

1 Justin G. Reedy
2 7295 Amherst Street
3 Sacramento, CA 95822
4 (916) 428-1510
5 Plaintiff, In Pro Per

6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8
9 Justin G. Reedy,
10 Plaintiff,

11 v.

12 Dr. Mark Ghaly, Secretary, Health and
13 Human Services Agency, in his official and
14 individual capacity;
15 Kim Johnson, Director of the California
16 Department of Social Services, in her
17 official and individual capacity;
18 Ann Edwards, Previous Director of the
19 Sacramento County Department of Human
20 Assistance, in her official and individual
21 capacity;
22 Ethan Dye, Acting Director of the
23 Sacramento County Department of Human
24 Assistance, in his official and individual
25 capacity; and
26 Eloy Ortiz Oakley, Chancellor and CEO of
27 the Board of Governors of California
28 Community Colleges,

Defendants.

No. 2:21-cv-00223-TLN-CKD

**PETITIONER'S OBJECTIONS TO
MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS**

I. Background

1. Plaintiff alleges he was wrongfully denied public benefits. He alleges that he has been discriminated against on the basis of sex and deprived of equal protection in violation of state and federal law.

1 Through legislative fiat, the single female parent was able to apply for CalWORKS
2 benefits on the basis of exclusively female attributes (i.e., pregnancy/childbirth). Plaintiff became
3 similarly situated to the female parent, applied for CalWORKS, was and continues to be deprived
4 of/denied access to the same public benefits, including the ancillary education benefits, that the
5 mother was/is receiving on the basis that she applied first.

6 2. Plaintiff alleges that he has been discriminated against as a student with single father
7 status in violation of Title IX because he is deprived of education programs and activities for
8 which he is otherwise. Only the female parent has received education benefits despite her
9 continuous employability and current employment.

10 3. Plaintiff alleges that his income is treated differently than that of the female parent. Only
11 his income is subject to child support collection; the female parent's income is exempt from the
12 child support calculation due to her exclusive access to CalWORKS programs.

13 4. Plaintiff alleges that the child is deprived of the public benefits she has been granted while
14 residing with Plaintiff, the male parent. Plaintiff alleges that he is deprived of access to the
15 child's benefits, as well as to his own, and this deprivation impairs his liberty interests in the
16 custody and control of the child, his ability to bring up a family, his relative position as a co-equal
17 parent, and ultimately the parent/child relationship.

18 5. Plaintiff alleges that the State intends for only one parent to receive the benefits and that
19 the challenged regulations ensured that the female parent was granted the totality of benefits for
20 an indeterminate duration with complete disregard for Plaintiff's more compelling need.

21 6. Plaintiff alleges that he was denied procedural due process in the wrongful determination
22 of ineligibility. Plaintiff alleges that the instant case warrants independent judicial review.

23 7. Plaintiff alleges that the challenged regulations impose no constraints on the statutes and
24 regulations that provide benefits to pregnant women. They are only interdependent insofar as the
25 challenged regulations reliance upon the temporal nature of eligibility during pregnancy to restrict
26 male parents from receiving benefits.

27 Plaintiff alleges the challenged regulations appear gender-neutral on their face, but they
28 are not and that the regulations discriminate on the basis of sex.

1 Plaintiff alleges that single female parents have a different criterion for when they can
2 apply for benefits than single male parents. (i.e., during pregnancy/childbirth for female parents
3 v. after obtaining equal joint custody for male parents). Plaintiff further alleges that these
4 differing criteria create two classifications of applicants that are gender-specific and treated
5 differently (1) after the child's birth, and (2) when the parents share equal joint custody on the
6 basis of the challenged regulations.

7 8. Plaintiff alleges that the challenged regulations circumvent the primary legislative purpose
8 of the CalWORKs program - to ensure the best possible economic outcome for the child.

9 **II. Objections to Preliminary Findings / Plaintiff's Complaint is Curable**

10 9. First Objection: Defendants' claims and the court's reliance on them has the effect of
11 requiring Plaintiff to completely litigate the case in his initial pleadings. Plaintiff contends that he
12 is not required to prove that the regulations are unconstitutional in the initial claim.

13 Plaintiff demonstrated that the named defendants are the only individuals who have the
14 responsibility and authority to redress the deprivations he alleges result from the regulatory
15 scheme put forth in his complaint. Plaintiff has also demonstrated that the named defendants are
16 without immunity from such a claim. This has not been challenged in the preliminary findings of
17 the court.

18 10. Second Objection: Plaintiff challenges not simply implementation of the CalWORKs
19 program, but primarily alleges that the regulatory scheme, and primarily regulations MPP §§ 82-
20 804.1, 82-808.4 and 82-808.413(d), deprive him as a male parent of equal protection of the law
21 and substantive due process.

22 This court's preliminary decision to **dismiss the claim** rests on the very **premise** that is
23 being **challenged**. It is settled law that **any regulation which is unconstitutional is invalid**.

24 If, in fact, Plaintiff's allegation that these regulations are unconstitutional, they are without
25 any merit and cannot be used as a basis to conclude that he had no fundamental rights at stake.
26 Plaintiff urges that it is incumbent upon the court not to rely upon the challenged regulations for a
27 decision.

28 ///

1 11. Third Objection: Plaintiff alleges that his claim could potentially be cured by adding the
2 minor child to the case. Plaintiff contends that denying the child access to her own benefits and
3 denying him control over such benefits while she resides with him is a violation of both the
4 child's and his fundamental rights. The child has a vested interest in receiving benefits, and as
5 her father, Plaintiff has vested in him, by state and federal law, a fundamental right to the custody
6 and control of the minor child, including control over her resources. Yet, this fundamental right
7 is abridged/eliminated by the challenged regulations contrary to the intent of the enabling statute.

8 12. Pursuant Welf. & Inst. Code § 11254, the aid to the child on behalf of the child is to "go to
9 the parent with whom the child resides," and this child resides with both parents equally.
10 Only Mother is receiving the child's benefits. Plaintiff has requested that Mother share the
11 child's benefits for the child's needs on his parenting time, but she refused and has also refused to
12 provide any portion of the additional grants she has received, such as the Golden State Grant that
13 was distributed to all CalWORKs Assistance Units in 2021.

14 This court's preliminary findings and recommendations concur with defendants' position
15 that the challenged regulations *sanction* giving Mother exclusive access to all of the resources
16 intended for the child despite leaving the child without the very protections against poverty they
17 are intended to bestow upon her only while she is residing with father.

18 13. Fourth Objection: Plaintiff alleges that he has suffered a **wrongful determination of**
19 **ineligibility** for benefits on the basis of the challenged regulations. He continues to allege and
20 insist that he has a fundamental property interest in the benefits to which he has been denied, and
21 that this denial required adequate procedural due process.

22 In contrast, the preliminary findings of the court agree with defendants' position, citing
23 *Waugh v. Connecticut Student Loan Foundation*, 966 F. Supp. 141 (D. Conn. 1997), that Plaintiff
24 does not have a **vested interest** in the benefits because he has not, and is not currently, receiving
25 them. Defendants and this court imply that *Waugh's* case failed because it relied exclusively on
26 *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970), whereby "the Supreme
27 Court recognized a property interest of welfare recipients in the **continued receipt** of their
28 benefits." Plaintiff also relied upon the context of *Goldberg v. Kelly* (1970) and disagrees that the

1 property interest in *Goldberg* is exclusive to the receipt of benefits. In *Goldberg*, the court found
2 that welfare benefits are “a matter of statutory entitlement for persons **qualified to receive**
3 **them**,” which Plaintiff alleges that he is, based on his need. (Emphasis added.)

4 The court concludes that the lack of property interest renders Plaintiff’s claim incurable.
5 However, Plaintiff disagrees and puts forth a definitive cure to this perceived defect.

6 **A. Plaintiff has a Fundamental Property Interest**

7 14. In *Frink v. Prod*, 31 Cal.3d 166 31 Cal.3d 166 (1982), the Supreme Court of California
8 reaffirmed *Bixby v. Pierno*, supra, 4 Cal. 3d 130, 144-146, and decreed that “In determining
9 whether a right is fundamental, the courts do not alone weigh the economic aspect of it, but the
10 effect of it in human terms and the importance of it to the individual in the life situation.”
11 (*Interstate Brands v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal. 3d 770, 774 et seq. [163 Cal
12 Rptr. 619, 608 P.2d 707].

