Superior Court of the State of Washington
For Thurston County

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Re: ***State of Washington v. Grocery Manufacturers Association***
Thurston County Superior Court Case No. 13-2-02156-8

Dear Counsel,

Enclosed please find the Court's ruling in the above noted matter. As you are well aware, the court conducted a four day penalty phase trial in late August and I apologize for the delay in sending this ruling.

Washington State voters enacted Initiative 276 in 1976. That Initiative was codified in Chapter 42.17A RWC which declared that

> The public policy of the state of Washington [is] that (1) political campaign...contributions and expenditures be fully disclosed to the public

> and...(10) the public's right to know of the financing of political campaigns... far outweighs any right that these matters remain secret and private.
>
> The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns...and full access to public records so as to assure the continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

Ch. 42.17A.001 RCW

The Court previously found that Defendant Grocery Manufacturers Association (GMA) is a political committee and that, as such, it was obligated to disclose contributions and expenditures in support of or opposition to any ballot proposition. Ch. 42.17A.005 (37). GMA did not do so as outlined in the court's March 9, 2016 letter ruling and as further outlined in the enclosed Findings of Fact, Conclusions of Law and Order. The Court has also previously determined that GMA violated Ch. 42.17A.435 RCW by concealing the true source of the funds that it received and spent opposing I-522. The purpose of the penalty phase trial was for the court to determine an appropriate penalty for those violations. The Court has done so by analyzing the facts in this case, as determined after trial, under the guidance of the statute and cases interpreting our State's public campaign finance laws.

As the court previously noted in its March 2016 letter ruling,

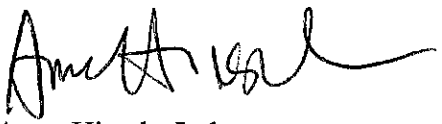
> In the ballot initiative context, where voters are responsible for taking positions on some of the day's most contentious and technical issues, voters serve as legislators while interest groups and individuals advocating a measure's defeat or passage act as lobbyists. As a result of this process, average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-government.

Human Life of Washington, Inc. v. Brunsickle, 624 F.3d 990, 1007 (9th Cir. 2010) (internal citations and quotations omitted.)

The people of Washington have directed that our state's public campaign finance laws be interpreted liberally, in order to promote transparency and full disclosure to the voters. Ch. 42.17A RCW. GMA intentionally violated the laws of Washington by its actions as set forth in the enclosed Findings of Fact, Conclusions of Law and Order. As a result, the Court is imposing a penalty, costs and fees as set forth in that Order, and trebling them based on GMA's intentional violation of the law.

A copy of the Court's Order is being filed on today's date with the Clerk.

Very Truly Yours,



Anne Hirsch, Judge
Thurston County Superior Court

cc: Thurston County Clerk for Filing

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON Plaintiff, v. GROCERY MANUFACTURERS ASSOCIATION, Defendant.	No. 13-2-02156-8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON TRIAL

THIS MATTER came before the Court for trial beginning on August 15, 2016 in order for the Court to address the issues of Defendant's intent and the appropriate penalty to assess as a result of it's violation of Washington State campaign finance disclosure laws. Plaintiff State of Washington appeared by and through its counsel, ROBERT W. FERGUSON, Attorney General, LINDA A. DALTON, Senior Assistant Attorney General, CALLIE A. CASTILLO, Deputy Solicitor General, and GARTH A. AHEARN, Assistant Attorney General. Defendant Grocery Manufacturers Association (GMA) appeared by and through its counsel, BERT REIN and MATTHEW GARDNER, Wiley Rein, LLP and AARON MILLSTEIN, K&L Gates LLP.

PRELIMINARY MATTERS

The State brought this civil enforcement proceeding against the Defendant in October 2013 alleging it failed to comply with the State's campaign finance disclosure laws under Ch. 42.17A. RCW. In January 2104 Defendants filed a separate lawsuit for injunctive and declaratory relief against the State, claiming various constitutional issues arising out of the same set of facts alleged by the State in its lawsuit. The cases were consolidated under this cause number on January 31, 2014. The Court has made various rulings over the time the case has been pending, including on the parties' cross motions for Summary Judgment, which the Court ruled on by letter opinion dated March 9, 2016.

Defendant filed a Motion for Reconsideration of the Court's ruling on Summary Judgment on April 4, 2016. In that Motion Defendant asserted that the Court drew incorrect inferences and also committed errors in making certain factual findings. Defendant requested that it be permitted to ask the Court to "harmonize, after trial," the factual findings made at Summary Judgment with those Findings the Court would make after the penalty phase trial (Motion at 1-2); Defendant's Motion, however, was never noted for hearing. At trial during this penalty phase, Defendants asked the Court to rule on its Motion for Reconsideration; the Court declined to grant the Motion for the reasons addressed on the record. However, because the Court allowed argument on Defendant's Motion, heard extensive testimony during the four day penalty phase trial and considered the admitted exhibits, the Court will, in the Findings of Fact and Conclusions of Law contained herein, RECONSIDER AND CORRECT those prior Summary Judgment Findings that evidence at trial proved were different from or inconsistent with the Findings the Court made at the time of Summary Judgment. The Court FINDS there is no prejudice in addressing the Motion for Reconsideration because at trial both parties had extensive opportunity to present evidence on all issues, the Court had the opportunity to listen to the testimony and make credibility determinations, and witnesses were cross examined by

counsel for both parties. To the extent these Findings conflict with the Findings of the Court made on Summary Judgment, these later findings, issued after trial, control.

