THE HONORABLE ALEXANDER C. EKSTROM

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)

PLAINTIFFS INGERSOLL AND FREED'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM OF AUTHORITIES

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I. INTRODUCTION AND RELIEF REQUESTED

For more than fifty years, Washington law has prohibited discrimination in places of public accommodation, recognizing that discrimination "threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state." RCW 49.60.010. Businesses that are open to the public are required to be open to everyone on the same terms; they are prohibited from turning away customers simply because of the customers' race, creed, color, national origin, sexual orientation, sex, military status, breastfeeding status, or disability. *Id.* Under Washington law, nobody can be turned away from a business simply because of who they are or whom they love.

Defendant Arlene's Flowers is a flower shop owned and operated by Defendant Barronelle Stutzman in Richland, Washington. The shop sells flowers and other goods to the public, including flowers to couples for display at their weddings. For years, Plaintiffs Robert Ingersoll and Curt Freed bought flowers for each other and for friends and family from Arlene's Flowers, and regarded Arlene's Flowers to be their florist. When they decided to get married and went to Arlene's Flowers to buy flowers for their wedding, they were devastated by Arlene's Flowers's and Ms. Stutzman's refusal to sell them flowers because they are gay.

Defendants' refusal to sell flowers to Robert and Curt violates the Washington Law Against Discrimination (WLAD) and the Consumer Protection Act (CPA). The statutes are clear, and the legal principles governing this case are well established. There are no genuine issues of material fact, as the parties do not dispute the basic facts of their interaction on March 1, 2013. By refusing to sell Robert and Curt flowers for their wedding, Defendants denied them full and equal enjoyment of the goods and services offered for sale at a place of

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public accommodation. Because Defendants' undisputed conduct violated the WLAD and the CPA, Plaintiffs Ingersoll and Freed are entitled to partial summary judgment as to Defendants' liability. Plaintiffs do not seek summary judgment as to damages at this time.

II. STATEMENT OF FACTS

Plaintiffs Robert Ingersoll and Curt Freed are gay men who have been in a committed relationship since 2004. Decl. of Robert Ingersoll In Opp'n to Defs.' Mot. for Partial Summ. J. ("Ingersoll Decl.") (Dkt. No. 82) ¶ 3[1]. In December 2012, soon after the State of Washington began recognizing the freedom to marry for same-sex couples (following a state referendum on the issue in the November 2012 election), Curt proposed marriage to Robert, and the two became engaged. *Id.* ¶ 4.

The wedding that Curt and Robert originally planned was supposed to take place on their nine-year anniversary, September 19, 2013. Ingersoll Decl. ¶ 4. The couple envisioned a ceremony followed by a reception with over 100 guests at the Bella Fiori Gardens in Kennewick, an established wedding venue. Deposition of Robert Ingersoll ("Ingersoll Dep.") 50:21-52:1.[2] The couple were excited about organizing their wedding, and planned to buy flowers for the wedding from Arlene's Flowers. Ingersoll Decl. ¶ 5. The couple were very familiar with Arlene's Flowers, as they—and in particular Robert—had purchased flowers there on many occasions, and viewed Arlene's Flowers as "their florist." *Id.*

On February 28, 2013, Robert drove to Arlene's Flowers to speak to someone about ordering flowers for his wedding to Curt. *Id.* ¶ 6. Robert spoke with Janell Becker, the manager of Arlene's Flowers. *Id.* Robert told Ms. Becker he was marrying Curt and that he

[1] The Ingersoll Declaration is attached as Exhibit F to the Declaration of Jake Ewart in Support of Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Authorities ("Ewart Decl.")
[2] Attached as Exhibit B to the Ewart Decl.

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and Curt wanted Arlene's to do the flowers. *Id.* Ms. Becker told Robert he would have to speak to the store owner, Defendant Barronelle Stutzman, and she gave Robert Ms. Stutzman's work schedule. *Id.* Robert knew Ms. Stutzman, as he had personally ordered flowers from her many times, including for Curt's birthday and for their anniversary. *Id.* ¶ 5; Ingersoll Dep. 11:15-25. Ms. Stutzman knew Robert and Curt were gay and in a committed relationship. Deposition of Baronelle Stutzman ("Stutzman Dep.") 70:8-71:13.[3]

