

FILED

JUN 12 2013

Superior Court
Linda Myhre Erlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date:
5 Time:
6 The Honorable Erik D. Price

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,
10 Plaintiff,

NO. 13-2-02156-8
14-2-00027-5

11 v.

~~PROPOSED~~ AGREED
PROTECTIVE ORDER REGARDING
TREATMENT OF CERTAIN
DOCUMENTS OR INFORMATION
PRODUCED BY THIRD PARTIES
DURING DISCOVERY

12 GROCERY MANUFACTURERS
13 ASSOCIATION,
14 Defendant.

15 GROCERY MANUFACTURERS
16 ASSOCIATION,
17 Plaintiff,

18 v.

19 ROBERT W. FERGUSON,
20 Attorney General of the State of
Washington, in his official capacity,
21 Defendant.

22
23 THIS MATTER comes before the Court on the parties' and the subject of a third party
24 subpoena, Winner & Mandabach Campaigns' ("Winner & Mandabach"), joint motion for a
25 protective order concerning documents and information responsive to the subpoena served by
26 Plaintiff State of Washington ("State"). In order to facilitate the exchange of, and resolution of

1 any dispute over, responsive documents and/or information that Winner & Mandabach asserts
2 contains confidential, trade secret, sensitive, or proprietary information that should be treated
3 as "confidential," the Court hereby finds good cause exists for entry of this protective order
4 under CR 26(c) and hereby ORDERS the following process be used:

5 1. Winner & Mandabach will produce all relevant and discoverable, non-privileged
6 documents responsive to the State's subpoena subject to the State and Winner &
7 Mandabach's agreement as to the scope of the production and any valid objections
8 submitted by Winner & Mandabach.

9 2. Winner & Mandabach may not designate as "confidential" any documents and/or
10 information that is already in the public domain or becomes part of the public domain
11 through trial or otherwise; information that the State can show was obtained (without any
12 benefit or use of the Winner & Mandabach's "confidential" material) from Grocery
13 Manufacturers Association ("GMA") or another third party having the right to disclose
14 such information to the receiving party without restriction or obligation of confidentiality;
15 information which, after its disclosure, is published to the general public by a third party
16 having the right to publish such information; or information that the State can show by
17 written record was independently developed by it after the time of disclosure by persons
18 who did not have access to the other party's "confidential" material.

19 3. Subject to the process for objecting below, Winner & Mandabach may mark certain
20 documents and/or information as "confidential" if it has a reasonable, good faith belief and
21 legal basis for so designating those documents and/or information. Designating a
22 document as "confidential" does not prevent production of that document if it is properly
23 responsive to a discovery request. Rather, any document or information produced or
24 provided by Winner & Mandabach in response to the State's third party subpoena that is
25 marked "confidential" pursuant to this Protective Order shall be held in confidence by the
26

1 parties and their attorneys, and shall not be disclosed to any other person nor used for any
2 other purpose except as necessary in the prosecution or defense of this lawsuit and in
3 compliance with this protective order, and as subject to the process for objecting below. If
4 any participant to this agreed protective order objects to any "confidential" designation on
5 any document or portion provided by Winner & Mandabach, the objecting person shall
6 provide each participant to this agreed protective order with written notice of its objections,
7 stating the basis for each objection. If, after conducting a discovery conference, the
8 participants cannot resolve the objection, the objecting person may file a motion with this
9 Court, including a request for an in-camera review, to determine whether there is a legal
10 basis for the document and/or information to be treated as "confidential."

- 11 4. To the extent that depositions of any person in this proceeding involve a specific discussion
12 of the contents (as opposed to the existence) of "confidential" material, then those portions
13 of the depositions should also be treated as "confidential" and designated as such. The
14 duty to mark the depositions or portions of depositions, as "confidential" shall rest with the
15 person claiming confidentiality. All depositions shall be treated as "confidential" until ten
16 days after each participant to this agreed protective order receives the deposition transcript.
- 17 5. Winner & Mandabach shall be notified when "confidential" material designated by Winner
18 & Mandabach is referred to or used by the State or GMA, respectively, during a deposition
19 by providing Winner & Mandabach with copies of the deposition transcript not later than
20 ten working days following the parties' receipt of the transcript. Winner & Mandabach
21 will then have an additional ten days to mark certain portions of the deposition as
22 "confidential" on the record.
- 23 6. "Confidential" material, including the contents thereof, may be disseminated only to:
- 24 a. The parties, attorneys for the parties in this litigation, and their
25 partners/supervisors, associates/attorney colleagues, secretaries, legal assistants,
26 paralegals/paralegal assistants, and other employees of the parties to whom it is

1 reasonably necessary to disclose the information for the prosecution or defense of
2 this litigation; experts retained for the purpose of consulting or testifying in this
3 litigation to whom disclosure is reasonably necessary for this litigation and who
4 has been provided with this Protective Order and agreed to abide by its terms in
5 writing;

6 b. Court officials other than the Court and/or its staff, involved in this litigation,
7 including court reporters and persons operating video recording equipment at
8 depositions, as may be required for purposes of attaching exhibits to depositions;

9 c. Copy or imaging services retained by counsel to assist in the duplication of
10 "confidential" material, provided that counsel for the party retaining the copy or
11 imaging service instructs the service not to disclose any "confidential" material to
12 third parties and to immediately return all originals and copies of "confidential"
13 material;

14 d. Mediators involved in resolving this matter should the parties choose to proceed
15 through alternative dispute resolution, who will be provided with this Protective
16 Order and agree to abide by its terms in writing; and

17 e. During their depositions, witnesses to whom disclosure is reasonably necessary
18 and who have been provided with this Protective Order and agreed to abide by its
19 terms in writing or on the record, unless otherwise agreed to by the parties or
20 ordered by the Court. "Confidential" material must be separately bound by the
21 court reporter and may not be disclosed to anyone except as permitted under this
22 Protective Order.

