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County of San Francisco

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF CONTRA COSTA**

16 MANOHAR RAJU, an individual, in his
official capacity as the Public Defender of San
17 Francisco; ELISA BAIER, an individual;
DONNA DOYLE, an individual; JOHN
18 DUNBAR, an individual; ROSE MARIE
SIMS, an individual,

19 Plaintiffs and Petitioners,

20 v.

21 SUPERIOR COURT OF CALIFORNIA,
22 CITY AND COUNTY OF SAN
FRANCISCO, an agency of the State of
23 California; SAMUEL K. FENG, an individual,
in his official capacity as Presiding Judge of
24 San Francisco Superior Court; T. MICHAEL
YUEN, an individual, in his official capacity
25 as Chief Executive Officer of the San
Francisco Superior Court,

26 Defendants and Respondents.
27

Case No. MSRA21-0005

**DEFENDANTS' NOTICE OF
DEMURRER AND DEMURRER TO
WRIT PETITION AND COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**(Decl. of Alison K. Beanum and Request for
Judicial Notice filed concurrently)**

Date: to be set
Time: to be set
Department: 39

1 **PLEASE TAKE NOTICE** that, in accordance with Local Rule 3.41, the hearing date for
2 the instant demurrer will be assigned by the Clerk’s Office and followed by a hearing in
3 Department 39 of the Superior Court of California, County of Contra Costa, located at 725 Court
4 Street, Martinez, California 94553, Defendants, SUPERIOR COURT OF CALIFORNIA,
5 COUNTY OF SAN FRANCISCO (the San Francisco Superior Court), SAMUEL K. FENG in his
6 official capacity as Presiding Judge of the Superior Court of California, County of San Francisco,
7 and T. MICHAEL YUEN, in his official capacity as Executive Officer of the Superior Court of
8 California, County of San Francisco, will, and hereby do, move this Court for an Order sustaining
9 their demurrer to Plaintiffs’ Complaint for declaratory and injunctive relief on the following
10 grounds:

- 11 (1) The Court has no jurisdiction to address the causes of action set forth in
12 Plaintiffs’ Complaint/Petition for Writ of Mandate, pursuant to Code of Civil
13 Procedure section 430.10(a).
- 14 (2) Plaintiffs fail to plead sufficient facts to support a claim for relief based on
15 any of the legal theories in the Complaint/Petition for Writ of Mandate,
16 pursuant to Code of Civil Procedure section 430.10(e).

17 More specifically, Plaintiffs’ action is barred as a matter of law because they lack standing
18 to pursue any of the alleged claims. In addition, this Court lacks jurisdiction to compel action by
19 another court of equal stature, particularly when Plaintiffs’ requested relief impacts Defendants’
20 exercise of discretion. Further, writ relief is not warranted in view of extant and adequate remedies
21 at law. Lastly, Plaintiffs are not, as a matter of law, entitled to either the injunctive or declaratory
22 relief for which they pray.

23 On October 21, 2021, counsel for Defendants met and conferred via telephone with
24 Plaintiffs’ counsel regarding the issues raised in this demurrer. Plaintiffs’ counsel indicated
25 Plaintiffs would oppose Defendants’ demurrer. (Decl. of Alison K. Beanum, ¶ .)

26 This demurrer is based upon this notice, the attached demurrer, memorandum of points and
27 authorities, declaration of Alison K. Beanum, request for judicial notice, all documents and
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records on file with this Court, and on such oral argument as may be presented at the hearing on this matter.

Dated: November 12, 2021

CLYDE & CO US LLP

By: 

Kevin R. Sutherland
Alison K. Beanum
Douglas J. Collodel
Attorneys for Defendants and Respondents,
Superior Court of California, County of San
Francisco; Samuel K. Feng, Presiding Judge of the
Superior Court of California, County of San
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs are the elected San Francisco Public Defender and four individuals seeking changes to the discretionary manner in which the Presiding Judge and Executive Officer of the San Francisco Superior Court are addressing the backlog of cases created by the COVID-19 pandemic. In short, Plaintiffs (none of whom are criminal defendants) ask this Court to grant a peremptory writ of mandate, as well as declaratory and injunctive relief, directing Defendants to expedite criminal cases and utilize other facilities to do so – principally a courthouse designed for hearing civil cases and not configured with criminal-oriented security concerns as is the Hall of Justice, which handles criminal cases. Setting aside the host of Plaintiffs’ factual inaccuracies that, should this matter proceed any further, Defendants would refute in a formal return but which they must accept on this demurrer, this Court should dismiss the action now, in its entirety, for four unassailable legal reasons.