13 The California Supreme Court concluded that “[t]he **right of the needy applicant** to
14 welfare benefits **is as fundamental as the right of a recipient** to continued benefits. Because
15 **need** is a condition of benefits, **erroneous denial of aid** in either case **deprives the eligible**
16 **person** ““of the very means for his survival and his situation becomes immediately desperate.””
17 (16 Cal.3d at p. 737).

18 **B. Plaintiff’s Rights are Abridged/Eliminated**

19 **1. Statutory Framework – Disputed Issues of Fact**

20 15. Plaintiff alleges that defendants led the court to believe that Plaintiff could apply for
21 benefits after a period of 48 months, which, at the time of Plaintiff’s SAC, was the statutory
22 limit for Mother to receive aid. *The court had accepted this as fact.*

23 Plaintiff alleged in his Responses to defendants’ MTDs that the receipt of benefits of a
24 “second eligible parent” are *impermissibly speculative* and that *imposing a waiting period* is
25 unconstitutional.

26 16. The State has proposed new regulations which extend the lifetime limit to 60-months
27 pursuant California Assembly Bill 135, Chapter 85, Statutes of 2021. *This court again accepts as*
28 *fact* that Mother’s benefits will end, and that Plaintiff will be able to receive benefits after this

1 period of time (Page 2, Lines 23-24).

2 17. Plaintiff has both alleged and described myriad ways in which a recipient's duration of
3 eligibility for benefits can be increased. For instance, there are exclusions to, and extensions of,
4 the months counted toward the statutory limit, pursuant Welf. & Inst. Code §§ 11454.5 and
5 11322.86. (See **Exhibit A**, *statutes*).

6 Plaintiff has also alleged that the once in a lifetime two-year exclusion may allow Mother
7 to continue her benefits without any welfare to work requirements for the 0-24 months that she
8 may have elected to waive or to withhold until a future date.

9 18. Defendants argued that "After the term of aid to the first parent ends or the first parent
10 otherwise loses eligibility, then the second parent may receive CalWORKs benefits. MPP §§
11 82.808.413(b); 82-808.5. Thus, the second eligible parent can apply for and receive CalWORKs
12 aid *when the aid to the first parent ends. Id.*" (Page 3, Lines 11-12, 14-15). (Emphasis added.)

13 19. Plaintiff alleges that these statements are misleading and false. Plaintiff could not find
14 any discussion of a "second eligible parent" in the Welf. & Inst. Code or regulations that include
15 MPP § 82-808.5, which state defendants referenced on page 3 of their MTD. (See **Exhibit B**,
16 *relevant statutes and MPP regulations*).

17 Plaintiff alleges that the duration of Mother's "term of aid" is the duration she can
18 continue to exclusively receive the child's benefits.

19 20. Plaintiff further alleges the following:

- 20 a) The regulations impose an **unconstitutional indefinite waiting period** that is triggered
21 when aid to the child on behalf of the child is no longer being provided to Mother, not when
22 Mother's benefits end.
- 23 b) A "first" recipient parent can continue to receive the child's benefits for as long as the child
24 is eligible if the child is on their active case.
- 25 c) A **qualifying child** can remain eligible as long as they are a 'dependent child.'
- 26 d) A "**dependent child**," as defined under Title 42, Section 606, can remain eligible for
27 benefits until they turn 18 years old, or potentially through 21 years old, depending on
28 whether they are a "student regularly attending a school, college, or university, or regularly

1 attending a course of vocational or technical training designed to fit him/her for gainful
2 employment.”

3 e) The Assistance Unit (AU) can maintain an active case if the income/assets remain below a
4 specified threshold. The parent receiving benefits is aware of the income and assets that
5 remain exempt from the calculation toward eligibility. They can earn, save, invest, and
6 purchase a vehicle within those limits to ensure continuation of their active case, which can
7 extend until the child reaches the age of majority.

8 f) All *cases* are confidential and there is no provision for Plaintiff to be informed if/when
9 Mother’s benefits terminate.

10 “Mother’s benefits” means the benefits she receives based on her own eligibility.

11 g) Mother’s *case* hypothetically could *terminate* at any time for a procedural lapse but could
12 be reinstated. However, Plaintiff would not be informed due to the confidentiality
13 restriction.

14 21. Plaintiff asserts that the State can make a legitimate claim that Mother’s *benefits* will - at
15 some indeterminate point - terminate, which is now after 60 months give or take any months that
16 exclusions/extensions apply, based solely on the specifics of her case. However, Plaintiff alleges
17 that defendants cannot legitimately or factually claim that her case will terminate or that Plaintiff
18 will be able to receive any benefits at any point in time in the future.

19 22. Plaintiff alleges that the individual Department of Human Assistance case managers have
20 vast discretion in determining what benefits and services an individual AU receives, the scope
21 and duration of educational benefits/employment plans, and any sanctions terminating benefits.

22 23. Plaintiff alleges that Mother would have to die or lose custody, or the AU would have to
23 obtain resources that exceed the threshold for continued eligibility (i.e., inheritance, marriage,
24 employment). However, Mother would have to become employed with earnings above the
25 threshold for her current AU (presumably of two) after all of the *exclusions to her income* are
26 calculated, and there is no basis for any expectation that any of these conditions will occur even
27 after her own benefits expire.

28 Pursuant Welf. & Inst. Code § 11250, the California Appellate court concluded that

1 “[t]here is **no legislative intent** in the statutory scheme to induce a parent to become self-
2 **supporting.**” (*Rojas v. Woods* 127 Cal. App. 3d 287 (1981)).

3 C. Procedural Due Process

4 1. Plaintiff has a Protected, Fundamental Property Interest

5 24. The findings and recommendations state, “The court looks to **state law** to determine
6 whether Plaintiff has a property interest protected by procedural due process.” (Page 5, Lines 10-
7 11). The court finds that plaintiff **never received the CalWORKs benefits** at issue and that he
8 has not made a claim of entitlement based on the existing eligibility requirements. The court
9 concludes that “**no property interest** is implicated under such circumstances.” (Page 5, Lines
10 21, 23-24, 26). (Emphasis added.)

11 The defendants argue, and the court has concurred in the preliminary findings, that the
12 challenged regulations *legitimately deny/deprive* Plaintiff’s receipt of benefits, but Plaintiff
13 disagrees. As Plaintiff alleges above, the **challenged regulations are unconstitutional**, and,
14 therefore, reliance upon them renders erroneous any conclusion upon which they are based.

15 25. The court’s argument also rests on a conclusion that a property interest requires a vested
16 interest in benefits that are currently being received.

17 In *Frink v. Prod* (31 Cal.3d 166), the Supreme Court of California opined that, “The right
18 of the **needy applicant to welfare benefits** is as **fundamental as the right of a recipient to**
19 **continued benefits**...The ultimate question in each case is whether the affected right is deemed
20 to be of sufficient significance to **preclude its extinction or abridgement by a body lacking**
21 **judicial power.** (See and cf. *Strumsky v. San Diego County Employees Retirement Assn.* (1974)
22 11 Cal. 3d 28, 34-45 [112 Cal. Rptr. 805, 520 P.2d 29].)” (26 Cal.3d at p. 779.) ... We think it is
23 significant that the United States Supreme Court in *Goldberg v. Kelly* (1970) 397 U.S. 254 [25
24 L.Ed.2d 287, 90 S. Ct. 1011], has held that the right to welfare benefits is important enough to fall
25 within the category of benefits which due process attach. Under the principles of our prior cases,
26 we find that this right is also important enough to trigger the **independent judgment standard of**
27 **review** when an administrative determination has been made terminating this right.” (Emphasis
28 added.) The decision reversed prior jurisprudence.

1 **Faulty conclusion – contradictory claims re equal protection/property interest**

2 26. Plaintiff alleges that the court’s basis for conclusion that Plaintiff has no property interest
3 or entitlement to benefits is inconsistent with its basis for conclusion that there is no violation of
4 equal protection. Defendants put forth two competing claims, and the court accepted them both.
5 The court allows that “in the area of social welfare, federal law gives each state “great latitude in
6 dispensing welfare funds” (Page 8, Lines 9-10), and the court also allows the counterpoint that
7 “the implementing regulations “greatly restrict the discretion” of the “people who administer
8 those benefits” (Page 5, Lines 13-14).

9 Plaintiff contends that the state should enact laws within “its great latitude” that don’t
10 deny or impede the legislative intent of “serving the poorest families with children in the state”
11 BEFORE they enact restrictive administrative policies that are strictly enforced and work to deny
12 to the child – while in custody of Plaintiff, a single father – the very thing the statutes purport to
13 guard and protect against (i.e., child poverty), as well as BEFORE they deny/deprive to Plaintiff,
14 a poor single father, the same relief from poverty provided to similarly situated female parents,
15 including educational benefits intended to help him rise out of poverty.

