stated in the complaint. A motion to dismiss may be  
23 brought under Rule 12(b)(6) when the plaintiff fails to state a claim upon which relief can be  
24 granted.

25 A complaint must contain a “short and plain statement of the claim showing that the  
26 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). While Rule 8 “does not require ‘detailed  
27 factual allegations,’” a complaint “must contain sufficient factual matter, accepted as true, to ‘state  
28 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937,

1 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570, 127 S.Ct. 1955,  
2 1955 (2007)). Facial plausibility is established “when the plaintiff pleads factual content that  
3 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
4 alleged.” *Id.* Thus, in order to survive a motion to dismiss, the nonmoving party must allege facts  
5 that are “enough to raise a right to above the speculative level . . . on the assumption that all the  
6 allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555.

7 Dismissal of a complaint can be based on either the lack of a cognizable legal theory or the  
8 lack of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dept.*,  
9 901 F.2d 696, 699 (9th Cir. 1990). In considering whether the complaint is sufficient to state a  
10 claim, the court will take all material allegations as true and construe them in the light most  
11 favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

## 12 DISCUSSION

### 13 A. *Standing for Prospective Relief*

14 County Defendants assert that Plaintiff lacks standing to seek injunctive relief. Quoting  
15 *Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 180-181 (2000),  
16 County Defendants argue that “[t]o demonstrate standing, ‘a plaintiff must show (1) [he] has  
17 suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not  
18 conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the  
19 defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed  
20 by a favorable decision.’” Def.’s Mot. (Doc. 33) at 13. Indeed, a plaintiff seeking injunctive relief  
21 must demonstrate a “real or immediate threat that they will be wronged again—a likelihood of  
22 substantial and immediate irreparable injury.” *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).  
23 Defendants assert that Plaintiff cannot establish standing for two reasons. “First, none of the  
24 allegedly wrongful conduct was ever directed against Plaintiff himself, and therefore he can have  
25 no Direct Claim for equitable relief regarding such conduct. Second, because there is no “real and  
26 immediate” threat of future injury to the decedent, then Plaintiff has no standing to assert equitable  
27 prospective relief via a Survivor Claim on the decedent’s behalf.” Def.’s Mot. (Doc. 33) at 6.

28 Plaintiff counters that “[i]t is premature at the pleading stage to eliminate a potential

1 remedy should plaintiffs prevail in this litigation.” Pl.’s Resp. (Doc. 34) at 16 (quoting *Johnson*  
2 *v. Shasta Cty.*, 83 F. Supp. 3d 918, 933 (E.D. Cal. 2015). “However, the Ninth Circuit has held  
3 that a plaintiff’s lack of standing may be raised at the pleading stage.” *East v. City of Richmond*,  
4 No. C 10-2392 SBA, 2010 WL 4580112, at \*6 (N.D. Cal. Nov. 3, 2010) (citing *Schmier v. United*  
5 *States Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 823 (9th Cir. 2002)). In addition,  
6 “[Plaintiff] argues that he has standing to seek injunctive relief because he alleges a pattern and  
7 practice of unlawful police conduct. But Plaintiff does not seek to represent a class of similarly  
8 situated individuals, and his complaint contains no factual allegations showing that [Defendants]  
9 had previously subjected him to unlawful conduct.” *Bass v. City of Fremont*, No. C12-4943 TEH,  
10 2013 WL 891090, at \*8 (N.D. Cal. Mar. 8, 2013).

11 To the extent Plaintiff is relying on his status as successor in interest to the harm  
12 perpetrated on the decedent, this too would fail. “For injunctive relief to be considered, Plaintiff[]  
13 cannot speculate that these events may happen again, but must assert that there is a ‘likelihood of  
14 substantial and immediate irreparable injury,’—something that [he] cannot under the  
15 circumstances of this case.” *Sullivan v. City of San Rafael*, No. C 12-1922 MEJ, 2012 WL  
16 3236058, at \*10 (N.D. Cal. Aug. 6, 2012). Because the injury was perpetrated on the decedent,  
17 there is no risk of future harm. Accordingly, the request to dismiss the requests for prospective  
18 injunctive relief is granted with prejudice.

