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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
ARLENE'S FLOWERS, INC., d/b/a  
ARLENE'S FLOWERS AND GIFTS; and  
BARRONELLE STUTZMAN,  
  
Defendants.  
  
ROBERT INGERSOLL AND CURT FREED,  
  
Plaintiffs,  
  
V.  
  
ARLENE'S FLOWERS, INC., D/B/A  
ARLENE'S FLOWERS AND GIFTS; AND  
BARRONELLE STUTZMAN,  
  
Defendants.

No. 13-2-00871-5  
  
(Consolidated with No. 13-2-00953-3)  
  
**INGERSOLL AND FREED'S  
OPPOSITION TO DEFENDANTS'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON PLAINTIFFS' CLAIMS  
AGAINST BARRONELLE STUTZMAN  
IN HER PERSONAL CAPACITY**

**I. INTRODUCTION**

Defendant Barronelle Stutzman, owner and president of Defendant Arlene's Flowers, refused to sell Plaintiffs Robert Ingersoll and Curt Freed flowers for their wedding because Robert and Curt are gay. She now contends she cannot be held personally liable for that decision unless

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1 the Arlene's Flowers corporate veil is pierced. A veil piercing analysis is not necessary.  
2 Ms. Stutzman has direct, personal, statutory liability under both the Washington Law Against  
3 Discrimination and Washington's Consumer Protection Act. The Court should therefore deny  
4 Defendants' motion for partial summary judgment as to Ms. Stutzman's personal liability.  
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6 Because Ms. Stutzman is directly and personally liable for her decision not to sell flowers  
7 for Robert and Curt's wedding, Plaintiffs agree that Ms. Stutzman cannot also be liable under the  
8 alternative theory that she aided and abetted discrimination. Robert Ingersoll and Curt Freed agree  
9 to dismiss their aiding and abetting claim.

## 10 II. STATEMENT OF FACTS

11 On February 28, 2013, Robert Ingersoll, a longtime Arlene's Flowers customer, drove to  
12 Arlene's to speak with someone about ordering flowers for his upcoming wedding. Decl. of  
13 Robert Ingersoll in Supp. of Opp'n to Defs.' Mot. for Partial Summ. J. on CPA Claim by Ingersoll  
14 and Freed ("Ingersoll Decl.") (Dkt. No. 82) ¶ 6. Robert spoke with Janell Becker, an Arlene's  
15 employee. *Id.* He told Ms. Becker he was getting married to Curt and that he wanted Arlene's to  
16 do the flowers. *Id.* Ms. Becker told Robert he would have to come back and speak with Arlene's  
17 Flowers' owner, Barronelle Stutzman. *Id.*

18  
19 The next day, on March 1, 2013, Robert returned to Arlene's during his lunch hour and  
20 spoke with Ms. Stutzman. *Id.* ¶¶ 7-8. Robert had ordered flowers from Ms. Stutzman many times  
21 over the years. *Id.* ¶ 7; Decl. of Barronelle Stutzman in Supp. of Mot. for Partial Summ. J. on  
22 Personal Capacity Claims ("Stutzman Decl.") ¶¶ 7-9. Ms. Stutzman took Robert's hand and said  
23 she could not sell Curt and Robert flowers for their wedding because of her relationship with  
24 Jesus Christ. Ingersoll Decl. ¶ 8. Robert left Arlene's Flowers and returned to work in shock and  
25 empty handed. *Id.* ¶¶ 8-9.  
26

