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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of

FPPC No.12/305

12 COTO FOR SENATE 2012, JOE COTO
13 and VOTE MATTERS

STIPULATION, DECISION, AND ORDER

14 Respondents.

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16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission
18 (Commission), and respondents Coto for Senate 2012, Joe Coto, and Vote Matters (Respondents) hereby
19 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
20 at its next regularly-scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents violated the Political Reform Act by making
4 and receiving campaign contributions in excess of the contribution limit in violation of Government
5 Code section 85301, subdivision (a) and failing to disclose making and receiving campaign
6 contributions in violation of Government Code section 84211, subdivisions (a),(b),(c),(f) and (k), all as
7 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set
8 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing an administrative penalty in the amount of Six
11 Thousand Dollars (\$6,000) against Coto for Senate 2012 and Joe Coto, and \$10,000 against Vote
12 Matters, resulting in a total penalty of Sixteen Thousand Dollars (\$16,000). Respondents submitted with
13 this Stipulation cashier's checks in said amount, made payable to the "General Fund of the State of
14 California," as full payment of the administrative penalty that shall be held by the State of California
15 until the Commission issues its Decision and Order regarding this matter. The parties agree that in the
16 event the Commission refuses to accept this Stipulation, the checks shall become null and void, and
17 within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all
18 payments tendered by Respondents in connection with this Stipulation shall be reimbursed to
19 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the
20 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any
21 member of the Commission, nor the Executive Director, shall be disqualified because of prior
22 consideration of this Stipulation.

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26 Dated: _____
27 Galena West, Chief, on behalf of the Enforcement
28 Division Fair Political Practices Commission

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Dated: _____
Joe Coto, individually and on behalf of Coto for Senate
2012

Dated: _____
Robert Apodaca, on behalf of Vote Matters

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Coto for Senate 2012, Joe Coto, and Vote Matters” FPPC No. 12/305, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Joe Coto (“Coto”) ran for State Senate in 2012. Respondent Coto for Senate 2012 (“Coto Committee”) was his controlled committee and Coto was the treasurer for the Coto Committee. Respondent Vote Matters (“Vote Matters”) is a general purpose committee that made a number of expenditures on behalf of Coto in the 2012 primary election.

Under the Political Reform Act (the “Act”)¹ an expenditure by a general purpose committee made for the benefit of a candidate is considered a contribution to that candidate if the general purpose committee coordinates the expenditure with the candidate’s committee. When such coordination occurs, both committees must disclose the contribution on their campaign statements and the contributions are subject to contribution limits. Vote Matters, on behalf of Coto, coordinated expenditures with the Coto Committee that exceeded the contribution limit and the parties failed to disclose these expenditures as contributions.

SUMMARY OF THE LAW

An “independent expenditure” means an expenditure made in connection with a communication that expressly advocates the election or defeat of a candidate.² An expenditure is not independent, and is a contribution from the person making the expenditure to the candidate for whose benefit the expenditure is made if the expenditure is made under any arrangement, coordination, or direction between the candidate, or the candidate’s agent, and the person making the expenditure.³ Similarly, payments made at the behest of a candidate are considered a contribution to the candidate’s committee unless full and adequate consideration is received from the candidate’s committee for making the payment.⁴ A payment is made at the behest of a candidate if it is made at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or his agent.⁵ In instances where the person making the expenditure retains the services of a person who provides the candidate with professional services related to the campaign strategy for that same election, the law presumes the expenditure is made at the behest of a candidate and is a contribution to the candidate.⁶ This presumption may be rebutted by a showing that there was no coordination between the candidate or the candidate’s agent, and the person making the expenditure.

A committee must disclose all contributions of \$100 or more made to a candidate, and expenditures made at the behest of a candidate, on its campaign statements.⁷ A candidate that

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

² Section 82031.

³ Section 85500, subd. (b)(3).

⁴ Section 82015.

⁵ Regulation 18225.7.

⁶ Regulations 18225.7, subd. (c)(3)(A) and 18550.1, subd. (b)(3).