Finally, the case presently before the Court is solely against Defendant GMA, whom the Court has already determined violated Washington State public campaign finance laws as found at Ch. 42.17A RCW. The only remaining issues before this court concern GMA's intent and the amount of penalty the court will impose. The Court will not in this case decide matters relating to whether any legal advice was wrong; that would be determined, if at all, in a different proceeding. To the extent Defendant seeks to limit its culpability based on advice of counsel, however, the Court will be addressing that later in this opinion when it addresses the "advice of counsel" affirmative defense.

WITNESS AND EVIDENCE CONSIDERED AT TRIAL

The Court heard from the following witnesses at trial:

1. Pamela Bailey, President and CEO of GMA;
2. William (Bill) MacLeod (by deposition), GMA outside counsel, Kelley Drye & Warren LLP;
3. Louis Finkel, former Executive Vice President of Government Affairs of GMA;
4. Karin Moore, General Counsel of GMA;
5. Robert (Rob) Maguire, former GMA outside counsel, Davis Wright Tremaine LLP;
6. Michael Ryan, former GMA outside counsel and Attorney, Seattle City Attorney's Office;
7. David Primo, Ph.D., Political Science Professor, University of Rochester;
8. Anthony (Tony) Perkins, Public Disclosure Commission.

The following Exhibits were entered into evidence during trial:

The State's Exhibits #1-35, 37-60, 62-89, 91-104, 116-123, and 126.

GMA's Exhibits #131-137, 139-140, 142-159, 161-171, 173-175, 177, 179-197, 206-208, 210 and 244.

Based on consideration of the testimony, exhibits, the briefing and arguments of counsel and being further advised of all of the circumstances, the Court makes the following

FINDINGS OF FACT:

1. Defendant Grocery Manufacturers Association (GMA) is a trade association, founded in 1908; during 2013 GMA was comprised of over 300 food , beverage and other companies that sell products at grocery stores.
2. GMA is overseen by a Board of Directors, with each Director representing a GMA member company. The Board also has several committees including the Finance and Audit Committee and the Government Affairs Council (GAC). The Finance and Audit Committee is chaired by a Board member and is comprised of Board members. The Government Affairs Council is a GMA work group comprised of Board members. GMA staff provides support for the Board, the Finance and Audit Committee and the Government Affairs Council. Finally, the GMA Board has an Executive Committee, made up of a smaller group of Board members.
3. The GMA Board of Directors is comprised of high level individuals from GMA member companies, including but not limited to company chief executive officers.
4. At all times relevant to this lawsuit, GMA's President and Chief Executive Officer was Pamela Bailey (Bailey).
5. Bailey's testimony was combative at times. Bailey often would not answer direct questions and frequently answered questions with questions of her own, and gave lengthy explanations that appeared designed to lecture the court and counsel for the State.

6. At all times relevant to this lawsuit, GMA's Executive Vice President for Governmental Affairs was Louis Finkel (Finkel). Finkel was involved in the crafting of the Defense of Brands (DOB) plan.
7. Finkel's testimony was also combative at times. Although he initially presented as very knowledgeable and answered questions asked of him, Finkel also often refused to answer direct questions, answering instead with questions, and appeared to the Court not to want to answer many questions asked of him.
8. From April 2013 through the date of this lawsuit, GMA's General Counsel was Karin Moore (Moore). When Moore first began working as counsel for GMA, GMA had already approved the Defense of Brands Account. At the beginning of her tenure at GMA Moore was unaware of Washington law and likely the significance of some of the many discussions she had with staff about various issues. Finkel did not provide complete information to Moore about the creation of the Defense of Brands Account and specifically never provided her with the "sham test" memo (Ex 72).
9. During 2012, GMA actively participated in opposing a California ballot proposition (Prop 37) that, if passed, would have required all packaged food products to identify GMOs (genetically modified organisms).
10. GMA spent $375,000 in monetary contributions and $82,000 in non-monetary contributions to oppose Prop 37. GMA loaned the No on Prop 37 political committee $1.5 million.
11. GMA, its members, and other sources spent $43 million to defeat Prop 37. GMA and its members spent almost $22 million to defeat Prop 37.
12. In November 2012, Prop 37 was defeated in California.
13. While successfully defeating Prop 37, certain individual member companies of GMA and some GMA staff received negative responses from the public because of their opposition to Prop 37, including threats and boycotts.

14. Starting in the summer of 2012, GMA's Government Affairs Council began discussing options and recommendations to give the GMA Board a strategy for fighting GMO labeling efforts, including at the state level. GMA expected the Washington Initiative to qualify for the November ballot in 2013.

