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DECLARATION OF STUART M. GAFFNEY

I, Stuart M. Gaffney, declare as follows:

1. I make this declaration of my own personal knowledge, and if called as a witness, I could and would testify competently to the contents hereof. I make this declaration in support of the memorandum of points and authorities that Plaintiffs and Petitioners Woo, *et al.* are concurrently filing per order of the Coordination Trial Judge in the Marriage Cases, California Judicial Council Coordinated Case No. 4365, in San Francisco Superior Court, arguing that California's statutory exclusion of same-sex couples from marriage violates numerous provisions of the California Constitution.

2. I am a 41-year-old gay man who resides in San Francisco, California. I am currently a Project Director with the Center for AIDS Prevention Studies at the University of California, San Francisco.

3. My partner of over seventeen years is John A. Lewis, a 46-year-old gay man who resides with me in San Francisco. He is an attorney, who for the past four years has been on leave from legal practice to pursue religious studies and other personal interests but who reactivated his law license in 2004.

4. John and I love each other and wish to be married. We want the self-respect and dignity of knowing our state government acknowledges us and our family as equal to other families in California.

Why John And I Have Joined This Lawsuit

5. John and I have lived our lives together in a loving and fully committed relationship for over seventeen years and have created a family together. Yet, the California Family Code says that John and I cannot marry because we are both men. John and I have become petitioners and plaintiffs in the present lawsuit because we believe the California Constitution protects us equally irrespective of our sexual orientation, and requires California to permit us to marry each other regardless of the fact that we are both men.

1 6. This is not the first time that our family has relied on the California courts for relief
2 from an unconstitutional statute restricting who can marry. My parents were an interracial couple.
3 My mother is Chinese American, and my father is white. They met and fell in love at a time when
4 interracial relationships faced widespread disapproval and couples in such relationships were not
5 permitted to marry in many states. My parents married in California in March 1952, less than
6 three and a half years after the California Supreme Court in 1948 became the first appellate court
7 in the country to strike down a state statute that prohibited marriage by persons of different races.
8 At the time my parents married, the California Legislature still had not removed from the statute
9 books its ban on marriage by persons of different races. Had it not been for the California
10 Supreme Court, my parents would not have been able to marry, and I might never have been born.

11 7. From the stories my parents have told me, it is my understanding that the California
12 Supreme Court's decision in 1948—declaring that the fundamental right to marry the person of
13 one's choice applies to all persons, regardless of race—was a politically unpopular decision. But
14 the California Supreme Court recognized that the color of a person's skin does not affect his or her
15 ability to commit to someone in the way that the law expects of those who are permitted to marry,
16 and that denying people their fundamental rights based on irrelevant personal characteristics like
17 race is a serious violation of the California Constitution.

18 8. Similarly, John and I love each other and are deeply committed to each other and wish
19 to be married. Neither the fact that we are both men nor the fact that we are both gay limits our
20 ability to commit to each other in the way that the law expects and encourages married couples to
21 commit to each other. John and I have joined this lawsuit with the confidence that, regardless of
22 whatever the political winds may be, the California courts will enforce the California Constitution
23 in our generation, too, by affirming that the fundamental right to marry the person of one's choice
24 applies to all persons, regardless of one's sex or sexual orientation or the sex or sexual orientation
25 of one's chosen life partner.

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1 **My Seventeen-Year Relationship With John**

2 9. For over seventeen years, John and I have loved each other and have been each other's
3 closest companion, confidant, and friend. We have shared so much of life together and relied
4 upon each other so completely that our thoughts, feelings, lives, and human spirits are now
5 intimately intertwined. Only the word "marriage" adequately conveys the meaning of our
6 relationship.

7 10. John and I met on March 17, 1987 at a small political fundraising party, and soon
8 thereafter we knew we were a perfect match (and not just because we both wanted to go to a
9 candidate's debate for our first date). We have openly presented ourselves as loving, committed
10 partners to our friends and family for the last seventeen years. We have made a home and
11 established a family together and have participated together in each other's extended families
12 since the beginning of our relationship.

13 11. We started living together in our apartment in the Haight Ashbury district of San
14 Francisco at the beginning of 1988 and started sharing finances in 1989. The vast majority of our
15 assets are held jointly, and we have listed each other as beneficiaries for any assets that we do not
16 hold jointly. Our wills designate each other as the sole beneficiary of each other's entire estate.
17 We have each executed documents giving the other immediate and complete power of attorney for
18 each other for finances and for health care decisions.