First, Plaintiffs lack standing to pursue their claims. The gist of this action is the ostensible need to prioritize a subsection of criminal matters (in-custody felony trials) based on Plaintiffs’ selective and misguided rendition of events, showcasing three (non-plaintiff) criminal defendants whose speedy trial rights purportedly were violated. Yet, none of the Plaintiffs are criminal defendants, let alone ones who claim their speedy-trial rights are being violated. Rather, they are the elected Public Defender, one of his employees who also happens to live in San Francisco, two other San Francisco residents whose relatives are criminal defendants, and a San Francisco-based business owner who has volunteered in the San Francisco jails.

And, as shown in the accompanying Request for Judicial Notice, Plaintiffs neglect to reveal that the two relatives identified as criminal defendants in the Complaint (Deshon Marman and Christopher Sims) whose rights under Penal Code section 1382 were being vitiated actually brought speedy-trial motions in their criminal actions (albeit unsuccessfully). While they could have, those criminal defendants did not pursue their own appellate remedies. Nonetheless, two other criminal defendants identified in the Complaint did, unsuccessfully petitioning the Court of

1 Appeal, First Appellate District, based on claims associated with their speedy trial rights; in both
2 cases, the San Francisco Public Defender’s Office filed the petitions. (*Zuniga v. Superior Court*,
3 A163120, writ denied September 17, 2021; *Bailey v. Superior Court*, A162523, writ denied May
4 28, 2021, petition for Supreme Court review in S269180 denied July 28, 2021.) Although ignored
5 in the Complaint, a viable avenue – not this action – exists to present a criminal defendant’s
6 speedy trial right claims.

7 Essentially, Plaintiffs view their status as taxpayers and ones having a public interest in the
8 criminal justice system as greater than the individuals whose constitutional rights really are at
9 stake. Because Plaintiffs do not assert the abrogation of *their* rights, they lack standing and this
10 Court lacks jurisdiction to entertain causes of action alleged in their complaint, as well as their
11 writ petition.

12 Second, Plaintiffs’ writ-of-mandate causes of action fail as a matter of law for three
13 independent reasons. Initially, this Court lacks jurisdiction to order another superior court of equal
14 stature to act in a specific manner or to control another court’s exercise of its discretion. Code of
15 Civil Procedure section 1085 manifestly states that mandamus can only be directed to an inferior
16 tribunal. Appellate decisions confirm this precept. Next, writ relief cannot be granted when there
17 is an adequate remedy at law. Here, any infringement of a criminal defendant’s speedy trial right
18 can and must be addressed in that defendant’s individual case, including a motion before the trial
19 judge and, if unsuccessful, appellate recourse in the Court of Appeal and Supreme Court. Indeed,
20 as noted, criminal defendants know about and avail themselves of their legal remedy in *their*
21 cases. Lastly, on a generalized showing, Plaintiffs seek to transfer responsibility for day-to-day
22 operations of the San Francisco Superior Court from its presiding judge and other court officials to
23 this Court. This Court would be responsible to ensure that criminal cases are “expedite[d]” and
24 “set for trial and hear[d] without regard to the pendency of any civil matters or proceedings.” But
25 case and courtroom management are based on the exercise of judgment, considering specific
26 circumstances and balancing relevant interests. Mandamus cannot issue to restrict the exercise of
27 judgment, especially on a showing, like Plaintiffs’, that is abstracted from real case and courtroom
28 circumstances. Because Plaintiffs cannot overcome the jurisdictional limitations for mandamus,

1 because an adequate remedy exists at law, and because mandamus does not lie to direct how
2 Defendants may exercise their discretion, this Court should sustain Defendants’ demurrer to
3 Plaintiffs’ writ allegations without leave to amend.

4 Third, Plaintiffs’ prayer for injunctive relief lacks a legal foundation, is misdirected, and,
5 quite frankly, would be completely unworkable. To start, they have not established that *they* will
6 suffer irreparable harm, nor can they as Plaintiffs’ rights have not been impacted. Further, the
7 injunctive relief Plaintiffs request implicates security concerns, responsibility for which statutorily
8 falls upon the Sheriff. Furthermore, an injunction would require this Court to oversee the
9 calendars and daily operations of the San Francisco Superior Court. Injunctive relief is, simply,
10 inappropriate.

11 Fourth, declaratory relief is unavailable under Code of Civil Procedure section 1060, as
12 there is no actual controversy for this Court to address. Plaintiffs expressly disclaim any remedy in
13 any particular case, opting instead for a generalized declaration that Defendants’ conduct violates
14 statutory and constitutional provisions. But without analyzing individual cases, it is impossible to
15 state that an individual defendant’s rights are being violated. Plainly, the requested relief cannot be
16 granted.

17 To sum, Plaintiffs cannot overcome fundamental and impassable barriers to their entire
18 action. This Court should end this litigation now and sustain Defendants’ demurrer without leave
19 to amend.

