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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11 ELDON RAY BLUMHORST,) Case No. BC291977
12)
13 Plaintiff,) PLAINTIFF’S OPPOSITION
14) TO DEMURRER
15 v.)
16) Date: October 10, 2003
17 HAVEN HILLS, INC., ET AL.,) Time: 9:00 a.m.
18) Dept. 72
19 Defendants.) Hon. Jon M. Mayeda
20) Action filed: March 12, 2003
21 _____)

22 Plaintiff Eldon Ray Blumhorst (“Plaintiff”) responds to the demurrers of Domestic
23 Violence Center of the Santa Clarita Valley (aka Assn. to Aid Victims of Domestic Violence),
24 So. CA Alcohol and Drug Program, Inc., House of Ruth, Rainbow Services, Haven Hills, Inc.,
25 Su Casa Family Crisis and Support Center, Peace and Joy Care Center, YWCA of Glendale,
26 CA, Jewish family Services of Los Angeles, and Haven House, Inc. (“Defendants”) as follows.

27 **INTRODUCTION**

28 Plaintiff filed this action to end the discrimination against male domestic violence victims
in state-funded services. Defendants are state-funded domestic violence programs that refuse to
provide shelter or even a motel voucher to males who, like many women, need shelter to escape

1 a violent environment at home (such as a violent partner under the influence of drugs).
2 Consequently, male victims are forced to travel long distances, often too far from their work or
3 their children’s school, to receive shelter at Valley Oasis, a state-funded shelter in Lancaster,
4 California that has sheltered both male and female victims for over a decade. Plaintiff filed this
5 action for injunctive (not monetary) relief on behalf of himself and California men per
6 Government Code section 11135¹, which forbids sex discrimination by state-funded programs.
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9 Defendants demurred, arguing that Plaintiff fails to plead sufficient facts. Defendants
10 narrowed their arguments to essentially the following: 1) Section 11139 exempts Defendants as
11 lawful programs benefiting women because it would adversely affect Defendants to provide
12 shelter or motel vouchers to male victims; 2) Section 11135 and 11139 are inseverable and thus
13 if one is invalid then so is the other, and; 3) Plaintiff failed to exhaust administrative remedies.
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16 Defendants’ arguments do not hold up under analysis. First, the question of whether
17 providing shelter or motel vouchers to male victims would “adversely affect” Defendants is a
18 question of *fact*, not law, and therefore it is not a proper issue for a demurrer. Second, Section
19 11139 employs suspect classifications of sex and race, which are *presumed unconstitutional*
20 according to the most recent case law and the current legal trend, and the suspect classifications
21 do not pass a constitutionality test. Third, Section 11139 is severable from Section 11135
22 because it is complete in itself, and in fact its implementing regulations contain a severability
23 clause. Fourth, exhaustion of remedies is not necessary because Section 11139 allows a private
24 action “independent of any other rights and remedies.”
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28 ¹ All statutory references hereafter are to the Government Code unless otherwise indicated.

1 **FACTS**

2
3 Plaintiff is a decorated Vietnam War veteran who served on the USS Valley Forge during
4 the Vietnam War. He is also a battered husband. Today he walks with a limp due to one of his
5 ex wife’s assaults in which she hurled a large piece of furniture at him. Plaintiff sought help
6 from various services but, being male, found virtually none. Feeling isolated and alone, he
7 joined the National Coalition of Free Men (“NCFM”), a nonprofit organization founded in 1976
8 that looks at the ways in which sex discrimination affects men and boys.
9
10

11 NCFM’s Los Angeles chapter (“NCFM-LA”) formed in 2000 as a public advocacy
12 organization and has received written support from local figures such as Judge Mableam of Fox
13 TV’s “Divorce Court,” Cal State University Professor Martin Fiebert, and State Assemblyman
14 Rod Wright. (<www.ncfmla.org/activism/activism.html>.)
15
16

