

FAXED COPY

1 Michael Temple Risher (SBN 191627)
mrisher@aclunc.org
2 Micaela Davis (SBN 282195)
mdavis@aclunc.org
3 American Civil Liberties Union
Foundation of Northern California, Inc.
4 39 Drumm Street
San Francisco, CA 94111
5 Telephone: (415) 621-2493
Facsimile: (415) 255-8437

6 Laura Oswell (SBN 241281)
oswelll@sullcrom.com
7 Christopher C. Morley (SBN 281895)
morleyc@sullcrom.com
8 Duncan C. Simpson (SBN 298776)
simpsond@sullcrom.com
9 Sullivan & Cromwell LLP
10 1870 Embarcadero Road
Palo Alto, California 94303
11 Telephone: (650) 461-5600
Facsimile: (650) 461-5700

12 Attorneys for Plaintiffs
13 *(Additional Counsel Listed After Caption)*

14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF ALAMEDA

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

21
22 Plaintiffs,

23 v.

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

28 Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

JUL 29 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson Deputy

CASE NO.: RG 15 7 7 9 7 3 1

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF: VIOLATION OF CALIFORNIA
AND UNITED STATES
CONSTITUTIONAL RIGHTS TO DUE
PROCESS AND CALIFORNIA
CONSTITUTIONAL RIGHT TO SPEEDY
TRIAL

1 Peter J. Eliasberg (SBN 189910)
2 peliasberg@aclusocal.org
3 American Civil Liberties Union
4 Foundation of Southern California
5 1313 West 8th Street
6 Los Angeles, CA 90017
7 Telephone: (213) 977-9500
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Plaintiffs allege as follows:

2 I. INTRODUCTION

3 1. Criminal defendants who have been found incompetent to stand trial have a constitutional
4 right to adequate and timely evaluation and, where possible, treatment to restore them to competency so
5 that they may proceed to trial or otherwise resolve their charges.

6 2. In California these individuals languish in jail for months even after the court has ordered
7 them committed for competency restoration, usually without adequate treatment for their serious mental
8 illnesses and in conditions that worsen their mental states and place them in danger. It is often only
9 when a judge threatens to hold the state officials in contempt for failing to obey the commitment order
10 that the defendant is finally admitted to an appropriate treatment facility.

11 3. This problem has persisted for years, even after California and federal appellate courts
12 have held that these types of delays are unlawful and countless superior court judges have ordered
13 Defendants to show cause why they should not be held in contempt for failing to admit incompetent
14 defendants to an appropriate treatment facility in a timely manner.

15 4. As of February 9, 2015, 366 incompetent defendants were awaiting admission to the
16 Department of State Hospitals ("DSH"), which has the primary responsibility for evaluating and treating
17 defendants who are incompetent because of a mental disorder. Some of these individuals had been
18 waiting in jail for more than five months — one of them had been waiting for 258 days. The average
19 time between the commitment date and the admission date for the previous 25 persons admitted as of
20 February 9 was more than 75 days.

21 5. The delays in admitting people with developmental disabilities are even longer. The
22 Department of Developmental Services ("DDS") has the primary responsibility for evaluating and
23 treating defendants who are incompetent because of a developmental disability. DDS recently reported
24 that "an estimated 52 individuals who have been issued court orders to receive competency training . . .
25 continue to be in jail or juvenile hall, pending availability of services at Porterville's [Secure Treatment
26 Program]." As of April 2, 2015, 11 individuals had been waiting for more than nine months following
27 their commitment, two of them for 384 days.

1 6. These delays are on top of the time that passes between the date that defendants are
2 initially suspected as being incompetent and the date that DSH or DDS first has a duty to admit them.
3 This additional time is usually at least a month and can be much longer.