20 **II. BACKGROUND**

21
22 Plaintiffs allege San Francisco’s criminal legal system is in a state of crises. (Complaint at
23 1, ¶1.) But they gloss over the COVID-19 pandemic that turned the world upside down. (See
24 generally, [https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/)
25 [help-state-prepare-for-broader-spread-of-covid-19/](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/) [March 4, 2020 gubernatorial declaration of a
26 state of emergency; currently archived]; Complaint at 3, ¶9; at 9-13, ¶¶37-62.) Due to the
27 pandemic, San Francisco’s court system, like those throughout the country, was sent into disarray
28 and has required the implementation of unprecedented alternatives to provide court services that

1 previously were taken as a given. Notwithstanding the great efforts Defendants have undertaken to
2 provide all court services, Plaintiffs make broad (and conclusory) assertions that felony criminal
3 trials can be held at other locations to clear the criminal case backlog and restore the right of the
4 criminally accused to a speedy trial in San Francisco. (Complaint at 1, ¶¶2-3.)

5 None of the Plaintiffs, however, is among the criminally accused whose speedy trial right
6 allegedly has been abrogated. Rather, Plaintiffs are the San Francisco Public Defender and four
7 individuals who live and work in San Francisco. (Complaint at 5-6, ¶¶17-21.) While they claim to
8 have public-interest and taxpayer standing [Complaint at 5-6, ¶¶17-22], they do not set forth any
9 facts showing entitlement to advocate for criminal defendants who, for personal reasons, may
10 prefer to delay their trials, or for attorneys who with the consent of their clients need and obtain
11 continuances in criminal matters, or for criminal defendants (including those identified in the
12 Complaint at paragraphs 19, 21, 64 and 65) who have already, and unsuccessfully, litigated their
13 claim that their speedy trial right was denied.

14 Plaintiffs demand the devotion of all of the San Francisco Superior Court’s resources to
15 felony criminal trials [Complaint at 23, ¶121] and pray for a writ compelling Defendants to “set
16 for trial and hear criminal matters without regard to the pendency of any civil matters or
17 proceedings” [Complaint at 26]. Essentially, Plaintiffs seek to change the way Defendants exercise
18 their discretion to dispense justice in all matters.

19 **III. THE APPLICABLE LEGAL STANDARD**
20

21 In determining the sufficiency of Plaintiffs’ complaint against a demurrer, this Court may
22 consider matters that may be judicially noticed, and treat the demurrer as admitting all material
23 facts properly pleaded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) It does not, however, accept
24 contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311,
25 318.)
26
27
28

1 **IV. BECAUSE PLAINTIFFS LACK STANDING, THIS COURT SHOULD SUSTAIN**
2 **DEFENDANTS’ DEMURRER WITHOUT LEAVE TO AMEND**

3
4 Absent standing, a party “lacks the right to seek relief, which ““goes to the existence of a
5 cause of action.”” (*Rubinstein v. Fakheri* (2020) 49 Cal.App.5th 797, 806.) “Typically, to have
6 standing, a plaintiff must plead an actual justiciable controversy and have some ‘special interest to
7 be served or some particular right to be preserved or protected over and above the interest held in
8 common with the public at large.’” (*San Diegans for Open Government v. Public Facilities*
9 *Financing Authority of City of San Diego* (2019) 8 Cal.5th 733, 738.)

10 Here, Plaintiffs cannot meet the threshold standing requirement, a fatal jurisdictional defect
11 that entitles judgment in Defendants’ favor. (*Scott v. Thompson* (2010) 184 Cal.App.4th 1506,
12 1510.) As is clear from their Complaint/Petition, Plaintiffs do not have a personal interest at stake
13 and claim public interest and taxpayer standing.¹ (Complaint at 5-6, ¶¶17-22.) More specifically,
14 Plaintiffs allege they are residents or work in San Francisco, but – in this action challenging
15 speedy trial rights uniquely bestowed upon a criminal defendant to assert (if desired) – Plaintiffs
16 do not claim to be criminal defendants, nor do they allege their statutory and constitutional speedy
17 trial rights have been implicated. Thus, Supreme Court authority forecloses their standing claim.

