

1 EXPEDITE
2 No hearing is set
3 Hearing is set
4 Date: January 13, 2011
5 Time: 11 a.m.
6 Judge/Calendar: Hon. Paula Casey/
7 Hon. Christopher Wickham

8 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

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

11 Plaintiffs,

12 v.

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

18 Defendants.

No. 11-2-01925-7

DECLARATION OF AVI J. LIPMAN
OPPOSING DEFENDANTS'
SPECIAL MOTION

19 I, AVI J. LIPMAN, declare under penalty of perjury of the laws of the State of
20 Washington that the following statements are true and correct and based on personal
21 knowledge:

22 1. I am one of the attorneys for Plaintiffs in the above-captioned matter and
23 am competent to testify to the matters set forth herein.

24 2. Attached hereto and incorporated by reference in Plaintiffs' Brief Opposing
25 Defendants' Special Motion are true and correct copies of the following documents:
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Exhibit AA: Complete copy of letter, dated May 31, 2011, from Plaintiffs to the Board of Directors of the Olympia Food Cooperative [an incomplete copy of this document is attached as Exhibit W to the Declaration of Harry Levine ISO Defendants' Special Motion];

Exhibit BB: Article, entitled "Decisions, Decisions," by Teresa McDowell, Co-Op News, Fall 1992, Olympia Food Co-op, [at p. 7]; and

Exhibit CC: Olympia Food Co-op Member Initiated Ballot Procedure and Petition Requirements, dated July 2005.

DATED this 1st day of December, 2011, at Seattle, Washington.


Avi J. Lipman, WSBA No. 37661

Exhibit AA

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 3948 Delphi Rd., SW Olympia, WA 98512
Joellen Reineck Wilhelm 623 Central St. SE Olympia, WA 98501	Suzanne Shafer 2919 Lindell Rd. NE Olympia, WA 98506	Jessica Laing 521 Quince St. SE Olympia, WA 98501	

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

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

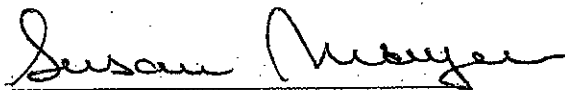
If not, we will bring legal action against you, and this process will become considerably more complicated, burdensome, and expensive than it has been already.

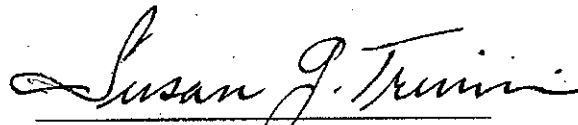
We look forward to receiving a response from you no later than **30 days** from the date of this letter. Please arrange to have the Board's response mailed to us at P.O. Box 6060, Olympia, WA 98507-6060.

Sincerely,


Kent L. Davis


Linda Davis


Susan Mayer


Susan G. Trinin

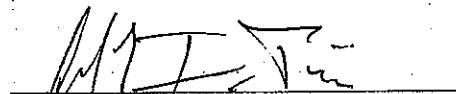

Jeffrey I. Trinin

Exhibit BB



DECISIONS, DECISIONS



It has been asked many times—“Just how does the staff make decisions?” Also the Co-op’s Goals and Objectives stated that there would be an article in the newsletter on just this topic. So here goes...an attempt.

We work as a *collective*, which has many meanings and variations. We decide things by *consensus*, which also has many variables. I have worked in many collectives and it seems that each develops its own working meaning of these words. These ideas are not stagnant; they are constantly changing and evolving. Right now we are working on the many aspects of our group process.

At the Co-op, we have developed some info packets to help get everybody on the same level with these ideas. We have these packets in the Collective Training Manual, a Group Process Proposal and a Functions of a Facilitator sheet to guide us.

From the Collective Training Manual comes the following paragraph on “decisions by consensus.”

The Co-op staff collective uses a consensus decision-making process. No group decision is made until it has the support of all members of the collective. Any individual collective member may block consensus at any time. In fact, if an individual staff member cannot live with a decision that is about to be made, it is her/his responsibility to block consensus. Short of blocking consensus, you can also state clearly your objections to an impending decision and your reasons for choosing not to block consensus. It is also each staff member’s responsibility to participate in developing proposals that will help the group reach consensus, as well as to negotiate honestly toward compromise. This process of negotiation and full participation should facilitate reaching consensus and keep to a minimum the number of instances where consensus is blocked.

