

# SMCLC Complaint to the FPPC

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## SMCLC Complaint to the FPPC

Diana Gordon, co-chair of the Santa Monica Coalition for a Livable City ("SMCLC"), files this Complaint on behalf of SMCLC. SMCLC is a nonprofit group, formed by residents in 2005 concerning development and governance issues in Santa Monica. See [www.smclc.net](http://www.smclc.net) for more information about SMCLC and its activities.

### Summary of Complaint

This Complaint is made in relation to four (4) election mailers widely distributed to voters in Santa Monica in October solely concerning the November 2, 2010 Santa Monica City Council election by a group calling itself "Santa Monicans for Quality Government" ("SMQG").

SMQG, through its officers, registered as a City General Purpose Committee in Santa Monica to support or oppose local, Santa Monica candidates. Thereafter, in violation of The Political Reform Act and FPPC rules, SMQG failed to file accurate, timely campaign disclosures with the City concerning these city mailers.

Instead, SMQG engaged in a series of actions, including the repeated failure to file timely and accurate campaign disclosure reports in Santa Monica, the effect of which was to conceal from Santa Monica voters that developers with big projects in the City were financing these city mailers which were produced and mailed by SMQG. Both of SMQG's officers are very experienced, long term political operatives, highly knowledgeable of the campaign disclosure laws in California as discussed more fully in the Complaint.

This Complaint is made against SMQG; SMQG's President, Fred Huebscher; and SMQG's Treasurer, Kinde Durkee. Mr. Huebscher's address is 924 16<sup>th</sup> Street, Hermosa Beach, CA 90254, telephone (310.374.0568). Ms. Durkee's address is 1212 S. Victory Blvd, Burbank, CA 91502, telephone (818.260.0669).

In summary, the facts and evidence as set forth in this Complaint establish the following obligations and violations of such obligations by SMQG and its responsible officers:

(1) On October 13, 2010, SMQG registered with the City of Santa Monica and the California Secretary of State as a "City" General Purpose Committee ("CityGPC") "to support or oppose candidates." By the time it registered, SMQG had already received contributions on October 6<sup>th</sup> and 7<sup>th</sup> totaling \$31,000.

(2) Once SMQG so registered, it was obligated to timely and accurately report to the City the legally required information as to all contributions, including late payments, it received for the four city mailers it produced and mailed which solely involved the City election.

(3) SMQG did not and could not legally terminate its CityGPC in order to avoid filing accurate campaign disclosure statements as to contributions and expenditures for all four of its city mailers. This is what it attempted to do by filing a terminating notice with the City Clerk. (Govt. Code Section 84214 and FPPC rules prohibit a recipient committee like SMQG from terminating its filing obligations to the City where it still has ongoing activities which must be disclosed following the alleged termination). SMQG produced and mailed four local election mailers to Santa Monica households during October; and therefore the Form 410 termination statement that SMQG filed with the City on October 25, 2010, after it had sent out only one or two city mailers, did not relieve SMQG of its duty to file accurate campaign disclosure statements, including late payment statements, with the City for all four of the exclusively city mailers that were still being mailed to Santa Monica households.

(4) Moreover, in order to have properly terminated its CityGPC once its city activities were over, SMQG additionally was required to file its terminating notice with the Secretary of State; SMQG has not filed for termination as a recipient committee with the Secretary of State and according to the Secretary of State, SMQG's CityGPC is still "active." Its purported termination is thus invalid for this reason alone.

(5) An additional and untimely filing by SMQG in late October with the State as a "state" Slate Mailer Organization ("StateSMO") did not relieve SMQG of its campaign disclosure reporting obligations to the City as to the city mailers that it produced and mailed solely concerning the City election; FPPC rules state that a "slate mailer organization" "which produces one or more slate mailers supporting or opposing candidates or measures voted on in only one city shall file campaign reports in the same manner as city general purpose committees . . . ." (Govt. Code Section 84218(c)(3)). SMQG failed to timely do this, as well.