18 In *Dix v. Superior Court* (1991) 53 Cal.3d 442, a writ petitioner claimed that a private
19 citizen had either a “beneficial interest” or public interest standing to challenge a criminal
20 defendant’s resentencing. The *Dix* court held, “[n]either a crime victim nor any other member of
21 the public has general standing to intervene in an ongoing criminal proceeding against another
22 person.” (*Id.* at 448.) The Supreme Court explained that, in a criminal case, it is the parties’
23 “responsibility, not a stranger’s, to decide what matters require litigation.” (*Id.* at 454.) Further, it
24 ruled that “recognition of citizen standing to intervene in criminal prosecutions would have

25
26 1 Plaintiff Raju is the San Francisco Public Defender, and Plaintiff Dunbar is one of his
27 employees and a San Francisco resident. (Complaint at 5-6, ¶¶17, 20.) Plaintiff Baier lives, works
28 and owns a business in San Francisco. (Complaint at 5, ¶18.) Plaintiff Doyle lives, works and
owns a home in San Francisco. (Complaint at 5, ¶19.) Plaintiff Sims lives and works in San
Francisco. (Complaint at 6, ¶21.) All claim to have public interest standing [Complaint at 6, ¶22],
and all but Plaintiff Raju allege they are taxpayers [Complaint at 5-6, ¶¶17-21].

1 ‘ominous’ implications.” (*Id.* at 453.) *Dix* reiterated “the general rule that neither a crime victim
2 nor any other citizen has a legally enforceable interest, public or private, in the commencement,
3 *conduct*, or outcome of criminal proceedings against another.” (*Id.* at 450 [emphasis added].)

4 Similarly, in *People v. Martinez* (2009) 47 Cal.4th 399, a criminal defendant’s sister
5 claimed the trial court erred by failing to conduct a hearing into the adequacy of counsel’s
6 representation. Relying on *Dix*, the Supreme Court reaffirmed the tenet that no private citizen has
7 a personal legal interest in a criminal proceeding against another person “[e]xcept as specifically
8 provided by law.” (*Id.* at 419, fn.2.) The defendant’s constitutional rights – there, the
9 constitutional right to counsel – are “personal to the defendant and ordinarily cannot be asserted
10 vicariously.” (*Id.* at 419.) Moreover, “even incarcerated defendants can speak for themselves in
11 various ways,” so there was no need for the sister to act as her brother’s advocate. (*Id.* at 420.)
12 This point from *Martinez* is particularly applicable to Plaintiffs’ lawsuit, as both of the Plaintiffs’
13 relatives named in the Complaint filed trial court motions to dismiss based on their speedy trial
14 rights (though unsuccessful). And two of the three criminal defendants identified as having their
15 speedy trial right impacted by Defendants’ alleged acts filed their own writ petitions (also
16 unsuccessfully). (*Zuniga v. Superior Court*, A163120, writ denied September 17, 2021; *Bailey v.*
17 *Superior Court*, A162523, writ denied May 28, 2021, petition for Supreme Court review in
18 S269180 denied July 28, 2021.)²

19 The *Martinez* court also observed that a citizen has no fiduciary obligation to a criminal
20 defendant, so “intervention of a person who is not under such a duty could impair the defendant’s
21 interests, especially because third parties may have motives that are inimical to the defense
22 position.” (*Ibid.*) Even if citizens believe they are being helpful, “even a well-intentioned person
23 adversely could impact the defendant’s position because of ignorance of the law.” (*Ibid.*) Finally,
24 “third parties are unlikely to have complete information” about the case. (*Ibid.*) Thus, Plaintiffs
25 should not be allowed to advance a general proposition over the rights and interests of the parties
26 actually involved in the individual cases. (See also, *Associated Builders and Contractors, Inc. v.*

27 _____
28 2 Defendants separately have requested that this Court take judicial notice of the Marman,
Sims, Bailey and Zuniga appellate proceedings. (Evid. Code §§ 452(d), 453; see RJN request.)

1 *San Francisco Airports Com.* (1999) 21 Cal.4th 352, 377-378 [contractor association lacked
2 standing to assert the organizational rights of the workers employed by its members].)

3 Since *Dix*, California’s voters have added a narrow exception to the general rule on
4 standing, recognizing that crime victims may be “heard” in “any proceeding in which a right of the
5 victim is at issue.” (Cal. Const., art. I, § 28.) The fact that this exception applies to only one
6 category of members of the general public provides further confirmation that Plaintiffs lack
7 standing here.

