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12 SUPERIOR COURT OF THE COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA
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14 RANDY THOMASSON and
CAMPAIGN FOR CALIFORNIA
15 FAMILIES

16
17 Plaintiffs,

18 vs.

19 GAVIN NEWSOM, individually and
20 in his official capacity as Mayor of the
City and County of San Francisco, CA
21 NANCY ALFARO, in her official capacity
as the San Francisco County Clerk.

22 Defendants.
23

) Case No.: CGC 04-428794

) VERIFIED AMENDED COMPLAINT
) FOR WRIT OF MANDAMUS,
) DECLARATORY AND
) INJUNCTIVE RELIEF

24 Plaintiffs Randy Thomasson and Campaign for California Families (collectively,
25 "Plaintiffs"), by and through their undersigned counsel, hereby apply for a temporary restraining
26 order, preliminary injunction and writ of mandate on the grounds that Defendants and their agents
27 have unlawfully issued marriage licenses to, and solemnized marriages of, same-sex couples, and
28 will continue their unlawful behavior if Plaintiffs' requested relief is not granted. In support of their

1 applications, Plaintiffs do hereby allege for their complaint as follows:

2 **INTRODUCTION AND STATEMENT OF FACTS**

3 1. Pursuant to Family Code § 300 “marriage” is defined as a “personal relation arising
4 out of a civil contract between a man and a woman, to which the consent of the parties capable of
5 making that contract is necessary.”

6 2. Family Code § 301 further provides that those capable of providing consent to a
7 marriage are “[a]n unmarried male of the age of 18 years or older, and an unmarried female of the
8 age of 18 years or older”

9 3. On March 7, 2000, the citizens of California voted in favor of and passed Proposition
10 22, which was incorporated into California law as Family Code § 308.5 (hereinafter “Proposition
11 22”). Proposition 22 states that “[o]nly marriage between a man and a woman is valid or recognized
12 in California.”

13 4. Marriages between couples of the same sex are not valid or recognized in California.

14 5. On or about February 10, 2004, Mayor Newsom issued a letter to County Clerk
15 Nancy Alfaro directing her to “determine what changes should be made to the forms and documents
16 used to apply for and issue marriage licenses in order to provide marriage licenses on a non-
17 discriminatory basis, without regard to gender or sexual orientation.” *See* Letter to County Clerk,
18 attached as **Exhibit 1** and incorporated herein (hereinafter “Directive”).

19 6. On or about February 10, 2004, Mayor Newsom issued a press release explaining the
20 reason behind the Directive. The press release indicates that the purpose of the Directive was to
21 allow gays and lesbians the ability to obtain marriage licenses. *See* Mayor’s Press Release, attached
22 as **Exhibit 2** and incorporated herein.

23 7. Plaintiff is informed and believes that County Clerk Alfaro has implemented the
24 Directive and begun to issue marriage licenses so that women can marry women and men can marry
25 men. Plaintiff bases his belief on newspaper reports, including a report stating that Clerk Alfaro
26 “said she would work diligently to implement the mayor’s request” *See* Article from
27 SFGate.com, incorporated herein and attached as **Exhibit 3**, and Copy of Marriage license issued
28 on February 12, 2004 by and City and County of San Francisco to a same-sex couple, incorporated

1 herein and attached as **Exhibit 4**.

2 8. As of February 11, 2004, the website for the Office of the County Clerk set forth the
3 requirements for obtaining a marriage license, which included the requirement that “[o]nly an
4 unmarried male and an unmarried female may marry in California.” *See* Requirements for a Marriage
5 License, attached as **Exhibit 5** and incorporated herein.

6 9. As of February 11, 2004, the Application for Public Marriage License required the
7 applicants to sign an affidavit stating that “We, the undersigned, an unmarried man and unmarried
8 woman, state that the foregoing information is correct and true to the best of our knowledge and
9 belief, that no legal objection to the marriage nor to the issuance of a license is known to us, and
10 hereby apply for a license and certificate of marriage.” *See* Application for Public Marriage License,
11 attached as **Exhibit 6** and incorporated herein.

12 10. The Marriage Licenses that are now being issued to same-sex couples contain a new
13 sworn statement: “We, the undersigned, unmarried individuals, state that the foregoing information
14 is correct and true to the best of our knowledge and belief, that no legal objection to the marriage nor
15 to the issuance of a license is known to us, and hereby apply for a license and certificate of
16 marriage.” *See* Exhibit 4.

17 11. As of February 11, 2004, the Application for Public Marriage License specifically
18 referred to the “Groom’s Personal Data” and the “Bride’s Personal Data.” *See* Exhibit 6.