(6) The SMQG CityGPC campaign disclosure statement received by the City Clerk on October 25, 2010, stated under penalty of perjury, that SMQG had no reportable activity – neither expenditures nor contributions. This statement was incomplete and inaccurate. As of the cutoff date of October 16, 2010, SMQG had already received contributions of \$31,000 and incurred expenditures of \$12,750 to produce mailers solely supporting City Council candidates.

(7) Instead of being properly and timely reported to the City, these contributions and expenditures were disclosed only on SMQG's StateSMO campaign disclosure statement which it filed with the State and the County, instead of with the City of Santa Monica as legally required.

(8) All of these contributions that SMQG itemized on its "state" campaign disclosure statement were from major developers and hotels with large development projects in Santa Monica that are expected to come before the City Council. This was vital information for Santa Monica voters to have in a timely manner before the election in order to make an informed voting decision.

(9) Thereafter, SMQG reported three late payments totaling \$10,000 only to the state, not also to Santa Monica as required by law (again these payments were from developers with pending development projects in Santa Monica as well as a law firm that represents them); and two of the late payment reports appear to be incorrect on their face (See Exhibit "24", and Section E, 2, *infra*)

(10) Other violations as discussed in this Complaint, including: (a) the failure to provide addresses for SMQG and its two officers in its initial CityGPC filing; (b) the failure to timely file SMQG's Statement of Organization as a slate mailer organization with the City Clerk; (c) the incorrect filing of SMQG's StateSMO campaign statements in Los Angeles County instead of in Santa Monica as required; and (d) the failure to report any payment from the two Councilmembers who allegedly "paid for" the four city mailers that SMQG produced and mailed to Santa Monicans in the City Council election.

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Based on a conversation with a representative of the FPPC, it is our understanding that the FPPC does not investigate complaints of deceptive or misleading statements in election mailers. Therefore, such allegations are not included in this Complaint. If that understanding is incorrect, SMCLC will submit additional information detailing the deceptive and misleading statements relating to SMQG's various mailers.

Statement of Supporting Evidence

A. SMQG Registers as a City General Purpose Committee in Santa Monica

The first filing SMQG made to any governmental entity concerning its local election activities for the 2010 Santa Monica election occurred on October 13, 2010.

On that date SMQG registered as a "City" General Purpose Committee (hereinafter "CityGPC") with the Santa Monica City Clerk. SMQG's Treasurer, Kinde Durkee stated that SMQG had qualified as a CityGPC on October 6<sup>th</sup> and described its activity under penalty of perjury as:

"To support and/or oppose candidates and/or ballot measures."  
(See Exhibit "1," Form 410).<sup>1</sup>

SMQG listed Fred Huebscher as its President and Kinde Durkee as its Treasurer (Id.) No street or mailing addresses were provided for SMQG or its two officers as required by law.

Mr. Huebscher is the head of The Political Scientists. On its website, Mr. Huebscher is described as a "consultant specializing in political direct mail for local candidates" and an "industry leader" in producing and mailing slate mailers for over 20 years. (See Exhibit "2," pp.1-2)

On its website Durkee & Associates is described as "expert" in specialized accounting and reporting for political campaigns. (See Exhibit "3") We understand that Ms. Durkee has been subject to multiple FPPC warning letters and, in addition, recently was heavily fined by the FPPC.

The following day, on October 14, 2010, SMQG filed a Form 410 with the Secretary of State for its CityGPC. This time, SMQG did include addresses for SMQG and its two officers. (See Exhibit "4")

**B. SMQG Also Later Registers as a Slate Mailer Organization with the Secretary of State to Engage in "State" Activity**

On October 22, 2010, SMQG and its same officers additionally registered SMQG as a Slate Mailer Organization and described its level of activity as "state" activity under penalty of perjury. (See Exhibit "5," Form 400)

As with the earlier SMQG CityGPC registration, this initial StateSMO filing lists Mr. Huebscher as SMQG's President and Ms. Durkee as its Treasurer at the same addresses eventually provided to the Santa Monica City Clerk in a subsequent SMQG filing (See Exhibit "13", infra).

