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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Phillip Urquidi, Daniel Martinez, Susana Perez, Terilyn Goldson, Gerardo Campos, and Arthur Lopez, on behalf of themselves and all other similarly situated, and Clergy and Laity United for Economic Justice ("CLUE"), Reverend Jennifer Gutierrez, Reverend Gary Williams, and Rabbi Aryeh Cohen, individually,

Plaintiffs,

vs.

City of Los Angeles, Los Angeles County, Los Angeles County Sheriff's Department, Sheriff

Case No. 22STCP04044

Honorable Lawrence P. Riff
Spring St. Courthouse, Dept. 7

PLAINTIFFS' OPPOSITION TO DEFENDANTS COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, AND SHERIFF ALEX VILLANUEVA'S DEMURRER

Hearing:

Date: February 27, 2023
Time: 1:45 pm
Dept: 7 (Spring Street)
Complaint filed: November 14, 2022

Alex Villanueva, Los Angeles Police Department, and Chief Michel R. Moore,

Defendants.

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I. INTRODUCTION

Plaintiffs' core contention—that the promulgation and enforcement of the Los Angeles County bail schedule[1] unconstitutionally deprives class members of pretrial liberty on the basis of wealth—has gone unchallenged. To the contrary, the Los Angeles County Sheriff's Department ("LASD"), the Sheriff, and the County of Los Angeles (the "County") (collectively, "County Defendants") agree that "'wealth-based detention,' via the bail schedule or otherwise, is totally and completely unacceptable." (Demurrer at p. 4.) County Defendants instead deny responsibility for this policy, arguing that they are not proper parties and that this Court lacks jurisdiction to hear the case. These arguments fail. Each of the four Counts in the First Amended Complaint ("FAC") properly states a claim against each County Defendant.

First, in Count One, Individual Plaintiffs bring, on behalf of themselves and a proposed class of similarly situated individuals, claims for declaratory and injunctive relief. LASD and the Sheriff, both of whom enforce the unconstitutional bail schedule, are proper defendants under the well-established rule that a plaintiff may sue enforcement officers to enjoin their enforcement of an unconstitutional law or policy. The County is a proper defendant because of its own role in enforcing the unconstitutional bail system. Separately, the County is a proper defendant because it promulgates the bail schedule via committees of Los Angeles County Superior Court judges, who act for the County when setting this countywide policy.

Second, in Count Two, Taxpayer Plaintiffs seek to enjoin all County Defendants from spending money to enforce the unconstitutional bail schedule and to enjoin the County from collecting forfeited bail. County Defendants ignore the substance of this claim. But in any event, all three County Defendants are properly sued because they waste public funds to jail pretrial detainees who cannot afford money bail. The County is also liable for the independent reason that it receives and spends proceeds derived from its unconstitutional bail system.

[1] There are separate bail schedules for felony and misdemeanor offenses. (See FAC ¶ 83.) For ease of reference, Plaintiffs refer to both as the "bail schedule." Plaintiffs also note that the bail schedule has been updated for 2023, but these updates cure none of the constitutional defects.

Third, in Counts Three and Four, Plaintiffs seek a writ of mandamus to prohibit County Defendants from promulgating and enforcing the unconstitutional bail schedule. These Counts are properly pled because County Defendants have a clear, mandatory duty to comply with the Constitution, which they fail to do in their promulgation and enforcement of the bail schedule.

County Defendants' procedural arguments also fail. There are no joinder problems here, much less fatal ones. Neither the State nor the Superior Court is a necessary party because they lack a personal stake in the outcome of the proceedings, and because Plaintiffs can obtain complete relief by enjoining County Defendants from enforcing the bail schedule or spending any funds in furtherance thereof. County Defendants' jurisdictional challenge, too, is meritless, because Plaintiffs challenge only *pre-arraignment* detention and do not ask this Court to review any bail orders issued by other judges.

Accordingly, the Court should overrule County Defendants' Demurrer in full.