4 7. While awaiting placement in State hospitals or developmental centers, incompetent
5 defendants are held in county jails. Those jails are rarely, if ever, equipped to treat individuals with
6 serious mental illnesses or to care for individuals with developmental disabilities. Incompetent
7 defendants are often held in solitary confinement because of their mental condition — a situation that
8 often exacerbates the prisoner's mental conditions, causes deterioration of their mental health, and
9 decreases the chances that they will achieve competency to proceed with their cases in a timely manner.
10 In addition, incompetent defendants' mental conditions sometimes lead to physical conflict with jail
11 personnel, endangering the safety of both jail staff and the inmates and sometimes leading to additional
12 criminal charges.

13 8. Plaintiffs, who are the family members of criminal defendants who have been found
14 incompetent to stand trial, bring this suit to put an end to this ongoing violation of the California and
15 federal constitutions.

16 II. JURISDICTION AND VENUE

17 9. This Court has jurisdiction under Article VI, Section 10, of the California Constitution
18 and California Code of Civil Procedure § 410.10.

19 10. Venue in this Court is proper because this is an action against Pamela Ahlin and Santi J.
20 Rogers in their official capacities for acts they performed as part of their public duties that caused, and
21 will continue to cause, legal injuries and deprivation of rights to persons in Alameda County. *See id.*
22 §§ 393(b), 395(a). In addition, because these directors reside in Sacramento and are unlawfully
23 spending taxpayer funds in that county, venue in this Court is proper because the California Attorney
24 General maintains an office in Alameda County. *Id.* §§ 393(b), 395(a), 401(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. PARTIES

11. Plaintiff Nancy Leiva is the mother of A¹, a criminal defendant who was determined incompetent to stand trial and ordered transferred to the DDS Porterville as is discussed below. A was detained in Los Angeles County jail for approximately eight months after the court ordered him admitted to Porterville. While awaiting admission to Porterville, A was the victim of multiple rapes at the county jail.

12. Plaintiff Stephanie Stiavetti is the sister of N, a criminal defendant who was determined incompetent to stand trial and ordered transferred to DSH as is discussed below. N was detained at Contra Costa County Jail for more than four weeks after his order of commitment before he was transferred to DSH. Ms. Stiavetti pays income and other state and local taxes.

13. Plaintiffs Kellie Bock and Kimberly Bock are daughters of the late Rodney Bock, a criminal defendant who was determined incompetent to stand trial and ordered transferred to DSH as is discussed below. Mr. Bock committed suicide while he was detained at Sutter County Jail, 10 days after the court had committed him to DSH. Kellie Bock and Kimberly Bock pay income and other state and local taxes.

14. Plaintiff Rosalind Randle is the mother of L, a criminal defendant who was determined incompetent to stand trial and ordered transferred to the DDS center at Porterville, CA, as is discussed below. L was detained at Contra Costa County Jail for approximately 12 months after being committed to Porterville and was finally transferred to outpatient treatment. Ms. Randle pays income and other state and local taxes.

15. The American Civil Liberties Union is a nationwide nonprofit, nonpartisan organization with over 500,000 members, dedicated to the defense and promotion of the guarantees of individual rights and liberties embodied in the state and federal constitutions. Plaintiff American Civil Liberties Union of Northern California (ACLU-NC), founded in 1934 and based in San Francisco, is one of the

¹ To protect the privacy of the Plaintiffs' family members who remain in custody, Plaintiffs refer to them by a single initial. The details of Rodney Bock's tragic death in custody have been made public and Plaintiffs therefore refer to him by name.

1 largest ACLU affiliates, with some 40,000 members. The ACLU-NC and many of its members are
2 assessed and pay California taxes every year. Plaintiff American Civil Liberties Union of Southern
3 California (ACLU-SC), founded in 1923 and based in Los Angeles, has more than 25,000 members. The
4 ACLU-SC and many of its members are assessed and pay California taxes every year.