23 7. All expert witnesses who receive "confidential" material shall use the "confidential"
24 material only for this litigation, and shall not disclose any "confidential" information to any
25 third person for any purpose without written consent of the parties or as ordered by the
26 Court.

- 1 8. Neither counsel, employees of the law firms representing the parties or third parties in this
2 litigation, nor experts retained for purposes of consulting or testifying shall disclose or
3 disseminate any "confidential" material to any third person, whether by oral description or
4 by writing, or by any other means, outside the group of persons listed in paragraph 7
5 without a court order.
- 6 9. If the State receives a request for public disclosure of any "confidential" material under the
7 state Public Records Act (Ch. 42.56 RCW), the State will provide Winner & Mandabach
8 through counsel, with notice and an opportunity, per RCW 42.56.520 and .540, to seek an
9 order prohibiting the State from releasing any "confidential" material, or take other
10 appropriate action within Winner & Mandabach's discretion. The State will provide such
11 notice no later than five working days after receiving the request. If Winner & Mandabach
12 does not seek and obtain an order prohibiting the State from releasing any "confidential"
13 material within 14 days of being provided notice of the request for disclosure of any
14 "confidential" material by the State, the State may release the requested, "confidential"
15 material. The State shall not release the requested "confidential" material during the
16 pendency of any ruling(s) on Winner & Mandabach's motion to prevent disclosure. The
17 participants to this Protective Order further agree exemptions to the Public Records Act
18 may apply to any and all documents and/or information marked as "confidential."
- 19 10. When "confidential" material (or any pleading, motion, or memorandum referring to such
20 material) is to be filed with the Court, the filing must be under seal and the party making
21 the filing must submit an appropriate motion and proposed order in accordance with the
22 applicable rules. In lieu of, or in addition to, filing papers under seal that include or
23 otherwise reveal "confidential" material, a party may file a redacted version to remove
24 "confidential" material. A party choosing to do so, however, must first confirm with
25 counsel for the producing party that the redactions are sufficient.
- 26

1 11. In the event that any participant of this agreement, its attorneys, experts, agents, or
2 employees learns of any breach of the confidentiality of, or the misappropriation of, any of
3 the "confidential" material, that individual or entity shall promptly give notice thereof to
4 Winner & Mandabach's counsel to whom the "confidential" material belonged. In
5 addition, any participant to this agreement shall be entitled, without limitation of any other
6 remedies to which they may be entitled by law, to seek injunctive relief and to enforcement
7 of specific performance of this Protective Order.

8 12. Nothing in this Order shall preclude reconsideration by the Court of any of the terms of the
9 Protective Order upon written application, with notice to the other parties, and for good
10 cause shown.

11 DONE this 12 day of June, 2015.

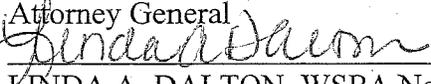
REBEKAH ZINN
COURT COMMISSIONER

~~JUDGE ERIK D. PRICE~~

14 PRESENTED BY:

15 ROBERT W. FERGUSON

Attorney General

16 

LINDA A. DALTON, WSBA No. 15467

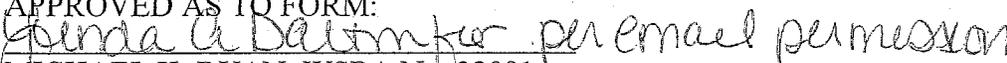
17 Senior Assistant Attorney General

18 CALLIE A. CASTILLO, WSBA No. 38214

Deputy Solicitor General

19 Attorneys for Plaintiff State of Washington/Defendant Robert W. Ferguson

20 APPROVED AS TO FORM:

21  per email permission

22 MICHAEL K. RYAN, WSBA No. 32091

23 AARON E. MILLSTEIN, WSBA No. 44135

K&L GATES, LLP

24 BERT W. REIN, (admitted *pro hac vice*)

CAROL A. LAHAM (admitted *pro hac vice*)

25 WILEY REIN LLP

Attorneys for Defendant/Plaintiff Grocery Manufacturers Association

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8 REBEKAH ZINN
9 COURT COMMISSIONER

10 JUDGE ERIK D. PRICE

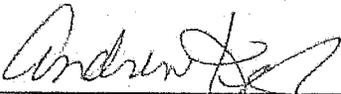
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13 Attorney General

14 LINDA A. DALTON, WSBA No. 15467
15 Senior Assistant Attorney General
16 CALLIE A. CASTILLO, WSBA No. 38214
17 Deputy Solicitor General
18 Attorneys for Plaintiff State of Washington/Defendant Robert W. Ferguson

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29 MAYER BROWN
30 Attorney for Winner & Mandabach