1 The decision to refuse service was Ms. Stutzman’s. She is the owner and president of  
2 Arlene’s Flowers, Inc., and she establishes its policies. Stutzman Decl. ¶¶ 4-5; Decl. of A. Berry  
3 in Supp. of Mot. for Partial Summ. J. on Personal Capacity Claims Ex. A (“Stutzman Dep.”) at  
4 77:6-13. Having been warned by Ms. Becker that Robert would be asking Arlene’s to provide  
5 flowers for his wedding to his same-sex partner, Ms. Stutzman consulted with her husband and  
6 concluded she could not provide flowers to the wedding because of their “biblical belief that  
7 marriage is between a man and a woman.” Stutzman Dep. at 76:2-78:10. No one else participated  
8 in the decision, and Arlene’s Flowers had no existing policy relating to weddings for same-sex  
9 couples. *Id.* at 44:10-45-2; 79:2-7. Indeed, Ms. Stutzman’s personal religious beliefs were the  
10 only reason for her decision to refuse service: “The reason I could not create floral arrangements  
11 for Robert’s wedding ceremony to Curt Freed was because of my biblical belief that marriage is a  
12 union of a man and a woman.”<sup>1</sup> Stutzman Decl. ¶ 16.

### 13 III. AUTHORITY

14 Summary judgment is appropriate only if the moving party is entitled to judgment as a  
15 matter of law. CR 56(c). Here, Defendants argue that Ms. Stutzman cannot, as a matter of  
16 law, be held personally liable for her discrimination unless Plaintiffs can pierce the Arlene’s  
17 Flowers corporate veil. This is not a case in which a veil piercing analysis is necessary or  
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22 <sup>1</sup> Although not relevant to the issues in this motion, Ms. Stutzman makes a point of claiming she declined to  
23 “participate” in the “event” of Robert and Curt’s wedding, but that she “did not decline because of Robert and  
24 Curt’s sexual orientation.” *E.g.*, Defs.’ Mot. for Partial Summ. J. on Pls.’ Claims Against Barronelle Stutzman  
25 In Her Personal Capacity (“Defs.’ Mot.”) at 8; Stutzman Decl. ¶ 16. Presumably, Ms. Stutzman is suggesting  
26 that she objects only to the marriage of two men, regardless of whether those men are straight or gay, and that  
she would happily provide flowers to a gay man’s wedding as long as he marries a woman. This attempted  
distinction is insulting and meritless. Such attempts to distinguish a protected status, such as sexual orientation,  
from conduct closely related with that status, such as marriage to a same-sex partner, have been roundly rejected.  
*E.g.*, *Elane Photography, LLC v. Willock*, 309 P.3d 53, 61-62 (N.M. 2013) (rejecting a similar argument in a  
case involving a wedding photographer who refused to photograph a wedding for a same-sex couple, and citing  
U.S. Supreme Court cases in support).

1 appropriate. Plaintiffs Ingersoll and Freed assert claims against Ms. Stutzman under the  
2 Washington Law Against Discrimination (WLAD) and Consumer Protection Act (CPA).  
3 Both statutes authorize direct personal liability for individuals, such as Ms. Stutzman, who  
4 violate those statutes.<sup>2</sup>

5  
6 **A. The WLAD Explicitly Imposes Personal Liability on Individuals such as  
7 Barronelle Stutzman**

8 Plaintiffs do not need to pierce the corporate veil to reach Barronelle Stutzman personally  
9 because Ms. Stutzman has direct statutory liability under the WLAD. The WLAD makes it  
10 unlawful “for any *person or the person’s agent or employee* to commit an act which directly or  
11 indirectly results in any distinction, restriction, or discrimination” prohibited by the WLAD,  
12 including discrimination in public accommodation on the basis of sexual orientation.  
13 RCW 49.60.215 (emphasis added); *accord* RCW 49.60.030. The WLAD broadly defines “person”  
14 to include, among other things, individuals, corporate entities, and business owners and  
15 employees:

16 “Person” includes one or more *individuals*, partnerships, associations,  
17 organizations, corporations, cooperatives, legal representatives, trustees and  
18 receivers, or any group of persons; *it includes any owner, lessee, proprietor,  
19 manager, agent, or employee*, whether one or more natural persons; and  
20 further includes any political or civil subdivisions of the state and any agency  
21 or instrumentality of the state or of any political or civil subdivision thereof.

