

1 EXPEDITE
2 No hearing is set
3 Hearing is set
4 Judge: Hon. Carol Murphy

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6
7 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

8 KENT L. and LINDA DAVIS; and SUSAN
9 MAYER, derivatively on behalf of
10 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; JULIA SOKOLOFF; and
20 JOELLEN REINECK WILHELM,

21 Defendants.

No. 11-2-01925-7

PLAINTIFFS' AMENDED
COMPLAINT FOR RELIEF AND
DAMAGES

22 Plaintiffs Kent L. and Linda Davis, and Susan Mayer, derivatively on behalf of
23 Olympia Food Cooperative (referred to herein as "OFC") (referred to collectively herein as
24 "Plaintiffs"), allege as follows:

25 **I. PARTIES**

26 1. Plaintiff OFC is a non-profit cooperative association organized under the
laws of Washington State, with its principal place of business in Olympia, Washington.

2. Plaintiffs Kent L. and Linda Davis are married and reside in Thurston
County, Washington. They have been members of OFC at all relevant times. Plaintiff Susan

1 Mayer resides in Thurston County, Washington. She has been a member of OFC at all
2 relevant times.

3 3. Defendant Grace Cox is a resident of Thurston County, Washington and a
4 staff member of OFC; was a member of the Board of Directors of OFC (referred to herein
5 as the “Board”) at or after the point at which the Board enacted policies regarding a boycott
6 of Israeli-made products (referred to herein as the “Israel Boycott”) and divestment from
7 Israel (referred to herein as “Divestment”); but is no longer a member of the Board.

8 4. Defendant Rochelle Gause is a resident of Thurston County, Washington and
9 a former member of the Board.

10 5. Defendant Erin Genia is a resident of Thurston County, Washington and a
11 former member of the Board.

12 6. Defendant T.J. Johnson is a resident of Thurston County, Washington and a
13 former member of the Board.

14 7. Defendant Jayne Kaszynski is a resident of Thurston County, Washington; a
15 staff member of OFC; and a former member of the Board.

16 8. Defendant Jackie Krzyzek is a resident of Thurston County, Washington;
17 was a member of the Board at the time the Board enacted the Israel Boycott and Divestment
18 policies; but is no longer a member of the Board.

19 9. Defendant Jessica Laing is a resident of Thurston County, Washington; was
20 a member of the Board at the time the Board enacted the Israel Boycott and Divestment
21 policies; but is no longer a member of the Board.

22 10. Defendant Ron Lavigne is a resident of Thurston County, Washington and a
23 former member of the Board.

24 11. Defendant Harry Levine is a resident of Thurston County, Washington; was
25 an Co-op staff member and member of the Board at the time the Board enacted the Israel
26 Boycott and Divestment policies; but is no longer a member of the Board.

1 22. OFC promotes itself, in part, as a “non-hierarchical collective run by
2 consensus process.”

3 23. OFC maintains an “open membership” policy. To become a “regular
4 member” of OFC, an applicant must pay a membership fee and membership “dues,” and
5 maintain a current address on file with OFC. OFC offers other types of membership—for
6 businesses and seniors, for example—with terms that differ from “regular” membership.

7 24. OFC members are entitled to vote on certain issues, and in such instances
8 each member has one vote. It is one of the Board’s responsibilities to maximize membership
9 participation in the affairs of OFC.

10 25. Some members of OFC volunteer by working at one or both OFC locations
11 without monetary compensation. These individuals are known as the “Working Members”
12 of OFC.

13 26. OFC also employs certain professional staff members, who are paid for the
14 time they spend working at OFC. These individuals are known collectively as the “Co-op
15 staff.” OFC publicly represents that the “Co-op staff is a non-hierarchical collective run by
16 consensus process.”

17 27. Decision-making by “consensus” at OFC means that all individuals who are
18 empowered to participate in the making of a particular decision must agree in order for a
19 particular proposal to be approved. As part of the “consensus”-based decision-making
20 process at OFC, any one of these individuals may block consensus and thus reject the
21 proposal at issue.

22 28. In or around May 1993, the Board enacted a “Boycott Policy.” The Boycott
23 Policy has not been changed or amended since its original enactment.

24 29. The Boycott Policy sets forth the terms by which OFC may “honor
25 nationally recognized boycotts which are called for reasons that are compatible with
26 [OFC’s] goals and mission statement.”