19 **B. Standing for Certain Damages**

20 Here, County Defendants seek dismissal of Plaintiff’s “§ 1983 Direct Claims” for lack of  
21 standing. Specifically, County Defendants argue that § 1983 does not entitle Plaintiff to recover  
22 damages for his own injuries based on conduct which occurred to his brother. For his part,  
23 Plaintiff states: (1) that he has brought his claims pursuant to California’s wrongful death statute  
24 California Code of Civil Procedure §§ 377.20 *et seq.*; (2) that he has also brought a survival  
25 claim pursuant to California law and § 1983; (3) that “Plaintiff’s Fourth and Fourteenth  
26 Amendment wrongful death claim survives the death of his brother”; (4) “that Congress intended  
27 by [§ 1983] to allow survivors to sue for their harm stemming from the deprivation of a loved  
28 one’s civil rights.” *Crumpton v. Gates*, 947 F.2d 1418, 1421 (9th Cir. 1991)”; and (5) that the

1 “Ninth Circuit and Northern District courts have long found wrongful death claims available  
2 to heirs of a decedent in § 1983 death cases.” Pl.’s Resp. (Doc. 34) at 8-9.

3 It appears that there is much confusion on this issue. Indeed, in the Motion, County  
4 Defendants assert that there is a “mashing” of claims, while Plaintiff responds with allegations that  
5 County Defendants “mischaracterize” the claims. Finally, County Defendants reply that Plaintiff  
6 simply “conflates” the two types of § 1983 claims and “mistakenly” argues that he has a Direct  
7 Claim under § 1983. In some respects, the parties are arguing about what they are arguing about.  
8 From what the court can parse, the confusion stems from the terms of art used in the briefing, the  
9 nature of the combined state and federal claims, and the wording of the First Amended Complaint.

10 The Reply makes clear that the parties agree as to the first two issues above: (1) that  
11 Plaintiff has brought his claims pursuant to California’s wrongful death statute, California Code  
12 of Civil Procedure §§ 377.20 *et seq.*; and (2) that he has also brought a survival claim pursuant to  
13 California law and § 1983. Plaintiff’s third point, that his “Fourth and Fourteenth Amendment  
14 wrongful death claim survives the death of his brother,” is where some of the confusion begins.  
15 Plaintiff’s Fourth and Fourteenth Amendment claims are his § 1983 survival actions, which are  
16 separate from any wrongful death claims brought pursuant to state law. This is because there is no  
17 “wrongful death” claim under § 1983. *Estate of Lopez ex rel. Lopez v. Torres*, 105 F. Supp. 3d  
18 1148, 1159 (S.D. Cal. 2015) (“The confusion seems to be in that some courts (primarily in  
19 unpublished dispositions) have allowed claims for wrongful death under § 1983 to proceed . . .  
20 What is clear from these cases is that even if the claim was described in the pleadings as a  
21 wrongful death claim under section 1983, the courts only allowed such claims to be maintained if  
22 they were construed as Fourth Amendment excessive force claims.”). This negates Plaintiff’s fifth  
23 point. The cases to which Plaintiff points for the assertion that the “Ninth Circuit and Northern  
24 District courts have long found wrongful death claims available to heirs of a decedent in § 1983  
25 death cases,” do not hold such. For example, Plaintiff points to *Moreland v. Las Vegas Metro.*  
26 *Police Dep’t*, 159 F.3d 365, 369 (9th Cir. 1998), as amended (Nov. 24, 1998) in support.  
27 However, that case merely reasserts the maxim that “[i]n § 1983 actions, however, the survivors of  
28 an individual killed as a result of an officer’s excessive use of force may assert a Fourth

1 Amendment claim on that individual’s behalf if the relevant state’s law authorizes a survival  
2 action.” *Id.* at 369. Plaintiff also points to *Teran v. Cty. of Monterey*, No. C 06-06947 JW, 2009  
3 WL 1424470, at \*5 (N.D. Cal. May 20, 2009). Here again, the *Teran* court explains that “[i]n §  
4 1983 actions, the survivors of an individual killed as a result of an officer’s excessive use of force  
5 may assert a Fourth Amendment claim on that individual’s behalf if the relevant state’s law  
6 authorizes a survival action. Under Cal. Code Civ. Proc. § 377.30, a survival action may be  
7 commenced by a decedents personal representative or, if none, by the decedent’s successor-in  
8 interest.” *Id.* In other words, there are survival actions under § 1983 if state law allows, which  
9 California does, there are state law survival actions, and there are state law wrongful death actions.