16 “[T]he less discretion a state official has to determine the benefits, the more likely the
17 benefit is a **property right.**” (*Washington Legal Clinic for Homeless v. Barry*, 107 F.3d. 32, 36
18 (D.C. Circuit 1997). In the case of TANF...**states do have a great deal of discretion** in
19 structuring and administering their welfare systems... The federal law, however, contains several
20 important limitations to that discretion, indicating that **procedural due process still protects**
21 **access to and receipt of benefits.**” (Emphasis added.)

22 “45 C.F.R. § 205.10(a)(1)(ii) (2004) requires states to develop procedural safeguards in
23 their administration of state welfare programs to develop procedural safeguards that meet the due
24 process standards set by the U.S. Supreme Court in *Goldberg* and the standards set forth in this
25 section The due process analysis was refined in *Mathews v. Eldridge*, 424 U.S. at 335 (1976).”¹

26 “[P]rocedural due process rules are shaped by the risk of error inherent in the truth-

27
28 ¹ Risa E. Kaufman, *Bridging the Federalism Gap: Procedural Due Process and Race Discrimination in a Devolved Welfare System*, 3, *Hastings Race & Poverty L.J.* 1 (2005).

1 finding process as applied to the generality of cases. (*Carey v. Phipus*, 435 U.S. 247, 259 (1978)
2 (citing *Matthews*)).

3 **D. Substantive Due Process**

4 **1. Plaintiff has Fundamental Interests at Stake**

5 27. The court's preliminary findings indicate that as a matter of **state law**, Plaintiff has not
6 established a protected property or liberty interest.

7 Plaintiff proposes to correct the perceived property interest defect pursuant the opinion of
8 the Supreme Court of California in *Frink v. Prod* and/or by amending to include the minor child.

9 28. Plaintiff alleges and demonstrates purposeful discrimination by showing that the
10 government has targeted the suspect class of male parents on the basis of gender and has
11 burdened the exercise of Plaintiff's fundamental rights including property and liberty interests,
12 both of which are at issue here.

13 The challenged regulations:

14 1) enable Mother to *apply first* during pregnancy;

15 2) enable Mother to add the child to her active case upon birth

16 3) enable Mother to have indefinite and *exclusive access to benefits* without any
17 opportunity for Plaintiff's eligibility to be considered;

18 4) enable Mother to deprive the 'qualifying child' of her own benefits while residing
19 with father;

20 5) deprive Plaintiff of ancillary educational benefits; and

21 6) deprive Plaintiff of any means to challenge and vindicate his and his child's right
22 to the benefits through a deliberative process.

23 29. Plaintiff alleges that his fundamental liberty interest in access to the welfare benefits is
24 outlined and recognized in **feminist legal philosophy**.

25 "Neither the Bill of Rights nor the specific practices of States at the time of the adoption
26 of the Fourteenth Amendment marks the outer limits of the substantive sphere of liberty which
27 the Fourteenth Amendment protects. The full scope of the liberty guaranteed by the Due Process
28 Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere

1 provided in the Constitution. This liberty is not a series of isolated points pricked out in terms of
2 the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms;
3 the freedom from unreasonable searches and seizures; and so on. It is a **rational continuum**
4 which, broadly speaking, includes a **freedom from all substantial arbitrary impositions and**
5 **purposeless restraints** and which also recognizes, what a reasonable and sensitive judgment
6 must, that **certain interests require particularly careful scrutiny of the state needs asserted to**
7 **justify their abridgment.**" (*Planned Parenthood v. Casey*, 505 U.S. 833 (U.S. 1992)).

8 (Emphasis added.)

9 30. Plaintiff is recognized as a coparent with equal custody but is deprived of the liberty
10 interests the public benefits should provide. He is excluded from access and control of the
11 CalWORKs benefits while the female parent receives them exclusively. This curtails his
12 decision-making power, his choices for school/work activities, his available time with the child,
13 and his state of mind/concerns over his economic condition, which, as a result, impacts the
14 parent/child relationship. The overwhelming impact of Mother's exclusive receipt of the child's
15 benefits is that Plaintiff's ability to fulfill all of the 'caretaker relative' criteria considered by the
16 county, such as MPP §82-808.33 and §82-808.36 – buying clothes and engaging the child in
17 extracurricular activities, is grievously impaired. He has had to borrow excessively and rely on
18 family to meet his parental obligations at a cost to his mental and emotional wellbeing. Plaintiff
19 alleges that this lack of independence and serious debt relegate him, as the male parent, to an
20 unacceptably inferior parental status.

21 Mother has all of the benefits, is employable and working, achieved her AA and is now
22 attending state university, has substantial earned income tax credit refunds including the enhanced
23 tax credits, and receives additional grants, such as the \$600 Golden State Grant, while Plaintiff is
24 oppressed by the arbitrary regulatory scheme that has deprived him of equal treatment/equal
25 opportunity.

26 31. Defendants' argument that the child has received the benefits is manifestly false in that
27 they were not, and are not, available to her for her care while she is residing with her father,
28 Plaintiff. These benefits are intended for her food, clothing, and necessities, and also include

1 childcare, none of which are provided to, or available to, Plaintiff, nor are they required to be
2 provided to him pursuant the challenged regulations.

3 32. Citing *Regan v. Taxation without Representation* and *Rust v. Sullivan*, the court's
4 preliminary findings assert that "[A] legislature's decision not to subsidize the exercise of a
5 fundamental right does not infringe the right...A refusal to fund protected activity, without more,
6 cannot be equated with the imposition of a 'penalty' on that activity." (Pg. 6, Lines 17-21).
7 However, the legislature has chosen to subsidize the right in the case of public welfare benefits,
8 but it does so in a discriminatory and arbitrary manner. Here, the offending regulations
9 affirmatively deprive/deny equal protection notwithstanding legislative refusal to fund more.

10 Neither *Regan* nor *Rust* can legitimately be compared to the instant case. The choice of
11 the government to subsidize lobbying by veteran's groups but not by charities or to fund myriad
12 family planning options that do not include abortions cannot be legitimately equated with the
13 government's decision to fund the entirety of welfare benefits and ancillary education benefits to
14 one parent indefinitely while entirely ignoring the needs of a co-equal parent when both are
15 similarly situated and the second applicant has a much more compelling, ongoing need whereas
16 the first applicant does not, and there has been no re-evaluation of the child's eligibility to
17 determine which parent should receive aid and no due process.

18 33. Plaintiff alleges that *Regan* and *Rust* do not provide an "exceedingly persuasive
19 justification" for the state's decision to have *two standards for when parents can become eligible*
20 *for welfare*, one being pregnancy for female parents and another being, at minimum, joint equal
21 custody for male parents. Plaintiff alleges that the challenged regulations rely on the temporal
22 nature of eligibility during pregnancy/after childbirth to restrict male parents from receiving
23 benefits, and therefore, though they appear gender neutral on their face, they are not gender
24 neutral and discriminate on the basis of sex. SEE Below: Page 15-16, sections 38-43.

25 34. Plaintiff alleges that the offending regulations disguise the state's underlying motive to
26 ensure that the female parent can receive the benefits to the exclusion of the male parent. Given
27 that only one parent can receive the benefits when there is shared equal custody and both parents
28 are otherwise 'eligible' under the current regulatory scheme, the challenged regulations allow the

1 female parent to *continue*, indefinitely, to exclusively receive theirs and the child's benefits *on the*
2 *basis that they applied first* resulting in the abridgment and/or extinction of availability of public
3 benefits to single male parents, who can never apply first since pregnancy is a condition exclusive
4 to women. This is not a mere "penalty." This is discrimination on the basis of sex that
5 invidiously and historically has deprived poor male parents of public assistance and the
6 educational opportunities intended to raise them out of poverty, which are integrated in the
7 California Community Colleges CalWORKs interagency agreements.

8 E. Equal Protection

9 35. The laws and regulations **affirmatively deny equal protection** notwithstanding
10 legislative refusal to fund. Additionally, as restated in *Frink*, "In determining whether the right
11 is fundamental the courts do not *alone* weigh the economic aspect of it, but the effect of it in
12 human terms and the importance of it to the individual in the life situation." (*Interstate Brands*
13 *v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal.3d 770, 774 et seq. [163 Cal.Rptr. 619, 608
14 P.2d 707]).

