

**PUBLIC DISCLOSURE COMMISSION
INVESTIGATIVE LOG**

PDC Case Number: 14-002

Respondent: Grocery Manufacturers Association (GMA)

Complainant: Karen Andonian & Moms for Labeling (Represented by Knoll Lowney of Smith & Lowney, P.L.L.C.)

Type of Investigation: Campaign Finance

RCW/WAC: RCW 42.17A.205, .235 & .240

Location of Occurrence: State of Washington Statewide ballot proposition & Washington D.C. headquarters

Date(s) of Occurrence: March 2013 – October 2013

Investigated By: Kurt Young and Phil Stutzman

DATE	REMARKS
8/26/13	The Attorney General’s Office (AGO) received a complaint from Karen Andonian and Moms for Labeling (MFL) against the Grocery Manufacturers Association (GMA) and the No on 522 Committee (No Committee), alleging that both were violating campaign finance laws and “numerous rules.” No on 522 is a political committee opposed to I-522, a Washington State ballot proposition concerning genetically modified food products. This investigative log concerns the alleged activities of the GMA. A separate investigative log concerns the alleged activities of No on 522. The complaint letter was postmarked in Seattle on August 23, 2013.
8/29/13	The AGO forwarded the complaint to the Public Disclosure Commission (PDC). At the time the PDC received the complaint, neither the AGO nor the PDC viewed it as a citizen action letter as provided in RCW 42.17A.765 because it was not identified as such. 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.
8/30/13	PDC staff sent letter to Karen Andonian and Moms for Labeling, acknowledging receipt of the complaint, and stating that after the complaint had been reviewed, PDC staff would inform them in writing as to whether the allegations warranted a formal investigation.
8/30/13	PDC staff sent letter to GMA, notifying them of receipt of the complaint against them, and stating that after the complaint had been reviewed, PDC staff would inform them in writing as to whether the allegations warranted a formal investigation.
9/4/13	PDC staff received a letter from Karin F.R. Moore, Vice President and General Counsel of GMA, responding to the complaint, attached to an email. The original letter was received by U.S. mail on September 9, 2013. The letter categorically denied the allegations in Ms. Andonian’s letter. Ms. Moore stated that the complaint was frivolous, completely unsupported by any facts, and lacked any specific allegations or the underlying reasons for the complainant’s belief. Ms. Moore said she looked forward to working with the PDC to resolve any staff questions about the complaint.

