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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DAVID CANO ARELLANO, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents.	B213224 (Los Angeles County Super. Ct. No. BC371542)

APPEAL from judgments of the Superior Court of Los Angeles County. Margaret L. Oldendorf, Judge. Affirmed.

Franklin L. Ferguson, Jr., for Plaintiff and Appellant.

Maranga Morgenstern, Kenneth A. Maranga, Patricia Ellyatt; Greines, Martin, Stein & Richland, Martin Stein, Carolyn Oill and Lillie Hsu for Defendant and Respondent County of Los Angeles.

Lawrence Beach Allen & Choi, Paul B. Beach and Tammy Kim for Defendant and Respondent Los Angeles County Sheriff Leroy D. Baca.

* * * * * *

Plaintiff and appellant David Cano Arellano filed a complaint against the County of Los Angeles (County) and Los Angeles County Sheriff Leroy D. Baca (Sheriff Baca) alleging that he was denied medical care after he was arrested and detained at a jail facility for less than one day. The trial court sustained demurrers without leave to amend filed by the County and Sheriff Baca. We affirm. As to the County, appellant failed to allege the requisite elements of any statutory violation and, in any event, the County was immune from liability. Appellant likewise failed to allege any viable claim against Sheriff Baca and he, too, was immune from liability.

FACTUAL AND PROCEDURAL BACKGROUND

We set forth the facts consistent with the standard of review applicable to an appeal from judgment of dismissal following the trial court's sustaining a demurrer without leave to amend. Thus, we accept as true the facts properly pleaded in the complaint, as well as any facts of which judicial notice was properly taken. (E.g., *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1006.)

Appellant's Detention.

During an evening in April 2006, appellant engaged in a physical confrontation with an individual identified as "Mr. Pasov." Appellant locked himself in an apartment unit to get away from Mr. Pasov and then dialed 911 to request police assistance. When Los Angeles Police Department (LAPD) officers arrived, appellant was experiencing chest and back pain as a result of the earlier confrontation. Following an interview with the officers, appellant was transported to Mission Hills Community Hospital. Once the hospital discharged appellant, the same two officers arrested him for making criminal threats.

Appellant was transported to the LAPD's Mission Community Police Station where he was booked and placed in a holding cell. He informed the booking officers that he was diabetic, had been diagnosed with severe panic disorder and suffered from clinically diagnosed depression. Officers then transported appellant to the Van Nuys jail

where there was a medical facility. Appellant informed a nurse there about his medical conditions and she indicated that the facility did not have the relevant medications. As a result, appellant was to be transported to the Los Angeles County Jail Twin Towers Correctional Facility (Twin Towers) where he could receive any necessary medical treatment. The nurse rejected appellant's requests to take medication he was carrying with him or to call a family member to bring him his medication.

While being transported to the Twin Towers, appellant suffered a severe panic attack; his heart pounded rapidly, he experienced pain and tingling in his limbs, he felt lightheaded and he had difficulty breathing. During the panic attack, appellant lay prone on the floor of the police car's back seat and was unable voluntarily to move his limbs. Officers placed appellant in an ambulance which transported him to a hospital where he was evaluated and discharged.

Appellant was returned to the police car and transported to the Twin Towers where he was processed and received a medical treatment wristband. While in a holding cell with other detainees, appellant suffered another panic attack. Though he asked for immediate medical attention, he was told he would have to wait. After several hours, appellant received a medical evaluation, though not by a physician. His blood glucose level registered in the high 200 mg/dL range, as opposed to the normal 100 to 120 mg/dL range with medication. Appellant was then returned to the general holding cell, where he suffered another panic attack. Appellant asked for medical attention and then fell to the ground. A few minutes later, a deputy assisted him to a standing position and returned him to the medical evaluation area.

Appellant had difficulty walking because his coordination had been altered in the absence of his medication. He described his condition to a nurse and added that he had been prescribed to take four milligrams of Xanax per day. The nurse opined that appellant was addicted to the medication and emphasized that he would not receive such medication while detained.

Appellant was then placed in an empty holding cell. When he began to feel the onset of another panic attack, he pressed a button in the cell signifying an emergency. A

deputy responded and appellant said he was not feeling well. The responding deputy told appellant to refrain from using the emergency button again, "lest [appellant] be detained 'for a week.'" Appellant continued to experience anxiety for the next several hours, but did not seek medical assistance for fear of retaliation. After several more hours, appellant was released on a $50,000 bond.