15 Important Governmental Interest Not Demonstrated by Defendants

16 36. The court indicates that the **statute** can be upheld if the government can demonstrate the
17 classification "substantially furthers an important government interest." (Pg. 7, Lines 10-12).

18 37. Plaintiff respectfully requests the court reconsider its findings and recommendations in
19 light of Plaintiff's intensified effort to **deconstruct this argument** and specify the issues.

20 First of all, Plaintiff points out that the **challenged regulations** are **not statutes**, but are,
21 in fact, regulations created to implement the underlying statutes. **MPP Chapter 82-808** covers
22 the method to define/determine 'caretaker relative' (i.e., the parent designated to receive the
23 benefits). The specific regulations he is challenging are **MPP §§ 82-804.1, 82-808.4 and 82-**
24 **808.413(d)**, which are the regulations identified in his Letter of Denial.

25 Defendants speciously imply that these *challenged regulations* control the availability of
26 benefits to pregnant women. They argue that Plaintiff's case should be dismissed because they
27 have "justification" for furthering the specific "important governmental interest" in providing
28 benefits to pregnant women pursuant the applicable statutes.

1 However, Plaintiff alleges that defendants' claims and this court's concurrence with their
2 assertion are not correctly correlated with the issues that Plaintiff is raising regarding the
3 designation of 'caretaker relative.' Neither the defendants nor this court recognize that the
4 "justification" proffered by the defendants fail to address the challenged regulations. Therefore,
5 the "justification" is without merit.

6 Plaintiff **restates and emphasizes** that he has made **no challenge** to the **statutes or**
7 **regulations** (i.e., Welf. & Inst. Code §11450(b)(2) and (c) or MPP §82-800) **regarding benefits**
8 **to pregnant women.**

9 Plaintiff's "complaint does not seek to address benefits inequities occurring during
10 pregnancy or childbirth," (Pg. 10, Lines 4-7), and it specifies the controlling statute, indicating
11 that "Pregnant women can receive aid under the **California Welfare and Institutions Code**
12 **§11450(b)(2) and (c),**" (Pg. 9, Lines 25-26). The enabling regulations for this statute are
13 categorized in **MPP Chapter 82-800.** (See **Exhibit C, statutes and regulations**). Neither this
14 statute nor its enabling regulations are challenged in Plaintiff's complaint.

15 Plaintiff alleges that the *challenged regulations* are only related to the aforementioned
16 controlling statutes and regulations for pregnancy insofar their effect on the "multi-step process to
17 determine eligibility" (State defs. MTD Pg. 3, Lines 4-10). The administrative determination of
18 the 'caretaker relative' when "each parent exercises an equal share of care and control
19 responsibilities, and each has applied for aid for the child" (MPP § 82-808.413) incorporates the
20 *temporal requirement of applying first* when only women can. Therefore, to be clear, the statutes
21 and regulations that allow *women to apply first during pregnancy* are then *employed to create*
22 the *definitive determinant* in providing the benefits exclusively and indefinitely to the female
23 parent under **MPP §82-808.413(d).**

24 Plaintiff alleges that defendants have failed to identify *any* "important governmental
25 purpose" for the *challenged regulations*, specifically MPP § 82-808.413(d), the regulation that
26 states "the parent who applied first" is designated as primary custodial parent. Plaintiff also
27 alleges that there is no statutory authority that supports this regulation.

28 ///

1 **Challenged Regulations are Not Gender-Neutral**

2 38. “Without equating gender classifications, for all purposes, to classifications based on race
3 or national origin, the Court, in post- *Reed* decisions, has carefully inspected official action that
4 **closes a door** or denies opportunity to women (or to men).” *United States v. Virginia*, 518 U.S.
5 515, 532 (1996). (Emphasis added.)

6 “To summarize the Court’s current directions for cases of official classification based on
7 gender: Focusing on the **differential treatment or denial of opportunity** for which relief is
8 sought, **the reviewing court must determine whether the proffered justification is**
9 **“exceedingly persuasive.”** The **burden of justification is demanding**, and it rests entirely on
10 **the State**. See *Mississippi Univ. for Women*, 458 U.S., at 724. The State must show “at least that
11 the [challenged] classification serves ‘important governmental objectives and that the
12 discriminatory means employed’ are ‘substantially related to the achievement of those
13 objectives.’” (*Ibid.*) (quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150 (1980)).

14 “[O]ur precedent instructs that **“benign” justifications proffered in defense of**
15 **category exclusions will not be accepted automatically**; a tenable justification must describe
16 actual state purposes, not rationalizations for actions in fact differently grounded.” (*Ibid.*)
17 (Emphasis added.)

18 39. Despite appearing to be facially gender-neutral, Plaintiff has demonstrated a tremendous
19 discriminatory effect on male parents that is statistically evident and enshrined in other areas of
20 public policy.

21 40. Plaintiff alleges that the exclusive governmental purpose of MPP §82-808.413(d) is to
22 create a *direct temporal and gender-specific relationship* to the eligibility requirements which
23 officially establishes **two gender classifications of applicants** – (1) that of single female parents
24 (i.e., mothers; pregnant women), who can always apply first and add the newborn child
25 (‘qualifying child’) to their active case, and (2) that of single fathers, who can neither apply first
26 nor claim the ‘qualifying child’ as a member of their household even after they become similarly
27 situated to the female parent with joint equal custody because there can only be one ‘caretaker
28 relative’ under the current regulations.

1 41. Plaintiff alleges that defendants have proffered a justification for an unchallenged statute
2 and its enabling regulations as a “benign” justification in defense of categorical exclusions of men
3 from access to benefits. They cannot provide an “exceedingly persuasive justification” *for*
4 *assigning the female specific criterion* as a definitive determinant of ‘caretaker relative’ when
5 the parents are similarly situated, and the child resides with both parents an equal amount of time.

6 42. Plaintiff alleges that the challenged regulations impose on him, as a single father, a
7 condition of having no reasonable expectation of ever being designated the ‘caretaker relative’ to
8 his ‘qualifying child.’ As a single male parent, his access to benefits is abridged/exterminated by
9 these gender-specific regulations because the female parent can apply first and then continue to
10 receive the child’s benefits until the child reaches the age of majority.

11 43. Plaintiff alleges that the outcome to the child and to himself is in complete contradiction
12 to the purpose of the enabling statutes that intend to raise families out of poverty and protect
13 children from immediate exposure to such poverty.

14 **Purposeful Discrimination**

15 44. Moreover, the administrative process completely disregarded criteria that are listed in the
16 ‘Care and Control Factors’ under MPP §82-808.35 (See **Exhibit D**, *regulations*). As state
17 defendants noted on page 3 of their MTD, “the county will determine which caretaker relative
18 exercises more of the routine responsibilities for the child. They indicated that one of the criteria
19 is “who claims the child as a tax dependent” (See fn. 3).

20 Plaintiff reported in his SAC that “[he] and his Authorized Representative insisted on
21 filing a new application in 2020, when his circumstances changed, and he became the “primary
22 custodial parent” for IRS purposes based on a parenting schedule whereby the child was with him
23 more nights of the year. After reconsideration, his eligibility was again denied.” (Pg. 9, Lines 8-
24 11). While all other Caretaker Relative Requirements remained equal between Plaintiff and
25 Mother, this one criterion that would have resulted in a transfer of the child’s case to her father
26 was not enforced in the multi-step process that state defendants allege the county is to apply. The
27 criterion was wholly ignored.

28 ///

1 45. Plaintiff alleges that the state's objective through the offending regulations is to exclude
2 fathers on the basis that they are unworthy of benefits in general because **they are absolutely**
3 **responsible for supporting their children** regardless of how dire their economic circumstances.
4 Plaintiff has alleged in his SAC that the regulatory scheme fosters single mother households
5 based on stereotypical roles in child-rearing as well as an outdated socio-economic model
6 whereby the father is the breadwinner. (Pg. 21, Lines 28 – Pg. 22, Lines 1-11).

