☐ EXPEDITE

☐ No hearing set

☒ Hearing is set

Date: January 13, 2012

Time: 11:00am

Judge/Calendar: Hon. Paula Casey/ Hon. Christopher Wickham

SUPERIOR COURT OF THE STATE OF WASHINGTON
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.	Case No. 11-2-01925-7 DEFENDANTS' REPLY TO PLAINTIFFS' BRIEF OPPOSING SPECIAL MOTION TO STRIKE UNDER WASHINGTON'S ANTI-SLAPP STATUTE, RCW 4.24.525, AND MOTION TO DISMISS

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I. INTRODUCTION

Plaintiffs cloak their challenge to the Co-op's boycott decision in the guise of policies and procedures. But their failure to rebut Defendants' First Amendment arguments with any legal authority, or illustrate how the Board's actions violate its duties and responsibilities under the corporation's governing documents, requires dismissal under the anti-SLAPP law. The Co-op's decision to boycott Israeli products for humanitarian reasons is constitutionally protected and consistent with its mission to foster a socially and economically egalitarian society. Indeed, it is among the very traits that distinguish the Co-op from grocery stores such as Safeway.

Instead of using remedies readily available to them, Plaintiffs have taken the intimidating and costly path of litigation. This is precisely what the anti-SLAPP statute was intended to curtail, and why the legislature provided a mechanism for heightened judicial vigilance of such claims. Plaintiffs have utterly failed to sustain their burden of proving, by clear and convincing evidence, that they will prevail in this lawsuit.

II. ARGUMENT AND AUTHORITY

A. The Co-op's Boycott Falls Within the Ambit of the Anti-SLAPP Statute.

Plaintiffs' Opposition Brief ("Opp. Br.") makes scarce effort to rebut that Defendants have met their burden to show that the Israeli boycott constitutes action involving public participation and petition. *See* RCW 4.24.525(4). Plaintiffs' only attempt to challenge the applicability of the anti-SLAPP statute consists of two paragraphs, which are unsupported by any legal citation. *See* Opp. Br. at 1, 7. These arguments merely attempt to distract the Court from the boycotting activity central to the case.

It is now beyond dispute that corporations enjoy the same rights to speech as individuals. *Citizens United v. Fed. Election Comm'n*, --- U.S. ---, 130 S. Ct. 876, 899-900 (2010). In fact, corporations are expressly recognized as "persons" under the anti-SLAPP statute.[1] Corporations "speak" through their duly elected representatives.

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[1] "'Person' means an individual, ***corporation***, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity." RCW 4.24.525(1)(e) (emphasis added).

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> [O]fficers of a corporation who manage and control the ultimate direction of its affairs ... are to be regarded as the corporation itself because a corporation is a purely metaphysical creature, having no mind with which to think, no will with which to determine and no voice with which to speak.

American States Ins. Co. v. Symes of Silverdale, Inc., 150 Wn.2d 462, 474 (2003) (internal quotations omitted). Defendants' fundamental First Amendment activity (or conduct in furtherance thereof) forms the basis for the Co-op's boycott. By deciding to honor the boycott, Defendants engaged in protected activity on behalf of the Co-op. Whether that advocacy is characterized as conduct in furtherance of the constitutional right of free speech or the right of petition, it falls squarely within the ambit of RCW 4.24.525. Plaintiffs' argument that the conduct of the Co-op Board members is ultra vires—but cannot simultaneously constitute conduct in furtherance of free speech—dramatically misunderstands the scope of the anti-SLAPP statute. This case is about the Co-op's boycott of Israeli products, plain and simple. Any argument to the contrary is undermined by the very relief sought by Plaintiffs: an injunction to end the Co-op's boycott. *See* Complaint at 11.

