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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

LASHAUNA LYVETTE HEARN, et al., Plaintiffs and Appellants, v. LOS ANGELES SCHOOL POLICE DEPARTMENT, et al., Defendants and Respondents.	B238195 (Los Angeles County Super. Ct. No. BC429632)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette Sanchez-Gordon, Judge. Affirmed.

The Luti Law Firm and Anthony N. Luti; Wilson Trial Group and Dennis P. Wilson for Plaintiffs and Appellants Lashauna Lyvette Hearn and Mercedes Priscilla Hearn, a minor.

Gonzalez, Saggio & Harlan, Irwin S. Evans, Maral I. Gasparian and JoAnn Victor for Defendants and Respondents Los Angeles Unified School District and Lawrence Manion.

Lashauna Lyvette Hearn and Mercedes Priscilla Hearn appeal from an order granting respondents Los Angeles School Police Department, Chief Larry Manion and the Los Angeles Unified School District relief from default under Code of Civil Procedure, section 473, and the judgment entered on the order granting respondents' demurrer to the fourth amended complaint without leave to amend. Appellants' complaint asserted causes of action for, *inter alia*, civil rights violations under Civil Code sections 43, 51.7 and 52.1, subdivision (b), based on a claim that respondents failed to provide adequate security during a high school football game.

With respect to the Code of Civil Procedure section 473 motion, appellants claim that the trial court erred in granting respondents relief from default and, erred in failing to grant appellants' attorney's fees in connection with the motion. As we shall explain, the trial court did not err in ruling on the Code of Civil Procedure section 473 motion. Likewise the court did not err in sustaining respondents' demurrer without leave to amend. Although the trial court afforded appellants multiple opportunities to amend their complaint to state a cause of action, appellants have failed to allege any claim that overrides respondents' immunity from liability under Government Code section 845. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY[1]

On September 19, 2008, Mercedes Hearn attended a football game at Washington Preparatory High School in Los Angeles. At the game gang members shot her.

Prior Complaints and Demurrer Proceedings

On January 12, 2010, Lashauna Hearn and Mercedes Hearn, a minor by and through her guardian James Albert Hearn, filed a complaint against the Los Angeles School Police Department, Chief Larry Manion, and the Los Angeles Unified School District. In the complaint, appellants alleged (1) violation of Civil Code sections 43, 51.7 and 52.1, subdivision (b) ("Civil Rights Claims"); (2) negligence; (3) negligent supervision, hiring and retention; and (4) intentional infliction of emotional distress.

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[1] The facts are taken from appellants' complaint.

Appellants sought remedies including (1) compensatory and general damages; (2) exemplary damages; (3) incidental damages, consequential damages, and prejudgment interest; and (4) a civil penalty of $25,000.

On May 3, 2010, respondents filed a demurrer and a motion to strike. Before the matter was heard, appellants filed a First Amendment Complaint. On November 18, 2010, appellants filed a Second Amended Complaint reiterating their causes of action in their prior complaint. Respondents again filed a demurrer and a motion to strike. On March 28, 2011, the trial court sustained the demurrer as to the second, third, and fourth causes of action without leave to amend.[2] The court sustained the demurrer to the first cause of action with leave to amend concluding that respondents might be liable for discriminatory acts, however, the complaint did not allege what actions were taken towards appellants to support liability. The court concluded that it was going to give appellants "one last opportunity and if they [could] [not] prepare an amended complaint on that action, that survives a demurrer, then the case w[ould] be dismissed in its entirety."

On April 18, 2011, appellants filed their Third Amended Complaint re-alleging their Civil Rights Claims. On May 18, 2011, respondents filed a demurrer to the Third Amended Complaint and a motion to strike. On June 30, 2011, the trial court sustained respondents' demurrer with leave to amend, stating it was "the absolutely last opportunity."[3] Appellants were again given 20 days to file an amended complaint with a hearing date set for October 25, 2011.[4]

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[2] The court sustained the demurrer to these causes of action without leave to amend because "plaintiff's allegations that defendants undertook a voluntary duty creating a special relationship is actually that defendants implemented policies and procedures under which security was provided at the game. This is exactly the type of police decision contemplated by the immunity of Section 845."

[3] The court explained that appellants' allegations could support a claim for civil rights violations, however, the complaint failed to specifically allege "what actions were or were not taken that differed from what actions were or were not taken at other schools." In addition, the court also found protection at a football game was different

Operative Complaint, Default and Demurrer

On July 20, 2011, appellants filed a Fourth Amended Complaint. In this complaint, appellants made an additional request for relief by, "a preliminary and permanent injunction against the Defendants, and each of them, with regard to their implementation and maintaining of the disparate impact and disparate treatment resulting in discrimination as described herein[5] or as in practice in the Los Angeles Unified School District." Respondents did not file a response to the complaint. On August 29, 2011, appellants filed a request for entry of default, which the court rejected. On September 2, 2011, appellants filed a second request for entry of default, which the clerked entered.