9/18/13	PDC staff received copies of a complaint and other pleadings filed by MFL against GMA and No on 522 (Thurston County Superior Court Case No. 13-2-01960-1).
9/19/13	<p>PDC staff sent a follow-up letter to GMA with two questions as follows:</p> <ul style="list-style-type: none"> • Has the Grocery Manufacturers Association (GMA) made a special appeal to its members, in the form of a voluntary special assessment, to collect funds in support of the No on 522 campaign? • If so, please provide a copy of the communications in which the appeal and/or assessment was made. • Has the GMA accepted any pledges or contributions from its members to support the No on 522 campaign?
9/20/13	PDC received copies of correspondence from Davis Wright Tremaine LLP to Knoll Lowney, attorney for MFL, concerning the lawsuit filed by MFL, along with pleadings filed by No on 522 in Thurston Co. Case No. 13-2-01960-1 seeking to strike MFL's lawsuit against GMA and No on 522.
9/23/13	<p>PDC staff received a letter from Ms. Moore on behalf of GMA, attached to an email. The original letter was received by U.S. mail on September 27, 2013. In response to the first question, Ms. Moore stated that GMA has not made a special appeal in the form of a voluntary special assessment to collect funds in support of No on 522. She went on to explain that GMA was founded over a century ago, and is an active, vocal advocate for its 300 member companies. She stated that in November 2012, GMA began planning a comprehensive approach to address a broad range of challenges facing their industry. She said to accomplish these goals; a strategic account was created in early 2013 based on a three-year plan and budget to fund the diverse efforts of GMA. She stated that members are invoiced on a semi-annual basis through 2015 to provide money for the fund. She did not say whether paying the invoiced amount is mandatory. Ms. Moore noted that members to not earmark or otherwise designate or purpose their contributions to the fund for particular activities. She said GMA does not make representations to members as to how, when, or where a member's specific contribution will be spent. She explained that GMA's Finance and Audit Committee determines how to use the money in the segregated fund, including whether to make contributions to No on 522. Ms. Moore stated that in 2013, GMA is using the fund for a variety of activities throughout the United States. She acknowledged that GMA has used, and anticipates further use in 2013, of some portions of the fund as contributions to No on 522, but denied that members contributing to the segregated fund have designated or instructed GMA to use their fund contributions to No on 522. She stated that, accordingly, there are no materials responsive to staff's request for a copy of the communications in which an appeal and/or assessment was made. Ms. Moore stated that GMA has not accepted any pledges or contributions from its members solely to support the No on 522 campaign.</p>
9/23/13	Knoll Lowney informed the AGO (by contacting Linda Dalton on September 23, 2013), that the complaint filed by Karen Andonian and MFL with the AG's office was intended to be notice of MFL's intent to file a citizen's action under RCW 42.17A.765.
10/4/13	PDC staff notified the complainant that staff had decided to investigate the allegations regarding GMA, and that the investigation has been assigned PDC Case No.14-002. The complainant was notified that staff had not yet determined whether the allegations in the complaint regarding the No on 522 committee warrant a formal investigation.
10/4/13	PDC staff notified GMA that staff had decided to open a formal investigation into the allegations and provided the assigned case number. Staff informed GMA that the complaint from Ms. Andonian and Moms for Labeling had been identified by the complainant's attorney as a 45-day notice letter under the citizen action provisions of

	<p>RCW 42.17A.765(4), and asked GMA to answer additional questions about the “strategic account” in order to move the investigation to a prompt resolution. Staff asked GMA for:</p> <ol style="list-style-type: none"> 1. Copies of all communications to GMA members discussing the creation or use of the “strategic account.” 2. Copies of invoices sent to GMA members for the “strategic account” GMA formed. 3. Identification of each month GMA members received invoices for payments to the “strategic account.” 4. Identification of whether GMA member payments to the “strategic account” were voluntary or part of a mandatory obligation on the member. 5. Identification of the total amount collected to date from GMA members and attributed to the “strategic account.” 6. For the “strategic account,” identification of: <ol style="list-style-type: none"> a. how much money collected to date for the “strategic account” has been spent; b. what percentage of the total collected has been spent; c. a general description of categories for such spending; d. the percentage of the money spent to date on each category; e. whether any funds from the “strategic account” were used to make contributions to the No on I-522 political committee; and f. if so, how much money from the “strategic account” fund was contributed to the No on I-522 political committee. 7. In the event the source of the contributions made by GMA to the No on I-522 political committee were not made from the “strategic account,” identification of the fund source and documentation of that information.
10/7/13	PDC staff received a copy of the transcript of Judge Wickam’s October 4, 2013 oral ruling dismissing MFL’s complaint in Thurston County Case No. 13-2-01960-1.
10/8/13	GMA requested, and was granted, a one-day extension to reply to the staff’s October 4 letter.
10/8/13	Mr. Lowney provided the AGO with a letter identified as “2 nd Notice of Intent to Sue for Violations of RCW 42.17[sic]” advising that MFL will file suit in the name of the State if the AGO does not bring an enforcement action against GMA and the No Committee in ten days.
10/9/13	PDC staff member Phil Stutzman spoke with Mr. Lowney by telephone concerning the complaint filed by his client, and the supporting evidence of the complainant. Mr. Lowney said that he and Moms for Labeling know that GMA made a special voluntary assessment to oppose I-522. He said some GMA members were unhappy that some of their dues money was used to oppose Proposition 37 in California in 2012. He said information has come from whistleblowers who are either members of GMA or former executives of GMA. Mr. Lowney said the same national consultants who ran the No on Proposition 37 campaign in California in 2012 are running the No on 522 campaign in Washington in 2013. Mr. Stutzman asked if he could speak with Ms. Andonian, the author of the complaint about No on 522 and GMA, about her allegations, including any first-hand evidence she has or is aware of. Mr. Lowney responded that specific questions could be provided to him and he would provide a written response. When Mr. Stutzman inquired further about interviewing Ms. Andonian, with Mr. Lowney present as her counsel, he declined to make Ms. Andonian available. Mr. Lowney stated that while Ms.