B. The Co-op Was—and Remains—a Lawfully Formed Washington Nonprofit.

Pursuant to the Washington Nonprofit Corporation Act ("NCA"), RCW 24.03 *et seq.*, the Co-op incorporated in 1976 as "The Fourteen Ounce Okie Dokie Cooperative Club." Kaszynski Supp. Decl. Exh. A. On April 29, 1981, the Co-op amended its articles of incorporation to, *inter alia,* change its name to the "Olympia Food Cooperative." *Id.* Plaintiffs' argument that the Co-op is improperly organized under the NCA—their only argument that the NCA does not shield Defendants from liability—is meritless. *See* Opp. Br. 16.[2]

Plaintiffs confuse *identifying* as a cooperative with *incorporating* as a cooperative. A legal entity's articles of incorporation determine its corporate status. *See* RCW 24.03.010; *Save Columbia CU Committee v. Columbia Community Credit Union*, 134 Wn. App. 175, 181 (2006)

[2] This argument also seems odd when made by Plaintiffs who claim to represent the interests of the Co-op in a *derivative* suit. Moreover, former officers and managing staff cannot make this challenge, which rests on the Co-op's failure to reorganize under the Co-op Act, because they were as much responsible for maintaining the alleged defect "as any other members of the corporation." *Boyle v. Pasco Growers' Ass'n,* 170 Wash. 516, 519-520 (1932).

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(courts look only to a corporation's governing documents and *objective* evidence to determine corporate intent).

The Co-op also *operates* as a nonprofit, despite its name. Statutes distinguish between cooperatives and nonprofits in at least two respects: ***First***, nonprofits cannot distribute income to "members, directors or officers." RCW 24.03.005(3). The Co-op complies with this defining attribute. Kaszynski Supp. Decl. ¶ 2 and Exh. A. In contrast, the Co-op Act authorizes cooperatives to pay earnings to members. RCW 23.86.160. ***Second***, under the NCA, nonprofit assets *may* be distributed upon dissolution to other nonprofits designated by the Board. RCW 24.03.225(5). That is how the Co-op has been established here. *See* Kaszynski Decl., exh. A, Art. VII. In contrast, under the Co-op Act, assets *must* be distributed to *members* upon dissolution. RCW 23.86.250 (incorporating RCW 24.06.265). These two differences, at a minimum, establish that the Co-op functions as a nonprofit, not as a cooperative.

Moreover, the Co-op Act explicitly recognizes that the Co-op may remain lawfully incorporated under the NCA.[4] The Co-op never reorganized under the Co-op Act, RCW 23.86.195. Accordingly, it remained a nonprofit corporation lawfully entitled to use the word "cooperative" in its name.[5] *See AG Link, Inc. v. Shrum*, 153 Wn. App. 1022, 2009 WL 4355843, *5 (2009) (unpublished) (corporation that chose not to reorganize under RCW 23.86.195 did not become a cooperative association). In sum, the Co-op's incorporation under the NCA was lawful and expressly recognized as a permissible organizational choice by the Co-op Act. The NCA governs this dispute.

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[4] "Any cooperative association organized under any other statute ***may*** be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter." RCW 23.86.195 (emphasis added).

[5] "No corporation or association organized or doing business in this state shall be entitled to use the term 'cooperative' as a part of its corporate or other business name or title, ***unless*** it: … (c) "is, on July 23, 1989, an organization lawfully using the term 'cooperative' as part of its corporate or other business name or title." RCW 23.86.030(2) (emphasis added).

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C. The Procedural Policy for Staff Boycott Decisions Does Not Displace the Board's Authority to Make Such Decisions as Matters of Co-op Policy.

Plaintiffs argue that Defendants exceeded their authority by failing to adhere to two aspects of a Board-approved 1993 staff revision to the Co-op's boycott policy: (1) its reference to "nationally recognized" boycotts and (2) its requirement of full staff consensus. This argument incorrectly presumes that the staff tail wags the Board dog, and is fatally flawed for three reasons: (1) both state law and the Co-op Bylaws prohibit staff from controlling the Board, and attempts at such delegation of powers is void; (2) the 1993 boycott policy governs procedure only for *staff* boycott decisions; the Bylaws govern the procedure for *Board* boycott decisions; and (3) the Board's decision to boycott Israeli goods was well within its discretion under the "business judgment" rule applicable to such decisions by corporate boards.

