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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16 SACRAMENTO DIVISION

17 WILLIAM A. SASSMAN,

18 Plaintiff,

19 v.

20 EDMUND G. BROWN, JR, Governor of
California, and JEFFREY A. BEARD,
21 Secretary of the California Department of
Corrections and Rehabilitation, in their
22 official capacities, and DOES 1-10,

23 Defendants.

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Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 Plaintiff WILLIAM A. SASSMAN challenges Defendants’ unconstitutional
3 exclusion of men from California’s Alternative Custody Program (“ACP”), as authorized
4 by California Penal Code section 1170.05. State law and implementing regulations issued
5 by the California Department of Corrections and Rehabilitation (“CDCR”) allow only
6 female prisoners to be considered for participation in the ACP, a highly desirable
7 alternative to incarceration. Plaintiff SASSMAN applied for the program but was denied
8 acceptance solely because of his sex. By allowing female but not male prisoners to
9 participate in a CDCR program that allows prisoners to reunite with their families in their
10 communities, ACP’s blanket sex-based exclusion violates the Equal Protection Clause of
11 the Fourteenth Amendment to the United States Constitution. Plaintiff brings this action
12 pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief.

13 **JURISDICTION AND VENUE**

14 1. This action arises under the Fourteenth Amendment to the United States
15 Constitution and 42 U.S.C. § 1983. This Court has subject matter jurisdiction over this
16 action under 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

17 2. Venue is proper in the Eastern District of California under 28 U.S.C.
18 § 1391(b)(2) because substantial acts and omissions giving rise to the claims occurred in
19 this District, including the authorization and implementation of the ACP as well as
20 Defendants’ decision to deny Plaintiff SASSMAN’s application to the ACP. Plaintiff
21 SASSMAN currently resides in this district.

22 3. Intradistrict venue is appropriate in this division pursuant to Federal Rule of
23 Civil Procedure 3 and E.D. Cal. L.R. 120(d) because a substantial part of the events or
24 omissions giving rise to Plaintiff’s claims occurred in the counties served by this division.
25 In particular, Defendants’ decision to establish the ACP in a sex discriminatory fashion
26 occurred in Sacramento County.

27 **PARTIES**

28 4. Plaintiff WILLIAM A. SASSMAN is a male prisoner with a family, and is

1 currently incarcerated at the Valley View Conservation Camp located in Elk Creek,
2 California.

3 5. Defendant EDMUND G. BROWN, JR. is the Governor of the State of
4 California and oversees all state agencies, including the CDCR. Defendant BROWN is
5 legally responsible for ensuring compliance with state and federal laws at all state
6 facilities, including state correctional facilities. Defendant BROWN is legally responsible
7 for the unlawful policies, practices, and procedures challenged herein, and has the
8 authority and legal obligation to abolish these unconstitutional policies, practices, and
9 procedures. Defendant BROWN is sued in his official capacity.

10 6. Defendant JEFFREY A. BEARD is the Secretary of the California
11 Department of Corrections and Rehabilitation. As Secretary of CDCR, Defendant Beard is
12 responsible for implementing the ACP, including the development and maintenance of
13 regulations implementing the program. Defendant BEARD is legally responsible for
14 ensuring compliance with state and federal laws at all correctional facilities. Defendant
15 BEARD is legally responsible for the unlawful policies, practices, and procedures
16 challenged herein, and has the authority and legal obligation to abolish these
17 unconstitutional policies, practices, and procedures. Defendant BEARD is sued in his
18 official capacity.

19 7. The true names and identities of Defendants DOES 1 through 10 are
20 presently unknown to Plaintiff. Each of Defendants DOES 1 through 10 are or were
21 employed by and are or were agents of the State of California or the California Department
22 of Corrections and Rehabilitation and are or were personally involved in the adoption
23 and/or implementation of the ACP. Plaintiff will seek to amend this Complaint as soon as
24 the true names and identities of Defendants DOES 1 through 10 have been ascertained.

25 8. Each and every act and omission alleged herein of Defendants, their officers,
26 agents, servants, employees, or persons acting at their behest or direction, were done and
27 are continuing to be done under the color of state law and within the scope of their official
28 duties as employees or agents of the State of California and the California Department of

1 Corrections and Rehabilitation.

2 **FACTS**

3 **The Alternative Custody Program As Currently Amended Categorically**
4 **Excludes Male Prisoners From Participation**

5 9. On September 30, 2010, California Governor Arnold Schwarzenegger signed
6 into law Senate Bill (“SB”) 1266, which added section 1170.05 to the California Penal
7 Code, authorizing CDCR to “offer a program under which female inmates, pregnant
8 inmates, or inmates who, immediately prior to incarceration, were primary caregivers of
9 dependent children ... who are committed to state prison may be allowed to participate in a
10 voluntary alternative custody program in lieu of confinement in state prison.”

