

☐ EXPEDITE  
☐ No hearing set  
☒ Hearing is set  
Date: February 2, 2012  
Time: 9:00am  
Judge/Calendar: Hon. Thomas  
McPhee

SUPERIOR COURT OF THE STATE OF WASHINGTON  
THURSTON COUNTY

KENT L. and LINDA DAVIS; JEFFREY and  
SUSAN TRININ; and SUSAN MAYER,  
derivatively on behalf of OLYMPIA FOOD  
COOPERATIVE,

Plaintiffs,

v.

GRACE COX; ROCHELLE GAUSE; ERIN  
GENIA; T.J. JOHNSON; JAYNE KASZYNSKI;  
JACKIE KRZYZEK; JESSICA LAING; RON  
LAVIGNE; HARRY LEVINE; ERIC MAPES;  
JOHN NASON; JOHN REGAN; ROB  
RICHARDS; SUZANNE SHAFER; JULIA  
SOKOLOFF; and JOELLEN REINECK  
WILHELM,

Defendants.

Case No. 11-2-01925-7

DECLARATION OF BRUCE E.H.  
JOHNSON IN SUPPORT OF  
DEFENDANTS' BRIEF OPPOSING  
PLAINTIFFS' CROSS-MOTION FOR  
DISCOVERY

I, Bruce E.H. Johnson, am over the age of 18, am competent to testify, and have  
personal knowledge of all the facts stated herein. I declare as follows:

1. I am a partner at the law firm Davis Wright Tremaine LLP, which represents  
Defendants in this case.

1           2.       Attached hereto as Exhibit A is a true and correct copy of a letter dated May 31,  
2       2011, which counsel for Plaintiffs sent to 15 past and present board members of the Co-op  
3       insisting that the Co-op rescind its boycott of Israeli products. The letter closed by threatening  
4       to "bring legal action against you, and this process will become considerably more  
5       complicated, burdensome, and expensive than it has already."

6           3.       Attached hereto as Exhibit B are true and correct copies of 13-page discovery  
7       requests that Plaintiffs served, along with their complaint and summons, upon each of the 16  
8       defendants.

9           4.       Attached hereto as Exhibit C are true and correct copies of 16 notices of  
10      videotaped depositions—one for every named defendant—dated September 30, 2011.

11          5.       Due to the large volume of discovery requested by Plaintiffs at the outset of this  
12      case, and pursuant to RCW 4.24.525(5)(c), I called Plaintiffs' counsel Robert Sulkin on the  
13      telephone to request a discovery stay. On October 3, 2011, during our telephone conversation,  
14      Mr. Sulkin and I agreed to stay discovery until the Court decided the anti-SLAPP motion.

15          6.       The following day, I sent Mr. Sulkin an email confirming our agreement to stay  
16      discovery until resolution of the anti-SLAPP motion. He responded: "We are on the same  
17      page." Accordingly, Plaintiffs agreed to stay discovery until resolution of the anti-SLAPP  
18      motion. As a result of our agreement, the sixteen videotaped depositions did not take place and  
19      none of the Defendants were required to respond to any of the extensive discovery requests  
20      served upon them at the outset of the lawsuit.

21          7.       Attached hereto as Exhibit D is a true and correct copy of an email chain, dated  
22      October 4, 2011, reflecting the agreement between myself and counsel for Plaintiffs, Robert  
23      Sulkin, that the parties would stay all discovery in this case until the anti-SLAPP motion is  
24      resolved.

25          8.       On November 1, 2011, I spoke again with Mr. Sulkin. Defendants were about to  
26      serve and file their anti-SLAPP motion, and so Mr. Sulkin and I were discussing an appropriate  
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1 oral argument hearing date for that motion in accordance with our agreement. At that time, Mr.  
2 Sulkin mentioned that in response to the anti-SLAPP motion, the Plaintiffs might file a cross-  
3 motion seeking discovery, which is a remedy available to them under RCW 4.24.525(5)(c).  
4 Other than that suggestion and until we received the Plaintiffs' cross-motion for discovery on  
5 December 1, 2011, Plaintiffs' counsel never contacted me with any request to modify their  
6 prior agreement staying discovery with Defendants.

7 //

8 I declare under penalty of perjury under the laws of the State of Washington that the  
9 foregoing is true and correct to the best of my knowledge and belief.

