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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PIERRE L. HOFFMAN,
Plaintiff and Appellant,

v.

JOHN JAMESON et al.,
Defendants and Respondents.

H037771
(Monterey County
Super. Ct. No. M106314)

In June 2010, Pierre L. Hoffman, an inmate at the Salinas Valley State Prison in Soledad, sued two physicians employed by Natividad Medical Center (Natividad), John Jameson and Jeffrey Bass. (Hoffman sued Natividad as well, but subsequently dismissed it from the action.) Jameson and Bass (hereafter, collectively, respondents) filed separate demurrers and motions to strike relative to Hoffman's complaint. The court sustained both respondents' demurrers without leave to amend, concluding that Hoffman had failed to state a claim for relief and that any claims were barred by the litigation privilege as codified by Civil Code section 47, subdivision (b).¹

Hoffman challenges the court's decision. He claims that he properly alleged claims for medical malpractice, defamation, and intentional infliction of emotional distress, and contends that the litigation privilege is no impediment to the assertion of

¹ Further statutory references are to the Civil Code unless otherwise stated.

such claims. We conclude that the claims alleged in the complaint are barred by the litigation privilege. (§ 47, subd. (b).) We hold further that the court below did not abuse its discretion in denying Hoffman leave to amend. Accordingly, we will affirm.

PROCEDURAL BACKGROUND

I. *Complaint*

On June 10, 2010, Hoffman, as a self-represented litigant, filed his complaint against respondents and Natividad, captioned as one for “medical malpractice.” (Capitalization omitted.) Hoffman alleged² that after he was given a blood test on February 12, 2009,³ respondents both claimed that Hoffman was under the influence of cocaine and, 14 days later, both stated that the results of a urinalysis sample also showed the presence of cocaine in Hoffman’s system.

More specifically, Hoffman alleged that he was transported from prison to Natividad on February 12 after suffering a heart attack. Bass was an emergency room physician and Jameson was the laboratory director of Natividad. Bass, who was the attending physician, ordered several tests, including a blood test. Hoffman was transferred the same day to Salinas Valley Memorial Hospital, where a stent surgery was performed on February 12, followed by two more stent surgeries on February 16. While Hoffman was recovering from the first surgery, members of the prison security team visited him and told him that Bass had advised Sergeant D. Reames “that they found trace of ‘cocaine’ in [Hoffman’s] blood . . . [,] that [this] was the causation [*sic*] of [his] heart attack[, and] they suggested to promptly notify the prison security [and] the ‘District Attorney’s Office’ of Monterey County [and] to file felony charges against [him].” (*Sic.*)

² A demurrer admits all the truth of all facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967 (*Aubry*).) Accordingly, we will refer to the allegations in the complaint in this paragraph and in the succeeding three paragraphs without sometimes using the prefatory “Hoffman alleged,” in order to avoid undue repetition of the phrase.

³ All dates are 2009 unless otherwise specified.

Hoffman referred to, and attached as an exhibit to the complaint, a “Crime/Incident Report” (capitalization omitted) in which it was indicated that the urinalysis taken by Natividad “resulted in a positive test for Benzo, Cocaine and Opiates”; Natividad medical staff provided Sergeant Reames with the test results; and Jameson advised another prison officer, J. Stevenson, that Hoffman’s heart attack “most likely was induced by the drugs in his system and once [Jameson] received the other test results showing more conclusive results, he would forward them to [Stevenson].” Hoffman alleged that Bass “change[d] his story” 14 days later and told Sergeant Reames “ ‘that a urinalysis was performed [and Hoffman] tested positive for cocaine.’ ”⁴

Between February 12 and March 1, respondents “tried very hard to convince” the Monterey County District Attorney to charge Hoffman with a felony. No charges were ever filed. On March 11, Jameson wrote to the prison that the cocaine determined to have been present in Hoffman’s system as determined from the urinalysis sample did not cause his heart attack; and while the chain of custody was compromised, he vouched for the finding that cocaine was present in the sample. Hoffman alleged that his “urine sample was uncontestably adulterated . . .”