15. In June 2012, Initiative 522 was filed with the Washington Secretary of State.

16. Beginning in November 2012, Bailey had discussions with then GMA Board Vice-President Ken Powell (2013 GMA Board President) concerning Initiative 522.

17. In November 2012, GMA knew that if Initiative 522 qualified for the ballot under Washington law, it would be on the November 2013 ballot in Washington State.

18. After the 2012 California Prop 37 campaign, GMA's Board discussed proposed strategies to defeat similar initiatives in states across the country. These discussions included a focus on Initiative 522 in Washington State. These discussions occurred at regular GMA Board of Directors meetings and at various Board committee meetings.

19. GMA intended to oppose and defeat state efforts to mandate GMO food labeling, including those in Washington State. As of December 2012, defeating Initiative 522 was part of GMA's overall strategy on combatting GMO labeling.

20. In December 2012, Bailey authorized a $9,000 expenditure for a consultant in Washington State.

21. On January 3, 2013, proponents of Initiative 522 submitted the required number of signatures for the initiative.

22. Over 30 Board members attended the January 2013 GMA Board of Directors meeting.

23. At the January 2013 Board meeting, GMA staff presented a proposal to address GMA member concerns about the growing potential for GMO labeling initiatives nationwide and in Washington State. (Ex. 13) The same proposal was also presented to GMA's Finance and Audit Committee. It included the statement that "state GMO related spending will be identified as coming from GMA which will provide anonymity and eliminate state filing requirements for contributing members." (Ex 15) GMA

understood that anonymity and elimination of state filing requirements were part of the plan to combat GMO labeling proposals.

24. The discussion at the January 2013 GMA Board meeting covered a variety of topics, including staff's description of starting an effort to defeat Initiative 522, an agreement to engage in Washington state, the need for an aggressive campaign plan to address mandatory labeling, and the cost associated with the GMO labeling issue, both in Washington State and nationwide. Finkel advised the GMA Board at this meeting that to be successful, Board members would need to contribute significant funds, and further, that GMA had developed a way to do this while shielding individual member companies from public scrutiny. Bailey informed the Board that although the California Proposition was defeated, it was not without a price and that GMA members all felt the onslaught of criticism for funding the campaign, mostly by activists who were also making efforts to boycott the brands of GMA members and harm consumer confidence consumers in GMA products. (Ex's 13, 17, 21)

25. GMA Board's Executive Committee also met in January 2013. The Executive Committee is comprised of many members including representatives from Conagra, General Mills, Del Monte Foods, Smucker's, and others. At that meeting Finkel explained to the members that GMA needed to develop a funding method that would provide significant financial support to oppose ballot title measures and state legislation. Finkel further described to the Executive Committee that establishing a multiple use fund for this would provide greater budgeting certainty to member companies while at the same time shield them from public disclosure and possible criticism. (Ex's 14, 21)

26. At the January 2013 Executive Committee meeting, the members discussed in detail the presentation by Finkel and Bailey and determined that it was important to continue to oppose and defeat state efforts to impose mandatory GMO labeling. (Ex. 14)

27. The Government Affairs Committee (GAC) was also briefed by staff in January 2013 on a proposal to develop a separate and distinct multi-year budget to address the spread of GMO related issues. The GAC supported the development of a fund of member contributions in advance of forming a state campaign to (1) cause state-related GMO spending to be identified as coming from GMA and (2) provide anonymity and (3) eliminate state filing requirements for contributing members. (Ex's 15, 17)

28. At the January 2013 GMA Board meeting the full Board was briefed, by Bailey and Finkel, on the GAC recommendations. The full Board was presented with a budget in which the greatest percent of funds were budgeted and designated to fight the upcoming Washington state ballot title measure on GMO labeling. Finkel described to the Board that the creation of a Defense of Brands account would allow greater predictability to members on funding needs and also shield individual companies from being disclosed and ultimately criticized for opposing ballot titles. (Ex's 16, 17, 21)

29. GMA staff and the Board noted that defeat of any state initiative requiring GMO labeling in Washington was a key part of the GMA national strategy regarding the GMO labeling issue. The GMA Board determined that (1) engaging in Washington was necessary, (2) it knew that it had a campaign in Washington State, and (3) "success in Washington was crucial to the overall success of GMO labeling issue for GMA." The GMA Board directed staff to develop a two to three-year budget to provide the Board with greater predictability for funding the plan. The GMA Board wanted a budget for each year of the plan. The Board expressed a preference for GMA only to be identified as the funder of efforts to oppose state labeling efforts, stating that this was a significant advantage to the proposed funding mechanism. (Ex's 17, 21)

30. Following the January 2013 GMA Board of Directors meeting, Finkel developed a "to-do" list based on the GMA Board's direction. The first items on that list addressed Initiative 522. The list also included budget development. (Ex 18)

31. The Government Affairs Council met on January 29, 2013. Finkel informed the Council that the GMA Board had directed GMA staff to begin preparing for a campaign to defeat Initiative 522. The Board was aware that an expensive campaign would be required to defeat Initiative 522.

