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13 SENATOR TONY MENDOZA and
14 ROGER BAGNE

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17 SENATOR TONY MENDOZA and
18 ROGER BAGNE

19 Plaintiffs,

20 v.

21 CALIFORNIA STATE SENATE,
22 CALIFORNIA STATE SENATE RULES
23 COMMITTEE, and DOES 1 through 50,
24 inclusive,

25 Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

26 The CALIFORNIA STATE SENATE (“Senate”) and its CALIFORNIA STATE
27 SENATE RULES COMMITTEE (“Rules Committee”) are conducting a secret and apparently
28 unbounded investigation into the last decade of SENATOR TONY MENDOZA’s (“Senator
Mendoza”) career without notice specifying the charges against him, the scope of the
investigation, or the standards against which his conduct will be judged. Though the Senate
refused Senator Mendoza’s requests for information, it appears the investigation is predicated on
allegations that Defendants already formally examined, investigated, and then dismissed in 2017.
Despite the fact that its new investigation is incomplete, public comments from members of the

1 Rules Committee suggest that they have already prejudged Senator Mendoza. This biased Rules
 2 Committee recently applied a newly minted, ad-hoc Senate Resolution to Senator Mendoza,
 3 resulting in a de facto suspension of his powers as a Senator. Resolution 79 unconstitutionally
 4 concentrates the power to mete out de facto suspensions of elected Senators into the 5-member
 5 Rules Committee.

6 This Kafkaesque process is the Senate’s response to the #MeToo movement. It is an
 7 unconstitutional sleight-of-hand where attacks on one Senator are used to hide other more serious
 8 allegations and offenders from public view. This misdirection gives the appearance that the
 9 Senate and its leadership are taking action by treating relatively minor allegations harshly and
 10 with zero tolerance. But, these actions come at the price of the California and United States
 11 Constitutions by sacrificing due process and equal protection for both Senator Mendoza and his
 12 constituents, including ROGER BAGNE (“Bagne”) (collectively hereinafter, “Plaintiffs”). They
 13 also come at the expense of victims who continue to remain silent because they see through this
 14 illusion and know that serious offenders are still being protected. Indeed, a lobbyist who helped
 15 write the letter that launched the #MeToo movement observed that the treatment of Senator
 16 Mendoza “speaks more largely to the fact that there isn’t a process” at all. For all of these
 17 reasons, Plaintiffs hereby complain and allege as follows:

18 PARTIES

19 1. As the son of immigrants, Senator Mendoza was the first in his family of nine
 20 children to graduate from college. After working as a teacher for 10 years, he decided to channel
 21 his passion for education into advocating change and positive policy-making in the California
 22 Legislature. A citizen of the United States, lifelong Californian, and 28-year resident of Artesia,
 23 California, Senator Mendoza was elected to the California State Senate in 2014 when a majority
 24 of the registered voters in California Senate District 32 cast ballots choosing him to represent the
 25 District. District 32 has nearly a million residents and encompasses approximately 20
 26 communities in Los Angeles and Orange counties.

27 2. Roger Bagne is a resident of the City of Commerce, California, located in
 28 California Senate District 32, and he is a constituent of Senator Mendoza. A life-long resident of

1 California, Roger has lived in District 32 for 38 years. Roger is a self-described fixer upper, who
2 made a career of buying and rehabilitating distressed real estate, which he then rented to residents
3 in the 32nd District. Roger's wife is a retired teacher.

4 3. Roger voted for Senator Mendoza, at least in part, because of the Senator's unique
5 perspectives on education and teaching. Roger appreciates the perspectives of Senator Mendoza
6 and Senator Mendoza's wife (who is also a teacher) on education matters. Moreover, Roger
7 values that Senator Mendoza is an independent thinker who does what is right for his
8 constituents, no matter the party-line on an issue. Roger also admires Senator Mendoza's work
9 with the Young Senators Program, which he and his wife have supported for many years.

10 4. Defendant CALIFORNIA STATE SENATE ("Senate") is one of the two bodies
11 comprising the California Legislature. The Senate is made up of 40 Senators elected for 4-year
12 terms who represent 40 districts across the State of California. The other body of the Legislature
13 is the California State Assembly, where Senator Mendoza served his constituents from 2006
14 through 2012.

