

1 LAW OFFICES OF THE PUBLIC DEFENDER  
MARY J. GREENWOOD, # 099728  
2 County of Santa Clara  
120 West Mission Street  
3 San Jose, CA 95110  
Telephone: 299-7195

4 Attorneys for Defendant  
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6

7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SANTA CLARA**  
9

10 PEOPLE OF THE STATE OF CALIFORNIA, : NO:

11 Plaintiff, : ORDER TO SHOW CAUSE

12 vs.

13 DEFENDANT,

14 Defendant

15 : Date  
: Time: 1:30 p.m.  
: Dept.: 24  
: Time Est.: 15 minutes

16 IT IS HEREBY ORDERED that a representative of the State Department of Mental Health  
17 appear in Department 24 of this Court on March 24, 2009 at 1:30 p.m. to explain why sanctions  
18 against the State Department of Mental Health should not be imposed for failing to accept  
19 transportation and failing to provide a mental health treatment placement for above named  
20 defendant.  
21

22 Date \_\_\_\_\_, 2010  
23

24 \_\_\_\_\_  
25 Superior Court Judge  
26  
27  
28

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7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SANTA CLARA**  
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10 PEOPLE OF THE STATE OF CALIFORNIA, : NO:

11 : Plaintiff,

12 vs.

12 : MEMORANDUM OF POINTS AND  
13 : AUTHORITIES IN SUPPORT OF AN  
14 : ORDER TO SHOW CAUSE

13 DEFENDANT,

14 : Defendant :  
15

16 **STATEMENT OF FACTS**

17 On January 6, 2010, Defendant was found incompetent to stand trial pursuant to Penal  
18 Code section 1368. Criminal proceedings have been suspended, and in accordance with Penal  
19 Code section 1370, subdivision (a)(1)(B)(i), the State Department of Mental Health was ordered  
20 on January 27, 2010 to provide placement for the care and treatment of the mentally disordered  
21 by February 9, 2010. However, the State Department of Mental Health has failed to do so, and  
22 Defendant has constantly remained confined in the Santa Clara County Jail since the date of  
23 commitment.  
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1 POINTS AND AUTHORITIES

2 **FAILURE TO EXAMINE AND EVALUATE AN INCOMPETENT DEFENDANT**  
3 **IN A THERAPEUTIC SETTING WITHIN 30 DAYS OF THE COURT’S**  
4 **COMMITMENT ORDER VIOLATES THE DEFENDANT’S**  
5 **CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION**  
6 **UNDER THE FEDERAL AND STATE CONSTITUTIONS.**

7 The indefinite confinement of a defendant found incompetent to stand trial violates  
8 constitutional principles of equal protection and due process. (*Jackson v. Indiana* (1972) 406  
9 U.S. 715, 730, 731; 92 S.Ct. 1845; 32 L.Ed.2d 435.) A person charged with a criminal offense  
10 and committed to the state hospital solely on account of his incapacity to proceed to trial may  
11 be confined only for that reasonable period of time necessary to determine whether there is a  
12 substantial likelihood that s/he will be restored to competence in the foreseeable future. (*Id. at*  
13 **720.** ) The constitutionality of California’s statutory framework for the commitment of  
14 defendants deemed incompetent to stand trial was reviewed by our Supreme Court in *In re*  
15 *Davis* ((1973) 8 Cal.3d 798). Subsequent to that review, the Court imposed upon the state  
16 hospital the following reporting requirement, thereby bringing California’s criminal  
17 commitment procedures into compliance with *Jackson’s* “rule of reasonableness:

18 ...[W]e believe that the hospitals’ authorities should report without undue delay  
19 regarding the current status of petitioners’ progress toward competence. Such  
20 reports should be prepared for all persons heretofore or hereafter committed as  
21 incompetent to stand trial, and should be submitted to the superior court which  
22 originated the commitment. With respect to future commitments, we think that in  
23 order to comply with *Jackson’s* demands the trial courts should henceforth direct  
24 the appropriate state hospital authorities to commence an immediate examination  
25 of the person committed and, within a reasonable time, report to the court the  
26 result of that examination and estimate the additional time probably necessary to  
27 restore the person to competence. (*In re Davis, supra at 806.*)  
28

1 This reporting obligation was later codified at Penal Code § 1370(b)(1) which provides in  
2 relevant part that:

3       Within 90 days of a commitment made...the medical director of the state  
4 hospital...to which the defendant is confined shall make a written report to the  
5 court...concerning the defendant’s progress toward recovery of mental  
6 competence.... If the defendant has not recovered mental competence, but the  
7 record discloses a substantial likelihood that the defendant will regain mental  
8 competence in the foreseeable future, the defendant shall remain in the state  
9 hospital....Thereafter, at six month intervals or until the defendant becomes  
mentally competent...the medical director...shall report in writing to the court  
...regarding the defendant’s progress toward recovery of mental competence.  
(Cal. Pen. Code §1370.)