32. GMA staff completed work on the Defense of Brands plan for final Board approval in February 2013. One purpose of the long-term funding mechanism for the plan was to reduce member company exposure to criticism and to show GMA as the only funder.

33. Bailey and Finkel both testified at trial that they believed that disclosures identifying GMA, rather than individual member companies, as a contributor would not affect the outcome of a possible campaign and the issue of effect was never discussed with the Government Affairs Committee or the Board. That testimony was not credible.

34. Finkel's and Bailey's testimony that shielding individual members from public scrutiny was not a concern is not credible to the court.

35. Finkel's testimony that shielding individual members from public scrutiny was merely an ancillary benefit of the Defense of Brands Account is not credible to the court.

36. Prior to the Board vote on February 28, 2013, GMA staff presented Board members with the final version of the proposed Defense of Brands Account. The Account identified a $17.3 million budget that specifically designated $10 million of the overall $11.3 million appropriated to be spent in 2013 to oppose state labeling efforts and included mounting a campaign in Washington State to defeat GMO labeling, namely, Initiative 522. The amount dedicated to defeating Initiative 522 ($10,000,000) did not change in any iteration of the proposed Defense of Brands budget for 2013.

37. The plan in the Finding of Fact above included a specific timeline for implementation of the goals of the Account including the goal of providing for better shielding of individual companies from attacks.

38. A few days prior to the February 28, 2013 GMA Board of Directors meeting, Bailey contacted GMA outside counsel, William MacLeod to tell him that GMA Board Chair (Ken Powell) would be turning to him and asking him to advise the board as to whether the proposed set up of the Account was legal and appropriate to establish the strategic brands account. Bailey did not provide MacLeod any documents or any further direction. Bailey did not ask MacLeod to conduct any legal research regarding Washington state campaign finance laws prior to the Board vote on February 28, 2013.

39. MacLeod's specialties are in anti-trust law and consumer protection. Campaign finance law is not an area of MacLeod's expertise. MacLeod is not licensed to practice law in Washington State.

40. Finkel testified that the reason counsel attend GMA Board meetings is for anti-trust purposes.

41. Finkel also spoke with MacLeod before the February 28, 2013 meeting and then confirmed with Bailey that he had spoken to MacLeod about the Defense of Brands account. Finkel and MacLeod did not talk about Washington campaign finance law during their conversation. GMA did not ask MacLeod to provide any opinion regarding the Account's legality with respect to Washington state campaign finance laws at any time prior to the Board voting to establish the Defense of Brands Account.

42. Prior to the February 28, 2013 GMA Board of Directors meeting, MacLeod did not review the Defense of Brands Account structure to determine if it would trigger any reporting obligations under Washington campaign finance disclosure laws. Comments attributed to MacLeod in the GMA Board of Directors Conference Call minutes for February 28, 2013, did not relate to the legality of the Account as it was to be used in Washington State. During this meeting, GMA Board members did not ask MacLeod whether the fund would be legal in Washington State.

43. MacLeod testified (by deposition) that the advice he gave at the February 28, 2013 meeting discussed in the Finding of Fact above was 1) based on what Finkel and Bailey

told him, 2) was general advice not specific to Washington State and 3) not based on a discussion of any state's laws.

44. At the February 28, 2013 GMA Board of Directors meeting, the Board voted to approve the GMA staff plan to address GMO labeling including specifically opposing Initiative 522 in Washington State. (Ex 29)

45. At the February 28, 2013 GMA Board of Directors meeting the Board also voted to create the Defense of Brands Account to fund opposition of Initiative 522 in Washington State along with other efforts. (Ex 29)

46. GMA and its Board expected and intended the Defense of Brands Account to (1) solicit, receive and hold contributions from specific GMA members (most of whom held a place on the GMA Board), (2) address the GMO strategy work nationwide and, (3) also specifically oppose Initiative 522 in Washington State. (Ex's 23, 29)

47. One of the specific purposes of the Defense of Brands Account was to shield the contributions made from GMA members from public scrutiny. (Ex's 29, 37)

48. Another purpose of putting GMA member funds into the Defense of Brands Account was to eliminate the requirement and need to publicly disclose GMA members' contributions on state campaign finance disclosure reports. (Ex 29)

49. The GMA Board knew and stated that "if the referendum in Washington were to pass, it would make success on other fronts very unlikely to succeed" and that "Washington was critical to the success of the overall objective."(Ex 29)

50. GMA staff advised GMA Board members that the Defense of Brands Account was intended to "provide anonymity and eliminate state filing requirements for contributing members." Finkel testified that it was clear to the public who the GMA members are. This testimony is inconsistent with the admitted exhibits that instead consistently discuss a purpose of the Account as to shield individual members from public scrutiny. Finkel's testimony in this regard is not credible.

51. The Defense of Brands Account, from its development through inception, held funds from GMA member companies and was intended to be used to engage in campaign activities in Washington, among other things. This engagement specifically included opposition to Initiative 522.