17 In 2000, NCFM-LA began asking the domestic violence industry to open their outreach
18 and shelter to male victims. NCFM-LA members testified before the County Supervisors and at
19 County domestic violence meetings, submitted research, printed newspaper articles, wrote
20 letters, appeared on local radio, etc. In 2002 they submitted a joint proposal with the nationally
21 recognized organization Stop Abuse For Everyone for a task force on male victims to the
22 County Domestic Violence Council Executive Committee, largely made up of shelter directors.
23 The County never responded. (<www.dailybreeze.com/content/opinion/nmangelucci22.html>,
24 <www.csudh.edu/dearhabermas/domabuse01.htm>.)
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1 By 2002, things still had not changed. So NCFM-LA decided to test state-funded shelters
2 for discrimination. Testing is a legitimate way to ferret out discrimination. (*Pierson v. Ray*
3 (1967) 386 U.S. 547, 558; *Evers v. Dwyer* (1958) 358 U.S. 202, 204; *Havens Realty Corp. v.*
4 *Coleman* (1982) 455 U.S. 363, 373-374; Haydon, *A Measure of Our Progress: Testing for Race*
5 *Discrimination in Public Accommodations* (1997) 44 UCLA L.Rev. 1207.)
6

7
8 Plaintiff agreed to do the testing. Between December 9 and December 14, 2002, Plaintiff
9 called Defendants and explained that he needed shelter as a domestic violence victim.
10 Defendants denied him shelter *because he was male* (not due to capacity) and did not offer him
11 a motel voucher. Some did not even refer to Valley Oasis. This violated Government Code
12 Section 11135. Plaintiff now seeks *injunctive* relief (not money) to end the discrimination.
13
14

15 ARGUMENT

16
17 No person in the State of California shall, on the basis of race,
18 national origin, ethnic group identification, religion, age, sex, color,
19 or disability, be unlawfully denied full and equal access to the
20 benefits of, or be unlawfully subjected to discrimination under, any
21 program or activity that is conducted, operated, or administered by
the state or by any state agency, is funded directly by the state, or
receives any financial assistance from the state.

22 (Govt. Code § 111355.)

23
24 Plaintiff pleaded, inter alia, that: 1) Defendants are state-funded shelters; 2) he requested
25 shelter from Defendants as a domestic violence victim; and, 3) based only on his sex they
26 refused to provide him shelter or even a motel voucher. This is sufficient to seek injunctive
27 relief against Defendants for their violation of Section 11135.
28

1 **I. WHETHER IT WOULD “ADVERSELY AFFECT” DEFENDANTS TO PROVIDE**
2 **SHELTER OR MOTEL VOUCHERS TO MALE VICTIMS IS A QUESTION OF**
3 **FACT, NOT LAW, AND IS NOT A PROPER ISSUE FOR A DEMURRER.**

4 Whether it would “adversely affect” Defendants to provide shelter or motel vouchers to
5 male victims is a *factual* issue that depends on various factors. Demurrers only look at issues of
6 law. (*Mechanical Contractors. v. Greater Bay Area Ass’n.* (1998) 66 Cal.App.4th 672, 677.)

7
8 Defendants have shown little to support their claim that offering shelter or motel
9 vouchers to male victims would “adversely affect” them. If Valley Oasis can shelter male and
10 female victims for over a decade, why can’t Defendants?

11 The answers can depend on *factual* matters that are not proper for a demurrer.

12
13 Moreover, whether Defendants’ contracts with the state use gender-specific language is
14 irrelevant. (Valley Oasis uses the same contract.) Section 11135 *forbids* state-funded programs
15 from discriminating by sex. What their contracts with the state say does not matter. Nor can the
16 contracts’ language make the discrimination “lawful,” especially since the state is also acting
17 illegally. The contractual language violates the Constitution and Section 11135 (hence it is *not*
18 lawful). And again, Defendants’ *acts* violate Section 11135 in and of themselves.

19
20 Plaintiff is not “attacking” domestic violence shelters any more than blacks were
21 “attacking buses” in Montgomery, Alabama by demanding fair and equal treatment.

