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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO DIVISION

11
12 **WILLIAM A. SASSMAN,**
13
14 Plaintiff,
15
16 **EDMUND G. BROWN JR., ET AL.,**
17 Defendants.

14-CV-01679-MCE-KJN (PR)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Judge: The Honorable Morrison C.
England, Jr.
Trial Date: N/A
Action Filed: July 16, 2014

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19 In accordance with Rule 12(a)(1) of the Federal Rules of Civil Procedure, Defendants
20 Edmund G. Brown, Jr., and Jeffrey A. Beard answer Plaintiff William A. Sassman's complaint,
21 and deny, admit, and allege as follows:

22 **INTRODUCTION**

23 Responding to the introduction of Plaintiff's complaint, Defendants admit that Plaintiff
24 brings this action challenging the Alternative Custody Program, as authorized by California Penal
25 Code section 1170.05, as unconstitutional. Defendants admit that California Penal Code section
26 1170.05 and California Code of Regulations, title 15, section 3078, *et seq.*, provide that "female
27 inmates sentenced to state prison for a determinate term of imprisonment...and only those
28 persons, shall be eligible to participate in the alternative custody program." Cal. Penal Code

1 §1170.05. Defendants admit that Plaintiff applied for the Alternative Custody Program and was
2 denied. Defendants admit that Plaintiff purports to bring this action under the Equal Protection
3 Clause of Fourteenth Amendment of the United States Constitution. Defendants admit that
4 Plaintiff purports to bring this action under 42 U.S.C. §1983 and seeks declaratory and injunctive
5 relief. Answering all remaining allegations in the introduction, Defendants state that the matters
6 alleged are questions of law to which no answer is required. Except as expressly admitted,
7 Defendants deny the allegations in the introduction.

8 **JURISDICTION AND VENUE**

9 1. Answering paragraph one, Defendants admit that Plaintiff purports to bring this
10 action under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983.
11 Defendants admit that this Court may have jurisdiction over claims seeking declaratory and
12 injunctive relief pursuant to 28 U.S.C. §§ 1331, 1343 and the Declaratory Judgment Act, 28
13 U.S.C. §§ 2201, 2202.

14 2. Answering paragraph two, Defendants admit that venue is proper in this
15 District. Defendants admit that the California State Legislature meets at the California State
16 Capitol in Sacramento, California. Defendants deny that they personally denied Plaintiff's
17 application to the Alternative Custody Program. Defendants are informed and believe and
18 therefore admit that Plaintiff presently lives within the Eastern District of California.

19 3. Answering paragraph three, Defendants admit that intradistrict venue is proper.
20 Answering all remaining allegations in paragraph three, Defendants state that the matters alleged
21 are questions of law, to which no answer is required. Except as expressly admitted, Defendants
22 deny the allegations in paragraph three.

23 **PARTIES**

24 4. Answering paragraph four, Defendants are informed and believe and therefore
25 admit that Plaintiff William Sassman, CDCR #AG0984, is a state inmate currently incarcerated at
26 Valley View Conservation Camp in Elk Creek, California.

27 5. Answering paragraph five, Defendants admit that Edmund G. Brown, Jr., is the
28 Governor of the State of California. Defendants admit the Plaintiff purports to sue Governor

1 Brown in his official capacity. Answering all remaining allegations in paragraph five, Defendants
2 state that the matters alleged are questions of law, to which no answer is required. Except as
3 expressly admitted, Defendants deny the allegations in paragraph five.

4 6. Answering paragraph six, Defendants admit that Jeffrey A. Beard is the
5 Secretary of the California Department of Corrections and Rehabilitation (CDCR). Defendants
6 admit that Plaintiff purports to sue Secretary Beard in his official capacity. Except as expressly
7 admitted, Defendants deny the allegations in paragraph six.

8 7. Answering paragraph seven, Defendants state that the matters alleged are
9 questions of law, to which no answer is required. To the extent that a response is required,
10 Defendants deny the allegations in paragraph seven.

11 8. Answering paragraph eight, Defendants state that the matters alleged are
12 questions of law, to which no answer is required. To the extent that a response is required,
13 Defendants deny the allegations in paragraph eight.

14 **FACTS**

15 9. Answering paragraph nine, Defendants admit that on September 30, 2010,
16 former California Governor Arnold Schwarzenegger signed Senate Bill (SB) 1266 into law.
17 Defendants admit that SB 1266 added section 1170.05 to the California Penal Code, authorizing
18 the Secretary of the Department of Corrections and Rehabilitation “to offer a program under
19 which female inmates, pregnant inmates, or inmates who, immediately prior to incarceration,
20 were primary caregivers of dependent children ... who are committed to state prison may be
21 allowed to participate in a voluntary alternative custody program in lieu of confinement in state
22 prison.”

