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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**
8 **CENTRAL DIVISION**

9 MAT WAHLSTROM

10 Plaintiff,

11 vs.

12 TODD GLORIA; SAN DIEGO COUNTY
13 DEMOCRATIC PARTY, and DOES 1-100,
inclusive,

14 Defendants.

Case No.

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

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16 Comes now, PLAINTIFF Mat Wahlstrom, alleging as follows:

17 1. PLAINTIFF is registered to vote in the City of San Diego and brings this lawsuit on
18 behalf of the public for the sole purpose of protecting the integrity of the electoral process, and not
19 for any personal benefit.

20 2. Defendant TODD GLORIA (GLORIA) is a registered Democrat and is currently the
21 elected representative of California's 78th Assembly District (AD78), which consists primarily of
22 the coastal communities of the City of San Diego. On December 20, 2018, he filed FPPC Form 501
23 with the San Diego City Clerk and under penalty of perjury declared his intention to run for the
24 office of Mayor of the City of San Diego in 2020. See Exhibit A hereto.

25 3. Defendant SAN DIEGO COUNTY DEMOCRATIC PARTY (SDCDP) is a political
26 party with its principal place of business in the County of San Diego.
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1 4. The true names and capacities of the Defendants identified as DOES 1 through 100
2 are unknown to PLAINTIFF; once their true names and capacities are known, PLAINTIFF will
3 seek leave to amend this lawsuit. On information and belief, PLAINTIFF alleges that each
4 fictitiously named Defendant has a legally recognized interest in the outcome of this lawsuit.

5 5. On information and belief, PLAINTIFF alleges that each of the Defendants is, and at
6 all relevant times was, the agent, servant, or employee of every other Defendant and acting within
7 the scope of said agency, servitude, or employment.

8 6. The violations of law alleged herein were committed primarily if not entirely in the
9 County of San Diego.

10 7. In November 2018, GLORIA was re-elected to the office of AD78 representative.
11 To support that re-election campaign, he had created a candidate-controlled committee known as
12 "Todd Gloria for Assembly 2018" approximately two years earlier.

13 8. On February 20, 2019, GLORIA created a new candidate-controlled committee
14 known as "Todd Gloria for Assembly 2020" and around this date established a bank account for this
15 committee. See Exhibit B hereto. GLORIA's Assembly 2020 committee is a "committee" within
16 the meaning of Government Code section 82013(a).

17 9. On March 19, 2019, GLORIA transferred the remaining \$293,079.05 held by his
18 Assembly 2018 committee to his new Assembly 2020 committee. See Exhibit C hereto.

19 10. GLORIA did not file FPPC Form 501 and declare his intention to run for re-election
20 to the office of AD78 representative under penalty of perjury until August 13, 2019. See Exhibit D
21 hereto.

22 11. On August 13, 2019, *Times of San Diego* published a news article announcing that
23 earlier in the day GLORIA had filed his FPPC Form 501 and under penalty of perjury declared his
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1 intention to run for re-election to the office of AD78 representative. The article's reporter, KEN
2 STONE (STONE), "tweeted" his article on Twitter. See Exhibit E hereto.

3 12. On August 13, 2019, NICK SERRANO (SERRANO) responded to STONE's tweet
4 about the article and stated: "Nothing has changed, Ken. Todd is running for mayor." See Exhibit F
5 hereto.

6 13. Since at least December 20, 2018, SERRANO has been GLORIA's mayoral
7 campaign manager and a paid member of GLORIA's legislative staff for AD78.

8 14. On August 14, 2019, GLORIA tweeted the following statement (with his own
9 emphasis): "Some news reports have suggested that I am seeking re-election to the Assembly. I
10 want to be very clear: **I am not running for the Assembly, I am running for Mayor.** [¶] My
11 Assembly committee remains open to fulfill my responsibilities as Member of the State Assembly
12 until the end of my current term. The form filed by my committee yesterday simply corrected an
13 administrative oversight that occurred when the original paperwork was filed months ago." See
14 Exhibit G hereto.
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16 15. Since declaring his intention to run for the office of Mayor of the City of San Diego
17 in 2020, GLORIA has maintained a website (www.toddgloria.com), a Facebook account, and a
18 Twitter account to support his Mayoral campaign. At no time has any of those communications
19 media give any indication that GLORIA was running for re-election in 2020 to the office of AD78
20 representative. See Exhibit H hereto.
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22 16. Between the time GLORIA first declared his intention to run for the office of Mayor
23 of the City of San Diego in 2020 and the time he filed his FPPC Form 501 for re-election to the
24 office of AD78 representative, GLORIA had never made any public statement that he was running
25 or intended to run for re-election to the office of AD78 representative.
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1 17. Despite filing FPPC Form 501 for re-election to the office of AD78 representative
2 under penalty of perjury on August 13, 2019, GLORIA has never intended to run for re-election to
3 the office of AD78 representative.