II. BACKGROUND

Throughout Los Angeles, arrested individuals are unconstitutionally detained solely because they lack the resources to pay cash bail. This unconstitutional detention is the direct result of the bail schedule, the countywide chart setting bail amounts for felonies, misdemeanors, and several infractions. (FAC ¶ 83; Exs. A, B.) The Bail and Executive Committees of the Los Angeles County Superior Court (the "Committees") promulgate the bail schedule on behalf of the County, pursuant to Penal Code § 1269b and Local Rule 8.3. For warrantless arrests, the bail schedule dictates the amount of cash bail individuals must pay to buy their freedom before arraignment based on the offense charged, with a handful of possible enhancements for prior convictions or aggravating circumstances. (*Id.* ¶ 83; Exs. A, B.) The bail schedule does not consider whether the arrested individuals can pay the amount listed, whether they are a flight risk, or whether their release would affect community safety. (*Id.*)

The County, the Sheriff, and LASD all play critical roles in this unconstitutional system. The Committees, acting for the County, promulgate the bail schedule. (*Id.* ¶¶ 1, 142-43, 150.) LASD, directed by the Sheriff, arrests individuals and holds them in custody in County-funded jails. (*Id.* ¶¶ 84-86.) LASD releases them if they can afford to pay the cash bail set by the bail

schedule but continues to jail them if they cannot afford it. (*Id.* ¶¶ 87-89.) The County purports to maintain programs like PREP to alleviate the harsh effects of the bail schedule, but it fails to live up to its word. (See FAC ¶ 90.) What's more, the County collects and spends proceeds from forfeited bail. (*Id.* ¶¶ 18-21; Pen. Code, §§ 1307, 1463.001.)

Plaintiffs—individuals who have been detained pursuant to the bail schedule, and taxpayers who reside in Los Angeles—brought this lawsuit to hold County Defendants accountable and to end unconstitutional wealth-based detention in Los Angeles County.

III. LEGAL STANDARD

"To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action." (*C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872.) In evaluating a demurrer, the Court must "accept as true [Plaintiffs'] well-pleaded allegations" and "likewise accept facts that are reasonably implied or may be inferred from the complaint's express allegations," and it must "give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Chiatello v. City and County of San Francisco* (2010) 189 Cal.App.4th 472, 480.) "For the purpose of determining the effect of a complaint, its allegations are liberally construed, with a view toward substantial justice." (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) If "the complaint does not state a claim, but there is a reasonable possibility that the defects can be cured by amendment, leave to amend must be granted." (*Id.*)

IV. DISCUSSION

A. The Sheriff and LASD Are Proper Defendants in Count One Because They Enforce the Unconstitutional Bail Schedule.

In Count One, Individual Plaintiffs sue LASD and the Sheriff in his official capacity for declaratory and injunctive relief to prohibit them from enforcing "a system of cash-based detention that keeps [class members] in jail solely because they cannot pay an arbitrary amount set by a predetermined written policy." (FAC ¶¶ 135, 142, 144-47.) This claim is independent of Plaintiffs' theories against the County, meaning that even if the Court sustains the Demurrer with respect to the County on any count, it should overrule it with respect to LASD and the Sheriff.

It is a bedrock legal principle that a plaintiff may sue a state or local officer who enforces an unconstitutional law or policy to enjoin that enforcement. (See, e.g., *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 [permitting suit against state and county education officials and school districts regarding constitutionality of school financing]; *In re Taylor* (2015) 60 Cal.4th 1019, 1038 [affirming decision enjoining the Department of Corrections and Rehabilitation from enforcing statutory residency restrictions as applied to class of people on parole].) Indeed, the California Supreme Court has repeatedly considered cases against sheriffs and police departments for their enforcement of unconstitutional laws or policies, including with respect to the bail system. For instance, in *Van Atta v. Scott*, the California Supreme Court considered a due process suit against the San Francisco sheriff and police department over the city and county's system for releasing detained individuals on their own recognizance. ((1980) 27 Cal.3d 424, 433; see also *McKay Jewelers v. Bowron* (1942) 19 Cal.2d 595, 599 [suit to enjoin enforcement of municipal code brought against "defendants, as enforcement officers of the city of Los Angeles"].)

Consistent with this black-letter law, Individual Plaintiffs have sued the Sheriff and LASD to enjoin their enforcement of the bail schedule. The FAC is replete with detailed and specific allegations supporting these claims, including that the Sheriff and LASD implement and enforce the bail schedule (see FAC ¶¶ 24-25, 29); that they detained two Individual Plaintiffs who could not afford bail (see *id.* ¶¶ 59-65, 75-81); that they release pretrial detainees who are wealthy enough to afford bail while detaining those who are too poor (see *id.* ¶¶ 84-89); and that this wealth-based detention often lasts for days (see *id.* ¶ 92). County Defendants do not contest that the Sheriff and LASD have these enforcement roles. It inexorably follows that the Sheriff and LASD are proper defendants in Individual Plaintiffs' claims for injunctive and declaratory relief.

