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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12
13
14 **STEPHANIE STIAVETTI, KELLIE**
15 **BOCK, KIMBERLY BOCK, ROSALIND**
16 **RANDLE, NANCY LEIVA, AMERICAN**
17 **CIVIL LIBERTIES UNION OF**
18 **NORTHERN CALIFORNIA, AMERICAN**
19 **CIVIL LIBERTIES UNION OF**
20 **SOUTHERN CALIFORNIA,**

Plaintiffs,

v.

21 **PAMELA AHLIN, AS DIRECTOR OF**
22 **THE CALIFORNIA DEPARTMENT OF**
23 **STATE HOSPITALS, SANTI J. ROGERS,**
24 **AS DIRECTOR OF THE CALIFORNIA**
25 **DEPARTMENT OF DEVELOPMENTAL**
26 **SERVICES, STATE OF CALIFORNIA,**

Defendants.

Case No. RG15779731

**DEFENDANTS' REPLY TO
PLAINTIFFS' OPPOSITION TO
DEMURRER**

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

1 Under the express language of section 526a, taxpayer standing hinges on the actual
2 payment or liability for “assessed” taxes. Section 526a states, in pertinent part, that a taxpayer
3 action may be maintained “by a citizen resident . . .who is assessed for and is liable to pay or,
4 within one year before the commencement of the action, has paid, a tax therein.” Under a plain
5 reading of the statute, the word “or” is intended to provide an alternative to the clause “is liable to
6 pay.” Thus, section 526a gives standing to two classes of persons who have been assessed for
7 taxes: (1) those who are liable to pay an assessed tax but who have not yet paid, and (2) those
8 who paid an assessed tax within one year before the filing of the lawsuit.

9 This language is susceptible to only one reasonable interpretation: proof of payment of an
10 assessed tax is required for section 526a standing. In *Torres v. City of Yorba Linda* (1993) 13
11 Cal.App.4th 1035, 1047, the court found this language meant that plaintiffs, who did not reside or
12 own real property in the City of Yorba Linda, lacked standing to sue the City of Yorba Linda on
13 the basis of their payment of sales tax. (*Id.* at pp. 1039, 1047-1048.) Even after the California
14 Supreme Court’s *Tobe* decision, the court in *Cornelius v. Los Angeles County etc. Authority*
15 (1996) 49 Cal.App.4th 1761 relied upon the statutory language in rejecting a plaintiff’s asserted
16 standing to sue a Los Angeles County agency on the basis of payment of state income taxes. The
17 *Cornelius* court found the statutory language of section 526a “speaks in terms of “an assessed”
18 tax” and so “is consistent with ad valorem property taxes, be that on real property or personal
19 property.” (*Id.* at p. 1775.) Black’s Law Dictionary defines assessed as: “Term is equivalent to
20 ‘imposed.’ To value or appraise. [Citation.]” (*Id.*) In accord, other courts found the payment of
21 property taxes, even by non-resident plaintiffs, was necessary to establish section 526a standing.
22 (*Thompson v. Petaluma Police Dept.* (2014) 231 Cal.App.4th 101, 105, citing *Irwin v. City of*
23 *Manhattan Beach* (1966) 65 Cal.2d 13, 19.) In accord, this Court should reject plaintiffs’
24 assertion that income taxes meet the definition of assessed taxes under section 526a.²

25
26 ² Should plaintiffs argue that the *Tobe* decision should be followed, defendants assert the
27 rule of *stare decisis* indicates this Court should follow the *Cornelius* decision as it expressly
28 addresses the issue of payment of property taxes for 526a standing, and it issued after the
Supreme Court’s decision in *Tobe*. The *Cornelius* decision did not discuss the *Tobe* decision.

1 Moreover, strong public policy concerns militate against finding payment of income taxes
2 enables section 526a taxpayer standing. While a plaintiff’s payment of property taxes can be
3 verified in discovery through public databases, verification of a plaintiff’s income tax payment
4 intrudes upon the confidentiality accorded by law to income tax statements. (*Sav-on Drugs, Inc.*
5 *v. Super. Ct. (Botney)*(1975) 15 Cal.3d 1, 6.) Further, “[i]f mere payment of state income taxes
6 conferred standing, then any state-implemented program that to any degree was financed by state
7 income tax could be subject to a legal challenge by any resident in any California county as long
8 as the resident paid state income taxes. (*Cornelius, supra*, 49 Cal.App.4th at p. 1778.) Such
9 expansion of section 526a standing, which already does not require actual injury, must “come
10 from our Supreme Court.” (*Id.* at p. 1779.) Plus, “there is no reason to believe that a party who
11 fulfills the case law requirement of actual injury cannot come forward to challenge” these alleged
12 IST admission practices (*id.*), given the “far-reaching scope” of the Department of State
13 Hospitals’ (DSH) and Department of Developmental Services’ (DDS) screening and placement of
14 defendants committed to their care, as well as the “pervasive” nature of the statutory schemes for
15 such admissions. (*Ibid.*) In light of these significant policy interests, the demurrer should be
16 sustained on the basis of lack of standing.

