

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cravotta v. County of Sacramento

Cravotta · No. 2:22-cv-00167-DJC-AC · Decided February 26, 2025

SUMMARY

The United States District Court for the Eastern District of California addresses three motions to dismiss claims arising from the alleged assault of a former pretrial detainee by his cellmate. The court dismisses in part claims under the Fourteenth Amendment, the Rehabilitation Act, the Americans with Disabilities Act, California Government Code section 845.6, and related state-law theories, generally with leave to amend. The order concerns alleged deliberate indifference, failure to protect, failure to summon medical care, disability discrimination, and related liability of county and medical-service defendants.

OPINION

Cravotta v. County of Sacramento

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

10 ANTHONY CRAVOTTA II, No. 2:22-cv-00167-DJC-AC

11 Plaintiff, v.

12 ORDER

COUNTY OF SACRAMENTO, et al., 13 Defendants. 14 15 16 Plaintiff Anthony Cravotta II, a former pretrial detainee in county jail, alleges he 17 was brutally assaulted by his cellmate Lemar Burleson after he had been found 18 mentally incompetent to stand trial and was awaiting transfer to a state hospital. 19 Plaintiff alleges that, as a result of the assault, he sustained catastrophic brain injuries. 20 Plaintiff brings six causes of action in his operative Third Amended Complaint 21 stemming from his detention at the jail and the assault. 22 Defendants , who oversee, operate, and provide mental health services at the 23 jail, have moved to dismiss Plaintiff’s claims arguing they are insufficiently pled. 24 Having considered the Parties’ arguments and briefings, the Court will dismiss 25 Plaintiff’s claims in part.

26 FACTUAL BACKGROUND

27 The factual background of this case is well known to the Parties and is also set 28 forth in the Court’s prior Order granting dismissal of Plaintiff’s First Amended 1 Complaint. (Mot. Dismiss

Order (ECF No. 83) at 2–5.) The Court will address Plaintiff’s 2 allegations as to specific Defendants as required below.

3 PROCEDURAL BACKGROUND

4 Plaintiff brought this action on January 26, 2022, asserting ten causes of action 5 in his First Amended Complaint for (1) deliberate indifference under the Fourteenth 6 Amendment and 42 U.S.C. § 1983; (2) failure to provide timely restorative treatment 7 under the Fourteenth Amendment and 42 U.S.C. § 1983; (3) violations of the 8 Rehabilitation Act, 29 U.S.C. § 701, et seq.; (4) violations of the Americans with 9 Disabilities Act (“ADA”), 42 U.S.C. § 12101, et seq.; (5) deliberate indifference under 10 Cal. Const. art. I, § 7(a); (6) failure to provide timely restorative treatment under Cal. 11 Const. art. I, § 7(a); (7) right to medical care/treatment under Cal. Gov’t Code § 845.6; 12 (8) breach of mandatory duty under Cal. Gov’t Code § 815.6; (9) violations of the Tom 13 Bane Civil Rights Act (“Bane Act”), Cal. Civ. Code § 52.1; and (10) negligence. (ECF

14 No. 20.) The Court subsequently dismissed the first, third, fourth, seventh, ninth, and 15 tenth causes of action in part and granted Plaintiff leave to amend. (Mot. Dismiss 16 Order at 35–36.) The Court also dismissed Plaintiff’s fifth cause of action with 17 prejudice. (Id. at 35.) 18 Plaintiff filed his operative Third Amended Complaint on June 3, 2024, 19 asserting six causes of action for (1) deliberate indifference/special 20 relationship/failure-to-protect under the Fourteenth Amendment and 42 U.S.C. 21 § 1983; (2) violations of the Rehabilitation Act, 29 U.S.C. § 701, et seq.; (3) violations of 22 the ADA, 42 U.S.C. § 12101, et seq.; (4) failure to summon medical care under Gov’t 23 Code § 845.6; (5) violations of the Bane Act, Civ. Code § 52.1; and (6) negligence 24 against Defendants the County of Sacramento (“County”), Sacramento County Sheriff’s 25 Department (“Sheriff’s Department”), the Regents of the University of California 26 (“Regents”), the State of California, the California Department of State Hospitals, 27 Sheriff Scott Jones, Christopher Sturgis, Christina Albright-Mundy, Jacob Saesee, 28 Daisy Rollon, Bradley Whiting, Jacquelyn Blevins, Ramandeep Singh, Andrea Haynes, 1 Moises Paredes, Ronnie McLean, Justin Higley, Takuya Noda, Bennett Preston, Nicole 2 Garcés-Barrella, Diane Oran, Jaclyn DeCarlo, and Melissa Turner. (Third Am. Compl. 3 (“TAC”) (ECF No. 98) ¶¶ 172–222.)

4 Under submission are three separate motions to dismiss brought under Federal 5 Rules of Civil Procedure 12(b)(6) and 12(b)(1): 6 • The Regents and Defendants Garcés-Barrella, Oran, DeCarlo, and Turner 7 (collectively, “Regent Defendants”) seek dismissal of Plaintiff’s first cause 8 of action against Defendants Garcés-Barrella, Oran, DeCarlo, and Turner; 9 second and third causes of action against the Regents; fourth cause of 10 action against the Regent Defendants; fifth cause of action against the 11 Regent Defendants; and sixth cause of action against the Regents. 12 (Regent Defs.’ Mot. Dismiss (ECF No. 102) at 1–3.) 13 • The County, Sheriff’s Department, and Defendants Jones, Sturgis, 14 Albright-Mundy, Rollon, Whiting, Blevins, Singh, Haynes, Paredes, 15 McLean, Higley, and Noda (collectively, “County Defendants”) seek 16 dismissal of Plaintiff’s

first cause of action against Defendants Sturgis, 17 Albright-Mundy, Rollon, Whiting, Blevins, Singh, Haynes, Paredes, 18 McLean, Higley, and Noda; fourth cause of action against the County, 19 Sheriff's Department, and Defendants Jones, Haynes, Paredes, McLean, 20 Higley, and Noda; fifth cause of action against Defendants Sturgis, 21 Albright-Mundy, Rollon, Whiting, Blevins, Singh, Haynes, Paredes, 22 McLean, Higley, and Noda; and sixth cause of action against Defendants 23 Sturgis, Albright-Mundy, Rollon, Whiting, Blevins, Singh, Haynes, 24 Paredes, McLean, Higley, and Noda. (County Defs.' Mot. Dismiss (ECF 25 No. 103) at 2–3.)

26 • Defendant Saesee seeks dismissal of Plaintiff's first, fifth, and sixth causes 27 of action. (Saesee Mot. Dismiss (ECF No. 114) at 2.) 28 1 The Court held a hearing on October 17, 2024, with Paul Masuhara and Mark 2 Merin appearing for Plaintiff, Adriana Cervantes appearing for the Regent Defendants, 3 and Jill Nathan appearing for the County Defendants and Defendant Saesee.

4 LEGAL STANDARD

5 A party may move to dismiss a complaint for “lack of subject matter jurisdiction” 6 under Federal Rule of Civil Procedure 12(b)(1). “The party asserting federal subject 7 matter jurisdiction bears the burden of proving its existence.” *Chandler v. State Farm* 8 *Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). Federal courts are courts of 9 limited jurisdiction, and the “case or controversy” requirement of Article III of the U.S. 10 Constitution “limits federal courts’ subject matter jurisdiction by requiring, inter alia, 11 that plaintiffs have standing.” *Id.* at 1121. To have Article III standing, a plaintiff must 12 allege they have “(1) suffered an injury in fact, (2) that is fairly traceable to the 13 challenged conduct of the defendant, and (3) that is likely to be redressed by a 14 favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). 15 A party may also move to dismiss for “failure to state a claim upon which relief 16 can be granted.” Fed. R. Civ. P. 12(b)(6). The motion may be granted only if the 17 complaint lacks a “cognizable legal theory or sufficient facts to support a cognizable 18 legal theory.” *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 19 2008). The court assumes all factual allegations are true and construes “them in the 20 light most favorable to the nonmoving party.” *Steinle v. City & Cnty. of San Francisco*, 21 919 F.3d 1154, 1160 (9th Cir. 2019). That said, if the complaint's allegations do not 22 “plausibly give rise to an entitlement to relief” the motion must be granted. *Ashcroft v. 23 Iqbal*, 556 U.S. 662, 679 (2009). A complaint need contain only a “short and plain 24 statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 25 8(a)(2), not “detailed factual allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 26 (2007). However, this rule demands more than unadorned accusations; “sufficient 27 factual matter” must make the claim at least plausible. *Iqbal*, 556 U.S. at 678. In the 28 same vein, conclusory or formulaic recitations of elements do not alone suffice. *Id.* “A 1 claim has facial plausibility when the plaintiff pleads factual content that allows the 2 court to draw the reasonable inference that the defendant is liable for the misconduct 3 alleged.” *Id.* 4 In granting a motion to dismiss, a court

must also decide whether to grant leave to amend. Leave to amend should be freely given where there is no “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Eminence Cap., LLC v. Aspeon, Inc.*, 931 F.3d 1048, 1052 (9th Cir. 2003). Dismissal without leave to amend is proper only if it is clear that “the complaint could not be saved by any amendment.” *Intri-Plex 11 Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1056 (9th Cir. 2007) (quoting *In re Daou 12 Sys., Inc.*, 411 F.3d 1006, 1013 (9th Cir. 2005)).