Hoffman claimed that respondents’ “fibbed allegations towards [him]” resulted in the “defaming [of his] name in the surrounding hospitals . . .” Respondents’ actions also resulted in the search of Hoffman’s prison cell for contraband, and the creation of an “acrimonious atmosphere towards [Hoffman]” at the prison and in nearby hospitals. Disciplinary proceedings were instituted by the prison against Hoffman, and based solely on the reports of respondents, Hoffman was found guilty and was subjected to the “punishment” of mandatory monthly drug testing. He alleged that respondents’ conduct constituted “the grossest possible medical malpractice . . .”

⁴ Elsewhere in the complaint, Hoffman alleged that *both* Bass *and* Jameson had reported to Sergeant Reames that the results of Hoffman’s blood test showed the presence of cocaine.

II. *The Demurrers*

On August 8, 2011, Jameson filed a demurrer to the complaint and a separate motion to strike certain allegation of the complaint. Likewise, on August 16, 2011, Bass filed a demurrer and motion to strike. Hoffman opposed the demurrers and motions to strike.⁵ After separate hearings, and after submission of the matters, the court, by separate orders, sustained respondents' respective demurrers without leave to amend. As to Bass's demurrer, the court ruled that the complaint failed to state a claim for relief and that any claim alleged was barred by the litigation privilege (§ 47, subd. (b)). The court ruled as to Jameson's demurrer that the complaint was "barred in its entirety by the provisions of Civil Code section 47, et seq." Judgments of dismissal were entered on the two orders on November 17, 2011. Hoffman filed timely separate notices of appeal from the two judgments. The matter is a proper subject for appellate review. (*Berri v. Superior Court* (1955) 43 Cal.2d 856, 860; *Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695.)

DISCUSSION

I. *Appellant's Burden*

Before addressing any substantive issues that may have been raised by Hoffman in this appeal, we are compelled to identify the serious procedural deficiencies existing in his filings with this court. Hoffman's opening brief is far from being in compliance with the California Rules of Court.⁶ The opening brief does not include a requisite summary of the relevant procedural history of the case, including a plain statement of "the nature of the action, the relief sought in the trial court, and the judgment or order appealed from,"

⁵ Although Hoffman's papers filed below were captioned as an opposition to respondents' motions to strike, it is apparent that his papers constituted an opposition to the demurrers as well.

⁶ Further rule references are to the California Rules of Court unless otherwise specified.

all as required by rule 8.204(a)(2)(A). Similarly, the brief fails to include a plain statement of appealability, i.e., that “the judgment appealed from is final, . . .” (Rule 8.204(a)(2)(B).) Further, Hoffman has taken the liberty of appending some 35 pages of documents to his opening brief, another procedural violation of appellate practice, because (1) it is unclear whether these documents are indeed part of the record below; and (2) the attachments exceed the 10-page limit for such appendices. (Rule 8.204(d); see *Banning v. Newdow* (2004) 119 Cal.App.4th 438, 454-455 [appellant required to remove 17-page appendix from brief].)

More significantly, the opening brief contains no citation to the record in support of Hoffman’s assertions of fact and his recitation of procedural matters allegedly occurring below, in violation of rule 8.204(a)(1)(C). (*See Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 [failure to include citations to appellate record in brief may result in forfeiture of claim].) Both of Hoffman’s reply briefs are similarly deficient.⁷

The failure to cite to the record belies the most fundamental problem with Hoffman’s appeal: his failure to procure an adequate appellate record. The court has gleaned—from the two briefs filed on behalf of respondents, *not* from Hoffman’s briefs—that his challenges on appeal relate to the court’s sustaining of the separate demurrers without leave to amend. Hoffman, however, has presented *none* of the relevant documents from the court below—i.e., the operative complaint, the demurrers, the opposition to the demurrers, the reply papers submitted in support of the demurrers, the court’s orders and judgments, and the transcript of the hearing—necessary for us to perform an intelligent review of his claims. Part of the appellant’s burden in showing error is to provide an adequate record from which the claimed error may be

⁷ Notwithstanding rule 8.200(a)(3) permitting an appellant to file *one* reply brief, Hoffman here filed *two* reply briefs. We have considered both of these reply briefs even though Hoffman was entitled to submit only one such brief.

demonstrated; the failure to present such a record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; see also *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [failure of appellant to include transcript of hearing foreclosed court’s review of claim of error].) This burden on appellant applies when his or her challenge is that the court erred in sustaining a demurrer to the complaint without leave to amend. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 478 [court rejects claim that demurrer improperly sustained where appellant failed to present adequate record by including operative complaint and demurrers].)