52. The funding of the Defense of Brands Account was based on a special assessment of the contributing GMA members. A total of 40 member companies were invoiced; 9 did not pay into the Account; one company paid but directed that its payments could not be used to oppose Initiative 522. All but two of the invoiced members were members of the GMA Board.

53. The formula used to determine the amount GMA invoiced the contributing members was based in part on the member company's revenue; it was not part of the member's normal dues. (Ex 38)

54. GMA expected to receive contributions to the Defense of Brands Account that could be spent to oppose Initiative 522 in Washington.

55. GMA commingled the money for different uses in the Defense of Brands Account.

56. Not all GMA member companies were billed or contributed money to the Defense of Brands Account. Participation in the Defense of Brands Account was not mandatory for any of the invoiced companies.

57. Invoices for the Defense of Brands Account were only sent to GMA members who were contributing to the Account. These contributing members were primarily GMA Board members who participated in the decision to create the Defense of Brands Account.

58. On March 15, 2013, GMA sent its first Defense of Brands Account invoice to GMA Board members and two non-Board contributing members as originally planned. (Ex 38)

59. The March Defense of Brands Account invoices contained a memorandum from Bailey that included discussion of the status of the campaign to defeat GMO labeling in Washington. (Ex 38)

60. The March Defense of Brands Account invoice characterized the amount GMA billed its members as a contribution to GMA's 2013 Defense of Brands Account and as the first of two installments. GMA invoiced 45 member companies.

61. The first contribution to the Defense of Brands Account was received by GMA on March 22, 2013. In total, 36 GMA member companies contributed to the Defense of Brands Account.

62. At least one GMA member who contributed to the Defense of Brands Account, Kraft Foods, specifically restricted its contributions and directed that they not be used to oppose Initiative 522.

63. GMA staff provided regular updates to GMA members regarding the campaign to oppose Initiative 522.

64. GMA members who contributed to the Defense of Brands Account were informed when their contributions were going to be transferred from the Defense of Brands Account to the No on 522 campaign.

65. GMA staff provided contributing GMA members information on how to respond if they received media or other inquiries once the contribution to the No on 522 campaign was publicly disclosed. They did this at least in part to divert attention from the true source of the funds, namely, the individual GMA members.

66. Despite the opinion testimony of Bailey and Finkel to the contrary, there was no evidence presented to the court that members of the general public know the names of the individual GMA member companies.

67. In March 2013, GMA staff submitted to the GMA Board of Directors a proposed amendment to GMA bylaws to establish the Defense of Brands Account, identify its purpose, and set how expenditures from the Account were to be made. Expenditure

authority came from a GMA Board subcommittee and not from a GMA staff member. Final vote on the bylaw amendment was completed in July 2013. The Defense of Brands Account was established and held separate from the GMA general operating budget.

68. On April 3, 2013, a representative of GMA Board member Kraft Foods contacted Finkel concerning the legality of the structure of the Defense of Brands Account under state and federal contribution laws. Finkel directed Kraft Foods to GMA's outside counsel, MacLeod.

69. On April 16, 2013, Kraft Foods attorney Jim Portnoy contacted MacLeod about the legality of the structure of the Defense of Brands Account.

70. From April to August 2013, Kraft Foods asked on multiple occasions if the structure of the Defense of Brands Account was legal, specifically if the Account would be used in accordance with the relevant state and federal contribution laws. These inquiries were made to MacLeod, Finkel, and GMA's Washington State counsel, Rob Maguire.

71. On April 16, 2013, MacLeod and Finkel communicated about the legality of GMA's conduct with the Defense of Brands Account and in response to Kraft's questions noted in the above Finding of Fact. Finkel told MacLeod on this date that he believed it would be best to have a lawyer "write something up." (Ex 44) Finkel's testimony that he did not know that he ever asked MacLeod to perform any work is not credible.

72. MacLeod testified that Finkel was confident in the authority he had to proceed with this type of fund and that is what MacLeod described in his memo.

73. In April 2013, MacLeod and others at his law firm, Kelley Drye & Warren, reviewed the Defense of Brands Account structure under Washington law. The firm developed two memos that outlined concerns about the structure and GMA's reporting responsibilities under Washington law. MacLeod verbally advised Finkel of the concerns and recommended seeking Washington State counsel with experience in state campaign finance disclosure laws. MacLeod did not tell Finkel that the Account was

legal in Washington State and Finkel did not ask. MacLeod never finalized these memos and there was no evidence at trial that Macleod provided Finkel with any written memoranda at this time. MacLeod testified that he did not then provide written memoranda to Finkel because he was not yet finished with his research and was not confident of the research he had completed thus far.

74. MacLeod emailed Finkel on May 1, 2013 asking him to call and respond to their draft memorandum (written by Dave Frulla) on the legality of the Defense of Brands account. There is no evidence that Finkel ever responded. MacLeod also informed Finkel that he needed to conduct more research before he could give an opinion on any concerns he had about the account under Washington law.