13 DISCUSSION

14 I. The Regent Defendants’ Motion to Dismiss 15 A. Relevant Factual Allegations 16 Plaintiff alleges that, on November 11, 2020, he was arrested and booked into 17 the Sacramento County Main Jail. (TAC ¶¶ 43–44.) Plaintiff was subjected to a 18 classification interview, during which he was diagnosed with mental health issues 19 including schizoaffective disorder, prescribed antipsychotics, and classified for 20 specialized housing in the Jail Psychiatric Services (“JPS”) unit. (Id. ¶¶ 45–49, 52, 54.) 21 While in the JPS unit, Plaintiff alleges that jail staff frequently observed and 22 documented him taking a “boxer’s stance” or “fighting position” with “fists in the air” 23 and expressing a need to “defend” himself from “threats,” including “invisible” and 24 “visible enemies.” (Id. ¶ 51.) 25 On December 10, 2020, Defendant Garces-Barrella, a registered nurse, 26 documented in Plaintiff’s mental health records that the “problems and conditions 27 identified at the time of admission have been resolved” and “Patient to be discharged 28 to the general population, recommend [outpatient psychiatric (“OPP”)] housing.” (Id. ¶¶ 24, 57.) Plaintiff alleges he was subsequently discharged from the JPS unit into 29 general population OPP housing based on Defendant Garces-Barrella’s 30 recommendation. (Id. ¶¶ 58–59.) 31 On December 17, 2020, Defendant Oran, a nurse practitioner, conducted a 32 mental health appointment with Plaintiff during which she noted Plaintiff presented as 33 “delusional and continu[ing] to be disorganized.” (Id. ¶¶ 25, 62.) However, Defendant 34 Oran concluded that, “since he is taking his medications and was recently discharged 35 from 2 P this seems to be his baseline.” (Id. ¶ 62.) 36 On April 30, 2021, Defendant DeCarlo, a social worker, conducted a mental 37 health appointment with Plaintiff during which he stated he sometimes missed meals 38 because people were trying to hit him, but confirmed he was not being hit physically 39 by his roommate or anyone else in his pod. (Id. ¶¶ 26, 76.) Defendant DeCarlo noted 40 that “[his] thought process appeared to be delusional as evidenced by [his] 41 endorsement [sic] of AH/VH [auditory hallucinations/visual hallucinations] and 42 perseveration regarding voices, radio frequencies and being attacked.” (Id. ¶ 76.) 43 On September 23, 2021, Plaintiff was assigned to share a cell with Burleson. 44 (Id. ¶¶ 95–98.) On September 24, 2021, Defendant Turner, a licensed clinical social 45 worker, conducted a mental health appointment with Plaintiff during which he stated 46 he had a new cellmate and it wasn’t working out too well. (Id. ¶¶ 27, 102.) Defendant 47 Turner asked Plaintiff to elaborate, but he refused, stating he would rather talk to his 48 lawyer about it. (Id. ¶ 102.)

Plaintiff also denied any physical or sexual contact with his 22 cellmate but stated if he got physical “I’ll have to defend myself.” (Id. ¶ 102.) On

23 September 26, 2021, Plaintiff was brutally assaulted by Burleson. (Id. ¶ 106.)

24 B. First Cause of Action for Deliberate Indifference 25 The Fourteenth Amendment provides that “[n]o State shall . . . deprive any 26 person of life, liberty, or property, without due process of law.” U.S. Const. amend. 14 27 § 1. Pretrial detainees at correctional facilities have a protected liberty interest in 28 adequate medical and mental health care under the Fourteenth Amendment. See 1 Gibson v. Cnty. of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002), overruled on other 2 grounds in Castro v. Cnty. of Los Angeles, 833 F.3d 1060, 1076 (9th Cir. 2016). 3 42 U.S.C. § 1983 creates a right of action for the “deprivation of any rights, privileges, 4 or immunities secured by the Constitution and laws” by persons acting under color of 5 state law. To state a plausible claim for failure to provide adequate medical care, a 6 plaintiff must show: (1) “a serious medical need, by demonstrating that failure to treat 7 a prisoner’s condition could result in further significant injury or the unnecessary and 8 wanton infliction of pain,” and (2) “the defendant’s response to the need was 9 deliberately indifferent.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal 10 quotations and citations omitted). 11 To establish the deliberate indifference prong, a plaintiff must allege: (1) the 12 defendant made an intentional decision with respect to the conditions under which 13 the plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of 14 suffering serious harm; (3) the defendant did not take reasonably available measures 15 to abate that risk, even though a reasonable official in those circumstances would 16 have appreciated the high degree of risk involved; and (4) by not taking such 17 measures, the defendant caused the plaintiff’s injuries. Gordon v. Cnty. of Orange, 18 888 F.3d 1118, 1124–25 (9th Cir. 2018). The third element requires that the 19 defendant’s conduct be objectively unreasonable. Castro, 833 F.3d at 1071. The 20 mere lack of due care by a state official does not deprive an individual of life, liberty, 21 or property under the Fourteenth Amendment. Id. Rather, the plaintiff must “prove 22 more than negligence but less than subjective intent—something akin to reckless 23 disregard.” Id. 24 Here, Plaintiff brings deliberate indifference claims against Defendants Garces- 25 Barrella, Oran, DeCarlo, and Turner based on Defendant Garces-Barrella’s failure to 26 properly classify and house him, Defendants Garces-Barrella, Oran, DeCarlo, and 27 Turner’s failure to provide him with sufficient mental health care, and Defendant 28 1 Turner’s failure to protect against and report threats made against Plaintiff. (TAC 2 ¶ 174.) The Court will dismiss each of these claims. 3 First, Plaintiff fails to plausibly allege Defendant Garces-Barrella made an 4 intentional decision to improperly classify or house him. Plaintiff alleges that the 5 County and Sheriff’s Department jail staff are responsible for classifying inmates based 6 on information obtained during an inmate’s classification interview. (Id. ¶¶ 35–38, 40– 7 42.) Plaintiff alleges that the County and Sheriff’s Department contract with the 8 Regents for the provision of psychiatric/mental health services to inmates housed at 9 jail facilities but does not allege that Regents’ employees are responsible for 10 classification of inmates. (Id. ¶ 39.)

Defendant Garces-Barrella is a Regents employee. 11 (Id. ¶ 24.) Plaintiff alleges that he was discharged from the jail's JPS unit to the general 12 population for OPP housing based on Defendant Garces-Barrella's "discharge 13 decision." (Id. ¶ 58.) However, Plaintiff also alleges he was "discharged and housed 14 without jail staff conducting any classification interview, and that a classification 15 deputy subsequently reviewed Plaintiff's classification file and concluded he was 16 moved without a proper classification interview having been conducted." (Id. ¶ 59.) 17 These allegations imply that the decision to reclassify Plaintiff was made by jail staff 18 employed by the County and the Sheriff's Department, not Defendant Garces-Barrella, 19 as none of Plaintiff's allegations indicate Defendant Garces-Barrella had the authority 20 to reclassify Plaintiff. 21 Even if Defendant Garces-Barrella was responsible for Plaintiff's discharge from 22 the JPS unit, Plaintiff fails to plausibly allege Defendant Garces-Barrella's discharge 23 decision put him at substantial risk of suffering harm. Defendant Garces-Barrella's 24 notes indicate that many of the issues Plaintiff presented at intake had been resolved, 25 and she recommended he continue to receive psychiatric treatment while in general 26 population housing. Plaintiff also continued to receive anti-psychotic medication 27 when he was discharged. 28