22  
23 <sup>2</sup> Defendants are ironically correct when they argue that “this case is nothing like those in which State courts  
24 have disregarded the corporate form and allowed plaintiffs to hold corporate officers personally liable.” Defs.’  
25 Mot. at 9. This case involves claims against Ms. Stutzman based on direct statutory liability. This case is *not* a  
26 veil piercing case, and plaintiffs’ cases are completely inapposite. *E.g.*, *Annechino v. Worthy*, 175 Wn.2d 630,  
290 P.3d 126 (2012) (tort case involving questions of fiduciary duties owed by bank officers); *Meisel v. M&N  
Modern Hydraulic Press Co.*, 97 Wn.2d 403, 645 P.2d 689 (1982) (veil piercing case involving product liability  
claim); *Truckweld Equip. Co., Inc. v. Olson*, 26 Wn. App. 638, 618 P.2d 1017 (1980) (veil piercing case  
involving breach of contract claim); *Block v. Olympic Health Spa, Inc.*, 24 Wn. App. 938, 604 P.2d 1317 (1979)  
(same).

1 RCW 49.60.040(19) (emphasis added).<sup>3</sup> Barronelle Stutzman, the owner of Arlene’s Flowers, is  
2 thus a “person” subject to the WLAD, and the plain language of the WLAD reaches an individual  
3 (whether an owner, manager, agent, or employee) who violated the WLAD while on the job.

4         The Washington Supreme Court has confirmed that the WLAD reaches an individual’s acts  
5 of on-the-job discrimination, even if the individual’s employer is also liable for the discrimination.  
6 In *Brown v. Scott Paper Worldwide Co.*, employees sued their corporate employers, and their  
7 individual supervisors, for sex and age discrimination under the WLAD. 143 Wn.2d 349, 354-57,  
8 20 P.3d 921 (2001). The supervisors claimed they could not be sued individually under the  
9 WLAD because the WLAD prohibits discrimination only by an “employer.” *Id.* at 357 (citing  
10 RCW 49.60.180). The Supreme Court disagreed. The WLAD defines “employer” to include “any  
11 *person* acting in the interest of an employer, directly or indirectly,” and the Court interpreted that  
12 definition to authorize liability for “both the individual supervisor who discriminates and the  
13 employer for whom he or she works.” *Id.* at 357-60 (citing RCW 49.60.040) (emphasis added).  
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16         In reaching that conclusion, the Court was mindful that the WLAD “mandates liberal  
17 construction in order to accomplish the broad purpose[] of the law,” which is to “eliminate all  
18 forms of discrimination.” *Id.* at 357, 359-60 (citing RCW 49.60.010-020). The Court therefore  
19 “view[s] with caution any construction that would narrow the coverage of the law,” and held that  
20 “enabling employees to sue individual supervisors who have discriminated against them is  
21 consistent with the broad public policy to eliminate all discrimination in employment.”  
22 *Id.* at 357, 361-62.  
23

24 \_\_\_\_\_  
25 <sup>3</sup> The list following the word “Person” in RCW 49.60.040(19) is exemplary only, not exclusive, because the  
26 definition uses the word “includes.” *E.g.*, *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 359, 20 P.3d  
921 (2001) (“the word ‘includes’ . . . is a term of enlargement;” by contrast, “the word ‘means’ . . . is a term of  
limitation”). The definition of “person” is very broad and, like the rest of the WLAD, must be construed  
liberally. RCW 49.60.020.

1 Here, as in *Brown*, individual liability is consistent not only with the legislative intent  
2 underlying the WLAD, but, most importantly, with the plain text of the WLAD. The WLAD  
3 holds every person accountable for unlawful acts of discrimination in public accommodation,  
4 and explicitly includes (and certainly does not *exclude*) acts of discrimination undertaken by a  
5 person while on the job. *Accord, e.g., Marquis v. City of Spokane*, 130 Wn.2d 97, 103,  
6 922 P.2d 43 (1996) (requiring the City of Spokane and individual city employees to stand trial for  
7 sex discrimination under the WLAD); *Lewis v. Doll*, 53 Wn. App. 203, 204, 765 P.2d 1341 (1989)  
8 (owner of 7-11 store sued individually, and held liable, under the WLAD for racial discrimination).  
9 Ms. Stutzman’s decision to refuse service to Robert and Curt thus subjects her to liability under  
10 the WLAD.  
11