7 46. Plaintiff alleges that the CalWORKs regulatory scheme allows an unborn child to
8 establish eligibility for a pregnant woman on the basis that there is **deprivation due to an**
9 **absentee parent**, as described in Plaintiff's prior filings. This implies that the absentee father has
10 the resources to provide financially for the unborn child, and it follows that MPP § 82-512
11 provides that, unless exempted, applicants for aid must cooperate with the District Attorney's
12 office to identify and locate the absent parent, establish paternity, and secure a child support
13 order. The recipient's rights to child support are assigned to the state. Plaintiff outlined in his
14 SAC that child support was unfairly collected from him by state coercive police power despite the
15 fact that he was disabled, unemployed, had NEVER been absent as defined by the CA Family
16 Code, never lived with Mother, lacked involvement with the child ONLY as a direct result of the
17 lack of legislation presuming equal custody, and both the family court and Mother
18 unconstitutionally restricting his access. Furthermore, Mother had been fully employed and
19 employable before and after the pregnancy/childbirth. She was eligible for benefits on the basis
20 that Plaintiff was 'absent' (as erroneously defined by the regulatory scheme). She met the income
21 criteria by voluntarily quitting her job. (See *Rojas v. Woods.*)

22 47. Plaintiff alleges that there is **consistency** with the way **fathers are treated** by the
23 **California Health and Human Services Agency**, which oversees both Child Support
24 Enforcement and the Department of Social Services. Mothers on welfare are required to identify
25 the father of for the exclusive reason that they are responsible to reimburse the state for the aid
26 the mother is receiving. Despite the fact that fathers may not even be aware of their paternity and
27 therefore would not have been given any chance to seek custody or to prepare for the
28 responsibilities of fatherhood financially, mentally, or emotionally, the Agency imposes child

1 support enforcement police power to attain monetary reimbursement for state aid for both the
2 mother's and child's state aid. Instead of assisting with the father's immediate needs, the Agency
3 will test for paternity to ensure that the biological father is on the hook for his responsibilities.

4 To demonstrate, Plaintiff brought his own paternity case before the child was born, but he
5 was served with a Child Support Enforcement demand before he even had the DNA test. His
6 need was ignored in lieu of his financial responsibility. He was in arrears for support for a period
7 of time in which he was actively seeking custody rights and had absolutely no control over the
8 amount of time he could spend with his child or the amount of responsibility he could exercise
9 with regard to her needs. He alleges that if the state/county has the right to come after him for the
10 support of the child, he should bear the same rights as the mother to the services they provide to
11 needy parents.

12 **Sex Discrimination is Based on Historical Attitudes of Men as Unworthy Poor**

13 48. "The uniform view and treatment of poor fathers is not new. Decades – or even centuries
14 – of social policies have viewed low-income fathers with a simplistic combination of contempt
15 and blame. The fathers have been lumped into the category of the "unworthy poor" and thus not
16 deserving of public assistance, while simultaneously being labeled as deadbeats and the root
17 cause of poverty among women and children."² (**Exhibit E, *Forgotten Fathers***).

18 Plaintiff alleges that under the current regulatory scheme, his financial hardship during the
19 period that he was seeking custody rights - despite the fact that he was not an 'absentee' parent
20 pursuant the Ca. Fam. Code § 3010 – was entirely ignored. Only Mother received diapers and
21 other supportive services along with Cash Aid and Food Stamps for herself and the child, as well
22 as receiving federal benefits from the aptly named *Women, Infants, and Children* program. Once
23 he obtained joint equal custody, which is the first point he was eligible to apply since by law he
24 was a "non-custodial parent," Plaintiff's financial hardship continued to be ignored.

25 Feminist legal theory advocates for parental-status as a protected class to Title VII in
26 response to childbearing women's challenges in the workforce, particularly the stereotypes of
27

28 ² Daniel L. Hatcher, "Forgotten Fathers," *Boston University Law Review* 93, no. 3 (May 2013): 897-920

1 'welfare mothers.' They argue that "the requirement of being similarly situated ignores the
2 **gender-based biological and socio-economic differences between men and women.**"³ In
3 keeping with this legal concept, Plaintiff points to the gender-based differences that inform the
4 welfare and child support enforcement policies.

5 Plaintiff contends that the gender classifications pose insurmountable structural barriers
6 that are embedded in a discriminatory welfare system that coerces poor fathers to abandon their
7 children when they simply do not have the resources to maintain their parental obligations. Even
8 if they are able to maintain some ties to their children, the parent/child relationship is dramatically
9 diminished and impaired. It is well established that the children receiving child support from
10 "non-custodial" fathers do better academically, socially, and mentally, but fathers who pay child
11 support are also statistically more involved in their children's lives. Plaintiff alleges that these
12 statistical points indicate that if the benefits of welfare were available to poor fathers when they
13 need it to raise the entire family out of poverty, the outcomes to children would be even greater.

14 Public policy proffers the continuation of attitudes that women are the primary parent and
15 are thus deserving, and in need of, of public support. Women argue that "[S]tereotypes cast
16 welfare recipients as lazy, slothful, morally bankrupt, and irresponsible women who bear
17 illegitimate children on the taxpayer's dime."⁴ By the same token, Plaintiff alleges that the
18 fathers of these children are stereotyped as the root cause of childhood poverty- they are
19 unwilling to support their children and instead opt to abandon their families for selfish reasons.
20 Thus, the perception of the deadbeat dad is that he is manifestly unworthy of public support.

21 **Rational, Intermediate, or Strict Scrutiny**

22 49. Plaintiff contends that the rational basis test is not applicable where fundamental rights
23 are violated. There can be no rational basis for the child being deprived of benefits. It is
24 irrational to circumvent the regulatory intent of the enabling statutes. "At least three views
25 amongst commentators and scholars have emerged over the impact of *Virginia*, including (1)

26 _____
27 ³ Peggie R. Smith, "Parental-Status Employment Discrimination: A Wrong in Need of a Right," (University of Michigan Journal
of Law Reform 35, no. 3 (Spring 2002): 569-620.

28 ⁴ Peggie R. Smith, "Parental-Status Employment Discrimination: A Wrong in Need of a Right," (University of Michigan Journal
of Law Reform 35, no. 3 (Spring 2002): 569-620.

1 intermediate scrutiny remains the applicable standard to sex-based classifications; (2) sex-based
2 classifications are now subject to strict scrutiny; and (3) sex-based classifications are now subject
3 to a level of analysis that falls between strict and intermediate scrutiny.”⁵

4 **Faulty conclusion – inconsistent arguments; issue of facts**

5 50. Plaintiff argues that the court’s analysis of purposeful discrimination is faulty. He alleges
6 that public policy allows pregnant applicants to apply for aid to foster better outcomes for the
7 unborn child and that the challenged regulations have no bearing on this “governmental purpose.”

8 In contrast, the court states that “the purpose of allowing pregnant applicants to apply for
9 aid is not to discriminate against men, but rather, to distribute benefits to needy children and
10 families (Page 8, Lines 3-5). How then is this stated purpose furthered once the otherwise
11 eligible father is precluded by the same statutory scheme from receiving benefits intended for the
12 needy child? Father is deemed ineligible in the short term and the long term of the child’s life so
13 long as Mother is being provided the benefits (for herself and/or the child) thereby **purposefully**
14 **denying/depriving fathers benefits they otherwise qualify for** and thereby also purposefully
15 subjecting the child to abject poverty when she is residing with Plaintiff, an otherwise benefit-
16 eligible parent, who is denied those same benefits because of the *challenged regulations* that:

17 (a) credit Mother for *applying first*,

18 (b) *fail to revisit benefit entitlement for fathers* so long as Mother is receiving *the child’s*
19 *benefits* (even after her own eligibility has expired, regardless of the 48-, 60-, or
20 umpteenth months she receives them).

21 **F. Title IX Violations**

22 **Faulty conclusion – Issue of facts**

23 51. This court’s preliminary findings state that “At least one court has determined the
24 holdings of *Gebser* and *Davis* would apply to **non-harassment** Title IX claims” referencing
25 *Phillips v. Anderson County Board of Education*, 259 F. App’x 842 (6th Cir. 2008) (Pg. 10, Lines
26 8-11). (Emphasis added.)

27
28 ⁵ Calvina Bostick; Katie McCracken, “Equal Protection,” *Georgetown Journal of Gender and the Law* 6, no 3 (2005): 249-288.

1 52. *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S. Ct. 1989, 141 L.
2 Ed. 2d 277 (1998) involved a high school teacher having sexual intercourse with a student that
3 was not reported to any school authority until he was arrested. *Davis v. Monroe County Bd. of*
4 *Educ.*, 526 U.S. 629, 641, 119 S. Ct. 1661, 143 L. Ed. 2d 839 (1999) involved sexual harassment
5 of a fifth-grade student by a classmate at a public elementary school.

6 53. Upon review of *Phillips*, Plaintiff found that although the circumstances did not involve
7 “sexual harassment” such as that in *Gebser* or *Davis*, it did involve an unauthorized act of a
8 teacher that discriminated on the basis of sex. Ambrea Phillips was officially dropped from a
9 weightlifting class by her instructor because she was one of two female students in a class of
10 thirty male students. He felt she was in danger of sexual assault or harassment in the classroom
11 and that this presented a potential liability for the high school. This decision was not based on an
12 official policy of the school, and when the appropriate school authorities were notified, she was
13 immediately reinstated to the class – three days later, and she completed the class with an A.