15 5. Defendant CALIFORNIA STATE SENATE RULES COMMITTEE ("Rules
16 Committee") is a Senate standing committee responsible for, among other things: appointment of
17 all other committees of the Senate (including designation of the chair and vice chair of each
18 committee); proposing amendments to the Standing Rules of the Senate; matters related to the
19 business of the Legislature; the administrative functioning of the Senate, including fulfilling the
20 Human Resources functions of the Senate; general supervision of all employees of the Senate;
21 and engrossment and enrollment of bills.

22 6. The President pro Tempore of the Senate, Kevin de León ("Senator de León") is
23 the Chair of the Rules Committee. Until recently, de León shared a house in Sacramento with
24 Senator Mendoza. However, because he is currently campaigning for a seat in the United States
25 Senate, he is now distancing himself from Senator Mendoza as it is more politically expedient to
26 avoid any negative fallout from his long tenure as Senator Mendoza's co-tenant. Daniel Alvarez
27 is the chief parliamentarian of the Senate and the Executive Officer of the Rules Committee. He
28 acts as the Rules Committee's authorized representative in all matters delegated to him by the

1 Rules Committee. Plaintiffs are informed, believe and thereon allege that various Human
2 Resources duties have been delegated to Alvarez by the Rules Committee.

3 JURISDICTION AND VENUE

4 7. This Court has subject matter jurisdiction over this action and personal jurisdiction
5 over Defendants.

6 8. Venue is proper in this Court pursuant to California Code of Civil Procedure
7 section 393(b) because this Complaint is against Public Officers, for acts done by the officers in
8 virtue of the office, and the causes of action herein arose in Sacramento County. In addition,
9 venue is proper in this Court pursuant to California Code of Civil Procedure section 395(a)
10 because the Senate and the Rules Committee reside in Sacramento County.

11 GENERAL ALLEGATIONS

12 After False Allegations of Retaliation Were Leveled Against Senator Mendoza, the Senate 13 Unconstitutionally Deprived Him of His Ability to Represent His Constituents

14 9. On or about September 22, 2017, the Senate terminated the employment of
15 Senator Mendoza's Legislative Director and two other employees on Senator Mendoza's staff.
16 Senator Mendoza's former Legislative Director was terminated solely for performance reasons.
17 The termination was handled entirely by the Senate Rules Committee staff. At the suggestion of
18 Rules Committee staff, the terminations were delayed until the end of the legislative session.
19 Senator Mendoza is informed, believes, and on that basis alleges, that during the meeting where
20 she was informed of her termination, his Legislative Director falsely accused him of retaliation.

21 10. Senator Mendoza is also informed, believes, and on that basis alleges, that during
22 this termination meeting, the former Legislative Director alleged that Senator Mendoza behaved
23 inappropriately toward a second, different employee. On information and belief, this second
24 employee did not, herself, make any complaint – formal or otherwise – regarding Senator
25 Mendoza's behavior.

26 11. Senator Mendoza was unaware that the former Legislative Director made any
27 allegations against him in the termination meeting until he received an inquiry from the media in
28 or around early November of 2017. When the Senator asked the Rules Committee about the

1 allegation, the Rules Committee confirmed that the Legislative Director raised an issue in the
2 termination meeting and indicated that the second employee was interviewed as part of an
3 internal investigation handled by the Rules Committee. The Committee also informed him that
4 its investigation revealed no violations of Senate policy and that the matter was closed.

5 12. Senator Mendoza is informed and believes that no one else has ever made any
6 allegations or complaints to the Senate or the Rules Committee about his conduct while serving in
7 the Senate. Upon information and belief, the Legislative Director's false and unsubstantiated
8 retaliation allegations in 2017, which the Rules Committee investigated then dismissed, constitute
9 the only allegations made against Senator Mendoza since his election to the Senate. The Senate
10 Rules Committee has never informed Senator Mendoza that it received any other complaints
11 against him.

12 13. Without explanation, on or about November 27, 2017, the Rules Committee, at the
13 request of Senator de León, voted to remove Senator Mendoza from his assignment as Chair of
14 the Insurance, Banking and Financial Institutions Committee. The Rules Committee also
15 removed Senator Mendoza as a member of the Commission for Economic Development and the
16 California Workforce Development Board. Prior to these actions Senator Mendoza was not given
17 notice of the charges against him or any opportunity to contest – or even appear at hearings
18 regarding – his removal from the committees on which he serves to represent his constituents and
19 all Californians.

