

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,

13 Plaintiffs,

14 v.

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

24 Defendants.

No. 11-2-01925-7

PLAINTIFFS' CROSS-MOTION
FOR DISCOVERY

25 **I. INTRODUCTION AND RELIEF REQUESTED**

26 Plaintiffs Kent L. and Linda Davis, Jeffrey and Susan Trinin, and Susan Mayer,
derivatively on behalf of Olympia Food Cooperative (the "Co-op"), submit this motion for
discovery in conjunction with their Brief Opposing Defendants' Special Motion. Should
the Court decline to deny Defendants' special motion outright, Plaintiffs respectfully
request that the Court grant them the opportunity to conduct "specified discovery" as
provided under the Anti-SLAPP statute, RCW 4.24.525(5)(c), before the Court rules on

1 the motion. Specifically, the Plaintiffs request that the Co-op (a) make Harry Levine
2 available for deposition, (b) make Grace Cox available for deposition, (c) make Jayne
3 Kaszynski available for deposition, and (d) produce all documents in possession of each
4 of the Defendants and the Co-op relating in any way to the Co-op's Boycott Policy and
5 actions taken related thereto. Because the statute specifically prohibits them from asking
6 for *full* discovery, Plaintiffs' are limited in the discovery they can request.¹ After
7 receiving such discovery, Plaintiffs do not waive their right to seek additional discovery as
8 set forth in the statute, or full discovery after the denial of Defendants' motion.

9 Plaintiffs contend that the law and facts currently before the Court are sufficient to
10 support the denial of Defendants' motion. However, in the alternative, Plaintiffs request
11 the opportunity to present the Court with additional evidence obtained through such
12 discovery in opposition to Defendants' motion.

13 II. STATEMENT OF FACTS

14 Plaintiffs have brought this action against the Co-op alleging that, among other
15 things, the Co-op violated its own Boycott Policy when it enacted the Israel Boycott and
16 Divestment Policies. The relevant facts are set forth in Plaintiffs' Brief Opposing
17 Defendants' Special Motion, which is incorporated by reference in support of this Cross-
18 Motion for Discovery.

19 Relevant to Plaintiffs' claims are, among other things, the Boycott Policy itself, the
20 Co-op's enactment of the Boycott Policy, the Co-op's application of the Boycott Policy,
21 the Co-op's actions adopting or rejecting previous proposed boycotts under the Boycott
22 Policy, and other issues related to the Boycott Policy. Moreover, because Plaintiffs'
23 claims are based on the Co-op's violation of its own Boycott Policy with respect to the

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25 ¹ Absent the provisions of the Anti-SLAPP statute, of course, Plaintiffs would be entitled
26 to full discovery under the Civil Rules before the Court were called upon to weigh evidence on a
motion to dismiss Plaintiffs' claims. That is one reason why Plaintiffs argue, in their
accompanying brief, that the statute is unconstitutional. Plaintiffs by making this motion are not
waiving any arguments made in response to Defendants' special motion.

1 adoption of the Israel Boycott and Divestment Policies, evidence related to the adoption of
2 those policies is also relevant.

3 In support of its motion, the Defendants submitted the Declaration of Harry
4 Levine, who was the Staff Representative to the Co-op Board and who provided on the
5 Defendants' behalf a detailed (but incomplete) account of how the Co-op adopted the
6 Israel Boycott and Divestment Policies. Mr. Levine contends, contrary to the facts, that
7 the Co-op complied with the Boycott Policy in adopting the Israel Boycott and
8 Divestment Policies. Mr. Levine's declaration is selective in its recounting of relevant
9 events and provided limited documentation of the Co-op.

10 Ms. Kaszynski replaced Mr. Levine as Staff Representative and also submitted a
11 declaration in support of the Defendants' motion. Ms. Kaszynski's declaration attempts
12 to, among other things, disqualify the individual Plaintiffs as proper derivative
13 representatives of the Co-op. Not surprisingly, Ms. Kaszynski's declaration suffers from
14 various inaccuracies. If subject to questioning at a deposition, for example, Ms.
15 Kaszynski would be required to answer questions regarding her mistaken claim that
16 Plaintiff Kent Davis first became a member in 2010.