On September 8, 2011, respondents filed and served a demurrer to the Fourth Amended Complaint and a Motion to Strike. On September 14, 2011, respondents applied ex parte to set aide the default, or for an order shortening time to file and serve a motion to set aside default. The court granted the request to shorten time and set the hearing date for October 25, 2011.

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from what happens during school hours, and, statistical data comparing attendance did not establish that the disparate attendance was responsible for Hearn's injuries.

4 The trial court inquired as to whether respondents would file another demurrer. Respondents' counsel stated it was likely to do so.

5 Appellants alleged that respondents were responsible for setting standards of security at schools for school activities, and school sponsored events which were "skewed in favor of the social-demographics wherein the schools with a lower minority student enrollment in higher economic areas . . . would be provided more and better security than schools with a higher minority student enrollment area in lower economic areas." They further alleged that respondents "intentionally" chose to provide less security and/or lower security budget to schools located in lower economic areas than the schools in upper class areas. "This created disparate treatment for the minority . . . [schools] based upon race, national origin, and the enrollees and the parents inability to muster objections because of their economic conditions and living conditions in their neighborhoods."

On September 16, 2011, respondents filed a motion asking for discretionary, or mandatory relief to set aside the default pursuant to Code of Civil Procedure section 473. To this motion, respondents attached the declarations of Maral I. Gasparian and Kit Cockrum (respondents' counsel). In the declaration, respondents' counsel stated that it was her understanding that "responsive motions were to be filed according to the hearing date . . . as they were with respect to prior demurrers, all of which except for the first were dates set by the court at previous hearings." Respondents' counsel also argued that communications with appellants' counsel "led [her] to believe [appellants] would be opposing the timeliness of [respondents'] demurrer, not that they would run to court and file another Request for Entry of Default." On October 11, 2011, appellants filed their opposition to the motion to set aside default and the demurrer.

At the October 25, 2011 hearing, the trial court granted the motion to set aside default, and denied appellants' request for attorney's fees. The court reasoned that respondents "ha[d] been clear that they were actively defending against this action, including filing numerous demurrers," and that appellant and respondents "had a different understanding of when the demurrer needed to be filed was an issue for counsel to discuss together, not for [appellants] to obtain a default." The court also denied appellants' request for attorney's fees because appellants "unnecessarily caused [a] needless motion."

The court also sustained respondents' demurrer without leave to amend. The court concluded that immunity did not apply to violations of civil rights due to racial discrimination. The court nonetheless sustained the demurrer because the complaint again did not allege with specificity "what actions were or were not taken that differed from what actions were or were not taken at other schools."

Appellants timely filed this appeal.

DISCUSSION

In this court, appellants assert the trial court erred in granting respondents relief under Code of Civil Procedure section 473, subdivision (b) because respondents did not prove that the failure to answer the amended complaint was due to mistake, inadvertence,

or excusable neglect. Appellants also assert that the trial court abused its discretion in failing to award attorney's fees under section 473, subdivision (b). Additionally, appellants argue that the court erred in sustaining the demurrers as to the Second and Fourth Amended Complaints. As we shall explain, in our view, the trial court reached the correct result.

I. The Trial Court's Order Granting Relief Under Code of Civil Procedure Section 473, Subdivision (b).

A. Standard of Review

An order granting discretionary relief under the Code of Civil Procedure section 473, subdivision (b) is subject to the abuse of discretion standard of review. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) "A motion seeking [relief from default] will not be disturbed absent a clear showing of abuse of discretion." (*Zamora v. Clayborn Contacting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*).) The trial court's discretion, nonetheless, is not unlimited, and "must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." (*McCormick v. Board of Supervisors* (1988) 198 Cal.App.3d 352, 359-360.)

Code of Civil Procedure section 473, subdivision (b) is in most cases, "applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if the relief is granted." (*McCormick v. Board of Supervisors, supra,* 198 Cal.App.3d at p. 360.) Any concerns regarding the application of Section 473 must be resolved in favor of the party seeking relief from default as "the law strongly favors trial and disposition on the merits." (*Ibid.*) Therefore, when an attorney files a timely application to be relieved from default, and files an affidavit asserting a plausible defense, and when no counter affidavit or showing of prejudice will result from the trial of the case upon its merits, "very slight evidence will be required to justify a court in setting aside the default." (*Smith v. L.A. Bookbinder's Union No. 63* (1955) 131 Cal.App.2d 486 (*Smith*), disapproved on other grounds by *MacLeod v. Tribune Pub. Co.* (1959) 52 Cal.2d 536.)