1 30. The honoring of a “nationally recognized” boycott by OFC involves, among
2 other things, a prohibition on Co-op staff ordering or otherwise purchasing on behalf of
3 OFC product(s) that are the subject of the boycott at issue.

4 31. According to OFC’s Boycott Policy, “A request to honor a boycott may
5 come from anyone in the organization. The request will be referred to the Merchandising
6 Coordinator (M.C.) to determine which products and departments are affected. The M.C.
7 will delegate the boycott request to the manager(s) of the department which contains the
8 largest number of boycotted products. The department manager will make a written
9 recommendation to the staff who will decide by consensus whether or not to honor a
10 boycott.”

11 32. Since the enactment of the Boycott Policy, OFC has joined various
12 “nationally recognized” boycotts based on Co-op staff consensus.

13 33. In or around March 2009, a staff member of OFC proposed that OFC boycott
14 products produced in Israel and divest from investment in Israel. The proposal was
15 discussed among Co-op staff members, who were unable to reach universal agreement—
16 i.e., consensus—regarding their position on these two proposals. For in fact, there was no
17 nationally recognized boycott of Israel “to honor.”

18 34. Some time in or before May 2010, certain Co-op staff communicated to the
19 Board that the staff has been unable to reach universal agreement—i.e., consensus—
20 regarding its position on the proposal to boycott products produced in Israel and to divest
21 from investment in Israel.

22 35. In or around May 2010, members of an organization calling itself Boycott,
23 Divestment and Sanctions (“BDS”)—an international alliance of anti-Israel political
24 organizations—made a presentation to the Board regarding the possibility of OFC
25 boycotting Israeli-made products and divesting from Israel.
26

1 36. At a Board meeting in or around May – July 2010, the Board proposed that a
2 boycott proposal be drafted regarding Israeli-made products and divestment from Israel.
3 The Board also urged that staff consensus be pursued regarding this draft boycott and
4 divestment proposal.

5 37. Universal agreement—i.e., consensus—among the Co-op staff regarding the
6 boycott and divestment proposal was not reached before the Board enacted the Israel
7 Boycott and Divestment policies.

8 38. At no time has the Co-op staff ever reached universal agreement—i.e.,
9 consensus—regarding any proposal, in any form, to boycott Israeli-made products and/or to
10 divest from investment in Israel.

11 39. In or around July 2010, a Board meeting was held at which numerous BDS
12 supporters appeared without prior notice to the Board or the OFC membership. These
13 supporters urged the Board to adopt the Israel Boycott and Divestment policies. Several
14 alternatives to adoption were also discussed among Board members, including but not
15 necessarily limited to rejecting the proposal; putting the Israel Boycott and Divestment
16 policies to a vote of OFC members via a “Member Ballot”; and holding “educational
17 forums” for OFC members to further educate them regarding the proposed Israel Boycott
18 and Divestment policies. The Board subsequently rejected all of these alternative proposals
19 and instead enacted the Israel Boycott and Divestment policies, as urged by the BDS
20 supporters.

21 40. The Board knew it was not following Board and/or OFC policy when it
22 voted to boycott merchandise from Israel. In enacting and/or subsequently upholding the
23 Israel Boycott on behalf of OFC, the Board exceeded its authority, and each of the
24 Defendants, as Board Members, exceeded their authority.

1 41. At no time prior to its enactment of the Israel Boycott and Divestment
2 policies did the Board determine whether the proposed boycott of Israeli-made products and
3 proposed divestment from investment in Israel were “nationally recognized.”

4 42. Indeed, the Board received no information establishing a “nationally
5 recognized” boycott of products from Israel.

6 43. Neither the proposed boycott of Israeli-made products nor divestment from
7 investment in Israel constituted a “nationally recognized” boycott at the time—nor do they
8 now. For example, as of this filing, no other food cooperative in the United States has
9 adopted either of these policies.

10 44. In or around late July or August 2010, another Board meeting was held to
11 review the Board’s recent decision to adopt the Israel Boycott and Divestment policies.
12 Despite the procedural violations that had been committed and vociferous, widespread
13 opposition to the Israel Boycott and Divestment policies among OFC members and staff,
14 the Board refused to rescind these policies.