The Pleadings and Judgment.

Approximately one year after filing his initial complaint, appellant filed the operative first amended complaint in June 2008 against the City of Los Angeles, the County, Los Angeles Police Chief William J. Bratton and Sheriff Baca. Appellant alleged a single cause of action against the County, captioned "Failure to provide adequate medical care in violation of California Civil Code §§ 51, 51.5, 51.7, 52.1 and 52.3, California Constitution Article I, § 1; and Government Code §§ 845.6 and 855.6." As against Sheriff Baca, appellant alleged the foregoing cause of action as well as claims for negligence; negligent hiring, training and retention; intentional infliction of emotional distress; and negligent infliction of emotional distress.

The County demurred on the grounds that the complaint failed to establish a viable cause of action and the County was immune from liability. The County also moved to strike the prayer's request for general and compensatory damages and the request for an award of attorney fees on the grounds raised by the demurrer. Sheriff Baca also demurred on the grounds the complaint was uncertain and failed to state a cause of action against him. Appellant opposed the demurrers and motion to strike.

Following an October 6, 2008 hearing, the trial court sustained the demurrers without leave to amend and granted the motion to strike except as it related to Code of Civil Procedure section 1021.5. It entered dismissals pursuant to Code of Civil Procedure section 581, subdivision (f)(1).

The trial court thereafter denied appellant's motion for reconsideration, with which he submitted a proposed second amended complaint, on the ground that appellant failed to set forth any new or different facts warranting reconsideration of the court's prior orders.

This appeal followed. (See *Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115 [an order of dismissal pursuant to Code Civ. Proc., § 581, subd. (f)(1) operates as a final judgment with respect to the dismissed defendant and is separately appealable].)

DISCUSSION

Appellant contends that the trial court erred in sustaining the demurrers and granting the motion to strike because he alleged valid causes of action against the County and Sheriff Baca resulting from their conduct while he was detained. We disagree.

On appeal, we review the trial court's sustaining a demurrer without leave to amend de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*Schifando v. City of Los Angeles, supra,* 31 Cal.4th at p. 1081; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) We may affirm if any ground raised in the demurrer is well taken. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742; *Hayter Trucking, Inc. v. Shell Western E&P, Inc.* (1993) 18 Cal.App.4th 1, 13.) We assume the truth of properly pleaded allegations in the complaint and give the complaint a reasonable interpretation, reading it as a whole and with all its parts in their context. (*People ex rel. Lungren v. Superior Court, supra*, at p. 300; *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 82.) "We do not, however, assume the truth of the legal contentions, deductions or conclusions; questions of law, such as the interpretation of a statute, are reviewed de novo." (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 373.) We may also disregard allegations which are contrary to law or to a fact of which judicial notice may be taken. (*Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 559–560.)

We apply the abuse of discretion standard in reviewing the trial court's denial of leave to amend, determining whether there is a reasonable probability that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1701.) Appellant bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion

in denying leave to amend. (*Blank v. Kirwan, supra*, at p. 318; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1020.)

I. The Trial Court Properly Sustained the County's and Sheriff Baca's Demurrers to the Second Cause of Action.

In the second cause of action, appellant sought to hold the County and Sheriff Baca liable for failing to provide adequate medical care. He alleged that the County and Sheriff Baca knew or had reason to know that he was in need of immediate medical attention and failed to take reasonable action to provide it. He further alleged that they displayed deliberate indifference to his serious medical needs and engaged in threatening and retaliatory behavior by denying him medical treatment, benefits and privileges. He also alleged that the County and Sheriff Baca discriminated against him because of his medical condition.

On appeal, appellant argues that these allegations were sufficient to support a cause of action under Civil Code sections 51.7 and 52.1, and Government Code sections 845.6 and 855.6. We consider each statutory provision in turn.

A. Appellant Failed to Allege a Violation of Civil Code Section 51.7.

"The Ralph Act, codified in Civil Code section 51.7, provides: 'All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of [Civil Code s]ection 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.'" (*Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 880.) Civil Code section 51, subdivision (e) identifies "disability" and "medical condition" among the protected characteristics. (Civ. Code, § 51, subd. (e).)