8 In the instant action, Plaintiffs are not raising their own constitutional and statutory rights.
9 Rather, they tether themselves to the rights of others – some who indisputably would prefer to
10 have their trials delayed for personal reasons. Plaintiffs suggest an ethereal connection to what
11 may be occurring in another person’s criminal case as their claim to legal standing, but *Dix* and
12 *Martinez* permanently sever that proposition. In short, Plaintiffs are using the ostensible
13 vindication of third parties’ rights to advance their taxpayer claims. But they have not, and cannot,
14 meet their burden to establish standing. Accordingly, this Court should sustain Defendants’
15 demurrer to Plaintiffs’ entire action without leave to amend.³

16 **V. THIS COURT SHOULD DISMISS PLAINTIFFS’ PEREMPTORY WRIT CAUSES**
17 **OF ACTION AS A MATTER OF LAW**

18
19 **A. This Court Lacks Jurisdiction to Issue a Peremptory Writ Against Defendants**

20 Simply put, this Court cannot issue a peremptory writ in this matter. Code of Civil
21 Procedure section 1085 explicitly states: “A writ of mandate may be issued by any court to *any*
22 *inferior tribunal*, corporation, board, or person, to compel the performance of an act which the law
23 specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of
24 a party to the use and enjoyment of a right or office to which the party is entitled, and from which
25

26 _____
27 3 The arguments referencing Defendants Presiding Judge Feng and the Superior Court apply
28 equally to Defendant Yuen in his capacity as the Superior Court’s Executive Officer. (See
generally, *Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 741; *Wolf v. Mulcrevy* (1917) 35
Cal.App. 80, 81.)

1 the party is unlawfully precluded by *that inferior tribunal*, corporation, board, or person.”
2 (Emphasis added.) This plain language governs here and precludes Plaintiffs’ petition in its
3 entirety. (*Haldane v. Superior Court of Los Angeles County* (1963) 221 Cal.App.2d 483, 485-486.)
4 [“Mandamus or prohibition may be issued only by a court to another court of inferior
5 jurisdiction.”]; *People v. Davis* (2014) 226 Cal.App.4th 1353, 1371 [“The superior court does not
6 have the authority or jurisdiction to issue mandamus or prohibition against itself.”]; see also, Code
7 Civ. Proc. § 1103; *Ford v. Superior Court, supra*, 188 Cal.App.3d at 742 [“One department of the
8 superior court cannot enjoin, restrain, or otherwise interfere with the judicial act of another
9 department of the superior court. Even between superior courts of different counties, having
10 coequal jurisdiction over a matter, the first court of equal dignity to assume and exercise
11 jurisdiction over a matter acquires exclusive jurisdiction.”]; *Alvarez v. Superior Court* (2010) 183
12 Cal.App.4th 969, 983.)

13 Because Defendants are not an inferior tribunal, this Court cannot issue the writ relief,
14 which Plaintiffs seek. Accordingly, this Court should sustain Defendants’ demurrer to Plaintiffs’
15 petition without leave to amend.

16 **B. Plaintiffs are not Entitled to a Peremptory Writ Because There is an Adequate**
17 **Remedy at Law.**

18 For Plaintiffs to obtain writ relief under Code of Civil Procedure section 1085, they must
19 show the absence of a plain, speedy, and adequate remedy law. (*County of San Diego v. State of*
20 *California* (2008) 164 Cal.App.4th 580, 593.) This, Plaintiffs cannot do. The Supreme Court has
21 already provided an avenue of relief to criminal defendants who claim their constitutional or the
22 statutory right to a speedy trial in felony prosecutions has been denied, namely, filing of a motion
23 under Penal Code section 1382 seeking dismissal for a speedy trial act violation in their own
24 actions, and, if unsuccessful in the trial court, appellate review. (*People v. Wilson* (1963) 60
25 Cal.2d 139, 149, 150-151 [“The defendant’s primary remedy, of course, is a timely motion to
26 dismiss in the trial court” followed by “petition for writ of mandate prior to the commencement of
27 trial” and also, on an appeal showing a miscarriage of justice]; *Sykes v Superior Court* (1973) 9
28 Cal.3d 83, 95 [writ of mandate issued directing dismissal of charges due to untimely delay in

1 rearraigning petitioner for plea]; *Jones v. Superior Court* (1970) 3 Cal.3d 734, 741 [directing
2 dismissal of action following denial of speedy trial right]; accord: *Rice v Superior Court* (1975) 49
3 Cal.App.3d 200, 205-206 [criminal charges dismissed upon showing of an unreasonable delay].
4 Furthermore, as the Supreme Court stated in *People v. Wilson*, “[t]he right to a speedy trial must
5 therefore be asserted, *if at all, in the court where the prosecution is pending*, and prior to the
6 commencement of trial.” (60 Cal.2d at 146; emphasis added.)

7 As applied to the instant action, the criminal defendants whose speedy trial rights are
8 implicated have an adequate remedy at law. In fact, as previously mentioned, the actual parties in
9 interest identified in Plaintiffs’ Complaint pursued their legal remedy in their criminal actions, in
10 both Section 1382 motions and petitions to Court of Appeal and Supreme Court. Those defendants
11 also have the remedy of an appeal from a judgment of conviction. (*Ford*, 188 Cal.App.3d at 742
12 [“Plaintiffs’ remedy was by way of intervention in the main case, and, in the event of an adverse
13 decision there, an appeal to this court.” (citing Cal. Const., art. VI, § 11)].) Thus, Plaintiffs’
14 petition for writ relief is inappropriate. Dismissal on this demurrer, on the other hand, is the proper
15 remedy here.