11 10. As enacted and as amended, participants in the ACP are released from prison
12 and allowed to live in a residential home, transitional care facility, or residential drug
13 treatment program in the community for the remainder of their prison sentence.

14 11. Prisoners who have a current conviction for a serious or violent felony, or a
15 current or prior sex-offense conviction or California Penal Code section 290 registration
16 requirement are not eligible for the ACP. Additional exclusionary criteria include a history
17 of attempted escape in the last 10 years, an active restraining order, gang membership/
18 affiliation, a criminal or immigration hold, and certain types of in-custody misconduct.

19 12. When prisoners apply for the ACP, CDCR conducts a screening process to
20 determine whether the prisoner is eligible for the program. CDCR then prepares an
21 Individualized Treatment and Rehabilitation Plan and identifies an appropriate housing
22 placement for each prisoner. Each participant in the ACP is monitored by an agent from
23 CDCR’s Division of Adult Parole Operations while in the community, and is subject to
24 electronic monitoring and searches of the prisoner and his or her residence at any time.
25 Participants in the ACP may be returned to state prison at any time, with or without cause.

26 13. As originally enacted by the Legislature, the ACP was open to at least some
27 men, although men were still required to be “primary caregivers of dependent children ...
28 immediately prior to incarceration” while women applicants faced no such restriction. SB

1 1266 included legislative findings expressly emphasizing the importance of reuniting
2 incarcerated fathers with their children, noting that research “demonstrates that a father’s
3 involvement in his child’s life greatly improves the child’s chances for success. Helping
4 incarcerated fathers foster stronger connections with their children, where appropriate, can
5 have positive effects for children. Strong family connections help to ensure that fathers
6 stay out of prison once they are released.”

7 14. On or about September 12, 2011, CDCR announced the formal launch of the
8 ACP, which according to CDCR was a “Community-Based Program ... aimed at reuniting
9 low-level offenders with their families and providing inmates with rehabilitative services
10 within the community,” but stated that “[i]nitially, the program will be offered to
11 qualifying female inmates” and that “[p]articipation may be offered at a later date to male
12 inmates, at the discretion of the Secretary of CDCR.”

13 15. On June 27, 2012, Defendant BROWN signed into law SB 1021, which
14 modified Penal Code section 1170.05 categorically to exclude men. As amended by SB
15 1021, the ACP now explicitly excludes all men, in that the statute authorizes a program in
16 which “female inmates ... and only those persons, shall be eligible to participate in the
17 alternative custody program.”

18 16. On or about September 13, 2012, CDCR issued emergency regulations for
19 the ACP. Those regulations provide that “[t]o be eligible to participate in the Alternative
20 Custody Program (ACP), the inmate must volunteer and be female.” *See* Cal. Code Regs.
21 tit. 15, § 3078.2. Those regulations became permanent on February 25, 2013.

22 17. CDCR has expressed its intention to expand the ACP as part of its efforts to
23 meet court-ordered population reduction benchmarks. However, CDCR has improperly
24 and irrationally limited the proposed expansion to additional female prisoners with more
25 serious or violent criminal histories, rather than allowing any male prisoners to participate.
26 *See* Defs.’ Mar. 2014 Status Report in Resp. to Feb. 10, 2014 Order of the Three-Judge
27 Court, *Coleman v. Brown*, E.D. Cal. Case No. 2:90-cv-00520-LKK-DAD, Dkt. No. 5114-2
28 (Mar. 17, 2014) at Ex. B, p. 4.

1 18. No men have ever been accepted to the ACP.

2 **CDCR's Refusal to Consider Plaintiff SASSMAN is**
3 **Gender-Based Discrimination**

4 19. Plaintiff WILLIAM A. SASSMAN is a CDCR prisoner. Plaintiff
5 SASSMAN was accepted into CDCR custody on January 13, 2011. Plaintiff SASSMAN
6 had no criminal history prior to his current conviction.

7 20. Plaintiff SASSMAN has two minor children, with whom he lived and for
8 whom he shared caregiving responsibilities before he was arrested in November 2009.
9 Plaintiff SASSMAN has maintained contact with his minor children during his
10 incarceration through letters and visits. Plaintiff SASSMAN seeks to be more present in
11 his children's lives, to care for them, help provide for their well-being, and to be
12 reintegrated into his community. Plaintiff SASSMAN also seeks to be closer to his
13 mother, who has been diagnosed with stage IV colon cancer and is no longer able to care
14 for herself fully at home, so that he can provide assistance to her as a caregiver. He has a
15 residential home to which he can return if accepted into the ACP.

16 21. On June 3, 2013, Plaintiff SASSMAN applied to the ACP, requesting that he
17 be allowed to finish his sentence in his home community of Sacramento. None of the
18 exclusionary criteria set forth in CDCR's implementing regulations—including
19 disqualifying convictions, in-custody misconduct, or other law enforcement holds—applies
20 to Plaintiff SASSMAN.