Four elements must be shown to support a claim for violation of Civil Code section 51.7: "'1. That [the defendant] threatened or committed violent acts against [the

plaintiff or his or her property]; [¶] 2. That a motivating reason for [the defendant's] conduct was [[his/her] perception of [the plaintiff's age or disability]]; [¶] 3. That [the plaintiff] was harmed; and [¶] 4. That [the defendant's] conduct was a substantial factor in causing [the plaintiff] harm.'" (*Austin B. v. Escondido Union School Dist., supra,* 149 Cal.App.4th at pp. 880–881, italics omitted.) In particular, an allegation of violence or intimidation by threat of violence is necessary to state a claim. (*Egan v. Schmock* (N.D.Cal. 2000) 93 F.Supp.2d 1090, 1094.)

Absent any indication by the Legislature to the contrary, we construe the term "violence" as used in Civil Code section 51.7 to have its ordinary and usual meaning in the context of the statute. (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199.) As summarized in *People v. Babich* (1993) 14 Cal.App.4th 801, 807, footnote 2: "Black's Law Dictionary defines violence as 'Unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury. . . .' (6th ed. 1990, p. 1570, col. 1.) Webster's Third New International Dictionary defines violence in part as 'exertion of any physical force so as to injure or abuse . . . intense, turbulent, or furious action, force, or feeling often destructive . . . .' ((1970) p. 2554, col. 2.)" (See also *People v. Bravot* (1986) 183 Cal.App.3d 93, 97 [the term "violence" is unambiguous and means "'any wrongful application of physical force against property or the person of another,'" italics omitted].)

Here, appellant argues that allegations he suffered a deliberate deprivation of medical attention satisfied the violence element of Civil Code section 51.7. But inattention to medical needs does not suffice to establish violence or a threat of violence within the meaning of the statute. (See, e.g., *Corales v. Bennett* (9th Cir. 2009) 567 F.3d 554, 560, 570–571 [middle school did not subject students to violence within the meaning of Civ. Code, § 51.7 where students who left campus without authorization were told by an assistant principal that they were "dumb, dumb and dumber," threatened with a fine and police involvement, and barred from attending a year-end school activity]; *Egan v. Schmock, supra*, 93 F.Supp.2d at pp. 1091–1092 [allegations that the defendant called the plaintiffs "dirty Indians" and told them to go back where they came from, mocked

their style of dress, videotaped the plaintiffs and their guests, threw trash on their property, gave them the "finger" and followed them on a bicycle failed to establish violence or a threat of violence within the meaning of Civil Code section 51.7].) Indeed, appellant's reliance on *Winarto v. Toshiba America Electronics Components* (9th Cir. 2001) 274 F.3d 1276 highlights the inadequacy of his pleading. There, evidence that a former coworker kicked the plaintiff so severely she required surgery and threatened to hurt the plaintiff again established both violence and a threat of violence by intimidation. (*Id*. at pp. 1290–1291.)

Nor did appellant's allegation that a deputy threatened to detain appellant for a week in the event he used the emergency button again satisfy the violence element of Civil Code section 51.7. In the context of false imprisonment, the element of violence requires the actual use of physical force against the victim that is greater than reasonably necessary to effect the restraint. (*People v. Matian* (1995) 35 Cal.App.4th 480, 485; accord, *People v. Babich, supra,* 14 Cal.App.4th at pp. 806–807.) Again, appellant failed to allege either that the deputy engaged in any act of violence against him or that the deputy threatened any violence that was intimidating. (See *Winarto v. Toshiba America Electronics Components, supra,* 274 F.3d at p. 1289.)

"Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action. If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action, this court should affirm the sustaining of a demurrer. [Citation.]" (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43.) To the extent the second cause of action was premised on a violation of Civil Code section 51.7, the trial court properly sustained the demurrer on the ground that appellant failed to allege a requisite element of the claim.