10       The “rule of reasonableness” extends to the time an incompetent defendant spends in the  
11 county jail awaiting transportation and admission to the state hospital. (*In re Mille (2010) WL*  
12 **716542 (Cal.App. 2Dist.)**) In *Mille*, the Second District Court of Appeal found that the  
13 Superior Court should have granted petitioner’s habeas corpus petition where petitioner alleged  
14 that 30 days after the court had ordered him committed, he still had not been transported to the  
15 state hospital for treatment. Citing the United States Supreme Court decision in *Jackson v.*  
16 *Indiana (supra, at 406 U.S. 715)* the Second District found that **an 84 day delay in**  
17 **transportation of the defendant to the state hospital for restorative care and treatment**  
18 **violated defendant’s constitutional rights to equal protection and due process of law:**  
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22       “Constitutional principles prohibit a defendant from being held “more than  
23 the reasonable” period of time necessary to determine whether there is a  
24 substantial probability that he will attain that capacity in the foreseeable  
25 future. ... Therefore, when the court orders a defendant committed to a  
26 state mental hospital for treatment that will promote a defendant’s “speedy  
27 restoration to mental competence” (P.C. 1370(a)(1)(B)(i)), *the court must*  
28 *also ensure that the defendant is actually transferred to the state hospital*  
*within a reasonable period of time. (In re Mille, supra at 11. (Emphasis*  
**added.))**

1 Noting that the United States Supreme Court had declined in *Jackson* to “prescribe  
2 arbitrary time limits,” the *Mille* court found that given the delay in transportation, it was not  
3 possible for the state hospital to evaluate Mr. Mille’s condition; for him potentially to derive  
4 some benefit from the prescribed treatment and for his progress to be reported to the court  
5 within the time constraints imposed by Penal Code section 1370. (*Id.* at 17.)

6 By the time Mr. Mille was eventually placed at Patton State Hospital, 84 out of the first  
7 90 days of treatment had been spent in the county jail, frustrating any real treatment required by  
8 § 1370 and the Federal and State Constitutions. “In order to implement section 1370, a  
9 defendant must arrive at Patton timely, not on the 84<sup>th</sup> day following the commitment order.”  
10 (*Id.*)

11  
12 The Court’s ruling in *Mille* is consistent with the 9<sup>th</sup> Circuit Court of Appeal’s decision  
13 in *Oregon Advocacy Center v. Mink* ((9<sup>th</sup> Cir. 2003) 322 F.3d 1101) wherein the Court  
14 examined delays in the transportation of defendants committed to the state hospital for  
15 restorative treatment by Oregon courts.

16  
17 In *Mink*, the 9<sup>th</sup> Circuit upheld a lower court order mandating the transportation of  
18 incompetent defendants within 7 days of the commitment order. Under Oregon law, the  
19 statutory period within which a person found incompetent to stand trial must be evaluated for  
20 purposes of assessing the likelihood and time for restoration of competence is 60 days. (ORS §  
21 161.370(3).) Nonetheless, incompetent defendants routinely languished in county jails for up to  
22 five months after being relegated to a “wait-list status and remain[ed] in jail until OSH [Oregon  
23 State Hospital] ha[d] room for them.” (*Oregon Advocacy Center v. Mink, supra, 322 F.2d at*  
24 1106.)