The next day, March 1, 2013, Robert returned to Arlene's Flowers during his lunch hour to speak with Ms. Stutzman. Ingersoll Decl. ¶ 7. Robert told Ms. Stutzman that he and Curt were getting married and that they wanted Arlene's to do the flowers. *Id.* ¶ 8. Ms. Stutzman took Robert's hand and said she could not sell Curt and Robert flowers for their wedding because of her relationship with Jesus Christ. *Id*. Indeed, even before Robert could describe what he wanted, Ms. Stutzman told him she would not provide services for his wedding; she "chose not to be part of his event" because of her religious views. Ingersoll Dep. 49:1-8, 71:3-8; Stutzman Dep. 79:17-81:5. In shock, Robert asked Ms. Stutzman if she knew any florists who would do the flowers for his wedding. Ingersoll Decl. ¶ 8. Ms. Stutzman gave Robert the names of three other florists in the area, and gave Robert a hug. *Id.* Robert left Arlene's Flowers and returned to work. *Id.* ¶ 9.

Arlene's Flowers sells flowers and other goods and services to members of the public for all kinds of occasions, including weddings. Stutzman Dep. 18:24-19:17. The decision to refuse to sell flowers to Robert and Curt for their wedding was Ms. Stutzman's. *Id.* at 76:2-78:10, 106:16-20. She is the owner and president of Arlene's Flowers, Inc., and she

[3] Attached as Exhibit A to the Ewart Decl.

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establishes its policies. *Id.* at 16:15-24, 76:2-78:10. Having been notified by Ms. Becker that Robert would be asking Arlene's to provide flowers for his wedding to Curt, Ms. Stutzman consulted with her husband and concluded she could not provide flowers for the wedding because of her and her husband's shared "biblical belief that marriage is between a man and a woman." *Id.* No one else participated in the decision, and Arlene's Flowers had no existing policy relating to weddings for same sex-couples. *Id.* at 44:10-45:2; 79:2-7. In fact, Arlene's Flowers is a for-profit corporation that has no religious purpose or affiliation whatsoever.[4] *Id.* at 15:11-25. Ms. Stutzman's personal religious beliefs were the only reason for her decision that Arlene's Flowers would not sell Robert and Curt flowers for their wedding. *Id.* at 44:16-25, 52:3-15, 78:3-10.

Robert and Curt were left reeling by the refusal. Ingersoll Decl. ¶ 11. Robert was shocked and hurt by Ms. Stutzman's refusal to provide services, especially given his relationship with Ms. Stutzman. Ingersoll Dep. 17:24-18:5, 19:5-11, 67:11-16. Curt too felt the "tremendous emotional toll of the refusal." Deposition of Curt Freed ("Freed Dep.") 26:24- 27:3.[5] The couple stopped planning for a big wedding in September 2013, in part because they feared being denied service by other wedding vendors. Ingersoll Decl. ¶ 11; Freed Dep. 26:24-27:3. Ultimately they decided to have a small wedding at their home. Ingersoll Decl. ¶ 15. They were married on July 21, 2013, with 11 people in attendance. *Id.*;

[4] The company's non-discrimination policy reads: "This company prohibits discrimination or harassment based on race, color, religion, creed, sex, national origin, age, disability, marital status, veteran status or any other status protected by applicable law." Stutzman Dep. 31:23-32:7. Another company policy relating to "Customers" states: "Customers come first, whoever they are, however they are dressed, whatever they look like, whatever color or creed, what they are willing to spend." *Id.* at 36:24-37:7. Ms. Stutzman testified that "creed" means "religion" in this policy. *Id.*

[5] Attached as Exhibit C to the Ewart Decl.

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Ingersoll Dep. 74:3-4. They bought one flower arrangement from another florist, and boutonnieres and corsages from a friend. Ingersoll Decl. ¶ 14.

On April 9, 2013, the State of Washington filed a complaint against Arlene's Flowers and Ms. Stutzman for the refusal to sell Robert and Curt flowers for their wedding, seeking primarily injunctive relief under the CPA. Robert and Curt filed this action under both the WLAD and the CPA several days later, also primarily seeking injunctive relief. The cases were consolidated for all purposes except trial. Dkt. No. 62.

III. STATEMENT OF ISSUES PRESENTED

As a matter of law, did Defendants violate the WLAD and CPA by refusing to serve Plaintiffs, based on Plaintiffs' sexual orientation, at Defendants' public accommodation?

IV. EVIDENCE RELIED UPON

Defendants rely on the Declaration of Jake Ewart in Support of Plaintiffs Ingersoll and Freed's Motion for Partial Summary Judgment and Memorandum of Authorities and the other papers and pleadings on file with the Court.