4 18. GLORIA has been soliciting and accepting donations into his Assembly 2020
5 committee with the intend to use that money, either directly or indirectly, to support his campaign
6 for the office of Mayor of the City of San Diego in 2020.

7 19. GLORIA and at least one member of SDCDP's executive committee agreed, prior to
8 the filing of this lawsuit, that if GLORIA transfers money from his Assembly 2020 campaign to
9 SDCDP, SDCDP will use the money to support GLORIA's campaign for the office of Mayor of the
10 City of San Diego in 2020.
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12 **FIRST CAUSE OF ACTION: ILLEGAL CAMPAIGN FINANCING**

13 **(Against All Defendants)**

14 20. PLAINTIFF incorporates the prior allegations as through fully recited herein.

15 21. Government Code section 85200 states (emphasis added): "**Prior to the solicitation**
16 **or receipt of any contribution** or loan, an **individual who intends to be a candidate for an**
17 **elective state office**, as that term is defined by Section 82024, **shall file with the Secretary of**
18 **State an original statement, signed under penalty of perjury, of intention to be a candidate for**
19 **a specific office.**"

20 22. Government Code section 85201(a) states (emphasis added): "Upon the filing of the
21 statement of intention pursuant to Section 85200, the individual **shall establish one campaign**
22 **contribution account** at an office of a financial institution located in the state."

23 23. Section 18521(a) of the FPPC's regulations states (emphasis added): "A candidate
24 who is required to file a statement of organization for a controlled committee pursuant to
25 Government Code section 84101 shall establish **a separate controlled committee and campaign**
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1 **bank account** for each specific office identified in statements filed by the candidate pursuant to
2 Government Code section 85200 and 2 Cal. Code Regs. Section 18520.”

3 24. Section 18525(a) of the FPPC’s regulations states (emphasis added): “An **incumbent**
4 **elected officer** shall make expenditures for the following **campaign expenses** from the appropriate
5 campaign bank account **for election to a future term of office**: (1) Payments for fundraising and
6 campaign strategy expenses for election to a future term of office. (2) Payments for mass mailings,
7 political advertising, opinion polls or surveys, and other communications in connection with
8 election to a future term of office. For purposes of this section, a mass mailing, political
9 advertisement, opinion poll or survey, or other communication shall be considered ‘in connection
10 with election to a future term of office’ if it makes reference to the officer’s future election or status
11 as a candidate for a future term of office, or if it is made by an incumbent officer within 3 months
12 prior to an election for which he or she has filed any of the following: (A) A statement of intention
13 to be a candidate for a specific office, pursuant to Government Code Section 85200. (B) A
14 declaration of candidacy or nomination papers, as specified in Chapter 1 (commencing with Section
15 8000) of Division 8 of the Elections Code. (C) Any other documents necessary to be listed on the
16 ballot as a candidate for any state or local office. (3) Payments for services and actual expenses of
17 political consultants, the campaign treasurer and other campaign staff, pollsters and other persons
18 providing services directly in connection with a future election. (4) Payments for voter registration
19 and get-out-the-vote drives.”

22 25. Section 18525(b) of the FPPC’s regulations states (emphasis added): “An incumbent
23 elected officer may make expenditures for purposes not enumerated in subdivision (a) from either
24 the campaign bank account established pursuant to Government Code Section 85201 for election to
25 the incumbent term of office or from a campaign bank account established pursuant to Government
26 Code Section 85201 for election to a future term of office. **This section shall not be construed to**
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1 **permit an incumbent elected officer to make expenditures from any campaign bank account**
2 **for expenses other than those associated with his or her election to the specific office for which**
3 **the account was established and expenses associated with holding that office.”**

4 26. Government Code section 89510(b) states (emphasis added): “All contributions
5 deposited into the campaign account shall be deemed to be **held in trust** for expenses associated
6 with the election of the candidate or for expenses associated with holding office.”

7 27. Government Code section 89512(a) states (emphasis added): “An expenditure **to**
8 **seek office** is within the lawful execution of the trust imposed by Section 89510 if it is **reasonably**
9 **related to a political purpose**. An expenditure **associated with holding office** is within the lawful
10 execution of the trust imposed by Section 89510 if it is **reasonably related to a legislative or**
11 **governmental purpose**. Expenditures which confer a substantial personal benefit shall be directly
12 related to a political, legislative, or governmental purpose.”

13 28. Government Code section 89519(a) states (emphasis added): “Upon the 90th day
14 after leaving an elective office, or the 90th day following the end of the postelection reporting
15 period following the defeat of a candidate for elective office, whichever occurs last, **campaign**
16 **funds under the control of the former candidate or elected officer shall be considered surplus**
17 **campaign funds** and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100).”