5 16. Defendant Pamela Ahlin is the director of DSH. DSH is a California agency comprising
6 five state hospitals and three psychiatric programs located in state prisons. DSH has the primary
7 responsibility for evaluating and treating defendants who have been found incompetent to stand trial
8 because of a mental disorder through the California criminal justice system. Defendant Ahlin is named
9 in her official capacity only.

10 17. Defendant Santi J. Rogers is the director of DDS. DDS is a California agency that
11 provides services and support for approximately 228,000 children and adults with developmental
12 disabilities and has the primary responsibility for evaluating and treating defendants who have been
13 found incompetent to stand trial because of a developmental disability through the California criminal
14 justice system. Defendant Rogers is named in his official capacity only.

15 18. Defendant State of California has the ultimate responsibility to ensure that the
16 constitutional and statutory rights of defendants, including incompetent defendants, in its criminal
17 justice system are protected and upheld.

18 IV. STATEMENT OF FACTS

19 A. The Statutory and Constitutional Framework

20 19. Both due process and California statutory law mandate that a criminal defendant who,
21 because of a mental disorder or a developmental disability, lacks the ability to assist counsel and to
22 understand the nature of the criminal court proceedings cannot be tried or sentenced for a crime. *See*
23 *Indiana v. Edwards*, 554 U.S. 164, 169-70 (2008); Penal Code § 1367(a). To implement this
24 constitutional mandate, the California Penal Code sets forth a comprehensive framework for evaluating
25 a defendant's competency and monitoring his progress, and either returning a defendant to trial or, if he
26 cannot be made competent, for civilly committing the defendant or releasing him.

1 20. The Code defines "developmental disability" to mean "a disability that originates before
2 an individual attains 18 years of age, continues, or can be expected to continue, indefinitely and
3 constitutes a substantial handicap for the individual, . . . [including] intellectual disability, cerebral palsy,
4 epilepsy, and autism." Penal Code § 1370.1(a)(1)(H). The Code does not define "mental disorder," but
5 the constitutional mandate means that this term must include all other conditions that render a defendant
6 incompetent to stand trial.

7 21. Penal Code § 1368(a) provides that "[i]f, during the pendency of an action and prior to
8 judgment, or during revocation proceedings for a violation of probation, mandatory supervision, post-
9 release community supervision, or parole, a doubt arises in the mind of the judge as to the mental
10 competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for
11 the defendant whether, in the opinion of the attorney, the defendant is mentally competent."

12 22. If, after a trial or by stipulation, the defendant is found mentally incompetent or
13 developmentally disabled, the trial court must suspend criminal proceedings and either order that the
14 defendant be admitted to a treatment facility to "promote the defendant's speedy attainment of mental
15 competence," or place the defendant on outpatient status. Penal Code §§ 1370(a)(1)(B),
16 1370.1(a)(1)(B).

17 23. The treatment facility then must evaluate the defendant and provide the court with a
18 report "concerning the defendant's progress toward becoming mentally competent." Penal Code
19 §§ 1370(b)(1), 1370.1(b)(1). The facility must make this report within 90 days of the order of
20 commitment or the date of admission. Penal Code §§ 1370(b)(1), 1370.1(b)(1).

21 24. If the report shows that the defendant has been restored to competency, he is returned to
22 court within ten days so that criminal proceedings can resume. Penal Code §§ 1372(a); *see*
23 § 1370.1(a)(1)(C). If the defendant has not become mentally competent, but the report shows a
24 substantial likelihood that he will become competent, treatment may continue. Penal Code
25 §§ 1370(b)(1), 1370.1(b)(1).

26 25. If the facility determines that "there is no substantial likelihood that the defendant will
27 regain mental competence in the foreseeable future," it must return him to court so that the court and
28

1 prosecution can determine whether to institute civil commitment proceedings or release him from
2 custody. *See id.* §§ 1370(b)(1)(A), 1370.1(b)(1), (c)(2).

