State of Washington
PUBLIC DISCLOSURE COMMISSION
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October 15, 2013

The Honorable Robert Ferguson
Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

SUBJECT: Status Report of Public Disclosure Commission Staff Investigation of Karen Andonian/Moms for Labeling Complaint Against Grocery Manufacturers Association and No on 522 Committee

Dear Attorney General Ferguson:

On August 26, 2013, your office received a complaint submitted by Karen Andonian and Moms for Labeling (MFL complaint) alleging that the Grocery Manufacturers Association (GMA) and the No on 522 committee (No Committee) were violating campaign finance laws and "numerous rules."

Your office forwarded the complaint to the PDC for review on August 29, 2013. At the time we received the complaint, neither your office nor our office viewed it as a citizen action letter (often also referred to as a "45-day letter" as provided for in RCW 42.17A.765) because it was not identified as such. However, Knoll Lowney, the attorney representing Moms for Labeling, later informed Linda Dalton of your office on September 23, 2013 that the complaint was intended to be notice of MFL's intent to file a citizen's action under RCW 42.17A.765. On October 8, 2013, Mr. Lowney provided your office with a letter identified as "2nd Notice of Intent to Sue for Violations of RCW 42.17[sic]" advising that Moms For Labeling will file suit in the name of the State of Washington if you do not bring an enforcement action against GMA and the No committee in ten days. Presumably this is intended as the second notice (often referred to as a "10-day letter") referenced in RCW 42.17A.765(4)(a)(ii).

The PDC has endeavored to expedite its investigation into this matter and, with this letter, is providing you a status report of staff's investigation to date into the allegations concerning both GMA and the No Committee. Our investigation is incomplete, and the Commission has not yet had an opportunity to receive or consider a report of staff's investigation or consider recommendations for you as it typically does in response to citizen action complaints forwarded by your office to our agency. However, in light of the

exigent circumstances, you are being provided all of the information PDC staff has obtained to date in its investigation, pursuant to WAC 390-37-041(4).

The MFL complaint alleged that the GMA:

- Needs to register as a political committee because it has accepted funds and pledges to defeat Initiative 522 but has not done so and has not filed required reports with the PDC.

The complaint further alleged that the No Committee:

- Received support from the GMA and failed to report it;
- Collected pledges of support but had failed to report them;
- Failed to report in kind contributions it has received from many large corporations that are trying to defeat Initiative 522; and
- Is not disclosing the identity of its actual top donors.

No evidence or other supporting information was provided with MFL's complaint to substantiate the allegations. Nevertheless, staff inquired of the GMA and the No Committee about the allegations and received written responses noting that no facts supporting the conclusory allegations were included with the complaint. Staff sought further clarification and information from GMA and the No Committee and also reviewed information from public sources. PDC staff reviewed this information in light of the applicable statutes and rules to determine whether a formal investigation or enforcement action was warranted.

Staff also became aware of a related lawsuit filed by Moms for Labeling against No on 522 and the GMA on September 17, 2013, which was dismissed on October 4, 2013 (Thurston County Superior Court Case No. 13-2-01960-1).

On October 4, 2013, PDC staff opened a formal investigation into the allegations against GMA (PDC Case No. 14-002) under WAC 390-37-060(1)(b), because our initial review indicated that a material violation of chapter 42.17A RCW may have occurred and/or GMA may not be in substantial compliance with the relevant statues and rules.

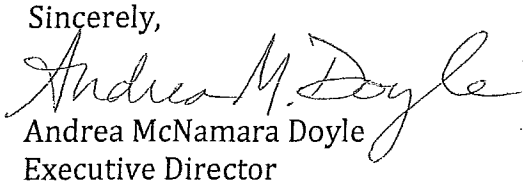
With his October 8, 2013 "2nd Notice" letter, Mr. Lowney provided documentation in support of MFL's "effort to require the No on 522 Campaign to comply with the Top 5 disclosure requirements in its political advertising campaign." That documentation had not been previously provided to your agency or the PDC by the Ms. Andonian, Moms for Labeling, or Mr. Lowney. Upon review of this documentation, PDC staff sought more information from Mr. Lowney that would demonstrate a reason for believing the alleged violations by the No Committee occurred. As part of that exchange, on October 10, 2013, Mr. Lowney withdrew MFL's allegations involving failure to report in kind contributions from corporations to the No Committee. PDC staff also made additional inquiries of the No Committee.