1 In contrast, cases alleging deliberate indifference claims in the context of 2 psychiatric illnesses typically involve plaintiffs who are "in the midst of an ongoing 3 psychiatric episode that, without immediate medical care, create[] a present and 4 substantial risk of serious harm." *Gilbert v. Turner*, No. 22-56217, 2024 WL 1947137, 5 at *2 (9th Cir. May 3, 2024). For example, in *Clouthier v. County of Contra Costa*, 591 F.3d 1232 (9th Cir. 2010), the court reversed summary judgment on a deliberate 7 indifference claim brought against a mental health worker by the family of a pretrial 8 detainee who committed suicide, reasoning that the mental health worker was "on 9 notice" of the decedent's "depressive, suicidal condition and need for mental health 10 treatment" yet did not take steps to prevent "the risk of harm that he faced if denied 11 medical treatment." *Id.* at 1245. Similarly, in *Kodimer v. Cnty. of San Diego*, No. 07- 12 CV-2221-BEN (NLS), 2010 WL 2635548 (S.D. Cal. June 30, 2010), the court denied 13 summary judgment on a deliberate indifference claim when the nurse who screened a 14 pretrial detainee at a detention center knew or could have known plaintiff was 15 suffering from a psychotic break but, instead of calling for an immediate psychological 16 evaluation, or directing plaintiff be transported to an emergency psychiatric facility for 17 treatment, simply "handed off Plaintiff to the classification deputy for a housing 18 assignment." *Id.* at *3-4. Here, Plaintiff's allegations do not clearly indicate that he 19 was a danger to himself or others, or that his placement in OPP housing would 20 dangerously deteriorate his mental state. Thus, Defendant Garces-Barrella's 21 discharge decision was not deliberately indifferent. 22 As for Defendants Oran and DeCarlo, when they evaluated Plaintiff, they noted 23 that he was delusional, disorganized, and believed people were trying to hit him. 24 Plaintiff alleges these Defendants should have reported Plaintiff's medical needs, and 25 that their failure to do so caused Plaintiff serious harm, including the continued 26 deterioration of his mental health and a heightened risk of safety. (TAC ¶¶ 63, 65, 77, 27 79.)

However, Plaintiff's conclusory allegations fail to establish that Defendants Oran 28 and DeCarlo put Plaintiff at substantial risk of suffering serious harm as their notes (the 1 contents of which are alleged in the Third Amended Complaint) establish Plaintiff had 2 been stabilized in JPS housing, was receiving mental health treatment while in OPP 3 housing, was taking his medication, and was not being physically assaulted or 4 threatened by other inmates. Thus, as with Defendant Garces-Barrella, there are no 5 plausible allegations Defendants' actions exposed Plaintiff to a risk of deteriorating 6 mental health or a heightened safety risk. 7 Finally, Plaintiff's claim for deliberate indifference against Defendant Turner is 8 inadequately pled. Defendant Turner conducted a mental health appointment with 9 Plaintiff on September 24, 2021, at which point Plaintiff was sharing a cell with 10 Burleson. (See TAC ¶¶ 95, 98, 102.) Plaintiff expressed to Defendant Turner that it 11 was not working out well with his new cellmate, and if it got physical, he would have to 12 defend himself. (Id. ¶ 102.) Plaintiff was assaulted by Burleson two days later. (Id. 13 ¶ 106.) Plaintiff contends that Defendant Turner is liable for failing to report that 14 Plaintiff felt threatened on September 24 because, had she made that report, the later 15 assault could have been avoided. 16 However, Plaintiff's allegations do not plausibly establish that Defendant Turner 17 could have appreciated that Plaintiff was at a serious risk of harm based on his 18 comments. First, it is unclear from the Third Amended Complaint whether Defendant 19 Turner, as an employee of the Regents, had access to Burleson's records and thus 20 could have recognized the specific threat that Burleson posed to Plaintiff as his 21 cellmate. Further, when Defendant Turner followed up with Plaintiff about his 22 comment that things might get physical, Plaintiff declined to elaborate further and 23 denied any physical or sexual contact with Burleson. (Id. ¶ 102.) Plaintiff's comment 24 that things might get physical, without more, is "too vague to support an inference 25 that [Defendant Turner] was aware of, but failed to address, a legitimate safety 26 concern on behalf of Plaintiff." *Sisneros v. Krittman*, No. 14cv891 GPC (RBB), 2016 WL 27 11447608, at *4 (S.D. Cal. Feb. 9, 2016), report and recommendation adopted, 2016 28 WL 3517600 (S.D. Cal. June 28, 2016). 1 For example, in *Sisneros* the court dismissed failure-to-protect claims brought 2 against mental health professionals by a prisoner after he was attacked by his cellmate 3 when he had allegedly told the professionals that problems could develop if his 4 cellmate didn't receive psychiatric medication, his cellmate engaged in "weird loud 5 angry behavior," and his cellmate displayed "demented" behavior. *Id.* The court 6 reasoned that dismissal was appropriate because "Plaintiff's complaints about his 7 cellmate's strange behavior could not establish 'more than a mere suspicion' that an 8 attack might occur" given that plaintiff's cellmate had not made any threats against 9 him and there was no history of prior conflicts between them. *Id.* A similar conclusion 10 is compelled here. 11 As Plaintiff has not previously pled deliberate indifference claims against 12 Defendants Garces-Barrella, Oran, DeCarlo, or Turner, the Court will dismiss these 13 claims with leave to amend. 14 C. Second and Third Causes of Action under the Rehabilitation Act and 15 ADA

16 Plaintiff alleges the Regents are liable under the Rehabilitation Act and ADA for 17 maintaining policies or customs of action or inaction that resulted in the denial of 18 adequate mental health care to Plaintiff and failure to reasonably accommodate 19 Plaintiff's disabilities. (TAC ¶¶ 178–89.) 20 The Court finds that Plaintiff has failed to state an ADA or Rehabilitation Act 21 claim for the reasons stated in the Court's prior Order. (See Mot. Dismiss Order at 13– 22 17.) Specifically, Plaintiff does not allege he was denied mental health care because 23 of his disability, an essential pleading requirement for both ADA and Rehabilitation 24 Act claims. See *O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007). 25 Courts have identified ADA or Rehabilitation Act violations in cases where the denial 26 of medical care is so extreme as to suggest a discriminatory refusal to accommodate a 27 disability-related need. See *Atayde v. Napa State Hosp.*, 255 F. Supp. 3d 978, 1001– 28 02 (E.D. Cal. 2017). However, Plaintiff has not alleged he experienced an extreme 1 denial of mental health services while in jail. Rather, he was provided regular mental 2 health care from the time of admission through the time of his assault, even after his 3 discharge from the JPS unit. (TAC ¶¶ 46, 48-49, 54-58, 62, 66-67, 73, 76, 81.) 4 Indeed, Plaintiff alleges he received several mental health check-ins from 5 Defendants Garces-Barrella, Oran, DeCarlo, and Turner, all Regents employees. (Id. 6 ¶¶ 57, 62, 66, 102.) While the care Plaintiff received from the Regents and their 7 employees may not have been sufficient, there is no evidence of any discriminatory 8 refusal to provide care, and neither the ADA nor the Rehabilitation Act provide a 9 remedy for inadequate treatment alone. See *Simmons v. Navajo Cnty.*, 609 F.3d 1011, 10 1022 (9th Cir. 2010) (“The ADA prohibits discrimination because of disability, not 11 inadequate treatment for disability.”); see also *O'Guinn v. Nev. Dep't of Corr.*, 468 Fed. 12 App'x 651, 653 (9th Cir. 2012) (concluding that plaintiff's allegations of inadequate 13 medical care did not state a cognizable ADA or Rehabilitation Act claim after finding 14 that plaintiff did not identify any evidence demonstrating “a total lack of treatment”). 15 Accordingly, Plaintiff's second and third claims under the Rehabilitation Act and 16 ADA against the Regents are dismissed. As this is the Court's first order regarding 17 these claims, the Court will grant leave to amend. 18 D. Fourth Cause of Action for Failure to Summon Medical Care 19 Under California Government Code section 845.6, public entities and public 20 employees are generally not liable for injury proximately caused by the failure of the 21 employee to furnish or obtain medical care for a prisoner in their custody. Gov't Code 22 § 845.6. However, a “public employee, and the public entity where the employee is 23 acting within the scope of his employment, is liable if the employee knows or has 24 reason to know that the prisoner is in need of immediate medical care and he fails to 25 take reasonable action to summon such medical care.” Id. Thus, a claim under 26 section 845.6 requires three elements: (1) the public employee knew or had reason to 27 know of the need (2) for immediate medical care, and (3) failed to reasonably summon 28 such care. *Jett*, 439 F.3d at 1099. “Liability under section 845.6 is limited to serious 1 and obvious medical conditions requiring immediate care.” Id. (quoting *Watson v. 2 California*, 21 Cal. App. 4th 836, 841 (1993)). In addition, “‘immediate’ does not 3 signify urgent; rather, the obligation to

