

1 JOSEPH M. ADAMS (SBN 245156)
 jadams@adamspham.com
 2 ADAMS & PHAM APC
 600 Anton Boulevard, Suite 1100
 3 Costa Mesa, California 92626
 Telephone: (714) 505-2121
 4 Facsimile: (714) 505-2122

5 KEVIN A. LIPELES (SBN 244275)
 kevin@kallaw.com
 6 THOMAS H. SCHELLY (SBN 217285)
 thomas@kallaw.com
 7 LIPELES LAW GROUP APC
 880 Apollo Street, Suite 336
 8 El Segundo, California 90245
 Telephone: (310) 322-2211
 9 Facsimile: (310) 322-2252

10 *Attorneys for Plaintiff, Jack Robert Lipeles*

11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

14 JACK ROBERT LIPELES, an individual,
 15 Plaintiff,
 16 vs.
 17 CITY OF SACRAMENTO, a California
 municipal corporation,
 18 Defendant.
 19

Case No.:

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

42 U.S.C. § 1983
 [First and Fourteenth Amendments]

21
 22 Plaintiff Jack Robert Lipeles (“Plaintiff”), complaining of Defendant City of Sacramento
 23 (“Sacramento” or “Defendant”), alleges as follows, which allegations are based upon information
 24 and belief insofar as they pertain to Sacramento’s identity and conduct:

25 **INTRODUCTION**

26 1. “If there is any fixed star in our constitutional constellation, it is that no official,
 27 high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other
 28 matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia*

1 *State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (“*Barnette*”). Section 1.04.080
2 of the Sacramento City Code, which requires all persons present to stand at attention, face the
3 flag (or, if no flag is displayed, face the music) and render the salute to the flag whenever “The
4 Star-Spangled Banner” (“Anthem”) is played, does precisely what the constitution prohibits: it
5 prescribes what shall be orthodox in politics, nationalism and other matters of opinion and force
6 citizens to confess by word or act their faith therein. Refusing to obey subjects a person to
7 criminal penalties. Section 1.04.080 of the Sacramento City Code is unconstitutional on its face
8 and the purpose of this action is to prevent its enforcement.

9 **PARTIES**

10 2. Plaintiff is an individual and all times relevant to the matters alleged herein, has
11 been a resident of Clark County, Nevada.

12 3. Defendant is a municipal corporation located within the County of Sacramento,
13 State of California, and is organized and operates under the terms its charter and the laws of the
14 State of California.

15 **JURISDICTION AND VENUE**

16 4. This Court has subject matter jurisdiction in this action pursuant to Sections 1331
17 and 1343 of Title 28 of the United States Code.

18 5. Venue is proper in this Court pursuant to Section 1391(b)(1) and (2) of Title 28 of
19 the United States Code because Sacramento is located and a substantial part of the events giving
20 rise to Plaintiff’s claim occurred in Sacramento County, California, which is within this judicial
21 district.

22 **GENERAL ALLEGATIONS**

23 6. The Sacramento City Code provides that

24 [t]he song, ‘The Star-Spangled Banner,’ is recognized as the
25 national anthem of the United States. When this music is played
26 on a proper occasion during ceremonies, at the close of concerts,
27 theatres, etc., all present shall stand at attention, facing the flag, or,
if no flag is displayed, facing the music, and shall render the salute
to the flag.

28 Sacramento City Code § 1.04.080 (“Section 1.04.080”). Section 1.04.080 is not merely

1 aspirational; it imposes a mandatory requirement. Sacramento City Code § 1.04.021(F)
2 (specifying that “may” is permissive and “shall” is mandatory). Not complying with Section
3 1.04.080’s requirements constitutes a misdemeanor and is punishable by a fine of between five
4 hundred dollars (\$500) and one thousand dollars (\$1,000), imprisonment in the county jail for up
5 to six (6) months, or by both fine and imprisonment. Sacramento City Code § 1.28.020(A), (C).

