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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

STEPHANIE STIAVETTI, KELLIE BOCK, KIMBERLY BOCK, ROSALIND RANDLE, NANCY LEIVA, AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA,

Plaintiffs,

v.

PAMELA AHLIN, AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF STATE HOSPITALS, SANTI J. ROGERS, AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES, STATE OF CALIFORNIA,

Defendants.

Case No. RG15779731

ASSIGNED FOR ALL PURPOSES TO HONORABLE EVELIO GRILLO DEPARTMENT 14

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT

Date: January 7, 2016
Time: 1:30 p.m.
Dept: 14
Trial Date: None Assigned
Action Filed: July 29, 2015

R-1672650

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs, five relatives of criminal defendants declared incompetent to stand trial (IST defendants) and two American Civil Liberties Union (ACLU) organizations, bring this action for court oversight over the timeframe for the admission of all IST defendants with mental disorders committed in all state courts to the Department of State Hospitals (DSH) and, for those IST defendants with developmental disabilities, to the Department of Developmental Services (DDS) for competency training and evaluation. By this demurrer, defendants Pamela Ahlin, sued in her official capacity as Director of DSH, Santi Rogers, sued in his official capacity as Director of the DDS, and the State of California contend the complaint and each of its causes of action cannot proceed as a matter of law.

The complaint is defective on a number of grounds. Both the individual and the organizational plaintiffs lack standing to bring this action. The individual plaintiffs, five relatives of IST defendants, cannot establish standing as real parties in interest or as taxpayers. Because of their tax-exempt status, plaintiffs ACLU- Northern and ACLU-Southern cannot show taxpayer standing under Code of Civil Procedure section 526a. Even if standing exists, plaintiffs' state and federal constitutional claims are barred by the two-year limitations period. There is no private cause of action, particularly for relatives and associations, concerning the state constitutional right to a speedy trial. Moreover, plaintiffs Stiavetti and Bock cannot assert any unconstitutional delay in admission occurred. Even if there was an unconstitutional delay, the habeas process provides an adequate remedy and so forecloses plaintiffs' due process claims. The complaint does not state a Section 1983 claim against the State of California and these state officials. Indeed, the State of California is not subject to suit under any of the causes of action.

More generally, the sought injunctive and mandamus relief intrudes upon defendants Ahlin and Rogers' statutory discretion to determine the timeframe and placement of IST defendants. Plaintiffs mistakenly assume IST defendants may only be placed in DSH and DDS for competency training and evaluation when other statutory options exist. Because plaintiffs seek a

specific timeframe for admission where none is provided in the statutory schemes, the complaint should be dismissed without leave to amend.

STANDARD OF REVIEW

A. State Law Claims

Where a complaint fails to state facts sufficient to constitute a cause of action as against a defendant, a demurrer is proper. (Code Civ. Proc., § 430.10, subd. (e).) A demurrer for uncertainty is "not intended to reach the failure to incorporate sufficient facts in the pleading, but is directed at the uncertainty existing in the allegations actually made." (*Bacon v. Wahrhaftig* (1950) 97 Cal.App.2d 599, 605.) A pleading must "allege facts and not conclusions," and any "allegations of material facts which are left to surmise are subject to special demurrer for uncertainty." (*Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537.)

B. Federal Law Claims

State courts apply "federal law to determine whether a complaint has pleaded a cause of action under section 1983 sufficient to survive a general demurrer." (*Greene v. Zank* (1984) 158 Cal.App.3d 497, 503; accord *Bach v. County of Butte* (1983) 147 Cal.App.3d 554, 563.) A Section 1983 claim must demonstrate facial plausibility. (*Ashcroft v. Iqbal* (2009) 556 U.S. 662, 678-679.) A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." (*Bell Atlantic Corp. v. Twombly* (2007) 550 U.S. 544, 555.) When a plaintiff has not "nudged [his] claims across the line from conceivable to plausible, [his] complaint must be dismissed." (*Twombly*, *supra*, 550 U.S. at p. 570.)

C. Judicial Estoppel

The "essential function and justification of judicial estoppel is to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." (*Billmeyer v. Plaza Bank of Commerce* (1995) 42 Cal.App.4th 1086, 1092; *Drain v. Betz Laboratories, Inc.* (1999) 69 Cal.App.4th 950, 955.) "The gravamen of this doctrine... precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." (*Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 957.)

STATEMENT OF THE CASE

I. THE DISTINCT STATUTORY SCHEMES FOR IST DEFENDANTS WITH MENTAL DISORDERS AND THOSE WITH DEVELOPMENTAL DISABILITIES.

A criminal defendant may be found incompetent to stand trial due to (1) a mental disorder or (2) a developmental disability. (Pen. Code, § 1367, subd. (a).) "Different procedures apply in each instance." (*In re Williams* (2014) 228 Cal.App.4th 989, 1001.) Penal Code section 1370 applies to a person found incompetent due solely to mental disorder. (*Ibid.*) In contrast, Penal Code section 1370.1 applies to a criminal defendant found incompetent due to developmental disability and to a criminal defendant who is incompetent as a result of a mental disorder, but is also developmentally disabled. (*Ibid.*; see also Pen. Code, § 1367, subd. (b).)

Under both Penal Code section 1370 and section 1370.1, an IST defendant must be provided competency training that "will promote the defendant's speedy" attainment of mental competence. (Pen. Code, § 1370, subd. (a)(1)(B)(i); Pen. Code, §1370.1, subd. (a)(1)(B)(i).) An IST defendant "cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." (*Jackson v. Indiana* (1972) 406 U.S. 715, 738; see also *In re Davis* (1973) 8 Cal.3d 798, 801 [IST defendant with mental disorder].) In accord, both Penal Code section 1370 and 1370.1 indicate a three-year limitation on the confinement period. (Pen. Code, § 1370, subd. (c)(1); Pen. Code, § 1370.1, subd. (c)(1)(A).) However, as more fully discussed below, neither statutory scheme indicates a quantitative time frame for admission to DSH or DDS. Rather, the statutory schemes vest DSH and DDS with discretion to manage the admission and placement of IST defendants in light of population caps on certain facilities and security issues posed by the IST defendants. Moreover, DSH and DDS are not the exclusive providers of competency training; other facilities and entities may provide such training.

A. The Statutory Scheme for IST Defendants with Mental Disorders.

1. DSH is not the only placement option for PC 1370 IST defendants.

In 2010, the Second District Court of Appeal expressed that DSH's therapeutic milieu warranted placement of all IST defendants in DSH. (*In re Mille* (2010) 182 Cal.App.4th 635,

648-650.) At the time of the *Mille* decision, the statutory definition of a treatment facility for IST defendants did not include a county jail, particularly because Penal Code section 1369.1 severely restricted county jails to in their administration of the anti-psychotic medications often needed by IST defendants. (*Id.* at p. 647.) However, after the *Mille* decision, the Legislature amended Penal Code section 1370 to provide that a treatment facility for IST defendants included a county jail, with the corollary amendment to Penal Code section 1369.1 stating that "a treatment facility includes a county jail." (Pen. Code, § 1370, subds. (a)(1)(B)(i) & (a)(2)(A); Pen. Code, § 1369.1, subd. (a); Stats. 2012, c. 24, § 25, eff. June 27, 2012.) In 2014, A.B. 1468 further amended Penal Code section 1370 to add community-based residential treatment facilities as a placement option for IST defendants. (Pen. Code, §§ 1370, subds. (a)(1)(B)(i) & (a)(2)(A).)