On October 14, 2013, PDC staff opened a formal investigation into the remaining allegations against the No Committee (PDC Case No. 14-003), again based on the fact that our initial review indicates that a material violation of chapter 42.17A RCW may have

occurred and/or No on 522 may not be in substantial compliance with the relevant statutes and rules.

As previously mentioned, PDC staff's investigation should not be considered complete, and the Commission has not reviewed or considered the information. Nevertheless, copies of the investigative records gathered to date in both these matters are being provided to Linda Dalton of your office. If you have any questions, please contact me at (360) 664-2735.

Sincerely,



Andrea McNamara Doyle
Executive Director

c: Commissioners
Nancy Krier, PDC General Counsel
Linda Dalton, Sr. Assistant Attorney General
Grocery Manufacturing Association
No on 522 Committee
John Tunheim, Thurston County Prosecuting Attorney

RECEIVED
NOV 22 2013
Public Disclosure Commission

FILED
NOV 20 2013
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. GROCERY MANUFACTURERS ASSOCIATION, Defendant.	NO. 13-2-02156-8 FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND FOR INJUNCTIVE RELIEF FOR VIOLATIONS OF RCW 42.17A

I. NATURE OF ACTION

The State of Washington ("State") brings this action to enforce the state's campaign finance disclosure law, RCW 42.17A. The State alleges that Defendant Grocery Manufacturers Association ("GMA") violated provisions of RCW 42.17A by 1) soliciting and receiving contributions and making expenditures to oppose Initiative 522 without properly registering and reporting as a political committee, 2) failing to identify a treasurer for the political committee, 3) failing to identify a depository for funds collected by the political committee, and 4) concealing the true source of the contributions received and made by

COPY

Defendant GMA. The State seeks relief under RCW 42.17A.750 and .765, including penalties, costs and fees, and injunctive relief.

II. VENUE AND JURISDICTION

1. This Court has jurisdiction over Defendant GMA, pursuant to RCW 42.17A, and the Attorney General has authority to bring this action on behalf of the State of Washington pursuant to RCW 42.17A.765 and RCW 42.17A.750.
2. Defendant GMA carried out the violations alleged in this complaint, in whole or in part, in Thurston County, Washington.
3. Venue is proper in Thurston County Superior Court pursuant to RCW 4.12.

III. PARTIES

4. Plaintiff is the State of Washington. Acting through the Washington State Public Disclosure Commission, Attorney General, or local prosecuting attorney, the State enforces the state campaign finance disclosure laws contained in RCW 42.17A.
5. Defendant Grocery Manufacturers Association is an association of food, beverage, grocery, and consumer products manufacturers located in Washington, D.C. that solicited funds from its members to, in part, make contributions and expenditures to oppose Initiative 522.

IV. FACTUAL ALLEGATIONS

Initiative 522

6. On June 29, 2012, Chris and Leah McManus submitted Initiative 522 to the Washington State Secretary of State. As identified by the Secretary of State, Initiative 522 "would require most raw agricultural commodities, processed foods, and seeds and seed stocks, if

produced using genetic engineering as defined, to be labeled as genetically engineered when offered for retail sale."

7. The Secretary of State then forwarded Initiative 522 to the Washington State Legislature pursuant to state law. Under state law, if the Legislature failed to act on Initiative 522 by the end of the 2013 legislative session, Initiative 522 would be submitted to Washington voters in November 2013.

8. The Legislature did not act on Initiative 522 within the time frames allotted by statute. The matter is now set on the November 5, 2013 General Election ballot.

Political Committees Supporting and Opposing Initiative 522

9. There are currently eight political committees registered with the PDC to support or oppose Initiative 522, seven supporting and one opposing.

10. The seven committees supporting Initiative 522 registered with the PDC on May 4, 2012 (Label It Now); August 6, 2012 (GMO Right to Know); February 11, 2013 (Yes on 522); February 20, 2013 (EWG Yes); March 20, 2013 (Organic Consumers Fund); June 19, 2013 (GMO Awareness); and September 10, 2013 (Farmers & Friends).

