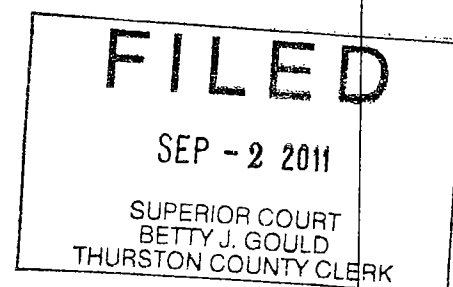


Hon.



SUPERIOR COURT OF WASHINGTON FOR 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.

No. 11 2 01925 7

COMPLAINT FOR RELIEF AND
DAMAGES

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

I. PARTIES

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.

COPY

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

3 3. Plaintiffs Jeffrey and Susan Trinin are married and reside in Thurston
4 County, Washington. They have been members of OFC at all relevant times. Susan Trinin
5 was formerly President of the Board of Directors (referred to herein as the "Board") of
6 OFC.

7 4. Plaintiff Susan Mayer resides in Thurston County, Washington. She has
8 been a member of OFC at all relevant times.

9 5. Defendant Grace Cox is a resident of Thurston County, Washington and a
10 staff member of OFC; was a member of the Board of OFC at or after the point at which the
11 Board enacted policies regarding a boycott of Israeli-made products (referred to herein as
12 the "Israel Boycott") and divestment from Israel (referred to herein as "Divestment"); but is
13 no longer a member of the Board of OFC.

14 6. Defendant Rochelle Gause is a resident of Thurston County, Washington and
15 a member of the Board of OFC.

16 7. Defendant Erin Genia is a resident of Thurston County, Washington and a
17 member of the Board of OFC.

18 8. Defendant T.J. Johnson is a resident of Thurston County, Washington and a
19 member of the Board of OFC.

20 9. Defendant Jayne Kaszynski is a resident of Thurston County, Washington; a
21 staff member of OFC; and a member of the Board of OFC.

22 10. Defendant Jackie Krzyzek is a resident of Thurston County, Washington;
23 was a member of the Board of OFC at the time the Board enacted the Israel Boycott and
24 Divestment policies; but is no longer a member of the Board of OFC.

1 11. Defendant Jessica Laing is a resident of Thurston County, Washington; was
2 a member of the Board of OFC at the time the Board enacted the Israel Boycott and
3 Divestment policies; but is no longer a member of the Board of OFC.

4 12. Defendant Ron Lavigne is a resident of Thurston County, Washington and a
5 member of the Board of OFC.

6 13. Defendant Harry Levine is a resident of Thurston County, Washington; was
7 an OFC staff member and member of the Board of OFC at the time the Board enacted the
8 Israel Boycott and Divestment policies; but is no longer a member of the Board of OFC.

9 14. Defendant Eric Mapes is a resident of Thurston County, Washington and a
10 member of the Board of OFC.

11 15. Defendant John Nason is a resident of Thurston County, Washington and a
12 member of the Board of OFC.

13 16. Defendant John Regan is a resident of Thurston County, Washington and a
14 member of the Board of OFC.

15 17. Defendant Rob Richards is a resident of Thurston County, Washington and a
16 member of the Board of OFC.

17 18. Defendant Suzanne Shafer is a resident of Thurston County, Washington;
18 was a member of the Board of OFC at the time the Board enacted the Israel Boycott and
19 Divestment policies; but is no longer a member of the Board of OFC.

20 19. Defendant Julia Sokoloff is a resident of Thurston County, Washington and a
21 member of the Board of OFC.

22 20. Defendant Joellen Reineck Wilhelm is a resident of Thurston County,
23 Washington; was a member of the Board of OFC at the time the Board enacted the Israel
24 Boycott and Divestment policies; but is no longer a member of the Board of OFC.

II. JURISDICTION AND VENUE

19. This Court has jurisdiction over this action pursuant to RCW 4.28.185(1)(a) and (b) because Defendants do business, reside, and/or have committed tortious acts within the State of Washington.

20. Venue in this Court is proper under RCW 4.12.020 and 4.12.025.

III. FACTS

21. OFC operates two retail grocery stores in Olympia, Washington: (a) the OFC Eastside Store at 3111 Pacific Ave., Olympia, Washington 98501; and (b) the OFC Westside Store at 921 Rogers St., Olympia, Washington 98502.

22. OFC operates according to certain governing rules, procedures, and principles, which are set forth in publicly available documents. Among these documents are OFC's "Mission Statement" and "Bylaws."

23. OFC promotes itself, in part, as a "non-hierarchical collective run by consensus process."

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

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

26. Some members of OFC volunteer by working at one or both OFC locations without monetary compensation. These individuals are known as the "Working Members" of OFC.