75. In April 2013, GMA retained Rob Maguire from Davis Wright Tremaine to provide advice to GMA on the legality of the Defense of Brands Account structure under Washington law. Maguire also represented the No on 522 political committee in Washington during 2013. Maguire is very experienced in the area of Washington campaign finance laws; GMA consulted with Maguire after GMA created the Defense of Brands account.

76. GMA made the first contribution from the Defense of Brands Account to the No on 522 political committee on May 8, 2013. GMA advised the contributing GMA members on May 7, 2013 of this transfer before it was made. In an update that followed the first contribution, GMA staff told the contributors that GMA expected to spend the full $10 million budgeted to oppose Initiative 522. Later updates also indicated that GMA was "still staying true to what the Board approved on February 28, 2013." (Ex 55)

77. On or about May 10, 2013, shortly after she was hired as GMA General Counsel, MacLeod spoke with Moore. At that time he told her to "keep an eye on things in Washington." He told Moore that because "Washington was a complicated area of the law, and I knew that if GMA was going to be proceeding there that it required attention

from the lawyers and from the experts." (MacLeod's trial testimony by deposition) Moore did not at that time follow up on the statement with MacLeod or anyone at GMA.

78. On May 10, 2013, GMA received a memo from Maguire through the No on 522 committee consultant with an "overview of key Washington laws applying to initiative campaigns and ballot measure committees." In that memo Maguire outlined the reporting requirements for political committees including the requirement to file, and to name individual contributors who gave more than $25. (Ex 59)

79. Finkel then requested additional advice from Maguire concerning the legality of the Defense of Brands Account structure under Washington law.

80. In preparation of providing that advice, Maguire requested specific information from Finkel including 1) how the Defense of Brands Account was set up, 2) whether contributions to the Account were voluntary, 3) how solicitations for the Account were handled, 4) any documents that established the purpose of the Account, 5) how decisions were made about money spent from the Account, 6) copies of solicitation memos, 7) whether the GMA Board had a specified amount identified to spend on Initiative 522 and whether that information was provided to contributors, and 8) the overall budgeted amount for the Account. (Ex 69)

81. In response to his request, Finkel provided two documents to Maguire: language from Bailey's March Defense of Brands invoice memo to contributors (not a copy of an actual invoice), and a version of the GMA's bylaw amendment for the Account. Finkel also verbally provided certain limited information to Maguire. Finkel provided no other information that would have answered Maguire's requests as set out in the above Finding of Fact. (Ex 72)

82. On June 13, 2013, Maguire provided GMA with a draft advice memo relying solely on information from Finkel, including the two documents in the above Finding of Fact. Finkel sent Maguire's draft memo to Kraft Foods on June 14, 2013. Maguire

specifically stated in his memo that his analysis was based on his review of the GMA bylaw concerning creation of the account and an undated memo from Bailey to the Board regarding invoices sent to members, as well as an explanation about the account given to him by Finkel. Maguire further stated that "We did not conduct a comprehensive review of all GMA communications concerning the Strategic Fund....we understand such a review would not reveal any information inconsistent with the description of the Strategic Funded provided to Davis Wright Tremaine LLP for this analysis. If, however, information exists indicating a different understanding or operation of the Strategic Fund, the analysis of reporting requirements may also differ from the analysis provided in this memorandum." (Ex. 80)

83. Maguire was provided only limited information on the Defense of Brands Account by Finkel and testified that he was aware that a "byproduct" of the funds becoming GMA's own funds was that the fund would "shield individual companies from criticism for funding of specific efforts."

84. In June 2013, GMA removed its membership list from its website. The membership list had identified the entire association company membership. The website did not identify the members that had contributed to the Defense of Brands Account.

85. On July 25, 2013 and after receiving a billing statement that reflected a number of hours Kelly Drye had worked on I-522 issues but not having received any work product, Moore emailed MacLeod stating she wanted to have a discussion about the Washington State ballot title funding question. She asked for and later received the two draft advice memos from Kelley Drye in which the legality of the Defense of Brands Account structure under Washington law was questioned. Moore asked nothing further from Kelley Drye about the memos and their position on the legality of the Defense of Brands Account.

86. On August 12, 2013, GMA sent its second invoice to the contributing GMA members for the 2013 Defense of Brands Account, again labeling the installment as a "contribution" to the Defense of Brands Account.

87. On August 20, 2013, Kraft Foods made its contribution to the Defense of Brands Account. It specifically prohibited use of its contributions "in connection with the 'No on 522' campaign Washington State." (Ex 101)

88. By the end of 2013, GMA collected $14,283,140.00 in contributions to the Defense of Brands Account. GMA exercised control over the funds it received into the Defense of Brands Account.

89. GMA contributed $11,000,000 of the $14,283,000 it accumulated into the Defense of Brands Account to the No on 522 political committee. This amounted to 77% of the Defense of Brands Account's total funds for 2013.