We are now working on defining the “stand aside” position and when and how many people can stand aside before a decision is blocked. Our final agreement will be something along the lines of what is in

the group process proposal. *It is appropriate to stand aside when one has personal conflicts with a proposal at hand but does not believe that the group will be intrinsically harmed if the proposal goes through. It is appropriate to block when one cannot allow, for the good of the group or organization, a proposal to pass.*

Two more paragraphs which help us to make a decision are also from the Group Process proposal. *The facilitator will listen for agreement and test for consensus when it appears that all speakers are arguing on the same side. This can help minimize repetition and move agenda items along in a more timely manner. Before cutting off discussion, however, the facilitator should solicit a dissenting opinion. Something like “It sounds like we are close to consensus on this item. Does anyone wish to speak against it before we finalize the decision?” Before finalizing a decision, facilitator will have the note taker read back the proposal as written in the minutes. This is so that we all know that what we are agreeing to is recorded for posterity (or the next meeting, whichever comes first).*

So all of the above information applies when a decision comes before the whole group...but how does that happen? Well, decisions are made many in different ways. In the store, different collective members have areas of responsibility, either by their job titles or because they are a “point” person on a task. They use product selection guidelines, By-laws, a multitude of written policies, or general agreements among collective members to influence their decisions. All decisions, however, may be questioned by anyone at any time, and possibly sent to the whole collective to be worked out. Within the store, whoever is the floor coordinator can make operational decisions about events that come up on the spur of the moment. These decisions may also be subject to staff review, but unless there is a recurring problem that needs a policy, it is unlikely. If things need immediate decisions and the whole collective cannot come together in time for the decision to be made, then four co-ordinators (finance, organizational, personnel, and merchandising) can

come together and make a decision. This has not happened for about five years.

When people feel a decision needs to go to the whole collective, they need to decide if it can wait for a staff meeting or if it can go through the staff journal. If it goes through the staff journal, a decision may be made in a few days if everyone agrees. However, people could say they feel it needs to go to staff meeting. If it goes to a staff meeting right away, or through the journal, someone needs to take the responsibility for getting it on the agenda, stating what kind of work needs to be done with it, and how long they feel it needs. We have agreed on the following paragraph from the Group Process proposal: *All agenda items requiring a decision will come to the group in the form of a written proposal. The group should not be asked to make a decision based on a brainstorm or open discussion at the same meeting. If one is really stumped, insecure about or incapable of making a proposal by oneself, she can either solicit help developing a proposal outside of the meeting or present the issue with enough time to allow for open discussion/brainstorm at one meeting with a written proposal presented for decision at the following regularly scheduled meeting.*

As you can see, decisions can be made in many places along the way. If it does get to the whole staff there are some specific requirements to help everybody reach consensus.

When the process is all written out like this, it feels a little overwhelming. But it does, in fact, work very well. When we get confused about our process it bogs down and when we get back on track it goes much more smoothly. It also helps that so many of us have worked together for a long time. We have had time to define our areas further, and we have a level of trust with each other. There are many other areas in our process that help toward getting us to a decision we can all agree on. Working this way takes time. It is also very empowering!

By Teresa McDowell

Exhibit CC

Olympia Food Co-op
Member Initiated Ballot Procedure and Petition Requirements

I. Petition Process and requirements

Members may submit an item for vote by the membership using the following procedure.

Step 1: A proposal is brought to the board, clearly describing the issue(s) in question. At this time the board may do one of the following:

- a) Approve the proposal to move forward as a member initiated ballot
- b) Agree to sponsor the member ballot and make it a board ballot
- c) Identify appropriate committee or staff to address the concern/idea
- d) Give feedback for possible rework
- e) Reject the proposal: The board may reject the proposal if it is illegal or deemed financially irresponsible or financially unfeasible. The board will provide a written statement articulating its reasons for rejection.

Step 2: The Board considers the proposal and determines which of the above options to carry forth. The following applies only if the proposal is approved to move forward as a member initiated ballot.

Step 3: The member(s) draft a petition to conduct a member initiated ballot. The petition must be lawful, and must be reasonable based on financial feasibility. The petition must include provisions for validating that the petition signatures are from active members. In addition, the petition must be clearly written so that the reader may be able to easily answer the following questions.

- Who wrote this petition?
- What is the issue they are trying to address?
- What is their solution?

Step 4: The board reviews the petition to insure that it meets the requirements in Step 3. If the board finds that the petition meets the above requirements, the petitioners may proceed with signature gathering. See tabling guidelines. In order to be included in the upcoming election, the required number of valid member signatures must be gathered by August 1st. The petition must be signed by 1/2 of the average number of voting members from the previous three annual elections, or 300, whichever is greater.

Step 5: The membership coordinators will review the petitions to insure that the required number of signatures are from active members.

Step 6: The required number of validated, signed petitions is presented to the board.

II. Member Initiated Ballot Procedure

After successfully completing the **Petition for Member Initiative Procedure**, the board or board committee works with the petitioners to put together the member-initiated ballot.

Step 1: Develop a voter pamphlet and educational materials that will be published in the October newsletter (September 1st submission deadline).

The voter pamphlet must include

- Benefits (pros)
- Impacts (cons)
- Costs
- Legal aspects
- Purpose, vision

Step 2: Between September 1st and November 15th, at least two member forums will be held at which the member initiative will be the topic. In addition, the member initiative must be included as an agenda item for the annual meeting. The board or board committee will also work with the petitioners to insure that the membership be given an opportunity to educate itself with regard to the issue during this period. Other methods of education that should be utilized are notebooks at stores with ballot and educational materials, the website, and tabling at the stores.

Step 3: The Election is held October 15th through November 15th. Unless otherwise specified by State law, a 60% majority is required for a member-initiated ballot to pass.

July 05