B. Appellant Failed to Allege a Violation of Civil Code Section 52.1.

Part of the Tom Bane Civil Rights Act (Bane Act), "Civil Code section 52.1, subdivision (a), provides that if a person interferes, or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of the constitutional or statutory

rights of 'any individual or individuals,' the Attorney General, or any district or city attorney, may bring a civil action for equitable or injunctive relief. Subdivision (b) allows '[a]ny individual' so interfered with to sue for damages." (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 841.) To state a cause of action for violation of Civil Code section 52.1, the plaintiff must allege: "'1. That [the defendant] interfered with [or attempted to interfere with] [the plaintiff's] [constitutional or statutory right] by threatening or committing violent acts; [¶] 2. [That [the plaintiff] reasonably believed that if [he/she] exercised [his/her] [constitutional] right [the defendant] would commit violence against [him/her] or [his/her] property;] [¶] [That [the defendant] injured [the plaintiff] or [his/her] property to prevent [him/her] from exercising [his/her] [constitutional] right or retaliate against [the plaintiff] for having exercised [his/her] [constitutional] right;] [¶] 3. That [the plaintiff] was harmed; and [¶] 4. That [the defendant's] conduct was a substantial factor in causing [the plaintiff's] harm.'" (*Austin B. v. Escondido Union School Dist., supra,* 149 Cal.App.4th at p. 882.)

In support of his assertion that the second cause of action alleged a violation of Civil Code section 52.1, appellant relies on the same allegations—that is, he suffered a deprivation of medical care and was told by a deputy that he would remain detained for a week if he used the emergency button again. But appellant's complaint failed to allege what threats, intimidation, or coercion had been employed against him and what constitutional and/or legal rights were implicated.

As explained in *Austin B. v. Escondido Union School Dist., supra,* 149 Cal.App.4th at page 882: "'The Legislature enacted [Civil Code] section 52.1 to stem a tide of hate crimes.' [Citation.] Civil Code section 52.1 requires 'an attempted or completed act of interference with a legal right, accompanied by a form of coercion.' [Citation.] To obtain relief under Civil Code section 52.1, a plaintiff need not allege the defendant acted with discriminatory animus or intent; a defendant is liable if he or she interfered with the plaintiff's constitutional rights by the requisite threats, intimidation, or coercion. [Citation.]" (Accord, *County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 228.)

Here, appellant did not allege that in connection with the denial of medical attention the County or Sheriff Baca engaged in the level of "threats, intimidation, or coercion" necessary to support a violation of Civil Code section 52.1. (*Venegas v. County of Los Angeles, supra*, 32 Cal.4th at p. 843; *Austin B. v. Escondido Union School Dist., supra,* 149 Cal.App.4th at p. 882.) Appellant's allegation that a deputy threatened to detain him for his use of the emergency button is not the type of "threat" that Civil Code section 52.1 was designed to prohibit. According to subdivision (j) of Civil Code section 52.1, "[s]peech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat."

Indeed, the legislative history of Civil Code section 52.1 confirms that the statute was designed to combat conduct wholly inapposite from that alleged here. Summarizing the statute's legislative history, the court in *D.C. v. Harvard-Westlake School* (2009) 176 Cal.App.4th 836, 857, explained that Civil Code section 52.1 "'was intended to supplement the Ralph Civil Rights Act as an additional legislative effort to deter violence . . . . The stated purpose of the bill was "to fill in the gaps left by the Ralph Act" by allowing an individual to seek relief to prevent the violence from occurring before it was committed and providing for the filing of criminal charges . . . ." The court continued: "'From its inception, the Bane Act's purpose has been to specifically target unlawful conduct motivated by discriminatory animus that interferes with the victim's enjoyment of statutory or constitutional civil rights . . . .'" (*D.C. v. Harvard-Westlake School, supra,* at pp. 858–859; see also *Stamps v. Superior Court* (2066) 136 Cal.App.4th 1441, 1447 [purpose of Civ. Code, § 52.1 "'is to give law enforcement officials clear effective authority to prevent acts of hate violence'"].) Appellant's allegations in no way demonstrated that the County or Sheriff Baca engaged in any coercion or intimidation by the threat of violence.

Also absent from appellant's allegations was any showing that the County or Sheriff Baca interfered with a protected constitutional or statutory right. "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threats, intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law. [Citation.]" (*Austin B. v. Escondido Union School Dist., supra,* 149 Cal.App.4th at p. 883.) Appellant argues that the failure to provide medical attention deprived him of his constitutional right to "safety" set forth in article I, section 1, of the California Constitution.[1] But appellant has cited no authority—nor have we located any—that suggests the constitutional right to safety transforms the provision of medical care into a constitutional right.

