

APPENDIX

C**Effective: June 10, 2010**West's Revised Code of Washington Annotated CurrentnessTitle 4. Civil Procedure (Refs & Annos)Chapter 4.24. Special Rights of Action and Special Immunities (Refs & Annos)**→→ 4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions**

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving

party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

CREDIT(S)

[2010 c 118 § 2, eff. June 10, 2010.]

Current with all 2012 Legislation and Chapters 1, 2, and 3 from the 2013 Regular Session

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END OF DOCUMENT

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2012 JUL 12 PM 2:47

BETTY J. GOULD, CLERK

1 EXPEDITE
 2 No hearing set
 3 Hearing is set
 4 Date: March 30, 2012
 5 Time: Motion Calendar
 6 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

~~PROPOSED~~ ORDER
GRANTING DEFENDANTS'
SPECIAL MOTION TO STRIKE
THE COMPLAINT UNDER
WASHINGTON'S ANTI-SLAPP
STATUTE, RCW 4.24.525

Amended

Clerk's Action Required

This matter came before the Court on Defendants' Special Motion to Strike Under Washington's Anti-SLAPP Statute, RCW 4.24.525, and Motion to Dismiss. The Court heard oral argument on Defendants' motion on February 23, 2012, and issued its oral ruling on February 27, 2012. In connection with this Motion, the Court has also reviewed the following documents submitted by the parties: (1) the Complaint and its attachments; (2) Defendants' Special Motion to Strike Under Washington's Anti-SLAPP Statute, RCW 4.24.525, and Motion

[PROPOSED] ORDER GRANTING DEFENDANTS'
SPECIAL MOTION TO STRIKE - 1
DWT 18949545v5 0200353-000001

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1 to Dismiss, and all declarations and exhibits thereto; (3) Plaintiffs' Brief Opposing Defendants'
2 Special Motion, and all declarations and exhibits thereto; (4) Defendants' Reply to Plaintiffs'
3 Brief Opposing Special Motion to Strike Under Washington's Anti-SLAPP Statute, RCW
4 4.24.525, and Motion to Dismiss, and all declarations and exhibits thereto; (5) Plaintiffs' Cross-
5 Motion for Discovery; (6) Defendants' Brief Opposing Plaintiffs' Cross-Motion for Discovery;
6 (7) Plaintiffs' Reply in support of Cross-Motion for Discovery; and (8) Defendant's Motion for
7 Mandatory Costs, Attorneys' Fees, and Award under RCW 4.24.525; (9) Plaintiffs' Opposition
8 to Motion for Fees and Penalties; and (10) Defendants' Reply to Plaintiffs' Opposition to Motion
9 for Mandatory Costs, Attorneys' Fees, and Award under RCW 4.24.525.

10 Based upon the arguments, a review of the court file, and the briefing submitted by the
11 parties, including the declarations and exhibits attached thereto, the Court hereby FINDS,
12 ORDERS, and DECREES as follows:

- 13 1) In an oral opinion February 23, 2012, the Court DENIED Plaintiffs' Cross-Motion for
14 Discovery;
- 15 2) In an oral opinion February 27, 2012, the Court GRANTED Defendants' Special
16 Motion to Strike under Washington's Anti-SLAPP Statute, RCW 4.24.525, and
17 Motion to Dismiss;
- 18 3) The Israeli-Palestinian conflict, which has persisted for more than four decades, is an
19 "issue of public concern." *See* RCW 4.24.525(2)(e);
- 20 4) Defendants have shown by a preponderance of the evidence that the claim is based on
21 "an action involving public participation and petition," RCW 4.24.525(4)(b);
22 specifically, "[a]ny other lawful conduct in furtherance of the exercise of the
23 constitutional right of free speech in connection with an issue of public concern."
24 RCW 4.24.525(2)(e);
- 25 5) Pursuant to RCW 4.24.525(4)(b), Plaintiffs have failed to establish by clear and
26 convincing evidence a probability of prevailing on their claims;