summon immediate medical care requires that 4 the public employee act in a ‘timely’ manner, so as to prevent further injury.” Horton v. 5 City of Santa Maria, 915 F.3d 592, 608 (9th Cir. 2019). 6 Under California law, “once an inmate is receiving medical care, [section] 845.6 7 does not create a duty to provide adequate or appropriate care.” Resendiz v. Cnty. of 8 Monterey, No. 5:14-cv-05495-LHK, 2015 WL 7075694, at *8 (N.D. Cal. Nov. 13, 2015). 9 Liability under section 845.6 attaches only when an employee fails to summon medical 10 care; failure to provide further treatment, or to ensure further diagnosis or treatment, 11 is not actionable under section 845.6. See Castaneda v. Dep’t of Corr. & Rehab., 212 12 Cal. App. 4th 1051, 1072 (2013). “Thus, once a prisoner is receiving medical care, 13 prison employees are under no further obligation under [section] 845.6.” Pajas v. 14 Cnty. of Monterey, No. 5:16-cv-00945-LHK, 2016 WL 3648686, at *12 (N.D. Cal. July 8, 15 2016); see also Castaneda, 212 Cal. App. 4th at 1070 (“Section 845.6 is very narrowly 16 written to authorize a cause of action against a public entity for its employees’ failure 17 to summon immediate medical care only, not for certain employee’s malpractice in 18 providing that care.”). 19 Plaintiff alleges that Defendants Garces-Barrella, Oran, DeCarlo, and Turner 20 failed to summon immediate medical care in violation of section 845.6. (TAC ¶ 192.) 21 Plaintiff further alleges the Regents are liable for those Defendants’ failure to summon 22 medical care under theories of supervisory and vicarious liability. (Id. ¶¶ 193–94.) 23 The Court will dismiss Plaintiff’s claims against Defendants Garces-Barrella, 24 Oran, DeCarlo, and Turner. Plaintiff fails to allege that he was suffering from any 25 immediate medical needs during his interactions with the individual Regent 26 Defendants such that they should have summoned medical care. (See id. ¶¶ 57–58, 27 62, 76, 102.) At most, Plaintiff’s mental health notes indicate he was delusional and 28 had auditory and visual hallucinations. There is no indication in the notes that his 1 mental health was so dire he was a harm to himself or others. Cf. Bock v. Cnty. of 2 Sutter, No. 2:11-cv-00536-MCE-GGH, 2012 WL 3778953, at *17 (E.D. Cal. Aug. 31, 3 2012) (denying dismissal of failure to summon medical care claim when defendants 4 observed plaintiff engaging in acts of self-harm, noted he was refusing his medication, 5 and noted he was severely delusional with suicidal thoughts, all of which resulted in 6 his death). In addition, the Regent Defendants were already providing Plaintiff with 7 mental health care. To the extent Plaintiff alleges the treatment the Regent 8 Defendants provided was insufficient, they cannot be held liable for their failure to 9 provide further diagnosis or treatment. 10 Thus, the Court will dismiss Plaintiff’s claims for failure to summon medical care 11 against the individual Regent Defendants, and against the Regents based on any 12 theory of vicarious or supervisory liability, with leave to amend. 13 E. Fifth Cause of Action under the Bane Act 14 The Bane Act “protects individuals from conduct aimed at interfering with rights 15 that are secured by federal or state law, where the interference is carried out ‘by 16 threats, intimidation or coercion.’” Reese v. Cnty. of Sacramento, 888 F.3d 1030, 1040 17 (9th Cir. 2018) (quoting Venegas v. Cnty. of Los Angeles, 153 Cal. App. 4th 1230 18 (2007)). When a Bane Act claim is based on alleged federal constitutional violations, 19 plaintiffs may rely on the same allegations to prove both that the defendant deprived 20 them

of a constitutional right and threatened, intimidated, or coerced them. See *id.* at 21 1043 (“[T]he Bane Act does not require the ‘threat, intimidation or coercion’ element 22 of the claim to be transactionally independent from the constitutional violation 23 alleged.”). But the claim must also rest on factual allegations that would allow an 24 inference the defendant had a specific intent to violate the plaintiff’s rights. See *id.* 25 “[S]pecific intent” may be shown by demonstrating that the defendant “acted . . . ‘in 26 reckless disregard of constitutional or statutory prohibitions or guarantees.’” *Cornell 27 v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 803–04 (2017), as modified (Nov. 28 17, 2017) (citation omitted); *Reese*, 888 F.3d at 1045 (“[A] reckless disregard for a 1 person’s constitutional rights is evidence of a specific intent to deprive that person of 2 those rights.”). 3 These rules are applicable to claims of deliberate indifference to serious 4 medical needs. See *Lapachet v. Cal. Forensic Med. Grp., Inc.*, 313 F. Supp. 3d 1183, 5 1196 (E.D. Cal. 2018). Multiple district courts have adopted the position that “a 6 prisoner who successfully proves that prison officials acted or failed to act with 7 deliberate indifference to his medical needs . . . adequately states a claim for relief 8 under the Bane Act” because deliberate indifference claims extend far beyond 9 ordinary tort claims and have been “associated with affirmatively culpable conduct.” 10 *M.H. v. Cnty. of Alameda*, 90 F. Supp. 3d 889, 898–99 (N.D. Cal. 2013); see also *Scalia 11 v. Cnty. of Kern*, 308 F. Supp. 3d 1064, 1084 (E.D. Cal. 2018); *Lapachet*, 313 F. Supp. 12 3d at 1195; *Est. of Neil v. Cnty. of Colusa*, No. 2:19-cv-4291745-TLN-DB, 2022 WL 13 4291745, at *9–10 (E.D. Cal. Sept. 16, 2022). As previously explained, this Court 14 agrees, and joins the numerous district courts which have found a Bane Act claim may 15 be based on deliberate indifference to serious medical needs. (See *Mot. Dismiss* 16 *Order* at 27.)

17 That said, Plaintiff has failed to state Bane Act claims against the Regent 18 Defendants. Plaintiff pleads his Bane Act claims against Defendants Garces-Barrella, 19 Oran, DeCarlo, and Turner based on their deliberate indifference to Plaintiff’s medical 20 needs in violation of the Fourteenth Amendment and Article I, Section 7(a) of the 21 California Constitution, failure to accommodate his disabilities in violation of the ADA 22 and Rehabilitation Act, failure to summon medical care in violation of Government 23 Code section 845.6, and failure to provide adequate health care and screening to 24 Plaintiff in violation of California Code of Regulations title 15 §§ 1207, 1208. (TAC 25 ¶¶ 199, 201, 203, 206.) Plaintiff also pleads his Bane Act claim against Defendant 26 Garces-Barrella based on her failure to provide adequate classification and housing to 27 Plaintiff in violation of California Code of Regulations title 15 § 1050. (*Id.* ¶ 210.)

28 1 Finally, Plaintiff pleads Bane Act claims against the Regents based on theories of 2 supervisory and vicarious liability. (*Id.* ¶¶ 202, 204, 206, 211–12.) 3 As explained above, Plaintiff has failed to plead deliberate indifference claims 4 against Defendants Garces-Barrella, Oran, DeCarlo, and Turner. See Section I.B 5 *supra*. Plaintiff has also failed to plead any failure to accommodate his disabilities in 6 violation of the ADA and Rehabilitation Act or any failure to summon medical care in 7 violation of Government Code section 845.6. See Sections I.C–I.D

supra. Finally, 8 Plaintiff does not contest that he has failed to plead a Bane Act claim based on alleged 9 violations of sections 1207, 1208, and 1050. (See Opp'n Regents Mot. Dismiss (ECF 10 No. 109) at 13–14.) Thus, Plaintiff has failed to state a Bane Act claim here.