Rather, the court in *Clausing v. San Francisco Unified School Dist.* (1990) 221 Cal.App.3d 1224 reached the opposite conclusion. There, the court determined a California Constitutional provision declaring that all students "'have the inalienable right to attend campuses which are safe, secure and peaceful'" imposed no affirmative duty on the part of school districts, provided no remedy for its violation and created no private right of action. (*Id.* at p. 1236.) Characterizing the safe schools provision as "closely analogous" to article I, section 1 of the California Constitution, the court reasoned: "Clearly, although safety and happiness are inalienable rights, this provision [article I, section 1] of the Constitution does not establish the means whereby they may be enjoyed. No case has ever held that this provision enunciating the inalienable right to obtain safety and happiness is self-executing in the sense that it gives rise, in and of itself, to a private right of action for damages or an affirmative duty on the part of the state to take particular steps to guarantee the enjoyment of safety or happiness by all citizens. [Citations.]" (*Clausing v. San Francisco Unified School Dist., supra,* at p. 1237, fn. 6; cf.

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[1] Article I, section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Langdon v. Sayre (1946) 74 Cal.App.2d 41, 44 [inalienable right to happiness provided by the California Constitution cannot be enforced through an action for damages].)

Thus, just as the constitutional right to safe schools does not impose an affirmative duty on any government agency to guarantee that schools will be safe, the constitutional right to safety does create a right to medical care that may form the basis for a claim under Civil Code section 52.1. (See *Clausing v. San Francisco Unified School Dist., supra,* 221 Cal.App.3d at pp. 1238–1239.) Our conclusion is buttressed by *County of Butte v. Superior Court* (2009) 175 Cal.App.4th 729, where a qualified medical marijuana patient alleged that the sheriff violated Civil Code section 52.1 by ordering him to destroy his marijuana plants. Denying a petition for writ of mandate seeking to vacate the trial court's order overruling the demurrer, the court determined that the patient adequately alleged that the sheriff interfered with a right protected by statute—the Compassionate Use Act of 1996 later codified in Health and Safety Code section 11362.5—and by article I, section 13 of the California Constitution which guarantees individuals the right to be secure in their persons, houses, papers and effects, and free from unreasonable searches and seizures. (*County of Butte v. Superior Court, supra,* at pp. 736–737.) Importantly, there was no suggestion that the Civil Code section 52.1 violation could be premised on the right to possess and protect property guaranteed by article I, section 1 of the California Constitution. (See *County of Butte v. Superior Court, supra,* at pp. 736–737.)

Absent allegations in the complaint that the County or Sheriff Baca threatened violence or interfered with a statutorily or constitutionally protected right, the trial court properly sustained the demurrer to the second cause of action to the extent it was premised on a violation of Civil Code section 52.1.[2]

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[2] On appeal, appellant refers to an allegation in his fourth cause of action that "[d]efendants maintained, fostered, condoned or else failed to correct an official policy, practice or custom of permitting the occurrence of the types of wrongs set forth in the First Amended Complaint" as support for his second cause of action. He also cites *Canton v. Harris* (1989) 489 U.S. 378, thus suggesting that he seeks to hold the County

C. Appellant Failed to Plead That the County and Sheriff Baca Were Not Immune From Liability Pursuant to Government Code Sections 845.6 and 855.6.

"The basic rule of immunity for public entities in California is contained in Government Code section 815, which states that '[e]xcept as otherwise provided by statute: [¶] (a) A public entity *is not* liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.' (*Ibid*., italics added.)" (*Lawson v. Superior Court* (2010) 180 Cal.App.4th 1372, 1382.) Although Government Code section 815.2 provides a statutory basis for liability against a public entity for the acts and omissions of its employees, that provision does not apply in the case of injuries to prisoners. (*Lawson v. Superior Court, supra*, at p. 1383.) Instead, pursuant to Government Code section 844.6, "'a public entity is not liable for: [¶] . . . [¶] (2) An injury to any prisoner.'" (*Ibid*.) We note that even if appellant's Civil Code violations had been properly alleged, governmental immunity would likewise apply to his claim under Civil Code section 51.7 (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 512–513) and Civil Code section 52.1 (*O'Toole v. Superior Court* (2006) 140 Cal.App.4th 488, 504).