We acknowledge that Hoffman is representing himself in connection with this appeal and therefore has not had the formal legal training that would be beneficial to him in advocating his position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, “[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys.” (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Based upon the wholly noncompliant nature of Hoffman’s briefs and his failure to present an adequate, or, indeed, any, appellate record, it would be appropriate for us here to entirely disregard his contentions as having been forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1.) Respondents, however, have filled many of the gaps by submitting separate appendices which permit us to review the operative complaint, the demurrers, and the orders upon which judgments were entered. Therefore, in the interests of addressing the merits of the case—and without impliedly minimizing the significance of Hoffman’s noncompliance with appellate procedures—we will address below the contention by Hoffman that his complaint stated viable causes of action and that respondents’ demurrers were improperly sustained without leave to amend.

II. *Standard of Review*

We perform an independent review of a ruling on a demurrer and decide de novo whether the challenged pleading states facts sufficient to constitute a cause of action. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) “In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.]” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*); see also *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066, 1075; *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213.) Thus, as noted, “the facts alleged in the pleading are deemed to be true, however improbable they may be. [Citation.]” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; see also *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the “plaintiff’s ability to prove . . . allegations, or the possible difficulty in making such proof”].)

On appeal, we will affirm a “trial court’s decision to sustain the demurrer [if it] was correct on any theory. [Citation.]” (*Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 808, fn. omitted.) Thus, “we do not review the validity of the trial

court's reasoning but only the propriety of the ruling itself. [Citations.]” (*Orange Unified School Dist. v. Rancho Santiago Community College Dist.* (1997) 54 Cal.App.4th 750, 757.)

An appellate court reviews the denial of leave to amend after the sustaining of a demurrer under an abuse of discretion standard. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) When a demurrer is sustained without leave to amend, the reviewing court must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect; if so, it will conclude that the trial court abused its discretion by denying the plaintiff leave to amend. (*Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 719.) “ ‘[W]here the nature of the plaintiff’s claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result.’ ” (*Buchanan v. Maxfield Enterprises, Inc.* (2005) 130 Cal.App.4th 418, 421.) The plaintiff bears the burden of establishing that it could have amended the complaint to cure the defect. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.)

III. *The Litigation Privilege*

Since the question of whether Hoffman’s complaint states a viable claim for relief turns on the applicability of the litigation privilege, we will first provide a brief discussion of that defense.

As summarized by the high court, “Section 47 establishes a privilege that bars liability in tort for the making of certain statements. Pursuant to section 47(b), the privilege bars a civil action for damages for communications made ‘[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate],’ with certain statutory exceptions that do not apply to the present case. The privilege established by this subdivision often is referred to as an ‘absolute’ privilege, and it bars all tort causes of

action except a claim for malicious prosecution. [Citations.]” (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360 (*Hagberg*)). In its “usual formulation[,] . . . the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action. [Citations.]” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212 (*Silberg*)).

The public policy considerations behind this “ ‘immunity’ from suit” (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 638, fn. 1) are several. Although its “principal purpose . . . is to afford litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions” (*Silberg, supra*, 50 Cal.3d at p. 213), other policies include “promoting complete and truthful testimony, encouraging zealous advocacy, giving finality to judgments, and avoiding unending litigation . . .” (*Id.* at pp. 214-215.) Given these public policy considerations, “[t]he litigation privilege is broadly applied [citation] and doubts are resolved in favor of the privilege [citation].” (*Ramalingam v. Thompson* (2007) 151 Cal.App.4th 491, 500 (*Ramalingam*)).