6 7. Plaintiff was a long-time resident of southern California and returns frequently to
7 visit family. While living in California, and now during return visits, Plaintiff and his family
8 enjoy attending professional sports events, including professional hockey and basketball games.

9 8. Plaintiff desires and intends to attend professional basketball games during the
10 2020-2021 National Basketball Association (“NBA”) season, including at least one home game
11 played by the Sacramento Kings (“Kings”). The Kings home venue is Golden 1 Center located
12 at 500 David J. Stern Walk, Sacramento, California 95814 (“Golden 1 Center”). Golden 1 Center
13 is located within Sacramento’s jurisdictional boundaries. Consequently, Plaintiff will be subject
14 to and must comply with the Sacramento City Code while attending any Kings home game.

15 9. The Anthem is played at the beginning of every Kings game at Golden 1 Center.
16 Consequently, when Plaintiff attends any home game(s) during the Kings 2020-2021 season, he
17 will face an impossible choice: obey Section 1.04.080 or expose himself to criminal liability. As
18 Plaintiff ardently believes it is improper and unlawful for Sacramento to mandate that people
19 stand (or perform or refrain from any other act) in response to the Anthem, he feels duty-bound
20 to not obey. In Plaintiff’s view, acquiescing to Section 1.04.080’s requirements would create the
21 false impression that Plaintiff (a) approves of Sacramento mandating how people respond to the
22 Anthem, (b) disapproves of people who do not respond in the mandated manner (*e.g.*, people who
23 kneel during the Anthem as a form of protest against racial injustice), and (c) approves of
24 Sacramento criminalizing the peaceful act of kneeling during the Anthem to protest racial
25 injustice. In short, Section 1.04.080 makes it impossible for Plaintiff to stand for the Anthem.

26 10. Plaintiff’s only other option, if he is to attend the Kings game(s) at all, is to not
27 stand for the Anthem and subject himself to criminal liability. Plaintiff is unwilling (and should
28 not be required) to subject himself to criminal prosecution in order to preserve his constitutionally

1 protect right to freedom of speech. Consequently, it is impossible for Plaintiff to attend Kings
2 game(s) but not stand for the Anthem.

3 11. Plaintiff's only remaining option is to refrain from attending any Kings game(s)
4 unless and until Section 1.04.080 is repealed, its enforcement is enjoined, or it otherwise becomes
5 unenforceable. Plaintiff has selected this option because, under Section 1.04.080, it is the only
6 way he can preserve—and exercise—his constitutional right to freedom of speech without
7 subjecting himself to criminal prosecution.

8 **FIRST CLAIM FOR RELIEF**

9 (Violation of Civil Rights – 42 U.S.C. § 1983)

10 12. Plaintiff incorporates by reference the allegations contained in paragraphs 1-11 as
11 though fully set forth herein.

12 13. Sacramento committed all of the complained of acts alleged herein under color of
13 state law.

14 14. Specifically, Sacramento has an existing policy—codified in Section 1.04.080 of
15 the Sacramento City Code—that requires all persons present to stand at attention, face the flag
16 (or, if no flag is displayed, face the music) and render the salute to the flag whenever the Anthem
17 is played.

18 15. Defendants, in doing the things alleged herein, deprive Plaintiff of his rights under
19 the United States Constitution, including, but not limited to, his right to freedom of speech
20 secured by the First and Fourteenth Amendments to the United States Constitution.

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WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. For a temporary restraining order and/or preliminary injunction enjoining Defendant and its officials, directors, officers, agents, and employees from enforcing Section 1.04.080;
- B. For a declaration that Section 1.04.080 is unconstitutional on its face;
- C. For a permanent injunction enjoining Defendant and its officials, directors, officers, agents, and employees from enforcing Section 1.04.080;
- D. For costs of suit, including reasonable attorneys' fees; and
- E. For such other and further relief as the Court may deem just and proper.

Dated: July 1, 2020

ADAMS & PHAM APC

By: /s/ Joseph M. Adams
Joseph M. Adams

*Attorneys for Plaintiff,
Jack Robert Lipeles*