ERNEST F. DALIDIO, JR.

███████████████

July 27, 2007

Enforcement Division
Fair Political Practices Commission
428 J. Street, Suite 620
Sacramento, CA 95814

Re: San Luis Obispo Downtown Association

Dear Sir or Madam:

Please accept the following complaint:

A.   **Name of the Person Making Complaint**

Ernest F. Dalidio, Jr.

███████████████

B.   **Person who Allegedly Violated the Political Reform Act**

San Luis Obispo Downtown Association ("SLO DA")
1108 Garden Street, Suite 210
San Luis Obispo, CA 93406

C.   **Provisions of the Political Reform Act Allegedly Violated**

Pursuant to *Govt. Code* §81002(a), "[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited."

SLO DA's undocumented use of public funds also likely violated numerous sections under the Political Reform Act of 1974 such as failing to file campaign and other required statements under *Govt. Code* §§ 84200 – 84225 and failing to enforce contribution limitations under *Govt. Code* §85100.

By making contributions on behalf of the public by using public funds, SLO DA likely violated *Govt. Code* §84301, which states that "[n]o contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes."

D.   Description of Facts Constituting Alleged Violation

In 2004, the San Luis Obispo City Council approved annexation of the Dalidio Ranch to allow for its development in the City under what was known as the "Marketplace" project. After approval of the Marketplace project, signatures were gathered by opposition to the development resulting in a voter referendum known as Measures "A", "B" and "C". The first measure qualified for the ballot on September 8, 2004. The referendum was placed on the April 26, 2005 ballot in the City of San Luis Obispo and resulted in overturning the San Luis Obispo City Council's decision to annex the Dalidio Ranch.

After the City referendum vote, the owner of Dalidio Ranch went through the county initiative process. The ballot initiative known as "Measure J" was placed on the San Luis Obispo County ballot on June 13, 2006 and was voted on by County residents on November 7, 2006. The initiative passed by 65% of the vote allowing for the development of Dalidio Ranch in the County.

SLO DA used public funds to influence voters in violation of California law. Attached to this complaint as Exhibit "A" is documentation evidencing SLO DA's unlawful use of public funds with respect to both the referendum and the initiative measures. Such documentation includes: (i) meeting minutes of SLO DA evidencing SLO DA's continued use of public resources to oppose both the referendum and initiative; (ii) literature put out by SLO DA trying to influence voters regarding the referendum and initiative elections; and (iii) an Article by Deborah Cash, a SLO DA employee, contending that SLO DA was unaware that they were not permitted to use public funds for practical purposes.

It is well settled that public funds cannot be used to take a position with regard to a referendum or initiative that is on the ballot. See *73 Op. Atty Gen. Cal. 256* (1990), which is

attached for reference as Exhibit "B". As acknowledged on its website,
http://www.downtownslo.com, SLO DA is a public agency, which "was established in 1975 to
address the needs of Downtown Merchants as a whole, is an advisory body to the City Council
funded by sales tax proceeds from its district. While not an actual department of the City, as a
government agency it follows the same guidelines as any public entity." Despite being a public
agency, SLO DA used public funds in violation of California law to support the referendum to
overturn the San Luis Obispo City Council's vote to annex the Dalidio Ranch and then continued
to use public funds in violation of California law to oppose the Measure J initiative. Only after
significant public funds and resources were used and significant time had passed did SLO DA
bother to review its obligations as a public agency during city and county elections and
discontinue its conduct. Nevertheless, the public funds that were used to influence the initiative
and the referendum were never properly disclosed or accounted for as required under Political
Reform Act of 1974.

The use of public resources by SLO DA to influence voters with respect to the
referendum and the initiative constitute contributions under the Political Reform Act of 1974
and, therefore, must be reported accordingly. California Code of Regulations, title 2, §18243(a)
provides in pertinent part that

> "the payment of salary, reimbursement for personal expenses, or other
> compensation by an employer to an employee who spends more than 10% of his
> compensated time in any one month rendering services for political purposes is a
> contribution, as defined in *Government Code Section 82015* and *2* Cal. Adm.
> Code Section 18215, or an expenditure, as defined in *Government Code Section
> 82025* and *2* Cal. Adm. Code Section 18225, by the employer if: (1) The
> employee renders services at the request or direction of the employer; or (2) The
> employee, with consent of the employer, is relieved of any normal working
> responsibilities related to his employment in order to render the personal
> services, unless the employee engages in political activity on bona fide, although
> compensable, vacation time or pursuant to a uniform policy allowing employees
> to engage in political activity."

Subsection b goes on to provide that "[p]ersonal services are rendered for political
purposes if they are carried on for the purpose of influencing or attempting to influence the
action of the voters for or against the nomination or election of one or more candidates, or the
qualification or passage of any measure…" (Emphasis added).

As shown in the documentation provided, Deborah Cash, SLO DA's employee, used considerable time and resources to influence the referendum and initiative. Such activity constitutes a contribution under the Political Reform Act of 1974, and SLO DA should have disclosed such information accordingly.

SLO DA is likely a committee under the Political Reform Act of 1974. Under *Govt. Code* §82013,

> "Committee" means any person or combination of persons who directly or indirectly does any of the following: (a) Receives contributions totaling one thousand dollars ($1,000) or more in a calendar year; (b) Makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year; or (c) Makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees.

Based on the information provided, it is likely that SLO DA would be deemed a committee under the Political Reform Act of 1974, and therefore, would be required to follow all guidelines set forth therein, including filing campaign statements. There is no evidence, however, to indicate which indicates that such guidelines were followed.

E.   Name and Addresses of Potential Witnesses, if Known

Deborah Cash
Administrator, SLO Downtown Association
1108 Garden St. Suite 210
P.O. Box 1402
San Luis Obispo, CA 93406
(805) 541-0286

Conclusion

The minutes of the SLO DA throughout 2004, 2005 and 2006 show that opposition to the Dalidio project consumed much of the time and energy of its members and staff. Some of these meetings were attended by members of the San Luis Obispo City Council. This activity was not abated but only intensified once the referendum and thereafter the initiative qualified for the ballot. The press release of April 18, 2005 where the SLO DA announced that it was hosting a

media conference to oppose the Marketplace project evidences the political activity engaged in by this public agency just one week before the election on the referendum.

The use of public funds and public employees' services to influence elections is not only illegal, but also a direct affront to those downtown businesses that supported the Dalidio project.

Thank you for your assistance in this matter.

Very truly yours,

Ernie F. Dalidio, Jr.