17 Ms. Cox did not submit a declaration in support of Defendants' motion. However,
18 Ms. Cox was a member of the Board of the Co-op during the time in which the Co-op
19 wrongfully enacted the Israel Boycott and Divestment Policies. Accordingly, Ms. Cox
20 has abundant evidence regarding the Board's process, thinking, purposes, and
21 understandings regarding the Boycott Policy and the Israel Boycott and Divestment
22 Policies at the time those policies were adopted. Because she did not submit a declaration
23 in support of Defendants' motion, however, she has presented no evidence for the Court's
24 consideration. Were she subject to a deposition, the Court would have the benefit of her
25 evidence.
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1 **III. ISSUE PRESENTED**

2 If the Court does not deny the Defendants’ motion on the present record, should
3 the Court permit the taking of “specified discovery” as provided under the Anti-SLAPP
4 statute, RCW 4.24.525(5)(c)?

5 **IV. ARGUMENT**

6 Under RCW 4.24.525(5)(c), notwithstanding the discovery stay currently imposed
7 by the filing of Defendants’ motion, the Court, “on motion and for good cause shown,
8 *may* order that specified discovery or other hearings or motions be conducted.”

9 Good cause here exists in light of the fact that Plaintiffs have had no opportunity to
10 test the veracity of Defendants’ voluminous factual allegations, including the declarations
11 submitted with their motion. Nor have the Plaintiffs had the opportunity to depose Ms.
12 Cox, a member of the Board who undoubtedly has evidence relevant to the Court’s
13 consideration of the Boycott Policy and the Co-op’s adoption of the Israel Boycott and
14 Divestment Policies.

15 Moreover, while the Plaintiffs’ contend the Boycott Policy speaks for itself, and
16 that Co-op’s adoption of the Israel Boycott and Divestment Policies clearly violated the
17 plain language of the Boycott Policy, Defendants’ have moved to dismiss Plaintiffs’
18 claims based on vague arguments regarding the purpose or operation of the Boycott
19 Policy. For example, the Defendants concede that the Boycott Policy “speaks in terms of
20 the Staff deciding to engage in a boycott,” Motion at 18:22, but contend that this language
21 does not limit an unstated but purportedly understood “ultimate authority” of the Board to
22 violate its own policies, *see id.* Were the Court to countenance this argument, the
23 Plaintiffs should be entitled to obtain deposition and documentary evidence regarding the
24 Boycott Policy, its purposes, and its past and present application. Only then can the Court
25 properly evaluate whether the Defendants’ vague reliance on general understandings is
26 actually supported by the evidence.

1 A refusal to grant limited specified discovery would be particularly problematic
2 given Plaintiffs' limited access to information regarding Board meetings and
3 communications by and among Board members about the Israel Boycott and Divestment
4 policies. Since the Defendants' procedural violations are central to this dispute, it is
5 important that Plaintiffs be allowed to examine the circumstances under which those
6 policies came to be enacted in July 2010. Should the Court not deny Defendants' motion
7 on one of the grounds set forth in Plaintiffs' Brief Opposing Defendants' Special Motion,
8 Plaintiffs must be permitted to conduct specified discovery in order to present the Court
9 with a more complete factual picture.

10 **V. CONCLUSION**

11 Plaintiffs contend that the law and facts currently before the Court are sufficient to
12 support the denial of Defendants' motion. However, should the Court conclude that, on
13 the current record, the Court would be inclined to grant Defendants' motion, then the
14 Plaintiffs respectfully request leave to take the specified discovery set forth above. Such
15 discovery is contemplated by RCW 4.24.525(5)(c) and, in the absence of the denial of
16 Defendants' motion, should be permitted to Plaintiffs in this case.

17 DATED this 1st day of December, 2011.

18 McNAUL EBEL NAWROT & HELGREN PLLC

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20 By: 

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23 Attorneys for Plaintiffs
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