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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

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11 In the Matter of:

12 MIKE GATTO FOR SENATE 2016,
MIKE GATTO, AND JANE
13 LEIDERMAN,

14 Respondents.

FPPC Case No. 2018-00149

STIPULATION, DECISION AND ORDER

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16 INTRODUCTION

17 Respondent Mike Gatto (“Gatto”) controlled the recipient committee Mike Gatto for Senate 2016
18 (“Committee”). Jane Leiderman (“Leiderman”) was the treasurer. This case arose from an audit conducted
19 by the Franchise Tax Board (“FTB”). The FTB audit report covered the audit period of January 1, 2014
20 through December 31, 2016. During the audit period, the Committee reported \$2,114,314 in contributions
21 and reported \$2,114,803 in expenditures. The FTB’s audit found, and the Enforcement Division of the Fair
22 Political Practices Commission confirmed, that the Committee, Gatto, and Leiderman violated the Political
23 Reform Act¹ (“Act”) by accepting over-the-limit contributions.

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28 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 All statutory references and discussions of law pertain to the Act’s provisions as they existed at the
3 time of the violations.

4 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³

8 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
9 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
10 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
11 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
12 “vigorously enforced.”⁶

13 **Definition of Committee**

14 A “committee” included any person or combination of persons who received contributions totaling
15 \$2,000 or more in a calendar year.⁷ This type of committee is commonly referred to as a “recipient
16 committee.” A recipient committee controlled by a candidate is called a controlled committee.

17 **Definition of Candidate**

18 “Candidate” means an individual who is listed on the ballot or who has qualified to have write-in
19 votes on his or her behalf counted by election officials, for nomination for or election to any elective office,
20 or who receives a contribution or makes an expenditure or gives his or her consent for any other person to
21 receive a contribution or make an expenditure with a view to bringing about his or her nomination or
22 election to any elective office, whether or not the specific elective office for which he or she will seek
23 nomination or election is known at the time the contribution is received or the expenditure is made and
24 whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such
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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

1 time. An individual who becomes a candidate shall retain his or her status as a candidate until such time as
2 that status is terminated pursuant to Section 84214.⁸

3 **Contribution Limits for Candidates of Statewide Offices**

4 A candidate for statewide elective office, including the office of Assembly or Senate, may not
5 accept from a person, any contribution totaling more than the contribution limit in effect during the
6 election.⁹ During the period of January 1, 2015 through December 31, 2016, the contribution limit in effect
7 for candidates for the Assembly was \$4,200 per person per primary or general election.¹⁰ Campaign
8 contributions include payments, forgiveness of a loan, payment of a loan by a third party, or an enforceable
9 promise to make a payment, including non-monetary or in-kind contributions.¹¹ A loan received by a
10 candidate or committee is a contribution unless the loan is received from a commercial lending institution
11 in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for
12 political purposes.¹²

13 **Candidate and Treasurer Liability**

14 Under the Act, it is the duty of the candidate and the treasurer of a controlled committee to ensure
15 that the committee complies with all the requirements of the Act concerning the receipt, expenditure, and
16 reporting of funds.¹³ The candidate and treasurer may be held jointly and severally liable, along with the
17 committee, for violations committed by the committee.¹⁴

18 **SUMMARY OF THE FACTS**

19 Gatto served as a member of the State Assembly, District 43, from June 10, 2010 until December
20 6, 2016. Gatto filed a Candidate Intention Statement for State Senate, District 25, for the June 7, 2016
21 Primary Election. Gatto ultimately withdrew from the election and was not listed on the ballot. The
22 Committee was terminated on June 30, 2016.

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26 ⁸ Section 82007.

27 ⁹ Section 82024, Section 85301, subdivision (a).

28 ¹⁰ Former Regulation 18545, subdivision (a) (2015).

¹¹ Section 82015.

¹² Section 84213.

¹³ Sections 81004, 84100, 84213, and Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

The Committee was formed on or around November 18, 2014 when a Statement of Organization was filed with the Secretary of State (“SOS”). The Committee reported qualifying as a committee on or around December 15, 2014.