21 22. On June 19, 2013, a CDCR Correctional Counselor denied Plaintiff
22 SASSMAN's application, stating that the "[s]ubject is a male and per Title 15 Section
23 3000 Def [sic] ACP not eligible."

24 23. Plaintiff SASSMAN appealed his ACP application denial through the third-
25 level of review. CDCR denied each of those appeals solely on the basis of Plaintiff
26 SASSMAN's sex, male. His final third-level appeal was denied on December 17, 2013,
27 which "exhaust[ed] the administrative remedy available to [him] within CDCR."

28 24. Since approximately March 2014, Plaintiff SASSMAN has been housed by

1 CDCR in a low-security fire camp. Plaintiff SASSMAN is currently housed at CDCR's
2 Valley View Conservation Camp in Elk Creek, California, where he works as a clerk
3 supporting prisoner fighting crews for fire suppression and flood control activities.

4 **Defendants Have Refused to Remedy Their Refusal to Consider Plaintiff**
5 **for the ACP Based Solely on Plaintiff's Gender**

6 25. Male prisoners other than Mr. Sassman have also been denied the
7 opportunity to apply and be considered for the ACP. For example, one prisoner
8 incarcerated by CDCR at Valley State Prison in Chowchilla, California is the father of a
9 one year old daughter, and aside from his sex, this prisoner would meet all ACP eligibility
10 criteria; nothing would exclude him from program participation if he were female. Last
11 year the prisoner sought access to the ACP so that he could transition back into his
12 daughter's life as well as pursue programming opportunities offered to ACP participants.
13 A CDCR Correctional Counselor refused even to provide the prisoner with an ACP
14 application because of the prisoner's sex—male. After filing an prisoner appeal stating “I
15 am being excluded from the Alternative Custody Program ... based solely on gender,” the
16 prisoner was instructed by an Appeals Coordinator to withdraw his appeal because the
17 ACP does not allow male prisoners to participate.

18 26. In addition to appeals and other communications, Defendants are aware that
19 the ACP is unconstitutional through a letter from Plaintiff's counsel to the CDCR General
20 Counsel dated May 12, 2014, stating that Defendants' policies, practices, and procedures
21 violate Plaintiff's constitutional rights. Plaintiff's letter went unanswered. Defendants
22 continue to violate Plaintiff's constitutional rights and have not made any attempts to
23 resolve the dispute pre-litigation.

24 27. Defendants' actions have violated, continue to violate, and are reasonably
25 expected in the future to violate Plaintiff's constitutional rights.

26 28. Defendants BROWN, BEARD, DOES 1-10, and other agents of the State of
27 California and the California Department of Corrections and Rehabilitation are responsible
28 for or personally participated in creating and implementing these unconstitutional policies,

1 practices, and procedures.

2 29. Defendants' unconstitutional policies, practices, and procedures are ongoing
3 and continue to violate Plaintiff's rights, causing irreparable harm to Plaintiff. Each day
4 Plaintiff SASSMAN is kept in prison away from his children solely on the basis that he is
5 male, not female, violates his fundamental rights to bond with and care for his children.
6 Every day that Plaintiff SASSMAN's children grow older without access to their parent is
7 time together that cannot be regained. Nor can Plaintiff SASSMAN regain time separated
8 from his elder, infirm mother for whom he very much wants to provide caregiving
9 assistance. As such, Plaintiff SASSMAN has no adequate remedy at law.

10 30. Plaintiff is entitled to injunctive relief prohibiting Defendants from
11 continuing categorically to exclude male prisoners like Plaintiff SASSMAN from the ACP.

12 31. Defendants' categorical exclusion of all male prisoners from the ACP harms
13 the public interest by exacerbating the overcrowding of California's state prisons and
14 denying low-risk male offenders the opportunity to pursue reintegration with their
15 communities and their families, which would reduce California's excessively high
16 recidivism rate. Defendants' blanket exclusion further harms the public interest by
17 perpetuating outdated and damaging stereotypes suggesting that only mothers care for
18 children, and that children can only benefit from reunification with their mothers, to the
19 detriment and denigration of fathers' roles in their children's lives. The exclusion further
20 harms the public interest by denying children the benefits that attend the presence and
21 participation of fathers in their lives, as research has demonstrated and the Legislature has
22 acknowledged.

23 WHEREFORE Plaintiff prays for relief as hereinafter alleged.

24 **FIRST CLAIM FOR RELIEF**
25 **(Against All Defendants – For Violations of the Equal Protection Clause of the**
26 **Fourteenth Amendment Under Color Of State Law – Section 1983)**

27 32. Plaintiff realleges and incorporates herein by reference the preceding
28 paragraphs.

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5. Such other relief as the Court deems just and equitable.

DATED: July 16, 2014

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld

Gay Crosthwait Grunfeld

Attorneys for Plaintiff