	<p>Andonian put her name on the complaint as a representative of Moms for Labeling, she likely had no first-hand evidence concerning the alleged violations. Mr. Stutzman asked if Mr. Lowney or Ms. Andonian or others associated with Moms for Labeling would identify the people you describe in your October 8, 2013 letter as “anonymous whistleblowers” to enable PDC staff to gather evidence from those individuals concerning GMA’s and/or No on 522’s activities, and Mr. Lowney declined. Mr. Stutzman asked Mr. Lowney whether there was evidence or relevant information that supports his view that individuals working for No on 522 knew, as the complaint implies, or should have known, that contributions coming to the campaign and attributed to GMA as the source were actually coming from sources other than GMA. Mr. Lowney referred to previous statements that the national consultants who ran the No on Proposition 37 campaign in California are running the No on 522 campaign in Washington in 2013, and that they knew GMA had made a special voluntary assessment of its members to oppose I-522.</p>
10/9/13 (Cont.)	<p>Ms. Moore provided the following information concerning the “strategic account”:</p> <ul style="list-style-type: none"> • GMA, under the direction of its Board invoiced “...companies represented on the Board of Directors who manufacture food and beverages in March 2013 and August 2013.” • GMA members invoiced were not required to make the payments to the strategic account. Currently, there are some GMA members that have outstanding invoices that have not been paid. • GMA’s goal was to raise a total of \$38 million from its members to the strategic account between 2013 through 2015. • As of October 7, 2013, GMA had received a total of \$13,480,500 for the strategic account. • As of October 7, 2013, GMA had spent a total of \$8,066,660 from the strategic account that included \$7,222,500 to the No on I-502 committee (Note – an additional \$1,004,734 has been obligated contractually for expenditures unrelated to I-522.).
10/9/13 (Cont.)	<p>Ms. Moore stated that out of \$8,066,000 spent in 2013, \$7,222,555 has been spent on I-522. She stated that the strategic fund plans to raise \$17,300,000 in 2013, \$10,000,000 in 2014, and \$10,650,000 in 2015, and that GMA plans to spend \$10,000,000 in the Washington ballot measure campaign in 2013. On March 15, 2013, GMA sent a three-page solicitation letter to its members for the strategic fund. The letter:</p> <ul style="list-style-type: none"> • Informed recipients about the creation of Defense of Brands Strategic Account by the GMA Board. • Stated that funds received for the strategic account are segregated from GMA general treasury funds. • Explained that all strategic account activities are under the direction of the GMA Finance and Audit Committee. • Explained that GMA member assessments are derived from a funding formula based upon the total sales of all participating GMA members, and the percentage of the total sales that each member represents, such that: <ul style="list-style-type: none"> ○ Each GMA member takes their reported US sales for that fiscal year, and divides it by the total sales from all GMA members participating in the Defense of Brands Strategic Account. • Discussed that in 2013, the Defense of Brands Strategic Account activities have already approved by the Board for 2013.