19 12. John and I have experienced many things together as a couple and as a family over
20 the last seventeen years. We celebrated together as new friends and extended family members
21 were born or adopted. We mourned together as others died. Together, we have worked to save
22 for our future, backpacked around the world, cared for family, helped as uncles in the raising of
23 children, hiked in national parks, enjoyed friends, attended each others' high school reunions,
24 shopped for food, cooked meals, done the laundry, and cleaned our home. We have cared for each
25 other through sickness, and we have comforted each other during times of sadness. We are a
26 family just as much as any other family is.

27 13. When we backpacked around the world together in 1991, we literally spent every
28 waking and sleeping minute of the year together, except for a half-hour in India when John had to

1 find a doctor for me when I was ill. Conversely, in 2000 we learned how to sustain our
2 relationship physically apart from one another when John spent three months in a silent meditation
3 retreat where we had no means to be able to communicate with each other.

4 14. We have a large extended family, whose members live in many different states
5 across the country from Massachusetts to Missouri to Hawaii. We consider our broad extended
6 family on both sides of the relationship to be one family. We know many of each other's family
7 members well, and we have participated in each other's family holiday celebrations, family
8 reunions, funerals, weddings, and anniversaries.

9 15. For over fifteen years, we have traveled together to John's parents' home in Kansas
10 City, Missouri twice a year to visit and care for John's parents as they have become elderly.
11 Similarly, John has cared for my mother, accompanying her to doctor visits and to the hospital and
12 cooking and cleaning for her, as she has become elderly.

13 16. When John's brother and sister-in-law who live in Chicago, Illinois adopted a baby
14 from China several years ago, we trekked to the remote town where she was born to take
15 photographs and bring back gifts for her and for five other children adopted from the same
16 orphanage. Our now seven-year-old niece has always known us as "Uncles John and Stuart," and
17 John and I have participated together in her upbringing.

18 17. For years, we have organized my family's annual Chinese New Year celebration,
19 and it is John who cooks the traditional dishes that recreate the aromas of my grandparents' home.
20 Several years ago, John and I were the relatives who took care of John's aunt through an extended
21 illness that led to her death. Because John unfortunately was away on the day she died, it fell to
22 me to inform John's parents and others about her death. Several years ago, my father wrote in his
23 submission to his college's published fiftieth-year class reunion book that the family had "grown
24 to love [John] dearly," and described me as "the most family-oriented" of his six children,
25 "binding us all with frequent visits, letters, and calls."

26 18. John and I registered as domestic partners with the State of California in 2002 in
27 order to obtain some of the limited legal benefits available under the State's domestic partnership
28 laws. For example, for the past four years, John has taken time away from paid work to pursue

1 personal interests, including religious practice and study. During this time, John has been
2 responsible for domestic responsibilities in our home, while I have supported us financially. John
3 currently receives his health care insurance through my employer because we are domestic
4 partners.

5 19. Registering as domestic partners, however, was primarily a practical step for us.
6 Domestic partnership has very little symbolic meaning to us or to anyone in our lives. No member
7 of our family has ever congratulated us for becoming domestic partners, and we do not think that
8 most of our friends and family members understand what domestic partnership is under California
9 law. The phrase "domestic partnership" cannot come close to describing the depth of our
10 relationship and our love for each other.

11

12 **My Marriage To John In San Francisco On February 12, 2004**

13 20. On February 12, 2004, John and I received a marriage license and married each
14 other in a ceremony at San Francisco City Hall. To both of us, that day was the happiest and most
15 moving day of our lives.

16 21. When John and I heard the words "by virtue of the authority vested in me by the
17 State of California, I now pronounce you spouses for life," we each felt something transform
18 within us. We experienced for the first time our government treating us as fully equal human
19 beings and recognizing us as a loving couple worthy of the full respect of the law.

20 22. For many years prior to that day, we suffered the experience of our government and
21 laws treating us as less than equal citizens. In addition to the many rights and benefits we were
22 denied, we suffered a very real cost to our dignity as human beings. A heterosexual couple who
23 had known each other for seventeen days could get married; yet, we, as gay men, together for over
24 seventeen years, could not do the same thing. The City and County of San Francisco removed a
25 badge of inferiority from us by allowing us to marry and thereby treating us as fully equal citizens.
26 We felt the lifting of that badge, and it made us both deeply happy in a way we had not fully
27 anticipated.