17 **B. Plaintiffs ACLU Do Not Show Associational Standing Under 526a.**

18 Plaintiffs ACLU admit they lack taxpayer standing to bring suit as entities in this matter.
19 (Oppo. , p. 8, fn. 3.) Hence, this Court should sustain defendants’ demurrer on that basis.

20 Plaintiffs ACLU’s assertion that they have taxpayer standing to bring suit “by virtue of the
21 taxes paid by their respective members” does not avoid the pending demurrer. (Plf. Sur-Reply to
22 Mot. Stay, Decl. Oswell, ¶ 5.) As a “representative organization or association,” their standing to
23 bring an action depends on whether their “members would have had standing to bring that action
24 as individuals.” (*Taxpayers for Accountable School Bond Spending* (2013) 215 Cal.App.4th
25 1013, 1031.) The complaint’s vague allegation that members pay unspecified “California taxes”
26 is insufficient to establish standing of any member. (Complt., ¶ 15; Demurrer, p. 20:4-12.)
27 Plaintiffs do not indicate that this allegation can be corrected to indicate any member of the
28

1 plaintiffs ACLU is liable for or pays assessed property taxes. Therefore, the demurrer to
2 plaintiffs ACLU's associational standing under section 526a should be sustained.

3 **C. No Mandamus Cause of Action Nor Citizen Standing is Alleged.**

4 Plaintiffs' complaint does not allege, and their opposition does not cite to, any allegation of
5 citizen standing or a mandamus cause of action. (Oppo., pp. 10:28 & 26:12-18.) Because
6 plaintiffs have the burden of properly pleading standing and a cause of action in mandamus, any
7 request to imply such allegation should be denied. (*Pich v. Lightbourne* (2013) 221 Cal.App.4th
8 480, 490 [affirming trial court's sustaining of demurrer].) Plaintiffs have not plead "sufficient
9 ultimate facts" of the three elements for mandamus. (*Id.* at p. 490.) First, plaintiffs have not
10 alleged that they seek to compel the DSH and DDS perform "an act which the law specially
11 enjoins, as a duty resulting from an office, trust, or station," and which they refuse to perform.
12 (*Id.*, citing Code Civ. Proc., § 1085, subd. (a).) Nor can they: established case law provides for a
13 "reasonable period of time" for admission. (*In re Mille* (2010) 182 Cal.App.4th 635, 650.)

14 Second, plaintiffs have not "plead they have a beneficial interest in the outcome of the
15 proceedings." (*Pich, supra*, 221 Cal.App.4th at p. 490, citing Code Civ. Proc., § 1086.) They
16 have not plead "some special interest to be served or some particular right to be preserved or
17 protected over and above the interest held in common with the public at large." (*Save the Plastic*
18 *Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166; see also *Green v. Obledo*
19 (1981) 29 Cal.3d 126, 144.) The complaint's focus on the individual experiences of plaintiffs'
20 relatives does not suggest citizen standing nor a special, beneficial interest beyond that of the
21 public. In addition, because the complaint focuses on criminal proceedings, citizen standing must
22 be denied as an improper intrusion on such proceedings. (See *Taliaferro v. Locke* (1960) 182
23 Cal.App.2d 752, 756; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 450-451.)

24 Third, plaintiffs have not plead facts showing "no other plain, speedy, or adequate remedy
25 at law." (*Pich, supra*, 221 Cal.App.4th at p. 490, citing Code Civ. Proc., § 1086.) The failure to
26 exhaust means the plaintiffs are not entitled to extraordinary relief. (*Id.* at p. 490 [citations
27 omitted].) The complaint fails to allege the three requisite elements of a traditional mandamus
28 cause of action, including citizen standing; hence, defendants' demurrer should be sustained.