Although its name suggests application only to pending judicial proceedings, the privilege’s application is much broader. The litigation privilege “encompasses not only testimony in court and statements made in pleadings, but also statements made prior to the filing of a lawsuit, whether in preparation for anticipated litigation or to investigate the feasibility of filing a lawsuit.” (*Hagberg, supra*, 32 Cal.4th at p. 361.) It is not limited in its application to pending or anticipated lawsuits, but also embraces pending or anticipated “official proceeding[s] authorized by law.” (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 781.) The litigation privilege, among other circumstances, applies to (1) “a communication intended to prompt an administrative agency charged with enforcing the law to investigate or remedy a wrongdoing” (*Hagberg*, at p. 362); (2) “complaints to governmental agencies requesting that the

agency investigate or remedy wrongdoing” (*id.* at p. 363); and (3) “a statement urging law enforcement personnel to investigate another person’s suspected violation of criminal law, to apprehend a suspected lawbreaker, or to report a crime to prosecutorial authorities . . .” (*id.* at p. 364).

The threshold issue for determining whether the litigation privilege applies “is whether the defendant’s conduct was communicative or noncommunicative. [Citation.]” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1058 (*Rusheen*)). This conclusion “hinges on the gravamen of the action. . . [namely,] whether the injury allegedly resulted from an act that was communicative in its essential nature. [Citations.]” (*Ibid.*) Thus, for instance, in *Rusheen*, although the plaintiff’s abuse of process claim arose out of the defendant’s having obtained a writ of execution, because that claim was founded on the allegation that the writ was obtained through the defendant’s communicative acts of submitting false declarations in support of the issuance of the writ, the litigation privilege was held applicable to bar the plaintiff’s claim. (*Id.* at pp. 1061-1065.)

IV. *Orders Sustaining Demurrers*

We apply the above principles to determine whether the court below properly sustained the separate demurrers filed on behalf of respondents. This analysis requires us to determine whether the allegations of the complaint—which for the purpose of a demurrer are deemed admitted (*Blank, supra*, 39 Cal.3d at p. 318)—concern matters which are immune from suit under the litigation privilege.

As noted above, Hoffman alleges that respondents harmed him as a result of the following actions: (1) respondents advised Sergeant Reames on February 12 that trace amounts of cocaine had been found in Hoffman’s blood sample, cocaine was the cause of his heart attack, and they wanted prison security and the District Attorney’s Office to be notified of Hoffman’s cocaine use so that felony charges would be filed against him; (2) respondents made unsuccessful efforts between February 12 and March 1 to have Hoffman charged with a felony; (3) Bass “change[d] his story” on February 26 by telling

Sergeant Reames that Hoffman had tested positive for cocaine as evidenced by urinalysis results; (4) Jameson advised the prison in writing on March 11 that the cocaine found present in Hoffman's system based upon the urinalysis sample was not the cause of his heart attack; and (5) respondents made "fibbed accusations towards [Hoffman] that [he] was 'under the influence of "cocaine"['] when [he] had [his] heart attack on [February 12]." As a result of these actions by respondents, Hoffman had his prison cell "ransacked" in an unsuccessful search by prison authorities for contraband; an "acrimonious atmosphere towards [Hoffman]" at the prison resulted; Hoffman's name was defamed "in the surrounding hospitals because of [respondents'] fibbed allegations towards [Hoffman]"; prison disciplinary proceedings against Hoffman were instituted and "punishment [of] monthly drug testing for a period of one year [and] . . . other penalties" were imposed by the hearing officer based solely on respondent's allegations; and Hoffman suffered "humiliation [and] 'defamation of character.'¹"