16 **C. Writ Relief Must be Denied Because Defendants’ Case and Courtroom**
17 **Management Involves Their Discretionary Powers**

18 Under similar circumstances (i.e., where mandamus was sought to compel a judge to act in
19 a certain manner), the Court of Appeal upheld the sustaining of a demurrer without leave to
20 amend. (*Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 755.) More specifically, the petitioner in
21 *Taliaferro* alleged the presence of a nuisance required a judge to issue a warrant for the arrest of
22 the purported culprits. Because the discretionary nature of the judge’s official duty was implicated,
23 the Court of Appeal rejected the petitioner’s claim, noting “[i]t is only where a court has refused to
24 perform a clear duty, unmixed with discretionary power or the exercise of judgment that
25 mandamus will issue; it is the duty of the petitioner to show that the duty sought to be enforced
26 does not involve judgment or discretion.” (*Id.*, citing *De Forrest v. Coffey* (1908) 154 Cal. 444,
27 *Bender v. Hutton* (1911) 160 Cal. 372, *Tomkin v. Harris* (1891) 90 Cal. 201; accord: *Mooney v.*
28 *Garcia* (2012) 207 Cal.App.4th 229, 232 [“[M]andamus will not lie to control an exercise of

1 discretion, i.e., to compel an official to exercise discretion in a particular manner.”].) Moreover,
2 “[m]andate will not issue if the duty is not plain or is mixed with discretionary power or the
3 exercise of judgment.” (*Mooney, supra*, 207 Cal.App.4th at 233.)

4 More recently, the Court of Appeal in *Alvarez v. Superior Court, supra*, 183 Cal.App.4th
5 969, denied writ relief requested by a robbery defendant who claimed improprieties in the San
6 Francisco Superior Court’s procedure of restricting the authority to approve criminal pleas to
7 specific judges. The appellate court concluded the procedure was a matter of internal court
8 management, wholly within the presiding judge’s discretionary authority. (*Id.* at 980.)

9 *Alvarez* also is noteworthy here for its reference to California Rules of Court, Rule 10.603,
10 which sets forth the authority and duties of a presiding judge. (*Id.* at 978.) Rather than limiting
11 their focus on felony criminal matters, Rule 10.603 outlines the many responsibilities presiding
12 judges must take into consideration in the daily operations of the entire court system within the
13 county:

14 “The presiding judge is responsible, with the assistance of the court executive
15 officer, for leading the court, establishing policies, and allocating resources in a
16 manner that promotes access to justice for all members of the public, provides a
17 forum for the fair and expeditious resolution of disputes, maximizes the use of
18 judicial and other resources, increases efficiency in court operations, and enhances
19 service to the public. The presiding judge is responsible for:

19 (1) Ensuring the effective management and administration of the court, consistent
20 with any rules, policies, strategic plan, or budget adopted by the Judicial Council or
21 the court;

22 (2) Ensuring that the duties of all judges specified under rule 10.608 are timely and
23 orderly performed; and

24 (3) Ensuring that the court has adopted written policies and procedures allowing the
25 presiding judge to perform efficiently the administrative duties of that office.”

26 Further, Rule 10.603(b)(1)(B) authorizes, among other items, a presiding judge to “(B)
27 Apportion the business of the court, including assigning and reassigning cases to departments;”
28 and “(G) Perform all acts necessary to accomplish the duties specified by the rules of court.”

1 Thus, it becomes apparent that a presiding judge’s actions regarding court operations
2 involve a host of considerations designed to fairly and effectively provide service to the public.
3 Evaluation and implementation of these matters are “wholly discretionary.” (See *Alvarez*, 183
4 Cal.App.4th at 980.) Yet, mandamus is only proper when “the respondent has a *clear, present, and*
5 *ministerial duty* to act in a particular way; and the petitioner has a clear, present and beneficial
6 right to performance of that duty. [Citation] A ministerial duty is one that is required to be
7 performed in a prescribed manner under the mandate of legal authority without the exercise of
8 discretion or judgment.” (*County of San Diego v. State of California, supra*, 164 Cal.App.4th at
9 593 [emphasis added].)