10 As to Plaintiff’s fourth point, that Congress intended § 1983 to allow survivors to sue for  
11 their harm stemming from the deprivation of a loved one’s civil rights, these loss of liberty claims  
12 are only available to “parents and children of a person killed by a government officer.” *Teran v.*,  
13 2009 WL 1424470 at \*5. And, as County Defendants rightly pointed out, Plaintiff properly  
14 withdrew those claims when he filed the First Amended Complaint.

15 Having set forth the proper parameters of Plaintiff’s claims, the court must now evaluate  
16 whether the claims in the First Amended Complaint fit those parameters. The court finds that  
17 Defendants are correct that the claims are impermissibly mixed with language of direct survival  
18 claims and require correction. Both the First and Second causes of action speak of the harm as  
19 having been suffered by Plaintiff as opposed to Steven Neuroth. “[S]urvival actions [] are based  
20 on injuries incurred by the decedent.” *Hayes v. Cty. of San Diego*, 736 F.3d 1223, 1229 (9th Cir.  
21 2013). In order for Defendants to properly answer and defend the allegations, the claims must be  
22 amended to properly set forth the causes of action. *See e.g. Davis v. Bender Shipbuilding &*  
23 *Repair Co.*, 27 F.3d 426, 429 (9th Cir.1994) (“In a survival action, a decedent’s estate may  
24 recover damages on behalf of the decedent for injuries that the decedent has sustained. In a  
25 wrongful death action, by comparison, the decedent’s dependents may only pursue claims for  
26 personal injuries they have suffered as a result of a wrongful death.”).

27 The First and Second Causes of Action will be dismissed with leave to amend. It is clear  
28 that Plaintiff can successfully amend these claims to state a claim upon which relief can be

1 granted. The court is of the opinion that the parties could have and should have resolved the  
2 confusions with this issue prior to the filing of the First Amended Complaint and avoided needless  
3 motions practice and would strongly encourage the parties to meet and confer regarding the  
4 second amended complaint prior to its filing.

5 **C. Monell Claims**

6 County Defendants also seek dismissal of Plaintiff's § 1983 claims in the Second Cause of  
7 Action on the basis that Plaintiff has not sufficiently stated a *Monell* cause of action against the  
8 County. Under *Monell*, a municipality "can be sued directly under § 1983 for monetary,  
9 declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional  
10 implements or executes a policy statement, ordinance, regulation, or decision officially adopted  
11 and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of City of New York*, 436  
12 U.S. 658, 690 (1978). County Defendants assert that while the First Amended Complaint "alleges  
13 at least 16 separate policies of action, inaction, and ratification by County policymakers as a basis  
14 for liability in two subject matter areas: use of excessive force and deliberate indifference to  
15 medical/mental health needs of the decedent" it "contains no factual allegations to support any of  
16 these *Monell* claims, and does not even point to a specific policy or practice that was somehow  
17 unlawful or deficient." Cnty. Defs.' Mot. (Doc. 33) at 17. Thus, County Defendants argue that  
18 the First Amended Complaint "does not provide notice to the County as to what Plaintiff believes  
19 the County did that was wrong." *Id.* More specifically, County Defendants allege that Plaintiff  
20 has failed to allege sufficiently facts in support of a "policy of action" a "policy of inaction," or  
21 "ratification." *See id.* at 18-26.

22 The court finds that County Defendants are attempting to assert too high a burden at this,  
23 the pleading stage. County Defendants' issues are not with the allegations regarding customs or  
24 policies, or omissions of the same, but rather with the factual sufficiency of the claims. Indeed, a  
25 complaint "may not simply recite the elements of a cause of action, but must contain sufficient  
26 allegations of underlying facts to give fair notice and to enable the opposing party to defend itself  
27 effectively." *AE ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 631, 637 (9th Cir.2012) (quoting  
28 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). In this case, after setting forth the factual



1 allegations describing the Deputy Sheriffs’ conduct in their alleged use extreme and deadly force  
2 against Steven Neuroth, Plaintiff alleged that:

3 Defendant COUNTY’s and ALLMAN’s failure to reasonably train and require  
4 their Deputy Sheriffs to use only proper and reasonable force when necessary under  
5 the circumstances, failure to implement and enforce generally accepted, lawful  
6 policies and procedures at the jail, and allowing and/or ratifying excessive and  
7 unreasonable force and restraint, and deliberate indifference to the serious  
8 medical/psychiatric needs of inmates. These substantial failures reflect Defendant  
9 COUNTY’s policies implicitly or directly ratifying and/or authorizing the  
10 deliberate indifference to serious medical needs and the use of excessive and  
11 unreasonable force and restraint by its deputy sheriffs, and the failure to reasonably  
12 train, instruct, monitor, supervise, investigate, and discipline deputy sheriffs  
13 employed by Defendant COUNTY in the use of force and inmates’ medical needs.

14 First Amend. Compl. (Doc. 99) at ¶39. The court finds these factual allegations, along with the  
15 other factual allegations in the complaint regarding the Deputy Sheriff’s alleged conduct,  
16 sufficient to support Plaintiff’s claims under a *Monell* theory of liability and provide County  
17 Defendants of fair notice to defend itself effectively. *AE ex rel. Hernandez*, 666 F.3d at 637.

18 Accordingly, the request to dismiss the Second Cause of Action against the County of Mendocino  
19 is denied.

20 **D. State law Claims**

21 County Defendants challenge Plaintiff’s state law claims brought as: (1) a Survivor Claim  
22 based on alleged violations of the Bane Act, California Civil Code § 52.1; (2) Direct and Survivor  
23 Claims for common law negligence; (3) Direct and Survivor Claims for assault and battery; and  
24 (4) Direct and Survivor Claims for violation of California Government Code § 845.6, regarding a  
25 failure to take reasonable action to summon medical care for an inmate. County Defendants move  
26 to dismiss the causes of actions against the County of Mendocino based on the first three  
27 categories of state law claims pursuant to immunity under California Government Code section  
28 844.6 and for dismissal of the 4th category based on failure to state a claim.

Section 844.6 states in relevant part that “[e]xcept as provided in California Government  
Code § 845.6, a public entity cannot be liable for an injury to a prisoner.” *Frary v. Cty. of Marin*,  
No. C 12-3928 MEJ, 2012 WL 6218196, at \*12 (N.D. Cal. Dec. 13, 2012) (citing Cal. Gov’t Code  
§ 844.6). Plaintiff counters that “§ 844.6(d) specifically negates such immunity for claims based  
on the ‘negligent or wrongful act or omission’ of ‘a public employee’” and that Defendants are

1 vicariously liable under of California Government Code section 815.2. Pl.’s Br. (Doc. 34) at 30.

2 The exception to immunity contained within subsection (d) of 844.6 applies to “a public  
3 employee.” Plaintiff’s reliance on a theory of vicarious liability through an employee through §  
4 815.2 in order to avoid the immunity provisions of § 844.6 fails because “[a]lthough a public  
5 entity may be vicariously liable for the acts and omissions of its employees (Gov. Code, § 815.2),  
6 that rule does not apply in the case of injuries to prisoners.” *Lawson v. Superior Court*, 180 Cal.  
7 App. 4th 1372, 1383, 103 Cal. Rptr. 3d 834, 844 (2010) (discussing interplay of immunities in  
8 claims brought pursuant to § 815.2, 844.6 and 845.6). Thus, the Third, Fourth, and Fifth Causes  
9 of Action are dismissed as to the County of Mendocino, without leave to amend.

10 As to the fourth category, Direct and Survivor Claims for violation of California  
11 Government Code § 845.6, failure to take reasonable action to summon medical care for an  
12 inmate, the court finds that Plaintiff has stated a claim. California Government Code section  
13 845.6 states in relevant part:

14 Neither a public entity nor a public employee is liable for injury proximately  
15 caused by the failure of the employee to furnish or obtain medical care for a  
16 prisoner in his custody; but, except as otherwise provided by Sections 855.8 and  
17 856, a public employee, and the public entity where the employee is acting within  
the scope of his employment, is liable if the employee knows or has reason to know  
that the prisoner is in need of immediate medical care and he fails to take  
reasonable action to summon such medical care.