14 54. Plaintiff contends that the *Phillips* case is not germane because Plaintiff’s damages do not
15 arise from vicarious acts of an intermediate agent who lacks the authority and agency
16 responsibility for Title IX violations. Plaintiff alleges that his damages arise from the challenged
17 regulations (i.e., official policy) controlled completely by the named defendants, who have the
18 authority and affirmative duty to implement interagency agreements that are gender-neutral and
19 that do not violate the funding requirements of Title IX, and that are faithful to the implementing
20 statutes.

21 Plaintiff has been denied access to educational programs that are available to similarly
22 situated female parents under a regulatory scheme that allows women to apply for CalWORKs
23 when they are pregnant and remain the only recipient of the benefits due to having applied for
24 them first.

25 55. Plaintiff alleged and continues to allege that jurisprudence relating to violations of Title
26 IX resulting from official policy is appropriate. By analogy, female students at UC Davis
27 specifically asserted that based on official policy, “they were wrongly deprived of their
28

1 opportunity to participate in intercollegiate wrestling.” (*Mansourian v. Board of Regents of the*
2 *University of California at Davis, 816 F. Supp. 2d 869 (E.D. Cal. 2011).*)

3 56. It was determined that “at all relevant times, females were the underrepresented sex in UC
4 Davis’ intercollegiate athletics program. (*Id.*) In Plaintiff’s case, he has demonstrated that male
5 parents have been and remain the underrepresented sex in the CalWORKs educational programs.

6 57. It is a conclusion of law that “statistical evidence of disparate impact may be highly
7 relevant to the determination of whether an institution violated Title IX. (*Id.* At 895.)

8 58. After the passage of Title IX, UC Davis had issues with compliance and tried to increase
9 the participation ratio of women’s opportunities to those of men. In doing so, “the UC Davis
10 Provost and Executive Vice Chancellor Grey appointed ...a Title IX workgroup to advise the
11 athletic department about Title IX issues.” (*Id.*)

12 Plaintiff alleges that as in the instant case, these parallels demonstrate that the individuals
13 at the highest level of authority are responsible for creating official policy, assuring compliance
14 with Title IX, and meeting the conditions for federal funding.

15 59. Plaintiff contends that *Mansourian* is a similar case and is the most authoritative. He
16 contends that statistical data on CalWORKs participation rates is sufficient to raise concerns over
17 disparities between male and female parents’ access to educational programs and activities
18 receiving TANF grants. He is denied access to programs and activities on the basis that the
19 female parent has an open case for CalWORKs for which she *applied first* when only female
20 parents can apply first because they alone can apply during pregnancy.

21 60. While defendants and this court contend that the regulatory scheme is gender-neutral,
22 Plaintiff contends his denial of access to the same educational programs and activities that are
23 available to similarly situated female parents is the direct result of discriminatory regulations that
24 deny male parents’ equal treatment under federal law with regard to (1) *when they can apply for*
25 *public benefits*, (2) the necessity of *applying first as a condition of receiving them*, and (3) having
26 the *child’s benefits continue on the mother’s case* as a structural barrier that precludes them.

27 Plaintiff contends that the reasoning of the U.S. Supreme Court in *Gebser* is pertinent.
28 “[B]ecause the recipient assumed the statutory duty set out in Title IX as part of its consideration

1 for the receipt of federal funds, that duty constitutes an affirmative undertaking that is more
2 significant than a mere promise to obey the law.”

3 61. The court’s preliminary findings indicate that “Title IX complaints can have differing
4 pleading standards,” but Plaintiff disagrees with the findings that “the implementing regulations
5 applicable to athletics...do not apply.” (Pg. 9, Lines 23-27).

6 First, Plaintiff points to the regulations that the court preliminarily finds do not apply. 34
7 C.F.R. 106.41, the Title IX code specific to athletics, generally provides that “No person shall, on
8 the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently
9 from another person or otherwise be discriminated against in any interscholastic, intercollegiate,
10 club or intramural athletics offered by a recipient, and no recipient shall provide any such
11 athletics separately on such basis.” Similarly, the implementing regulations in the instant case,
12 C.F.R. § 106.40, the Title IX code specific to marital or parental status, generally provides that
13 “A recipient shall not apply any rule concerning a student’s actual or potential parental, family, or
14 marital status which treats students differently on the basis of sex.” (Student is defined as a
15 “person who has gained admission.”) The underlying premise for each of these regulations is the
16 same, as they are both classifications under 34 CFR Part 106 – Nondiscrimination on the Basis of
17 Sex in Education Programs or Activities Receiving Federal Financial Assistance.

18 62. Plaintiff contends that the *Gebser* and *Davis* cases relied upon by the defendants and this
19 court in its preliminary findings is appropriately considered in a definitive analysis in *Mansourian*
20 *v. Regents of University of California*, 602 F.3d 957 U.S. Ct. App., (9th Cir. 2010), which is
21 precedential, authoritative caselaw. Though Plaintiff should not require a reconstruction of the
22 analysis, he is providing one out of an abundance of caution to prevent the instant case from
23 being dismissed prematurely without proper consideration of the merits and without appropriate
24 judicial review.

25 In *Mansourian v. Regents of University of California* (2010), the Ninth Circuit Court set
26 out “the statutory and regulatory framework governing Title IX athletics cases.” In doing so, it
27 **examined all types of sexual harassment claims** specifically applicable to 20 U.S.C. § 1681,
28

1 non-discrimination in education. (Emphasis added.) The following excerpts from The Ninth
2 Circuit Court of Appeals analysis are germane in the instant case:

3 The starting point for this inquiry is *Franklin v. Gwinnett County Public Schools*,
4 503 U.S. 60, 112 S. Ct. 1028, 117 L. Ed. 2d 208 (1992), in which the defendant
5 school district was aware of a teacher's sexual harassment of a student but took no
6 action to stop it... *Franklin* held...that the failure to halt harassment of which a
7 school district is aware constitutes intentional discrimination for which monetary
8 damages are an appropriate remedy. *Id.* At 75-76, 112 S. Ct. 1028.

9 *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S. Ct. 1989,
10 141 L. Ed. 2d 277 (1998), further defined the scope of a school's monetary
11 liability under Title IX for inaction in the face of serious sexual harassment. In
12 *Gebser*, the Court held that principles of *respondeat superior* and constructive
13 notice are inadequate to impose Title IX liability on a school district for a teacher's
14 sexual abuse of a high school student. *Id.* At 285, 118 S. Ct. 1989.

15 [I]n cases like [*Gebser*] **that do not involve official policy of the recipient entity**,
16 ... a damages remedy will not lie under Title IX unless an official who ... has
17 authority to address the alleged discrimination and to institute corrective measures.
18 ... has actual knowledge of discrimination. . . and fails adequately to
19 respond...Proof of actual notice is required only when the alleged Title IX
20 violation consists of an institution's deliberate indifference to acts that "do not
21 involve official policy of the recipient entity." *Id.*

22 In sexual harassment cases, it is the deliberate failure to curtail known harassment,
23 rather than the harassment itself, that constitutes the intentional Title IX violation.
24 *See Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 641, 119 S. Ct. 1661, 143
25 L. Ed. 2d 839 (1999) (holding that *Gebser* permits the plaintiff "to hold the Board
26 liable for **its own decision** to remain idle in the face of known student-on-student
27 harassment in its schools.")" (Emphasis added.)

28 The Tenth Circuit has held that a corollary of this principle is that where the

1 **official policy is one of deliberate indifference** to a known overall risk of sexual
2 harassment, **notice of a particular harassment situation and an opportunity to**
3 **cure it are not predicates for liability.** See *Simpson v. Univ. of Colo. Boulder*,
4 500 F.3d 1170 (10th Cir.2007). (Emphasis added.)

5 Consistent with the reasoning underlying *Gebser*, the Supreme Court has made
6 clear that **no notice requirement is applicable to Title IX claims that rest on an**
7 **affirmative institutional decision...**The Fifth Circuit has reached the same
8 conclusion...holding that “the requirement in the sexual harassment cases that the
9 academic institution have actual knowledge of the sexual harassment is not
10 applicable for purposes of determining whether an academic institution
11 intentionally discriminated on the basis of sex”...“[I]t is the institution itself that
12 is discriminating.” The circuits are already split on the issue, and we find the
13 **Fifth Circuit’s holding (and that of the Tenth Circuit in *Simpson*, on a**
14 **different but related issue) the more persuasive, for reasons already surveyed.**

15 63. The Plaintiffs in *Mansourian* and other cases raised the issues with the Office of Civil
16 Rights to put the institution on notice. In the instant case, Plaintiff reached out to the Sacramento
17 County Department of Human Assistance and to the California Department of Social Services
18 Civil Rights Units to complain of the discrimination but was told it was not within their purview
19 to redress regulatory issues.