County Defendants' attempt to confuse the issue—by arguing that the Sheriff's enforcement of the bail schedule is "state action" and "entirely without discretion"—falls flat. (Demurrer at p. 8.) Both contentions are beside the point: because the Sheriff and LASD enforce the bail schedule, they are liable regardless of whether they act for the county or the state, and regardless of whether they have any discretion in their enforcement. *Buffin* and *Welchen*—cases on which County Defendants rely—illustrate these principles. In those cases, the plaintiffs argued

that the bail schedules in San Francisco and Sacramento unconstitutionally discriminated based on wealth. (See *Buffin v. City and County of San Francisco* (N.D. Cal., Oct. 14, 2016) 2016 WL 6025486, at p. *1; *Welchen v. County of Sacramento* (E.D. Cal. 2018) 343 F. Supp. 3d 924, 928). In both cases, the courts allowed the plaintiffs' claims for injunctive relief to proceed against the sheriffs. (See *Welchen*, 343 F. Supp. 3d at p. 935 ["Plaintiff may seek declaratory or injunctive relief against the Sheriff for allegedly unconstitutional conduct related to the Bail Law."]; *Buffin*, 2016 WL 6025486, at p. *8 [same]; see also Demurrer at p. 9 [admitting that *Buffin* and *Welchen* "allowed the Plaintiffs' injunctive relief claims to proceed as to the Sheriff's actions"].) The courts did so while acknowledging that the sheriffs were state actors and that they lacked discretion in following the bail schedule. (*Buffin*, 2016 WL 6025486, at pp. *8-9; *Welchen*, 343 F. Supp. 3d at p. 935.)[2]

By the same logic, the Court should overrule the Demurrer as to Individual Plaintiffs' claims against the Sheriff and LASD in Count One.

B. The County Is a Proper Defendant in Count One Because It Enforces and Promulgates the Unconstitutional Bail Schedule.

In Count One, Individual Plaintiffs also assert two independent theories against the County, which are separate and distinct from the theories against the Sheriff and LASD. First, the County is liable for its own role in enforcing and exacerbating the wealth-based pretrial detention system. Second, the County is liable for promulgating the unconstitutional bail schedule.

1. The County Is Liable for Enforcing and Exacerbating the Unconstitutional System of Wealth-Based Detention.

In Count One, Plaintiffs allege that the County, like the Sheriff and LASD, plays a role in enforcing the unconstitutional wealth-based detention that results from the bail schedule. (FAC ¶¶ 134-35.) The County oversees the jails and has even hired outside consultants to analyze

[2] *Buffin*'s and *Welchen*'s conclusions that the sheriffs as state actors are immune from suit for money damages (Demurrer at p. 9) have no bearing here, where the Plaintiffs seek only equitable relief. (See *Buffin*, 2016 WL 6025486, at p. *9 [concluding that Eleventh Amendment shields sheriffs from suit for money damages because the sheriff acts on behalf of the state, but permitting the plaintiff to seek declaratory or injunctive relief]; *Welchen*, 343 F. Supp. 3d at p. 935 [same].)

overcrowding in the County's jail population. (*Id.* ¶¶ 103, 105-06.) The County purports to maintain the PREP program and "to be on the forefront of pretrial release and bail reform." (See Declaration of David Grkinich in support of County Defendants' Opposition to Motion for Preliminary Injunction ("Grkinich Decl.") ¶ 10; Exhibit 3 to Grkinich Decl. (Memorandum of Agreement Between the Superior Court and the County for PREP).) The deficiencies in the PREP program exacerbate the unconstitutional harms stemming from the bail schedule. (FAC ¶ 90.)

Indeed, the County Board of Supervisors ("Board") has taken responsibility for complying with the California Supreme Court's decision in *In re Humphrey*. Contrary to the Demurrer's claim that the "County has no substantive role at all" (Demurrer at p. 4), the Board has long viewed itself as responsible for the pretrial bail system. (See Grkinich Decl. ¶ 9 [describing vote by Board to "initiate research and analysis of pretrial practices with the intention of increasing the ability of inmates to be released on bail" and the County's creation of "a Bail Reform Team"].) After the Supreme Court's decision in *Humphrey*, the Board passed a motion that sought to integrate "pretrial reforms flowing from . . . *Humphrey*" with "existing County reform initiatives" and solicited "recommendations for how Los Angeles County justice partners can implement the holding of *In re Kenneth Humphrey*." (Motion, *Implementing the California Supreme Court's* Humphrey *Decision*, April 20, 2021.) After receiving the responsive report, the Board passed another motion, declaring that "LA County must build upon the foundation set in the *Humphrey* report" and setting out a variety of implementation steps. (Motion, *REVISED: Implementing* Humphrey *and ATI Pretrial Reforms*, July 13, 2021.) The Board possesses power to reduce wealth-based detention and, in its own eyes, bears responsibility for complying with the directive of *In re Humphrey*; its failure to fully exercise that power renders it liable for the resulting harms.