V. AUTHORITY AND ARGUMENT

Summary judgment should be entered when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). No material fact is in dispute in this case. Arlene's Flowers and Ms. Stutzman have admitted that Arlene's Flowers is a retail business that sells flowers and other goods and services, including flowers for weddings, to members of the public. Arlene's Flowers and Ms. Stutzman denied service to Robert and Curt because Robert and Curt are gay. That denial violated the WLAD and CPA. The Court should enter summary judgment for the Plaintiffs on liability.

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A. In Refusing to Sell Robert and Curt Flowers for Their Wedding, Arlene's Flowers and Ms. Stutzman Violated the WLAD.

Washington state law prohibits discrimination on the basis of sexual orientation by a place of public accommodation. Specifically, the WLAD prohibits acts that "directly or indirectly result[] in any distinction, restriction, or discrimination . . . in any place of public . . . accommodation" on the basis of sexual orientation. RCW 49.60.215(1); *accord* RCW 49.60.030(1). The WLAD thus guarantees "the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public," without fear of discrimination based on one's sexual orientation. RCW 49.60.040(14).

Arlene's Flowers is a place of public accommodation that denied goods and services to Robert and Curt because they are gay. That denial violated the WLAD.

1. *Arlene's Flowers Is a Place of Public Accommodation.*

The WLAD broadly defines "any place of public . . . accommodation" to include "any place, licensed or unlicensed, kept for gain, hire, or reward . . . or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services." RCW 49.60.040(2). Consumers of such businesses are entitled to the "full enjoyment" of goods or services offered for sale to the public. RCW 49.60.030(1)(b), -.040(14).

It is undisputed that Arlene's Flowers is a place of public accommodation. Arlene's Flowers is a for-profit corporation that sells flowers and floral arrangements to the general public, and advertises online and through other media to the general public. Stutzman Dep. 27:9-13. Arlene's has *never* refused to sell flowers for a wedding to anyone (besides Robert and Curt) for any reason other than lack of capacity to fill the order. Def. Arlene's

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Flowers's Responses to Pls.' Disc. Reqs. at Answer to Interrog. No. 13.[6] Arlene's Flowers is thus a place of public accommodation under the WLAD.

2. *In Refusing to Sell Robert and Curt Flowers for Their Wedding, Arlene's Flowers and Ms. Stutzman Discriminated Against Robert and Curt Based on Their Sexual Orientation.*

Ms. Stutzman admits she refused to provide flowers to Robert and Curt because they wanted the flowers for their wedding and they are a same-sex couple. On its face, this constitutes discrimination based on sexual orientation. Ms. Stutzman sells flowers to heterosexual couples for their weddings, but she denied Robert and Curt the same service solely because they are a gay couple.

Defendants nevertheless try to justify their discrimination by arguing they were not discriminating "on the basis of any customer's sexual orientation," but were, instead, declining "to provide goods and services for a particular type of event." Answer ¶ 41, Dkt. No. 15 (Cause No. 13-2-00953-3). This is not a meaningful or lawful distinction, and courts have routinely rejected it. In a similar case, the Supreme Court of New Mexico recently held that a photography studio discriminated based on sexual orientation, and thereby violated New Mexico's antidiscrimination law, by refusing to photograph the commitment ceremony of a same-sex couple. *See Elane Photography, LLC v. Willock*, 309 P.3d 53, 59 (N.M. 2013), *cert. denied*, __ U.S. __, 134 S. Ct. 1787, 188 L. Ed. 2d 757 (2014). The court concluded that "a commercial photography business that offers its services to the public, thereby increasing its visibility to potential clients, is subject to the antidiscrimination provisions of the [New Mexico Human Rights Act] and must serve same-sex couples on the same basis that it serves opposite-

[6] Attached as Exhibit G to the Ewart Decl.

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sex couples." *Id.* When Elane Photography refused to photograph the commitment ceremony of a same-sex couple, it violated New Mexico law "in the same way if it had refused to photograph a wedding between people of different races." *Id.*

Like Arlene's Flowers, Elane Photography tried to justify its discrimination by claiming that the owner was opposed to the *event* of a wedding-like ceremony for a same-sex couple, not the participants' *sexual orientation*. *Id.* at 61. The New Mexico Supreme Court was not persuaded. Noting that the U.S. Supreme Court had rejected similar arguments, the New Mexico Supreme Court held that "when a law prohibits discrimination on the basis of sexual orientation, that law similarly protects conduct that is inextricably tied to sexual orientation." *Id.* at 62. (citing cases); *accord* Initial Decision Granting Complainants' Mot. for Summ. J. & Denying Resp'ts' Mot. for Summ. J., Craig v. Masterpiece Cakeshop, No. P20130008X, at 5-6 (Colo. Civ. Rights Div. Dec. 6, 2013), *available at* https://www.aclu.org/sites/default/files/assets/initial_decision_case_no._ cr_2013-0008.pdf (citing similar cases and upholding state statute prohibiting discrimination on the basis of sexual orientation).