20 64. While Plaintiff holds that Chancellor Oakley was aware of the discrimination, this court
21 maintains that he alleges no plausible inference of deliberate indifference. This court recounts,
22 Plaintiff alleges the discriminatory eligibility requirements of the CalWORKs program results in
23 “single mothers receiving more educational resources than single fathers” and cites only one
24 report for one year as evidence of indifference. This is incorrect.

25 What Plaintiff alleged and demonstrated in his SAC is that significantly more single
26 mothers are receiving educational resources than single fathers. He stated that “California
27 Community Colleges (CCC) collects and collates data on CalWORKs participation rates” (Pg. 20,
28 Lines 9-13) and attached two reports that were generated directly from the CCC website using

1 their online tool which identifies the demographics of CalWORKs programs specifically that
2 allows the public to access and compare the data from 1999 to 2021. Plaintiff incorporated into
3 his SAC a “copy of CalWORKs Status Summary Reports – statewide by decade: 1999-2000,
4 2009-2010, and 2020-2021 academic years” as well as the Annual 2020, Los Rios Community
5 College District report this court cites in its findings. (See Pg. 20, Par. 55, Lines 9-13).

6 Unlike UC Davis, the CCC failed to analyze the CalWORKs participation rate data or to
7 make any effort to correct the disproportionate access to educational programs and activities that
8 was clearly occurring through its interagency agreements with the California Health and Human
9 Services Agency/Department of Social Services. Plaintiff alleges that they collect this data for
10 the purposes of federal funding and that it is statutorily required. Plaintiff alleges that all named
11 defendants failed to evaluate the programs for gender equity and discrimination.

12 65. “Although arising from a teacher-student harassment case, Doe A is instructive. In finding
13 that the case “did not lend itself well to summary adjudication,” Doe A noted that the question of
14 **whether an institution acted with deliberate indifference under a particular set of**
15 **circumstances is a question normally left to the jury.** 298 F. Supp. 2d at 1036 (citing, e.g.,
16 *Oviatt By and Through Waugh v. Pearce*, 954 F.3d 1470, 1478 (9th Cir. 1992) (“Whether a local
17 government entity has displayed a policy of deliberate indifference is generally a question for the
18 jury.”)); *Davis v. Mason County*, 927 F.2d 1473, 1482 (9th Cir. 1991); *Alexander v. City and*
19 *County of San Francisco*, 29 F.3d 1355, 1367 (9th Cir. 1994); *Blair v. City of Pomona*, 206 F.3d
20 938, 2000 WL 290246, (9th Cir. 2000); *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir.
21 2001). A number of “[o]ther district courts have found that the deliberate indifference or clearly
22 unreasonable standard does not lend itself well to a determination by the Court on summary
23 judgment, and have permitted the claim to go to the jury if the plaintiff advanced some evidence
24 in support.” *Id.* (citing *Hart v. Paint Valley*, 2002 U.S. Dist. LEXIS 25720, 2002 WL 31951264,
25 (S.D. Oh. 2002) (stating that whether a response is unreasonable under Title IX “does not lend
26 itself well to a determination by the Court on summary judgment”)). *Roe v. Gustine Unified Sch.*
27 *Dist.*, 678 F. Supp. 2d 1008 (9th Cir. 2009). (Emphasis added.)

28 ///

1 66. 20 U.S.C. § 1681 (b) states in relevant part: “this subsection shall not be construed to
2 prevent the consideration in any hearing or proceeding under this chapter of statistical evidence
3 tending to show that such an imbalance exists with respect to the participation in, or receipt of the
4 benefits of, **any such program or activity by the members of one sex.**” The statistical data
5 pertaining to participation rates is not exclusive to athletics. Plaintiff maintains that the
6 regulatory scheme results in “a more subtle variety of discrimination” which “produces effects
7 which weigh adversely and disproportionately upon the members of a particular protected group
8 of individuals.” (*Sue De La Cruz et al., Plaintiffs-appellants, v. James Tormey et al., Defendants-*
9 *appellees*, 582 F.2d 45 (9th Cir. 1978). (Emphasis added.) In this case, it is male parents.

10 Plaintiff contends that the data he provided “establish[es] the degree of statistical
11 imbalance” necessary to “trigger further inquiry” as in such cases as “*Griggs, Davis, and*
12 *Dothard*.” He further contends that a decision should not be reached until there is a “relatively
13 full evidentiary record and not, as here, upon a construction of the pleadings... While these
14 allegations may prove to be entirely conclusory,” Plaintiff contends that he is “entitled to an
15 opportunity to present specific facts in their support. See Fed. R. Civ. P. 56 ϵ .” (*Id.*)

16 67. “The question of whether Title IX is governed by discriminatory intent or a disparate
17 impact standard is unsettled.”⁶ It is notable that Title IX is an area of law that is being developed,
18 and most of the cases involve teacher-student or student-student sexual harassment. The U.S.
19 Supreme Court stated in *Gebser* that “Congress did not intend to allow recovery of damages
20 where liability rests solely on principles of vicarious liability or constructive notice,” which
21 applies to cases where the misconduct of an individual, whether an agent (i.e., employee, faculty)
22 or a student is at issue. The decision in *Gebser* made clear that someone with authority needed to
23 have actual notice of the harassment, not constructive notice, because the actions were vicarious.

24 68. In *Franklin v. Gwinnett County Public Schools, et. al.*, 503 U.S. 60 112 S.Ct. 1028, 117
25 L.Ed.2d 208 the U.S. Supreme Court asserted that “the notice problem does not arise in a case ...
26 in which intentional discrimination is alleged... and that Title IX places [a duty on the institution]

27
28 ⁶ Federal Civil Rights Acts Third Edition. 2018 Edition. Rodney A. Smolla. Thomson Reuters, November 2018.

1 not to discriminate on the basis of sex.” See also 42 U.S.C. § 20000d-7(a)(1) (withdrawing the
2 States’ Eleventh Amendment immunity); § 20000d-7(a)(2) (providing that, in suits against States,
3 “remedies both at law and equity) are available for violations of [Title IX] to the same extent as
4 such remedies are available for such a violation in the suit against any public or private entity
5 other than a State”). It held that Title IX is enforceable through an implied right of action.
6 *Cannon v. University of Chicago*, 441 U. S. 677. P. 65 and that a damages remedy is available for
7 an action brought to enforce Title IX. Pp. 65–76.

8 The Court further opined, “It is well to recall that [federal judicial] authority historically
9 has been thought necessary to provide an **important safeguard** against abuses of legislative and
10 executive power, see *Kendall v. United States*, 37 U.S. (12 Pet.) 524, 9 L.Ed. 1181 (1838), as well
11 as to insure an independent judiciary.”⁷

12 As stated in *Gebser*, the U.S. Supreme Court held that “the text of Title IX should be
13 accorded “a sweep as broad as its language.” *North Haven Bd. of Ed. V. Bell*, 456 U.S. 512, 521,
14 72 L. Ed. 2d 299, 102 S. Ct. 1912 (1982) (quoting *United States v. Price*, 383 U.S. 787, 16 L. Ed.
15 2d 267, 86 S. Ct. 1152 (1966)).

16 Conduct by persons acting under color of state law which is wrongful under 42 U.S.C.S.
17 §§ 1983 or 1985(3) cannot be immunized by state law. A construction of the federal statute which
18 permitted a state immunity defense to have controlling effect would transmute a basic guarantee
19 into an illusory promise; and the Supremacy Clause of the United States Constitution ensures that
20 the proper construction may be enforced. The immunity claim raises a question of federal law.
21 (*Roe v. Gustine Unified Sch. Dist.*, 678 F. Supp. 2d 1008 *; 2009 U.S. Dist. LEXIS 118880).

22 70. In *Mansourian*, the Ninth Circuit concurred with the Fifth Circuit’s conclusion that in
23 cases where the policies and regulations of an institution discriminate on the basis of sex, the
24 institution is, in fact, itself causing the constitutional violation at issue.