B. Discretionary Relief Under Code of Civil Procedure Section 473, Subdivision (b).

The discretionary relief provision of Code of Civil Procedure section 473, subdivision (b) provides that: "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Subdivision (b) applies to any "judgment, dismissal, order, or other proceeding." (*Zamora, supra,* 28 Cal.4th at p. 254.)

A party who seeks relief under Code of Civil Procedure section 473, subdivision (b) on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable because the negligence of the attorney is imputed to his client and may not be offered by the latter as a basis for relief. (*Zamora, supra,* 28 Cal.4th at p. 258 quoting *Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1399.) When determining whether an attorney's mistake or inadvertence was excusable, "the court inquires whether 'a reasonably prudent person under the same or similar circumstances might have made the same error.'" (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) Code of Civil Procedure section 473, subdivision (b) only allows relief from attorney error "fairly imputable to the client, i.e., mistakes anyone could have made." (*Zamora, supra,* 28 Cal.4th at p. 258 quoting *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682.) Therefore, attorney conduct that falls below the professional standard is not excusable. (*Ibid.*) "'To hold otherwise would eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.'" (*Ibid.*)

A party seeking relief under this section must also be diligent. (*Zamora, supra*, 28 Cal.4th at p. 258.) Moreover, a request for relief must be made ""within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (*Ibid.* quoting Code Civ. Proc., § 473, subd. (b).)

In *Smith*, the trial judge made it clear to both parties that the time for pleading an amended complaint would be 10 days. (*Smith, supra,* 133 Cal.App.2d at p. 498.) The complaint was filed and served, and as a result defendants filed a motion to strike. (*Ibid.*) A hearing was set, but defendants did not file a response. (*Ibid.*) The plaintiffs' attorney made no point of this, never asked his opponents to plead further, and further did not tell them about his intent to obtain a default judgment. (*Ibid.*) Default was entered in favor of plaintiffs, and it was not until the hearing of the motion to strike that defendants discovered that plaintiffs were in another department for a hearing upon application of a default judgment. (*Ibid.*) As a result, defendants filed for relief under Code of Civil Procedure section 473, subdivision (b). (*Ibid.*)

The court held that "'[t]here is no statutory or rule requirement that the plaintiff's attorney notify the defendant's attorney (if known) that he intends to take a default. But failure to do so will usually be a sufficient ground for setting the default aside on motion under C.C.P. 473.'" (*Smith, supra*, 133 Cal.App.2d at p. 500 quoting 2 Witkin, Cal. Proc., § 59 p. 1694.) It concluded that plaintiffs' counsel knew that defendants "were actively engaged in contesting the case, challenging the sufficiency of the publication to constitute a libel . . . and . . . they had on file a verified answer to the original complaint which denied its principal allegations . . . ." (*Id.* at p. 500.) "The quiet speed of plaintiffs' attorney in seeking a default judgment without the knowledge of defendants' counsel is not to be commended," therefore, all the facts combined justified ruling in favor of a trial on the merits. (*Ibid.*)

In the present case, we conclude that the trial court did not abuse its discretion in granting the motion for relief under Code of Civil Procedure section 473, subdivision (b). Similar to *Smith*, respondents' counsel had been actively engaged in defending against the action, including filing numerous demurrers. Therefore, appellants could not have been unclear as to the respondents' position on this case. The timing of the filing of the demurrer should have been discussed between counsel. Therefore, in accord with *Smith*, the trial court did not err in granting the motion for relief under Code of Civil Procedure section 473, subdivision (b).

C. The Request for Attorney's Fees Was Properly Denied.

The mandatory relief provision of Code of Civil Procedure section 473, subdivision (b) states that, "[t]he court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties." (Code Civ. Proc., § 473, subd. (b).) However, the trial court did not rely on the mandatory provision of Code of Civil Procedure section 473, subdivision (b), to grant respondents' relief. The judge did not look solely on the attorney's affidavit of fault in granting relief. Instead, the court found appellants' counsel at fault for seeking the default; "the issue of when the demurrer needed to be filed was an issue for counsel to discuss together, not for plaintiff to obtain a default . . . and no attorney's fees are awarded to plaintiff who unnecessarily caused this needless motion." Given the court's remarks, the court did not base its ruling entirely on the attorney's affidavit of fault and thus any award of attorney's fees would be subject to the court's discretion. (Code Civ. Proc., § 473, subd. (c) [under section 473, subdivision (c)(1) whenever the court grants relief from a default the court "*may*" impose fees to the opposing party, but this is by no means obligatory].)