As a result, DSH is not the sole provider of competency care to IST defendants. An IST defendant may now be committed by the superior court, subject to the recommendation of the community program director, to a variety of settings: (1) a DSH facility, or (2) any other public or private treatment facility, including a local county jail treatment facility or a community-based residential treatment system provided under Welfare and Institutions Code section 5670 et seq. (so long as the facility has a secured perimeter), or a locked and controlled treatment facility, or (3) placed on outpatient status. (Pen. Code, § 1370, subd. (a)(1)(B)(i).) These additional placement options meet the statutory mandate that an IST defendant "shall be treated as near to the patient's community as possible if an appropriate treatment program is available." (Welf. & Inst. Code, § 7228.)

Moreover, since 2008, the Legislature has funded the Restoration of Competency Program (ROC), in which DSH pays a contractor to provide in-custody competency training to IST defendants housed at county jails. (Exh. 1, Leg. Analyst Office Rpt.; Req. J. Not.) In light of the success of the ROC program in San Bernardino County, the Legislature has provided additional funding to activate the ROC (jail-based competency) program in Sacramento County and elsewhere. (Exh. 2, Gov. Budget Summary, FY 2015-16; Exh. 3, Sacramento County Authorization; Req. J. Not.)

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2. DSH's statutory discretion over the admission of IST defendants.

In June 2014, the Legislature enacted the A.B. 1468 amendments to Penal Code section 1370 which, *inter alia,* shifted control over the admission of IST defendants from the committing court to DSH and increased DSH's statutory discretion. The committing court must provide a packet, containing medical as well as psychiatric, legal, and security information, on each IST defendant to DSH "prior to admission" of the IST defendant. (Pen. Code, § 1370, subd. (a)(3).) With that informational packet, DSH must, by statute, screen IST patients for security risks, and place a high security patient in the "most secure facilities," such as DSH-Atascadero and DSH-Patton. (Welf. & Inst. Code, §§ 7225, 7228, 7230.) Further, certain individual DSH facilities, DSH-Patton and DSH-Napa, are subject to population caps set by the Legislature. (Welf. & Inst. Code, § 4107, subd. (c) (DSH-Patton); § 7200.06 (DSH-Napa).) The committing county must await DSH's completion of that screening function before delivering the IST defendant to DSH. (Pen. Code, § 1370, subd. (a)(3).) In addition, DSH, and not the committing court, is the decision maker on the placement of the IST defendant in any particular DSH facility. (Pen. Code, § 1370, subd. (a)(5).) Because each IST defendant presents unique competency training needs based on the causes of their incompetency, DSH seeks efficient utilization of its bed capacity but does not apply a fixed length of stay for IST defendants. Hence, each IST defendant's admission date, once placement has been determined, is subject to DSH's discretionary management of its beds.

3. There is no express timeframe for DSH's admission of IST defendants.

Neither the state Constitution nor the statutory scheme of Penal Code section 1370 expressly state a timeframe for DSH to admit an IST defendant following issuance of a commitment order. However, Penal Code section 1370 does require DSH or any other provider to submit a progress report, concerning the IST defendant's likelihood of restoration, within 90 days of the commitment order. (Pen. Code, §1370, subd. (b)(1).) The Second District Court of Appeal found an IST defendant must be admitted to a treatment facility within a "reasonable period of time" following the commitment order, such that an adequate 90-day status report could be provided to the committing court. (*In re Mille*, *supra*, 182 Cal.App.4th at p. 650.)

The Legislature did not act, by A.B. 1468 or any other statute, to state a specific quantitative timeline for the admission of IST defendants committed under Penal Code section 1370. The Legislature is "presumed to know of existing domestic judicial decisions and to have them in mind when amending statutes which the courts have construed." (*Enyeart v. Bd. of Supervisors* (1967) 66 Cal.2d 728, 735.) When the Legislature enacted A.B. 1468, the Legislature was presumably aware of the judicial construction of Penal Code section 1370 to indicate a qualitative timeframe for admission in the decision of *In re Mille*, *supra*, and chose not to enact any amendments in response to that construction. Therefore, the *Mille* decision's expression of a "reasonable period of time" for the admission of an IST defendant to DSH continues to stand. (*In re Mille*, *supra*, 182 Cal.App.4th at p. 650.)

B. The Statutory Scheme For IST Defendants with Developmental Disabilities.

1. DDS is not the only placement option for PC 1370.1 IST defendants.

An IST defendant with developmental disabilities may be committed to (1) a state hospital, or (2) a developmental center for the care and treatment of the developmentally disabled, or (3) any other available residential facility approved by the director of a regional center for the developmentally disabled, or (4) be placed on outpatient status. (Pen. Code, §1370.1, subd. (a)(1)(B)(i).) In addition, section 1370.1 provides for alternative (i.e., civil) commitment procedures if the IST defendant cannot attain competency. (Pen. Code, § 1370.1, subd. (a)(5)(A).) Therefore, DDS is not the only entity that may provide competency training and evaluation to IST defendants with developmental disabilities.

Further, the committing court may order a regional center to utilize private vendors to provide competency training and evaluation to an IST defendant with developmental disabilities. DDS "contracts with private nonprofit corporations to establish and operate a network of 21 regional centers that are responsible for determining eligibility, assessing needs, and coordinating and delivering direct services for developmentally disabled persons and their families." (*Michelle K. v. Super. Ct.* (2013) 221 Cal.App.4th 409, 422; *Capitol People First v. Dept. Developmental Services* (2007)155 Cal.App.4th 676, 682-683.) The regional centers' purpose is to "assist

persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).) State funds are allocated "to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports." (*Capitol People*, *supra*, 155 Cal.App.4th at p. 683, citing Welf. & Inst. Code, §§ 4620, 4621, 4787.) Because the trial court has jurisdiction to order a regional center to provide secure competency training and evaluation by utilizing a private vendor, DDS does not have sole responsibility to provide such training and evaluation under Penal Code section 1370.1.

2. DDS has statutory discretion over the admission of IST defendants with developmental disabilities.

By statute, DDS has discretion to reject or delay the admission of an IST defendant committed to it. All IST defendants committed to DDS, pursuant to Penal Code section 1370.1, must be placed in the secure treatment program at Porterville Developmental Center (Porterville). The Porterville secure treatment program is subject to a statutory population cap of 211. (Welf. & Inst. Code, § 7502.5, subd. (a).) To the extent the population cap is reached, DDS informs the committing court of its inability to admit IST defendants until others are discharged from Porterville.

Moreover, DDS has the discretion to reject an IST defendant's placement at Porterville on the basis of security issues and other patient health factors. By statute, once DDS informs the trial court that an IST defendant cannot be safely served at Porterville, the court "under no circumstances" may order placement of that individual in the developmental center. (Welf. & Inst. Code, § 6510.5.) Simply put, Penal Code section 1370.1 does "not mandate placement at Porterville" nor does it indicate Porterville as the "sole placements for such defendants." (*In re Williams, supra,* 228 Cal.App.4th at p. 1016.)