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<sup>1</sup> The Exhibits which are copies of SMQG filings are the result of searches of the City, County and State offices for all filings made by SMQG either as a CityGPC and/or a StateSMO using both ID numbers that were assigned to SMQG by the Secretary of State.

Although SMQG also used October 6<sup>th</sup> as its qualifying date (the same date used for SMQG's CityGPC) and its treasurer claimed to have executed the form on October 15<sup>th</sup>; it was not filed with the Secretary of State until a full week later on October 22<sup>nd</sup>. (See Exhibit "5")

This SMQG filing was late. FPPC rules require that a slate mailer organization "shall" file its statement of organization "within 10 days after the slate mailer organization receives or is promised five hundred dollars (\$500) or more for producing one or more slate mailers." (Govt. Code Section 84108 (c)).

SMQG eventually reported having received initial contributions of \$11,000 on October 6<sup>th</sup>; so its Statement of Organization was due by October 16<sup>th</sup> at the latest (and earlier if more than \$500 had been promised before the \$11,000 was actually received. (See Exhibit "14")

On its face, Form 400 requires that if applicable, a slate mailer organization must also file a copy of its registration with the city officer where the organization must file its original campaign disclosure statements. SMQG did not file a copy of Form 400 with the City Clerk in Santa Monica when it filed with the state as it should have due to its City mailer activities.

Additionally, SMQG did not advise the Secretary of State that it had very recently registered with the State and the City of Santa Monica as a CityGPC for City election activities. (Id.) Instead, SMQG's treasurer verified under oath that SMQG was not a committee pursuant to Govt. Code Section 82013, did not provide SMQG's recipient committee ID number, and did not submit any campaign disclosures for its recipient activities for the required time period. (See Exhibit "5")

As the result of having filed statements of organization with the Secretary of State both as a CityGPC and as a StateSMO, SMQG obtained two different ID numbers for its allegedly different activities: The SMQG CityGPC ID is 1332962; its later registered StateSMO ID is

1333300. According to a search of the Secretary of State records, both SMQG entities are currently "active." (See Exhibits "6," "7")

By virtue of its dual registrations, SMQG was obligated to comply with all campaign disclosure requirements both as a CityGPC and a StateSMO.

C. Shortly After Forming its City GPC, SMQG Began Producing and Mailing a Series of Four City Mailers Solely Concerning the Santa Monica City Council Election

In the Santa Monica election, there were two council races, one for a four-year term, and a second race for a two-year term. Pam O'Connor, Kevin McKeown, Bob Holbrook, and Ted Winterer, among others, were running for four-year terms; Gleam Davis and Terry O'Day, among others, for two-year terms.

Mr. Huebscher, in addition to setting up and operating SMQG, was the campaign consultant for two sitting City Councilmembers (Pam O'Connor and Gleam Davis) who were running in this election. Ms. Durkee, in addition to serving as SMQG's treasurer, was the treasurer for sitting City Councilmember Terry O'Day, who was also running in this election.

As soon as SMQG registered with the City, it began producing and mailing expensive, multi-colored City mailers to Santa Monica residents. SMQG produced a series of four such mailers which dealt solely with the local City Council race. (See Exhibits "8," "9," "10," and "11." The first mailer (Exhibit "8") was produced, mailed and received by Santa Monica households before October 21, 2010. (See Exhibits "18" and "19" (October 21 and 22, 2010 news articles entitled "Police Union Calls Campaign Mailer with its Logo 'Disingenuous;'" and "Campaign mailer draws rebuke from public safety associations")

SMQG's second mailer (Exhibit "9") was received by October 25, 2010 (the date when SMQG's purported termination as a City GPC was filed with the City Clerk). When I picked up my mail at the Post



Office on October 25, 2010, both of these first two mailers were included in it.