11 Accordingly, the Court will dismiss Plaintiff's Bane Act claims against the Regent 12 Defendants with leave to amend. 13 F. Sixth Cause of Action for Negligence 14 Finally, the Court will dismiss Plaintiff's negligence claim against the Regents. 15 As a public entity, the Regents are immune from liability for "[a]n injury proximately 16 caused by any prisoner . . . [or] to any prisoner." Cal. Gov't Code § 844.6(a). Pretrial 17 detainees are considered "prisoners." Id. § 844. 18 At the time of his injuries Plaintiff was a pretrial detainee, and his injuries were 19 caused by another pretrial detainee. Thus, section 844.6(a) precludes a negligence 20 claim against the Regents for Plaintiff's injuries. While it is true that claims brought 21 under Government Code section 845.6 are an exception to this immunity provision, 22 id. § 844.6(a), as held in Section I.D supra, Plaintiff has failed to plead a cause of action 23 under section 845.6 against the Regents. 24 Thus, Plaintiff's claim for negligence will be dismissed against the Regents with 25 leave to amend. 26 //// 27 //// 28 //// 1 II. The County Defendants' Motion to Dismiss 2 A. Relevant Factual Allegations 3 Plaintiff alleges he was discharged from the JPS unit to general population 4 outpatient psychiatric ("OPP") housing on December 11, 2020. (TAC ¶ 58.) On

5 February 5, 2021, Defendant Sturgis, a classification deputy, conducted a review of 6 Plaintiff's security and housing assignment in general population OPP housing, and 7 failed to reclassify Plaintiff or consider any factors other than that OPP housing was 8 appropriate because the housing had been "without issue" up to that point. (Id. 9 ¶¶ 10, 67–69.) On July 26, 2021, Defendant Albright-Mundy, a classification deputy, 10 also conducted a classification review of Plaintiff's security and housing assignment 11 and failed to reclassify Plaintiff or consider any factors other than that Plaintiff's current 12 housing assignment in general population OPP housing was appropriate because the 13 housing had been "without issue" up to that point. (Id. ¶¶ 11, 81–83.) 14 On September 23, 2021, Defendant Rollon, a records officer, and Defendants 15 Whiting, Blevins, and Singh, law enforcement officers, assigned Plaintiff and Burleson 16 to cell #203. (Id. ¶¶ 13–16, 95–98.) In so doing, Plaintiff alleges the Defendants "failed 17 to consider or review" either Plaintiff or Burleson's history or potential for compatibility 18 as cellmates. (Id. ¶ 99.) Plaintiff alleges Defendants "could and should" have learned 19 that housing Plaintiff and Burleson together created a security and safety risk because, 20 for example, jail records identified Plaintiff as "White" and Burleson as "Black," and 21 records demonstrated that Burleson was assaultive, including: "noted at intake that 22 patient said he wanted to kill white people"; "Extreme psych issue// says will assault 23 any cellmates he has"; "Threats to assault anyone he is celled with"; "Burleson is [in 24 total separation] because he has threatened to assault any inmate he is housed with"; 25 and "Inmate has extreme psych issues, said he would assault any inmate he gets." (Id. 26 ¶¶ 99–100.) 27 Plaintiff was assaulted by Burleson in cell #203 on September 26, 2021. (Id. 28 ¶ 106.) Plaintiff alleges that Defendants Paredes, McLean, and Higley, law 1

enforcement officers, and Defendant Noda, a records officer, were the jail staff 2 responsible for the inmates in the general area of the jail where Plaintiff and Burleson 3 were housed that day, including monitoring inmates via a closed-circuit television 4 (“CCTV”) surveillance system and conducting direct visual checks of cells and inmates. 5 (Id. ¶¶ 19–22, 108.) Plaintiff alleges those Defendants were under the supervision of 6 Defendant Haynes, another law enforcement officer. (Id. ¶¶ 18, 108.) 7 Plaintiff alleges that, about 30 minutes prior to Burleson’s assault, Defendant 8 Paredes walked by cell #203 to conduct a direct-view check. (Id. ¶ 109.) However, 9 Plaintiff alleges Defendant Paredes failed to conduct a sufficient check of cell #203 10 because he was preoccupied with talking with an inmate-trustee at the time. (Id. 11 ¶ 110.) Plaintiff also alleges Defendant Paredes generally failed to conduct direct- 12 view checks of cell #203 at random or varied intervals, instead consistently conducting 13 checks of cell #203 at approximately the same time every hour. (Id. ¶ 111.) 14 After Plaintiff was assaulted, he alleges he was on the ground of his cell 15 bleeding from a headwound and struggling to breathe for about 30 minutes with his 16 blood leaking underneath the cell door. (Id. ¶¶ 114, 116.) Plaintiff alleges his blood 17 was visible on at least two different CCTV surveillance cameras (id. ¶¶ 115–16), 18 although it is unclear who of the Defendants were watching the surveillance cameras. 19 Plaintiff alleges that, more than 22 minutes after the blood was visible on the jail’s 20 CCTV cameras, and about 55 minutes after Defendant Paredes’s last cell check, Josh 21 Soules, an inmate-trustee, noticed the stream of blood leaking from cell #203 and 22 approached the cell for inspection. (Id. ¶ 120.) Plaintiff alleges that Burleson 23 observed that Soules had discovered his assault, used the emergency button to 24 activate the intercom inside of the jail, and informed Defendant Noda, who was 25 located in the control area, that he had attacked and “might have killed” Plaintiff. (Id. 26 ¶¶ 121–22.) Defendant Noda relayed Burleson’s message to Defendants Haynes, 27 Paredes, McLean, and Higley. (Id. ¶ 123.) Defendants Paredes and McLean walked to 28 cell #203, observed Plaintiff lying on the ground in a pool of blood, and then left the 1 scene, returning a minute later with Defendant Haynes. (Id. ¶¶ 124–27.) Defendant 2 Higley arrived shortly after. (Id. ¶ 129.) Defendants Paredes and McLean escorted 3 Burleson out of the cell, while Defendants Haynes and Higley remained. (Id.) 4 Plaintiff alleges that, instead of responding to Plaintiff’s medical needs by, for 5 example, placing Plaintiff in a recovery position to aid breathing, or staunching the 6 bleeding from Plaintiff’s headwound, Defendants Haynes and Higley stared down at 7 Plaintiff for approximately one minute and 40 seconds, after which Defendant Higley 8 dragged Plaintiff’s body out of the cell. (Id. ¶¶ 130–37.) At that point, medical 9 personnel arrived on the scene and began to give Plaintiff medical aid. (Id. ¶ 138.) 10 Eventually, Plaintiff was transported to the hospital where he was placed in a medically 11 induced coma. (Id. ¶ 140.) 12 B. First Cause of Action for Deliberate Indifference 13 Plaintiff brings deliberate indifference claims against Defendants Sturgis, 14 Albright-Mundy, Rollon, Whiting, Blevins, and Singh based on their failure to 15 sufficiently classify and house Plaintiff; against Defendants Haynes, Paredes, McLean, 16 Higley, and Noda for insufficiently monitoring Plaintiff; and against Defendants

Haynes 17 and Higley for providing insufficient medical care. (TAC ¶ 174.) As discussed below, 18 the Court will dismiss Plaintiff's deliberate indifference claims against Defendants 19 Sturgis, Albright-Mundy, Paredes, McLean, and Noda. However, the Court declines to 20 dismiss Plaintiff's claims against Defendants Rollon, Whiting, Blevins, Singh, Haynes, 21 and Higley. 22

1. Defendants Sturgis and Albright-Mundy 23 Plaintiff alleges that Defendants Sturgis and Albright-Mundy were deliberately 24 indifferent to his medical needs because they conducted insufficient classification 25 reviews of his security and housing assignment on February 5, 2021, and July 26, 26 2021, when they failed to consider anything other than Plaintiff's housing in general 27 population OPP housing had been without issue up to that point. (TAC ¶¶ 67–69, 81–28 83, 174.) As explained in Section I.B supra, to state a deliberate indifference claim, a 1 plaintiff must allege that the defendant did not take reasonably available measures to 2 abate a substantial risk to the plaintiff, even though a reasonable official in those 3 circumstances would have appreciated the high degree of risk involved. *Gordon*, 888 4 F.3d at 1124–25. 5 Here, the Court does not find Plaintiff's allegations sufficient to demonstrate 6 Defendant Sturgis could have reasonably appreciated a high degree of risk in keeping 7 Plaintiff in general population OPP housing when he conducted the classification 8 review on February 5. At most, Plaintiff alleges that, between his discharge from the 9 JPS unit into OPP housing on December 11, 2020, and February 5, 2021, he had two 10 mental health appointments, during which mental health professionals documented 11 he appeared delusional but was taking his medication, and noted he “stated that 12 someone is hitting him inside his cell, however, upon further explanation, [he] stated ‘I 13 get an electric shock.’” (TAC ¶¶ 62, 66.) These notes demonstrate that, while Plaintiff 14 was mentally unwell, he was receiving mental health treatment and medication while 15 in OPP housing. In addition, Plaintiff's vague statements about receiving an electric 16 shock do not plausibly establish he was at clear risk of physical harm. Thus, because 17 Plaintiff has not sufficiently pled he was at risk from remaining in general population 18 OPP housing, the Court will dismiss Plaintiff's deliberate indifference claim against 19 Defendants Sturgis. 20 The Court will similarly dismiss Plaintiff's claim against Defendant Albright- 21 Mundy. In between February 5, 2021, and July 26, 2021, Plaintiff was found 22 incompetent to stand trial and was ordered to be placed at a state hospital pending 23 restoration of his competency.¹ (*Id.* ¶¶ 70, 74.) During that period—in which the 24 Plaintiff remained in Sacramento County Main Jail—Plaintiff had several mental health 25 appointments, during which mental health workers documented that a different 26 cellmate had allegedly attacked him at the end of February or beginning of March, 27