⁷ Section 84211, subd. (b) and (k).

receives contributions of \$100 or more from a committee in the form of expenditures must disclose receiving those contributions on his campaign statements.⁸ But a candidate does not have an obligation to disclose independent expenditures made on the candidate's behalf.

In 2012, a person could not make, and a candidate for State Senate could not accept, cumulative contributions from that person exceeding \$3,900 per election.⁹

SUMMARY OF THE FACTS

Vote Matters' stated mission is to increase Latino voter registration. Robert Apodaca ("Apodaca") is the principal officer for Vote Matters. He directed all expenditures by Vote Matters during 2012. Apodaca and Coto have known each other since the early 1970s and have worked together on various projects over the years related to Latino participation in the elective process. At various times, Coto and Apodaca worked together on fundraising efforts and Coto sought Apodaca's input on policy and political issues.

Salvador "Chava" Bustamante ("Bustamante") and Steve Arevalo ("Arevalo") are long-time political consultants and activists. Coto has known both men for some time. In November of 2011, Coto, Bustamante, Arevalo, and Apodaca met at the Fairmont Hotel in San Jose. According to Bustamante and Arevalo, Coto set up the meeting to introduce Arevalo and Bustamante to Apodaca, who they hoped could provide financial support for an organization they were creating to register Latinos to vote. Apodaca decided not to provide financing for the organization. Shortly after the meeting, in December of 2011, the Coto Committee hired Bustamante and Arevalo to run a "signature in lieu" campaign to place Coto's name on the ballot for State Senate District 15 for the 2012 primary election.

For the Coto campaign, Bustamante and Arevalo hired and managed a staff of ten to fifteen people to conduct a "signature in lieu" field operation collecting signatures from voters to qualify Coto for the ballot. The Coto Committee purchased voter data that Bustamante and Arevalo used to identify and locate voters likely to support Coto. Bustamante and Arevalo obtained enough signatures to qualify Coto for the ballot by the February 23, 2012 deadline.

Bustamante and Arevalo continued to work for the Coto Committee after the signature in lieu campaign until the end of April 2012. They continued to oversee the field operation, which consisted mainly of targeting and contacting potential voters and handing out campaign materials in support of Coto.

On February 20, 2012, while still working for the Coto Committee, Bustamante presented a written proposal to Apodaca for an independent expenditure campaign by Vote Matters in support of Coto. Apodaca and Bustamante met to discuss the proposal, but Apodaca rejected the proposal. Coto contends he did not know Bustamante approached Apodaca with a proposal and the Enforcement Division did not uncover any evidence to suggest that Coto knew of the proposal.

⁸ Section 84211, subd., (a),(c), and (f).

⁹ Section 85301, subd. (a) and Regulation 18545, subd. (a)(1).

After the Coto Committee informed Bustamante and Arevalo that their field operation would end, Bustamante presented a different proposal to Apodaca in late April, 2012. The proposal was for a “get out the vote” field operation supporting Coto. This time, Apodaca hired Bustamante and Arevalo. Bustamante and Arevalo began working for Vote Matters on or about May 1, 2012, after their work with the Coto Committee terminated. They hired, trained and managed a staff of 12 to 15 field canvassers, many of whom had worked for the Coto Committee until their jobs ended. The “get out the vote” operation consisted of walking precincts and talking to voters, distributing door hangers and flyers, and other typical field operation activities. The Enforcement Division did not discover evidence showing that Coto knew Bustamante approached Apodaca again, or that Bustamante and Arevalo began working for Vote Matters on or about May 1, 2012 and Coto denies having any knowledge at the time of Bustamante’s proposal or his and Arevalo’s subsequent employment with Vote Matters

While working for the Coto Campaign, Bustamante and Arevalo gained knowledge about the precincts and voters of Senate District 15, and the Coto Committee strategy for the campaign. They used that knowledge and experience they gained from working for the Coto Committee to create and execute a “get out the vote” field operation for Vote Matters that complimented the efforts of the Coto Committee. Due to Bustamante and Arevalo’s positions with both the Coto Committee and Vote Matters the law presumes certain expenditures by Vote Matters were made in coordination with the Coto Committee, and Coto and Vote Matters were unable to provide evidence to rebut the presumption of coordination.