25 The preliminary findings of the Ninth Circuit Court of Appeals in *Mansourian* directly
26 contradict the preliminary findings of the Ninth Circuit Court in the instant case. Additionally,

27
28 ⁷ See generally Katz, *The Jurisprudence of Remedies: Constitutional Legality and the Law of Torts in Bell v. Hood*, 117
U.Pa.L.Rev. 1, 16-17 (1968). (*Franklin v. Gwinnett County Public Schools and William Prescott*, 1992).

1 the “court’s holding does not require Title IX plaintiffs to plead their allegations with precision or
2 specificity. However, the allegations must provide some indication of the basis for the
3 institution’s non-compliance so that an institution may attempt to remedy the situation
4 voluntarily.” (*Id.*)

5 **G. State Law Claims**

6 71. Plaintiff alleges that there are not incurable defects when considering his allegations in
7 totality that have been presented in the SAC as well as subsequent responses. Plaintiff believes
8 that he has sufficiently alleged a federal claim and therefore respectfully requests that the court
9 exercise its supplemental jurisdiction over the state-law claims.

10 **H. Leave to Amend**

11 72. Plaintiff alleges that the regulations that permit the abuse of power by the state are
12 unconstitutional and constitute invidious discrimination, and that it is incumbent upon this court
13 to re-evaluate the findings and recommendations in light of Plaintiff’s objections in which he
14 believes he demonstrates he can cure any deficiencies. Plaintiff believes there were several
15 claims made by defendants that this court accepted as fact that Plaintiff has shown to be
16 speculative or untrue. Plaintiff has also deconstructed the arguments regarding defendants claim
17 that the challenged regulations serve an “important governmental purpose” because the purpose
18 proffered is not relevant to those specific regulations or the purpose they serve.

19 Plaintiff contends that if the identified defects can be corrected that he must be granted
20 leave to amend. Thusly, if the complaint is dismissed, he requests the court grant leave to amend.

21 **III. Conclusion**

22 73. Plaintiff has a property interest in the benefits. There are three separate arguments
23 demonstrating that receipt of benefits is not required to establish a property interest in welfare
24 benefits. They are TANF statutory language that requires procedural due process to protect
25 *access to* and receipt of benefits; *Goldberg*, which states that “welfare benefits are “a matter of
26 statutory entitlement for persons qualified to receive them;” and *Frink*, which states that “[t]he
27 right of the needy applicant to welfare benefits is as fundamental as the right of a recipient to
28

1 continued benefits.” There is a statutory requirement for procedural due process, and in *Bixby*,
2 the U.S. Supreme Court held that independent judicial review is the appropriate standard.

3 74. Plaintiff has alleged and demonstrated that the challenged regulations create two different
4 classifications of applicants and that they are gender specific. Plaintiff contends that these
5 regulations are arbitrary and capricious and subvert the enabling statutory objectives, which are to
6 protect the child from exposure to poverty and to raise the neediest families out of poverty.

7 75. Defendants’ arguments essentially sanction the appropriateness of mothers being given
8 public benefits exclusively despite the fact that there is no absentee parent, they are employable,
9 and the qualifying child is deprived of their support half the time while they reside with fathers
10 who have joint equal custody. Despite the fact that a male parent is unemployed, underemployed,
11 or disabled and left without resources, their arguments affirm a regulatory scheme that prioritizes
12 men’s roles as financial sponsors forced to pay the guideline child support to reimburse the state
13 for an outpouring of economic resources to women so they can achieve lofty educational goals
14 without any legislative intent for them to become self-supporting. Plaintiff believes that he has
15 demonstrated the invidiousness of the systemic discrimination and attached relevant
16 jurisprudence documenting the plight of “Forgotten Fathers.”

17 76. Plaintiff alleges, in summary, that not only are the challenged regulations not controlling
18 of the issue of benefits during pregnancy, but they do also not promote any identified “important
19 governmental objective,” particularly with regard to the legislative goals and objectives of the
20 CalWORKs programs.

21 He further alleges that the government has not identified or demonstrated an “important
22 governmental purpose” for the challenged regulations and they have failed to provide an
23 “exceedingly persuasive justification” for imposing the gender-specific criterion of “first to
24 apply” when determining which parent should receive the distribution of benefits when two
25 parents share joint equal custody, particularly where the county did not utilize the follow the
26 criteria set forth in MPP §82-808.3 et. seq. when considering Plaintiff’s renewed application at
27 the time he was able to claim the child as a tax dependent.
28

1 **A. Purposeful/Invidious Discrimination**

2 77. According to U.S. Department of Human Assistance, “TANF funds may be used in any
3 way that supports one of the four statutory purposes of TANF: to provide assistance to needy
4 families so that children can be cared for at home; to end the dependence of needy parents on
5 government benefits by promoting job preparation, work and **marriage**; to prevent and reduce the
6 incidence of **out-of-wedlock pregnancies**; and to encourage the formation and maintenance of
7 **two-parent families.**” ([https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-](https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview)
8 [assistance-needy-families-tanf-overview](https://aspe.hhs.gov/aid-families-dependent-children-afdc-temporary-assistance-needy-families-tanf-overview)).

9 Plaintiff was not the one who chose to have an out-of-wedlock child. He was misled
10 about the nature of the relationship and found that Mother was more interested in the benefits that
11 welfare could offer given his meager economic standing. He was then punished by her, by the
12 family court, by the public welfare institutions, and by child support enforcement for her decision
13 to alienate him from his own child.

14 78. Plaintiff alleges that the “man in the house” rule was the historical paradigm for
15 discriminating against male parents having access to welfare. This rule prevented adult males
16 from residing with mothers and children who received public assistance. “Whereas federal aid to
17 the poor has traditionally focused on support for families, a central contradiction in these policies
18 is the degree to which the state employs antifamily modes of regulation and punishment, a finding
19 consistent across welfare, health, and child services.”⁸

20 79. Plaintiff alleges that the totality of circumstances supports his claim of purposeful
21 discrimination and invidious discrimination against single male parents.

22 In *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979) the U.S. Supreme Court held
23 that in the context of a constitutional equal protection claim that “‘discriminatory purpose’ implies
24 more than intent as volition or intent as awareness of consequences. It implies that the
25 decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’
26 not merely ‘in spite of,’ its adverse effects upon an identifiable group.”

27 _____
28 ⁸ Rahim Kurwa (2020): *The New Man in the House Rules: How the Regulation of Housing Vouchers Turns Personal Bonds Into Eviction Liabilities*, Housing Policy Debate, DOI: 10.1080/10511482.2020.1778056

1 80. Plaintiff alleges that this group is **unwed single fathers**. He alleges that, in part, the
2 defendants have an attitude toward male parents that is demonstrable in their motions to dismiss.
3 They have done everything they can to deny and deprive Plaintiff of benefits including presenting
4 false, outdated, speculative, and/or misleading information to the court. Plaintiff also alleges that
5 their dogged adherence to arbitrary regulations belies their contempt for his needs. They could
6 have considered the human impact that the regulatory scheme is imposing on Plaintiff and his
7 child and other male parents once he informed the intake worker and the Civil Rights Unit.
8 Plaintiff has also demonstrated the discriminatory effect in the twenty-year statistical data.

9 81. Plaintiff contends that if the discriminatory challenged regulations were struck down, they
10 could be replaced with a deliberative process to determine whether either parent should receive
11 benefits once joint equal custody was obtained, or determine whether, in fact, there is an absentee
12 parent pursuant to, and consistent with, the Cal. Fam. Code § 3010 that allows poor single fathers
13 access to resources prior to joint equal custody as a criterion for interventional assistance.

14 Plaintiff believes that a new paradigm that focuses on reinforcing the needs of children
15 who are residing with both parents equally, or whose father is actively seeking to establish
16 paternity/custody, could, and arguably would, result in a huge reduction in taxpayer cost and
17 improved efficient distribution of welfare benefits in the public interest. Plaintiff alleges that
18 recognizing and meeting the needs of families, and not just 'women and children' as a single-
19 parent household, is a legitimate governmental purpose because the best outcome for children is
20 to have both parents' involvement in childrearing.

21 Plaintiff alleges that a finding by this court that the challenged regulations are
22 unconstitutional would ultimately not impose any new economic burden upon the state but would
23 instigate regulatory changes that the state defendants are authorized to promulgate, administer,
24 and enforce (i.e., administering agencies) as they have an affirmative duty as recipients of TANF
25 funds not to discriminate on the basis of sex or gender.

26 Dated March 15, 2022

Respectfully submitted,



Justin G. Reedy, Plaintiff, In Pro Per