23 10. Answering paragraph ten, Defendants admit that California Penal Code section
24 1170.05, as enacted in 2010 and amended in 2012, allows statutorily eligible participants in the
25 Alternative Custody Program to “participat[e] in an alternative custody program . . . in lieu of . . .
26 incarceration in state prison” through “Confinement to a residential home”, “Confinement to
27 a residential drug or treatment program”, or “Confinement to a transitional care facility that
28 offers appropriate services.”

1 11. Answering paragraph eleven, Defendants admit that California Penal Code
2 section 1170.05(d) states, “[a]n inmate committed to the state prison who meets any of the
3 following criteria shall not be eligible to participate in the alternative custody program: (1) The
4 person has a current conviction for a violent felony, as defined by Penal Code section 667.5. (2)
5 The person has a current conviction for a serious felony, as defined in Sections 1192.7 and 1192.8.
6 (3) The person has a current or prior conviction for an offense that requires the person to register
7 as a sex offender as provided in Chapter 5.5 (commencing with Section 290) of Title 9 of Part
8 1. . . . [and] (5) The person has a history, within the last 10 years, of escape from a facility while
9 under adult or juvenile custody” Defendants admit that California Code of Regulations, title
10 15, section 3078.3, states in part “[e]xclusionary criteria includes, but is not limited to: . . . (6)
11 Active or potential misdemeanor or felony holds, warrants or detainers. (7) Active or potential
12 United States Immigration and Customs Enforcement holds, warrants, or detainers. (8) An active
13 restraining order. (9) In-custody misconduct equivalent to a Divisions ‘A-1’ through ‘C’
14 offense . . . during the last 24 calendar months, except for physical possession of alcohol. . . . (13)
15 Validated active or inactive prison gang members or associates, as defined in subsection
16 3378(c).”

17 12. Answering paragraph twelve, Defendants admit that California Code of
18 Regulations, title 15, section 3078.4(a)(2) and (a)(3), state, in part, “the Correctional Counselor
19 shall complete a preliminary screening for Alternative Custody Program (ACP) eligibility
20 utilizing the criteria provided in section 3078.2” and “[a]n assessment of the inmate’s
21 predictive factors shall be completed using the California Static Risk Assessment, as provided for
22 in section 3768.1.” Defendants admit California Code of Regulations, title 15, section
23 3078.4(b)(1) further states in part that “[b]ased on the assessment . . . and a review of the inmate’s
24 central file, an Individualized Treatment and Rehabilitation Plan shall be prepared by designated
25 institution staff.” Defendants admit that California Code of Regulations, title 15, section
26 3078.4(b)(2), states in part that, “institution staff shall coordinate with the ACP Program Manager,
27 to identify appropriate placement consistent with the offender’s needs and availability of
28 appropriate program(s).” Defendants admit that California Code of Regulations, title 15, section

1 3078.5(a), states in part that “[e]ach Alternative Custody Program participant shall be assigned to
2 the supervision of a designated Division of Adult Parole Operations (DAPO) staff who shall
3 function as the case manager.” Defendants admit that California Code of Regulations, title 15,
4 section 3078.5(b) and (c) further state in part that the “[l]evel of supervision of the inmate will be
5 determined by DAPO staff” and “includes but is not limited to: . . . electronic monitoring . . . [and]
6 search and seizure by a peace officer at any time of the day or night, with or without a warrant
7 and with or without cause, for the purpose of verifying compliance with the requirements of the
8 ACP.”

9 13. Answering paragraph thirteen, Defendants admit that, as enacted in 2010,
10 California Penal Code 1170.05 authorized the creation of the Alternative Custody Program for
11 “female inmates, pregnant inmates, or inmates who were primary caregivers of dependent
12 children immediately prior to incarceration.” Defendants admit that SB 1266 included the
13 following legislative finding: “Separating parents from children has a substantial impact on their
14 futures. Children of inmates are much more likely than their peers to become incarcerated.
15 Research suggests that mothers who are able to maintain a relationship with their children are less
16 likely to return to prison. Research also demonstrates that a father’s involvement in his child’s
17 life greatly improves the child’s chance for success. Helping incarcerated fathers foster stronger
18 connections with their children, where appropriate, can have positive effects for children. Strong
19 family connections help to ensure that fathers stay out of prison once they are released.”