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1 23. When John and I married at San Francisco City Hall, we believed that our marriage
2 would be fully and permanently recognized by law. We considered ourselves to be entering into a
3 solemn contract, described by our wedding vows provided by the City and County of San
4 Francisco. After more than seventeen years together, we entered into the contract “thoughtfully
5 and seriously with a deep realization of its obligations and responsibilities.” We considered “[n]
6 other human ties . . . [to be] more tender and no other vows more important than” our vows to
7 each other that day. We felt more deeply than ever before the love that we share for each other
8 and our commitment to each other as a family.

9 24. Beginning on February 12, 2004, we publicly held ourselves out as legally married
10 spouses. We referred to each other as “husband” to family, friends, co-workers, and the public in
11 general. Marriage provided the highest public acknowledgement and validation of our
12 relationship—something that a state domestic partnership cannot provide. Being able to tell other
13 people we were married both in formal and informal settings permitted us to experience our
14 dignity as equal human beings and allowed us to express the truth of our lives together. Through
15 the years, continually being required to check the “single” box on government forms, including tax
16 forms, when we knew that our relationship involved the same level of commitment as “marriage,”
17 became a constant reminder of, and recurring symbol of, our second-class status. After marrying,
18 we were each called to jury duty in San Francisco Superior Court and experienced the newfound
19 dignity of being able to identify ourselves as “married”—and thus fully equal citizens—on the
20 juror identification form.

21 25. After we married, all four of our parents, our brothers and sisters, and members of
22 our extended family celebrated the fact that our government no longer considered our relationship
23 inferior and thus no longer treated any family member as “less than equal.” Most of all, though,
24 they celebrated that John and I were so happy.

25 26. Beginning on February 12, 2004, our parents all publicly held us out as a married
26 couple and publicly supported our full marriage rights. In addition to telling family and friends
27 about our wedding, John’s parents submitted opinion editorial pieces to newspapers in their home
28 state of Missouri, arguing for our full equal rights, describing us as a married couple, and referring

1 to me as their "son-in-law." My mother, who still lives in California, has publicly advocated for
2 equal marriage rights for us to the Chair of the California Assembly Rules Committee and to the
3 press, referring to John as my "husband" and a full member of the family. She has also told
4 family and friends about our marriage. In a keynote address at a national economics conference,
5 my father proudly announced our marriage. In addition, my father sent announcements to friends
6 and professional colleagues about our marriage and the fact that he had a new "son-in-law."

7 27. The San Francisco Chronicle reported about our wedding in its February 13, 2004
8 edition. I have attached to this declaration a true and correct copy of the February 13, 2004 San
9 Francisco Chronicle article. Through the internet, friends and family across the country learned
10 the news quickly and began sending us congratulatory e-mail messages and gifts. One gay male
11 friend described the Chronicle account of our wedding as "actually ... making me cry—with
12 happiness for the two of you and for what it means for all of us." A heterosexual friend wrote that
13 she, her husband and their kids were "jumping over furniture because we're so happy for you
14 two!!!" My best friend from second grade, from whom I had not heard in over thirty years, sent a
15 bouquet of flowers. A heterosexual male friend reported: "I cried with bittersweet happiness for
16 you two and for the countless years of hiding and suffering that same sex couples have had to
17 endure."

18 28. This outpouring of joy and support from friends and family made us realize how
19 much we had missed by not being able to marry during our many years together. Friends, family,
20 and co-workers seemed to know how to respond to the news of our wedding. We experienced
21 public validation and support of our relationship in a way that we had not when we became
22 domestic partners. John and I also witnessed innumerable expressions of enormous joy and
23 newfound dignity from many other same-sex couples whom we saw get married at San Francisco
24 City Hall from February 12 to March 11, 2004. Their faces reflected back to us the excitement
25 and deep happiness we felt that day.

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1 were told that Missouri's anti-miscegenation statute proclaimed: "All marriages between . . . white
2 persons and negroes or white persons and Mongolians . . . are prohibited and declared absolutely
3 void" The Missouri Supreme Court had not overturned the Missouri statute, and indeed the
4 statute remained in effect until 1967, when the United States Supreme Court in *Loving v. Virginia*
5 struck down all state laws restricting marriage based on race and declared marriage to be "one of
6 the 'basic civil rights of man.'"