27. OFC also employs certain professional staff members, who are paid for the time they spend working at OFC. These individuals are known collectively as the "Co-op

1 staff.” OFC publicly represents that the “Co-op staff is a non-hierarchical collective run by
2 consensus process.”

3 28. Decision-making by “consensus” at OFC means that all individuals who are
4 empowered to participate in the making of a particular decision must agree in order for a
5 particular proposal to be approved. As part of the “consensus”-based decision-making
6 process at OFC, any one of these individuals may block consensus and thus reject the
7 proposal at issue.

8 29. In or around May 1993, the OFC Board enacted—by consensus—a “Boycott
9 Policy.” The Boycott Policy has not been changed or amended since its original enactment.

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

13 31. The honoring of a “nationally recognized” boycott by OFC involves, among
14 other things, a prohibition on OFC staff ordering or otherwise purchasing on behalf of OFC
15 product(s) that are the subject of the boycott at issue.

16 32. According to OFC’s Boycott Policy, “A request to honor a boycott may
17 come from anyone in the organization. The request will be referred to the Merchandising
18 Coordinator (M.C.) to determine which products and departments are affected. The M.C.
19 will delegate the boycott request to the manager(s) of the department which contains the
20 largest number of boycotted products. The department manager will make a written
21 recommendation to the staff who will decide by consensus whether or not to honor a
22 boycott.”

23 33. Since the enactment of the Boycott Policy, the OFC Board has decided—by
24 consensus—to honor various “nationally recognized” boycotts.

25 34. In or around March 2009, a staff member of OFC proposed that OFC boycott
26 products produced in Israel and divest from investment in Israel. The proposal was

1 discussed among OFC staff members, who were unable to reach universal agreement—i.e.,
2 consensus—regarding their position on these two proposals.

3 35. Some time in or before May 2010, OFC staff communicated to the Board of
4 OFC that the staff has been unable to reach universal agreement—i.e., consensus—
5 regarding its position on the proposal to boycott products produced in Israel and to divest
6 from investment in Israel.

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

11 37. At an OFC Board meeting in or around May – July 2010, the OFC Board
12 proposed that a boycott proposal be drafted regarding Israeli-made products and divestment
13 from Israel. The OFC Board also urged that staff consensus be pursued regarding this draft
14 boycott and divestment proposal.

15 38. Universal agreement—i.e., consensus—among the Co-op staff regarding the
16 boycott and divestment proposal was not reached before the OFC Board enacted the Israel
17 Boycott and Divestment policies.

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

21 40. In or around July 2010, an OFC Board meeting was held at which numerous
22 BDS supporters appeared without prior notice to the Board or the OFC membership. These
23 supporters urged the Board to adopt the Israel Boycott and Divestment policies. Several
24 alternatives to adoption were also discussed among OFC Board members, including but not
25 necessarily limited to rejecting the proposal; putting the Israel Boycott and Divestment
26 policies to a vote of OFC members via a “Member Ballot”; and holding “educational

1 forums” for OFC members to further educate them regarding the proposed Israel Boycott
2 and Divestment policies. The OFC Board subsequently rejected all of these alternative
3 proposals and instead enacted the Israel Boycott and Divestment policies, as urged by the
4 BDS supporters.

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

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

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

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

21 45. Plaintiffs have repeatedly asked, in writing, that the OFC Board rescind the
22 Israel Boycott and Divestment policies and apply the proper procedures to deciding the
23 issue. For example, in letters dated May 31, 2011 and July 6, 2011, Plaintiffs demanded in
24 no uncertain terms that the OFC Board act in accordance with its rules and bylaws and
25 rescind the Israel Boycott and Divestment policies. Further, Plaintiffs have requested that
26 the issues of boycotting and divesting from Israel be raised through a process that comports

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

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

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

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

24 49. Plaintiffs have exhausted all means within their reach to obtain compliance
25 by the OFC Board with their reasonable demands that the Board rescind the Israel Boycott
26 and Divestment policies and institute a process that comports with OFC's governing rules,

1 procedures, and principles. Moreover, it is clear that making any further requests of the
2 Board with regard to these issues would be futile.

3 50. This derivative action is not a collusive one brought to confer jurisdiction on
4 a Court of Washington State which it would not otherwise have. Additionally, Plaintiffs
5 fairly and adequately represent the interests of similarly situated members of OFC.

6 51. Defendants' actions and omissions—in failing to follow OFC's governing
7 rules, procedures, and principles—have, among other things, fractured the OFC community;
8 sown division and mistrust among OFC members, staff members, and Board members;
9 alienated numerous OFC members and staff members from OFC and the Board; and caused
10 numerous OFC members to either resign their memberships or otherwise cease shopping at
11 OFC.