2. The County Is Liable for Promulgating the Unconstitutional Bail Schedule.

In Count One, Individual Plaintiffs *also* allege that the County is liable for promulgating the unconstitutional bail schedule. (FAC ¶¶ 134-35.) California courts have not squarely

addressed whether promulgating a bail schedule is state or county action.[3] However, in other contexts, courts have rejected "a categorical, all or nothing approach" and instead "inquire[d] whether governmental officials are final policymakers for the local government in a particular area or on a particular issue." (*Streit v. County of Los Angeles* (9th Cir. 2001) 236 F.3d 552, 560 (internal quotations omitted); accord *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 356.) Here, three critical factors—the scope of the challenged policy, the final decision-making authority of the Committees, and the non-judicial nature of the policymakers' power—illustrate that the promulgation of bail schedule is a County act.

First, the bail schedule is "countywide" and territorially limited in scope—it applies with the force of law throughout, but not outside of, Los Angeles County. Indeed, the statute that authorizes the promulgation of the bail schedule refers to it as a "countywide schedule." (See Pen. Code, § 1269b(c)). Both this statutory description and the territorial scope it specifies are indicative of County policy. (See, e.g., Cal. Const., art. XI, § 7 ["A county or city may make and enforce *within its limits* all local, police, sanitary, and other ordinances and regulations not in conflict with general laws" (emphasis added)].) No one suggests that the County bail schedule could apply statewide, so this Court should reject the unintuitive conclusion that it is somehow still a state policy. (Cf. *Hernandez v. County. of San Bernardino* (2004) 117 Cal.App.4th 1055, 1063 ["[S]tate interest and involvement must be overt, explicit, and pervasive for apparent county activity to be characterized as state conduct."].)

Second, the Committees exercise final policymaking authority for the County in setting this countywide policy. The Committees alone determine the content of the bail schedule. Neither Penal Code § 1269b nor any other state law dictates the Committees' decisions, including

[3] The federal courts in *Buffin* and *Welchen* commented in passing that the Superior Courts are arms of the state. (See *Buffin*, *supra*, 2016 WL 6025486, at p. *8; *Welchen*, *supra*, 343 F. Supp. 3d at p. 935; see also Demurrer at pp. 7-8.) But both *Buffin* and *Welchen* relied on an inapposite case, *Greater Los Angeles Council on Deafness, Inc. v. Zolin* ((9th Cir. 1987) 812 F.2d 1103). *Zolin* held only that the Superior Court had Eleventh Amendment immunity in a lawsuit challenging its non-provision of sign language interpreters to deaf jurors. (See *id.* at 1106, 1110.) That conduct occurred during trials, within courtrooms, and—in contrast to the promulgation of a countywide pre-arraignment bail schedule—is much more clearly related to the State's judicial power.

(as County Defendants acknowledge, see Demurrer at p. 11) whether to set bail at $0 or higher. Nor can any State authority override the Committees' decisions.[4] (Cf. *Pitts*, 17 Cal.4th at pp. 356-58, 363 [finding that district attorneys' prosecutorial and training roles are state action in large part because district attorneys answer to the Attorney General].) This discretion and finality are hallmarks of County action. (Cf. *Hernandez*, *supra*, 117 Cal.App.4th at pp. 1063-64 [holding that a county's liability turns on whether its policy was compelled by state law]; *Pembaur v. City of Cincinnati* (1986) 475 U.S. 469, 483 [holding that a county is liable under § 1983 when a policymaker makes "a deliberate choice to follow a course of action . . . from among various alternatives"].)