3 26. The Due Process Clause of the 14th Amendment to the United States Constitution
4 provides that “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of
5 law” The United States Supreme Court has held, under this provision, “that a person charged by a
6 State with a criminal offense who is committed solely on account of his incapacity to proceed to trial
7 cannot be held more than the reasonable period of time necessary to determine whether there is a
8 substantial probability that he will attain that capacity in the foreseeable future.” *Jackson v. Indiana*,
9 406 U.S. 715, 738 (1972).

10 27. Similarly, the California Supreme Court has held that our state constitution’s due process
11 clause “demands that the duration of commitments to state hospitals must bear some reasonable relation
12 to the purpose which originally justified the commitment.” *In re Davis*, 8 Cal. 3d 798, 805 (1973).

13 28. Moreover, Article I, § 15 of the California Constitution provides that “[t]he defendant in
14 a criminal cause has the right to a speedy public trial,” which is prejudiced when a defendant spends a
15 prolonged period in jail “unaccompanied by the course of treatment that served as the basis for the trial
16 court’s suspension of proceedings.” *Craft v. Superior Court*, 140 Cal. App. 4th 1533, 1543 (2006).

17 **B. Plaintiffs Have Watched Their Family Members Languish in Detention Awaiting**
18 **Commitment**

19 29. Nancy Leiva is the mother of A. A has intellectual disabilities and has been a client of
20 the Eastern Los Angeles Regional Center since he was an infant. He has been in special education
21 classes since he was in kindergarten and he receives supplemental security income payments. Because
22 of A’s inability to provide for his own personal and financial needs, Ms. Leiva has been appointed to be
23 A’s limited conservator.

24 30. A was arrested and incarcerated in Los Angeles County on September 9, 2011. On
25 December 6, 2012, A was found incompetent to stand trial pursuant to Penal Code § 1370.1, due to what
26 the court labeled mental retardation. The court ordered that A be committed to DDS under the
27 supervision of Porterville Developmental Center. Despite this order of commitment, A was forced to
28

1 wait in county jail for eight additional months before he was finally admitted to Porterville on August 8,
2 2013.

3 31. A's public defender and the court made numerous inquiries to Porterville as to when A
4 would be admitted over the course of this eight months. A's public defender filed a habeas petition on
5 behalf of A to attempt to remedy A's unlawful detention. The court issued an Order to Show Cause why
6 A had not yet been admitted despite the commitment order. Porterville consistently responded that they
7 could not admit A because the facility was at capacity and there were numerous others on the waiting
8 list ahead of A. Porterville further represented that they could not make any estimate as to when A
9 would be admitted due to the unpredictability of being able to obtain a vacancy at Porterville.

10 32. A's intellectual disabilities made the county jail an especially noxious and hostile place.
11 A was housed in general population where he was easy prey for the other inmates. The worst of the
12 abuse occurred while he was waiting to be admitted to Porterville. A was raped – multiple times – by
13 another inmate. A was traumatized by the assaults, and continues to suffer from post-traumatic stress
14 disorder. Even when the jail was made aware of the assaults, they did not provide A with any
15 emergency psychological therapy to assist him in recovering.

16 33. The lengthy period of detention following A's commitment order and the multiple rapes
17 to which A was subjected also caused great pain and suffering for A's mother. Ms. Leiva has been the
18 primary caretaker and advocate for A since his birth. She plays an especially important role in A's life
19 due to his life-long intellectual disabilities and need for support. It was anguishing for Ms. Leiva to
20 witness her son incarcerated in the county jail, an environment she knew he was not equipped to handle.
21 It was a particularly painful experience for Ms. Leiva to learn that her son had been the victim of
22 multiple rapes while incarcerated and to know she could not do anything to protect him from these
23 attacks.

24 34. Stephanie Stiavetti is the sister of N. On August 28, 2014, N was arrested for resisting
25 sheriff's deputies in the performance of their duties under Penal Code § 69. On September 2, 2014 a
26 felony complaint was filed against N for this charge.

