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**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

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Stiavetti  <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p>  Ahlin  <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG15779731</u>  Order  Demurrer to Complaint Overruled
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The Demurrer to Complaint filed for State of California and Santi J. Rogers and Pamela Ahlin was set for hearing on 04/26/2016 at 10:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The Demurrer of defendants Pamela Ahlin, sued in her official capacity as Director of the Department of State Hospitals, Santi Rogers, sued in his official capacity as Director of the Department of Developmental Services, and the State of California (collectively, "Defendants") To the Petition For Writ of Mandate and Complaint For Declaratory and Injunctive Relief ("Complaint") of plaintiffs Stephanie Stiavetti, Kellie Bock, Kimberly Bock, Rosalind Randle, Nancy Leiva, American Civil Liberties Union of Northern California ("ACLU-NC"), and American Civil Liberties Union of Southern California ("ACLU-SC") (collectively, "Plaintiffs") is ruled on as follows:

**BACKGROUND:**

Plaintiff filed the currently operative Petition For Writ Of Mandate And Complaint in this action on July 29, 2015 ("Complaint") seeking relief on behalf of criminal defendants who have been found incompetent to stand trial ("IST defendants"). Plaintiffs allege that these individuals languish in jail for months even after a court has ordered them committed for competency restoration, usually without adequate treatment. (Complaint, paragraphs 1-2). The IST defendants fall into two categories, those who are found to be mentally incompetent (to whom Penal Code section 1370 applies, "1370 defendants"), and those who are found to be mentally incompetent and are developmentally disabled (to whom Penal Code section 1370.1 applies, "1370.1 defendants"). The placement of 1370 defendants is done by the Department of State Hospitals ("DSH") and the placement of 1370.1 defendants is done by the Department of Developmental Services ("DDS").

The individual plaintiffs, Stephanie Stiavetti, Kellie Bock, Kimberly Bock, Rosalind Randle and Nancy Leiva, are family members of IST defendants, and all but Nancy Leiva allege that they "pay income and other state and local taxes." ACLU-NC and ACLU-SC are non-profit organizations and allege that they and many of their members are assessed and pay California taxes every year.

The Complaint sets forth four causes of action: 1) Violation of California Constitution, Article I, section 7 (Due Process); 2) Violation of California Constitution, Article I, section 15 (Speedy Trial); 3) Violation of United States Constitution, Amendment 14 (Due Process); and 4) Taxpayer Action Under

Code of Civil Procedure ("CCP") section 526a To Prevent Illegal Expenditure of Funds. The prayer is for a declaration that Defendants' delays in admitting IST defendants violate the due process clauses of both the state and federal constitutions and the speedy trial clause of the state constitution, a writ of mandate and an injunction directing Defendants to admit IST defendants within a constitutionally permissible time following the order of commitment, and attorneys' fees and costs pursuant to CCP section 1021.5.

#### DEMURRER:

Defendants demur to each cause of action on under CCP section 430.10 (e) ["does not state facts sufficient to constitute a cause of action"], (f) ["pleading is uncertain"] and (d) ["defect or misjoinder of parties"]. They also assert that because the Complaint fails to state a cause of action for mandamus relief that no mandamus relief can be granted, and that the Complaint is not properly verified.

The court notes that certain of Defendants' arguments were withdrawn after court-ordered meet and confer sessions with Plaintiffs, as set forth in Defendants' Supplemental Statement Of Meet And Confer Regarding Defendants' Demurrer To Complaint, filed on March 24, 2016. Accordingly, those arguments will not be discussed.

#### STANDING:

Defendant argues that Plaintiffs have not properly alleged taxpayer standing (Code of Civil Procedure section 526a, "526a standing") to pursue any of their causes of action because they have not alleged payment of taxes that are "assessed," such as ad valorem taxes on real or personal property (citing, *inter alia*, *Blair v. Pitchess* (1971) 5 Cal.3d 258, 269 fn.2; and *Cornelius v. Los Angeles County Met. Trans. Authority* (1996) 49 Cal.App.4th 1761, 1775-1779 ["*Cornelius*"]). Defendants also argue that ACLU-NC and ACLU-SC have not properly alleged associational standing under 526a because they only vaguely allege that their members pay unspecified "California taxes."

In opposition, Plaintiffs argue that the alleged payment of income and other state and local taxes is adequate, citing cases in which similar allegations went unchallenged (e.g., *Cal. Ass'n For Safety Educ. v. Brown* (1994) 30 Cal.App.4th 1264, 1268 n.1), or where the type of taxes paid by the petitioners/plaintiffs were not identified (e.g., *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1081, 1086 ["*Tobe*"]).