Thereafter, Santa Monica households received a third and fourth city mailer from SMQG featuring the same photos of the same four City Council candidates. (See Exhibits "10" and "11") Mr. Huebscher and Ms. Durkee's clients, Councilmembers O'Connor, Davis and O'Day, were all prominently featured along with another Councilmember. No other race or measure was included in these mailers. They dealt exclusively with the local city election. I received these mailers on October 27<sup>th</sup> and 28<sup>th</sup>.

After these four City mailers, I and other Santa Monica households received a different type of mailer from SMQG the weekend before the election. This time the mailer purported to be a "Santa Monica Democratic Voter Guide," styled to look as though it had come from the Democratic Party. This mailer included both state and local candidates and measures, including the Santa Monica City Council race. (See Exhibit "12")

With the exception of this one Voter Guide received by Santa Monica households just prior to the election, all of SMQG's city mailers targeted only the Santa Monica City Council race. And all of them were mailed and received before the SMQG Voter Guide.

#### D. Developer Funding of SMQG's City Mailers

On October 6<sup>th</sup> and October 7<sup>th</sup>, SMQG received contributions totaling \$31,000 in support of two Councilmembers running in the Santa Monica City Council election. (See Exhibit "14," Form 401 filed with the County of Los Angeles instead of Santa Monica. On October 28<sup>th</sup> and 29<sup>th</sup> SMQG received additional contributions totaling \$10,000. (See Exhibit "15", Form 498s) All of these contributions were in support of two City Council candidates. All of these contributions were from developers with pending projects before the City as well as one law firm which represents some of these developers. (See Exhibit "22", *The Lookout News*, November 2, 2010, article entitled "Controversial Flyers Have Developer Funding")

None of these contributions were timely reported to the City Clerk, in violation of the applicable FPPC rules, and therefore deprived Santa Monica voters of important information as to who funded the mailers and how much money was being spent on them.

E. SMQG's Campaign Disclosure Filings

1. The October 25<sup>th</sup> Santa Monica Filing Claiming No Reportable Financial Activity

Despite campaign contributions received as early as October 6<sup>th</sup> and the production and mailing of at least one SMQG city mailer that Santa Monica households had already received well before October 21<sup>st</sup>, (when complaints about them were first reported,) and despite a second mailing before October 25<sup>th</sup>, SMQG's treasurer filed a CityGPC campaign statement with the City Clerk, under penalty of perjury, that SMQG had not received any contributions or loans, incurred any expenditures, and had no cash or cash equivalents or outstanding debts in support or opposition to any City candidate for the period 01/01/2010-10/16/2010. (See Exhibit "16," Form 460)

SMQG concurrently filed a purported notice of termination of its CityGPC with the City Clerk. (See Exhibit "13", Form 410)

Despite SMQG's alleged termination of its City election activities as a "CityGPC" as of October 25, 2010, Santa Monica households continued to receive city mailers from SMQG after that date solely concerning the City Council election. Exhibit "9" had been received by Santa Monica households on October 25th; Exhibit "10" on or about October 27<sup>th</sup>; and Exhibit "11," on or about October 28th.

Equally significant, SMQG has never filed a notice of termination with the Secretary of State as required by the FPPC rules, in order to properly terminate its CityGPC. The original and one copy of the terminating Statement of Organization must be filed with the Secretary of State's Political Reform Division, in addition to filing a copy with the local filing officer with whom original campaign

statements are filed (2 CCR section 18404). There is no such filing on record and the Secretary of State reports SMQG's CityGPC as "active." (See Exhibit "6")

## 2. The SMQG Campaign Disclosure Filings with the State Disclose Only City Related Contributions and Expenditures, and They Should Have Been Timely Reported to Santa Monica

As stated earlier, SMQG had received \$31,000 in reportable contributions and spent \$12,750 for its city mailers as of October 16, 2010. Instead of reporting this to the City Clerk as it was required to, SMQG utilized its newly formed StateSMO committee and filed its City related contributions and expenditures with the County and the State on or about October 25, 2010. (See Exhibits "14" and "17," Form 401).<sup>2</sup>

Independent of SMQG's having wrongly characterized these reported contributions and expenditures as "state" SMO activities when they were for local city election activities, SMQG also had an obligation to report them in a timely manner to Santa Monica's City Clerk, which it refused to do.