22
23 Even if Defendants showed that female victims do not want males in the shelters (which
24 is not true), it would not justify denying male victims shelter or *motel vouchers* any more than it
25 would justify denying services to blacks because some victims were battered by or fear blacks.
26
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1 **II. SECTION 11139'S SUSPECT CLASSIFICATIONS ARE UNCONSTITUTIONAL**

2 **Where a statutory scheme, on its face, employs a suspect**
3 **classification, the scheme is, on its face, in conflict with the core**
4 **prohibition of the Equal Protection Clause. [Citations.] And the**
5 **express use of suspect classifications in a statutory scheme**
6 **immediately triggers strict scrutiny review.**

7 (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 44, emphasis added.)

8 In California, sex classifications are *suspect* for equal protection purposes. (*Id.* at p. 40.)
9 The *core purpose* of the equal protection clause is to eliminate governmentally-sanctioned race
10 and gender distinctions. (*Id.* at p. 34.) A suspect classification is *presumptively invalid* and
11 immediately triggers strict scrutiny review. (*Id.* at p. 36.)

12 **To the extent the statutory schemes challenged by plaintiff**
13 **employ express racial and gender classifications, he has met his**
14 **initial burden by pointing that out.**

15 (*Id.* at p. 43, emphasis added.)

16 “[S]tatistical anomalies, without more, do not give a government entity the legal authority
17 to employ racial and gender classifications. (*Id.*, at p. 56.)

18 Any rule, policy or practice which treats men and women differently
19 for purposes of any program or activity on the basis of aggregate
20 statistical characteristics of men or women, whether founded in fact,
21 belief or statistical probability is a discriminatory practice.

22 (Cal. Code of Regs. § 98243.)

23 Strict scrutiny applies regardless of whether a law is claimed to be benign or remedial.
24 What matters is that the government draws a line on the basis of or purposefully uses a suspect
25 classification. Strict scrutiny focuses on whether the suspect classification *itself* is justified by a
26 compelling government interest and whether the means chosen are narrowly tailored to that
27 interest. Governmental *specificity and precision* are demanded. (*Id.* at pp. 35-36.)
28

1 Courts can invalidate a state statute even where the state is not a party. (*See City of Los*
2 *Angeles v. Lewis* (1917) 175 Cal. 777 (section of the Political Code held unconstitutional).)

3
4 Section 11139 employs suspect classifications based on sex and race by stating in essence
5 that it is ok for state-funded programs to discriminate against males or against whites. These
6 classifications are presumed unconstitutional on their face and they fail a constitutionality test.
7
8 The burden is on the government to prove that they meet strict scrutiny. The government has
9 not shown with any degree of specificity and precision that Section 11139's broad-sweeping
10 suspect classifications are narrowly tailored to a compelling government interest or are in any
11 way necessary for the normal operation of "public contracting" or "public employment."
12

13 **III. SECTION 11139 IS SEVERABLE FROM SECTION 11135**

14 An unconstitutional provision is severable from a remaining statute if the remainder is
15 "complete in itself" and would have been adopted without the severed provision. (*People v.*
16 *Nararro* (1972) 7 Cal.3d 248, 260; *In re Bell* (1942) 19 Cal.2d 488, 498.) The invalid provision
17 must be grammatically, functionally, and volitionally severable from the remaining provision.
18

19 To be functionally severable, the remaining provisions must be "capable of independent
20 application" and must "stand on their own, unaided by the invalid provisions nor rendered vague
21 by their absence nor inextricably connected to them by policy considerations." (*Ibid.*)
22

23 Defendants argue that Section 11139 is functionally and volitionally inseverable from
24 Section 11135 because they were written at the same time and are "inextricably intertwined."
25

26 Section 11135 is not "inextricably intertwined" with Section 11139. It is not "rendered
27 vague" or left an "unintended fragment" without it. (*Franklin Life Ins. Co. v. State Bd. of*
28 *Equalization* (1965) 63 Cal.2d 222, 228.) On the contrary, it stands complete in itself as a law

1 forbidding discrimination by state-funded programs. There is no indication that it would not
2 have been enacted absent Section 11139. Section 11139 merely adds an invalid statement that,
3 essentially, such programs can discriminate against people who are white or who are male.
4

5 Moreover, Section 11135's implementing regulations (2 CCR §§ 98000 et seq.) state:

6 If any provision of this Division, or any portion thereof, is adjudged
7 to be invalid by a court of competent jurisdiction, or if any provision
8 of this Division, or a portion thereof, loses its force or effect as a
9 result of legislative action, that judgment does not affect the
remainder of the provisions of this Division.