3. Penal Code 1370.1 does not state a quantitative timeframe for admission of IST defendants with developmental disabilities.

Neither the state Constitution nor the statutory scheme of Penal Code section 1370.1 expressly state a quantitative timeframe for DDS to admit an IST defendant following issuance of

a commitment order. Moreover, unlike Penal Code section 1370, the statutory scheme for developmentally disabled IST defendants does not require a 90-day progress report following the commitment order. Rather, the initial progress report is due 90 days after admission of the developmentally disabled IST defendant, not the date of commitment. (Pen. Code, § 1370.1 subd. (b)(1).) As a result, DDS must be found to have discretion over the precise admission date for each IST defendant with developmental disabilities.

II. THE PLAINTIFFS AND THEIR CAUSES OF ACTION

The complaint asserts four causes of action: (1) violation of the right to due process, (2) denial of the right to a speedy trial, (3) violation of the Fourteenth Amendment, and (4) taxpayer claim. The ACLU-Northern and the ACLU-Southern allege their status as non-profit organizations that "pay California taxes each year." (Complt., ¶ 15.) Their members pay "California taxes every year." (*Id.*) The individual plaintiffs bring this complaint on the basis of a relative who was an IST defendant committed to DSH or DDS for competency training, as follows:

·Stephanie Stiavetti's brother, N, was committed to DSH on September 22, 2014 and admitted to DSH on November 3, 2014. (Complt., ¶¶ 12, 35.)

·Kellie and Kimberly Bock's father, Rodney Bock, was found incompetent on April 19, 2010, and committed suicide on April 29, 2010 at Sutter County Jail. (Complt., ¶¶ 13, 50-51.)

·Nancy Leiva's son, A, was committed to DDS on December 6, 2012, and admitted to DDS on August 8, 2013. (Complt., ¶ 30.)

·Rosalind Randle's son, L, was committed in November 2013 to DDS, and admitted on October 14, 2014 to an outpatient facility. (Complt., ¶¶ 38, 39, 41.)

LEGAL ARGUMENT

I. PLAINTIFFS LACK STANDING TO BRING THE FIRST AND SECOND CAUSES OF ACTION.

Assuming arguendo plaintiffs' alleged taxpayer standing is limited to the fourth cause of action under 526a, then each of the plaintiffs must establish themselves as real parties in interest for the first and second causes of action regarding the right to due process and the right to a

speedy trial. (Code Civ. Proc., § 367.) To pursue these state law causes of action, each plaintiff must show she "has or will suffer particularized injury as a result of the enforcement" of the challenged law. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748-749.) Only the real party in interest has "an actual and substantial interest in the subject matter of the action," and stands to be "benefited or injured" by a judgment in the action. (*Friendly Village Community Assn., Inc. v. Silva & Hill Constr. Co.* (1973) 31 Cal.App.3d 220, 225.)

Plaintiffs cannot establish standing as IST defendants or as representatives of IST defendants to bring the first and second causes of action. None of the individual plaintiffs allege that they were directly subject to IST proceedings as criminal defendants. They do not allege representational capacity derived from appointment as guardian ad litem nor do they join their family members who were IST defendants as parties to this case. (Code Civ. Proc., §§ 372, subd. (a)(1) & 373, subd. (c).) Moreover, plaintiffs do not allege representational capacity as a person "expressly authorized by statute" to bring suit on behalf of another, without joining the beneficiary to the action. (*Id.* at § 369, subd. (a)(4).) Hence the allegation that plaintiff Leiva is A's limited conservator is of no import as A is not a named plaintiff. (Complt., ¶ 29.) Because plaintiffs fail to plead any facts demonstrating that they have legal representational capacity for non-related IST defendants, plaintiffs cannot plead a direct cause of action for violation of the right to due process and right to a speedy trial on behalf of any and all IST defendants.

II. THE FIRST CAUSE OF ACTION FOR VIOLATION OF STATE CONSTITUTIONAL RIGHT TO DUE PROCESS CANNOT PROCEED.

A. The Statutory Habeas Process Provides Due Process.

The application of the due process clause of the California Constitution must be determined in the context of the individual's due process "interest in freedom from arbitrary adjudicative procedures," and start "with an assessment of what procedural protections are constitutionally required in light of the governmental and private interests at stake." (*People v. Ramirez* (1979) 25 Cal.3d 260, 263-264.) Due process is a "flexible concept," with the "primary purpose" of providing affected parties with "the right to be heard at a meaningful time and in a meaningful

manner." (*Ryan v. Cal. Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072.)

The habeas writ provides due process to review the "lawfulness of a person's imprisonment or other restraint on . . . liberty." (*In re Paul W.* (2007) 151 Cal.App.4th 37, 53, quoting from *Appeals & Writs in Criminal Cases* (C.E.B. 2006) § 2.143, p. 484; Pen. Code, §1473.) The habeas process, as codified in the Penal Code, affords all criminal defendants, including IST defendants, an appropriate means of challenging any admission timeframe. (Pen. Code, §§ 1476-1480; Cal. Rules Ct., rule 4.551; see e.g. *In re Mille*, *supra*, 182 Cal.App.4th 635 [addressing habeas petition brought by IST defendant].) Because the habeas process was available to the instant plaintiffs' IST defendants-relatives, with plaintiff Leiva's son actually filing a habeas petition contesting the timeframe of his admission, plaintiffs cannot claim any lack of due process. (Complt., ¶ 31.)

Moreover, as the committing court retains jurisdiction to enforce its commitment orders, the IST defendants' interest in timely admission may be enforced through Order to Show Cause (OSC) proceedings. For instance, the admission of plaintiff Stiavetti's brother, N, was the subject of an OSC proceeding one month after the commitment order issued. (Complt., ¶ 35.) The admission of plaintiff Leiva's son, A, was also the subject of an OSC proceeding. (*Id.* at ¶ 31.) The availability, if not employment, of OSC proceedings and petitions for writs of habeas corpus therefore foreclose plaintiffs' first cause of action for due process.

B. Plaintiffs Stiavetti and Bock Cannot Establish a Due Process Violation.

Plaintiffs Stiavetti and Bock cannot state a due process violation. As stated above, Penal Code section 1370 does not provide a quantitative timeframe for admission. The delivery of an IST defendant to DSH must occur within a "reasonable period of time," such that an adequate 90-day status report could be provided to the committing court. (*In re Mille*, *supra*, 182 Cal.App.4th at p. 650; *People v. Brewer* (2015) 235 Cal.App.4th 122, 131.) Even assuming arguendo a "reasonable time" indicates a 30-day timeframe for admission, Stiavetti's brother N – committed on September 22 and admitted on November 4 - was admitted within a constitutionally adequate timeframe. (Complt., ¶¶ 12, 35.) Plaintiffs Bock's father expired within ten days of his

commitment order, so plaintiffs Bock cannot claim a violation of any 30-day timeframe for admission. (*Id.* at ¶¶ 13, 35.) Therefore, neither plaintiff Stiavetti nor plaintiffs Bock can pursue a due process violation arising from their relatives' commitments to DSH.