7 33. The State of California's deliberate decision to establish two systems of family
8 law—one for different-sex couples and one for same-sex couples—is particularly painful to John
9 and to me in light of our family's history and the struggles that my parents faced as a result of the
10 antimiscegenation laws that used to exist in California and other states where my parents lived
11 decades ago. Indeed, on August 12, 2004 and in the weeks that followed, it has been particularly
12 disturbing and emotionally reeling to us to know that our marriage was declared a legal nullity by
13 the same California Supreme Court whose decision overturning the state's ban on marriage by
14 persons of different races had permitted my parents to marry over 50 years ago. The message that
15 John and I were not equal in the eyes of California law rang loud and clear. For many years, I had
16 felt so proud of California's history of ending marriage discrimination based on race. The Court's
17 voiding of our marriage felt like a horrible betrayal.

18 34. No matter how many rights domestic partnership may provide, it cannot provide us
19 with equality under the law. When the California Supreme Court issued its decision in 1948
20 requiring that California permit interracial couples like my parents to marry, the Court did not
21 suggest that some legal status other than marriage could satisfy the requirements of the California
22 Constitution. What John and I seek in this lawsuit is exactly what my parents obtained by virtue
23 of the California Supreme Court's decision in 1948: the right to become a married couple with
24 equal status in the eyes of the law.

25 35. In addition to depriving us of public recognition, being unable to marry has caused
26 us significant tangible harm that the state domestic partnership law does not rectify. For instance,
27 we must pay substantially more in federal and state income taxes because we cannot file joint
28 income tax returns. Our taxes would be much lower if we could file jointly because only one of us

1 currently has earned income. Like any married family in similar circumstances, we could use such
2 tax savings for practical purposes such as saving for a downpayment on a house or for retirement.
3 We also must save more money for retirement because we have no right to spousal or survivor
4 Social Security benefits. And if one of us is hospitalized or dies outside California, we face the
5 possibility that we will have no legal rights and protections while we are trying to care for each
6 other or while one of us is grieving the loss of the other. In addition, a legally recognized state
7 marriage is a prerequisite to our obtaining over one thousand other marriage rights recognized
8 under federal law (if necessary, by challenging federal laws that purport to prohibit federal
9 recognition of marriages of same-sex couples). Furthermore, it is our understanding that four
10 Canadian provinces and the Commonwealth of Massachusetts now permit same-sex couples to
11 marry, and that state trial courts in Oregon, Washington, and New York have declared those
12 states' prohibitions on marriage by same-sex couples to be contrary to those states' respective
13 constitutions. A legally recognized California marriage would enable us to enjoy the protections
14 afforded married couples by those jurisdictions and by any other jurisdictions that would
15 recognize a same-sex couple's marriage.

16 36. John and I recently celebrated the 50th wedding anniversary of John's parents in
17 Kansas City, Missouri, in June 2004. We took great pride in being able to attend the celebration
18 as a married couple, just as John's brother and sister-in-law did. We are a family that cherishes
19 family ties and important milestones. It continues to be extremely painful for John and me and for
20 other members of our family to contemplate what happened to us on our own six-month
21 anniversary.


22 37. I believe that all intimate relationships have their own strengths and weaknesses,
23 their individual flavors, and their unique expressions of love that bind the partners together. At its
24 core, my relationship with John is neither better nor worse than other relationships, and we, as
25 same-sex partners who are willing to commit to the responsibilities of marriage, should have not
26 only the same legal rights and obligations that different-sex couples do, but the same
27 acknowledgment from the State of California and the same legal status in the eyes of the law.
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1 38. Unfortunately, California's relegation of same-sex couples to domestic partnership
2 and California's statutory exclusion of couples like us from marriage feels to us like a caste
3 system designed to ensure that our family is unequal under the law and deprived of full dignity.
4 The very existence of two institutions—with one deliberately more highly protected than the
5 other—communicates to us that the State regards our love for each other as inferior.

6 39. My family owes its very existence to the California Supreme Court's courageous
7 decision striking down the state's ban on marriage by interracial couples in 1948. Decades later,
8 other members of our family and countless California citizens have entered into legally authorized
9 and protected marriages with spouses of different racial backgrounds. In the present lawsuit, our
10 family once again turns to, and is depending on, the California courts for full legal recognition
11 under constitutional guarantees.

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

14 Executed on this 30th day of August 2004 at San Francisco, California.

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17 STUART M. GAFFNEY
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