Vote Matters’ first expenditure supporting Coto was a set of mailers sent on April 26, 2012 that cost \$16,557. This was the only expenditure in support of Coto that Vote Matters made prior to formally hiring Bustamante and Arevalo. The table below details the expenditures by Vote Matters in support of Coto, and in opposition to Coto’s opponent in the primary election, Jim Beall (“Beall”).

Statement Period	Amount of Expenditures Supporting Coto	Amount of Expenditures Opposing Beall	Total
1/1/12 – 5/19/12	\$95,660	\$1,479	\$97,139
5/20/12 – 6/30/12	\$36,628	\$284	\$36,911
Total	\$132,288	\$1,763	\$134,050

*all amounts listed in this exhibit are rounded to the nearest dollar

The expenditures reported by Vote Matters went to pay for numerous mailers, as well as to pay the costs associated with the “get out the vote” field operation run by Bustamante and Arevalo. The Enforcement Division found no evidence that Bustamante and Arevalo were involved in creating Vote Matters’ mailers, or that Vote Matters coordinated the content, timing, location, mode or distribution of those mailers with the Coto Committee. Nonetheless, the expenditures for the benefit of Coto were the vast majority of Vote Matters’ activity during 2012.

In the primary election, Coto and Beall both qualified for the 2012 general election. Beall defeated Coto in the general election.

Coto and Apodaca both deny having any communications with each other about Vote Matters' expenditures on behalf of Coto and its hiring of Bustamante and Arevalo to conduct a field operation on Coto's behalf a few days after their employment with the Coto Committee ended.

VIOLATIONS

Count 1 (as to Coto Committee and Coto) – Receiving Contributions Over the Limit

After hiring Bustamante and Arevalo, Vote Matters made expenditures on behalf of Coto totaling \$117,493 for the primary election. Because Bustamante and Arevalo also provided professional campaign services to the Coto Committee for the primary election, those expenditures by Vote Matters supporting Coto were not independent expenditures but rather contributions to the Coto Committee. As a result, the Coto Committee received cumulative contributions from Vote Matters that exceeded the \$3,900 contribution limit for the primary election in violation of Section 85301, subdivision (a) and Regulation 18545, subdivision (a)(1).

Count 2 (as to Coto Committee and Coto) – Failing to Disclose Receipt of Contributions

The expenditures by Vote Matters on behalf of Coto made after Bustamante and Arevalo began working for Vote Matters on May 1, 2012 were not independent expenditures but rather contributions to the Coto Committee. The total amount of those contributions was \$117,493. The Coto Committee's campaign statements for the statement periods ending on May 19, 2012, and June 30, 2012 did not disclose receipt of the contributions from Vote Matters, in violation of Section 84211, subdivisions (a), (c), and (f).

Count 3 (as to Vote Matters) – Making Contributions Over the Limit

After hiring Bustamante and Arevalo, Vote Matters made expenditures on behalf of Coto totaling \$117,493 for the 2012 primary election. Because Bustamante and Arevalo provided professional campaign services to the Coto Committee for the primary election, the expenditures by Vote Matters supporting Coto made after May 1, 2012 were not independent expenditures but rather contributions to the Coto Committee. As a result, Vote Matters' expenditures exceeded the \$3,900 contribution limit for the primary election in violation of Section 85301, subdivision (a) and Regulation 18545, subdivision (a)(1).

Counts 4 and 5 (as to Vote Matters) – Failure to Disclose Making Contributions

The expenditures by Vote Matters on behalf of Coto made after Bustamante and Arevalo began working for Vote Matters on May 1, 2012 were not independent expenditures but rather contributions to the Coto Committee. Vote Matters' campaign statements for the statement periods ending on May 19, 2012, and June 30, 2012 improperly identified all expenditures on behalf of Coto as independent expenditures, rather than contributions to the Coto Committee, in violation of Section 84211, subdivision (k).