20 14. News reports began to circulate regarding allegations against Senator Mendoza
21 and the Rules Committee's actions. The Committee advised that there would be further
22 investigation and that the Senator should allow the Committee to handle communications and not
23 discuss the allegations. Senator Mendoza understands that it is important in any investigation to
24 ensure that the recollections of witnesses are not tainted by the reports of other people before they
25 can be interviewed and wanted to make sure that the investigation was thorough and unbiased.

26 15. In various media reports, Senator de León was quoted on the record discussing
27 Senator Mendoza and the allegations against him. Among other things, the following quotes
28 appeared in published news reports regarding Senator Mendoza:

1 a. “Like many in our Caucus, I’m deeply troubled by the quantity and
2 specificity of accusations against Senator Mendoza – and have therefore determined that
3 Senator Mendoza should be suspended from Chairmanships, boards and commissions
4 until the independent investigation into his conduct is complete.” (Quote from Senator de
5 León in a November 17, 2017, Sacramento Bee article).

6 b. “Today, the Senate Rules Committee showed that no lawmaker is immune
7 from our zero-tolerance harassment policies. . . . This is only one important step — the
8 next is a full, independent investigation led by outside experts, with publicly reported
9 findings. . . . Given the troubling nature of the allegations, this was a necessary action,
10 pending completion of a full investigation.” (Quote from Senator de León in a November
11 27, 2017, Los Angeles Times article).

12 c. “Given the severity of the allegations against Sen. Mendoza, I do not
13 believe he can perform the duties in Sacramento right now.” (Quote from Senator de
14 León in a December 14, 2017, Sacramento Bee article.)

15 d. “He’s proving he does not have an understanding of the gravity of the
16 situation with no decency and little respect for the institution.” (Quote from Senator de
17 León in a January 23, 2018, Sacramento Bee article.)

18 e. “Democratic Sen. Connie Leyva told CALmatters that Mendoza should
19 resign.” (Quote from a December 14, 2017, Associated Press article.)

20 16. Despite the promise of a fair and impartial process, the comments of Senator de
21 León and other members of the Rules Committee demonstrate that the body charged with making
22 decisions about Senator Mendoza is not fair and impartial and, in fact, already pre-judged the
23 circumstances. This is despite the Rules Committee’s prior findings that no policy was violated,
24 without the completion of the new investigation, and without any opportunity for Senator
25 Mendoza to know of or respond to the specific charges against him.

26 17. In or about mid-December 2017, Senator de León announced that the Rules
27 Committee hired two law firms to conduct all sexual harassment investigations regarding
28 members of the Senate. These law firms are conducting their investigation in secret and away

1 from public scrutiny. Though Senator Mendoza was informed that he is under investigation, he
2 was never provided with notice — written or otherwise — informing him of the charges against
3 him, the legal or policy standards that will be applied in the investigation, or the scope of the
4 investigation.

5 18. Senator Mendoza is informed, believes, and on that basis alleges, that, although
6 there have been allegations that he engaged in inappropriate verbal conduct, no one has ever
7 accused Senator Mendoza of any inappropriate bodily contact, propositions, or threats.

8 19. Senator Mendoza is informed and believes, and on that basis alleges, that the
9 Senate is presently investigating allegations that were never actually reported to the Senate or the
10 Senate Rules Committee. Upon information and belief, the Senate is investigating an allegation
11 that was first made in 2017 regarding conduct in 2008 while Senator Mendoza was serving in the
12 California State Assembly. Upon information and belief, no complaint, either formal or
13 otherwise, was ever reported to the Assembly or its Rules Committee regarding any alleged
14 misconduct by Senator Mendoza in 2008. Nor has the Senate ever informed Senator Mendoza
15 about the allegations that have been made against him by a person who Senator Mendoza now
16 believes worked in his Assembly District Office for a brief period of time in 2008.

17 20. Senator Mendoza is informed and believes, and on that basis alleges, that the
18 Senate is also investigating allegations relating to conduct by Senator Mendoza in 2010, while he
19 was still serving in the California State Assembly. The complainant herself characterized the
20 behavior as involving “a gray area.” After Senator Mendoza was informed that an employee felt
21 she was being treated differently than others in his office, he immediately acted to correct this
22 perception and alleviate the employee’s concerns. The California State Assembly did not take
23 any action to reprimand Senator Mendoza. That same employee continued to work for Senator
24 Mendoza (then Assemblyman Mendoza) for several years without incident.