The Washington statute squarely places the mantle of leadership on a nonprofit's board: "The affairs of a corporation shall be managed by a board of directors." RCW 24.03.095. The Co-op's Bylaws do the same: "The affairs of the cooperative shall be managed by a Board of Directors." Bylaws art. III, §1. The Bylaws also explicitly vest authority to change or make policy and to "resolve organizational conflicts" solely in the Board. Bylaws art. III, §§13(9), (10), (16).

Plaintiffs ask the Court to hold that a single staff member, by withholding consensus, has power to veto such management authority and to block the Board from modifying or terminating a staff boycott decision—or even to adopt a boycott after a staff block—even though the Board is the body vested *as a matter of law* with the ultimate duty to govern the organization. This argument improperly attempts to elevate the Co-op's internal "rules and policies" to the same controlling weight as its Bylaws and Articles of Incorporation. *See* Opp. Br. at 13-16.

The Board's powers, duties, and obligations under the NCA and the Co-op Bylaws cannot be waived as Plaintiffs demand. Indeed, unless certain statutory requirements are met, the Co-op Board cannot abrogate its ultimate governance responsibility to anyone else, including staff. A proper delegation of the Board's decision-making authority must be (1) authorized by

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the Articles of Incorporation or the Bylaws, (2) created by Board resolution (3) approved by a majority of the directors in office, and must (4) delegate such authority to a Board "committee," (5) which must include two or more directors. RCW 24.03.115; *see also Hartstene Pointe Maintenance Ass'n v. Diehl*, 95 Wn. App. 339, 343 (1999).[6]

Here, the Board did not delegate or waive its duties and powers under statute and the Co-op Bylaws. To the contrary, the Board's minutes of the 1992 meeting at which the staff was directed to revise its boycott policy contradict Plaintiffs' subjective, undocumented, and inadmissible declarations.[7] They show that the Board intended to ***retain*** its authority to review—and therefore override—a staff boycott decision that the Board might deem contrary to Co-op interests or values. Levine decl. exh. Z, at 2.[8] The Co-op's minutes show that the Board appropriately sought to delegate to the staff the investigation of a boycott request, an assessment of the requested boycott's impact on its business and customer goodwill, and resolution of that request by full staff consensus. *Id.* Nothing in the record suggests that the Board intended to—or actually did—abandon its legal authority to override a staff decision.

The 1993 boycott policy established procedures to be followed for staff responses to boycott requests, specifying the information to be collected by investigation, the procedure to be followed, and making it clear that decisions required staff consensus. *Id.* ¶ 19 and exh. I. Plaintiffs erroneously assume that the same procedure for *staff* boycott decisions must automatically bind *Board* boycott decisions. But nothing in the boycott policy supports this assumption. The record is uncontradicted that the Board, unlike the staff, was bound only by the

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[6] Plaintiffs cite cases they claim are to the contrary, *see* Opp. Br. at 15, but those cases stand for the exact opposite proposition and, thus, undermine Plaintiffs' argument. *Save Columbia CU Committee v. Columbia Community Credit Union* very clearly interprets ***bylaws***, not corporate "rules or policies." 134 Wn. App. 175, 181 (2006). This erroneous citation makes Plaintiffs' attempt to import the rules of construction that govern contract law inapposite.

[7] Defendants move to strike the subjective testimony of all plaintiffs about the Board's intentions under ER 401-403, and the hearsay that permeates their declarations. Further, the views of board members and managing staff, years after failing to express those concerns while they held the power to take action, are irrelevant. *See Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695 (1999) (a party's unilateral and subjective intentions are irrelevant).

[8] The Board directed the policy revision to ensure that boycotts should be decided by full staff consensus, rather than individual managers, who had been making these decisions. The minutes noted, "Let staff as whole make decision; ***BOD can discuss if they take issue with a particular decision***." (emphasis added).

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Articles of Incorporation and the Co-op Bylaws. As a matter of law, neither of these governing documents required the Board to bow to the will of a single staff dissenter.