15 45. The Israel Boycott and Divestment policies caused acrimony and other issues
16 to surface between the Board and the Co-op staff. The Board was aware of this acrimony.
17 The Co-op staff protested that the Board acted beyond its authority.

18 46. Through the present day, opposition has been repeatedly expressed by
19 numerous OFC members and staff members to the Israel Boycott and Divestment policies
20 and the procedures followed by the Board before, during, and after the July 2010 Board
21 meeting at which the policies were adopted.

22 47. Plaintiffs have repeatedly asked, in writing, that the Board rescind the Israel
23 Boycott and Divestment policies and apply the proper procedures to deciding the issue. For
24 example, in letters dated May 31, 2011 and July 6, 2011, Plaintiffs demanded in no
25 uncertain terms that the Board act in accordance with its rules and bylaws and rescind the
26 Israel Boycott and Divestment policies. Further, Plaintiffs have requested that the issues of

1 boycotting and divesting from Israel be raised through a process that comports with OFC's
2 governing rules, procedures, and principles. In their May 31, 2011 and July 6, 2011 letters,
3 Plaintiffs made clear that they are prepared to respect the outcome of such a process. Yet the
4 Board has denied Plaintiffs' requests. In a letter dated June 30, 2011, the Board stated that it
5 continues to adhere to its decision to enact the Israel Boycott and Divestment policies, and
6 made no offer to modify its position or take remedial action. Nor has it done so since that
7 time.

8 48. In or around February 2011, the Board modified the terms of the Israel
9 Boycott by redefining the political conditions under which OFC will cease boycotting
10 Israeli-made products. This modification did not involve rescinding the Israel Boycott and
11 Divestment policies, was not put to the staff for approval, and was not put to the
12 membership for a vote. Nor did this modification involve the Board addressing in any
13 respect its failure to abide by OFC's governing rules, procedures, and principles when it
14 originally enacted the Israel Boycott and Divestment policies in July 2010.

15 49. Despite repeated demands by OFC members, including Plaintiffs, neither the
16 current Board members, nor those former Board members who were on the Board when the
17 Israel Boycott and Divestment policies were enacted, nor those former Board members who
18 had the opportunity to take remedial action, have at any point taken the steps necessary to
19 rescind the Israel Boycott and Divestment policies and institute a process that comports with
20 OFC's governing rules, procedures, and principles. In short, those Board members who
21 could have reversed the Board's wrongful actions and omissions have repeatedly failed to
22 do so.

23 50. The Board publicly represents that its decision to enact the Israel Boycott
24 and Divestment policies was made based on OFC's "mission statement" and in accordance
25 with OFC's bylaws. This representation is false.
26

1 58. As members and formers members of the Board, Defendants owed and/or
2 owe OFC fiduciary duties and other duties as Board members.

3 59. Defendants put their own personal and/or political interests above the
4 interests of OFC, to the detriment of OFC.

5 60. Defendants put the interests of another organization above the interests of
6 OFC, to the detriment of OFC.

7 61. Through their acts and omissions with regard to the Israel Boycott and
8 Divestment policies, Defendants have breached their duties to OFC.

9 62. Defendants' breaches have proximately caused damages to OFC in its
10 business or property, in an amount to be proven at trial.

11 63. When the Board failed to follow OFC's governing rules, procedures, and
12 principles in enacting the Israel Boycott and Divestment policies, those Defendants who
13 were Board members at the time knew (a) the Board lacked authority to take such action;
14 and that (b) enacting the Israel Boycott and Divestment policies would violate the governing
15 rules, procedures, and principles of OFC. Despite this knowledge, they intentionally and
16 wrongfully enacted the Israel Boycott and Divestment policies. These Defendants are
17 therefore personally liable to OFC for the damages proximately caused by the breaches of
18 their duties.

19 64. As to those Defendants who remained or became Board members after the
20 Israel Boycott and Divestment policies had been wrongfully enacted, they knew and/or
21 know (a) the Board failed to follow OFC's governing rules, procedures, and principles and
22 thus lacked authority to take such action at the time; and (b) the Israel Boycott and
23 Divestment policies continue to violate the governing rules, procedures, and principles of
24 OFC. Despite this knowledge, and despite repeated requests from OFC members for
25 remedial action, they have intentionally and wrongfully failed to rescind the Israel Boycott
26

1 and Divestment policies. These Defendants are therefore personally liable to OFC for the
2 damages proximately caused by the breaches of their duties.