The only case cited by either party in which the question of whether the payment of state income taxes confers 526a standing was directly addressed is *Cornelius*. While Defendants are correct that the *Cornelius* court found no 526a standing on the facts before it, the court concludes that *Cornelius* is distinguishable. The *Cornelius* plaintiff sought to challenge an affirmative action program implemented by the Los Angeles County Metropolitan Transportation Authority ("MTA"), a local governmental agency (*Cornelius*, at 1764), and the court's ruling on the taxpayer standing issue was based on an analysis of the MTA's revenue sources, only 15 percent of which came from the state government, and the conclusions that the relationship between the taxes paid and the policy being contested was "tangential" and that initiation of lawsuits against local public agencies based only on the payment of state income taxes would not be sound public policy. (*Cornelius*, at 1777-1779.) Here, Plaintiffs are challenging the actions or inactions of State agencies, and as Plaintiffs correctly point out in their opposition, there are no published cases that support the blanket assertion that 526a standing in an action against a State agency may only be based on assessment of property taxes. Indeed, other cases against local governments or agencies, such as *Tobe*, support the inference that property ownership is not necessary, as the plaintiffs in that case included homeless persons who were taxpayers (*Tobe*, at 1081 and 1086.)

The court also rejects Defendants' challenge to the associational standing of ACLU-NC and ACLU-SC. While it is true that the kind of taxes that the members of these associations is not spelled out in the Complaint, Defendants cannot reasonably assert that none of the members own real property, let alone that none of them pay state income taxes.

Although Defendants' 526a standing arguments did not single out any of the individual Plaintiffs, as noted above, there are no taxpayer allegations in the Complaint that apply to Nancy Leiva. Accordingly, Defendant's demurrer on the basis of lack of 526a standing is SUSTAINED as to Nancy Leiva and OVERRULED as to all other Plaintiffs. Nancy Leiva does not have standing to pursue the 1st, 2nd, 3rd

or 4th causes of action. As further addressed, below, however, all of the named plaintiffs, including Nancy Leiva, have citizen standing to pursue mandamus relief.

#### DUE PROCESS (STATE):

As to the 1st cause of action, Defendant argues that the habeas process, as codified in the Penal Code ("PC"), provides due process, and the availability of Order To Show Cause ("OSC") proceedings and petitions for writs of habeas corpus foreclose Plaintiffs' cause of action for due process under the state constitution. Defendants also assert that plaintiffs Stiavetti and Bock cannot establish a due process violation because Stiavetti's brother was admitted within a reasonable time after commitment, and Bock's father expired within ten days of his commitment order.

In opposition, Plaintiffs argue that the availability of post-deprivation relief in individual cases is irrelevant to Plaintiffs' due process claims, which are based on both substantive and procedural due process. (Citing, *inter alia*, *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101 (9th Cir. 2003).) The court agrees. Plaintiff also argues that the separate argument as to Stiavetti and Bock misconstrues Plaintiffs' claims, which are not based on the circumstances specific to these families. Again, the court agrees.

Defendants' demurrer to the 1st cause of action is **OVERRULED**.

#### SPEEDY TRIAL (STATE):

As to the 2nd cause of action, Defendants argue (a) that there is no private right of action to enforce another's right to speedy trial, the enforcement mechanisms protecting the right to a speedy trial may be brought either by the criminal defendant or their appointed counsel, but not by family members; (b) because the right to a speedy trial is subordinate to the constitutional right to not undergo trial while incompetent, 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 (citing, *inter alia*, *People v. McGill* (1968) 257 Cal.App.2d 759, 761); and (c) the Complaint is silent regarding any effort by the IST defendants or their counsel to assert their right to a speedy trial, so they may have waived their rights or otherwise consented to delays.

In opposition, Plaintiffs argue that their claims are consistent with those in *Craft v. Sup. Ct.* (2006) 140 Cal.App.4th 1533 ("Craft"), and are consistent with the general and established rule that a taxpayer plaintiff may bring a cause of action to challenge unlawful expenditure of public funds in violation of the state and federal constitutions, even when individual relief is available to incarcerated defendants (citing *Van Atta v. Scott* (1980) 27 Cal.3d 424, 447-448 ["Van Atta"].) The court agrees.

Defendants' demurrer to the 2nd cause of action is **OVERRULED**.

#### DUE PROCESS (FEDERAL):

As to the 3rd cause of action, Defendants argue that there is no cause of action directly under the United States Constitution. Rather, relief must be sought under 42 U.S.C. section 1983 (citing *Azul-Pacifico Inc. v. City of Los Angeles*, 973 F.2d 704, 705). This argument was apparently based on Defendants' assumption that Plaintiffs' constitutional claims, both state and federal, were for procedural due process only. Plaintiffs' opposition arguments are directed to the challenges to both the 1st and the 3rd causes of action, and are well taken. Plaintiffs do not state a claim under 42 U.S.C. section 1983, nor are they required to do so. (*Mission Hosp. Reg'l Med. Ctr. v. Shewry* (2008) 168 Cal.App.4th 460, 479-480.)

Defendants' demurrer to the 3rd cause of action is **OVERRULED**.