1 35. On September 22, 2014 N was committed to DSH pursuant to Penal Code § 1370, *et seq.*
2 A month after the commitment order, N had still not been admitted to a DSH facility. On October 20,
3 2014 the superior court issued an Order to Show Cause Why Sanctions Should Not Be Ordered, and
4 ordered that the sheriff deliver, and that DSH admit, N within 21 days. Defendant N was admitted to
5 Metropolitan State Hospital sometime prior to November 3, 2014. N was transferred back from
6 Metropolitan State Hospital to the Contra Costa County Jail earlier this year, but was sent back to
7 Metropolitan State Hospital due to continued incompetency, after yet another delay.

8 36. The lengthy and ongoing periods of pretrial detention and the weeks of delay in being
9 admitted to the DSH system following the commitment order have caused great pain and suffering for
10 both N and his family, including Ms. Stiavetti. N's mental-health issues make him ill-equipped to
11 handle the county jail environment. He has trouble understanding jail rules and can easily become
12 confused, depressed and agitated. This has resulted in N getting in fights with correctional staff and
13 other inmates at the jail. He was placed in administrative segregation in a solitary cell, on a block of
14 violent offenders, for lengthy periods of time, where he was allowed out of his cell no more than once
15 every several days. Being in solitary conditions in particular caused N's mental health to deteriorate.
16 The longer N was in limbo the more frustrated, depressed and confused he got about his confinement.
17 This frustration lead to increased agitation, increased the chances he would be involved in altercations,
18 and increased the likelihood he would be subject to punitive action on the part of the jail. Both the
19 solitary conditions of confinement and the prolonged waiting with no certain end in sight amounted to
20 forms of torture according to Ms. Stiavetti.

21 37. N's family has been deeply affected by this experience. Ms. Stiavetti and her family
22 have been stuck in a frustrating holding pattern as N goes through the system, and they have felt unable
23 to help their loved one. They have experienced great pain as they have watched N deteriorate in jail. It
24 was particularly frustrating for the family not to have any answers as to when N would be transferred to
25 the state hospital and to have no explanation for the delay.

26 38. Rosalind Randle is the mother of L, who was detained in Contra Costa County jail for
27 approximately 12 months while awaiting transfer to the DDS facility at Porterville. L suffers
28

1 permanent, irreparable brain damage as a result of a childhood accident. His condition cannot be treated
2 with medication.

3 39. L was arrested on March 4, 2013. On May 15, 2013 his lawyer raised a doubt as to his
4 competency to stand trial. The court found L incompetent to stand trial on June 13, 2013 and requested
5 a placement recommendation from the Contra Costa Conditional Release Program ("CONREP").
6 Almost four months later, after receiving CONREP's recommendation, the court finally committed L to
7 the Porterville Developmental Center in November of 2013.

8 40. L languished in jail for almost another year after he was committed to Porterville. L's
9 mental state deteriorated while he sat in jail. He became depressed and lost touch with reality. Because
10 of his developmental disability, he was not able to adjust his behavior to fit in with the other defendants
11 he was jailed with. He was often involved in fights with other inmates, and several times he was sent to
12 solitary confinement for multiple days.

13 41. L was incapable of understanding why he had not yet been transferred to Porterville. He
14 called his mother, Ms. Randle, almost every day to ask her why other inmates were getting on the bus to
15 Porterville, but he was not. Ms. Randle could not do anything for her son other than to try to explain to
16 him that it would be his turn when there was room for him. L was never admitted to Porterville. On
17 October 14, 2014 he was instead placed in an out-patient residential facility.

18 42. The long delays are not unusual. According to documents provided by DDS, as of
19 February 9, 2015, there were 366 people who had been committed to DSH but had yet to be admitted.
20 At least one of these individuals had been waiting for 258 days. Most admissions take longer than sixty
21 days, and many take more than 100 days. The average time between commitment and admittance for
22 the previous 25 persons admitted before February 9 was more than 75 days.