1 The federal Circuit Court held that allowing defendants to remain incarcerated in jail  
2 under these circumstances violated due process. “Holding incapacitated criminal defendants in  
3 jail for weeks or months violates their due process rights because the nature and duration of  
4 their incarceration bear no reasonable relation to the evaluative and restorative purposes for  
5 which courts commit those individuals.” (*Id. at 1122.*) So ruling, the Circuit Court upheld a  
6 lower court injunction mandating that incompetent defendants be admitted to the state hospital  
7 within 7 days of the commitment order. (*Id. at 1123.*)

9 Constitutional principles of equal protection and due process and California Penal Code  
10 § 1370 mandate that if Defendant is to be detained while criminal proceedings remain  
11 suspended, Defendant must be detained under the authority of a state hospital or other  
12 appropriate treatment facility, or placed upon outpatient status. (*In re Mille, supra; Cal. Pen.*  
13 **Code § 1370, subd. (a)(1)(B)(i).**)

15 Under *Mille*, a 30 day delay in transportation is too long. According to the 9<sup>th</sup> Circuit’s  
16 decision in *Mink*, transportation within 7 days of the Court’s commitment order protects the  
17 due process rights of the defendant. In the instant case, the Defendant has been confined for 30  
18 days.

19 Under both the *Mille* and *Mink* decisions, the Defendant is now unlawfully confined. If  
20 the state hospital cannot accept the defendant for treatment forthwith, the defendant must be  
21 placed on outpatient status or released altogether. The Defendant’s confinement in the County  
22 Jail cannot be further prolonged. He is entitled to an immediate release.

#### 23 CONCLUSION

24 Defendant requests the court adopt one of the following orders to resolve Defendants  
25 unlawful detention:  
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1           1) Order the State Department of Mental Health to accept transportation and placement  
2 of the defendant forthwith, and no longer than seven days from the date of this order, or suffer  
3 court ordered sanctions;

4           2) Order release of the Defendant forthwith.

5  
6 Date: February 17, 2010.

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8 Respectfully Submitted,

9 MARY J. GREENWOOD  
10 PUBLIC DEFENDER,

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13 Deputy Public Defender  
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4 Attorneys for Defendant  
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7 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SANTA CLARA**  
9

10 PEOPLE OF THE STATE OF CALIFORNIA, NO:  
11 Plaintiff, DECLARATION OF COUNSEL IN  
12 vs. SUPPORT OF AN ORDER TO SHOW  
13 DEFENDANT, CAUSE  
14 Defendant  
15

16  
17 I, Gilda Valeros, hereby declare under penalty of perjury that:

18 1. On January 6, 2010, Defendant was found incompetent to stand trial pursuant to Penal  
19 Code section 1368.

20 2. On January 27, 2010, the Court committed the Defendant to the State Department of  
21 Mental Health to for care and treatment, pursuant to Penal Code section 1370, subdivision  
22 (a)(1)(B)(i).

23 3. The court ordered the Department of Mental Health to comply with the commitment  
24 orders by February 9, 2010, 13 days from the January 27, 2010 orders.

25 3. Defendant has remained confined for 30 days since the commitment order on January  
26 27, 2010.  
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1           4. The State Department of Mental Health has failed to accept transportation and to  
2 provide mental health care and treatment.

3           5. Defendant is not receiving the restorative care and treatment to which he is  
4 constitutionally entitled and is therefore unlawfully detained.

5  
6 Date: February 27, 2010

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8 \_\_\_\_\_  
9 Gilda Valeros  
10 Deputy Public Defender

**PROOF OF SERVICE**

1  
2 STATE OF CALIFORNIA            )  
  )  
3 COUNTY OF SANTA CLARA    )

NO: CC123456

4           I am a citizen of the United States and am employed in the County aforesaid; I am over  
5 the age of eighteen years and not a party to this action; my business address is: 120 West  
6 Mission St, San Jose, CA 95110.

7           On March 7, 2010, I served the within ORDER TO SHOW CAUSE on the Parties in this  
8 action,  
9 by serving by mail a true and correct copy thereof on:

10           State of California – Department of Justice  
11           Office of the Attorney General  
12           1300 "I" Street  
13           P.O. Box 944255 Sacramento, CA 94244-2550

14           State Department of Mental Health  
15           Legal Department  
16           1600 – 9<sup>th</sup> Street, Rm 153  
17           Sacramento, CA 95814  
18           Fax (916) 654-3198

19           Santa Clara County Office of County Counsel  
20           70 West Hedding  
21           San Jose, CA 95110  
22           On behalf of **County Department of Mental Health**  
23           On behalf of **County Department of Corrections**

24           Santa Clara County District Attorney Office  
25           70 West Hedding St.  
26           San Jose, CA 95110

27           I declare under the penalty of perjury that the foregoing is true and correct.

28 Executed on March 7, 2010, at San Jose, California

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