11. Currently, the one political committee registered to oppose Initiative 522 is No on 522, which registered with the PDC on January 15, 2013.

Grocery Manufacturers Association's Opposition to Mandatory Labeling

12. Following the 2012 defeat of a California ballot measure (Proposition 37) which was similar in purpose to Initiative 522, GMA staff and its Board of Directors ("GMA Board") began review and development of short and long-term strategies to oppose mandatory labeling on products containing genetically engineered or modified organisms. GMA, its

Board, and its members determined that a "long-term, thoughtful, strategically flexible approach" to product labeling issues was necessary at the local, state, and national levels.

13. In December 2012, following meetings of the GMA Government Affairs Council and GMA Board, the GMA Board directed GMA staff to conduct baseline polling in Washington State "to determine the viability of a campaign to defeat I-522." The GMA Board also directed GMA staff to "scope out a funding mechanism to address the GMO issue" "while better shielding individual companies from attack for providing funding." At the same time, the GMA Board directed GMA staff to prepare to oppose "efforts to require mandatory GMO labels: a. Fight Washington State Ballot Measure" and "begin preparations for a campaign, . . . to defeat I-522, the Washington State Ballot measure."

14. In January 2013, GMA staff presented the GMA Board with options for addressing "GMO Labeling Post Prop 37." The GMA Board discussion included discussion of Initiative 522, an estimated cost for a campaign to defeat Initiative 522, and consideration of GMA members' "appetite to mount a campaign to defeat the Washington State Measure."

15. At its January 19, 2013 meeting, the GMA Board supported a "multi-pronged" approach to mandatory labeling issues and directed GMA staff to "oppose all state efforts" to impose mandatory labeling by engaging in a state-by-state campaign.

16. Also at its January 19, 2013 meeting, the GMA Board expressed a desire to plan for funding long-term GMA goals with "a preference for GMA to be the funder of such efforts, rather than individual companies."

17. In a February 18, 2013 memorandum to the GMA Board, GMA's Chief Executive Officer Pamela G. Bailey proposed a cost estimate for the multi-pronged approach to labeling

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issues, which included the cost to "fight Washington State Ballot Measure" in 2013. CEO Bailey also included in her memorandum the establishment of a separate GMA fund that would "allow for greater planning for the funds to combat current threats and better shield individual companies from attack that provide funding for specific efforts." The fund would allow GMA to be identified as the source of funding for efforts that included defeating Initiative 522.

18. GMA named the fund the "Defense of Brand Strategic Account" ("Account") and determined that it would be funded from an assessment to GMA members separate from their normal association dues. The Account would be segregated from other GMA funds. GMA expressed its intent that GMA's opposition to a mandatory labeling program would be paid for from the Account. GMA also originally set a three-year period for this program, running from 2013 through 2015. GMA anticipated a number of different actions would be taken regarding the mandatory labeling issue, including opposition to the pending Initiative 522.

19. Following GMA Board approval in January and February 2013, GMA staff sent invoices for the Account to GMA members in March and August 2013. Goals identified for the Account included to "defeat ballot measures" and continue to "oppose all state measures."

20. GMA identified the portion of 2013 Account budget to be allotted to oppose Initiative 522 was $10,000,000.

21. On March 15, 2013, CEO Bailey sent a memorandum to GMA members with the first Account invoice. In addition to a description of the purpose of the Account, Ms. Bailey provided GMA members an "Update on Washington State," which described GMA efforts

to "assess the viability of a campaign to defeat I-522" and the results of GMA's polling efforts. Ms. Bailey further advised GMA members that "[m]uch like California, [the opposition to Initiative 522] campaign will be challenging." She then promised to provide updates to GMA members about "our progress on the Washington State efforts."

22. The March Account invoice further described the amount GMA billed its members as a "contribution" for its 2013 Defense of Brands Strategic Account and was the first of two installments with a due date of April 15, 2013.

23. On May 8, 2013, the No on 522 political committee reported receiving a contribution from GMA in the amount of $472,500. GMA also identified to its membership that the $472,500 contribution made to the No on 522 political committee came from funds collected from GMA members for the Defense of Brands Strategic Account.