The Co-op Bylaws grant the Board authority to "adopt policies which promote achievement of the mission statement and goals of the Co-operative." Bylaws, art. III, § 13(15). The Board not only had the authority to decide to boycott Israeli goods consistent with its mission and goals, but to the extent the staff deadlock was an "organizational conflict," the Board had the duty to resolve it "after all other avenues of resolution have been exhausted." *Id.* art. III, §13(16). Even assuming it is the Board that is required to exhaust other avenues of resolution, it clearly did so.[9] After the Staff Merchandising Coordination Action Team unsuccessfully tried to reach consensus for more than a year and sought Board intervention (Levine decl. ¶ 20), and several members were asking the Board to boycott Israeli goods, the Board decided that an attempt should be made to reach full staff consensus and invite feedback from the full staff, and directed Staff Representative Harry Levine to prepare a written boycott proposal and present it to the Staff. *Id.* ¶¶ 22-23 and exh. K. Levine devoted two months to that process, in the course of which it became apparent that a few staff members would not permit consensus. *Id.* and exh. L. Any other efforts to achieve resolution would have been futile.

Ultimately, the Board decided that the requested boycott was within its mission, was justified by substantial human rights concerns, and was supported by numerous national and international organizations.[10] Moreover, as detailed in Defendants' main brief, the Board followed up with a public meeting and posted a notice to its web site, informing members of the

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[9] Plaintiffs provide no authority for their interpretation that it is the Board, rather than the parties to the conflict, that must exhaust all other avenues of resolution under the Bylaws.

[10] Minutes of the Board 's May 2010 meeting report: "The members presented the ***nationally and internationally recognized*** boycott and feel that this is a humanitarian issue and needs to be addressed." Levine decl. exh. K (emph. added). The record submitted to the Board showed nearly 200 Palestinian and Israeli organizations, the National Lawyers Guild, Code Pink, Women in Black, Pax Christi, the Fellowship of Reconciliation, the Canadian Postal Workers and Public Employees Unions, Toronto International Film Festival, Congress of South African Trade Unions, South African Transport and Allied Workers' Union, Industrial Workers of the World, International Jewish Anti-Zionist Network, bank and national pension funds in Denmark, Sweden, and Norway; the Brazilian Parliament; Belgian government; British National Union of Journalists, and numerous individuals, including Naomi Klein, Archbishop Desmond Tutu, Elvis Costello, Gil Scott-Heron, Santana, Craig and Cindy Corrie and many of the Co-op's own Jewish members. Levine decl. Exh. L, at 3-4; Cox. decl. ¶¶11-14 and exh. B.

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procedure to be followed for a member-initiated ballot. The Board urged opponents to follow the steps for a member-initiated ballot and promised that if the procedure was invoked successfully, the Board would assume the costs and administrative work. Kaszynski decl. ¶¶ 11-13 and exhs. H, I, J. As Plaintiffs' counsel has acknowledged, Plaintiffs simply refused to avail themselves of this opportunity, even at the explicit invitation of Defendants. Kaszynski supp. decl. ¶ 6 and exh. G.

It is axiomatic that the Board has the authority—indeed, the duty—to interpret its Bylaws and policies, including the boycott policy. *See* Levine decl. ¶ 11. "Courts are reluctant to interfere with the internal management of corporations and generally refuse to substitute their judgment for that of the directors." *Schwarzmann v. Ass'n of Apartment Owners of Bridgehaven*, 33 Wn. App. 397, 402 (1982) (citing *Sanders v. E-Z Park, Inc.*, 57 Wn.2d 474 (1960)). "The 'business judgment rule' immunizes management from liability in a corporate transaction undertaken within both the power of the corporation and the authority of management where there is a reasonable basis to indicate that the transaction was made in good faith." *Id.*[11] "Rules and policies" do not bind the Board, which is bound only by the Co-op's governing documents. The determination of whether the Israeli boycott was "nationally recognized" rested with the Board alone. The record before the Board showed substantial national support for the BDS call and that prior boycotts were approved without objection or debate about whether other businesses had adopted the boycott or whether the call for boycott came from abroad, from a single organization, or from a single organization whose only known office was in Seattle. Nason decl. ¶¶ 3, 5-8 and exhs. A - D; Cox decl. ¶¶ 4-9; Kaszynski supp. decl. ¶ 5.