1 **II. THE STATE DUE PROCESS CAUSE OF ACTION CANNOT PROCEED.**

2 Plaintiffs’ procedural due process claim under the state constitution, as well as any
3 mandamus claim, cannot proceed because a “plain, speedy, or adequate remedy at law” is
4 available at law. (*Pich, supra*, 221 Cal.App.4th at p. 490, citing Code Civ. Proc., § 1086.) “The
5 writ of habeas corpus is available to contest an unlawful restraint on liberty.” (*People v. Brewer*
6 (2015) 235 Cal.App.4th 122, 154 (conc. & dis. opn. of Nicholson, J.)) A “writ of habeas corpus
7 is considered the fundamental instrument for safeguarding individual freedom against arbitrary
8 and lawless state action.” (36 Cal.Jur.3d Habeas Corpus § 1, citing *Harris v. Nelson* (1969) 394
9 U.S. 286.) The Judicial Council’s standard form (MC-275) for habeas petitions renders the writ
10 process plain and speedy. Plus, habeas petitions may seek blanket prospective orders or release.
11 (*Brewer, supra*, 235 Cal.App.4th at pp. 127, 133, 154-155) Because habeas proceedings provide
12 timely and potentially prospective relief for any violation of the procedural due process rights of
13 defendants declared incompetent to stand trial (IST defendants), plaintiffs cannot state a cause of
14 action for procedural due process nor mandamus.

15 Assuming arguendo this Court considers plaintiffs’ belated identification of their first cause
16 of action as alleging a substantive due process claim (Oppo., p. 14: 17-19),³ the cause of action is
17 flawed. The California Constitution, article 1, section 7, addresses “a state’s interference with
18 personal decisions relating to marriage, procreation, contraception, family relationships, child
19 rearing, education, and matters pertaining to an individual’s bodily integrity.” (Cal. Civ. Practice,
20 Civil Rights Litigation, §7.18 [citations omitted].) Such personal decisions are not at stake in this
21 matter. Even if the substantive due process afforded by the state constitution applies, the
22 statutory framework for the commitment and admission of IST defendants (Penal Code, §§1370,
23 1370.1 et seq.) bears a reasonable relation to the defendants’ substantive due process right to
24 restorative care. (*Brewer, supra*, 235 Cal.App.4th at pp. 130-131.) The June 2014 amendments

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³ This Court may disregard plaintiffs’ citation to the *Oregon Advocacy Center v. Mink* (2003) 322
26 F.3d 1101 decision as state courts “are not bound by the decisions of the Ninth Circuit Court of
27 Appeals, even on constitutional issues.” (*Brewer, supra*, 235 Cal.App.4th at p. 152, citing *People*
28 *v. Bradley* (1969) 1 Cal.3d 80, 8.)

1 to Penal Code section 1370 further protect such rights by vesting DSH with additional discretion
2 over the screening and placement of IST defendants committed to its facilities. (*Id.* at pp. 140-
3 143.) Therefore, the alleged state due process claim is not viable.

4 **III. THE STATE SPEEDY TRIAL CAUSE OF ACTION IS NOT VIABLE.**

5 Plaintiffs fail to state a claim for violation of the state constitutional right to a speedy trial.
6 The courts have consistently rejected the notion that the provisions of Penal Code section 1368, et
7 seq. “operate to deprive a committed defendant of his right to a speedy trial.” (*In re Davis* (1973)
8 8 Cal.3d 798, 801.) An IST defendant may await admission to DSH for “a reasonable time,”
9 dependent upon the individual circumstances of each defendant, without infringing upon his right
10 to a speedy trial. (*Mille, supra*, 182 Cal.App.4th at p. 650.) The complaint’s description of
11 county jails as not providing competency training is belied by recent amendments to Penal Code
12 1369.1 and 1370 which codify the provision of in-custody training.

13 Plaintiffs mistakenly rely upon criminal procedure in asserting they need not allege actual
14 harm to their speedy trial rights or defense on the merits. (Oppo., p. 18, fn. 8.) Because plaintiffs
15 seek injunctive relief under 526a, the complaint must allege “irreparable harm.” (Code Civ. Proc.
16 § 526, subd. (a)(2).) “An injunction . . . must be supported by actual evidence that there is a
17 realistic prospect that the party enjoined intends to engage in the prohibited activity.” (*Korean*
18 *Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.)
19 Plaintiffs’ failure to allege harm to their right to speedy trial, and their implicit request for judicial
20 management of criminal attorney’s speedy trial decisions, warrants sustaining the demurrer.

