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CITY

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1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 THERESE M. STEWART, State Bar #104930
 Chief Litigation Attorney
 3 ELLEN FORMAN, State Bar #147479
 WAYNE K. SNODGRASS, State Bar #148137
 4 K. SCOTT DICKEY, State Bar #184251
 KATHLEEN S. MORRIS, State Bar #196672
 5 SHERRI SOKELAND KAISER, State Bar #197986
 Deputy City Attorneys
 6 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 7 San Francisco, California 94102-4682
 Telephone: (415) 554-4674
 8 Facsimile: (415) 554-4747
 E-Mail: scott.dickey@sfgov.org
 9

CASE MANAGEMENT CONFERENCE SET

PLAN I AUG 13 2004 900AM

DEPARTMENT 212

DE LA VEGA-NAVARRO, Rossalv

10 Howard Rice Nemerovski Canady Falk & Rabkin
 A Professional Corporation
 11 Bobbie J. Wilson (No. 148317)
 Pamela K. Fulmer (No. 154736)
 12 Amy E. Margolin (No. 168192)
 Sarah M. King (No. 189621)
 13 Three Embarcadero Center, Seventh Floor
 San Francisco, CA 94111-4024
 14 Tel: 415.434.1600
 Fax: 415.217.5910
 15 bwilson@howardrice.com

16 Attorneys for Plaintiff
 17 CITY AND COUNTY OF SAN FRANCISCO

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

19 CITY AND COUNTY OF SAN
 20 FRANCISCO, a charter city and county,

21 Plaintiff,

22 vs.

23 STATE OF CALIFORNIA, and DOES
 24 1 through 10,

25 Defendants.

Case No. EGC - 04 - 429539

COMPLAINT FOR DECLARATORY
 RELIEF
 (To Determine Validity of State Statutes)

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1 Pursuant to California Code of Civil Procedure section 1060, Plaintiff City and County of
2 San Francisco alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. Plaintiff City and County of San Francisco ("the City") is a municipal
5 organization organized and existing under the Constitution and laws of the State of California.

6 2. Defendant State of California ("the State") is a state organized and existing under
7 the Constitution of the State of California and the Constitution of the United States of America.

8 3. Defendants Does 1-10 ("the Doe Defendants") are the entities and/or persons
9 charged by law with the duty of enforcing the California Family Code provisions challenged
10 herein. Plaintiff will amend this cross-complaint to substitute their true names as their identities
11 become known.

12 **NATURE OF DISPUTE**

13 4. In 1977, the California Legislature amended Family Code section 300 to provide
14 that "Marriage is a personal relation arising out of a civil contract between a man and a woman."
15 Prior to that amendment, the Family Code did not specify that marriage must be between a man
16 and a woman. Family Code section 301 further provides that "an unmarried male" and an
17 "unmarried female" are "capable of consenting to and consummating marriage." Finally, Family
18 Code section 308.5, which was added to the Code by voter initiative and became effective on
19 March 8, 2000, provides that "[o]nly marriage between a man and a woman is valid or
20 recognized in California." These Family Code provisions have been and are now in full force
21 and effect in California. Accordingly, since 1977 the Family Code has prevented an entire class
22 of adults, namely adults in same-sex relationships, from entering into the legal institution of
23 marriage.

24 5. San Francisco Mayor Gavin Newsom swore upon taking office that he would
25 support and defend the Federal and State Constitutions. Accordingly, on February 10, 2004
26 Mayor Newsom sought to end this discrimination by directing San Francisco County Clerk
27 Nancy Alfaro to arrange for the issuance of marriage licenses to eligible same-sex couples. Two
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DECLARATION SOUGHT

11. In order to resolve this controversy, the City requests that, pursuant to Code of Civil Procedure section 1060, this Court declare the respective rights and duties of the parties in this matter and, in particular, this Court declare that Family Code section 308.5 does not apply to in-state marriages and that Family Code sections 300, 301, and 308.5 if it applies, violate the State Constitution and thus are void and unenforceable.


PRAYER FOR RELIEF

For the reasons set forth above, the City prays for relief as follows:

- 1. A declaration that Family Code section 308.5 does not apply to in-state marriages;
- 2. A declaration that Family Code sections 300 and 301 are unconstitutional, void and unenforceable;
- 3. Costs, including but not limited to attorneys' fees; and
- 4. Any and all other relief to which the City may be justly entitled.

DATED: March 11, 2004

DENNIS J. HERRERA
 City Attorney
 THERESE M. STEWART
 Chief Deputy City Attorney
 ELLEN FORMAN
 WAYNE K. SNODGRASS
 K. SCOTT DICKEY
 KATHLEEN S. MORRIS
 SHERRI SOKELAND KAISER

By: 
 KATHLEEN S. MORRIS
 Chief Deputy City Attorney

Attorneys for Cross-Complainant