Plaintiffs' self-serving declarations about the wording of this staff policy are irrelevant. As Justice Holmes noted: "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the

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[11] Failure to allege a prima facie violation of the business judgment rule may result in dismissal of a derivative suit. *See Potter v. Hughes*, 546 F.3d 1051, 1058 (9th Cir. 2008); Adam Richins, *Risky Business* ... , 80 Wash. L. Rev. 977, 984 (2005). Plaintiffs have not met this burden because they allege only a violation of "rules and policies."

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1 time in which it is used." *Towne v. Eisner*, 245 U.S. 418, 425 (1918). This sentiment applies
2 here, where Plaintiffs attempt to splash their own subjective interpretation of the boycott policy
3 onto the collective whole. But under the business judgment rule, the only interpretation that
4 matters is that of the Board charged with making the decision.

5 **D. Washington's Anti-SLAPP Statute is Constitutional.**

6 In Washington, "it is well established that statutes are presumed constitutional and that a
7 statute's challenger has a heavy burden to overcome that presumption; the challenger must prove
8 that the statute is unconstitutional beyond a reasonable doubt." *Sch. Dists. Alliance for Adequate*
9 *Funding of Special Educ. v. State*, 170 Wn.2d 599, 605 (2010). A court will not strike a duly
10 enacted statute unless it is "fully convinced, after a searching legal analysis, that the statute
11 violates the constitution." *Id.* at 606 (internal quotation omitted).

12 Courts have *unanimously* upheld the constitutionality of anti-SLAPP statutes—including
13 California courts, which interpret the law on which Washington's anti-SLAPP statute was
14 modeled. *See, e.g., Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal.4th 53 (2002) (rejecting
15 claim that statute violated constitutional right to petition); *Guam Greyhound v. Brizill*, 2008 WL
16 4206682 (Guam Sept. 11, 2008) (same); *Hometown Props., Inc. v. Fleming*, 680 A.2d 56 (R.I.
17 1996) (rejecting claim that statute violated constitutional right of access to courts); *Lafayette*
18 *Morehouse, Inc.*, 37 Cal.App. 4th 855 (same).[12] As the California Supreme Court has found, the
19 anti-SLAPP statute "does not bar a plaintiff from litigating an action that arises out of the
20 defendant's free speech" but merely "subjects to potential dismissal only those causes of action
21 to which the plaintiff is unable to show a probability of prevailing on the merits." *Equilon*
22 *Enterprises*, 29 Cal.4th at 63 (emphasis added). Another California court has stated that the
23 legislature is well within its rights to "reasonably conclude [SLAPP] suits should be evaluated in
24 an early and expeditious manner." *Lafayette Morehouse*, 37 Cal.App.4th 865-66.

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[12] *See also, Anderson Dev. Co. v. Tobias*, 116 P.3d 323, 338 (Utah 2005) (rejecting claim that statute was
26 unconstitutional bill of attainder); *Sandholm v. Kuecker*, 942 N.E.2d 544 (Ill. App. Ct. 2010) (guarantee to a
remedy); *Nexus v. Swift*, 785 N.W.2d 771 (Minn.Ct.App. 2010) (due process and jury trial); *Lee v. Pennington*, 830
27 So. 2d 1037 (La.Ct.App. 2002) (equal protection and due process).

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Here, Plaintiffs predicate their constitutional arguments almost exclusively on a single court decision: *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 980 (2009). *Putman*, however, is inapposite. In *Putman*, the court struck down a statute that required plaintiffs to submit a medical expert's certificate of merit ***before*** filing a malpractice lawsuit. The anti-SLAPP statute does not suffer this flaw. Unlike the statute in *Putman*, RCW 4.24.525 puts ***no*** precondition on filing a lawsuit. Moreover, it allows ample discovery "on a motion and for ***good cause*** shown."[13] RCW 4.24.525(5)(c) (emphasis added).