1 The Third Amended Complaint contains little detail about the state court proceedings that led to this 28 determination. 1 but that he had not been attacked since. (*Id.* ¶ 73.) The workers also documented 2 Plaintiff sometimes missed meals because he believed people were trying to hit him 3 but confirmed that he was not being hit physically by his cellmate or anyone else. (*Id.* 4 ¶ 76.) These allegations are insufficient to demonstrate Defendant Albright-Mundy 5 could have reasonably appreciated a high degree of risk in keeping Plaintiff in general 6

population OPP housing as Plaintiff was still receiving mental health treatment and 7 had not reported any ongoing or imminent safety threats. 8 Thus, the Court will dismiss Plaintiff's deliberate indifference claims against 9 Defendants Sturgis and Albright-Mundy with leave to amend. 10 2. Defendants Rollon, Whiting, Blevins, and Singh 11 Plaintiff alleges Defendants Rollon, Whiting, Blevins, and Singh were 12 deliberately indifferent in housing him with Burleson because they failed to consider 13 Burleson's assaultive history, mental illness, and avowed dislike of white people 14 before assigning Burleson to Plaintiff's cell. (See TAC ¶¶ 95–101, 174.) 15 The Court declines to dismiss these claims. The County Defendants argue that, 16 at the time Plaintiff and Burleson were housed together, there was no history of 17 physical confrontation between them; thus, they argue Defendants could not have 18 known Plaintiff was at risk of imminent harm. (County Defs.' Mot. Dismiss at 7.) 19 However, Plaintiff alleges Defendants Rollon, Whiting, Blevins, and Singh made an 20 intentional decision to house Plaintiff with Burleson without considering Burleson's 21 documented mental illness and previous threats to other cellmates. The Defendants 22 also failed to consider Plaintiff's own mental health history. Those decisions plausibly 23 put Plaintiff at risk of assault, and the Court finds these allegations sufficient to support 24 Plaintiff's deliberate indifference claim. See, e.g., *Estate of Michael McCormack v. 25 Cnty. of San Bernardino*, No. EDCV 21-148 JGB (SHKx), 2023 WL 3407141, at *2–5 26 (C.D. Cal. Mar. 23, 2023) (denying motion to dismiss claims that defendants 27 improperly housed plaintiff with his cellmate when the cellmate was mentally ill, had a 28 1 history of violent and assaultive conduct, and plaintiff was also mentally ill and 2 vulnerable to violent inmates). 3 Thus, the Court will not dismiss Plaintiff's deliberate indifference claims against 4 Defendants Rollon, Whiting, Blevins, and Singh. 5 3. Defendants Haynes, Paredes, McLean, Higley, and Noda 6 Finally, Plaintiff brings deliberate indifference claims against Defendants 7 Haynes, Paredes, McLean, Higley, and Noda for inadequately monitoring Plaintiff in 8 his cell during and after the assault, and against Defendants Haynes and Higley for 9 providing insufficient medical care when they arrived at his cell after the assault. (TAC 10 ¶¶ 106–139, 174.) 11 The Court will dismiss Plaintiff's claims against Defendant McLean. As 12 explained in Section I.B supra, to state a deliberate indifference claim, a plaintiff must 13 allege the defendant made an intentional decision with respect to the conditions 14 under which the plaintiff was confined and that those conditions put the plaintiff at 15 substantial risk of serious harm. *Gordon*, 888 F.3d at 1124–25. The Court previously 16 dismissed Plaintiff's claims against Defendants Paredes and McLean because Plaintiff 17 failed to allege that either Defendant intentionally failed to monitor his cell, i.e., that 18 they were “due to check his cell at some point during the 30-minute interval [when the 19 assault occurred], but failed to do so, or did check his cell during the 30-minute 20 interval but failed to detect that an assault had occurred.” (See Mot. Dismiss Order at 21 11.) In his Third Amended Complaint, Plaintiff generally alleges that Defendant 22 McLean failed to adequately monitor cell #203 and failed to detect Plaintiff's assault. 23 However, Plaintiff has not alleged that Defendant McLean was due to check Plaintiff's

24 cell and did not, checked the cell inadequately, or was assigned to monitor CCTV 25 footage and failed to do so. Thus, the Court finds that Plaintiff has failed to allege 26 Defendant McLean acted intentionally with respect to Plaintiff's conditions of 27 confinement. 28 1 The Court will also dismiss Plaintiff's claim against Defendant Paredes. Plaintiff 2 alleges Defendant Paredes was scheduled to check his cell approximately half an hour 3 before the attack occurred but failed to conduct an adequate check. However, this is 4 insufficient to establish deliberate indifference. Plaintiff does not plausibly allege 5 Defendant Paredes's failure to adequately check his cell heightened his risk of assault 6 as neither he nor Burleson were allegedly exhibiting any signs of distress at that point. 7 Cf. Castro, 833 F.3d at 1073 (sustaining verdict in plaintiff's favor on deliberate 8 indifference claim when he had pounded on his cell window for a full minute to get a 9 nearby officer's attention, to no avail). Plaintiff also does not allege Defendant 10 Paredes was scheduled to check his cell in the 30 minutes between when the assault 11 occurred and was detected, or that he failed to do so. Thus, the Court will dismiss 12 Plaintiff's deliberate indifference claim against Defendant Paredes. 13 Finally, the Court will dismiss Plaintiff's claim against Defendant Noda. Plaintiff 14 alleges Defendant Noda was responsible for monitoring his cell, including via direct 15 cell checks and CCTV footage, but failed to do so, including by ignoring or failing to 16 detect the blood leaking from underneath Plaintiff's cell door for approximately 22 17 minutes. (TAC ¶¶ 108, 117–23, 174.) However, Plaintiff fails to plausibly allege how 18 Defendant Noda intentionally failed to monitor his cell. At most, Plaintiff substantively 19 alleges that Defendant Noda was in the control area when Burleson reported the 20 assault and relayed the reported assault to other jail staff. (Id. ¶¶ 122–23.) These 21 allegations are insufficient to establish Defendant Noda made an intentional decision 22 with respect to Plaintiff's conditions of confinement. 23 However, the Court finds that Plaintiff has plausibly alleged deliberate 24 indifference claims against Defendants Haynes and Higley based on their failure to 25 adequately respond to Plaintiff's medical emergency. The Court previously ruled that 26 Plaintiff failed to state a deliberate indifference claim against either Defendant 27 because Plaintiff failed to allege that "Defendants were trained in and could have 28 reasonably provided CPR or other life-saving measures" and that "his injury could 1 have been alleviated had CPR or other life-saving measures been administered 2 swiftly." (Mot. Dismiss Order at 12.) Plaintiff has amended his pleadings to allege 3 Defendants Haynes and Higley received training related to first aid and CPR, that 4 Defendants could have, but failed to, respond to Plaintiff's medical emergency by 5 placing Plaintiff into a recovery position to aid his breathing or staunching bleeding 6 from his headwound, and that this failure to render medical aid "caused serious harm, 7 including prolonged bleeding and struggle to breathe." (TAC ¶ 130–34.) 8 Defendants argue that Plaintiff has not pled their delay in care exacerbated his 9 brain injury. (County Defs.' Mot. Dismiss at 16, 20.) However, Plaintiff points out that 10 his brain injury is not the only injury for which he can recover damages, as he could 11 also recover for the psychological and physiological distress he suffered as a result of 12 blood and oxygen loss. (Opp'n County Defs.'