10 Executed at Seattle, Washington this 11<sup>th</sup> day of January, 2012.

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14 Bruce E.H. Johnson  
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# EXHIBIT A



May 31, 2011

Via Certified Mail, Return Receipt Requested

Grace Cox  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Eric Mapes  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Harry Levine  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Julia Sokoloff  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

TJ Johnson  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Rochelle Gause  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Rob Richards  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Erin Genia  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

John Nason  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Ron Lavigne  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

John Regan  
Olympia Food Co-op  
Board of Directors  
3111 Pacific Ave. SE  
Olympia, WA 98501

Jackie Krzyzek  
[REDACTED]

Joellen Reineck Wilhelm  
[REDACTED]

Suzanne Shafer  
[REDACTED]

Jessica Laing  
[REDACTED]

To the Olympia Food Co-op Board of Directors (present and former):

We are members of the Olympia Food Co-op ("OFC") who oppose OFC's boycott of Israeli made products ("Israel Boycott") and divestment from Israeli companies ("Divestment"). More importantly, we strongly object to the numerous procedural violations committed by the OFC Board of Directors (the "Board") in adopting these policies. You are receiving this letter because either (a) you are currently a member of the Board or (b) you were a member of the Board at the time the Israel Boycott and Divestment policies were adopted.

To be clear, we have repeatedly asked the Board to act on these issues in accordance with the rules and bylaws of OFC. We agree, of course, that OFC would be bound by the result of such a process. After all, OFC is a *cooperative* and its members have agreed to abide by certain rules. Yet you have refused to follow these rules or to cooperate. It is clear that members of the Board, by committing such procedural violations, have failed collectively and as individuals to abide by their lawful obligations to OFC and its members. A number of us have made this position clear to the Board since it announced its decision to enact the Israel Boycott. Yet our efforts have apparently fallen on deaf ears, as the Board steadfastly refuses to revisit its position on the Israel Boycott and Divestment policies. (To be clear, we currently take no position on



OFC Board of Directors

May 31, 2011

Page 2

soundness of OFC's "Boycott Policy" itself, which we understand may be under review by the Board, or OFC's boycott of products other than those made in Israel.)

At this point, we are left no choice but to demand in no uncertain terms that OFC act in accordance with its rules and bylaws and rescind the Israel Boycott and Divestment policies. Should new proposals to enact such policies be pursued at a later date in accordance with OFC rules and regulations, we would be prepared to respect the outcome of that process. Regrettably, should the Board reject our demand, we are prepared to pursue relief through the court system. We wish the situation had not come to this point, but frankly you have forced our hand by ignoring—again and again—our requests for due process and procedural compliance with OFC rules and regulations. As such, we expect to receive a response from the Board to our demand no later than **30 days** from the date of this letter. (Please arrange to have the Board's response mailed to us at the address below.) Should no response be received by that date, we will assume you have rejected our demand and will proceed accordingly.

Although the basis for our demand has previously been communicated to Board members collectively and, in certain instances, individually, we again explain in summary fashion our position. This is provided in the sincere hope that you will revisit the process by which the Boycott and Divestment policies were adopted. Nothing would please us more than to see this matter resolved without the need for adversarial action. That said, we are tired of being ignored and marginalized by a Board that refuses to abide by the rules and cooperative spirit of OFC's governance principles and procedures.

We remind the Board of the numerous occasions on which members of OFC have explained how and why the enactment of the Israel Boycott and Divestment policies violated OFC rules and regulations and why, as a result, the Board should rescind them. In short, you have repeatedly been put on notice of the Board's procedural violations, and you have repeatedly rejected requests for remedial action. While we are continuing to investigate and conduct additional analysis, it is clear that the Board, in deciding to boycott Israeli made products and divest from investments in Israeli companies, violated the terms of a number of OFC's governing documents—most obviously, the OFC "Boycott Policy." Other rules and regulations that were violated include OFC's Mission Statement and Bylaws. We intend to hold each of you personally responsible for these procedural violations and the breaches of your duties.

As members of OFC—some of us longstanding members—we submit this letter to you in the sincere hope that the Board will (1) recognize the mistakes it made in the course of adopting the Israel Boycott and Divestment policies and (2) rescind these policies without the need for further action by us. We are not interested in needlessly dragging ourselves or OFC, an institution to which we have collectively given significant time and energy, into an adversarial proceeding. That said, our informal efforts thus far—made in the spirit of cooperation that drew us to OFC in the first place—have failed to persuade you to do what is required under the circumstances. In short, you are entirely responsible for the position in which you now find yourselves. If you do what we demand, this situation may be resolved amicably and efficiently.



OFC Board of Directors


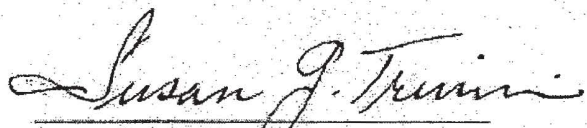
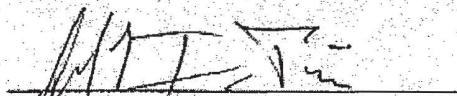
May 31, 2011

Page 3

If not, we will bring legal action against you, and this process will become considerably more complicated, burdensome, and expensive than it has been already.

We look forward to receiving a response from you no later than *30 days* from the date of this letter. Please arrange to have the Board's response mailed to us at P.O. Box 6060, Olympia, WA 98507-6060.

Sincerely,

  
Kent L. Davis  
Linda Davis  
Susan Mayer  
Susan G. Trinin  
Jeffrey I. Trinin