"Government Code section 845.6 focuses more specifically on the extent of immunity applicable to a prisoner's claim for failure to provide medical care. It limits the liability of public employees for failing to provide medical care, and also creates one exception to the State's blanket immunity for injuries to prisoners. 'Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; *but*, except as

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liable for the violation of a federal constitutional right under title 42 United States Code section 1983. (See *Canton v. Harris, supra*, at p. 380.) But merely suggesting a federal civil rights violation pursuant to title 42 United States Code section 1983 is inadequate. Rather, "to state a federal civil rights cause of action, a plaintiff must plead specific and nonconclusory facts showing the defendant deprived the plaintiff of rights, privileges, or immunities secured by the federal Constitution and laws. [Citations.]" (*City and County of San Francisco v. Ballard* (2006) 136 Cal.App.4th 381, 406; see also *Duffy v. City of Long Beach* (1988) 201 Cal.App.3d 1352, 1360 [same].) Appellant's conclusory allusion to the deprivation of a federal constitutional right cannot save the second cause of action.

otherwise provided by Sections 855.8 and 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*. . . .' (Gov. Code, § 845.6, italics added.)" (*Lawson v. Superior Court, supra,* 180 Cal.App.4th at pp. 1383–1384, fn. omitted.) In sum, "under Government Code section 845.6, both a public entity and its employees are immune from claims based on injuries to prisoners caused by a failure to provide medical care, except when an employee, acting within the scope of his employment, fails to provide medical care to a prisoner and has reason to know that need for medical care is immediate."[3] (*Id.* at p. 1384, fn. omitted.)

Appellant's allegations failed to satisfy the requirements necessary to bring the County's and Sheriff Baca's actions within the exception to immunity. Rather, appellant alleged that after his first panic attack he was transported to a hospital, evaluated and discharged. After his second panic attack, he was again evaluated. Although appellant further alleged that his blood-glucose level registered at a level higher than normal range at that point, he did not allege that any immediate medical care was required because of that level. Following his third panic attack, appellant alleged that he was able to see a nurse again who said that his symptoms were the result of an addiction to Xanax. The only time that appellant alleges he did not receive medical attention was after he again began to experience symptoms of anxiety. According to appellant, when the responding deputy told appellant not to press the emergency button again after appellant said "he was not feeling well," "[f]or the next several hours, [appellant] experienced extreme anxiety and continued suffering from symptoms related to the absence of his regularly prescribed medications."

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[3] For the purpose of Government Code section 845.6, a "prisoner" includes an arrestee who has been booked and placed in the custody of jail officials. (*Lawson v. Superior Court, supra*, 180 Cal.App.4th at p. 1384; *Terzian v. County of Ventura* (1994) 24 Cal.App.4th 78, 84–86.)

"Liability under [Government Code] section 845.6 is limited to *serious* and *obvious* medical conditions requiring immediate care. [Citations.]" (*Watson v. State of California* (1993) 21 Cal.App.4th 836, 841, italics added.) The "exposure to the liability imposed by [Government Code] section 845.6 . . . arise[s] infrequently and establish[es] only a modest standard of care in an area of ethical duty . . . refer[red] to as 'the moral obligation of common decency and common humanity, to come to the aid of another human being who is in danger.'" (*Hart v. County of Orange* (1967) 254 Cal.App.2d 302, 307.) Consistent with these principles, the court in *Lawson v. Superior Court, supra*, 180 Cal.App.4th at pages 1378 and 1385 concluded that allegations similar to those here—the denial of medications—did not amount to neglect of a serious and obvious medical condition and affirmed an order sustaining a demurrer to the plaintiff's claim for the failure to furnish medical care to a prisoner. (See also *Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341, 350 [no liability for failure to summon immediate medical care for prisoner's drug and alcohol intoxication]; *Kinney v. County of Contra Costa* (1970) 8 Cal.App.3d 761, 770 [no liability for failure to provide immediate medical care when prisoner complained of a bad headache and was not provided with medication or other treatment].) Appellant's allegations that he suffered "anxiety" and unspecified "symptoms" from not receiving unspecified "medications," likewise, cannot be construed to subject the County and Sheriff Baca to liability for the failure to summon immediate medical care.