19 12. The Marriage License and Certificate of Marriage that is being issued to same-sex
20 couples refers to “applicant” rather than “bride” and “groom.” *See* Exhibit 4.

21 13. Article III, § 3.5 of the California Constitution provides that an administrative agency
22 does not have the power to declare a statute unconstitutional or to refuse to enforce a state law unless
23 an appellate court has made a determination that such statute is unconstitutional.

24 14. Defendants’ began issuing marriage licenses to same-sex couples without notifying
25 the public and affording them an opportunity for public comment.

26 15. California law is clear that same-sex couples cannot marry.

27 16. Mayor Newsom knew that his actions were in direct violation of California laws
28 prohibiting same-sex marriages.

1 marriage are “[a]n unmarried male of the age of 18 years or older, and an unmarried female of the
2 age of 18 years or older”

3 25. Proposition 22 further explains that only marriage between one man and one woman
4 is valid and recognized in California.

5 26. Marriage a matter of statewide concern.

6 27. Defining who can marry is not a permissible function of a municipality in California.

7 28. Determining whether same-sex couples can marry is a matter of statewide concern.

8 29. Recognizing marriages is a matter of statewide concern

9 30. San Francisco is a home rule charter city.

10 31. Home rule charter cities remain subject to and are controlled by applicable general
11 state laws and matters of statewide concern.

12 32. The California Family Code, including Proposition 22 preempted the field regarding
13 the regulation of marriage and precludes local regulation of marriage.

14 33. The California Family Code demonstrates the intent and purpose to occupy the field
15 of who may marry to the exclusion of municipal regulation.

16 34. The language of Proposition 22 demonstrates the intent and purpose to occupy the
17 field of who may marry to the exclusion of municipal regulation.

18 35. Since state law has preempted the field, the Directive is *ultra vires*.

19 36. Defendants have no authority to issue marriage licenses in violation of state law.

20 37. Defendants are without power to amend the California Family Code, including
21 Proposition 22.

22 38. Defendants are without authority to create a new city or county ordinance.

23 39. Absent certain emergency situations, before a new City and County ordinance can be
24 passed, the public is entitled to notice and an opportunity to be heard.

25 40. City and County actions taken without compliance with state, county and city open
26 meetings laws are a nullity.

27 41. An actual controversy has arisen and now exists between Plaintiffs and Defendants
28 concerning their respective rights and duties. Plaintiffs contend that Defendants have failed to

1 comply with state statutes governing issuance of marriage licences, whereas Defendants disagree.

2 42. Plaintiffs desire a judicial determination of the rights and duties of the parties and a
3 declaration that Defendants have failed to comply with state statutes governing the issuance of
4 marriage licenses by unlawfully issuing marriage licenses to same-sex couples; and that all marriage
5 licenses issued and marriages solemnized under circumstances not provided by law are invalid.

6 **SECOND CAUSE OF ACTION**

7 **INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS**

8 43. Plaintiffs hereby incorporate and adopt each and every allegation in the proceeding
9 paragraphs numbered 1 through 36.

10 44. Defendants are charged with the duty to enforce state marriage laws, including those
11 that provide only a marriage between a man and a woman is valid or recognized in California.

12 45. Defendants' actions in issuing marriage licenses in violation of state law is *ultra vires*.

13 46. Defendants' actions in marrying same-sex couples deprives the 4.3 million
14 Californians who passed Proposition 22 of their constitutional right to define marriage.

15 47. Defendants have illegally expended and wasted, and threaten and will continue to
16 illegally spend and waste, the public funds of the City and County of San Francisco, to the detriment
17 of local taxpayers.

18 48. There is no plain, adequate or speedy remedy at law that is applicable herein.

19 49. Unless enjoined and restrained by this Court, Plaintiffs' rights will continue to be
20 violated, funds will be illegally expended and wasted, and the Defendants will continue to act
21 unlawfully and without authority.

22 **THIRD CAUSE OF ACTION**

23 **CODE OF CIVIL PROCEDURE SECTION 1085, MANDAMUS AGAINST ALL**

24 **DEFENDANTS**

25 50. Plaintiffs hereby incorporate and adopt each and every allegation in the proceeding
26 paragraphs numbered 1 through 43.

27 51. Defendants actions in issuing marriage licenses to same sex couples constitutes a
28 failure to perform a mandatory duty because Defendants are required to adhere to the statutory

1 requirements for issuing marriage licenses and solemnizing marriages under the Family Code and
2 California Constitution, Art. III, § 3.5.

3 52. California Family Code § 300 defines marriage as “a personal relation arising out of a
4 civil contract between *a man and a woman*, to which the consent of the parties capable of making
5 that contract is necessary.” (Emphasis added).