CONCLUSION

This matter consists of five counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count, and \$25,000 total.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

Improperly designating coordinated expenditures as “independent” provides an avenue for candidates, general purpose committees, and their contributors, to skirt the Act’s contribution limits and disclosure requirements. It also puts opposing candidates who comply with contribution limits at an unfair disadvantage in the election. In this case, Vote Matters hired Bustamante and Arevalo who it knew, as a result of their having managed a field operation for the Coto Committee, would have knowledge of the Coto Committee’s campaign strategy for the primary election. This resulted in a substantial advantage for Coto in the primary election and denied the public information about the true source of the funds used to support Coto’s candidacy.

In assessing penalties, the Commission also considers penalties in prior cases involving similar violations. The following cases concerned similar violations:

- *In the Matter of Russell Bogh, Russ Bogh for Senate 2010, and Dana Hopkins*, FPPC No. 13/005 (“*Bogh*”) (Commission approved stipulation on January 16, 2014): This case resulted in a penalty of \$3,000 for a State Senate candidate and his committee for accepting cumulative contributions from his family’s business that exceeded the contribution limit by \$7,100.
- *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652 (“*Chacon*”) (Commission approved stipulated decision on February 10, 2011). The respondents failed to disclose numerous contributions of \$100 or more over three statement periods. Respondent stipulated to three counts, one for each statement period and paid a penalty of \$2,500 for failing to disclose 21 contributions totaling \$22,388 in one statement period; \$2,500 for failing to disclose 21 contributions totaling \$11,650; and \$2,000 for failing to disclose two contributions totaling \$3,100.
- *In the Matter of Joshua Mitchell and Joshua Mitchell for Mayor 2012*, FPPC No. 13/138 (“*Mitchell*”) (Commission approved stipulated decision on June 19, 2014). In one statement period the respondents failed to timely disclose 39 contributions of \$100 or more that totaled \$7,041.76. The respondents paid a penalty of \$3,000 for the violation.
- *In the Matter of Voters of a New California and Joaquin Ross*, FPPC No. 10/470 (“*Voters for a New California*”) (Commission approved stipulation on April 25, 2013): Joaquin Ross, a campaign manager for a State Assembly candidate, was also the principal officer for Voters for a New California, a general purpose committee that produced three

sets of mass mailers supporting the candidate that cost \$28,892. Voters for a New California improperly identified the mass mailers as independent expenditures on a pre-election statement. The committee agreed to a penalty of \$3,000 for making contributions over the limit and \$3,500 for falsely reporting the contributions as independent expenditures.

As for the violations by Coto and the Coto Committee, the *Bogh* case resulted in a penalty of \$3,000 for receiving contributions over the limit. That case involved a contribution that exceeded the contribution limit by \$7,100 whereas the contribution received by the Coto Committee exceeded the limit by over \$113,000. The *Chacon* and *Mitchell* cases involved violations for failure to disclose contributions that were much smaller than in this case, but they involved similar violations that resulted in similar types of public harm, although on a smaller scale.

The nature of the violations in *Voters for a New California* are rather similar to Vote Matters' violations since both instances involved agents who worked for a candidate committee and participated in the making of expenditures by a general purpose committee in support of that candidate. The agent in *Voters for a New California* had a much greater level of involvement in the general purpose and candidate-controlled committees than Arevalo and Bustamante had in the present case, but Vote Matters' total coordinated expenditures greatly exceeded the coordinated expenditures in *Voters for a New California*. Given the similar nature of the violations in these two cases, similar per count penalties are justified here.

Coto maintains that he was not aware of the contributions. But given the frequency and large dollar amount of the expenditures made by Vote Matters, and the role that former Coto Committee employees played in those expenditures, the Coto Committee should have been aware of the expenditures made by Vote Matters supporting the Coto Committee.

In mitigation, Coto, the Coto Committee, Vote Matters and Apodaca fully cooperated with the Enforcement Division of the Commission throughout its investigation of this matter.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$3,000 for Counts 1, 2 and 3, and \$3,500 for Counts 4 and 5, resulting in a total penalty of \$16,000.