It is plain from a review of the complaint that the injuries alleged by Hoffman are the result of "act[s] that w[ere] communicative in [their] essential nature. [Citations.]" (*Rusheen, supra*, 37 Cal.4th at p. 1058.) "[T]he gravamen of the action" (*ibid.*) was that Hoffman was harmed as a result of respondents' communications to prison officials and the District Attorney's Office concerning the alleged presence of cocaine in Hoffman's system at the time of his heart attack on February 12. The conduct complained of satisfies the four-part *Silberg* test. (*Silberg, supra*, 50 Cal.3d at p. 212.) First, the communications were made in quasi-judicial proceedings, i.e., they occurred in anticipation of potential prison disciplinary proceedings and criminal proceedings. (*Ibid.*; see also *Hagberg, supra*, 32 Cal.4th at p. 364 [absolute privilege applies to reports to police of potential criminal wrongdoing]; *Slaughter v. Friedman* (1982) 32 Cal.3d 149, 156 ["[t]he . . . privilege . . . protect[s] communications to or from governmental officials which may precede the initiation of formal proceedings".]) Second, the communications were made by respondents, who were "participants authorized by law." (*Silberg*, at

p. 212; *Fremont Comp. Ins. Co. v. Superior Court* (1996) 44 Cal.App.4th 867, 875 [all citizens protected under litigation privilege for reporting potential criminal activity to police or prosecutor, even if report is made with malice].) And the third and fourth elements are satisfied, in that respondents' communications were accomplished "to achieve the objects of the litigation" and "have some connection or logical relation to the action. [Citations.]" (*Silberg*, at p. 212.) The acts complained of were communicative in nature and respondents are thus immunized from a lawsuit founded upon them under the litigation privilege of section 47, subdivision (b).

It makes no difference whether Hoffman's claim is one for medical malpractice, as originally termed in his complaint, or whether—as claimed in his opposition to the demurrers and in his appellate briefs—he is asserting additional claims for defamation and intentional infliction of emotional distress. It is the gravamen of the suit that controls whether the litigation privilege applies (*Rusheen, supra*, 37 Cal.4th at p. 1058), and each of the three tort claims is potentially one for which the privilege applies. (See *Slaughter v. Friedman* (1982) 32 Cal.3d 149, 155 [privilege applicable to defamation]; *Ribas v. Clark* (1985) 38 Cal.3d 355, 364 [privilege applies to intentional infliction of emotional distress claim]; *Gootee v. Lightner* (1990) 224 Cal.App.3d 587, 593-594 [privilege applies to professional negligence claim].)

Block v. Sacramento Clinical Labs, Inc. (1982) 131 Cal.App.3d 386 is instructive. There, criminal charges were filed against the plaintiff based upon the defendant's toxicology report conducted after an autopsy in which it was concluded that the plaintiff's infant daughter had a toxic level of salicylate concentration indicative of an overdose of aspirin. (*Id.* at pp. 387-388.) It was discovered at the preliminary hearing that the toxicologist had erred in his calculations by overstating the amount of aspirin the infant had ingested, and the criminal complaint was dismissed at the prosecution's request. (*Id.* at p. 388.) The plaintiff sued the toxicologist for damages, asserting a claim labeled "as one for 'professional negligence.'" (*Ibid.*) The court held that the action was

barred by the litigation privilege: “Plaintiff’s theory of liability places [the] communication of the report to the district attorney and, later, [the toxicologist’s] testimony in the criminal proceeding, at the heart of the claim of liability. The publication of [the] report for purposes of the criminal proceeding is made *the* actionable wrong.” (*Id.* at p. 392.) Applying the privilege, the court reasoned that “[t]o allow plaintiff to proceed with this action would substantially defeat the purpose of a privilege designed ‘to afford litigants freedom of access to the courts . . . and to promote the unfettered administration of justice even though as an incidental result it may [sometimes] provide . . . immunity to the . . . malignant slanderer [citations].’ [Citation.]” (*Id.* at p. 394.)