6 53. Pursuant to Proposition 22, enacted as Family Code § 308.5, “[o]nly marriage
7 between a man and a woman is valid or recognized in California.”

8 54. Under California Penal Code, section 359, “Every person authorized to solemnize
9 marriage, who willfully and knowingly solemnizes any ... marriage forbidden by law, is punishable
10 by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the
11 County Jail not less than three months nor more than one year, or by both.”

12 55. Under California Penal Code Section 360, “Every person authorized to solemnize any
13 marriage, who solemnizes a marriage without first being presented with the marriage license, ...or
14 who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk and
15 every person who willfully makes a false record of any marriage return, is guilty of a misdemeanor.

16 56. Defendants actions are contrary to law. Defendants have a clear, present and
17 ministerial duty to comply with the law and enforce the provisions of the Family Code when issuing
18 marriage licenses. Defendants have failed and refused to do so and continue to fail and refuse to do
19 so.

20 57. Defendants have the present ability to perform the duties required by law.

21 58. Plaintiffs are beneficially interested in the subject matter of this action and has no
22 plain, speedy or adequate remedy at law. Plaintiffs have no administrative remedy.

23 59. Unless and until commanded by order of this Court, Defendants will continue to
24 violate the law to Plaintiffs’ substantial injury and detriment and to the substantial injury and
25 detriment of the People of the City and County of San Francisco and the State of California.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for judgment as follows:

28 A. That this Court order an alternative writ of mandate and an immediate stay, pursuant

1 to Code of Civil Procedure section 1085, directing Defendants to comply with Family Code sections
2 300 and 308.5 by ceasing and desisting to issue marriage licenses and/or solemnize “marriages” of
3 couples of than those constituting only an unmarried male and an unmarried female, or to show
4 cause before this Court why a peremptory writ should not issue to compel such action.

5 B. That, upon the return of the alternative writ and hearing on the order to show cause,
6 this Court order a peremptory writ of mandate compelling Defendants to comply with Family Code
7 Sections 300 and 308.5 and California Constitution, Art. III, §3.5.

8 C. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
9 immediately issue an order temporarily restraining Defendants, their agents, servants and employees
10 and those acting in active concert and with actual notice thereof, from, implementing the Mayor’s
11 Directive, revising forms and documents used to apply for and issue marriage licenses, issuing
12 marriage licenses to same-sex couples and from illegally expending public funds.

13 D. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
14 immediately issue a Preliminary Injunction enjoining Defendants, their agents, servants and
15 employees and those acting in active concert and with actual notice thereof, from, implementing the
16 Mayor’s Directive, revising forms and documents used to apply for and issue marriage licenses,
17 issuing marriage licenses to same-sex couples and from illegally expending public funds.

18 E. That this Court, pursuant to California Code of Civil Procedure §§ 525 and 526(a)
19 immediately issue a Permanent Injunction enjoining Defendants, their agents, servants and
20 employees and those acting in active concert and with actual notice thereof, from, implementing the
21 Mayor’s Directive, revising forms and documents used to apply for and issue marriage licenses,
22 issuing marriage licenses to same-sex couples and from illegally expending public funds.

23 F. That this Court render a Declaratory Judgment that the Mayor’s Directive and actions
24 to implement the Directive are invalid insofar as such Directive and actions violate California Law
25 and Plaintiffs’ voting rights.

26 G. That this Court render a Declaratory Judgment that the marriage licenses already
27 issued to same-sex couples are null and void.

28 H. That this Court adjudge, decree, and declare the rights and other legal relations with

1 the subject matter here in controversy, in order that such declaration shall have the force and effect
2 of final judgment;

3 I. That this Court retain jurisdiction of this matter for the purpose of enforcing this
4 Court's order;

5 J. That this Court award Plaintiffs damages, together with the reasonable costs and
6 expenses of this action, including attorney's fees, in accordance with California Code of Civil
7 Procedure § 1021.5; and

8 K. That this Court grant such other and further relief as this Court deems equitable and
9 just under the circumstances.

10 Respectfully Submitted,

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VERIFICATION

I, RANDY THOMASSON, DECLARE AS FOLLOWS:

I am an individual plaintiff in the above-captioned matter. I am also the founder and director of Campaign for California Families, a non-profit corporate plaintiff in the above-captioned matter, organized and existing under the laws of California. I have been authorized to make this verification on behalf of Campaign for California Families. I have read the foregoing document entitled Verified Complaint for Declaratory Relief and Preliminary and Permanent Injunctive Relief and know the contents thereof. The matters set forth in the foregoing document are true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

Executed on February 14, 2004, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

x _____