3
4 **Count 2: Ultra Vires**

5 65. Plaintiffs reallege the preceding paragraphs and incorporate them by
6 reference.

7 66. By failing to follow OFC's governing rules, procedures, and principles in
8 enacting the Israel Boycott and Divestment policies, those Defendants who were on the
9 Board at the time acted without authority and beyond the scope of the power allowed or
10 granted them as Board members.

11 67. As a result of the foregoing misconduct, the enactment of the Israel Boycott
12 and Divestment policies is rendered void and unenforceable under the doctrine of *ultra*
13 *vires*.

14 **Count 3: Declaratory Judgment**

15 68. Plaintiffs reallege the preceding paragraphs and incorporate them by
16 reference.

17 69. Pursuant to RCW 7.24 *et seq.*, an actual and present dispute exists between
18 Plaintiffs and Defendants insofar as Defendants have taken *ultra vires* action in violation of
19 OFC's governing rules, procedures, and principles, and breached their duties to OFC; since
20 that time, despite repeated requests, the Board has refused to rescind its *ultra vires* action
21 and/or action in breach of its duties.

22 70. Plaintiffs therefore request that the Court issue declaratory judgment that:

- 23 a. The Defendant Board members who enacted the Israel Boycott and
24 Divestment policies acted (i) without authority and in violation of OFC's governing
25 rules, procedures, and principles, and/or (ii) in violation of their duties to OFC;
26 b. The Defendant Board members who failed to take action to rescind the Israel
Boycott and Divestment policies despite repeated requests acted (i) in violation of

1 OFC's governing rules, procedures, and principles, and/or (ii) in violation of their
2 duties to OFC;

3 c. The Board's enactment of the Israel Boycott and Divestment Policies was
4 *ultra vires* and/or in violation of the Board members' duties. It is therefore declared
5 unenforceable, null, and void.

6 **Count 4: Permanent Injunctive Relief**

7 71. Plaintiffs reallege the preceding paragraphs and incorporate them by
8 reference.

9 72. Defendants have violated their duties and responsibilities to OFC by taking
10 *ultra vires* action in violation of OFC's governing rules, procedures, and principles, and/or
11 by breaching their duties to OFC.

12 73. Absent the issuance of permanent injunctive relief, Plaintiffs will continue to
13 sustain irreparable injury insofar as the Israel Boycott and Divestment policies are
14 fracturing the OFC community; sowing division and mistrust among OFC members, staff
15 members, and Board members; alienating numerous OFC members and staff members from
16 OFC and the Board; and causing numerous OFC members to either resign their
17 memberships or otherwise cease shopping at OFC.

18 74. Plaintiffs lack an adequate remedy at law as the harm caused by Defendants
19 is of a kind and degree that are not readily measurable.

20 75. Plaintiffs therefore request that the Court permanently enjoin the Board from
21 enforcing or otherwise abiding by the Israel Boycott and Divestment policies and order the
22 Board to follow OFC's governing rules, procedures, and principles in the future.

23 **V. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs seek the following relief against Defendants:

- 25 A. Findings and conclusions of law as described herein;
26 B. Declaratory judgment as described herein;

- 1 C. Permanent injunctive relief as described herein;
2 D. An award of damages in an amount to be proved at trial;
3 E. An award of reasonable attorneys' fees and costs to the extent permitted by
4 law;
5 F. Such other and further legal and equitable relief as the Court may deem just
6 and proper.

7 DATED this 8th day of January, 2016.

8 McNAUL EBEL NAWROT & HELGREN PLLC

9
10 By: 

11 Robert M. Sulkin, WSBA No. 15425
12 Avi J. Lipman, WSBA No. 37661
13 *Attorneys for Plaintiffs*

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DECLARATION OF SERVICE

On January 8, 2016, I caused to be served a true and correct copy of the foregoing document upon counsel of record, at the address stated below, via the method of service indicated:

Bruce E. H. Johnson, WSBA No. 7667	<input type="checkbox"/>	Via Messenger
Angela Galloway, WSBA No. 45330	<input checked="" type="checkbox"/>	Via U.S. Mail
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I declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 8th day of January, 2016, at Seattle, Washington.



Lisa Nelson, *Legal Assistant*