Third, setting the bail schedule does not resemble the ordinary exercises of judicial power. The Committees are not deciding cases, interpreting laws, presiding over parties, or managing courtrooms. (Cf. *Regan v. Price* (2005) 131 Cal.App.4th 1491, 1495-96 [explaining the test for judicial immunity as whether a judge's acts "relat[e] to a function normally performed by a judge" or were "acts that simply happen to have been done by judges"].) The Committees' decisions about the bail schedule are not subject to review through the standard appellate process. (Cf. *id.* at p. 1497 ["A judicial act within the meaning of the [judicial immunity] doctrine may normally be corrected on appeal."].) Instead, the Committees promulgate the bail schedule with independence and finality, acting not as judges exercising the State's judicial power but as "final policymakers for the local government." (*Streit*, *supra*, 236 F.3d at p. 560 (internal quotations omitted).)

Accordingly, for the two separate and independent reasons described in Sections IV.B.1 (enforcement) and IV.B.2 (promulgation), the Court should overrule the Demurrer as to the County on Count One.

[4] The Judicial Council previously promulgated a statewide emergency bail schedule ("EBS") that overrode the bail schedules of individual counties. (FAC ¶ 96.) But this is akin to the State passing a law that preempts inconsistent county ordinances; it does not imply that the counties promulgate their bail schedules using state power. Plaintiffs are not aware of any authority to suggest that, in setting their bail schedules, the Committees answer to the Judicial Council. Indeed, the Judicial Council could only implement EBS because an executive order "enhance[d] [its] authority" to promulgate emergency rules and "suspended" statutes that were inconsistent with such authority. (Governor's Exec. Order No. N-38-20 (March 27, 2020).)

C. All County Defendants Are Liable Under Count Two Because Each Expends Funds Unconstitutionally.

Separate from the claims of Individual Plaintiffs and the proposed class, Taxpayer Plaintiffs have brought claims of their own, including in Count Two. County Defendants ignore these claims. The grounds on which they seek a demurrer to Count Two—that the State promulgates the bail schedule, and that the Sheriff acts on behalf of the State—are verbatim repeats of their challenges to Count One. (See Demurrer at pp. 1-2.) These points are largely irrelevant for Count Two, and County Defendants have made no effort to further justify dismissal. In any event, Count Two is properly pled.

1. Count Two Is Proper Against the Sheriff and LASD.

In Count Two, Plaintiffs allege that the Sheriff and LASD improperly spend public funds to jail pretrial detainees who cannot afford bail. (FAC ¶ 139.)

Taxpayer Plaintiffs are proper plaintiffs here. Section 526a allows a resident or corporate taxpayer to bring "[a]n action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency." (Code Civ. Proc., § 526a; accord *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267 ["[S]ection 526a . . . authorizes actions by a resident taxpayer against officers of a county, town, city, or city and county to obtain an injunction restraining and preventing the illegal expenditure of public funds."].) The amount of money at stake is irrelevant and no showing of harm to the taxpayer is necessary. (*Blair*, 5 Cal.3d at pp. 268, 270.) Here, Taxpayer Plaintiffs all pay taxes to the County, and the individual taxpayers reside therein. (FAC ¶¶ 18-21, 138.) That is sufficient to bring a claim. (*Blair*, 5 Cal 3d. at p. 269 [holding that "residents and taxpayers of the County of Los Angeles" had standing to enjoin county officials from enforcing allegedly unconstitutional law].)

The Sheriff and LASD are also proper defendants. Taxpayer claims may be brought against state or local officers to enjoin them from spending taxpayer funds to either enforce an unconstitutional law or policy or enforce a valid law in an unconstitutional manner. In *Blair*, for instance, a taxpayer claim was proper "against the county and its sheriff, marshal, and deputy sheriff" to enjoin them "from expending their own time and the time of other county officials in

executing" an allegedly unconstitutional law. (5 Cal.3d at pp. 265, 269; accord *Wirin v. Horrall* (1948) 85 Cal.App.2d 497, 499-500.) So too here: the Sheriff and LASD necessarily expend their resources, including the officers' time, whenever they detain an individual under the unconstitutional bail schedule.

2. Count Two Is Proper Against the County.

Taxpayer Plaintiffs bring claims against the County under two independent theories. Taxpayer Plaintiffs allege in Count Two that the County improperly uses public funds by: (1) funneling county funds to LASD and the jails, enabling the wealth-based detention of individuals pre-arraignment, and (2) spending the proceeds derived from its unconstitutional bail system. (FAC ¶¶ 18-21, 103, 139-40.)