III. THE SECOND CAUSE OF ACTION FOR ALLEGED VIOLATION OF THE STATE CONSTITUTIONAL RIGHT TO SPEEDY TRIAL IS NOT VIABLE.

A. No Private Right of Action to Enforce Another's Right to Speedy Trial.

The comprehensive statutory scheme providing IST defendants with a speedy trial evinces no intent to provide a private cause of action. Because a criminal statute can "expressly or impliedly give rise to a private right of action for its violation," the determination of whether a private cause of action exists is a "question of legislative intent." (*Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 141-142.) That legislative intent is manifested in the enforcement mechanisms of the statutory scheme. The *Mendes* court found no private cause of action to enforce Penal Code section 597t, an animal cruelty provision, reasoning, "In light of the overall statutory scheme effectively 'deputizing' of humane societies to aid local authorities in the enforcement of anti-cruelty laws," it is clear "the Legislature did not intend to create a private cause of action in other private entities." (*Id.* at p. 142.) This Court should extend the legislative analysis indicated in the *Mendes* decision and find the overall Penal Code scheme for ensuring a criminal defendant's constitutional right to a speedy trial does not indicate any private cause of action.

Plaintiffs do not allege any language in the Penal Code provides them, as interested parties and/or family members, with the right to assert an IST defendant's constitutional speedy trial right. Applying the *Mendes* analysis of legislative intent, the existence of three procedural mechanisms protecting the right to speedy trial precludes a private cause of action for denial of that right. First, an IST defendant may move for dismissal of pending charges due to prejudicial and unjustified delays in bringing the case against a defendant to trial. (*People v. Martinez* (2000) 22 Cal.4th 750,767, 769; *Craft v. Super. Ct.* (2006) 140 Cal.App.4th 1533, 1538, 1540-41 see also Pen. Code, §§ 1381-1383.) If the trial court denies the motion, a defendant can proceed to the appellate court by way of peremptory writ of mandate. (*Craft*, *supra*, 140 Cal.App.4th at

pp. 1536, 1538.) Second, the defendant may bring a petition for writ of habeas corpus to challenge the basis for their continued confinement. (*In re Mille, supra,* 182 Cal.App.4th at p. 640; *In re Davis, supra,* 8 Cal.3d at pp. 803, 810.)

Third, these enforcement mechanisms may be brought not only by the criminal defendant on their own behalf, but also by their appointed counsel. The trial court must appoint counsel on the defendant's behalf even where the criminal defendant is merely suspected of being incompetent to stand trial and is not already represented. (Pen. Code, § 1368, subd. (a).) Defense counsel may bring the above-indicated motions and writs to enforce the right to speedy trial on behalf of IST defendants. (*Craft, supra,* 140 Cal.App.4th at p. 1538 fn. 1; Pen. Code, § 977.1)

Given these statutory and procedural remedies for any violation of an IST defendant's right to a speedy trial, plaintiffs herein do not have a private cause of action to enforce that right on behalf of their family members who were IST defendants or on behalf of other unidentified IST defendants. The demurrer to the second cause of action should therefore be sustained without leave to amend.

B. Because the U.S. Constitution and State Law Direct a Stay of Criminal Trials Pending Competency Training, the Second Cause of Action Is Not Viable.

Plaintiffs allege a cause of action for denial of the right to speedy trial without acknowledging that right is subordinate to the constitutional right to not undergo trial while incompetent. The California Constitution provides criminal defendants with the right to a speedy trial. (Cal. Const., art. I, § 15, cl. 1.) However, it is "well established" that ongoing criminal prosecution of an incompetent defendant violates the Due Process Clause of the Fourteenth Amendment. (*Medina v. California* (1992) 505 U.S. 437, 439.) In accord, IST defendants have a right, under the federal due process clause and under state law, not to be tried while they are incompetent. (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 464.) Criminal proceedings are initially suspended when a concern arises as to a defendant's competency to stand for trial. (Pen. Code, § 1367, subd. (a); see also Pen. Code, § 1368, subd. (c).) The stay continues after an affirmative determination of incompetency and corresponding commitment for treatment. (Pen. Code, §§ 1370, subd. (a)(1)(B) & 1370.1, subd. (a)(1)(B).) Therefore, as a matter of law,

plaintiffs cannot claim any denial of the right to speedy trial by alleged delays in admitting IST defendants to DSH or DDS for competency training.

The question of whether the IST process in Penal Code section 1368 et seq. impinges on the state constitutional right to a speedy trial has been repeatedly answered in the negative. Indeed, delays in criminal proceedings due to competency and other mental health proceedings are justified. (*People v. McGill* (1968) 257 Cal.App.2d 759, 761 [finding good cause associated with delay in proceedings under Penal Code § 1368].) The California Supreme Court found no prejudicial delays resulting from the hospitalization of IST defendants. (*In re Davis*, *supra*, 8 Cal.3d at p. 809.) More recently, the appellate court stated that "delay alone, even delay that is "uncommonly long," is not enough to demonstrate prejudice" sufficient to implicate the right to a speedy trial. (*Craft*, *supra*, 140 Cal.App.4th at pp. 1542-1543, citing *Martinez*, *supra*, 22 Cal.4th at p. 755.) These decisions illustrate that not every delay, even one associated with the IST process, results in a violation of the right to a speedy trial. Therefore, plaintiffs cannot state a cause of action on the basis that any delays in the IST process necessarily jeopardizes the right to a speedy trial.

C. Once Waived or Rejected, Speedy Trial Claims Cannot Be Revived.

Enforcement of a defendant's right to speedy trial hinges on active assertion of the right. (*People v. Contreras* (2009) 177 Cal.App.4th 1296, 1303.) Specifically, a criminal defendant must timely object to any pertinent delay and follow the objection with a motion to dismiss the criminal charges. (*People v. Wright* (1990) 52 Cal.3d 367, 389.) Otherwise, the defendant will be deemed to have waived the right. (*Ibid.*) Even if timely raised, the trial court hearing the criminal matter is the arbiter of whether the prosecution established good cause for any prejudicial delay. (*Craft*, *supra*, 140 Cal.App.4th at pp. 1540-41.) The trial court's denial of the claim of violation of the right to speedy trial cannot, on the basis of res judicata, be revisited in this civil action. (Cf. *In re Crow* (1971) 4 Cal.3d 613, 622, disapproved on other grounds in *People v. Barragan* (2004) 32 Cal.4th 236 [court's issuance of writ of habeas corpus on basis of violation of right to speedy trial given res judicata effect in subsequent criminal proceeding]; *Buttimer v. Alexis* (1983) 146 Cal.App.3d 754 [county district attorney and State agency serve

same public interest, so privity established for collateral estoppel effect of criminal court's ruling].)