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- 6) Plaintiffs have failed to show, by evidence beyond a reasonable doubt, that Washington's Anti-SLAPP statute, RCW 4.24.525, is unconstitutional;
- 7) Defendants are the prevailing parties regarding (1) Defendants' Special Motion to Strike under Washington's Anti-SLAPP Statute, RCW 4.24.525, and Motion to Dismiss, (2) Plaintiffs' Cross-Motion for Discovery, and (3) Defendant's Motion for Mandatory Costs, Attorneys' Fees, and Award under RCW 4.24.525;
- 8) Defendants are entitled to mandatory costs of litigation, reasonable attorneys' fees, and the statutory amount of ten thousand dollars (\$10,000) per each Defendant. RCW 4.24.525(6)(a);
- 9) Therefore, Defendants' Special Motion to Strike Under Washington's Anti-SLAPP Statute, RCW 4.24.525, and Motion to Dismiss is GRANTED;

Accordingly, Plaintiffs' Complaint is hereby stricken and DISMISSED with prejudice.


It is so ORDERED.

DATED this 12 day of July, 2012.



Hon. Thomas McPhee

Presented by:
Davis Wright Tremaine LLP
Attorneys for Defendants

By 
Bruce E.H. Johnson, WSBA #7667
Devin Smith, WSBA #42219

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2012 JUL 12 PM 2:47

BETTY J. GOULD, CLERK

1 EXPEDITE

2 No hearing set

3 Hearing is set

4 Date: March 30, 2012

5 Time: Motion Calendar

6 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

~~PROPOSED~~ ORDER DENYING
PLAINTIFFS' CROSS-MOTION
FOR DISCOVERY

This matter came before the Court on Plaintiffs' Cross-Motion for Discovery. The Court heard oral argument on Plaintiffs' cross-motion on February 23, 2012, and denied the Cross-Motion in an oral ruling on that same date. In rendering its decision, the Court has reviewed the following documents submitted by the parties:

1. The Complaint and its attachments;

[PROPOSED] ORDER DENYING PLAINTIFFS'
CROSS-MOTION FOR DISCOVERY - 1
DWT 18949943v2 0200353-000001

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- 1 2. Defendants' Special Motion to Strike Under Washington's Anti-SLAPP Statute,
- 2 RCW 4.24.525, and Motion to Dismiss, and all declarations and exhibits thereto;
- 3 3. Plaintiffs' Brief Opposing Defendants' Special Motion, and all declarations and
- 4 exhibits thereto;
- 5 4. Defendants Reply to Plaintiff's Brief Opposing Special Motion to Strike Under
- 6 Washington's Anti-SLAPP Statute, RCW 4.24.525, and Motion to Dismiss, and all
- 7 declarations and exhibits thereto;
- 8 5. Plaintiffs' Cross-Motion for Discovery, and all declarations and exhibits thereto;
- 9 6. Defendants' Brief Opposing Plaintiffs' Cross-Motion for Discovery, and all
- 10 declarations and exhibits thereto; and
- 11 7. Plaintiffs' Reply Brief and the declaration and exhibits thereto.

12 Based upon the arguments, a review of the court file, the court's oral ruling, and the
 13 briefing submitted by the parties, it is hereby ORDERED, ADJUDGED, and DECREED that:

- 14 1. Plaintiffs have failed to show good cause for discovery as required by RCW
- 15 4.24.525(5)(c);
- 16 2. Defendants are the prevailing parties regarding Plaintiffs' Cross-Motion for
- 17 Discovery;
- 18 3. Plaintiffs' Cross-Motion for Discovery is DENIED.

19
 20 DATED this 12 day of July, 2012.

21 
 22 _____
 Hon. Thomas McPhee

23 Presented by:
 24 Davis Wright Tremaine LLP
 Attorneys for Defendants
 25 By 
 26 Bruce E.H. Johnson, WSBA #7667
 Devin Smith, WSBA #42219

FILED

NOV 16 2012

SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

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<input type="checkbox"/>	EXPEDITE
<input type="checkbox"/>	No hearing set
<input checked="" type="checkbox"/>	Hearing is set
Date:	<u>July 12, 2012</u>
Time:	<u>Motion Calendar</u>
Judge/Calendar:	<u>Hon. Thomas McPhee</u>