Also of relevance here is our decision in *Ramalingam, supra*, 151 Cal.App.4th 491, in which the plaintiff sued the defendant for professional negligence in connection with work he performed as a neutral, jointly-retained accountant in dissolution proceedings between the plaintiff and her former spouse. (*Id.* at pp. 493-494.) We rejected the plaintiff’s position that the litigation privilege did not apply because the alleged misconduct by the accountant—namely, the failure to perform a proper investigation and the use of an incorrect vesting schedule to derive his opinions in the prior dissolution action which the plaintiff claimed understated the number of shares of Johnson & Johnson stock held as community property—was noncommunicative. (*Id.* at p. 502.) Relying on *Rusheen, supra*, 37 Cal.4th 1048, we concluded, “[I]t was his communication of his opinion regarding the community property interest in the Johnson & Johnson stock that allegedly caused Ramalingam’s damages. The gravamen of Ramalingam’s claim is therefore Thompson’s communicative conduct. . . . [¶] . . . The fact that Ramalingam alleges that Thompson was negligent in his investigation and preparation of his opinions regarding the Johnson & Johnson stock does not alter our conclusion. . . . [I]t is well established that where the gravamen of a complaint is communicative conduct, the litigation privilege necessarily protects related

noncommunicative conduct [citation], including activities done in preparation for testifying [citation]. Thus, Johnson’s allegedly negligent investigation of the status of the Johnson & Johnson stock in preparation for testifying at the trial on property issues is also protected by the section 47(b)(2) litigation privilege.” (*Ramalingam*, at p. 504; see also *Wang v. Heck* (2012) 203 Cal.App.4th 677 [litigation privilege barred action based upon physician’s communication to Department of Motor Vehicles concerning plaintiff’s alleged unfitness to drive for purposes of agency’s evaluation of plaintiff’s driving status].)

Similarly, here, the gravamen of Hoffman’s action is that he was damaged as a result of respondents’ allegedly false reports to prison officials and the District Attorney’s Office that test results showed the presence of cocaine in Hoffman’s system. Regardless of whether these reports were accurate or whether respondents were in any way negligent in their preparation—and even if respondents made them knowing them to be false (*Silberg, supra*, 50 Cal.3d at p. 218)—the litigation privilege of section 47, subdivision (b) acts as a bar to Hoffman’s claims. The court below therefore correctly sustained respondents’ demurrers to the complaint based upon Hoffman’s claims being barred by the litigation privilege.⁸

⁸ Bass also argues that the complaint is demurrable because Hoffman failed to state a prima facie claim for professional negligence. Jameson makes the additional argument that Hoffman’s complaint is not maintainable because he did not allege that he complied with the requirements of Government Code section 945.4, namely, the filing of a written claim with the appropriate governmental agency. Because we have concluded that the claims alleged in the complaint are barred by the litigation privilege, we need not address respondents’ alternative arguments in support of the court’s orders sustaining the demurrers. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 845, fn. 5 [courts will not address issues, the resolution of which is unnecessary to disposition of appeal].)

V. *Denial of Leave to Amend*

In ruling on a demurrer, the court must grant the plaintiff leave to amend if “there is a reasonable possibility that the defect can be cured by amendment.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39.) The failure of the court to grant leave under such circumstances is ordinarily an abuse of discretion. (*Aubry, supra*, 2 Cal.4th at pp. 970-971.) Furthermore, “[i]f the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment. [Citations.]” (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) As noted above, the plaintiff bears the burden of showing “in what manner [it] can amend [its] complaint and how that amendment will change the legal effect of [its] pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

Here, as discussed above, the nature of Hoffman’s claim is one based upon damages allegedly sustained as a result of communications by respondents to prison officials and the District Attorney’s Office. These claims are clearly barred by the litigation privilege. Thus, since the nature of the claims are clear and the conclusion is inescapable that there is no liability based upon those claims, denial of leave to amend here was not an abuse of discretion. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 459: “[W]here the nature of the plaintiff’s claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result.”) Furthermore, because Hoffman has failed to present an adequate record, including a transcript of the hearing on the demurrers, he has not met his burden of showing that the court abused its discretion in denying leave to amend. (See *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324 [where appellant failed to present reporter’s transcript, appellate court conclusively presumes that trial court had ample evidence to support the findings in support of judgment]; *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [“absence of a record concerning

what actually occurred at the hearing precludes a determination that the court abused its discretion” in denying motion for relief under Code of Civil Procedure section 473, subdivision (b)].)

DISPOSITION

The judgments entered in favor of the respondents are affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.