Nor are we persuaded that Government Code section 855.6 creates a basis for imposing liability against the County and Sheriff Baca. That statute provides: "Except for an examination or diagnosis for the purpose of treatment, neither a public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination, of any person for the purpose of determining whether such person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others." (Gov. Code, § 855.6.) The California Law Revision Commission comment accompanying Government Code section 855.6 described the

statute as declaring immunity "for failure to perform adequately public health examinations, such as public tuberculosis examinations, physical examinations to determine the qualifications of boxers and other athletes, and eye examinations for vehicle operator applicants. It does not apply to examinations for the purpose of treatment such as are made in doctors' offices and public hospitals. In those situations, the ordinary rules of liability would apply." (4 Cal. Law Revision Com. Rep., 32 West's Ann. Gov. Code (1995 ed.) foll. § 855.6, p. 487.)

Elaborating on the comment, the court in *Creason v. Department of Health Services* (1998) 18 Cal.4th 623, 637, stated: "The preceding explanatory comment was itself based on a 1963 Law Revision Commission report that further explained the policy reasons underlying the immunity in favor of public entities charged with giving physical or mental examinations: 'To provide the utmost public protection, public entities should not be dissuaded from engaging in such activities by the fear that liability may be imposed if an employee performs his duties inadequately. Far more persons would suffer if government did not perform these functions at all than would be benefited by permitting recovery in those cases where the government is shown to have performed inadequately.' [Citation.]" Thus, a public entity was not liable for failing to detect a newborn's congenital hypothyroidism through a state-mandated blood test program because the program did "not focus on the 'in hospital' diagnosis and treatment of a specific patient." (*Id*. at pp. 627, 637; see also *Colome v. State Athletic Com.* (1996) 47 Cal.App.4th 1444, 1458–1459 [immunity applied to medical examination of boxer for the purpose of renewing his license, as the examination was not for the purpose of medical diagnosis or treatment].)

Here, though appellant now argues that he alleged he received medical examinations for the purpose of treatment, his allegations do not support that argument. When reviewing an order sustaining a demurrer, we are required to give the complaint a reasonable interpretation, reading the complaint as a whole and placing all the parts in context. (*Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 807.) We accept as true the facts alleged, as well as those that can be reasonably inferred from the

alleged facts. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) The only reasonable inference to be drawn from appellant's allegations is that appellant received medical evaluations for the purpose of determining whether he was physically able to proceed with the arrest and booking process. Although appellant alleged that he was to be transported to the Twin Towers facility where he could receive medical treatment, he never alleged that he received treatment at that facility. Rather, he alleged that he was rerouted to a hospital when he began experiencing panic attack symptoms. After appellant was evaluated at and discharged by the hospital without treatment, he was immediately transported to the Twin Towers jail facility. Following his second panic attack, appellant was evaluated and returned to the general holding cell. After his third panic attack, appellant was again evaluated and returned to a different holding cell. Neither appellant's allegations nor the reasonable inferences to be drawn therefrom suggest that any of appellant's medical evaluations were for "the purpose of treatment" within the meaning of Government Code section 855.6. Indeed, appellant did not receive treatment at any point during his detention. Accordingly, the immunity provisions of that statute apply to preclude imposing liability against the County and Sheriff Baca.[4] (E.g., *O'Toole v. Superior Court, supra,* 140 Cal.App.4th at p. 504; *Gates v. Superior Court, supra,* 32 Cal.App.4th at pp. 512–513.)

II. The Trial Court Properly Sustained the Sheriff Baca's Demurrer to the Balance of the Complaint.

Although the second cause of action was appellant's only claim against the County, appellant alleged four additional causes of action against Sheriff Baca for negligence; negligent training, hiring and retention; intentional infliction of emotional distress; and negligent infliction of emotional distress. The negligence claim was premised on Sheriff Baca's failure to provide appellant with adequate medical care. In

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[4] In view of our conclusion that appellant failed to allege any basis for imposing liability against the County, we find no basis to disturb the trial court's granting the County's motion to strike certain portions of the prayer for relief.

connection with the cause of action for negligent training, hiring and retention, appellant alleged that Sheriff Baca failed properly to supervise personnel and, further, that he "fostered, condoned or else failed to correct an official policy, practice, or custom of permitting the occurrence of the types of wrongs set forth in this First Amended Complaint." The two claims for intentional and negligent infliction of emotional distress generally alleged that Sheriff Baca's conduct had caused appellant to suffer severe emotional distress. Appellant did not allege that Sheriff Baca was personally involved in any of the allegedly injury-producing conduct; rather, he alleged that Sheriff Baca "set in motion a series of acts by others, which he knew, or should reasonably have known, would cause others to inflict the constitutional injuries herein described."