25 21. The Senate and the Rules Committee have repeatedly ignored Senator Mendoza’s
26 requests for information about the charges against him and have refused to provide Senator
27 Mendoza with records related to the charges or the investigation. The Senate Employment
28 Manual provides that Senators are permitted to access certain employment records. However, in

1 responding to his request for records, the Senate departed from its written policy and previous
2 practices by instead treating his request for records as brought under the Legislative Open
3 Records Act (“LORA”). Several months after using the LORA to deny Senator Mendoza the
4 records that he requested, the Legislature released some of the records he requested to the general
5 public with no prior notice to the Senator.

6 22. Media reports indicate that the results of the Senate’s secret investigation will
7 eventually be reported to the Rules Committee, but Senator Mendoza has not been informed who
8 will review the results of the investigation, what any review process will entail, what standards, if
9 any, will be applied, or if Senator Mendoza will have an opportunity to respond to the results of
10 the investigation. Upon information and belief, any report relating to the secret investigation will
11 not actually be shared with Senator Mendoza.

12 23. On or about December 14, 2017, Senator Andy Vidak announced that he drafted a
13 Senate Resolution to expel Senator Mendoza from the Senate. On or about January 3, 2018,
14 Senator Vidak’s resolution was formally introduced for a vote on the Senate floor. Senator
15 Vidak’s premature and incendiary resolution seeks to expel Senator Mendoza from the Senate
16 without completing the already secret investigation against Senator Mendoza and without any
17 formal ethics complaint being filed against Senator Mendoza in accordance with the procedures
18 outlined in the Standing Rules of the Senate, Rule 12.3. It appears that the resolution is premised
19 solely on hearsay gleaned from media reports rather than the testimony of witnesses or actual
20 evidence.

21 24. On or about January 3, 2018, the Senate Democratic Caucus asked Senator
22 Mendoza to take a voluntary leave of absence. After much deliberation, Senator Mendoza
23 reluctantly decided to take a limited leave from the Capitol with the understanding that he would
24 continue to perform work for his constituents from his District Office. Senator Mendoza wished
25 to avoid any appearance that he was attempting to influence the thus far secret investigation into
26 sexual harassment in the Senate, as he believes that all investigations of sexual harassment and
27 misconduct should be open and fair to both the alleged victim and the accused.

28 25. Senator Mendoza did not seek approval for his leave of absence from the Rules

1 Committee. Senator Mendoza specifically informed Senator de León and the Rules Committee
2 that his leave of absence would expire no later than February 1, 2018, and that he would not stop
3 representing his constituents by totally stepping away from his office. To that end, Senator
4 Mendoza informed Senator de León and the Rules Committee that he would not appear on the
5 Senate floor, attend hearings or meetings, or take part in other official Senate deliberations during
6 his leave of absence. However, he would continue to undertake his duties as a Senator in
7 representing the citizens of Senate District 32, including ensuring that his pending legislation
8 moved forward, introducing new legislation for the upcoming session to meet legislative
9 deadlines, and ensuring advocacy services were available to his constituents for state issues. This
10 agreement was memorialized in a letter by his attorney to the Senate Rules Committee and was
11 also provided to the public in his statement to the media on January 3, 2018.

12 26. Senator de León and the Rules Committee asked Senator Mendoza to provide a
13 letter regarding his leave to be recorded in the Daily Journal. The Rules Committee refused to
14 accept the first letter he provided, which accurately outlined his intention to continue working for
15 his constituents. Instead, the Rules Committee demanded that he submit a second, shorter letter
16 to be recorded in the Daily Journal. Senator Mendoza complied with the demand.

17 27. On January 12, 2018, in direct contravention of Senator Mendoza's understanding
18 that he would be working for his constituents during his voluntary leave of absence, Senator
19 Mendoza received a letter from Secretary of the Senate Alvarez informing Senator Mendoza that
20 he should not be in the State Capitol. The letter also stated that Senator Mendoza would not be
21 afforded travel, Senate Special Services, or any other Senate resources.