23 43. According to documents provided by DDS, as of April 2, 2015 there were 52
24 incompetent defendants on the waiting list to be transferred to a DDS hospital following their
25 commitment. Three of them had been waiting for more than a year; an additional 11 had been waiting
26 for more than nine months. The average incompetent defendant on this list had been waiting for 204
27
28

1 days; because defendants are admitted in the same order they are placed on this list, these individuals
2 will likely be waiting much longer before they are actually admitted.

3 **C. Improper Detention of Mentally Ill or Developmentally Disabled Persons Worsens**
4 **Their Condition**

5 44. California's process for commitment of incompetent defendants is intended to restore
6 these persons to competence so that they may be tried, whenever that is possible. Incarcerating
7 incompetent defendants in county jails has the opposite result.

8 45. Incompetent defendants "are the most costly and difficult to manage in the jail. In their
9 acute state they are often violent, noncompliant, a danger to themselves and seriously disruptive to other
10 inmates and staff. Typically, they will not voluntarily take prescribed medication, thus are not making
11 progress towards competency to participate in the criminal proceedings." Sen. Rules Com., Off. of Sen.
12 Floor Analyses, analysis of Sen. Bill No. 568 (2007–2008 Reg. Sess.). In fact, "defendants usually get
13 worse the longer they wait for admission to a Mental Health hospital." *Id.*

14 46. Our state's largest jail system illustrates this problem. In 1996, the United States
15 Department of Justice ("DOJ") investigated Los Angeles County jails pursuant to the Civil Rights of
16 Institutionalized Persons Act (CRIPA), 42 U.S.C. §§ 1997 *et seq.*, and concluded that unconstitutional
17 conditions existed at the Los Angeles County Jail, including a deliberate indifference to inmates' serious
18 mental health needs because among other things, (1) inmates received inadequate treatment, such as
19 lengthy delays before evaluation, improper diagnosis, and improper administration of medication;
20 (2) there were insufficient resources for the number of inmates who needed mental health care; (3) "the
21 Jail [did] not adequately prevent abuse of mentally ill inmates and [did] not adequately investigate
22 allegations of such abuse when it occur[ed]"; (4) custody staff [were] not properly trained to work with
23 inmates with mental illness; and (5) the jails lacked proper policies and practices for suicide prevention.

24 47. Many of these problems continue to exist: in 2014, the DOJ issued another letter
25 containing its findings on the treatment of inmates with mental illness. Among L.A. County's
26 continuing failures were (1) "inadequate mental health care to prevent prisoners from becoming suicidal,
27 to identify suicidal prisoners, or to prevent prisoners from going into crisis"; (2) inadequate "custodial
28 supervision for prisoners, including those . . . who have been identified as having a heightened risk of

1 suicide"; and (3) housing inmates "in conditions that present, rather than prevent a risk of suicide." The
2 DOJ found that "[l]iving conditions in general are deficient (dimly-lit, vermin-infested, noisy,
3 unsanitary, cramped and crowded)"

4 48. In a 2013 County of Napa position paper on legislation relating to Napa State Hospital,
5 Napa County explains that one of the most severe consequences of housing incompetent defendants in
6 county jails is the "decompensation they exhibit when moved to the jail and the deterioration in their
7 condition-when they are kept in a segregated, non-clinical environment." Delay in admission to mental
8 health facilities not only unduly punishes incompetent defendants, but it also decreases the probability
9 that they will achieve competency to proceed with their cases in a timely manner.