20 14. Answering paragraph fourteen, Defendants admit that on September 12, 2011,
21 CDCR began implementing the Alternative Custody Program. Defendants admit that a press
22 release entitled, “CDCR Announces Community-Based Program for Eligible Inmates,”
23 announced the implementation of the Alternative Custody Program, “aimed at reuniting low-level
24 offenders with their families and providing rehabilitative services within the community.”
25 Defendants admit that the press release stated that “[i]nitially, the program will be offered to
26 qualifying female offenders.” Defendants admit that the press released stated that,
27 “[p]articipation may be offered at a later date to male inmates, at the discretion of the Secretary of
28 CDCR.”

1 15. Answering paragraph fifteen, Defendants admit that Defendant Governor
2 Brown signed into law SB 1021 on June 27, 2012, which amended California Penal Code section
3 1170.05 to offer the Alternative Custody Program to qualifying “female inmates.”

4 16. Answering paragraph sixteen, Defendants admit that on or about September 13,
5 2012, emergency regulations adopted California Code of Regulations, title 15, section 3078.2,
6 which provides that, “[t]o be eligible to participate in the Alternative Custody Program (ACP),
7 the inmate must volunteer and be female.” Defendants admit that California Code of
8 Regulations, title 15, section 3078.2 was made permanent on February 25, 2013.

9 17. Answering paragraph seventeen, Defendants state that the March 17, 2014
10 Update to the Three-Judge Court, *Coleman v. Brown*, E.D. Cal. Case No. 2:90-cv-00520-LKK-
11 DAD at ECF No. 5114-2, discusses CDCR’s intention to expand the Alternative Custody
12 Program as part of the State’s plan to comply with court-ordered population benchmarks, and that
13 on February 10, 2014, the Three-Judge Court ordered Defendants to “[i]mplement an expanded
14 alternative custody program for female inmates.” N.D. Cal. Case No. 3:01-cv-1351-TEH, ECF
15 No. 2766 at 3. Except as expressly admitted, Defendants deny the allegations in paragraph
16 seventeen.

17 18. Answering paragraph eighteen, Defendants are informed and believe and
18 therefore admit that no male inmates have been accepted into the Alternative Custody Program.

19 19. Answering paragraph nineteen, Defendants admit that Plaintiff is a CDCR
20 inmate, and was accepted into CDCR custody on January 13, 2011. Responding to the allegation
21 that Plaintiff “had no criminal history prior to his current conviction,” Defendants state that they
22 are unable to ascertain the meaning, if any, of the phrase “criminal history,” that the phrase is
23 ambiguous, and that Defendants have insufficient information with which to admit or deny the
24 allegation and, on that basis, deny the allegation.

25 20. Answering paragraph twenty, Defendants have insufficient information with
26 which to admit or deny the allegation that Plaintiff has two minor children based and, on that
27 basis, deny the allegation. Defendants deny the remaining allegations in paragraph twenty.
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1 21. Answering paragraph twenty-one, Defendants are informed and believe and
2 therefore admit that Plaintiff applied to the Alternative Custody Program on June 3, 2013. Except
3 as expressly admitted, Defendants deny the allegations in paragraph twenty-one.

4 22. Answering paragraph twenty-two, Defendants are informed and believe and
5 therefore admit that Plaintiff's application to the Alternative Custody Program was denied on
6 June 19, 2013.

7 23. Answering paragraph twenty-three, Defendants are informed and believe and
8 therefore admit that Plaintiff filed a prison grievance on June 24, 2013, appealing the denial of his
9 application to the Alternative Custody Program. Defendants are informed and believe and
10 therefore admit that this appeal, log number CCC-13-00709, was denied at the third level of
11 review on December 17, 2013. Defendants lack information or knowledge sufficient to respond
12 to the allegation that Plaintiff's appeals were denied solely on the basis of his sex, and on that
13 basis deny the allegation. Except as expressly admitted, Defendants deny the allegations in
14 paragraph twenty-three.

15 24. Answering paragraph twenty-four, Defendants are informed and believe and
16 therefore admit that Plaintiff is presently housed at Valley View Conservation Camp in Elk
17 Creek, California, and that Plaintiff is presently working as a clerk at Valley View Conservation
18 Camp.

19 25. Answering all allegations in paragraph twenty-five, Defendants have
20 insufficient information with which to admit or deny the allegations and, on that basis, deny all
21 allegations in paragraph twenty-five.

22 26. Defendants admit that CDCR General Counsel received a letter dated May 12,
23 2014 from Plaintiff's counsel Gay Grunfeld, concerning Plaintiff's application to the Alternative
24 Custody Program. Answering all remaining allegations in paragraph twenty-six, Defendants
25 state that the matters alleged are questions of law to which no answer is required. Except as
26 expressly admitted, Defendants deny the allegations in paragraph twenty-six.