First, like the Sheriff and LASD, the County uses its resources, personnel, and funds to effect its unconstitutional detention scheme. For example, the County's "board of supervisors" *must* use funds from the "county treasury" to "provide the sheriff with necessary food, clothing, and bedding" for "all persons committed to jail." (Pen. Code, § 4015.) Some of those funds necessarily go to the jailing of arrested individuals who remain detained solely because they cannot afford bail. Taxpayer Plaintiffs are entitled to sue the County to prevent this expenditure.

Second, the County spends "forfeited bail obtained pursuant to the unlawful bail schedule." (FAC ¶¶ 18-21.) Because conditioning pre-arraignment release on a predetermined monetary payment is unconstitutional, the funds collected pursuant to this practice are illegal and cannot be legally spent. And because the County receives at least part of these illegal funds (see Pen. Code, §§ 1305.3, 1307, 1463.001), Taxpayer Plaintiffs have properly sued the County to prevent the expenditure of those funds—regardless of whether the illegal procedures add money to the public fisc. (See *Blair*, 5 Cal.3d at p. 268 [declaring it "immaterial . . . that the illegal procedures actually permit a saving of tax funds"]; see also *id.* [noting that the California Supreme Court has not "required that the unlawfully spent funds come from tax revenues" and that it had upheld injunctions prohibiting the expenditure of funds "derived from the operation of a public utility or from gas revenues"]).

This Court should overrule the Demurrer as to all County Defendants in Count Two.

D. All County Defendants Are Liable Under Counts Three and Four Because They Have a Mandatory Duty to Comply with the Constitution.

Plaintiffs' final claims, in Counts Three and Four, seek a prohibitory writ of mandate against all County Defendants for enforcing an unconstitutional system of bail (see FAC ¶¶ 144, 151) and against the County for promulgating the bail schedule (see *id.* ¶¶ 143, 150). As with Plaintiffs' other claims, County Defendants' only arguments against the mandate claims are that the State promulgates the bail schedule, and that the Sheriff enforces the bail schedule on behalf of the State. (See Demurrer at pp. 2-3.) Plaintiffs have already shown that these contentions provide no barriers to relief. (See Sections IV.A-B, *supra*.)

Plaintiffs' claims are proper in all other respects. *First*, a writ of mandate is proper against all County Defendants because they enforce and fund Los Angeles County's unconstitutional bail system. Writs of mandate target "mandatory ministerial dut[ies]," and every such duty "embodies a corollary duty to not perform the duty in violation of law." (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 262.) Thus, a writ of mandate may be "used to restrain state officials from enforcing ministerial statutory provisions found to be unconstitutional." (*Id.* at p. 263.) Here, County Defendants admit that the duty to enforce the bail schedule "is entirely ministerial, without discretion." (Demurrer at p. 9.) And all County Defendants have corollary duties to act in accordance with the law. (See *Planned Parenthood Affiliates*, *supra*, 181 Cal.App.3d at p. 262.) Plaintiffs properly seek a writ of prohibitory mandate to enjoin County Defendants from performing their duties unconstitutionally.

Second, a writ of mandate is also proper to prohibit the County from promulgating an unconstitutional bail schedule. A traditional mandamus claim allows for review of a discretionary decision that "violates a constitutional right." (*Internat. Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd*. (2011) 51 Cal.4th 259, 271.) Thus, Plaintiffs are entitled to a writ of mandate against the County to enjoin the Committees from promulgating an unconstitutional bail schedule.

The Court should overrule County Defendants' Demurrer as to Counts Three and Four.

E. There Are No Joinder Problems, Much Less Fatal Ones.

County Defendants cannot escape responsibility by arguing that the State is a necessary party. (Demurrer at p. 9.) As a threshold matter, County Defendants' joinder challenge relies on their contention that the Committees act for the State in promulgating the bail schedule. (*Id.*) If the Court holds that the Committees set the bail schedule on behalf of the County (see Section IV.B.2, *supra*), the premise of County Defendants' arguments disappears.

But even if County Defendants pass this threshold inquiry, their joinder arguments misapprehend the relevant law. A non-party is necessary if (1) the person is needed to provide "complete relief", or (2) the person "claims an interest" in the litigation and his absence will "impede his ability to protect that interest" or subject the parties to "inconsistent obligations." (Code Civ. Proc., § 389(a).) When this is the case, the absent person shall "be made a party." (*Id.*) But if joinder is *impossible*, the Court applies the factors in § 389(b) to determine "whether in equity and good conscience the action should proceed . . . or should be dismissed *without prejudice*, the absent person being thus regarded as indispensable." (*Id.* § 389(b) (emphasis added).) None of these requirements are met here, as the State lacks a personal, concrete interest in the litigation, and complete relief can be accorded in its absence.