Plaintiffs provide no facts regarding whether the underlying IST patients or their counsels objected to unconstitutional delays in their cases proceeding to trial. While the complaint references a habeas writ filed on behalf of plaintiff Leiva's son A, it provides no details regarding the grounds for the writ nor any final ruling by the trial court. (Complt., ¶ 31.) The complaint is otherwise silent regarding any effort by the IST defendants or their counsels to assert the right to a speedy trial. Indeed, the IST defendants may very well have waived or otherwise consented to certain delays. (*McGill*, *supra*, 257 Cal.App.2d at p. 761 [defendant's consent presumed by lack of objection to setting of trial dates].) Because the second cause of action lacks necessary facts concerning any IST defendant's timely assertion of their right to a speedy trial in the criminal court, the demurrer should be sustained on the bases of uncertainty and failure to state a cause of action.

IV. THE THIRD CAUSE OF ACTION FOR VIOLATION OF THE FEDERAL CONSTITUTION CANNOT PROCEED AGAINST AHLIN AND ROGERS.

Plaintiffs' third cause of action for violation of the Fourteenth Amendment cannot state a cause of action. A "litigant complaining of a violation of a constitutional right" has "no cause of action directly under the United States Constitution," and instead must seek relief under 42 U.S.C. section 1983. (*Azul-Pacifico Inc. v. City of Los Angeles* (9th Cir. 1992) 973 F.2d 704, 705.) Because plaintiffs improperly assert a cause of action directly under the Fourteenth Amendment, their third cause of action fails to state a claim.

Even assuming the third cause of action seeks relief under 42 U.S.C. section 1983, plaintiffs fail to establish the elements of a Section 1983 claim. Plaintiffs must demonstrate the following elements: (1) the conduct complained of was committed by a person acting under color of state law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or by the laws of the United States. (*Parratt v. Taylor* (1981) 451 U.S. 527, 535, overruled on other grounds in *Daniels v. Williams* (1986) 474 U.S. 327; *Crumpton v. Gates* (1991) 947 F.2d 1418, 1420.) Plaintiffs cannot establish these elements.

A. Ahlin and Rogers are Not Proper Defendants in the Fourteenth Amendment Claim.

Section 1983 does not impose respondeat superior liability upon state officials, such as Ahlin and Rogers, for the actions of their employees. (*Mosher v. Saalfeld* (9th Cir. 1978) 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). "[A] plaintiff must plead that each government-official defendant, through the official's own individual actions, has violated the Constitution." (*Ashcroft v. Iqbal, supra,* 556 U.S. at p. 676.) When a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. (*Leer v. Murphy* (9th Cir. 1988) 844 F.2d 628, 633; *Fayle v. Stapley* (9th Cir. 1979) 607 F.2d 858, 862.) The complaint must demonstrate that the supervising defendants either: personally participated in the alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" (*Hansen v. Black* (9th Cir. 1989) 885 F.2d 642, 646; *Taylor v. List* (9th Cir. 1989) 880 F.2d 1040, 1045.) Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. (*Ivey v. Bd. of Regents of Univ. of Alaska* (9th Cir. 1982) 673 F.2d 266, 268.)

Plaintiffs' suit against Ahlin and Rogers in their official capacities is based on the erroneous assertion that Ahlin and Rogers' agencies, DSH and DDS, respectively have "primary responsibility for evaluating and treating" IST defendants. (Complt., ¶¶ 16, 17.) By statute, the responsibility for initially evaluating a criminal defendant for incompetency rests with the trial court. (Pen. Code, §§ 1368, 1370, subd. (a)(1)(B) & 1370.1, subd. (a)(1)(B).) Further, by statute, the trial court may order the county jail, or a community-based residential treatment facility, or any other public or private facility, or DSH to provide competency training to an IST [illegible] with mental disorders. (Pen. Code, § 1370, subd. (a)(1)(B).) Depending upon any issues posed by an IST defendant with developmental disabilities, the trial court may [illegible]petency training occur on an outpatient basis, in a residential facility approved by a center or at Porterville. (Pen. Code, § 1370.1, subds. (a)(1)(B) & (E).) The statutory

schemes therefore do not vest DSH and DDS with exclusive responsibility for providing competency training to IST defendants. Hence, plaintiffs cannot assert Ahlin and Rogers are proper defendants in the Section 1983 claim on the basis of their agencies' statutory responsibilities.

Moreover, the complaint's factual allegations do not establish Ahlin and Rogers' involvement in any constitutional violation. The allegations concerning a February 2015 wait list for admission to DSH does not illuminate defendant Ahlin's role nor any alleged constitutional deprivation. (Complt., ¶ 42.) Likewise, the allegations concerning an April 2015 wait list for admission to a "DDS hospital" does not indicate defendant Roger's role nor any alleged constitutional deprivation. (*Id.* at ¶ 43.) The alleged conditions of confinement in various county jails do not establish any constitutional violation by Ahlin and Rogers, who are not alleged to have authority over county jails and their care of IST defendants. (*Id.* at ¶¶ 16-17 & 44-53.) Given this paucity of proper allegations against Ahlin and Rogers, the demurrer should be sustained.

B. Defendants Ahlin and Rogers Are Entitled to Qualified Immunity.

Defendants Ahlin and Rogers are entitled to qualified immunity to the Section 1983 claim. Immunity from liability under Section 1983 is governed by federal, not state law. (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 350.) "For executive officials in general, ... qualified immunity represents the norm." (*Harlow v. Fitzgerald* (1982) 457 U.S. 800, 807.) Qualified immunity turns upon two considerations: (1) whether the alleged facts made out a violation of a constitutional right; and (2) "whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." (*Saucier v. Katz* (2001) 533 U.S. 194, 201-202; *Pearson v. Callahan* (2009) 555 U.S. 223, 232, 236 [overruling holding in *Saucier* that the two-step inquiry must be conducted in sequence, with the second step dependent upon the first step].) In other words, "'existing precedent must have placed the statutory or constitutional question beyond debate.' " (*Carroll v. Carman* (2014) – U.S. – , 135 S.Ct. 348, 350, quoting *Ashcroft v. al-Kidd* (2011) 563 U.S. 731, 13 S.Ct. 2074, 2083.)

Given the pendency of appeals concerning the constitutional adequacy of court-ordered time frames for the admission of IST defendants to DSH facilities, it would not be clear to a reasonable person in defendant Ahlin and Roger's position that their conduct was unlawful in the circumstances. To paraphrase the California Supreme Court, it would not be "clear" to a reasonable administrator that the existing timeframe for the admissions of IST defendants was "unlawful." (*Venegas*, *supra*, 32 Cal.4th at p. 840.) Ahlin and Rogers should therefore be granted immunity "for reasonable mistakes as to the legality of their actions." (*Id.*, citing *Saucier*, *supra*, 533 U.S. at p. 206.) Because qualified immunity applies to Ahlin and Rogers' actions, the Section 1983 action is subject to dismissal.

V. THE FOURTH CAUSE OF ACTION UNDER SECTION 526A IS FLAWED.

Plaintiffs Stiavetti, Bocks, Randle, ACLU-Southern, and ACLU-Northern fail to establish a cause of action under Code of Civil Procedure section 526a to "obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to" the funds of the state. A Section 526a claim cannot be stated where other enforcement mechanisms are available. Moreover, plaintiffs' section 526a claim does not establish defendants engaged in unlawful acts of "fraud, collusion, and ultra vires" or failed to perform a legal duty. (*Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 253.) Plaintiffs' do not show standing as taxpayers. Therefore, the taxpayer claim cannot proceed.