Mot. Dismiss (ECF No. 108) at 14.) A 13 delay in providing medical treatment can sustain a deliberate indifference claim 14 where the delay has exacerbated the prisoner's injury or unnecessarily prolonged the 15 inmate's pain. See, e.g., *Jett*, 439 F.3d at 1096 (noting indifference may appear when 16 prison officials deny, delay, or intentionally interfere with medical treatment); *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (on a claim of prolonged exposure to 18 pepper-spray fumes found a serious medical need is present whenever the failure to 19 treat a prisoner's condition could result in further significant injury or the unnecessary 20 and wanton infliction of pain). The Court finds that a jury could reasonably conclude 21 Defendants Haynes and Higley prolonged Plaintiff's suffering by failing to promptly 22 address his medical needs. 23 In sum, the Court will dismiss Plaintiff's claims against Defendants Paredes, 24 McLean, and Noda only. This is the Court's second order dismissing Plaintiff's 25 deliberate indifference claims against Defendants Paredes and McLean. (See Mot. 26 Dismiss Order at 35.) There is nothing in the briefing that suggests the Plaintiffs could 27 plead additional facts that would cure the defects in the claims against these 28 Defendants, and the Court will dismiss these claims with prejudice. See *Intri-Plex 1 Techs., Inc.*, 499 F. 3d at 1056. However, Plaintiff is granted leave to amend his claim 2 against Defendant Noda. 3 C. Fourth Cause of Action for Failure to Summon Medical Care 4 Plaintiff alleges that Defendants Haynes, Paredes, McLean, Higley, and Noda 5 knew or had reason to know that Plaintiff was in need of immediate medical care and 6 failed to summon such care in violation of Government Code section 845.6. (TAC 7 ¶ 192.) Plaintiff alleges that the County, Sheriff's Department, and Defendant Jones 8 are liable under theories of municipal/supervisory and vicarious liability. (Id. ¶¶ 193– 9 94.) 10 The Court will dismiss Plaintiff's claims against Defendants Haynes, Paredes, 11 McLean, Higley, and Noda for the reasons set forth in the Court's prior Order: Plaintiff 12 has not sufficiently alleged any of these Defendants knew, or had reason to know, that 13 Plaintiff was in need of immediate medical care during the 30-minute period between 14 when Plaintiff was attacked and the attack was reported. (Mot. Dismiss Order at 23– 15 25;) see also Section II.B *supra*. Plaintiff has not plausibly alleged the Defendants 16 failed to conduct a scheduled safety check or insufficiently conducted a safety check 17 during that 30-minute period, or that they could have or were monitoring the CCTV 18 footage during that period. Further, Plaintiff's allegations support the conclusion that 19 once the Defendants were made aware of the attack, medical care was promptly 20 summoned. (See TAC ¶¶ 122–140.) Thus, Plaintiff's claims will be dismissed. As this 21 Court has previously dismissed this claim against Defendants Haynes, Paredes, 22 McLean, and Higley, Plaintiff's claims against those Defendants are dismissed without 23 leave to amend. Plaintiff's claim against Defendant Noda will be dismissed with leave 24 to amend. 25 As Plaintiff's claims against the individual County Defendants are dismissed, the 26 Court also finds Plaintiff's allegations insufficient to sustain his claims against 27 Defendant Jones, the County, and the Sheriff's Department based on supervisory 28 1 liability or vicarious liability. Accordingly, those claims will also be dismissed with 2 leave to amend. 3 D. Fifth Cause of Action under the Bane

Act 4 Plaintiff pleads his Bane Act claims against Defendants Sturgis, Albright-Mundy, 5 Rollon, Whiting, Blevins, Singh, Haynes, Paredes, McLean, Higley, and Noda based on 6 their deliberate indifference to his medical needs in violation of the Fourteenth 7 Amendment and Article I, Section 7(a) of the California Constitution, and failure to 8 summon medical care in violation of Government Code section 845.6. (TAC ¶¶ 199, 9 203.) Plaintiff also pleads his Bane Act claim against Defendants Haynes, Paredes, 10 McLean, Higley, and Noda based on their failure to provide adequate monitoring and 11 safety checks in violation of Code of Regulations title 15 section 1027.5, and against 12 Defendants Sturgis, Albright-Mundy, Rollon, Whiting, Blevins, and Singh based on 13 their failure to provide adequate classification and housing to Plaintiff in violation of 14 Code of Regulations title 15 section 1050. (Id. ¶¶ 208, 210.) 15 As this Court has previously explained, a Bane Act claim may be based on 16 deliberate indifference to serious medical needs. See Section I.E supra. As held in 17 Section II.B supra, Plaintiff has adequately pled claims for deliberate indifference 18 against Defendants Rollon, Whiting, Blevins, Singh, Haynes, and Higley. Thus, Plaintiff 19 declines to dismiss Plaintiff’s fifth cause of action against those Defendants. 20 As to the remaining Defendants Sturgis, Albright-Mundy, Paredes, McLean, and 21 Noda, the Court finds that Plaintiff has inadequately pled any failure to summon 22 medical care in violation of Government Code section 845.6. See Section II.C supra. 23 Thus, those allegations cannot support his Bane Act claim here. However, Defendants 24 do not challenge Plaintiff’s Bane Act claims based on violations of sections 1027.5 and 25 1050. (See Opp’n County Defs.’ Mot. Dismiss at 14.) As Defendants have failed to 26 explain why dismissal of those claims is warranted, the Court will not grant dismissal as 27 to the remaining Defendants. 28

1 Thus, the Court declines to dismiss Plaintiff’s fifth cause of action against 2 Defendants Sturgis, Albright-Mundy, Rollon, Whiting, Blevins, Singh, Haynes, Paredes, 3 McLean, Higley, and Noda. 4

E. Sixth Cause of Action for Negligence 5 Finally, Plaintiff brings negligence claims against Defendants Sturgis, Albright- 6 Mundy, Rollon, Whiting, Blevins, Singh, Haynes, Higley, McLean, Paredes, and Noda. 7 (TAC ¶¶ 215–20.) In California, a cause of action for negligence requires (1) a legal 8 duty to use reasonable care; (2) breach of that duty; and (3) proximate cause between 9 the breach and (4) the plaintiff’s injury. *Mendoza v. City of Los Angeles*, 66 Cal. App. 10 4th 1333, 1339 (1998). This standard requires a much lower level of culpability than 11 deliberate indifference. See *Castro*, 833 F.3d at 1071. 12 Here, Plaintiff has adequately pled deliberate indifference claims against 13 Defendants Rollon, Whiting, Blevins, Singh, Haynes, and Higley. Thus, he has 14 sufficiently pled negligence claims against these Defendants. See, e.g., *Guy v. Bick*, 15 No. 2:21-CV-00823-WBS-JDP, 2022 WL 1271374, at *3 (E.D. Cal. Apr. 27, 2022), 16 report and recommendation adopted, 2022 WL 3358116 (E.D. Cal. Aug. 15, 2022) 17 (“Where a plaintiff alleges sufficient facts to state a § 1983 claim of deliberate 18 indifference, it follows that they have also sufficiently pled a negligence cause of 19 action.”). 20 However, the Court finds Plaintiff has inadequately pled negligence claims 21 against Defendants Sturgis, Albright-

Mundy, McLean, Paredes, and Noda. “In 22 California, prison officials owe detainees a duty to protect them from foreseeable 23 harm.” *Cotta v. Cnty. of Kings*, 686 F. App’x 467, 469 (9th Cir. 2017); *Edison v. United 24 States*, 822 F.3d 510, 521 (9th Cir. 2016); *Giraldo v. Cal. Dep’t of Corr. & Rehab.*, 168 25 Cal. App. 4th 231, 252–53 (2008). Plaintiff alleges Defendants Sturgis and Albright- 26 Mundy breached their duties when they insufficiently classified and housed Plaintiff, 27 and that Defendants McLean, Paredes, and Noda breached their duties when they 28 insufficiently monitored Plaintiff. (TAC ¶ 217.) However, as discussed in Section II.B 1 supra, Plaintiff’s claims are insufficient to conclude Defendants breached any duties. 2 When Defendants Sturgis and Albright-Mundy conducted their classification reviews 3 of Plaintiff, Plaintiff had been housed in general population OPP housing without any 4 notable incidents. (See *id.* ¶¶ 58–83.) Thus, there was no foreseeable harm in 5 keeping Plaintiff in OPP housing at that time. As for Defendants McLean, Paredes, and 6 Noda, Plaintiff has not plausibly alleged they failed to conduct scheduled direct-view 7 safety checks during the assault in question, conducted insufficient safety checks 8 during that time, or failed to monitor CCTV footage of Plaintiff’s cell. See Section II.B 9 supra. Thus, as held in this Court’s prior order, Plaintiff has failed to state negligence 10 claims on that basis. (Mot. Dismiss Order at 31–33.) 11 The Court will dismiss Plaintiff’s negligence claims against Defendants Sturgis, 12 Albright-Mundy, McLean, Paredes, and Noda only. As this Court has previously 13 dismissed this claim against Defendants Paredes and McLean on the same grounds, 14 Plaintiff’s claims against those Defendants are dismissed without leave to amend. 15 However, Plaintiff’s claims against Defendants Sturgis, Albright-Mundy, and Noda will 16 be dismissed with leave to amend. 17