1. The State Does Not Have a Personal or Concrete "Interest" in this Case.

County Defendants' suggestion that the State has an "interest" in the subject of this litigation (Demurrer at pp. 10-12) ignores governing law. The California Supreme Court has long recognized that "[t]he only interests protected by section 389 are personal ones which may be prejudiced in a concrete way by a judgment rendered in the absence of joinder." (*Van Atta*, *supra*, 27 Cal.3d at p. 451.) *Van Atta* rejected the argument that the judges of the superior court were necessary parties in a challenge to San Francisco's pretrial detention system: although the judges were "undoubtedly interested in any case which may affect the . . . administration of justice," those interests "d[id] not rise to a personal stake in the outcome of the case." (*Id.*) Similarly, *Serrano* held that the interests of "lawmakers concerned with the validity of statutes enacted by them" were "not of the immediacy and directness requisite to party status." (*Serrano*, *supra*, 18

Cal.3d at p. 752 [holding that the legislature and governor were not necessary parties in a suit challenging California's public school financing].)

Serrano and *Van Atta* clearly establish that having a position on the validity or wisdom of a policy—or even enacting that policy—is not the same as having a "personal stake" or "concrete" interest.[5] Thus, neither the State's abstract interest in bail policy nor the Committees' enactment of the bail schedule gives rise to an interest sufficient to require joinder.[6]

2. The State Is Not Needed to Provide "Complete Relief."

County Defendants' assertion that they cannot offer any relief falls equally flat. (Demurrer at p. 10.) Indeed, the California Supreme Court has expressly rejected the argument that State policymakers are necessary to afford complete relief. In *Serrano*, the court rejected the argument that the plaintiffs had to join the legislature and governor to challenge a state statute, holding that "in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." (18 Cal.3d at pp. 751-52 [rejecting argument that defendants "lack[ed] all power to bring about the relief sought by [the] plaintiffs".)

Here, Plaintiffs can obtain meaningful relief by enjoining County Defendants from enforcing the bail schedule or spending any funds in furtherance thereof. Indeed, in *Buffin*, the court provided complete relief *not* by striking or modifying the bail schedule, but by preventing enforcement actors from using it. (See Final Judgment and Injunction at p. 2, *Buffin v. City and*

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[5] Even if the State had a cognizable interest, it would not be a necessary party unless nonjoinder would also "impede [its] ability to protect [that] interest" or subject the parties to "inconsistent obligations." (Code Civ. Proc., § 389(a).) The State is protected because its "interests are sufficiently aligned" with those of the existing Defendants. (*City of San Diego v. San Diego City Employees' Ret. Sys.* (2010) 186 Cal.App.4th 69, 84.) If the State felt otherwise, it could move to intervene. (Cf. *Serrano*, *supra*, 18 Cal.3d at p. 753, n.27 [holding that parties were not indispensable, in part, because they "at no point sought intervention or indicated any interest in doing so"].) Moreover, County Defendants have not and cannot suggest any "substantial risk" of conflicting obligations. (*Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 16.)

[6] To the extent County Defendants ask the Court to solicit voluntary input from the State (see Opp. to PI Motion at p. 12), there is no need: just weeks ago, Attorney General Bonta reiterated his position that "enforcing California Penal Code section 1269c" in a way that "fail[s] to account for an arrestee's ability to pay bail . . . would be unconstitutional." (Defendant Rob Bonta's Supplemental Brief Regarding Injunctive Relief at p. 9, *Welchen v. Bonta* (E.D. Cal., filed Dec. 15, 2022) 2:16-cv-185 (No. 97).)

County of San Francisco (N.D. Cal., Sept. 3, 2019) 4:15-cv-4959 (No. 372).) To be sure, Plaintiffs are entitled to seek *additional* relief from the County to stop it from promulgating a bail schedule resulting in unconstitutional wealth-based detention. (See Section IV.B.2, *supra.*) But the fact that the promulgator of the bail schedule is a *proper* party does not automatically render it necessary or indispensable. (See *Serrano*, 18 Cal.3d at p. 752 ["[E]ven should the Legislature and the Governor be considered proper parties," they are not "parties without whom the action could not fairly proceed."].) A proper party is only necessary to accord complete relief when, in its absence, the remedy would be "hollow." (Code Civ. Proc., § 389, comments.) That is not the case here.