A. The Taxpayer Claim Is Precluded by Penal Code Enforcement Avenues.

Plaintiffs cannot employ Section 526a to enforce the Penal Code provisions concerning IST defendants' competency training when the Penal Code affords enforcement mechanisms. The First District Court of Appeal recently ruled a taxpayer action could not proceed given the existence of a "carefully crafted legislative mechanism for enforcing the Penal Code section plaintiffs claim defendants violated." (*Animal Legal Defense Fund, Inc. v. Cal. Exposition and State Fairs* [*Cal. Exposition*] (Aug. 27, 2015) – Cal.App.4th –, 2015 WL 5050255.) In *Cal. Exposition*, the appellate court determined an animal rights group could not bring a taxpayer action to enforce Penal Code section 597t because "the comprehensive statutory scheme provides multiple avenues for the enforcement of California's animal cruelty laws," with both law

enforcement and humane officials authorized to enforce the laws. (*Id.* at p. *6.) Moreover, as the California Supreme Court declared, "[T]he appropriate tribunal for the enforcement of the criminal law is the court in an appropriate criminal proceeding." (*Nathan H. Schur, Inc. v. City of Santa Monica* (1956) 47 Cal.2d 11,12-14, 17 [finding taxpayer action precluded by administrative hearing process].)

Here, the competency training provisions of Penal Code sections 1370 and 1370.1 are subject to multiple entities and avenues of enforcement. Multiple entities, such as IST defendants, their retained or appointed counsels, and judges may act to ensure an IST defendant is provided timely competency training. Multiple procedures permit the assertion of any delay in restorative training, including habeas petitions, Orders to Show Cause, and motions to dismiss, as discussed above. Hence, in accord with *Cal. Exposition* decision, this Court should find the existing enforcement mechanisms established by the Legislature, and "the entities in whom it entrusted such enforcement," to be the exclusive means and persons charged with enforcing the right to competency training. (*Cal. Exposition*, 2015 WL 5050255 at p.* 8.) Therefore, the fourth cause of action should be dismissed.

B. Plaintiffs Lack Taxpayer Standing for the Fourth Cause of Action.

To establish standing under Section 526a, plaintiffs must allege payment of taxes that are "assessed," such as ad valorem taxes on real or personal property. (Code Civ. Proc., § 526a; *Blair v. Pitchess* (1971) 5 Cal.3d 258, 269 fn. 2; *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 872 [payment of sales tax insufficient].) Indeed, the appellate courts have twice held that payment of property taxes is required for taxpayer standing under section 526a. (*Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1047-1048 [sales tax insufficient]; *Cornelius v. Los Angeles County etc. Authority* (1996) 49 Cal.App.4th 1761, 1775-1779 [payment of gasoline and state income tax insufficient].) A plaintiff's lack of taxpayer standing, whether apparent from the face of the complaint or from judicially noticed matters, constitutes a failure to state a claim. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.) The individual plaintiffs and the two ACLU organizations herein do not establish Section 526a standing.

The complaint does not establish the taxpayer status of the individual plaintiffs bringing this cause of action. Plaintiffs Randle, Stiavetti, and Bocks alleged payment of "income and other state and local taxes" is vague as to their payment of assessed (property) taxes imposed by the State of California. (Complt., ¶¶ 12-14.) Likewise, plaintiffs ACLU-Southern California and ACLU-Northern California assert they "pay California taxes each year," without specifying the type of taxes paid. (*Id.* at ¶ 15.)

Moreover, both plaintiff organizations, ACLU-Northern California and ACLU-Southern California, are tax-exempt and thus cannot allege the payment of the requisite ad valorem taxes for Section 526a standing. Plaintiff ACLU of Northern California (ACLU-NC) describes itself as a separate entity distinct from the ACLU Foundation. (Exh. 6, ACLU-NC 2014 Annual Report, p. 26; Req. J. Not.) The ACLU Foundation is described as the entity that "conducts litigation and public education" as a 501(c)(3) "tax-exempt organization." (*Id.*) In contrast, plaintiff ACLU-NC is described as the entity that "conducts membership outreach, organizing, legislative advocacy, and lobbying," with 501(c)(4) status as a "tax-exempt organization." (*Id.*) ACLU-NC is listed as a tax exempt organization by the State Franchise Tax Board. (Exh. 8, Excerpted Page, Franchise Tax Board Exempt Organization List, p. 365; Req. J. Not.) Therefore, ACLU-NC cannot serve as a proper Section 526a plaintiff on the basis of its alleged payment of California taxes each year.

Plaintiff ACLU of Southern California (ACLU-SC) also describes itself as distinct from the ACLU Foundation. (Exh. 7, ACLU-SC 2013-14 Annual Report, p. 16; Req. J. Not.) "The ACLU of Southern California is comprised of two separate corporate entities, the American Civil Liberties Union and the ACLU Foundation, each with its own board of directors." (*Id.* at p. 15.) The ACLU Foundation is described as a 501(c)(3) entity, with finances separate from those of ACLU-SC. (*Id.* at p. 16.) Litigation is "handled exclusively by the ACLU Foundation and lobbying by the ACLU." (*Id.* at p. 15.) ACLU-SC is listed as an "active" tax exempt organization by the State Franchise Tax Board. (Exh. 8, Excerpted Page, Franchise Tax Board Exempt Organization List, p. 366; Req. J. Not.) Therefore, the ACLU-SC cannot serve as a Section 526a plaintiff based on the allegation it pays California taxes each year. Indeed, both

ACLU plaintiffs are estopped from asserting Section 526a taxpayer standing to sue on their own behalf. (*Drain, supra,* 69 Cal.App.4th at p. 961; *Prilliman, supra,* 53 Cal. App.4th at pp. 957-960.)

Even if an organization does not pay taxes in its own right, it may have standing to bring a taxpayer action if at least one of its members would have standing to bring the action as an individual. (*Gilbane Bldg. Co. v. Super. Ct.* (2014) 223 Cal.App.4th 1527, 1531.) Both ACLU-Southern California and ACLU-Northern California allege that "many of its members are assessed and pay California taxes." (Complt., ¶15.) This allegation does not indicate that at least one member qualifies as a taxpayer by paying assessed (property) taxes, therefore neither organization has representational standing. Because the plaintiffs bringing the Section 526a claim - Randle, Stiavetti, Bocks, ACLU-Southern California, and ACLU-Northern California – fail to establish taxpayer standing, the demurrer to the Section 526a claim should be sustained.

C. No Illegal and/or Wasteful Expenditure Is Alleged.

Plaintiffs' taxpayer claim is based on the single assertion that defendants are "illegally expending public funds by performing their duties in violation" of the referenced constitutional provisions is insufficient to state a cognizable taxpayer claim. (Complt., ¶ 67.) There are no "specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240.) "General allegations, innuendo, and legal conclusions are not sufficient" to establish illegal expenditure of public funds. (*Ibid.*) Having failed to allege specific facts of illegal spending, none of the plaintiffs have standing to bring a taxpayer action. (*Imagistics Intern. Inc. v. Dept. of General Services* (2007) 150 Cal.App.4th 581, 594.)