18 29. Government Code section 89519(b) states (emphasis added): “Surplus campaign
19 funds shall be used **only** for the following purposes: (1) The payment of outstanding campaign
20 debts or elected officer’s expenses. (2) The repayment of contributions. (3) Donations to any bona
21 fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no
22 substantial part of the proceeds will have a material financial effect on the former candidate or
23 elected officer, any member of his or her immediate family, or his or her campaign treasurer. (4)
24 Contributions to a political party committee, provided the campaign funds are not used to support or
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1 oppose candidates for elective office. However, the campaign funds may be used by a political party
2 committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate
3 mailers as that term is defined in Section 82048.3. (5) Contributions to support or oppose any
4 candidate for federal office, any candidate for elective office in a state other than California, or any
5 ballot measure. (6) The payment for professional services reasonably required by the committee to
6 assist in the performance of its administrative functions, including payment for attorney's fees for
7 litigation that arises directly out of a candidate's or elected officer's activities, duties, or status as a
8 candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of
9 an action brought for a violation of state or local campaign, disclosure, or election laws, and an
10 action from an election contest or recount."

12 30. Section 18951 of the FPPC's regulations states in part (emphasis added): "For
13 purposes of Section 89519: (a) Campaign funds under the control of a candidate or elected officer
14 will be considered surplus campaign funds on the following dates: (1) Incumbent Candidates: The
15 90th day after leaving an elective office for which the campaign funds were raised, or if the
16 candidate is defeated for reelection, the 90th day after the end of the postelection reporting period
17 following his or her defeat, whichever is later. **An incumbent candidate who wishes to use funds
18 for a future election must transfer those funds to a new committee for a future election no
19 later than this date.**"

21 31. Section 18951(b) of the FPPC's regulations states: "The 'end of the postelection
22 reporting period' means June 30 with respect to elections occurring in the first six months of the
23 calendar year and December 31 for elections occurring in the latter six months of the calendar
24 year."
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26 32. Page 11.7 of FPPC Manual 1, which governs candidates for state office and their
27 committees, states in part (emphasis in original): "In order for a candidate to use leftover (non-
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1 surplus) campaign funds for a future election, the candidate must (•) File a new **Form 501**
2 (Candidate Intention Statement) for the specific future election; (•) File an initial **Form 410**
3 (Statement of Organization to obtain a new committee identification number; and, (•) Open **new**
4 **bank account**. Transfers to a committee for a different state office must be attributed to specific
5 contributors as described in Chapter 1.”

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7 33. The money raised by GLORIA’s Assembly 2020 committee may not lawfully be
8 used for any political purpose because, despite filing his FPPC Form 501 for re-election to the
9 office of AD78 representative under penalty of perjury, he has no intention of running for re-
10 election to that office.

11 34. Because GLORIA has no intention of running for re-election to the office of AD78
12 representative, the money raised by GLORIA’s Assembly 2020 committee may only be used for a
13 governmental or legislative purpose associated with his current term of office. However, GLORIA
14 has used that money mostly, if not exclusively, for illegal political purposes, and he intends to
15 continue to use that money for such illegal purposes. The expenditure of any portion of that money
16 to SDCDP for direct or indirect us to support GLORIA and/or oppose any of his opponents would
17 constitute an illegal political purpose.
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19 35. Because GLORIA received money in his Assembly 2020 committee before he filed
20 his FPPC Form 501 for re-election to the office of AD78 representative under penalty of perjury,
21 the money received by that committee prior to August 13, 2019, may not be spent by Gloria either
22 because it became “surplus” money on March 31, 2019, or was otherwise illegally placed into the
23 Assembly 2020 committee.
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25 36. On information and belief, PLAINTIFF alleges that DEFENDANTS dispute the
26 foregoing allegations. Declaratory relief is therefore appropriate.
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1 37. The public will be irreparably harmed if DEFENDANTS are allowed to use the
2 money illegally raised by GLORIA to support him, directly or indirectly, in the race for the office of
3 Mayor of the City of San Diego in 2020. Money damages would be an inadequate remedy.
4 Equitable relief is therefore appropriate.

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6 WHEREFORE, PLAINTIFF prays for the following relief against all DEFENDANTS as
7 the Court deems appropriate:

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- 9 1. An order or judgment declaring that DEFENDANTS are illegally financing

10 GLORIA's campaign for election to the office of Mayor of the City of San Diego in 2020;

 - 11 2. An order or judgment enjoining DEFENDANTS from using any money from

12 GLORIA's Assembly 2020 committee, directly or indirectly, to support his campaign for the office

13 of Mayor of the City of San Diego in 2020;

 - 14 3. An award of attorney fees and court costs as authorized by law; and
 - 15 4. Any additional relief that the Court deems appropriate.

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17 Dated: August 19, 2019

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19 ~~By: _____~~
20 ~~Dayne E. Kenney~~
21 ~~Attorneys for Mat Wahlstrom~~
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VERIFICATION

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I, Mat Wahlstrom, have read the foregoing Verified Complaint and know its contents. I am informed and believe and on that ground allege that the matters stated in the Complaint are true except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

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

Executed on this 19th day of August, 2019 at San Diego, California.



Mat Wahlstrom