22 28. On Thursday, January 24, 2018, without prior notice to Senator Mendoza and with
23 little, if any, notice to the other Senators, Senator de León introduced Senate Resolution 79 ("SR
24 79"). It is the weekly practice of many Senators to depart the Capitol on Thursday so that they
25 may return to work in their Districts on Friday. This Thursday-morning Resolution was
26 introduced without opportunity for review or reflection and under circumstances calculated to
27 shorten the time for consideration to ensure that review and reflection would not occur.

28 29. SR 79 reads as follows:

1 Resolved by the Senate of the State of California, That the Standing
2 Rules of the Senate for the 2017–18 Regular Session are amended
as follows:

3 That Rule 3.5 is added to read:

4 Leave of Absence

5 3.5. (a)(1) A Member of the Senate may request a paid leave of
6 absence from the Senate under this rule. The request shall be in
writing to the Committee on Rules.

7 (2) Upon receipt of the request, the Committee on Rules shall
8 determine whether the length of the leave requested is sufficient
9 based on the circumstances surrounding the request. If the
10 Committee on Rules determines that the requested time period is
not sufficient, the Committee on Rules may prescribe a different
date of termination of the leave of absence. Once approved, the
Committee on Rules may extend a leave of absence at its discretion.

11 (b) A Member of the Senate shall not exercise any of the rights,
12 privileges, duties, or powers of his or her office, or utilize any
13 resources of the Legislature, during the period of the leave of
absence. The member shall not receive reimbursement for living or
travel expenses during the period of the leave of absence.

14 (c) This rule applies to a leave of absence granted before or after
15 adoption of this rule.

16 30. SR 79 passed, though several Senators observed the lack of notice, shortened
17 timeframe for consideration, and that the Resolution was a blatant attempt to work around the
18 suspension procedures outlined by the California State Constitution. Senator Mendoza was not
19 present in the Senate during this discussion due to his agreement to absent himself from the floor.
20 Prior to the vote, Senator de León represented that the Resolution would be modified the
21 following week in order to address the concerns expressed about its legality. This did not occur.

22 31. Instead of providing the promised amendment to SR 79, on or about January 25,
23 2018, the Rules Committee voted to extend Senator Mendoza’s leave of absence for 60 more days
24 or until the investigation regarding the allegations against Senator Mendoza concludes. The
25 Rules Committee’s letter announcing this unilateral de facto suspension informed Senator
26 Mendoza that during his “leave of absence,” he will not be afforded travel, use of Senate Special
27 Services, or any other Senate Resources. Moreover, the letter ordered that “any activities related
28 to your membership as a Senator should cease.” Senator Mendoza was not given an opportunity

1 to contest this retroactive de facto suspension or present his case to the Rules Committee in any
2 way.

3 32. Furthermore, the Rules Committee’s letter announcing the unilateral de facto
4 suspension of Senator Mendoza did not contain any findings or declarations setting forth the basis
5 for the suspension.

6 33. SR 79 as applied to Senator Mendoza constitutes a retroactive and de facto
7 suspension, as it allows the five-member Rules Committee, rather than two-thirds of the State
8 Senate, to arbitrarily decide to “extend” Senator Mendoza’s leave without notice, his consent, or
9 an opportunity to be heard.

10 34. On or about February 1, 2018, Senator Mendoza announced that though he
11 adamantly disagrees and opposes the Senate’s de facto suspension, he understands that SR 79
12 represents the will of the Senate until it is overturned.

13 35. Senator Mendoza is informed, believes, and based thereon alleges, that through all
14 of the foregoing events, no formal complaint has ever been made against him, either to the Senate
15 Legislative Ethics Committee, the Rules Committee, or the Legislature’s Subcommittee on
16 Sexual Harassment Prevention and Response.

17 **The Disparate Treatment of Senator Mendoza Violates Constitutional Norms**

18 36. As discussed above, Senator Mendoza: (1) was stripped of his membership on
19 Senate committees by the Rules Committee; (2) was asked to take a leave of absence by the
20 Senate Democratic Caucus; (3) reluctantly chose to take only a limited leave of absence with the
21 understanding that he would still serve constituents; and (4) was unilaterally suspended by the
22 Rules Committee as a result of the passage of SR 79.

23 37. Senator Mendoza, however, is not the only member of the Senate accused of
24 sexual harassment and misconduct.