18 In other words, “[p]ublic entities and public employees are liable for injuries proximately caused  
19 to prisoners where: (1) ‘the employee is acting within the scope of his [or her] employment,’ (2)  
20 ‘the employee knows or has reason to know that the prisoner is in need of immediate medical  
21 care,’ and (3) ‘he [or she] fails to take reasonable action to summon such medical care.’” *Resendiz*  
22 *v. Cty. of Monterey*, No. 14-CV-05495-LHK, 2015 WL 7075694, at \*8 (N.D. Cal. Nov. 13, 2015)  
23 (quoting Gov. Code, § 845.6).

24 Plaintiff’s Sixth Cause of Action, failure to summon medical care, is factually supported  
25 where the First Amended Complaint alleges that “jail staff had actual knowledge” of Steven  
26 Neuroth’s immediate and serious medical needs and did not provide him care. First Amend.  
27 Compl. (Doc. 31) at ¶23. However, “California courts have held that § 845.6 does not impose an  
28 obligation to provide necessary medication or treatment . . . [t]hus, once a prisoner is receiving

1 medical care, prison employees are under no further obligation under § 845.6.” *Id.* Accordingly,  
2 County Defendants are correct that the allegations contained in the Sixth Cause of Action related  
3 to “higher level medical care, treatment, observation and monitoring” and “access to such medical  
4 care and treatment” must be removed from the second amended complaint.

5 ***E. Sheriff Allman***

6 County Defendants move to dismiss the claims against Sherriff Allman. First, County  
7 Defendants move to dismiss the § 1983 claim, as it was improperly brought as a *Monell* claim,  
8 which would only apply to Sheriff Allman in his official capacity, which is the same as a suit  
9 against the County. Plaintiff responds that he has brought “claims under §1983 for individual  
10 liability against Sheriff Allman as a supervisor in his personal capacity.” Pl. Resp. (Doc. 34) at  
11 21.

12 County Defendants are correct that because the Second Cause of Action expressly relies on  
13 *Monell*, it could only be brought against the Sheriff in his official capacity, which is a suit against  
14 the County. This is because *Monell* established §1983 liability against “a public entity,” and when  
15 “individuals are being sued in their official capacity as municipal officials and the municipal entity  
16 itself is also being sued, then the claims against the individuals are duplicative and should be  
17 dismissed.” *Roy v. Contra Costa Cnty.*, No. 15-CV-02672-TEH, 2015 WL 5698743, at \*4 (N.D.  
18 Cal. Sept. 29, 2015) (quoting *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal.  
19 1996)). Accordingly, the claims in the Second Cause of Action are dismissed against Sheriff  
20 Allman.

21 However, “[a] supervisor can be liable in his individual capacity ‘for his own culpable  
22 action or inaction in the training, supervision, or control of his subordinates; for his acquiescence  
23 in the constitutional deprivation . . . ; or for conduct that showed a reckless or callous indifference  
24 to the rights of others.’” *Watkins v. City of Oakland, Cal.*, 145 F.3d 1087, 1093 (9th Cir. 1998)  
25 (internal quotations, citations and corrections omitted). Thus, through amendment, Plaintiff will  
26 be allowed to add a separate claim against Sheriff Allman in his individual capacity pursuant to  
27 § 1983.

28 Second, County Defendants seek dismissal of the state law claims brought against Sheriff

1 Allman in the Third Cause of Action alleging a Survivor Claim based on the Bane Act, California  
2 Civil Code § 52.1, and the Fourth Cause of Action alleging Direct Claims and Survivor Claims for  
3 common law negligence. County Defendants assert that all claims against Sheriff Allman in his  
4 official capacity should be dismissed because, “both the County and Sheriff Allman are immune  
5 from such claims under California Government Code § 844.6.” Cnty. Def.s’ Mot (Doc. 33) at 31.  
6 In Response, Plaintiff states that Sheriff Allman is “individually liable under the Bane Act.” Pl.’s  
7 Resp. (Doc. 34) at 33. The court takes this to mean that the Bane Act claim in the Third Cause of  
8 Action is brought against Sheriff Allman in his individual capacity.