	<ul style="list-style-type: none"> • Stated that “...over the past few months GMA staff have been working with partners in Washington State to assess the viability of a campaign to defeat I-522...” • Stated GMA has conducted polling in Washington State concerning I-522, and recently received the results of that poll (next segment redacted) and went on to state: “...Much like California, this campaign will be challenging. However, an organized and well funded program that includes credible messengers, a multi-message focused strategy, extensive media outreach, broad grassroots mobilization, and a high level of advertising saturation will position us for success.”
10/9/13 (Cont.)	<p>Ms. Moore replied to staff’s October 4, 2013 letter requesting additional information from GMA. The response included a six-page letter and 45-pages of attached documents. The attached documents included the following:</p> <ul style="list-style-type: none"> • A three-page undated memorandum from Louis Finkel, GMA Executive Vice-President of Government Affairs, sent to GMA Government Affairs Council concerning GMO Labeling after the defeat of Proposition 37 in California in 2012 (GMA-PDC Pages 00001 through 00003); • A five-page undated memorandum from the GMA Government Affairs Council, Mr. Finkel, and Jim Skiles, GMA General Counsel concerning options the GMA has for address GMO Labeling post Proposition 37 (GMA-PDC Pages 00005 through 00009); • A 14-page undated memorandum from Pamela G. Bailey, GMA President and CEO, and Mr. Finkel concerning the “Plan and Budget for Defense of Brands and Address GMO Labeling Post Prop 27” (GMA-PDC Pages 000010 through 000024); • A seven-page document entitled “GMO Labeling” that provided information about GMO labeling efforts dating back to calendar year 2002 in Oregon and discussed GMA Board action following the defeat of Prop 37 which included information about the Strategic Account, federal legislation, a GMO Labeling Amendment in the US Senate, and GMO action in a number of states. (GMA-PDC Pages 000025 through 000031); • A one-page memorandum updating information on the Defense of Brand account budget and spending, and a one-page Defense of Brands Budget report as of September 27, 2013 (GMA-PDC Pages 000032 and 000033); • March 15, 2013, a three-page letter from Ms. Bailey concerning the invoicing for GMA Defense of Brands Strategic Account and an Update on Washington State (GMA-PDC Pages 000034 through 000036); an August 8, 2013 email from Ms. Bailey, and two-page letter from Ms. Bailey concerning the invoicing and 2nd installment for GMA Defense of Brands Strategic Account (GMA-PDC Pages 000038 through 000040); • Two redacted copies of invoices sent to a GMA member concerning contributions to the Defense of Brands Strategic Account (GMA-PDC Pages 000037 and 000041); and • A four-page article in POLITICO dated October 8, 2013 and entitled “The battle lines on food labeling.”
10/10/13	<p>PDC staff (Phil Stutzman) sent an email to Knoll Lowney, memorializing their conversation and following up on a couple of issues: (anonymous whistleblowers; evidence supporting allegations of unreported in-kind contributions from GMA and others; evidence of No on 522 not accurately reporting its Top 5 contributors on its</p>

	political advertising; evidence that No on 522 knew that contributions coming to it from GMA were actually from other sources contributing to GMA.)
10/10/13	Knoll Lowney responded to staff's October 10, 2013 email. He stated that it was impossible to reveal the names of the whistleblowers because of the harm it would do to those individuals. He stated that he misspoke about the allegations being based on the "ramp-up" period. He described how the complainant believes GMA and supporting corporations were part of an effort to coalesce the No on 522 campaign. He withdrew the allegations of other corporations failing to report their in-kind contributions to the No on 522 campaign because they have been unable to find specific evidence that would support the allegations. He stated that the allegations constitute illegal concealment, use of an agent, and reimbursement of a contribution. He said the allegations also include that the Top 5 contributors are inaccurate and illegal, and that GMA was a political committee that needed to report. He also stated that the primary consultants for the No on Prop 37 campaign in California are the consultants for No on 522 (Winner Mandabach Campaigns).
10/10/13	Later on October 10, Mr. Lowney sent another email further explaining the cross-over between the No on 522 campaign and the No on Prop 37 campaigns. He said because the No on 522 consultants worked on the No on Prop 37 campaign, they understood the special assessment being made by GMA in connection with the No on 522 campaign. He noted that Winner & Mandabach, which includes several affiliated companies, also represents GMA and claims to have helped GMA win several ballot campaigns.
10/11/13	Michael Ryan, an attorney representing GMA, contacted PDC staff by email to follow up regarding the information GMA had provided on 10/9/13, and offering to make a GMA representative available to meet in person.
10/15/13	PDC staff sends a letter to the Attorney General's Office providing a status report of staff's investigation to date.
10/15/13	Staff concludes its investigation of GMA.
10/16/13	Robert Ferguson, Washington State Attorney General, files a lawsuit in Thurston County Superior Court naming Defendant Grocery Manufacturers Association.