24. On or about August 13, 2013, GMA sent the next invoice to GMA members for the second installment to the 2013 Defense of Brands Strategic Account, again labeling the installment as a contribution to the Account.

25. On or about August 23, 2013, GMA contributed $1,750,000 to the No on 522 political committee from its Defense of Brands Strategic Account.

26. On or about September 27, 2013, GMA contributed $5,000,000 to the No on 522 political committee from its Defense of Brands Strategic Account.

27. At the time GMA made the contributions to the No on 522 political committee as identified in paragraphs 25 and 26, it had not received contributions of ten dollars or more each from at least ten persons registered to vote in Washington State.

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28. As of October 7, 2013, GMA had accumulated $13,480,500 from GMA members' contributions to the Account.

29. On October 17, 2013, after this action was filed, GMA registered a political committee (Grocery Manufacturers Association Against I-522) with the Public Disclosure Commission and then, on October 18, 2013, disclosed $7,222,500 in filings with the Public Disclosure Commission as the total amount of the contributions it had collected from its members as of that date.

30. On October 29, 2013, Grocery Manufacturers Association Against I-522 reported that it contributed $2.9 million to No on 522 on October 24, 2013 and $877,500 to No on 522 on October 25, 2013. Except for $352,935.44, the source of the funding for these two contributions was monies contributed from GMA members to the Defense of Brands Strategic Account and received by GMA prior to GMA registering a political committee.

31. GMA spent $11,000,000 of the total amount it collected from its members on cash contributions to the No on 522 political committee to oppose Washington's Initiative 522 and $40,000 in polling expenses.

32. GMA's contributions to the No on 522 political committee came from contributions it collected from its members, with all but $352,935.44 received by GMA prior to registering Grocery Manufacturers Association Against I-522 as a political committee.

V. CLAIMS

Based on the foregoing factual allegations and information and belief available to date, the State makes the following claims, each of which may give rise to multiple violations of RCW 42.17A.

1. First Claim: The State reasserts the factual allegations made above and further asserts that Defendant GMA, in violation of RCW 42.17A.205, failed to register as a political committee within two weeks after the date it first had the expectation of receiving contributions or making expenditures in the election campaign to oppose Initiative 522.

2. Second Claim: The State reasserts the factual allegations made above and further asserts that Defendant GMA, in violation of RCW 42.17A.210 and RCW 42.17A.215, failed to identify a treasurer for its political committee and a depository for its funds.

3. Third Claim: The State reasserts the factual allegations made above and further asserts that Defendant GMA, in violation of provisions of RCW 42.17A, including but not limited to RCW 42.17A.235, .240, .245 and .442, failed to regularly, timely, properly, and electronically report the financial activities of its political committee, including identifying the sources of the contributions it received to make its expenditures to the No on 522 political committee to oppose Initiative 522 and for polling in Washington state.

4. Fourth Claim: The State reasserts the factual allegations made above and further asserts that Defendant GMA, in violation of RCW 42.17A.435, acted to conceal the true sources of funding for its electoral activities in opposing Initiative 522, including contributions it received from GMA members and the contributions it made to the No on 522 political committee and for polling in Washington state.

5. Fifth Claim: The State reasserts the factual allegations made above and further asserts that the actions of Defendant GMA stated in the above claims were negligent and/or intentional.

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VI. RELIEF REQUESTED

WHEREFORE, the State hereby requests that the following relief as provided by RCW 42.17A:

1. Assess a penalty against Defendant GMA for its failures to timely and properly comply with the above identified provisions of RCW 42.17A;
2. Compel Defendant GMA to register and report the financial transactions related to the operation of its Defense of Brands Strategic Account as provided for in RCW 42.17A;
3. Order Defendant GMA to pay all costs of investigation and trial, including reasonable attorneys fees, as authorized by RCW 42.17A.765(5);
4. In the event the Court finds Defendant GMA intentionally violated state campaign finance disclosure laws, order any penalty assessed against Defendant GMA to be trebled as authorized by RCW 42.17A.765(5); and
5. Grant such additional and further relief as the Court deems appropriate.

DATED this 20th day of November, 2013.

Respectfully submitted,
ROBERT W. FERGUSON
Attorney General

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Senior Assistant Attorney General
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