9 The Bane Act “provides that a person may bring a cause of action ‘in his or her own name  
10 and on his or her own behalf’ against anyone who ‘interferes by threats, intimidation or coercion,’  
11 with the exercise or enjoyment of any constitutional or statutory right.” *Bay Area Rapid Transit*  
12 *Dist. v. Superior Court*, 38 Cal.App.4th 141, 144, 44 Cal.Rptr.2d 887 (Cal. App. 1995) (quoting  
13 Cal. Civ. Code § 52.1). County Defendants assert that the First Amended Complaint fails to assert  
14 facts in support of this claim.

15 Plaintiff points the court to *M.H. v. Cty. of Alameda*, 90 F. Supp. 3d 889, 899 (N.D. Cal.  
16 2013), wherein the court held that “[b]ecause deliberate indifference claims necessarily require  
17 more than ‘mere negligence,’ a prisoner who successfully proves that prison officials acted or  
18 failed to act with deliberate indifference to his medical needs . . . adequately states a claim for  
19 relief under the Bane Act.” The *M.H.* court found that “[b]ecause Plaintiffs adequately state a  
20 Bane Act claim with respect to [the individual nurse], her liability also gives rise to *respondeat*  
21 superior liability with respect to [the prison health care provider] under traditional California  
22 common law principles.” *M.H.*, 90 F. Supp. 3d at 897. Based on the allegations in the complaint  
23 related to the Deputy Sheriffs’ actions and the allegations that Sheriff Allman failed to train his  
24 employees and had implemented policies, practices, and customs that led to the Steven Neuroth’s  
25 death, the court finds that Plaintiff has sufficiently pled a claim against Sheriff Allman in his  
26 individual capacity under the Bane Act.

27 Third, County Defendants seek the dismissal of the negligence claims against Sheriff  
28 Allman in the Fourth Cause of Action as insufficiently supported by facts. Plaintiff counters that

1 the facts set forth in the First Amended Complaint state a proper negligence claim under  
2 California law because “a supervisor can be held liable under California law for negligence in  
3 hiring or retaining an employee who is incompetent or unfit. *Najera v. Southern Pacific Co.*, 191  
4 Cal.App.2d 634, 637-638 (1961).” Pl.’s Resp. (Doc. 34) at 34. However, “a claim of negligent  
5 hiring, training, and supervision is, in reality, one against the entity itself.” *Hillbloom v. Cty. of*  
6 *Fresno*, 2010 WL 3341922, at \*5 (E.D. Cal. Aug. 23, 2010). The First Amended Complaint  
7 alleges that Sheriff Allman acted negligently through the negligent training and supervision and  
8 hiring of jail staff. Thus, the cause of action fails as a matter of law. *See e.g. Sanders v. City of*  
9 *Fresno*, 2006 WL 1883394, at \*8 (E.D. Cal. July 7, 2006) (“[A]ttempting to simply add Chief  
10 Dyer as an individual Defendant in an attempt to avoid the clear prohibition of alleging negligence  
11 against a public entity is not permissible since it is virtually the same as attempting to  
12 impermissibly set forth the same claims against the City . . . because the City necessarily acts  
13 through its Police Chief.”). Accordingly, the claims against Sheriff Allman in the Fourth Cause of  
14 Action are dismissed with prejudice.

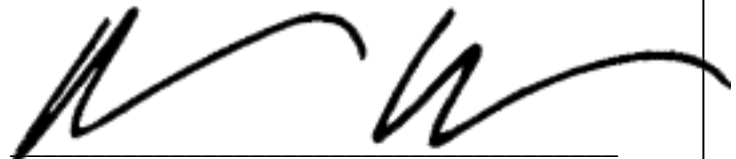
15 **CONCLUSION**

16 For the reasons stated above, it is ORDERED that the Motion to Dismiss is granted in part  
17 and denied in part. Plaintiff shall, on or before February 18, 2016, file a second amended  
18 complaint in accordance with the court’s rulings herein.

19 The court reiterates its opinion that the parties would do well to meet and confer regarding  
20 the second amended complaint to ensure that it incorporates all of the court’s rulings and so that  
21 the court can set a case management conference and begin moving this case toward a final  
22 resolution.

23 **IT IS SO ORDERED.**

24 Dated: January 28, 2016



25  
26 NANDOR J. VADAS  
United States Magistrate Judge

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