10 49. These problems are compounded by the practice of incarcerating incompetent defendants
11 in administrative segregation within county jails. In administrative segregation, incompetent defendants
12 are housed with the most dangerous offenders and are constantly on "lockdown." In some instances,
13 incompetent defendants in these conditions are released from their cells for only one hour every few
14 days, and at irregular hours, sometimes very late at night or early in the morning such that they cannot
15 call their families or counsel. Moreover, county jail routines change often and largely are unpredictable.
16 This unpredictability imposes special hardships on incompetent defendants who may have much greater
17 difficulty adapting to new routines and for whom erratic routines can cause confusion and stress.
18 Incompetent defendants' inability to understand and follow the rules and routines in jail can lead to
19 disciplinary infractions and loss of privileges, such as commissary and phone time to call family
20 members, which further compounds the stress and deterioration of these defendants.

21 50. Even minor delays can cause extreme distress and deterioration in the condition of
22 incompetent defendants. For example, Rodney Bock, a self-employed farmer and father of four
23 daughters, two of whom are plaintiffs in this action, committed suicide while being housed in the Sutter
24 County Jail awaiting transfer to Napa State Hospital. Mr. Bock was found incompetent to stand trial on
25 April 19, 2010 and was detained in the Sutter County Jail. According to a civil suit his family later
26 filed, within five days he "was unstable and unkempt, was talking to himself and to inanimate objects
27 and was refusing his medication."
28

1 51. The staff of the Sutter County Jail observed Mr. Bock banging himself against his cell
2 door, yelling about or at people who did not exist, and describing various hallucinations. In spite of this
3 erratic behavior, the staff failed to follow their suicide prevention protocol and instead allowed Mr.
4 Bock to have items that were proscribed due to his psychiatric condition and failed to conduct hourly
5 safety checks on Mr. Bock. On April 29, 2010 Mr. Bock again violently banged his head against the
6 wall and then hanged himself. After Mr. Bock's suicide, the Sutter County Grand Jury investigated the
7 Sutter County Jail and found deficiencies such as a lack of required training on suicide prevention, non-
8 compliant medical policies, and inadequate medical staffing.

9 52. In addition to exacerbating incompetent defendants' mental disorders or developmental
10 disabilities, holding incompetent defendants in county jails also exposes jail personnel to the risk of
11 physical harm and exposes the inmates to additional criminal penalties by putting incompetent
12 defendants in the care of jailors who do not have the skills or training to manage the erratic and violent
13 behavior that incompetent defendants often exhibit. As the 2013 Napa County position paper explains,
14 "[s]tate hospital patients require a very high and specialized level of care that a small local jail should
15 not reasonably be expected to provide." As a result, many incompetent defendants are charged with
16 additional crimes for fighting with guards while they languish in county jail waiting to be sent to a
17 mental health facility.

18 53. For example, a Solano County defendant, Bret Nye was arrested on December 5, 2008
19 for allegedly threatening his ex-wife and making a false bomb threat. Six days later, while in pretrial
20 custody in the Solano County Jail, Mr. Nye picked up a new offense: felony battery of a correctional
21 officer. Mr. Nye's erratic behavior caused his attorney to declare a doubt as to his competency to stand
22 trial on December 17, 2008. On February 25, 2009 the court ordered Mr. Nye transferred to Napa State
23 Hospital. Mr. Nye was not timely transferred, and on March 19, 2009 his attorney filed a request for an
24 order to show cause why Napa State Hospital and the Solano County Sheriff's Department should not be
25 held in contempt for failing to transport Mr. Nye to Napa State Hospital. The next day, while still
26 waiting to be transferred pursuant to court order, Mr. Nye was charged with another offense, again for
27 battery of a correctional officer.

54. Plaintiffs' counsel have tried to resolve this matter with both the DSH and DDS but have been unable to do so. Although both Departments maintain that they are attempting to reduce these delays, they have not yet done so and are unwilling to enter into a binding agreement that will assure that they comply with their constitutional obligations.

FIRST CAUSE OF ACTION
(VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE I, § 7)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

55. Plaintiffs incorporate by reference all of the above allegations as though fully set forth herein.

56. Article I, Section 7 of the California Constitution prohibits the government from depriving any person of life, liberty, or property without due process of law.