90. In September 2013 a lawsuit was filed against GMA by a group called Moms for Labeling and GMA then retained Michael Ryan as defense counsel. GMA General Counsel Moore provided three documents to Ryan for his review. Moore did not provide all available GMA records that might have informed Ryan's legal advice to GMA or any opinion he might have provided and she did not provide him with the two draft memoranda from Maguire. Moore and Ryan did, however, have a lengthy conversation regarding Washington public campaign finance law and cases interpreting that law. At the end of the conversation Ryan informed Moore that he believed the account was appropriate under Washington law.

91. During 2013, the state Public Disclosure Commission's (PDC) website recorded over 85,000 unique visitors to its website according to a report the PDC received from Google Analytics. Those users accessed over 1.7 million pages on the PDC website; of those pages, almost 1.2 million pages accessed were to the PDC contribution and expenditure database.

92. Members of the public including candidates, political committee representatives, lobbyists, researchers, media, and others seek information from the PDC website including about disclosure information. PDC staff instruct members of the public and others on how to use the website, how to find reporting materials, and about campaign finance data.

93. David Primo is a political scientist who testified for GMA at trial. Primo has published articles outlining his theory regarding the lack of impact public campaign finance laws have on educating the voting public. Primo has testified in some other courts as an expert. Primo's work flows from his hypothesis that campaign finance disclosure laws are not helpful to the public and is based on on-line polling research he conducted regarding Florida voters. Primo's research did not include any contact with Washington voters.

94. Primo's testimony about the benefit of Washington public campaign finance law to Washington voters is directly at odds with the legislative intent and policy behind the Washington public campaign finance laws found at Ch. 42.17A RCW. The court did not find his testimony helpful.

95. GMA did not register with the PDC as a political committee until October 17, 2013, when it did under the direction of the State and in order to avoid being assessed a penalty in this case.

96. From February 28, 2013 to October 17, 2013, GMA did not submit any political committee finance disclosure reports. Those reports would have included and identified its donors as well as the expenditures from the Defense of Brands Account.

97. GMA did not disclose its members who contributed to the Defense of Brands Account until October 17, 2013. GMA never fully disclosed the total contributions to the Defense of Brands Account from its members.

98. From February 28, 2013 to October 17, 2013, GMA did not file any political committee finance disclosure reports showing expenditures it made from the Defense

of Brands Account. GMA never fully identified all expenditures from its Defense of Brands Account. Additionally, GMA should have filed summaries of its Defense of Brands Account activity including eleven C-4 reports through the end of December 2013. GMA did not file any reports for activity after December 31, 2013.

99. From February 28, 2013 to October 17, 2013, GMA did not file any reports that fully disclosed the amount of contributions it received into the Defense of Brands Account, the expenditures GMA made from the Defense of Brands Account, or the full amount of funds in the Defense of Brands Account available during the 2013 election year.

100. GMA never filed a final political committee report with the state PDC.

101. In light of all the evidence in the record, the testimony of GMA Executives Baily and Finkel that GMA did not intend to violate Washington campaign finance law is not credible.

102. Finkel, Bailey and Moore did not provide complete information to the attorneys with whom they spoke to about the Account. Additionally, Finkel never responded to MacLeod's requests for information and never provided MacLeod, Maguire or Ryan with all applicable and relevant documents or information regarding the Defense of Brands Account. Further, neither Finkel nor Bailey fully informed Moore, when she first became general counsel for GMA, of all of the specifics regarding the Defense of Brands account. GMA did not fully, or accurately, disclose all material facts to its attorneys.

103. GMA voted to approve the Defense of Brands Account without ever inquiring of its attorneys whether such an account was legal under Washington law

104. In light of all the evidence in the record, it is not credible that GMA executives believed that shielding GMA's members as the true source of contributions to GMA's Defense of Brands Account was legal.

105. In light of all the evidence in the record, GMA executives' testimony that they believed they did not have disclose the funds in the Defense of Brands Account during the course of the Initiative 522 campaign is not credible.

106. In exercising its discretion in determining an appropriate penalty in this case, the court should and did review the applicable statutes, administrative code provisions, case law and penalties imposed by other courts. Although the court would not allow testimony or argument on penalties in other cases, the court has reviewed all of the briefing submitted, including GMA's briefing and arguments regarding penalties imposed in other cases. The court has considered all of that in making its determination regarding a penalty.

107. Mitigating factors in this case include lack of any prior violations by GMA, that GMA is not a repeat violator and that GMA cooperated with the PDC once this case was filed. Those factors weigh in favor of a smaller penalty.

108. There are also factors that weigh in favor of the court imposing a more substantial penalty, including trebling of damages. Those factors include: violation of the public's right to know the identity of those contributing to campaigns for or against ballot title measures on issues of concern to the public, the sophistication and experience of GMA executives, the failure of GMA executives to provide complete information to their attorneys, the intent of GMA to withhold from the public the true source of its contributors against Initiative 522, the large amount of funds not reported, the large number of reports filed either late or not at all, and the lateness of the eventual reporting just shortly before the 2013 election.