Accordingly, the trial court did not err in failing to award attorney's fees to appellants in connection with the motion for relief from default.

II. The Trial Court Properly Sustained the Demurrer Without Leave to Amend.

A. Standard of Review.

An appeal from an order sustaining a demurrer is reviewed de novo. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497; *Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 424, 439 (*Stearn*).) Courts treat a demurrer as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Sanchez v. Truck Ins. Exchange* (1994) 21 Cal.App.4th 1778, 1781.) If a complaint is insufficient on any grounds indicated in a demurrer, "the order sustaining the demurrer must be upheld even though the particular ground upon which the court sustained it may be untenable." (*Stearn, supra,* 170 Cal.App.4th at p. 439.)

The abuse of discretion standard is applied to a trial court's determination that the plaintiff is not entitled to an opportunity to amend. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1701.) When a demurrer is sustained without leave to amend, the appellate court must decide whether there is a reasonable possibility that the defect can be cured by amendment. (*Ibid.*) If it is possible to be cured by amendment, the case must be reversed, as the trial court abused its discretion, if not there is no abuse of discretion, then the case shall be affirmed. (*Ibid.*) The burden of proving a reasonable possibility lies "squarely on the plaintiff." (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126 (*Zelig*) quoting *Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

B. The Court Properly Sustained the Demurrer Without Leave to Amend.

The Government Claims Act applies to claims filed against public employees. (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 493-494 (*Gates*).) In such cases because all government tort liability is based on statute, the general rule is that these causes of actions must be pleaded with particularity. (*Ibid.*) Therefore, "'"to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity."'" (*Ibid.* quoting *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.)

Here, appellants' Civil Rights Claims alleged that appellants' injuries were caused as a result of the discriminatory procedures of defendants in assigning inadequate police protection for schools with minority attendance, and that defendants assigned more police protection for schools located in affluent (and white) areas. However, as we shall explain, the trial court properly sustained the demurrer without leave to amend because respondents were immune under Government Code section 845.

1. Government Code Section 845 Immunity Applies to the Purported Civil Rights Violations.

Government Code section 845 provides that "neither a public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide

sufficient police protection service." (Gov. Code, § 845.) "[Gov. Code] [s]ection 845 is an absolute immunity from the duty to pay monetary damages when by its terms it applies to a discretionary policy determination concerning police deployment. Absolute immunities apply to both ministerial and discretionary acts." (*Gates, supra* 32 Cal.App.4th at p. 504.)

In *Gates*, plaintiffs alleged violations of Civil Code sections 51.7 (right to freedom from violence) and 52 (denial of civil rights) by several Los Angeles police officers, during the Los Angeles riots. (*Gates, supra,* 32 Cal.App.4th at pp. 487-489.) Plaintiffs argued that immunity under Government Code section 845 did not apply to claims for money damages under the Unruh Act. (*Id.* at p. 504.) The court of appeal rejected this contention for two reasons. (*Id.* at p. 505.) First, "immunity is a jurisdictional bar to pursuing any claim for money damages against [a] public employee." (*Ibid.*) Second, there was no indication that the Legislature ever intended to preclude immunity for a public employee who failed to enforce the law, or provide adequate police protection during a riot. (*Ibid.*) The court concluded that nothing in the legislative history relating to Civil Code sections 51.7 and 52 suggested Government Code immunity was inapplicable to an Unruh Civil Rights Act Claim. (*Id.* at p. 513.) The plaintiffs failed to show that "Civil Code sections 51.7 and 52 were intended to override the immunity and vest courts with jurisdiction to hear claims for money damages involving the failure to provide sufficient police protection service." (*Ibid.*)

In the present case, appellants pled that Mercedes Hearn's injuries were caused as a result of inadequate police measures, and training, which resulted in a violation of appellants' civil rights under Civil Code sections 43, 51, 51.7, and 52.1, subdivision (b). Here, similar to *Gates,* the fact that appellants have characterized this as a discrimination case does not take it outside of the scope of Government Code section 845. Furthermore, to the extent that appellants are seeking damages for the Civil Rights Claims, then as the

court held in *Gates,* Government Code section 845 immunizes respondents from liability.[6] Thus, we turn our attention to appellants' claims for equitable relief.[7]

2. Absent a Special Relationship, Respondents were Immune from Suit under Government Code Section 845.

Police officers, like other members of the public owe "no duty to control the conduct of another, nor warn those endangered by such conduct." (*Zelig, supra*, 27 Cal.4th at p. 1129 quoting *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203 (*Davidson*).) A person who has not created danger is not liable in tort simply for failure to take affirmative action to protect or aid an individual unless there is some special relationship. (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1121 (*Von Batsch*).) However, a duty may arise if "(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection." (Rest.2d Torts (1965) § 315.) These general rules govern recovery when "plaintiffs, having suffered injury from third parties who were engaged in criminal activities, claim that their injuries could have been prevented by timely assistance from a law enforcement officer." (*Zelig,supra,* 27 Cal.4th at p. 1129.)