21 **IV. THE FEDERAL DUE PROCESS CAUSE OF ACTION IS NOT VIABLE.**

22 Plaintiffs assert that the complaint states a direct claim for violation of the due process
23 clause under the Fourteenth Amendment, and not a Section 1983 claim. (Oppo., 1:27-2:2.) Yet,
24 plaintiffs have not provided the requisite “‘careful description’ of the asserted fundamental liberty
25 interest.” (*Washington v. Glucksberg* (1997) 521 U.S. 702, 721.) This “concrete and
26 particularized” description (*Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 940) must
27 conform to the narrowing scope of the Fourteenth Amendment’s substantive due process
28 protection to matters of marriage, procreation, and bodily integrity. (*Washington, supra*, 521 U.S.

1 at p. 720; see also Cal. Civ. Practice, Civil Rights Litigation, §7.18 [citations omitted].) Absent
2 such a description, the complaint fails to state a cause of action.

3 Assuming arguendo plaintiffs properly allege violation of a substantive due process right,
4 the cause of action is not viable. As observed by the high court, “guideposts for responsible
5 decision making in this unchartered area are scarce and open-ended.” (*Collins v. Harker*
6 *Heights* (1992) 503 U.S. 115, 125.) However, the statutory framework for the commitment of
7 IST defendants (Penal Code, §§1370, 1370.1 et seq.) protects defendants’ substantive due process
8 rights. (*Brewer, supra*, 235 Cal.App.4th at pp. 130-131.) The June 2014 amendments to Penal
9 Code section 1370 increase that protection by vesting DSH with additional discretion over the
10 screening and placement of IST defendants committed to its care. (*Id.* at pp. 140-143.) To the
11 extent plaintiffs assert the Fourteenth Amendment requires uniform timelines for admission to
12 DSH or DDS, the Supreme Court has declared that it not “appropriate to attempt to prescribe
13 arbitrary time limits” for the admission of an IST defendant to DSH or DDS. (*Jackson, supra*,
14 406 U.S. at p. 738.) Given the Penal Code provisions for admission have a reasonable relation to
15 IST defendants’ substantive due process rights, defendants’ demurrer Fourteenth Amendment
16 claim should be sustained.

17 **V. THE TAXPAYER CAUSE OF ACTION CANNOT PROCEED.**

18 **A. This 526a Mandamus Action is Barred by the Availability of Other**
19 **Remedies.**

20 Because plaintiffs bring this taxpayer action for mandamus relief, their complaint must
21 establish that no adequate remedy exists at law. As stated above, adequate remedies at law exist
22 to address the alleged timeframes for the admissions of IST defendants. Contrary to plaintiffs’
23 assertion, “broad injunctive relief” (Oppo., p. 20:23) can be and has been obtained through habeas
24 proceedings brought by criminal defendants. (See e.g. *In re Walters* (1975) 15 Cal.3d 738, 744
25 [pretrial procedures in misdemeanor cases].) Hence, defendants’ demurrer should be sustained.

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1 **B. This Action Improperly Seeks Enforcement of Penal Code Provisions.**

2 This mandamus action is not simply addressing an alleged violation of the constitutional
3 right to competency training - if it were, other providers of such care would be named.⁴ (Oppo.,
4 p. 19: 25-26.) This action names only the Directors of DSH and DDS because it seeks to enforce
5 the legislative scheme identifying DSH and DDS as appropriate providers of competency
6 training. As such, this taxpayer action intrudes upon the legislative scheme by seeking to impose
7 judicial management of admission decisions left, by statute, to the discretion of the DSH and
8 DDS as well as the committing courts and criminal defense counsels. This Court should sustain
9 the demurrer in light of the decision of *Animal Legal Defense Fund v. California Exposition and*
10 *State Fairs* (2015) 239 Cal.App.4th 1286, 1297, rev. denied (Nov. 10, 2015).

11 **C. The Complaint Fails to Establish an Illegal Expenditure.**

12 The complaint fails to establish the necessary element of “illegal or wasteful expenditure of
13 public funds” to state a cognizable taxpayer claim. (4 Witkin, Cal. Procedure (2002 Supp.)
14 Pleading, § 144, p. 39, citing *Waste Management of Alameda County, Inc. v. County of Alameda*
15 (2000) 79 Cal.App.4th 1223, 1240.) Plaintiffs’ lengthy and irrelevant description of various
16 events involving their family members, as well as “snapshot in time” data, amounts to “general
17 innuendo.” (*Id.*) The “reasonable time period” set in *Mille* for admissions, with DSH’s successful
18 appeals of blanket admission orders, belies any illegal conduct by defendants. (See e.g. *Brewer*,
19 *supra*, 235 Cal.App.4th 122.) The demurrer should be sustained to the taxpayer cause of action.