To the extent plaintiffs' taxpayer claim asserts waste, the claim is still insufficient. The term "waste" under section 526a "means something more than an alleged mistake of public officials in matters involving the exercise of judgment or wide discretion." (*Sundance v. Municipal Ct.* (1986) 42 Cal.3d 1101, 1138.) Section 526a does not encompass "disputes which are primarily political in nature," so the trial court should reject a Section 526a claim premised upon a taxpayer's mere disapproval of an expenditure. (*Ibid.*) Plaintiffs do not allege

unnecessary public spending, but unnecessary delays in their family member's receipt of competency care. As a result, plaintiffs do not state a cause of action under Section 526a for illegal or wasteful spending.

D. A Taxpayer Claim Cannot Be Based on State Officials' Discretionary Acts.

Plaintiffs do not allege any acts of fraud or ultra vires by these state officials-defendants. To the extent the section 526a claim is based upon an alleged violation of a legal duty, the Section 526a claim cannot proceed in light of defendants' statutory discretionary over admissions of IST defendants.

A Section 526a action may only be brought if a government entity or agency official has a "duty to act, and refused to do so," as opposed to discretion to act. (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1281.) Indeed, "the court is prohibited from substituting its discretion for the discretion" of the government entity or agency official. (*Ibid.*) Plaintiffs' requested relief, namely judicial oversight and orders to control the executive branch's discretion to determine the specific timeframes for admitting IST defendants runs foul of this rule. As discussed above, the defendants have statutory discretion regarding the timeframe for admissions. Given section 526a "should not be applied to principally 'political' issues involving the exercise of the discretion of either the legislative or executive branches of government" (*id.*) this Court "risk[s] trespassing into the domain of legislative or executive discretion" by permitting this complaint to proceed. (*Sagaser v. McCarthy* (1986) 176 Cal.App.3d 288, 310-311.) This demurrer should be sustained because the complaint, and its sought relief, exceeds the "limits" of Section 526a. (*Humane Soc. of U.S. v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 356.)

VI. THE STATE OF CALIFORNIA IS NOT A PROPER DEFENDANT.

A. The State is Not a Proper Defendant in the State Law Claims.

By naming the State of California as a defendant, the complaint contains "a defect or misjoinder of parties." (Code Civ. Proc., § 430.10, subd. (d).) Plaintiffs cannot obtain mandamus, injunctive or declaratory relief against the State of California. Nor can plaintiffs

bring a taxpayer claim against the State of California. Therefore, the State of California's demurrer should be sustained without leave to amend.

The California Supreme Court declared that claims for writ or injunctive relief cannot proceed against the State of California, as distinct from an agency or officer. (*State v. Super. Ct.* (1974) 12 Cal.3d 237, 255.) In *State v. Superior Court*, developers sued the State, California Coastal Zone Conservation Commission, and two Commission employees, seeking a writ of mandate, declaratory, and injunctive relief, based on the denial of a permit and the alleged unconstitutionality of the California Coastal Zone Conservation Act. The court sustained the State's demurrer because the plaintiffs made no allegations establishing any right to relief against the State "as distinguished from the Commission acting as its agent." (*Id.* at p. 255.) Because the State of California can only act through its agencies and officers, it is not a proper party defendant from which mandamus, declaratory, and injunctive relief may be obtained in this matter.

A taxpayer action may only be "maintained against any officer" of the involved state or local agency. (Code Civ. Proc., § 526a.) In accord with this statutory language, the courts have determined that taxpayer suits must be brought against a state agency or officer with administrative authority over the challenged action, not the State of California. (*Ahlgren v. Carr, supra,* 209 Cal.App.2d at p. 256 [action to enjoin State Director of Finance and Controller from purchasing textbooks]; *Farley v. Cory* (1978) 78 Cal.App.3d 583, 589 [action against State Controller to compel exercise of discretion over money due the state].) Therefore, the State of California's demurrer to each state law claim should be sustained, and the State of California dismissed from this action.

B. The State of California is Not a Proper Defendant in a Section 1983 Claim.

"Under the Eleventh Amendment to the United States Constitution, and the doctrine of sovereign immunity, the state is absolutely immune from tort liability under the federal civil rights act (42 U.S.C. § 1983)." (*Venegas, supra*, 32 Cal.4th at p. 826.) Further, the State of California is not considered a 'person' for purposes of Section 1983. (*Bougere v. County of Los Angeles* (2006) 141 Cal.App.4th 237, 242; *Will v. Michigan Dept. of State Police* (1989) 491

U.S. 58, 62, 66, 71.) Because plaintiffs cannot plead a viable Section 1983 claim against the State of California, this Court should sustain the demurrer without leave to amend as to the Section 1983 claim against the State of California. (*Catsouras v. Dept. Cal. Highway Patrol* (2010) 181 Cal.App.4th 856, 892.)

VII. NO MANDAMUS CAUSE OF ACTION SUPPORTS MANDAMUS RELIEF.

Plaintiffs seek mandamus relief in their prayer for relief, yet fail to properly present any cause of action for mandamus. The complaint fails to contain "a statement of the facts constituting the [mandamus] cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10.) Plaintiffs' failure to separately state a mandamus cause of action indicates the mandamus cause of action is improperly subsumed within another cause of action. (Cal. Rules Ct., rule 2.112.) "[P]leadings which jumble together several distinct causes of action may be subject to demurrer for uncertainty." (*Cal. Practice Guide: Cal. Civ. Proc. Before Trial* (2015) Ch. 6-B, § 6:104.) Plaintiffs' mandamus claim fails to comport with pleading standards; hence the mandamus claim is subject to demurrer.

To the extent the complaint is broadly construed to allege a cause of action for mandamus, plaintiffs have not alleged the elements for the mandamus cause of action. Plaintiffs do not establish "(1) a clear, present and usually ministerial duty" on the part of the defendants; and "(2) a clear, present and beneficial right" in the plaintiffs "to the performance of that duty." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 868.) There is no ministerial duty because, as discussed above, the statutory schemes do not require DSH and DDS to always admit IST defendants and do provide Ahlin and Rogers with discretion over the admission and placement of IST defendants. A writ cannot be used to control a matter of discretion vested in a state official. (*Kaiser Foundation Hospitals v. Belshe* (1997) 54 Cal.App.4th 1547, 1558.) "Where a statute leaves room for discretion, a challenger must show the official acted arbitrarily, beyond the bounds of reason or in derogation of the applicable legal standards." (*Cal. Correctional Supervisors Organization, Inc. v. Dept. of Corrections* (2002) 96 Cal.App.4th 824, 827.)

These individual and organizational plaintiffs cannot establish a present and beneficial right to performance of any admission duty under Penal Code sections 1370 and 1370.1. The

individual plaintiffs are family members of IST defendants whose admission is no longer in controversy. The organizational plaintiffs do not allege any members are IST defendants or will be IST defendants in the future. The demurrer should be sustained because plaintiffs are not real parties in interest for standing under Code of Civil Procedure section 367.