25 38. For instance, it has been widely reported that at least one Caucasian Senator
26 engaged in inappropriate and unwanted physical conduct with at least three female colleagues,
27 and of not stopping the unwanted physical conduct when asked to do so. Specifically, it is
28 alleged that after a female lawmaker asked him to refrain from touching her, this Senator

1 “grabbed her anyway and pinned her in his arms, with one hand on her lower back, so that she
2 couldn’t turn away from him, then he thrust his groin into her.” Though Senator de León
3 confirmed that the secret investigation being conducted by the outside law firms will include
4 these complaints, the accused Senator was not stripped of his Senate committee memberships by
5 the Rules Committee, was not asked to take a leave of absence by the Senate Democratic Caucus
6 (a body of which, like Senator Mendoza, he is a member), and was not unilaterally suspended by
7 the Rules Committee. Indeed, Senator de León confirmed that he would not ask this Senator to
8 step down.

9 39. Senator Mendoza is informed, believes, and on that basis alleges, that there are
10 currently pending investigations against at least six other sitting members of the Senate and eight
11 members of the Assembly related to sexual harassment and misconduct. No other senators,
12 however, have been stripped of committee memberships, asked to take a leave of absence, or
13 unilaterally suspended.

14 **The Senate’s Unconstitutional Actions Violate Equal Protection for Roger Bagne and All of**
15 **Senator Mendoza’s Constituents**

16 40. Roger Bagne lives in Senate District 32, is Senator Mendoza’s constituent, and
17 voted for Senator Mendoza to serve as District 32’s Senator.

18 41. As of, at a minimum, January 25, 2018, when the Rules Committee voted to enact
19 a de facto suspension of Senator Mendoza, Mr. Bagne – and all of the residents of Senate District
20 32 – have been denied representation in the Senate.

21 42. Even if, by virtue of his status as a constituent of Senator Mendoza, Mr. Bagne can
22 be deemed to have consented to Senator Mendoza’s initial voluntary leave of absence in which
23 Senator Mendoza insisted on continuing to represent his constituents, Mr. Bagne most assuredly
24 did not consent to the Rules Committee’s unilateral and de facto suspension of Senator Mendoza
25 that purports to direct that all activities – necessarily including representative activities – related
26 to Senator Mendoza’s membership as a senator must cease.

27 43. Unlike Mr. Bagne, the constituents of the other Senators currently under
28 investigation for sexual harassment and/or misconduct in the Senate, are not being deprived of

1 representation in the Senate by the actions of the Senate, the Rules Committee, and Senator de
2 León.

3 The California and U.S. Constitutions

4 44. Both the California and the U.S. Constitutions provide due process and equal
5 protection rights to the citizens of California.

6 45. The Fifth Amendment to the U.S. Constitution provides that no person shall “be
7 deprived of life, liberty, or property without due process of law.” The due process protections of
8 the Fifth Amendment are extended to protect citizens from deprivation of due process by state
9 government via the Fourteenth Amendment to the U.S. Constitution.

10 46. The Fourteenth Amendment to the U.S. Constitution provides that no state shall
11 “deny to any person within its jurisdiction the equal protection of the laws.”

12 47. Article I, Section 7, Subsection (a) of the California Constitution provides that “A
13 person may not be deprived of life, liberty, or property without due process of law or denied equal
14 protection of the laws.”

15 48. Article IV, Section 2(c) of the California Constitution outlines the qualifications
16 for membership in the Legislature: “A person is ineligible to be a member of the Legislature
17 unless the person is an elector and has been a resident of the legislative district for one year, and a
18 citizen of the United States and a resident of California for 3 years, immediately preceding the
19 election. . . .”

20 49. Article IV, Section 5 of the California Constitution provides the Legislature with
21 the procedure to expel or suspend a member. Section 5(a)(1) requires a two-thirds vote among
22 members of their respective houses for an expulsion. Section 5(a)(2)(A) permits suspension of a
23 member by motion or resolution where two-thirds of the members of that house concur. The
24 motion or resolution for suspension must be supported by findings and declarations setting forth
25 the basis for the suspension. In addition, the suspension of a member pursuant to Section
26 5(a)(2)(A) shall remain in effect until the date specified in the motion or resolution or, if no date
27 is specified, the date a subsequent motion or resolution terminating the suspension is adopted by a
28 two-thirds vote of the membership of the house at issue.

1 violated the California Constitution, as debate on the Senate Floor regarding SR 79 centered
2 around its ability to impose de facto suspensions on members of the Senate.