20 **D. The State of California is Not a Proper Defendant in this 526a Action.**

21 As a general rule, section 526a applies to state agencies and officials (*Chiatello v. City and*
22 *County of San Francisco* (2010) 189 Cal.App.4th 472, 482), but not to the State of California.
23 (*Farley v. Cory* (1978) 78 Cal.App.3d 583, 589, fn. 5; *Ahlgren v. Carr* (1962) 209 Cal.App.2d
24 248; *Waste Management, supra*, 79 Cal.App.4th at p. 1240.) In *Vasquez v. State of California*

25 _____
26 ⁴ Defendants DSH and DDS recognize the statutory scheme identifies their departments,
27 and others, as appropriate providers of competency training. However, in the context of the
28 allegations of this complaint, defendants object to plaintiffs’ broad, unsupported assertion of a
mandatory duty under Government Code section 815.6, a ministerial duty, and a constitutional
duty to provide competency care with a certain timeframe. (Oppo., pp. 20:12, 24:5, 29:18-19.)

1 (2003) 105 Cal.App.4th 849, 856-859, the court only considered and ruled upon the state
2 official's status as a proper defendant. In one exceptional case, the State was subject to section
3 526a suit due to its explicit constitutional role in the educational system. (*Butt v. State of*
4 *California* (1992) 4 Cal.4th 668, 678-679.) In contrast, Penal Code sections 1370 and 1370.1 do
5 not identify the State of California (or its officers and agents) as having any role in the admissions
6 of IST defendants. The erroneous assertion that the State of California has "ultimate
7 responsibility" for such admissions should be disregarded, a writ against State officers be denied,
8 and the State of California dismissed with prejudice. (Complt., ¶ 18; Oppo., p. 25:22-25.)

9 **E. The Limitations Period Precludes Plaintiffs Leiva and Bocks' Suit.**

10 Plaintiffs' contention that their complaint is, alternatively, a petition for writ of mandamus,
11 introduces different limitations periods. As stated in the demurrer, the two-year period applies to
12 civil rights actions, thus barring Leiva's and Bocks' claims. In the alternative, a mandamus
13 petition is subject to the three-year limitation period for a liability created by statute, such as this
14 mandamus action. (Code Civ. Proc., § 312, 338.) The three-year limitation period forecloses
15 plaintiffs Bocks' claims.

16 In addition, the Bocks' improper splitting of their causes of action bars their claim in this
17 matter. The Bocks' cause of action accrued in 2010, with the in-custody death of their father.
18 The Bocks filed a wrongful death action concerning their father's death in 2011 but did not file
19 this mandamus petition until 2015. The Bocks' decision to now bring this mandamus action
20 violates the rule against splitting their cause of action. Plaintiffs do not rebut this legal argument
21 with any citation to authority, hence their rebuttal should be disregarded. (*Woods v. Horton*
22 (2008) 167 Cal.App.4th 658, 677; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-
23 785.) Moreover, any alleged "ongoing accrual" of the taxpayer cause of action is not alleged nor
24 shown by legal authority to supersede the rule against splitting a cause of action. (*Howard Jarvis*
25 *Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 821.) Because over three years have
26 passed since the accrual of their taxpayer cause of action, and the Bocks should not be permitted
27 to bring suit twice on the same events, this Court should dismiss the Bocks from this action.
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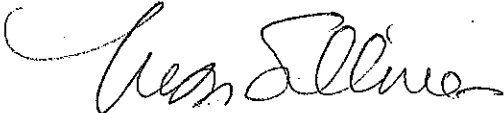
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CONCLUSION

For all the reasons stated, defendants' demurrer to the complaint should be sustained, with dismissal with prejudice of the State of California as an improper defendant.

Dated: December 11, 2015

Respectfully Submitted,
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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Stephanie Stiavetti, et al. v. Pamela Ahlin, et al.**

No.: **RG15779731**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550

On December 11, 2015, I served the attached [DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEMURRER] by transmitting a true copy via electronic mail addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 11, 2015, at Sacramento, California.

Julie Hutcherson

Declarant


Signature