An individual cannot recover for "injuries caused by the failure of police personnel to respond to requests for assistance, the failure to investigate properly, or the failure to investigate at all . . . " (*Von Batsch, supra,* 175 Cal.App.3d at p. 1122.) However, police officers may assume a duty towards a particular member of the public in

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[6] Because the claims alleged in the first and second amended complaints sought damages, they were properly dismissed without leave to amend based on Government Code section 845 which immunized respondents' actions. (See *Gates v. Superior Court, supra,* 32 Cal.App.4th at p. 494.)

[7] In appellant's Fourth Amended Complaint along with money damages, appellants sought "a preliminary and permanent injunction against the Defendants, and each of them, with regard to their implementation and maintaining of the disparate impact and disparate treatment resulting in discrimination as described herein or as in practice in the Los Angeles Unified School District."

the above situations "if an officer voluntarily assumes a duty to provide a particular level of protection, and then fails to do so . . . or if an officer undertakes affirmative acts that increase the risk of harm . . . ." (*Zelig, supra,* 27 Cal.4th at p. 1129.) Moreover, even if an officer "offered special protection on one occasion does not, by itself, give rise to a continuing special relationship and duty at a later date—or with other officers." (*Id.* at p. 1130.)

In *Morgan v. County of Yuba* (1964) 230 Cal.App.2d 938, 941, the sheriff and deputies of the county had planned to warn a woman and her children immediately when a particular person was released on bail from jail. Nonetheless, the warning was not issued, and the person who had been released from jail killed the woman. (*Ibid.*) The court held that "giving reassurance and protection to members of the public who have been threatened with violence . . ." gives rise to a special relationship between that individual and the police. (*Id.* at p. 946.)

Here, unlike *Morgan*, appellants have not alleged that the police officers made an express promise to warn them specifically of the potential danger of the gang members. Appellants did not plead that they had been threatened by violence from this gang, or that they were lulled by police officers into protection from the gang members at the football game. After four amended complaints, appellants have never pled that there was an express promise made by respondents to them that induced reliance on appellants behalf, or that appellants had any specific conversations with any of the officers at the game to create reliance. Nothing in the complaints allege a more specific duty than the duty that police owed to any other member of the general public who attended the game. Therefore, appellants' failure to allege facts supporting a special relationship between appellants and respondents is fatal to their claim.

Furthermore, a special relationship does not arise unless police officers create a victim's peril, or change the risk to a victim in their absence. (See *Davidson, supra,* 32 Cal.3d at p. 208.) In *Davidson,* plaintiff was stabbed four times while at a Laundromat. (*Ibid*.) The Laundromat was under police surveillance at the time because various women had been stabbed on earlier occasions at the same or nearby Laundromats. (*Id.* at

p. 201.) The officers were aware of plaintiff's presence, and after some time watched the assailant enter and leave the premises numerous times, without warning the plaintiff. (*Ibid.*)

The court held that no special relationship existed between the plaintiff and the police. (*Davidson, supra*, 32 Cal.3d at p. 208.) The court reasoned that the officers did not create the danger to the plaintiff because plaintiff was unaware of police presence and did not rely upon them for protection at the Laundromat. (*Ibid.*) Additionally, the officers' conduct did not alter the risk that would have existed in their absence. (*Ibid.;* see also *Hartzler v. City of San Jose* (1975) 46 Cal.App.3d 6, 10 [holding that a special relationship did not exist when the police refused to aid decedent after she called them informing them that her husband told her he was going to her house to kill her, even though police previously responded to 20 calls by plaintiff about her husband's violence].)

In the present case, similar to *Davidson* and *Hartzler*, appellants' complaints do not allege with specificity how the officers' conduct created or altered the risk that would have existed. Moreover, simply because appellants alleged that the officers had advance warning of the gang members in attendance at the football game, did not in itself create a special relationship because such knowledge did not increase the risk that gang members would attend the game. Therefore, because appellants have failed to plead facts showing a special relationship, respondents are immune from liability for appellants' Civil Rights Claims under Government Code section 845.

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**