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

[PROPOSED] ORDER
GRANTING DEFENDANTS'
MOTION FOR MANDATORY
COSTS AND ATTORNEYS'
FEES UNDER RCW 4.24.525

This matter comes before the Court on Defendants' Motion for Mandatory Costs, Attorneys' Fees, and Award under RCW 4.24.525. The Court heard arguments of counsel regarding these issues on July 12, 2012, but left the amount of costs and fees to be determined after additional briefing. The Court subsequently issued the Court's Decision Re Attorney Fee Shifting on September 17, 2012 (the "Fee-Shifting Decision"), which identifies the amount of

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR
MANDATORY COSTS AND ATTORNEYS' FEES - 1
DWT 20452824v2 0200353-000001

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1 costs and fees awarded to Defendants. A copy of the Fee-Shifting Decision is attached hereto
2 as Attachment A, and is incorporated by reference herein. Based upon the arguments of
3 counsel, a review of the court file, and the briefing submitted by the parties, including the
4 declarations and exhibits attached thereto, the Court hereby FINDS, ORDERS, and DECREES
5 as follows:

- 6 1) RCW 4.24.525(6)(a) provides to each moving party mandatory awards of costs of
7 litigation and reasonable attorney' fees incurred in connection with each motion on
8 which the moving parties prevailed, and a statutory award in the amount of \$10,000.
9 2) Defendants are the prevailing parties regarding (1) Plaintiffs' Cross-Motion for
10 Discovery, (2) Defendants' Special Motion to Strike under Washington's Anti-
11 SLAPP Statute, RCW 4.24.525, and Motion to Dismiss, and (3) Defendants' Motion
12 for Mandatory Costs, Attorneys' Fees, and Award under RCW 4.24.525.
13 3) Pursuant to RCW 4.24.525(6)(a), Defendants are entitled to costs of litigation and
14 reasonable attorneys' fees incurred in connection with the first two motions
15 mentioned in the preceding paragraph, but for reasons set forth in the Fee-Shifting
16 Decision, are not entitled to such costs and fees as to the third.
17 4) After engaging in the lodestar analysis contemplated by *Bowers v. Transamerica*
18 *Title Ins. Co.*, 100 Wn.2d 581 (1983) and its progeny, the Court issued the Fee-
19 Shifting Decision on September 17, 2012.
20 5) The parties have agreed to accept the Fee-Shifting Decision as Findings of Fact and
21 Conclusions of Law regarding the award of attorneys' fees and costs.
22 6) Based on the lodestar calculation, Defendants are entitled to an award of reasonable
23 attorneys' fees in the amount of \$61,668.00, as follows:

- | | |
|--------------------------------------|--------------|
| a. Bruce Johnson & Devin Smith (DWT) | \$52,443.00. |
| b. Barbara Harvey | \$9,225.00. |

1 7) Defendants are entitled to \$178.75 for costs of litigation, pursuant to RCW
2 4.24.525(6)(a)(i) and RCW 4.84.010.


3 8) On July 12, 2012, the Court ruled that each of the 16 individual Defendants were
4 entitled to a statutory amount of \$10,000, and consequently entered an award of
5 \$160,000 pursuant to RCW 4.24.525(6)(a)(ii).

6 Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that, pursuant to
7 RCW 4.24.525(6)(a), Plaintiffs shall pay reasonable attorneys' fees to Defendants in the amount
8 of \$61,668.00; costs of litigation in the amount of \$178.75; and a statutorily prescribed amount
9 of \$160,000 (\$10,000 for each moving party). The total amount of this judgment and award is
10 \$221,846.75, which shall bear interest at the rate of 12% per annum.


11
12 SO ORDERED this 16 day of Nov, 2012.

13 
14 The Honorable Thomas McPhee

15 Presented by:
16 DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendants.

17 By: 
18 Bruce E.H. Johnson, WSBA #7667
Devin Smith, WSBA #42219

19
20 Approved as to form:
McNAUL EBEL NAWROT & HELGREN PLLC
21 Attorneys for Plaintiffs.

22 By: 
23 Robert Sulkin, WSBA #15425
Avi Lipman, WSBA #37661

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR
MANDATORY COSTS AND ATTORNEYS' FEES - 3
DWT 20452824v2 0200353-000001

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