12 IV. CLAIMS AND CAUSES OF ACTION

13 Plaintiffs plead the following causes of action derivatively on behalf of OFC:

14 Count 1: *Ultra Vires*

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

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

21 54. As a result of the foregoing misconduct, the enactment of the Israel Boycott
22 and Divestment policies is rendered void and unenforceable under the doctrine of *ultra*
23 *vires*.

24 Count 2: Declaratory Judgment

25 55. Plaintiffs reallege the preceding paragraphs and incorporate them by
26 reference.

1 56. Pursuant to RCW 7.24 *et seq.*, an actual and present dispute exists between
2 Plaintiffs and Defendants insofar as Defendants have taken *ultra vires* action in violation of
3 OFC's governing rules, procedures, and principles; since that time, despite repeated
4 requests, the OFC Board has refused to rescind its *ultra vires* action.

5 57. Plaintiffs therefore request that the Court issue declaratory judgment that:

6 a. The Defendant Board members who enacted the Israel Boycott and
7 Divestment policies acted without authority and in violation of OFC's governing
8 rules, procedures, and principles;

9 b. The Defendant Board members who failed to take action to rescind the Israel
10 Boycott and Divestment policies despite repeated requests violated OFC's
11 governing rules, procedures, and principles;

12 c. The OFC Board's enactment of the Israel Boycott and Divestment Policies
13 was *ultra vires*. It is therefore declared unenforceable, null, and void.

14 **Count 3: Permanent Injunctive Relief**

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

17 59. Defendants have violated their duties and responsibilities to OFC by taking
18 *ultra vires* action in violation of OFC's governing rules, procedures, and principles.

19 60. Absent the issuance of permanent injunctive relief, Plaintiffs will continue to
20 sustain irreparable injury insofar as the Israel Boycott and Divestment policies are
21 fracturing the OFC community; sowing division and mistrust among OFC members, staff
22 members, and Board members; alienating numerous OFC members and staff members from
23 OFC and the Board; and causing numerous OFC members to either resign their
24 memberships or otherwise cease shopping at OFC.

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

1 62. Plaintiffs therefore request that the Court permanently enjoin the OFC Board
2 from enforcing or otherwise abiding by the Israel Boycott and Divestment policies and
3 order the OFC Board to follow OFC's governing rules, procedures, and principles in the
4 future.

5 **Count 4: Breach of Fiduciary Duties**

6 63. Plaintiffs reallege the preceding paragraphs and incorporate them by
7 reference.

8 64. As members and formers members of the OFC Board, Defendants owed
9 and/or owe OFC fiduciary duties.

10 65. Through their acts and omissions with regard to the Israel Boycott and
11 Divestment policies, Defendants have breached their fiduciary duties to OFC.

12 66. Defendants' breaches of their fiduciary duties have proximately caused
13 damages to OFC in its business or property, in an amount to be proven at trial.

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

22 68. As to those Defendants who remained or became Board members after the
23 Israel Boycott and Divestment policies had been wrongfully enacted, they knew and/or
24 know (a) the Board failed to follow OFC's governing rules, procedures, and principles and
25 thus lacked authority to take such action at the time; and (b) the Israel Boycott and
26 Divestment policies continue to violate the governing rules, procedures, and principles of

1 OFC. Despite this knowledge, and despite repeated requests from OFC members for
2 remedial action, they have intentionally and wrongfully failed to rescind the Israel Boycott
3 and Divestment policies. These Defendants are therefore personally liable to OFC for the
4 damages proximately caused by the breaches of their fiduciary duties.

5 **V. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs seek the following relief against Defendants:

- 7 A. Findings and conclusions of law as described herein;
8 B. Declaratory judgment as described herein;
9 C. Permanent injunctive relief as described herein;
10 D. An award of damages in an amount to be proved at trial;
11 E. An award of reasonable attorneys' fees and costs to the extent permitted by
12 law;
13 F. Such other and further legal and equitable relief as the Court may deem just
14 and proper.

15 DATED this 2 day of September, 2011.

16 McNAUL EBEL NAWROT & HELGREN PLLC

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18 
19 Robert Sulkin, WSBA No. 15425
20 Avi J. Lipman, WSBA No. 37661
21 Attorneys for Plaintiffs
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VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Susan Mayer, being first duly sworn upon oath, deposes and says:

That she is a named plaintiff in the action identified in the foregoing Complaint, that she has read the foregoing Complaint, and to the best of her knowledge believes the allegations contained therein to be true and correct.

Susan Mayer
Susan Mayer

SUBSCRIBED AND SWORN TO before me this 30th day of August, 2011.



Gretchen L. White
Name: *Gretchen L. White*
Notary public in and for the State of Washington,
residing at: *Tempe, Arizona*
My commission expires: *3/29/14*