10 Here, by way of the generalized allegations, Plaintiffs ask this Court to seize management
11 of all judicial services throughout San Francisco Superior Court in order “to set for trial and [have
12 heard] criminal cases without regard to the pendency of any civil matters or proceedings,” and,
13 presumably, without regard to specific circumstances of any case or any competing interests.
14 (Complaint at 26.) In other words, authority and responsibility for regular case and courtroom
15 management decisions would pass from the San Francisco presiding judge and other court
16 officials to this Court. Further, Plaintiffs would have this Court direct Defendants on the use of
17 resources and facilities without regard to security or safety concerns. There is no escaping the fact
18 that case and courtroom management requires the exercise of discretion. Under *County of San*
19 *Diego*, as well as *Taliaferro* and the Supreme Court authority it cites, mandamus is not appropriate
20 to direct how Defendants exercise their discretion. (*County of San Diego*, 164 Cal.App.4th at 596
21 [“the acts the writ directs are not ministerial and, therefore, cannot properly be compelled by a writ
22 of mandate”]; *Taliaferro*, 182 Cal.App.2d at 755.) Hence, this Court should sustain the instant
23 demurrer to Plaintiffs’ petition without leave to amend.

24 **VI. AS A MATTER OF LAW, PLAINTIFFS CANNOT SHOW IRREPARABLE HARM**
25 **TO WARRANT INJUNCTIVE RELIEF**
26

27 Plaintiffs pray for a permanent injunction. (Complaint at 27.) “To obtain an injunction, a
28 party must show injury as to himself.” (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739,

1 748.) *Connerly*, which also rejected taxpayer standing, declined injunctive relief because there
2 were no facts alleged to show the plaintiff had or will suffer particularized injury. It plainly
3 precludes Plaintiffs’ injunctive relief claims.

4 In addition, when injunctive relief is sought against a public agency, such as the San
5 Francisco Superior Court, Plaintiffs must make a significant showing of irreparable injury, since
6 there is a “general rule against enjoining public officers or agencies from performing their duties.”
7 (*Tahoe Keys Property Owners’ Ass’n. v State Water Resources Control Board* (1994) 23
8 Cal.App.4th 1459, 1471; *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464.) Here,
9 Plaintiffs have not, and cannot, establish a risk of irreparable injury because they have not shown a
10 “high degree of existing or threatened injury required for the *prejudgment* injunctive relief sought
11 here.” (See *Cohen v. Board of Supervisors* (1986) 178 Cal.App.3d 447, 454 [original emphasis].)
12 Plaintiffs cannot make a significant showing of irreparable injury because criminal defendants can,
13 should they desire, address their speedy trial right by pursuing their own relief in their own cases,
14 as two criminal defendants mentioned in the Complaint/Petition already have done.

15 Separately, injunctive relief is unavailable in this matter because courtroom utilization
16 implicates security concerns for which the San Francisco Sheriff has responsibility. (See generally,
17 Gov. Code § 69920 [the Superior Court Security Act of 2012]; see also, *Superior Court of*
18 *Alameda County v. County of Alameda* (2021) 65 Cal.App.5th 838 [discussing history of trial
19 court security funding].) Pertinent here, the Superior Court Security Act expressly provides, “the
20 sheriff is responsible for the necessary level of court security services, as established by the
21 memorandum of understanding described in subdivision (b) of Section 69926.”⁴ (Gov. Code §
22 69921.5; see also, Gov. Code § 69922 [outlining court security services provided by sheriff].)
23 Without a viable security plan approved by the sheriff and subject to compliance with the
24 operative memorandum of understanding, an injunction “requiring all Defendants to act as set
25

26 4 Government Code section 69926 states: “(b) The sheriff, with the approval and
27 authorization of the board of supervisors, shall, on behalf of the county, enter into an annual or
28 multiyear memorandum of understanding with the superior court specifying an agreed-upon level
of court security services and any other agreed-upon governing or operating procedures. The
memorandum of understanding and the court security plan may be included in a single document.”

1 forth [in Plaintiffs’ Complaint/Petition]” could not be followed.⁵

2 Moreover, the “open ended” injunctive relief Plaintiffs request is inappropriate, as this
3 Court would be called upon to micromanage the day-to-day operations of the San Francisco
4 Superior Court to review compliance with any injunction. (See *Thayer Plymouth Center, Inc. v.*
5 *Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300, 304; see also, *Continental Baking Co. v. Katz*
6 (1968) 68 Cal.2d 512, 534 [“An injunction must not be uncertain or ambiguous and defendant
7 must be able to determine from the order what he may and may not do”].)

8 For all these reasons, Plaintiffs cannot establish any basis for an injunction against
9 Defendants. This Court should reject their prayer for injunctive relief.