This triggers the standards that govern application for a summary judgment continuance pursuant to Civil Rule ("CR") 56(f).[14] *See, e.g., Taus v. Loftus*, 40 Cal.4th 683, 714 (2007) ("the Legislature . . . intended to establish a summary-judgment-like procedure available at an early stage of litigation that poses a potential chilling effect on speech-related activities"); *South Sutter, LLC v. LJ Sutter Partners, L.P.*, 193 Cal.App.4th 634, 655 (2011) ("a special motion to strike a SLAPP complaint is an evidentiary motion more akin to a summary judgment motion"); *Price v. Operating Engineers Local Union No. 3*,195 Cal.App.4th 962, 969 (2011) (same). The very purpose of the anti-SLAPP statute is to sidestep wasteful and unnecessary discovery. This case is a perfect example of what the Washington Legislature hoped to avoid. Indeed, Plaintiffs demanded videotaped depositions and issued multiple and duplicative discovery requests ***to all sixteen (16) Defendants*** in this case. *See* Declaration of Bruce E.H. Johnson at ¶ 3.

Plaintiffs argue that Washington's anti-SLAPP statute is unconstitutional because it requires nonmoving parties to prove their case by the clear and convincing standard. However, courts have squarely rejected this argument. "[T]he argument that a state statute stiffens the standard of proof of a common law claim *does not implicate* [the right of access]." *Garcia v.*

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[13] California courts have long applied the good-cause exception in California's anti-SLAPP statute which, similar to Washington's anti-SLAPP law, calls for a discovery stay except for "good cause shown." *See* Cal. Civ. Code § 425.16(g); *see also Schroeder v. Irvine City Council*, 97 Cal.App.4th 174, 183 (2002).

[14] A trial court may deny a CR 56(f) motion to conduct further discovery when "(1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact." *Butler v. Joy*, 116 Wn. App. 291, 299 (2003).

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Wyeth-Ayerst Labs., 385 F.3d 961, 967-68 (6th Cir. 2004) (italics added); *see also Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 657 (1989) ("The legislature may ... ***allocate burdens of proof***, and the like") (internal quotation omitted) (emphasis added).

Washington's anti-SLAPP statute also does not violate the separation of powers doctrine. The statute in *Putman*, RCW 7.70.150, directly conflicted with CR 8 and CR 11 because it required an attorney "to submit additional verification of the pleadings" and more than a "short and plain statement of the claim." 166 Wn.2d at 983. Washington's anti-SLAPP statute requires neither. The *Putman* court held that RCW 7.70.150 "is *procedural* because it addresses *how to file a claim* to enforce a right provided by law." *Id.* (italics added). Nothing in the anti-SLAPP law impacts or alters a plaintiff's mechanism for filing a lawsuit. Furthermore, and contrary to Plaintiffs' argument, the U.S. Supreme Court has held that burdens of proof create substantive—not procedural—rights: "Given its importance to the outcome of cases, we have long held the burden of proof to be a 'substantive' aspect of a claim." *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20-21 (2000) (citing cases). *Putman* does not control this issue.

Finally, Plaintiffs allege that the anti-SLAPP statute infringes access to untrammelled (and burdensome) discovery.[15] Plaintiffs lack standing to bring this belated challenge because, at the outset of this case, they agreed with Defendants that they would not pursue any discovery until the Anti-SLAPP motion is decided by this Court.[16] Johnson Decl. at ¶¶ 4-6 and Exh. A.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their motion to strike, award them attorneys' fees and costs, and impose the statutory penalty prescribed by law.

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[15] In response to Plaintiffs' Cross-Motion For Discovery, Defendants will address Plaintiffs' improper attempt to renege on their discovery agreement in a separate response brief.

[16] For this reason, Plaintiffs' challenge to RCW 4.24.525's discovery provision "rings hollow." *Lafayette Morehouse, Inc. v. Chronicle Publ'g Co.*, 37 Cal.App. 4th 855, 867 (1995). "[D]iscovery is still a party-driven process, requiring the [non-moving party] to at least ***seek*** discovery." *Flores v. Emerich & Fike*, 385 Fed. Appx. 728, 2010 WL 2640625, at *2 (9th Cir. June 29, 2010) (emphasis added).

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DATED this 15th day of December, 2011.

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DATED this 15 day of December, 2011.

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By Roni Grant
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