3 58. Thus, there exists a substantial controversy of sufficient immediacy and reality
4 regarding the constitutionality of SR 79 to warrant the issuance of declaratory judgment that SR
5 79 is unconstitutional on its face and as applied to Senator Mendoza. This declaration is
6 necessary and appropriate at this time so that Senator Mendoza's ability to serve his constituents
7 not further be hindered, and so that the Senate and the Rules Committee do not continue to violate
8 the California and U.S. Constitutions.

9 **SECOND CAUSE OF ACTION**

10 **Declaratory Relief – Senate Resolution 79 Violates Roger Bagne's Constitutional Rights
(Against All Defendants)**

11 59. Plaintiffs reallege and incorporate by reference each and every allegation of the
12 above paragraphs 1 through 58 inclusive, as if fully set forth herein.

13 60. There is an actual controversy between Bagne and Defendants regarding the
14 constitutionality of SR 79 on its face and as applied to Senator Mendoza.

15 61. As discussed above, SR 79, as introduced by Senator de León, allows the Rules
16 Committee to unilaterally extend a *requested and approved* leave of absence of a member of the
17 Senate on the vote of just the five members of the Rules Committee.

18 62. On January 25, 2018, the Rules Committee purported to extend the leave of
19 absence of Senator Mendoza. Senator Mendoza's leave, however, was not requested of or
20 approved by the Rules Committee. As such, the Rules Committee's action acted as a unilateral
21 de facto suspension of Senator Mendoza without following the procedures outlined in the Article
22 IV, Section 5 of the California Constitution.

23 63. In addition to the due process infirmities and the failure to follow the explicit
24 procedures of the California Constitution discussed above, the Rules Committee's action has
25 created two separate classes of voters: those that are afforded representation in the Senate, and
26 those who are not.

27 64. Mr. Bagne and all of Senator Mendoza's nearly one-million constituents are being
28 treated differently from all other voters in the State of California. Mr. Bagne is currently without

1 representation in the Senate, while other voters (including voters whose representatives in the
2 Senate have also been accused of sexual harassment or misconduct) continue to receive
3 representation. This is a clear violation of the equal protection rights guaranteed to Mr. Bagne by
4 the California and U.S. Constitutions.

5 65. Thus, there exists a substantial controversy of sufficient immediacy and reality
6 regarding the constitutionality of SR 79 to warrant the issuance of declaratory judgment.
7 Specifically, a judicial declaration is necessary and appropriate at this time so that Mr. Bagne and
8 Senator Mendoza's other constituents are provided the representation they are entitled to receive
9 under the California Constitution, and so that the Senate and the Rules Committee do not
10 continue to violate the California and U.S. Constitutions.

11 **THIRD CAUSE OF ACTION**
12 **Declaratory Relief – Proposition 50 is Unconstitutional**
13 **(Against All Defendants)**

14 66. Plaintiffs reallege and incorporate by reference each and every allegation of the
15 above paragraphs 1 through 66 inclusive, as if fully set forth herein.

16 67. There is an actual controversy between Plaintiffs and Defendants regarding the
17 constitutionality of Article IV, Section 5, Subsection (a)(2) of the California Constitution as
18 enacted by Proposition 50, on the June 7, 2016 ballot.

19 68. Based on Senator Vidak's resolution that is currently pending with the Rules
20 Committee, Senator Mendoza is informed, believes, and on that basis alleges, that the entire
21 Senate may soon consider voting to suspend or expel him using the provisions of Article IV,
22 Section 5, Subsection(a)(2), of the California Constitution.

23 69. As enacted, however, Proposition 50 did not contain – and still does not contain –
24 any due process protections for Senators who the Senate may seek to suspend. For instance,
25 Proposition 50 contains no procedures for either pre- or post-suspension hearing, opportunities for
26 a Senator to present evidence regarding the alleged basis for a proposed suspension, or even a
27 guarantee that a Senator facing suspension may be heard on the Senate floor during the
28 suspension debate. The lack of these protections violates the Due Process protections of the
California and U.S. Constitutions.

1 regarding the violation of Senator Mendoza’s equal protection rights to warrant the issuance of
 2 declaratory judgment. Specifically, a judicial declaration is necessary and appropriate at this time
 3 so that Defendants will cease violating Senator Mendoza’s equal protection rights.