1 27. Answering all allegations in paragraph twenty-seven, Defendants state that the
2 matters alleged are questions of law to which no answer is required. To the extent that a response
3 is necessary, Defendants deny the allegations in paragraph twenty-seven.

4 28. Answering all allegations in paragraph twenty-eight, Defendants state that the
5 matters alleged are questions of law to which no answer is required. To the extent that a response
6 is necessary, Defendants deny the allegations in paragraph twenty-eight.

7 29. Answering all allegations in paragraph twenty-nine, Defendants state that the
8 matters alleged are questions of law to which no answer is required. To the extent that a response
9 is necessary, Defendants deny the allegations in paragraph twenty-nine.

10 30. Answering all allegations in paragraph thirty, Defendants state that the matters
11 alleged are questions of law to which no answer is required. To the extent that a response is
12 necessary, Defendants deny the allegations in paragraph thirty.

13 31. Answering all allegations in paragraph thirty-one, Defendants state that the
14 matters alleged are questions of law to which no answer is required. To the extent that a response
15 is necessary, Defendants deny the allegations in paragraph thirty-one.

16 **FIRST CLAIM FOR RELIEF**

17 32. Answering paragraph thirty-two, Defendants admit that Plaintiff incorporates
18 by reference each and every allegation contained in the preceding thirty-one paragraphs as if set
19 forth fully. Defendants incorporate by reference their responses to paragraphs one through thirty-
20 one of Plaintiff's complaint as if set forth fully here.

21 33. Answering paragraph thirty-three, Defendants admit that Plaintiff purports to
22 bring a claim under the Equal Protection Clause of the United States Constitution.

23 34. Defendants admit that Plaintiff purports to bring this action under the Equal
24 Protection Clause of the United States Constitution. Answering all remaining allegations in
25 paragraph thirty-four, Defendants state that the matters alleged are questions of law to which no
26 answer is required. Except as expressly admitted, Defendants deny the allegations in paragraph
27 thirty-four.

1 35. Answering all allegations in paragraph thirty-five, Defendants state that the
2 matters alleged are questions of law and to which no answer is required. To the extent that a
3 response is necessary, Defendants deny the allegations in paragraph thirty-five.

4 36. Answering paragraph thirty-six, Defendants admit that Plaintiff purports to seek
5 declaratory and injunctive relief against Defendants.

6 **PRAYER FOR RELIEF**

7 Defendants deny that Plaintiff is entitled to any of the relief requested in his prayer for
8 relief.

9 **AFFIRMATIVE DEFENSES**

10 Without admitting any of the allegations of Plaintiff's complaint and without admitting or
11 acknowledging that Defendants bear any burden of proof as to any of them, Defendants assert the
12 following affirmative defenses. Defendants intend to rely upon any additional defenses that
13 become available or apparent during pretrial proceedings and discovery in this action and hereby
14 reserve the right to amend this answer to assert all such further defenses.

15 **First Affirmative Defense**

16 Defendants assert that Plaintiff has not been deprived of any rights, privileges, or
17 immunities guaranteed by the laws of the United States or by the laws of the State of California.

18 **Second Affirmative Defense**

19 Defendants assert that Plaintiff lacks standing to assert the claims alleged in the complaint.

20 **Third Affirmative Defense**

21 Defendants assert that Plaintiff's claims are or may become moot, thus depriving this Court
22 of subject matter jurisdiction over his claims.

23 **Fourth Affirmative Defense**

24 Defendants assert that Plaintiff's claims are barred, limited, or controlled by the Prison
25 Litigation Reform Act, including, but not limited to, the Act's exhaustion requirement.

26 **Fifth Affirmative Defense**

27 Defendants assert that Plaintiff's claims are barred by the doctrines of res judicata and
28 collateral estoppel.

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Sixth Affirmative Defense

Defendants allege that, at all relevant times, their actions were reasonably related to achieving legitimate penological goals.

Seventh Affirmative Defense

Defendants state that the matters alleged here may implicate Defendants' collateral obligations in other litigation.

DEMAND FOR JURY TRIAL

Defendants demand under Rule 38 of the Federal Rules of Civil Procedure that this matter be tried by and before a jury to the extent provided by law.

PRAYER FOR RELIEF

Wherefore, Defendants pray as follows:

1. That Plaintiff takes nothing by reason of his complaint;
2. That the Court enter judgment in Defendants' favor;
3. That Defendants be awarded their costs of suit and attorneys' fees incurred in defense of this action; and
4. For such relief as the Court otherwise deems appropriate.

Dated: August 7, 2014

Respectfully submitted,
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Supervising Deputy Attorney General

/s/ Martine N. D'Agostino
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