We find no basis to disturb the trial court's sustaining the demurrer without leave to amend as to these remaining causes of action. Appellant's challenge to the ruling is comprised solely of quoting verbatim the allegations of his complaint supporting those claims. For this reason alone, we conclude that appellant has forfeited any claim on appeal relating to the remaining causes of action against Sheriff Baca. It is a fundamental principle of appellate review that "[a]n appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Appellant's "conclusory presentation, without pertinent argument or an attempt to apply the law to the circumstances of this case, is inadequate," enabling us to treat appellant's arguments as abandoned. (*Ibid*.)

Nonetheless, even if we were to consider the propriety of the trial court's order on the merits, we would reach the same result. To the extent appellant's claims are premised on an alleged failure to provide adequate medical care, Sheriff Baca is immune from liability under Government Code sections 845.6 and 855.6, which apply both to public entities and public employees. (E.g., *Lawson v. Superior Court, supra,* 180 Cal.App.4th at pp. 1384–1385.) Furthermore, because appellant's claims for intentional and negligent infliction of emotional distress do not contain any independent factual basis to support the requested relief, but instead incorporate the complaint's allegations relating to the

failure to provide medical care, governmental immunity applies. The allegations here are akin to those in *Scannell v. County of Riverside* (1984) 152 Cal.App.3d 596, 609, where the plaintiff alleged the same underlying facts to support his malicious prosecution and intentional infliction of emotional distress claims. The court held that the immunity provided by Government Code section 821.6 for the malicious prosecution claim applied equally to the claim for intentional infliction of emotional distress, reasoning: "To allow an intentional infliction of emotional distress cause of action in this situation would exalt form and disregard substance. It would permit public entity and employee immunity to be avoided simply by denominating the cause of action as one for intentional infliction of emotional distress rather than malicious prosecution." (*Scannell v. County of Riverside, supra,* at p. 609.)

With respect to appellant's claim for negligent training, hiring and retention, appellant did not allege that Sheriff Baca was personally involved in such employment decisions beyond "set[ting] in motion a series of acts by others . . . ." Under these circumstances, where Sheriff Baca is not alleged to have been personally involved in either the deputies' hiring or training, or in the incidents allegedly giving rise to liability, he is protected by the immunity afforded under Government Code section 820.8. That statute provides in pertinent part: "Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person." (Gov. Code, § 820.8.) Relying on this provision, the court in *Weaver v. State of California* (1998) 63 Cal.App.4th 188 declined to impose liability against the California Highway Patrol Commissioner for the actions of patrol officers in the absence of evidence that he was personally involved in the officers' training or in the incident causing injury. According to the court: "To the extent that any of the state law theories of liability asserted in the complaint were premised on his being held vicariously liable for the acts of his subordinates, we conclude that the trial court properly concluded that Government Code section 820.8 affords him immunity as to such theories." (*Weaver v. State of California, supra,* at p. 203.) Because appellant's negligent hiring, training and retention allegations sought to hold Sheriff Baca vicariously liable for the acts of his

deputies, Government Code section 820.8 insulates Sheriff Baca from liability under the fourth cause of action.

Finally, we find no basis to disturb the trial court's exercise of discretion in denying appellant leave to amend. "The burden of showing that a reasonable possibility exists that amendment can cure the defects remains with the plaintiff; neither the trial court nor this court will rewrite a complaint. [Citation.] Where the appellant offers no allegations to support the possibility of amendment and no legal authority showing the viability of new causes of action, there is no basis for finding the trial court abused its discretion when it sustained the demurrer without leave to amend. [Citations.]" (*Rakestraw v. California Physicians' Service, supra,* 81 Cal.App.4th at p. 44.) Appellant has failed to meet his burden. He has offered neither facts nor legal authority to show that amendment could cure the complaint's defects.

DISPOSITION

The judgments of dismissal as to the County and Sheriff Baca are affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