The Committee was initially funded largely by transferring funds on or around December 31, 2014 from another committee controlled by Gatto, named Mike Gatto for Assembly 2012, and properly attributed to the original sources. Subsequently, the Committee received additional contributions made directly to the Committee, as opposed to being transferred, from the same sources. For some of these contributors, the total amount received exceeded the contribution limit in place at the time. The details of the over-the-limit contributions are included in the section for the violation below and totaled at least \$2,700 in excess contributions from at least three sources. The Committee deposited the over-the-limit contributions instead of returning the checks to the contributors. The Committee sought permission from the contributors to reattribute the contributions so the Committee would not need to ask for a new check. Then the Committee transferred the funds to another committee controlled by the candidate. The Committee did not make actual use of the funds. The excess contributions were transferred to another committee controlled by the candidate on December 31, 2015, more than 14 days after receipt.

VIOLATIONS

Count 1: Acceptance of Over-the-limit Contributions

The Committee, Gatto, and Leiderman accepted contributions in amounts that were over the contribution limit of \$8,400, in violation of Government Code section 85301, as described below:

Contributor	Amount	Date of Contributions Received by Committee.	Exceeded Limit of \$8,400 by \$	Attribution Requested (if known)	Returned or Transferred to 2018 Committee
Charter Communications	\$7,800	12/31/2014	--	--	--
	\$2,000	08/17/2015	\$1,400	--	12/31/2015
California Defense Counsel PAC	\$8,200	12/31/2014	--	--	--
	\$1,000	09/08/2015	\$800	--	12/31/2015
Sempra Energy	8,700	12/31/2014	--	--	--
	\$1,000	06/29/2015	--	--	--
	\$1,000	10/19/2015	\$500	--	12/31/2015
		TOTAL EXCESS CONTRIBUTIONS	\$2,700		

1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty per count that may be imposed is \$5,000.¹⁵

3 In determining the appropriate penalty for a particular violation of the Act, the Commission
4 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
5 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
6 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
7 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
8 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁶

9 Over-the-limit contributions cause public harm as it creates an unlevel playing field amongst
10 candidates and contributors. Here, the evidence does not suggest that there was intention to conceal,
11 deceive, or mislead the public. In mitigation, the candidate did not appear on the ballot for that election.

12 A comparable case is *In the Matter of Gray for Assembly 2014, Adam Gray, and Douglas L. White*,
13 FPPC Case No. 16/455 (The Commission approved a stipulation on August 17, 2017.) The candidate and
14 his candidate-controlled committee accepted two contributions from a single source that in combination
15 was in excess of the prescribed contribution limits by \$5,000. The Commission imposed a penalty of \$3,000
16 for this count.

17 Here, the amount in excess was lower, \$2,700, but was from three individual sources and the excess
18 was the result of transferring contributions from an old committee while accepting contributions from the
19 same sources to the new committee, unlike the comparable case. In aggravation, the Committee failed to
20 timely file at least two \$5,000 reports to disclose contributions of \$5,000 or more during an election cycle
21 within 10 days of receipt, as required under Section 85309. The Committee failed to report a total of at
22 least \$28,000 over at least two missed reports. Therefore, a penalty of \$2,500 is appropriate.

23 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
24 total penalty of \$2,500 is recommended.

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¹⁵ Section 83116, subdivision (c).

¹⁶ Regulation 18361.5, subdivision (d).

1 **CONCLUSION**

2 Mike Gatto for Senate 2016, Mike Gatto, and Jane Leiderman hereby agree as follows:

3 1. Respondents violated the Act as described in the foregoing pages, which are a true and
4 accurate summary of the facts in this matter.

5 2. This stipulation will be submitted for consideration by the Fair Political Practices
6 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

7 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
8 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
9 liability of Respondents pursuant to Section 83116.

10 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
11 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
12 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
13 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
14 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
15 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
16 reviewed.

17 5. Respondents agree to the issuance of the decision and order set forth below. Also,
18 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
19 \$2,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
20 California—is/are submitted with this stipulation as full payment of the administrative penalty described
21 above, and same shall be held by the State of California until the Commission issues its decision and order
22 regarding this matter.

23 6. If the Commission declines to approve this stipulation—then this stipulation shall become
24 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
25 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
26 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
27 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
28 shall be disqualified because of prior consideration of this Stipulation.