12 **B. Ms. Stutzman is Personally Liable Under the CPA for her**  
13 **Discriminatory Acts**

14 Ms. Stutzman also has direct, statutory liability under the CPA. First, as the Court has  
15 previously observed, the WLAD explicitly makes a violation of the WLAD a violation of the  
16 CPA where injury is caused by the WLAD violation. Second, regardless of its connection to the  
17 WLAD, the CPA reaches individuals who participate in prohibited conduct, whether on the job  
18 or otherwise.  
19

20 **1. Ms. Stutzman is personally liable under the CPA because she is**  
21 **personally liable under the WLAD.**

22 Under the WLAD, “any unfair practice prohibited by [the WLAD] committed in the course  
23 of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the  
24 purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation  
25 to the development and preservation of business, and is an unfair or deceptive act in trade or  
26 commerce.” RCW 49.60.030(3). Thus, an unfair practice under the WLAD, occurring in trade or

1 commerce, satisfies every element of a CPA claim where the unfair practice results in injury  
2 (as will inevitably be the case). *E.g., Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 37,  
3 204 P.3d 885 (2009) (listing elements of CPA claim, including (1) an unfair or deceptive act or  
4 practice (2) occurring in trade or commerce and (3) affecting the public interest). Because  
5 Ms. Stutzman is individually liable for her discriminatory act under the WLAD, she is  
6 individually liable for the injuries caused by that act under the CPA. RCW 49.60.030(3).  
7

8 **2. CPA liability extends to individuals who participate in prohibited**  
9 **conduct.**

10 Ms. Stutzman is also individually liable under the CPA because the CPA applies to an  
11 individual's on-the-job conduct. In Washington, "[i]f a corporate officer participates in the  
12 wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the  
13 corporation, is liable for the penalties." *State v. Ralph Williams' North West Chrysler Plymouth,*  
14 *Inc.*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976). This source of liability is unrelated to liability  
15 resulting from corporate veil piercing. *Id.* Indeed, a corporate employee may not be liable under  
16 theories of corporate veil piercing but, on the same facts, be personally liable for her violations of  
17 the CPA.  
18

19 For example, in *State v. Ralph Williams*, a car dealership violated the CPA by engaging in  
20 deceptive sales practices. 87 Wn.2d at 305-09. On appeal, the dealership's owner, Ralph  
21 Williams, claimed he could not be liable for the dealership's CPA violation because the trial court  
22 had correctly denied the plaintiff's request to pierce the corporate veil. *Id.* at 321-22. In affirming  
23 Williams' personal liability, the Supreme Court explained that veil piercing was unnecessary, and  
24 that Williams was "independently liable for his role in formulating and supervising the  
25 dealership's unlawful activities." *Id.* at 322.  
26

1 Similarly, in *Grayson v. Nordic Construction Co.*, the president and majority stockholder  
2 of Nordic Construction Company, Arnold Bergstrom, claimed he could not be held personally  
3 liable for the company’s CPA violation because, under the facts of that case, it was inappropriate  
4 to pierce the corporate veil. 92 Wn.2d 548, 552, 599 P.2d 1271 (1979). The Supreme Court  
5 agreed that it was inappropriate to pierce the corporate veil in that case, but “nonetheless [found]  
6 that personal liability was properly imposed on Bergstrom under the rule enunciated in [*State v.*  
7 *Ralph Williams*].” *Id.* at 553-54. The Court held Bergstrom was “personally liable as a corporate  
8 officer who participated in a violation of the Consumer Protection Act.” *Id.* at 554.

10 Ms. Stutzman cites both *Ralph Williams* and *Grayson* in her motion papers, but  
11 misleadingly suggests that both cases are veil piercing cases that depended on the existence of  
12 “fraud, deception, or theft,” or another intentional violation of the law, to impose personal liability.  
13 Defs.’ Mot. at 5-7. Neither case relied on a veil piercing analysis to impose personal liability, and  
14 neither depended on the existence of fraud, deception, or theft, or an intentional violation of the  
15 law. Indeed, the rule stated in both cases is the same, and is more than broad enough to require  
16 personal liability for Ms. Stutzman here: “If a corporate officer participates in wrongful conduct  
17 or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable  
18 for the penalties.” *Grayson*, 92 Wn.2d at 554; *Ralph Williams*, 87 Wn. 2d at 322.