FPPC rules state that a "slate mailer organization" "which produces one or more slate mailers supporting or opposing candidates or measures voted on in only one city shall file campaign reports in the same manner as city general purpose committees . . . ." (Govt. Code Section 84218(c)(3)). SMQG failed and refused to timely do this.

In the days after its reporting was due, SMQG's President, Fred Huebscher, repeatedly stonewalled the press and refused to provide information to the press or to the City Clerk as to who was funding the City mailers or how much SMQG had received in donations or how much had been expended on them. (Exhibits "18," "19," "20" and "21")

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<sup>2</sup> According to the Los Angeles County Clerk's office, the Form 401 filing it received from SMQG should not have been filed there inasmuch as it showed no reportable county activity. We were told this when we obtained the filing .

On October 26<sup>th</sup>, in a press interview, Mr. Huebscher stated that SMQG would file its required disclosures with the Secretary of State, not with the Santa Monica City Clerk's office because the group plans to play a role in elections outside of Santa Monica. (See Exhibit "20") Thereafter, the press was unable to obtain copies of any SMQG filings from the Secretary of State's office. (Id.), and (See Exhibit "21" --- press report that no financial disclosure documents were available from the Secretary of State as of Friday, October 29th).

Additionally, all four city mailers that SMQG produced and mailed to Santa Monica voters concerning the City Council election indicated with an asterisk that the mailings were paid for and their appearances authorized by Councilmembers Pam O'Connor and Gleam Davis. (See Exhibits "8," "9," "10," and "11")

However, SMQG's Form 401 filing states that SMQG has not received a payment of \$100 or more from either Councilmember Pam O'Connor or Gleam Davis. It also states that it has not received any payments of less than \$100. (See Exhibits "14" and "17")

Again on October 28<sup>th</sup> and 29<sup>th</sup>, SMQG bypassed Santa Monica when it filed three Form 498 Late Payment Partial Reports (all of which listed contributions solely for the City Council race) only with the State (See Exhibit "14"). Govt. Code Section 84220 required SMQG to report all payments of \$2500 or more for the purpose of supporting any candidate in a slate mailer in the same manner as a recipient committee. This means SMQG should have filed this information with the City Clerk.

There appears to be an additional problem with two of the late payment filings; SMQG reports that Village Trailer Park LLC and Armbruster, Goldsmith & Delvac LLP each made total reportable contributions of only \$1250. However, each firm is also reported as having contributed the sum of \$1250 twice --- for two City Council candidates. So it would appear that these two firms each contributed \$2500, (which is what triggered the reporting), not \$1250; and the late payments actually total \$10,000 (\$5,000 from Hines 26<sup>th</sup> Street LLC, and \$5,000 from these two firms). This \$10,000 is also

consistent with the statement by SMQG's President to the press that as of November 1st, SMQG had received \$41,000 in contributions. (See Exhibit "22")

Because of the inconsistency in reporting, SMQG should, among other things, be required to file amended reports accurately reporting the actual payments it received from these three entities.

F. Growing, Unmet Demands for SMQG to Timely and Accurately Disclose Its Contributions and Expenditures for its Santa Monica City Mailers

By October 21, 2010, the content of the first widely distributed mailer produced and mailed by SMQG, relating solely to the City Council race, was the subject of press articles and complaints. The Santa Monica Police and Firefighters' Associations denounced the mailer as "deceptive," as a "misrepresentation" of their endorsements, and as a misuse of their logos. (See Exhibits "18" and "19;" these two news articles are attached to show their publication dates and that the SMQG mailer had been received by Santa Monica households earlier that week; thus also showing that SMQG had to have produced and mailed it before October 21, 2010 and therefore also had to have incurred reportable expenditures and contributions by October 16, 2010, which SMQG did not report to the City Clerk)