10 **VII. AS A MATTER OF LAW, PLAINTIFFS ARE NOT ENTITLED TO**
11 **DECLARATORY RELIEF**

12 Plaintiffs also pray for a declaration requiring Defendants to act as set forth in Plaintiffs’
13 writ petition. (Complaint at 27.) Yet, as it pertains to Plaintiffs, there is no actual controversy upon
14 which declaratory relief can be granted. The governing statute, Code of Civil Procedure section
15 1060, provides, in pertinent part that “[a]ny person . . . who desires a declaration of his or her
16 rights or duties with respect to another, . . . may, in cases of actual controversy relating to the legal
17 rights and duties of the respective parties, bring an original action or cross-complaint in the
18 superior court” “The “actual controversy” requirement concerns the existence of *present*
19 controversy relating to the legal rights and duties of the respective parties pursuant to contract
20 [citation], statute or order.” (*Sweetwater Union High School Dist. v. Julian Union Elementary*
21 *School Dist.* (2019) 36 Cal.App.5th 970, 984 [original italics].) But “[w]here the allegations of the
22 complaint reveal the controversy to be conjectural, anticipated to occur in the future, or an attempt
23 to obtain an advisory opinion from the court, the fundamental basis of declaratory relief is
24

25
26
27 5 Plaintiffs allege that, as of August 5, 2021, the San Francisco Superior Court has not
28 executed a memorandum of understanding with the sheriff. (Complaint at ¶87.) Government Code
section 69926(f) provides, however, the old memorandum of understanding remains in effect until
the parties enter into a new one.

1 lacking.” (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410;
2 *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582 [same].)

3 Plaintiffs openly acknowledge that they do not challenge or seek any remedy in any
4 particular case. (Complaint at 6, ¶23.) As they pertain to any particular trial, Plaintiffs’ allegations
5 of harm are indisputably conjectural and anticipated to occur in the future. (*Id.*) Hence, Plaintiffs
6 cannot show there is an “actual controversy relating to the legal rights and duties of the respective
7 parties.” (Code Civ. Proc. § 1060.) In the absence of an “actual controversy,” Plaintiffs’
8 Complaint/Petition does not state a cause of action for declaratory relief. (*Ephraim v. Metropolitan*
9 *Trust Co. of Cal.* (1946) 28 Cal.2d 824, 836 [“since no present legal controversy exists, a cause of
10 action for declaratory relief is not stated”].) Furthermore, “[c]ourts will not entertain a declaratory
11 relief action ‘the sole object of which is to settle rights of third persons who are not parties.’”
12 (*Connerly, supra*, 146 Cal.App.4th at 748.)

13 Because Plaintiffs have not presented an actual controversy about *their* constitutional and
14 statutory speedy trial rights, their prayer for declaratory relief must fail.

15 **VIII. CONCLUSION**

16 Plaintiffs’ Complaint/Petition must be dismissed on demurrer for four equally valid
17 reasons. First, Plaintiffs lack standing to insinuate themselves in and influence criminal actions in
18 which none is a defendant. Second, writ relief is unavailable, as this Court is not empowered to
19 order another court of equal jurisdiction to act in a specific manner, there exists an adequate
20 remedy at law for those whose speedy trial rights actually are being violated, and this Court cannot
21 direct Defendants to exercise their discretion in a specific manner. Third, Plaintiffs cannot show
22 why injunctive relief is warranted. And fourth, Plaintiffs have not presented a ripe controversy

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upon which a declaration of rights could be adjudicated. Because these legal grounds preclude Plaintiffs' claims in whole, this Court should sustain the instant demurrer without leave to amend.

Dated: November 12, 2021

CLYDE & CO US LLP

By: 

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PROOF OF SERVICE
Raju v. Superior Court of California, City and County of San Francisco, et al.
Case No. CGC-21-594671

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 355 S. Grand Avenue, Suite 1400, Los Angeles, CA 90071.


On **November 12, 2021**, I served true copies of the following document(s) described as **DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER TO WRIT PETITION AND COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action as follows:

Attorneys for <i>Plaintiffs and Petitioners</i> Monique Olivier Christian Schreiber Hannah Shirey OLIVIER SCHREIBER & CHAO LLP 201 Filbert Street, Suite 201 San Francisco, CA 94133 Tel: (415) 484-0980 monique@oscllegal.com christian@oscllegal.com hannah@oscllegal.com	Attorneys for <i>Plaintiffs and Petitioners</i> James E. Miller Chiharu G. Sekino Casey T. Yamasaki MILLER SHAH LLP 1230 Columbia St., Ste. 1140 San Diego, CA 92101 Tel: (866) 540-5505 jemiller@millershah.com cgsekino@millershah.com ctyamasaki@millershah.com
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- EMAIL - by transmitting via email the document(s) listed above to the email address(es) set forth in the attached Service List below on this day before 5:00 p.m.
- MAIL** - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in Los Angeles, California addressed as set forth below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via Federal Express.

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

Executed on **November 12, 2021**, at Pasadena, California.



Angelo McCabe