Allegations

A Citizen Action Complaint was filed by Karen Andonian (Moms for Labeling) on August 26, 2013, with the Attorney General's Office, and forwarded to the PDC on August 29, 2013, alleging that the Grocery Manufacturers Association (GMA) violated the following:

- A. **RCW 42.17A.205 by failing to register as a political committee.** The complaint alleged that GMA failed to register with the PDC as a political committee in opposition to I-522, a statewide initiative concerning the labeling of genetically modified foods and beverages on the November 5, 2013 general election ballot in Washington State.
- B. **RCW 42.17A.235, and 42.17A.240 by failing to file reports of contribution and expenditure activities as a political committee.** The complaint alleged that GMA failed to file Cash Receipts Monetary Contributions reports (C-3 reports), and Campaign Summary

Receipts & Expenditures reports (C-4 reports) disclosing contribution and expenditure activities undertaken as a political committee in its opposition to I-522.

Findings

Although the Complaint provided no evidence or other supporting information to substantiate its allegations, staff inquired of GMA 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 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. On October 4, 2013, staff opened a formal investigation into the allegations against GMA because our initial review indicated that a material violation may have occurred and/or that GMA may not be in substantial compliance with the relevant statutes and rules.

On October 9, 2013, Karin F.R. Moore, Vice President and General Counsel, provided the following documents along with her response letter concerning the “strategic account”:

- GMA, under the direction of its Board invoiced “...companies represented on the Board of Directors who manufacture food and beverages in March 2013 and August 2013.”
- GMA members invoiced were not required to make the payments to the strategic account. Currently, there are some GMA members that have outstanding invoices that have not been paid.
- GMA’s goal was to raise a total of \$38 million from its members to the strategic account between 2013 through 2015.
- As of October 7, 2013, GMA had received a total of \$13,480,500 for the strategic account.

As of October 7, 2013, GMA had spent a total of \$8,066,660 from the strategic account that included \$7,222,500 to the No on I-502 committee. Ms. Moore stated that out of \$8,066,000 spent in 2013, \$7,222,555 has been spent on I-522. She stated that the strategic fund plans to raise \$17,300,000 in 2013, \$10,000,000 in 2014, and \$10,650,000 in 2015, and that GMA plans to spend \$10,000,000 in the Washington ballot measure campaign in 2013.

The letter went on to state that GMA had conducted polling in Washington State concerning I-522, and recently had received the results of that poll (next segment redacted) and went on to state: “...***Much like California, this campaign will be challenging. However, an organized and well funded program that includes credible messengers, a multi-message focused strategy, extensive media outreach, broad grassroots mobilization, and a high level of advertising saturation will position us for success.***”

PDC Staff Concludes Investigation and Forwards Findings to Attorney General

On October 8, 2013, before staff could complete its Report of Investigation and bring it to the Commission with a recommendation, the complainants filed a “2nd Notice” with the Attorney General stating that they intended to file a lawsuit against GMA in the name of the state. As a result, on October 15, 2013, staff sent a letter to the Attorney General (copy enclosed) consisting of a status report of the staff investigation to date, and on October 16, 2013, the Attorney General filed a lawsuit in Thurston County Superior Court naming Defendant Grocery Manufacturers Association.

On November 20, 2013, the Attorney General filed a First Amended Complaint against GMA (copy enclosed). The complaint, as amended, alleges that 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 Defendant GMA.

Disposition

At the January 23, 2014 Commission meeting, PDC staff made a Report to the Commission concerning the citizen action letter filed against the Grocery Manufacturers Association.

PDC staff recommended that the Commission take no further action concerning the Citizen Action Complaint since the Attorney General's Office has addressed the allegations in full in its First Amended Complaint filed November 20, 2013, and if the Commission agrees, staff will formally close its investigation of the allegations in PDC Case No. 14-002.