#### ILLEGAL SPENDING:

As to the 4th cause of action, Defendants argue that Plaintiffs have not alleged specific facts of illegal spending (citing, *inter alia*, *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1240), and that a taxpayer claim cannot be brought based on state officials' discretionary acts (citing, *inter alia*, *California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1281.)

Defendants' discretionary acts argument is supported by a discussion of the applicable statutory

provisions. The statutory scheme for IST defendants with mental disorders (PC 1370) does not include quantitative time frames for admission to DSH, but does require a progress report within 90 days of the commitment order (PC 1370(b)(1)), and the court in *In re Mille, on Habeas Corpus* (2010) 182 Cal.App.4th 635, 650, applying constitutional principles, held that when a court orders an IST defendant committed to a state hospital the actual transfer must happen "within a reasonable period of time." Defendants also point out that amendments to PC 1370 in 2012 and 2014 established that treatment facilities are not limited to DSH, but may include a county jail or a community-based residential treatment facility, and the 2014 amendments also shifted control over the admission of IST defendants from the committing court to DSH and increased DSH's statutory discretion.

As to the 1370.1 defendants, Defendants assert that DDS is not the only placement option. They may be committed to a state hospital, a developmental center, or other approved residential facility, or may be placed on outpatient status. (PC 1370.1(a)(1)(B)(i).) That is to say, DDS does not have sole responsibility to provide training and evaluation under PC 1370.1. Defendants further assert that when a 1370.1 defendant is committed to DDS, the DDS facility at Porterville Development Center is subject to a statutory population cap, and DDS has the discretion to reject placements at Porterville on the basis of security issues and other patient health factors. Like PC 1370, PC 1370.1 does not state a quantitative timeframe for DDS to admit an IST defendant following a commitment order, although PC 1370.1 does not have a 90 day progress report requirement.

In opposition, Plaintiffs argue that the Complaint includes ample allegations that Defendants have engaged in systematic constitutional violations, and their statutory discretion is subordinate to their constitutional duty, which is not discretionary. (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 790.) Plaintiff further argues that 526a relief is available independent of any other alleged avenues of relief. (*Van Atta*, at 447.) The court agrees. The factual allegations in the Complaint are sufficient, for pleading purposes.

Defendants' demurrer to the 4th cause of action is **OVERRULED**.

**STATE AS DEFENDANT:**

Defendants argue that the State of California is not a proper defendant for any of Plaintiffs' claims, because they cannot obtain mandamus, injunctive or declaratory relief, or bring a taxpayer claim, against the State of California, as distinct from an agency or officer (citing *State v. Sup. Ct.* (1974) 12 Cal.3d 237, 255).

Plaintiffs' only argument in opposition is that there is no blanket rule that writ or injunctive relief may not be obtained as to the State of California. This argument misses the point, which is that any form of relief in this case would be directed to the DHS and the DDS, and Plaintiffs acknowledge that if the State's demurrer is sustained as to the petition for writ of mandate, it would have no effect on the writ as to the other Defendants. (Opposition, page 26, fn.14.)

Since there is no apparent basis for Plaintiffs' claims as against the State of California, the State of California's demurrer to the entire Complaint is **SUSTAINED**, and the State of California is **DISMISSED**.

**MANDAMUS:**

Defendants argue that Plaintiffs' mandamus claim must fail because they have not separately stated a mandamus cause of action as required by California Rule of Court ("CRC") 2.112, and because the elements of a mandamus cause of action have not been pled. These arguments have no merit. There is no authority for the proposition that mandamus, which is a form of relief, must be set forth in a separate cause of action, the constitutional rights of the IST defendants are enforceable by writ of mandate, and the fact that Defendants exercise some discretion in implementing mandatory constitutional duties does not foreclose the availability of mandamus relief.

It is not clear to the court whether Defendants intended to withdraw their "clear, present and beneficial right" standing argument as applied to the writ of mandate. If not, the court rejects this argument on the merits. The allegations of the Complaint are sufficient to establish "citizen standing." (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.)

Defendants' demurrer to the Writ of Mandate is OVERRULED.

CLAIM SPLITTING:

Finally, Defendants assert that Plaintiffs Kellie and Kimberly Bock have improperly split their claims, as they both brought suit in federal court in 2011 alleging the failure to timely transfer their father from county jail to DSH caused his death. Also, in that suit, the Bocks averred that DSH authorized admission of their father yet the County defendants failed to deliver him, which is inconsistent with the allegations in this case. This argument misconstrues Plaintiffs' claims, which are not based on the circumstances specific to these families.

To the extent Defendants' demurrer is based on this argument, it is OVERRULED.


RULING:

The State of California is DISMISSED as a defendant.

Defendants Ahlin and Rogers shall answer the Complaint forthwith, and no later than May 6, 2016.

Defendants' Request for Judicial Notice is GRANTED as to the existence of the subject records only.

Dated: 04/26/2016

Facsimile  


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Judge Winifred Y. Smith

SHORT TITLE:

Stiavetti VS Ahlin

CASE NUMBER:

RG15779731

ADDITIONAL ADDRESSEES

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