109. It is impossible for this court to determine whether GMA's violation of Ch. 42.17A RCW contributed to or resulted in the defeat of Initiative 522.

INTRODUCTION TO CONCLUSIONS OF LAW

A few jurisdictions have recognized an affirmative defense of "advice of counsel" in some types of cases. There appears to be no Washington cases directly on point with this

case. In those limited number of state and federal jurisdictions that recognize this defense, courts require some common elements including: action in good faith with the belief that good cause exists for the action and that one is not seeking the opinion as a shelter; complete, accurate and honest disclosure of all the material facts; that the legal rights at issue are in doubt; that counsel is competent and that the advice is complied with. Further, it is the defense burden to prove this affirmative defense by competent evidence. See e.g., *DiLiddo v. Oxford Street Realty*, 450 Mass. 66, 876 N.E.2d 421 (Mass. 2007); *G.S. Enterpirses, Inc. v. Falmouth Marine, Inc.*, 410 Mass. 262, 275, 571 N.E.2d 1363 (Mass. 1991); *United States v. Vernon,* 723 F.3d 1234, 1269 (11th Cir. 2013); *Liss v. United States,* 915 F.2d 287, 291 (7th Cir. 1990). Even if the Court were to find that this defense could be asserted in this case, Defendant did not meet its burden to prove it is entitled to its application and protection in this case.

CONCLUSIONS OF LAW

Based on the Findings of Fact identified above, the Court makes the following Conclusions of Law:

1. After hearing and considering all of the evidence submitted at trial in this matter the Court will not reconsider its prior ruling regarding when GMA's political committee was formed. Based on that prior ruling, GMA's committee registration form should have been filed with the PDC no later than March 14, 2013. GMA filed this registration form 224 days late.
2. Under state law, GMA was obligated to file reports of the contributions it expected to and did receive from member companies. This amounted to at least 47 reports that GMA did not timely or properly file.
3. The totality of the record establishes under a preponderance of the evidence, as well as the higher clear, cogent and convincing standard, that GMA solicited and received campaign contributions from its members, which it placed in its Defense of Brands Account and then used to oppose the 2013 Washington ballot measure, Initiative 522.

4. The totality of the record establishes under a preponderance of the evidence, as well as the higher clear, cogent and convincing standard, that GMA formed a political committee as defined by Ch. 42.17A.005(37) RCW as a receiver of contributions on or about February 28, 2013, by creating an expectation of receiving contributions to the Defense of Brands Account.

5. The totality of the record establishes under a preponderance of the evidence, as well as the higher clear, cogent and convincing standard, that GMA committed multiple violations of Washington's campaign finance disclosure laws by:

   a. Failing to timely register with the PDC as a political committee in violation of Ch. 42.17A.205 RCW;

   b. Failing to timely identify a treasurer and bank account in violation of Ch. 42.17A.210 and Ch. 42.17A.215 RCW;

   c. Failing to timely and properly file 60 reports of contributions it received from its members and expenditures it made from GMA's Defense of Brands Account in violation of Ch. 42.17A.235 and .240 RCW; and,

   d. Concealing the true sources of the contributions it received and expenditures it made in opposing Initiative 522 in violation of Ch. 42.17A.435 RCW.

6. The totality of the record establishes under a preponderance of the evidence, as well as the higher clear, cogent and convincing standard, that GMA has not met its burden of proving an "advice of counsel" defense. Specifically, GMA either intentionally failed to provide full and accurate information to counsel when asking for advice on the legality of the Defense of Brands Account under Washington law or, alternatively, created the Account without receiving any advice that such an account was legal under Washington law. In either case, GMA does not make the required showing that it is entitled to this defense, if it even is available at all under Washington law.

7. The totality of the record establishes under a preponderance of the evidence, as well as the higher clear, cogent and convincing standard, that GMA intentionally violated Washington State public campaign finance laws.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby ORDERS as follows:

1. Defendant Grocery Manufacturers Association shall pay the amount of $6,000,000.00 as a civil penalty for multiple violations of the state campaign finance disclosure law, RCW 42.17A specifically for
   - concealing the amount accumulated in the Defense of Brands Account;
   - concealing the source of contributions to the Defense of Brands Account;
   - the 60 disclosure reports that were not timely or properly filed identifying the finance activity of the Defense of Brands Account; and
   - the number of days required reports were filed late.
2. The civil penalty outlined in Paragraph 1 of this Order above shall be trebled as punitive damages for GMA's intentional violations of state law.
3. Defendant Grocery Manufacturers Association shall pay the State all costs of investigation and trial, including its reasonable attorneys' fees, in an amount to be set by later order of the court after the State provides a cost bill for the attorneys' fees, costs of trial, and costs of investigation.
4. Defendant Grocery Manufacturers Association shall file reports with the Public Disclosure Commission that account for all funds paid into and out of the Defense of Brands Account from February 28, 2013 through December 31, 2013, and then file a final report closing the committee. Such reports shall be filed no later than 30 days from the date of this Order.

DATED this 2nd day of November, 2016.

JUDGE ANNE HIRSCH