SMQG's officers refused to provide SMQG's StateSMO campaign disclosure statements or explain who was funding the deceptive City mailers and how much money was involved in response to repeated requests from the press and telephone calls from the City Clerk. (See Exhibits "18," "19," "20," and "21")

By October 25, 2010, SMQG had produced and mailed a second SMQG mailer concerning the City Council election which had been received by Santa Monica voters. SMQG's third and fourth mailers followed. As with the first SMQG mailer, the fourth SMQG mailer riled a local public school support group which objected to its inaccuracy. (See Exhibit "21")

It was only on the afternoon of November 1<sup>st</sup>, after our group, The Santa Monica Coalition for a Livable City ("SMCLC") a non-profit concerned with city governance and development issues, filed a complaint with the City, and after repeated phone calls by the City Clerk to SMQG's officers, that SMQG provided some campaign disclosure information. When it was too late to do much with this information before the election, only then did SMQG's treasurer provide copies of an unverified campaign disclosure statement for SMQG's StateSMO and three late expenditure reports. (See Exhibits "23" and "24")<sup>3</sup>

As stated earlier, all of the contributions that SMQG untimely provided to the City Clerk on November 1<sup>st</sup> were from major developers, hotels and a law firm representing them with large development projects in Santa Monica that are expected to come before the City Council (See Exhibit "22")

This information as to the developer funding of SMQG's four city election mailings would have been very important to have been disclosed in a timely manner to the electorate in Santa Monica. Indeed, the earliest donations that SMQG reports are a \$10,000 developer contribution from Hines on October 6, 2010 (the very date SMQG stated under oath that it had qualified as a City General Purpose committee "[t]o support and/or oppose candidates and/or ballot measures.")

Hines has the largest and tallest development project currently pending in the City – a nearly 1,000,000 square-foot project on the Papermate site at Olympic Boulevard and 26<sup>th</sup> Street in Santa Monica that is being opposed by Santa Monica residents. (Id.)<sup>4</sup>

The actions of SMQG's officers in refusing to file accurate and timely campaign disclosures as to its City Council mailers, violated the law

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<sup>3</sup> SMCLC understands that the City on its own may have forwarded SMCLC's initial complaint to the City concerning SMQG dated October 26, 2010 to the FPPC to investigate. If so, our current complaint here supersedes it and provides more detail and new information and lists witnesses.

<sup>4</sup> SMCLC and other community groups in Santa Monica have voiced their opposition to the mass and scale of the Hines "Papermate" project. See SMCLC's website at [www.smclc.net](http://www.smclc.net) for more information.

and deprived voters of important information they had a right to know in determining how to vote in the City Council election.

The above is provided based upon a review of the documents cited and upon having personally received the mailings in question, having had communications with other Santa Monica residents who also received these mailings, and is true to the best of my knowledge and belief.

G. Additional Witnesses

Maria M. Stewart  
City Clerk, Santa Monica  
1685 Main Street  
Santa Monica, CA 90407  
Tel: 310.458.8211  
Email: [maria.stewart@smgov.net](mailto:maria.stewart@smgov.net)

Ford Printing & Mailing  
125 N Vineland Ave  
City of Industry, CA 91746

Conclusion

SMCLC requests investigation of the facts in this Complaint, as well as any additional facts that the FPPC determines, in order to assess what violations occurred and what appropriate penalties should be assessed against SMQG and its officers.

Diana Gordon  
Co-Chair, Santa Monica Coalition for a Livable City  
1223 Wilshire Blvd, #1002  
Santa Monica, CA 90403  
Tel: 310.849.0032  
Email: [info@smclc.net](mailto:info@smclc.net)

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

*Diana Gordon*

*11.16.10*

Signature

Date

Diana Gordon

Cc: Maria M. Stewart