10 (2 CCR § 98009.)

11 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS UNNECESSARY.**

12 This article and regulations adopted pursuant to this article may be
13 enforced by a civil action for equitable relief, which shall be
14 independent of any other rights and remedies.
15

16 (Gov. Code § 11139.)

17 **V. MALE VICTIMIZATION IS A SERIOUS AND HIDDEN SOCIAL PROBLEM**

18 The frequency and severity with which males are domestic violence victims is becoming
19 more and more recognized. Although the figures can vary, research consistently shows that
20 males are victims of domestic violence at very high rates and are injured quite often as well.
21

22 The United States Department of Justice has announced:

23 **[A]pproximately 1.5 million women and 834,732 men are raped**
24 **and/or physically assaulted by an intimate partner annually in**
25 **the United States.**

26 (Natl. Violence Against Women Survey, <www.ncjrs.org/txtfiles1/nij/181867.txt>.)

27 The American Medical Association (AMA) urges public services (including shelters) to
28 **“develop appropriate interventions for all victims of intimate violence”** and has said:

1 **[M]any women also use violence for the same reasons men do: as**
2 **expressive behavior, instrumental behavior, or as an attempt to**
3 **exert control . . . [T]he most conservative indicator of battering-**
4 **-to the 52 million married couples in the United States suggests**
5 **that 104,000 men are injured by their wives each year.**

6 (AMA, “Violence Toward Men: Fact or Fiction?” Council on Scientific Affairs (I-94).²)

7 **Men are undoubtedly victims of intimate partner violence.**
8 **Current data suggest that at least 15% of cases of intimate**
9 **partner violence have male victims, most of whom have female**
10 **partners.**

11 (AMA, “Data on Violence Between Intimates, (I-00).)

12 California State University at Long Beach maintains a bibliography of 138 scholarly
13 Investigations, with an aggregate sample size exceeding 100,000, each concluding that:

14 **[W]omen are as physically aggressive, or more aggressive, than**
15 **men in their relationships with their spouses or male partners.**

16 (<www.csulb.edu/%7Emfiebert/assault.htm>.) One such study is a meta-analysis published by
17 the American Psychological Association’s “Psychological Bulletin” (9/00) which shows that
18 men make 38 percent of *physically harmed* victims and that “women were more likely than men
19 to use one or more acts of physical aggression and to use such acts more frequently.”

20
21 Renowned domestic violence researcher Richard Gelles, Ph.D., Chair of Child Welfare
22 and Family Violence School of Social Work, University of Pennsylvania, conducted extensive
23 research for the National Institute of Mental Health for a period of more than ten years and
24 repeatedly found that, “contrary to the claim that women only hit in self-defense, we found that
25 women were as likely to initiate the violence as were men.” Gelles further states:
26

27 ²

28 <[http://207.68.164.250/cgi-bin/linkrd?_lang=EN&lah=8c884f998c49ee5dd01c916ca99d7d2e&lat=1057638500&hm___action=ht
tp%3a%2f%2fwww%2eama%2dassn%2eorg%2fama%2fpub%2farticle%2f2036%2d2559%2ehtml](http://207.68.164.250/cgi-bin/linkrd?_lang=EN&lah=8c884f998c49ee5dd01c916ca99d7d2e&lat=1057638500&hm___action=ht
tp%3a%2f%2fwww%2eama%2dassn%2eorg%2fama%2fpub%2farticle%2f2036%2d2559%2ehtml)>.)