4 **FIFTH CAUSE OF ACTION**

5 **Declaratory Relief – Defendants Are Violation Senator Mendoza’s Due Process Rights
 6 (Against All Defendants)**

7 78. Plaintiffs reallege and incorporate by reference each and every allegation of the
 8 above paragraphs 1 through 77 inclusive, as if fully set forth herein.

9 79. There is an actual controversy between Senator Mendoza and Defendants
 10 regarding the deprivation of Senator Mendoza’s liberty interests in freedom from arbitrary,
 11 deprivatory governmental action and in fair and unprejudiced decision-making.

12 80. The unilateral de facto suspension of Senator Mendoza by the Rules Committee
 13 without notice reasonably calculated to apprise him of the basis for the decision and no
 14 opportunity to present objection amounts to an arbitrary, constitutionally cognizable deprivation
 15 of his liberty interest without sufficient process.

16 81. Likewise, the statements made by members of the Rules Committee to the media –
 17 and not on the Senate floor – indicate that the tribunal wielding the authority of the de facto
 18 suspension was already biased against him. For instance, at the same time Senator de León was
 19 making statements to the media characterizing Senator Mendoza’s behavior, he was also
 20 presiding over the stripping of Senator Mendoza’s committee memberships, and the
 21 unconstitutional and unilateral suspension of Senator Mendoza by the Rules Committee. In both
 22 these instances, Senator Mendoza was not provided any process at all, as he was not given an
 23 opportunity to contest in any way the stripping of his committee memberships or his suspension.

24 82. Thus, there exists a substantial controversy of sufficient immediacy and reality
 25 regarding whether Defendants have engaged in an unconstitutional deprivation of Senator
 26 Mendoza’s right to due process liberty interests. A judicial declaration is necessary and
 27 appropriate at this time so that the actions depriving Senator Mendoza of his protected liberty
 28 interests can be reversed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For a declaration that SR 79 is unconstitutional on its face and/or as applied to Senator Mendoza because it does not follow the procedures for suspension required by Article IV, Section 5, Subsection (a)(2) of the California Constitution.

2. For a declaration that SR 79 is unconstitutional on its face and/or as applied to Senator Mendoza because it deprives him of a property and/or liberty interest without adequate due process.

3. For a declaration that SR 79 is unconstitutional on its face and/or as applied to Senator Mendoza because it violates the equal protection rights of Mr. Bagne and all of Senator Mendoza’s constituents.

4. For a declaration that the Rules Committee’s extension of Senator Mendoza’s leave of absence on January 25, 2017, pursuant to SR 79, is null and void because Senator Mendoza never requested that the Rules Committee place him on leave.

5. For a declaration that Article IV, Section 5, Subsection (a)(2) of the California Constitution as enacted by Proposition 50, is unconstitutional because it allows the deprivation of a property and/or liberty interest without due process of law and denies the equal protection of the laws to the citizens of the State of California.

6. For a declaration that Defendants’ disparate treatment of Senator Mendoza violates his right to the equal protection of the laws.

7. For a declaration that Defendants’ secretive investigation and failure to advise Senator Mendoza of the allegations against him violates his right to due process.

8. For a declaration that the statements and actions of Defendants have resulted in an unconstitutional deprivation of Senator Mendoza’s protected liberty interests.

9. For a declaration that the statements and actions of Defendants have resulted in an unconstitutional deprivation of the rights of Mr. Bagne and all of Senator Mendoza’s constituents.

10. For injunctive relief requiring Defendants to restore Senator Mendoza to his

1 committee memberships.

2 11. For injunctive relief requiring Defendants to lift Senator Mendoza’s
3 unconstitutional suspension.

4 12. For injunctive relief requiring Defendants to return Senator Mendoza to his full
5 rights and privileges as a member of the Senate.

6 13. For injunctive relief requiring Defendants to restore Mr. Bagne’s full rights to
7 representation in the Senate as a citizen of the State of California.

8 14. For attorneys’ fees and costs of suit incurred herein.

9 15. For such other and further relief as the Court deems just and proper.

10 DATED: February __, 2018

DOWNEY BRAND LLP

11 By: _____

12 CASSANDRA M. FERRANNINI
13 Attorney for Plaintiffs
14 SENATOR TONY MENDOZA and
15 ROGER BAGNE
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