21 Here, as in *Ralph Williams* and *Grayson*, Ms. Stutzman had a direct, personal role in the  
22 CPA violation at issue. She is therefore personally liable for the CPA violation, and her motion  
23 for partial summary judgment should be denied.

24 **C. Neither the WLAD nor the CPA Requires that Ms. Stutzman Knowingly**  
25 **Violated the Law or Acted with Discriminatory Intent**

26 Throughout their brief, Defendants suggest Ms. Stutzman cannot be liable for her conduct



1 because she allegedly did not “knowingly” engage in unlawful discrimination, or “intentionally  
2 discriminate[] against anyone.” Defs.’ Mot. at 8-9. Because Ms. Stutzman intentionally refused  
3 to provide flowers for their wedding, Plaintiffs contend that Ms. Stutzman did intentionally  
4 discriminate against them. Nonetheless, for purposes of this motion, Ms. Stutzman’s intent is  
5 irrelevant.  
6

7 The WLAD does not limit liability to people who intentionally violate its provisions.  
8 Nothing in the statute imposes such a limitation, *see* RCW 49.60.010 *et seq.*, and Washington  
9 courts have explicitly rejected efforts by defendants to avoid WLAD liability on the basis that no  
10 discrimination was intended, *e.g.*, *Negron v. Snoqualmie Valley Hosp.*, 86 Wn. App. 579, 588-89,  
11 936 P.2d 55 (1997) (intentional discrimination not necessary for award of emotional distress  
12 damages under WLAD); *Lewis*, 53 Wn. App. at 210 (“Nor is the fact that [defendant] did not  
13 intend a discriminatory effect relevant.”).  
14

15 The CPA similarly applies regardless of whether the person violating its provisions did so  
16 knowingly or intentionally. Again, nothing in the CPA limits liability in that way, *see*  
17 RCW 19.86.010 *et seq.*, and Washington courts have found that the CPA “does not require a  
18 finding of an intent to deceive or defraud,” and that “good faith on the part of the [violator] is  
19 immaterial,” *Wine v. Theodoratus*, 19 Wn. App. 700, 706, 577 P.2d 612 (1978); *Fisher v. World-*  
20 *Wide Trophy Outfitters*, 15 Wn. App. 742, 748, 551 P.2d 1398 (1976). *Accord Grayson*,  
21 92 Wn.2d at 552 (construction company owner liable for his role in his company’s CPA violation  
22 even though the trial court “found no intentional wrongdoing on [his] part”).  
23

24 Ms. Stutzman is liable for her violations of the WLAD and CPA regardless of her intent or  
25 her understanding of the law at the time she refused to sell flowers for Robert and Curt’s wedding.  
26

1 **D. Plaintiffs Agree to Dismiss Their Aiding and Abetting Claim**

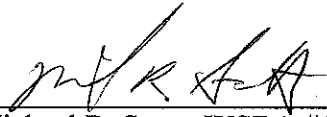
2 As noted above, the facts of this case support direct personal liability for Ms. Stutzman  
3 rather than aiding and abetting liability. Plaintiffs agree to dismiss their aiding and abetting claim  
4 against Ms. Stutzman.  
5

6 **IV. CONCLUSION**

7 A person who violates the WLAD or CPA does not escape liability simply because he or  
8 she was working on behalf of a corporation when committing the violation. Both the WLAD and  
9 CPA hold individuals, such as Barronelle Stutzman, personally liable for violations of those  
10 statutes. A veil piercing analysis is unnecessary. Because Ms. Stutzman has direct, personal,  
11 statutory liability for her decision to refuse service to Robert and Curt, her motion for partial  
12 summary judgment should be denied.  
13

14 DATED this 12th day of November, 2013.

15 HILLIS CLARK MARTIN & PETERSON P.S.

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