Any allegations that defendants have a ministerial duty in their implementation of Penal Code sections 1370 and 1370.1 must fail as a matter of law. Plaintiffs cannot show that defendants Ahlin and Rogers' statutory discretion in implementing Penal Code section 1370 and 1370.1, respectively, equates to "ministerial acts." The statutory schemes do not require Ahlin or Rogers to admit IST defendants in a prescribed, quantitative timeframe set by any law, "without regard to his or her own judgment or opinion concerning the propriety of such act." (*Coachella Valley Unified School Dist. v. State* (2009) 176 Cal.App.4th 93, 113 [citations omitted].) Moreover, the demurrer should be sustained in the absence of any affirmative allegations that plaintiffs have the requisite beneficial interest to prosecute a mandamus action. Given the plaintiffs cannot state a cause of action for mandamus, the demurrer to any apparent mandamus cause of action should be sustained and the prayer for mandamus relief struck.

VIII. LEIVA AND BOCK'S CLAIMS ARE UNTIMELY.

Plaintiffs Leiva and Bock have not met the applicable two-year limitations period for bringing their state law and federal claims concerning their relatives who were IST defendants. The two-year statute of limitations applies to state constitutional claims. (Code Civ. Proc., § 335.1.) A state cause of action accrues at "the time when the cause of action is complete with all of its elements." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) The state limitations period "ordinarily commences at the time when the obligation or liability arises, regardless of the plaintiff's ignorance of the cause of action." (*Utility Audit Co. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 962.)

Federal law determines the accrual date for federal claims. (*Maldonado v. Harris* (9th Cir. 2004) 370 F.3d 945, 955.) Unless a federal statute provides otherwise, a federal claim accrues "when the plaintiff knows, or should know, of the injury which is the basis of the cause of action." (*Ibid.*) While Congress has provided no federal statute of limitations governing Section

1983 claims, the United States Supreme Court has held that federal courts should use the forum state's statute of limitations applicable to personal injury actions for all section 1983 claims. (*Wilson v. Garcia* (1985) 471 U.S. 261, 269.) For Section 1983 claims arising in California on or after January 1, 2003, that period is two years. (Code Civ. Proc., § 335.1; *Maldonado, supra,* 370 F.3d at pp. 954-955.)

Plaintiffs Leiva and Bock knew or should have known of the facts essential to their claims over two years before the filing of this complaint. The necessary facts for Leiva to bring suit were apparent when her son, A, was not admitted to DDS within 30 days of his December 6, 2012 commitment order. (Complt., ¶ 30.) The essential facts for Kellie and Kimberly Bock's claim were apparent on the date of Mr. Bock's death, April 29, 2010. (*Id.* at ¶ 13; Exh. 4, Fourth Am. Complt., ¶¶ 107-111, *Estate of Bock v. County of Sutter*, U.S.D.C. Eastern, case 2:11-cv-00536 MCE/KJN; Exh. 5, Aug. 31, 2012 Memo. Decision, *Estate of Bock, supra,* Req. J. Not.) Because more than two years have passed since plaintiffs Leiva and plaintiffs Bocks learned the facts essential to their claims, their state and federal claims are barred by the limitations period. Plaintiffs Leiva and Bock should therefore be dismissed from this action.

IX. PLAINTIFFS KELLIE AND KIMBERLY BOCK IMPROPERLY SPLIT THEIR CLAIM.

A. The Primary Right Cannot Be Split into Two Lawsuits.

To define a cause of action, California follows the primary right theory. (*Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Assn., Inc.* (1998) 60 Cal.App.4th 1053, 1067.) The primary right theory "provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty." (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681.) The "violation of a single primary right gives rise to but a single cause of action." (*Id.*)

Plaintiffs Kellie and Kimberly Bock cannot split their cause of action concerning the failure to timely transfer their father to DSH by first suing in federal court for recovery of monetary damages arising from his death and then suing in state court for equitable relief concerning his death. Before bringing this action, Kellie and Kimberly Bock brought suit in 2011 on the same facts - the failure to timely transfer their father from county jail to DSH caused his death – in

federal court. (Exh. 4, Fourth. Am. Complt., ¶¶ 107-111, *Estate of Bock, supra*; Exh. 9, Docket, *Estate of Bock, supra;* Exh. 5, Aug. 31, 2012 Memo. Decision, *Estate of Bock, supra,* pp. 13-14.) The Bocks brought their federal suit against the Department of Mental Health (DMH was the predecessor to DSH), Cliff Allenby, then-Director of DMH, and Dolly Matteucci, Executive Director of DSH-Napa. (Exh. 9, Docket, *Estate of Bock, supra.*) However, the Bocks dropped Allenby and Matteucci from the action on May 26, 2011, with the filing of their first amended complaint, and dropped DMH from the action on March 12, 2012, with the filing of their third amended complaint. (*Ibid.*)

The Bocks focused their federal action against Sutter County defendants, contending, "Napa State Hospital had notified Sutter County that Decedent was approved for admission and that each Defendant had been informed of such approval. These Defendants nonetheless failed to timely effectuate Decedent's transfer." (Exh. 4, Fourth Am. Complt., ¶¶ 107-111, *Estate of Bock, supra,* Exh. 5, Aug. 31, 2012 Memo. Decision, p. 14, *Estate of Bock, supra,* [discussing third am. complt.]; Req. J. Not.) No relief was then sought against the DMH, the Director of DMH or the Executive Director of DMH-Napa. (Exh. 4, Fourth. Am. Complt., ¶¶ 107-111, *Estate of Bock v. County of Sutter, supra.*) The Bocks settled their federal wrongful death action with Sutter County in June 2014. (Exh. 9, Docket, *Estate of Bock, supra.*) The Bocks chose their federal court action as the avenue for addressing their primary right, and must be held to that choice.[1] Defendant Ahlin's demurrer to the Bocks' complaint and each and every cause of action should therefore be sustained without leave to amend.

B. Kellie and Kimberly Bock are Estopped from Asserting DSH Delayed in Admitting their Father.

Because plaintiffs Kellie and Kimberly Bocks' allegations in this complaint are inconsistent with the allegations in their federal action against the County of Sutter for their father's death, their claim is barred by the doctrine of judicial estoppel. (*Drain, supra,* 69 Cal. App. 4th at p.

[1] The Bocks were represented in their federal wrongful death action by Michael Bien, Esq., who obtained long-standing equitable relief against the California Department of Corrections concerning its care of mentally ill inmates, and three other law firms. (See *Coleman v. Wilson* (1995) 912 F.Supp. 1282.)

961; *Prilliman, supra,* 53 Cal. App. 4th at pp. 957-960.) In this action, the Bocks indicate their father, Rodney Bock, was not timely transferred to DSH. (Complt., ¶ 13.) However, in their federal complaint against only Sutter County defendants, the Bocks averred that DSH authorized admission of their father yet the County defendants failed to deliver him to DSH-Napa. (Exh. 4, Fourth. Am. *Bock* Complaint, ¶¶ 107-111.) This Court should apply the doctrine of judicial estoppel and find the Bocks' inconsistent allegations warrant dismissal of their claims without leave to amend.

CONCLUSION

The complaint is substantively flawed on numerous grounds, ranging from failing to state a cause of action to failing to establish standing. For all the reasons stated, defendants' demurrer should be sustained, with dismissal of the State of California from the action.

Dated: October 1, 2015

Respectfully Submitted,

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