III. Defendant Saesee’s Motion to Dismiss 18

A. Relevant Factual Allegations 19 Plaintiff alleges that, on September 20, 2021, Defendant Saesee, a classification 20 deputy, reviewed Burleson’s security and housing classification, reclassified his 21 security assignment as “Medium,” and housed him in the jail’s general population with 22 an OPP designation. (TAC ¶¶ 91–93.) Plaintiff alleges that Defendant Saesee 23 reclassified Burleson without considering factors necessary to adequately and safely 24 classify and assign Burleson, including Burleson’s jail records which reflected Burleson 25 suffered from mental illness, including schizophrenia and schizoaffective disorder, and 26 was frequently subject to criminal charges and convictions, including for robbery. (*Id.* 27 ¶¶ 89, 91.) Burleson’s records also demonstrated he had previously been housed by 28 jail staff in total separation housing, where he was frequently documented as being 1 assaultive towards inmates and cellmates and expressed a desire to “kill white 2 people.” (*Id.* ¶ 90.) Plaintiff alleges that Defendant Saesee’s failure to adequately 3 classify Burleson caused harm to Plaintiff because Burleson was housed in an 4 inappropriate area of the jail, leading to a heightened security and safety risk, and 5 Burleson was later assigned to share a cell with Plaintiff, where he then assaulted 6 Plaintiff. (*Id.* ¶¶ 93, 95–97, 106.) 7

B. Plaintiff’s Standing to Bring Claims Against Defendant Saesee 8 Defendant Saesee alleges Plaintiff lacks Article III standing to bring claims 9 against him because Plaintiff’s injury is not fairly traceable to Defendant Saesee’s 10 conduct.

(Saesee Mot. Dismiss at 4.) Defendant Saesee argues that “the connection 11 between Deputy Saesee’s September 20, 2021, classification of Lemar Burleson and 12 the September 26, 2021, attack is far too speculative and attenuated to establish 13 causation,” as the Third Amended Complaint “does not allege that defendant Deputy 14 Saesee was involved in the cell assignment for [Plaintiff] or for Burleson.” (Id. at 5.) 15 The Court finds that Plaintiff has sufficiently alleged standing. Article III requires 16 only that a plaintiff’s injury be fairly traceable to the defendant’s conduct. See *Maya v. 17 Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011). To established standing, plaintiffs 18 “do not bear so heavy a burden,” and do not need to “demonstrate that defendants’ 19 actions are the ‘proximate cause’ of plaintiffs’ injuries.” Id. Rather, all that is required 20 is “a ‘line of causation’ between defendants’ action and their alleged harm that is more 21 than ‘attenuated.’” Id. (citation omitted). “A causal chain does not fail simply because 22 it has several ‘links,’” id., and a plaintiff need not allege that the defendant was “the 23 sole source of” injury nor “eliminate any other contributing causes,” *Barnum Timber 24 Co. v. EPA*, 633 F.3d 894, 901 (9th Cir. 2011). The Court finds Plaintiff’s allegations 25 sufficient to meet the Article III standard, as Plaintiff has plausibly pled a line of 26 causation between Defendant Saesee’s classification of Burleson, and Burleson’s later 27 assault on Plaintiff, as Burleson would not have been in general population, and 28 therefore able to be housed with Plaintiff, without Defendant Saesee’s action. 1 Thus, Plaintiff has standing to sue Defendant Saesee. 2 C. First Cause of Action for Deliberate Indifference 3 Plaintiff alleges Defendant Saesee was deliberately indifferent in his 4 classification and housing of Plaintiff. (TAC ¶ 174.) The Court will not dismiss this 5 claim. While Plaintiff’s claim should more accurately read Defendant Saesee 6 insufficiently classified Burleson, not Plaintiff, the Court finds Plaintiff has plausibly 7 alleged Defendant Saesee reclassified Burleson without considering Burleson’s 8 concerning jail records, thereby placing Plaintiff, as well as other inmates in general 9 population housing, at risk of harm. While Defendant Saesee’s classification decision 10 may ultimately prove to be too far removed from Plaintiff’s harm to meet the causation 11 requirements for a section 1983 claim,² the Court notes that causation is ordinarily a 12 factual question ill-suited for considering at the motion to dismiss stage. See, e.g., 13 *Christensen v. Georgia-Pac. Corp.*, 279 F.3d 807, 815–16 (9th Cir. 2001) (“proximate 14 cause is usually a factual decision that should be decided at trial”). 15 Thus, the Court finds Plaintiff’s allegations minimally sufficient to state a 16 deliberate indifference claim against Defendant Saesee. See, e.g., *Estate of Gonzales 17 v. Hickman*, No. ED CV 05-00660 MMM (RCx), 2006 WL 4959780, at *15 (C.D. Cal. Jan. 18 23, 2006) (refusing to dismiss deliberate indifference claim in a case where a 19 correctional officer was fatally stabbed by a prisoner where defendants “created or 20 increased the risk of danger to [the officer]” by “improperly assign[ing] [the prisoner] 21 to a general population,” where “[the prisoner]’s misclassification and improper 22 placement created a dangerous condition.”). 23 D. Fifth Cause of Action under the Bane Act 24 Plaintiff also pleads a Bane Act claim against Defendant Saesee based on his 25 deliberate indifference to Plaintiff’s medical needs. (TAC ¶ 199.) As explained in

26 27 2 To prevail on a section 1983 claim under a deliberate indifference theory, the plaintiff must show defendant's actions were both the actual and proximate cause of his injuries. See *Lemire v. Cal. Dep't 28 of Corr. & Rehab.*, 726 F.3d 1062, 1074, 1080–81 (9th Cir. 2013). 1 Section I.E supra, a Bane Act claim may be based on deliberate indifference to serious 2 medical needs. Plaintiff has sufficiently stated a deliberate indifference claim against 3 Defendant Saesee. Thus, the Court declines to dismiss Plaintiff's fifth cause of action 4 against Defendant Saesee. 5 E. Sixth Cause of Action for Negligence 6 Finally, Plaintiff pleads a negligence claim against Defendant Saesee based on 7 his insufficient classification and housing of Plaintiff. (TAC ¶ 217.) Negligence 8 requires a much lower level of culpability than deliberate indifference such that a 9 deliberate indifference claim will typically sustain a negligence claim. See, e.g., *Guy*, 10 2022 WL 1271374, at *3. As Plaintiff has sufficiently stated a deliberate indifference 11 claim against Defendant Saesee, the Court declines to dismiss Plaintiff's negligence 12 claim.

13 CONCLUSION

14 In accordance with the above, it is hereby ordered the Regent Defendants' 15 Motion to Dismiss (ECF No. 102) is GRANTED in part and DENIED in part. It is further 16 ordered that the County Defendants' Motion to Dismiss (ECF No. 103) is GRANTED in 17 part and DENIED in part. Finally, Defendant Saesee's Motion to Dismiss (ECF No. 114) 18 is DENIED. 19 Specifically, the Court GRANTS dismissal as to the: 20 • First cause of action against Defendants Garces-Barrella, Oran, DeCarlo, 21 Turner, Sturgis, Albright-Mundy, and Noda with leave to amend; 22 • First cause of action against Defendants Paredes and McLean without 23 leave to amend; 24 • Second and third causes of action against the Regents with leave to 25 amend; 26 • Fourth cause of action against Defendants Garces-Barrella, Oran, 27 DeCarlo, Turner, the Regents, Noda, Jones, the County, and the Sheriff's 28 Department with leave to amend; 1 e Fourth cause of action against Defendants Paredes, McLean, Haynes, 2 and Higley without leave to amend; 3 e Fifth cause of action against Defendants Garces-Barrella, Oran, DeCarlo, 4 Turner, and the Regents with leave to amend; 5 e Sixth cause of action against Defendants Sturgis, Albright-Mundy, Noda, 6 and the Regents with leave to amend; and 7 e Sixth cause of action against Defendants Paredes and McLean without 8 leave to amend. 9 The Court DENIES dismissal as to Plaintiff's remaining claims. Plaintiff is 10 | granted leave to file an amended complaint within 30 days of this order. If Plaintiff 11 | wishes to add any additional claims or defendants to his amended complaint aside 12 | from those specifically contemplated by this Order, Plaintiff must seek the Court's 13 | leave to do so pursuant to Federal Rule of Civil Procedure 15. 14 15 IT IS SO ORDERED. 16 | Dated: February 25, 2025 "Darel A CDbnetto Hon. Daniel alabretta

v7 UNITED STATES DISTRICT JUDGE

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