57. Defendants' delays in admitting incompetent defendants violate this right, including by not timely accepting transfer of incompetent defendants from county jails, which causes incompetent defendants who have been committed solely on account of their incapacity to proceed to trial to be held for more than the reasonable period of time necessary to determine whether there is a substantial probability that they will attain that capacity in the foreseeable future.

58. Defendants' practice of not timely accepting transfer of incompetent defendants from county jails also does not afford adequate time for incompetent defendants to be examined and have their potential to regain competency evaluated within the 90-day period prescribed under Cal. Penal Code §§ 1370(b)(1) and 1370.1(b)(1).

SECOND CAUSE OF ACTION
(VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE I, § 15)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

59. Plaintiffs incorporate by reference all of the above allegations as though fully set forth herein.

60. Article I, Section 15 of the California Constitution guarantees every criminal defendant the right to a speedy trial.

61. Defendants' delays in admitting defendants who have been found incompetent to stand trial violate this right.

62. Defendants' practice of not timely accepting transfer of incompetent defendants from county jails is unjustified, and is outweighed by prejudice to the speedy trial rights of incompetent defendants by causing incompetent defendants to be held in jails for prolonged periods of time, and by causing incompetent defendants to not receive the course of treatment that serves as the basis for the suspension of their court proceedings during this prolonged imprisonment.

THIRD CAUSE OF ACTION
(VIOLATION OF UNITED STATES CONSTITUTION, AMENDMENT 14)
(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

63. Plaintiffs incorporate by reference all of the above allegations as though fully set forth herein.

64. The Fourteenth Amendment prohibits the states from depriving any person of life, liberty, or property without due process of law.

65. Defendants' failure to timely accept transfer of incompetent defendants who have been ordered transferred from county jails violates this right, including by not timely accepting transfer of incompetent defendants from county jails, which causes incompetent defendants who have been committed solely on account of their incapacity to proceed to trial to be held for more than the reasonable period of time necessary to determine whether there is a substantial probability that they will attain that capacity in the foreseeable future.

FOURTH CAUSE OF ACTION
TAXPAYER ACTION UNDER CODE CIV. PRO. § 526A TO PREVENT
ILLEGAL EXPENDITURE OF FUNDS
(STEPHANIE STIAVETTI, KELLIE BOCK, KIMBERLY BOCK, ROSALIND RANDLE,
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL
LIBERTIES UNION OF SOUTHERN CALIFORNIA AGAINST ALL DEFENDANTS)

66. Plaintiffs incorporate by reference all of the above allegations as though fully set forth herein.

67. Defendants are illegally expending public funds by performing their duties in violation of the constitutional provisions described above.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a declaration that Defendants' delays in admitting defendants who have been found incompetent to stand trial violate the due process clauses of the state and federal constitutions and the speedy trial clause of the state constitution.
2. Issue a writ of mandate directing Defendants to admit persons found incompetent to stand trial within a constitutionally permissible time following the order of commitment.
3. Issue an injunction directing Defendants to admit persons found incompetent to stand trial within a constitutionally permissible time following the order of commitment.
4. Order Defendants to pay Plaintiffs' attorneys' fees and costs pursuant to Code Civ. Proc. § 1021.5 and other applicable statutes.
5. Grant Plaintiffs such further relief as the Court deems just and proper.

DATED: July 29, 2015

Respectfully submitted,

By: Michael T. Risher
Michael T. Risher
Attorney for Plaintiffs

By: Laura Oswell / dcs
Laura Oswell
Attorney for Plaintiffs

VERIFICATION

I, Christine P. Sun, am the Associate Director and Director of the Legal-Policy Department for the ACLU of Northern California. I have read this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the matter of *Stephanie Stiavetti et al. v. Pamela Ahlin et al.* I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 28, 2015