3. Even if the Court Disagrees, Dismissal Is Not Appropriate.

Finally, even if the Court concludes that an absent entity is necessary to provide complete relief, the remedy is joinder of the necessary party, not dismissal. (Code Civ. Proc., § 389(a).) Dismissal is proper *only* if the necessary party cannot be joined *and* the court determines that the action should not proceed "in equity and good conscience" based on the statutory factors. (*Id.* § 389(b).) Nothing here supports such a drastic outcome, which would "thwart rather than accomplish justice." (*Serrano*, 18 Cal.3d at p. 753 (citation omitted)).

F. <u>The Court Has Jurisdiction.</u>

County Defendants' only remaining argument—that this Court lacks jurisdiction—is likewise unavailing. "The California Constitution confers broad subject matter jurisdiction on the superior court." (*Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1029, citing Cal. Const., art. VI, § 10.). The Constitution vests this power in the superior court as a whole, "not in any particular judge or department thereof." (*Magallan v. Superior Court* (2011) 192 Cal.App.4th 1444, 1453.) "The division into departments is purely imaginary, and for the conveniences of business and of designation"—jurisdiction "remains at all times in the court as a single entity." (*Id*. at pp. 1453-54.)

It is unsurprising, given this broad jurisdictional grant, that civil courts regularly hear challenges to the constitutionality of government conduct, even when that conduct relates to the criminal process or bail system. For example, in *People for Ethical Operation of Prosecutors and*

Law Enforcement v. Spitzer, plaintiffs filed taxpayer and mandamus claims challenging an allegedly unlawful confidential informant program, and defendants demurred, arguing that the suit would "interfere with other pending criminal cases" and "involve consideration of constitutional violations occurring in cases currently pending before other departments of the superior court." ((2020) 53 Cal.App.5th 391, 405.) The appellate court rejected this argument, holding that "Plaintiffs' action d[id] not threaten to undermine the current criminal cases that may be relevant to plaintiffs' claims because plaintiffs are not contesting the outcome of any particular case." (*Id*. at p. 407; see also *Van Atta*, 27 Cal.3d at pp. 430-33 [reviewing a civil taxpayer claim that challenged bail and own recognizance release statutes]).

As these principles make clear, the Court's exercise of jurisdiction is entirely proper here. County Defendants' cases stand only for the unremarkable proposition that, outside of the appellate process, judges cannot overrule the orders of other judges in pending cases. (See, e.g., *In re Kowalski* (1971) 21 Cal.App.3d 67, 70 ["An order made in one department during the progress of a cause can neither be ignored nor overlooked in another department."]; *Slone v. Inyo County Juvenile Court* (1991) 230 Cal.App.3d 263, 268-69 [parties to juvenile court case could not file "petition in the superior court requesting that court to 'invalidate the actions'" of the juvenile court].) Plaintiffs' lawsuit, like *Spitzer*, is fully consistent with this rule. Plaintiffs are challenging only *pre-arraignment* detention pursuant to the bail schedule, not bail orders that judges in the criminal division set at arraignment. Plaintiffs, in other words, are not asking the Court to review a ruling by another judge, nor will the requested relief affect "the thousands of bail orders issued and pending currently before the criminal courts." (Demurrer at pp. 12-13.)

Accordingly, County Defendants' jurisdictional challenge fails.

V. CONCLUSION

For the foregoing reasons, the Court should overrule County Defendants' Demurrer in full. If the Court disagrees, Plaintiffs request leave to amend to address any deficiencies.

DATED: February 8, 2023

Respectfully Submitted,

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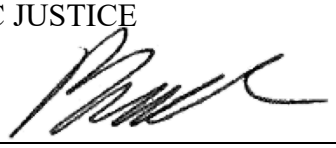
By: 

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**Pro Hac Vice applications forthcoming*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On February 8, 2023, I served true copies of the following document(s) described as

PLAINTIFFS' OPPOSITION TO DEFENDANTS COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, AND SHERIFF ALEX VILLANUEVA'S DEMURRER

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to Court Order and agreement by the parties, I served the document(s) on the persons listed in the Electronic Service List by submitting an electronic version of the document(s) to Case Anywhere, through the user interface at www.caseanywhere.com.

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

Executed on February 8, 2023, at Los Angeles, California.

/s/ *Loren Rives*
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