Indeed, the U.S. Supreme Court has consistently held that discrimination based on conduct associated with a protected characteristic is discrimination on the basis of that characteristic. Thirty years ago in *Bob Jones Univ. v. United States*, 461 U.S. 574, 605, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983), the Court upheld an IRS revocation of a university's tax exempt status because the university denied admission to students who engaged in or advocated interracial romantic relationships, even though it otherwise admitted students of all races. The Court held that "discrimination on the basis of racial affiliation and association is a

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form of racial discrimination." *Id.*. The Court then extended this logic to discrimination based on sexual orientation in *Christian Legal Society Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 689, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010), where it held that a student group discriminated on the basis of sexual orientation even though the group claimed it did not prohibit gay members, but only people who engaged in same-sex intimacy or did not oppose such intimacy. The Court explained that its "decisions have declined to distinguish between status and conduct in this context." *Id.*; *see also Lawrence v. Texas*, 539 U.S. 558, 575, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003) ("When homosexual *conduct* is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual *persons* to discrimination.") (emphasis added); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270, 113 S. Ct. 753, 122 L. Ed. 2d 34 (1993) ("A tax on wearing yarmulkes is a tax on Jews.").

Nor is it relevant that Ms. Stutzman does not discriminate against gay customers in all contexts. It is true, for example, that Ms. Stutzman previously sold flowers to Robert and Curt (for occasions other than their wedding), knowing they were gay. But a business cannot *mostly* comply with the WLAD. As the New Mexico Supreme Court explained in *Elane Photography*, "if a restaurant offers a full menu to male customers, it may not refuse to serve entrees to women even if it will serve them appetizers." *Elane Photography*, 309 P.3d at 62. The WLAD requires that gay customers have "the full enjoyment" of Arlene's Flowers' services. RCW 49.60.030(1)(b) -.040(14).

Examined from any angle, the failure of Arlene's Flowers and Ms. Stutzman to provide Robert and Curt with goods and services regularly provided to heterosexual couples constitutes

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discrimination based on Robert and Curt's sexual orientation and therefore violates the WLAD.

3. *Robert and Curt Were Harmed by Arlene's Flowers's and Ms. Stutzman's Discriminatory Refusal to Sell Them Flowers.*

Discrimination based on a protected characteristic—invidious discrimination—is inherently harmful. Not only does invidious discrimination cause tangible injury to those suffering the discrimination, but it "deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic and cultural life." *Roberts v. United States Jaycees*, 468 U.S. 609, 625, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). The very purpose of enacting public accommodations laws such as the WLAD is to prevent this inherent harm: "the fundamental object of [federal civil rights legislation] was to vindicate the deprivation of personal dignity that surely accompanies denials of equal access to public establishments." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250, 85 S. Ct. 348, 354, 13 L. Ed. 2d 258 (1964). As Justice Goldberg so eloquently explained:

> Discrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment, even though he be a citizen of the United States and may well be called upon to lay down his life to assure this Nation continues.

Id. at 291-92 (Goldberg, J., concurring).

Washington courts have also "long recognized damage is inherent in a discriminatory act." *Negron v. Snoqualmie Valley Hosp.*, 86 Wn. App. 579, 587, 936 P.2d 55 (1997). An act of discrimination "in itself carries with it the elements of an assault upon the person, and in such cases the personal indignity inflicted, the feeling of humiliation and disgrace engendered, and the consequent mental suffering, are elements of actual damages for which a compensatory

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award may be made." *Id.* at 587-88 (quoting *Anderson v. Pantages Theatre Co.*, 114 Wash. 24, 31, 194 P. 813 (1921)). In line with this authority, evidence of actual damages is not required to establish liability under the WLAD. *E.g.*, *Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 637, 911 P.2d 1319 (1996) (damages not an element of a claim under RCW 49.60.215). Where actual damages are not sought or awarded, nominal damages are awarded. *Minger v. Reinhard Distrib. Co.*, 87 Wn. App. 941, 946-47, 943 P.2d 400 (1997). Finally, attorneys' fees and costs are awarded to the prevailing plaintiff where discrimination is found, regardless of evidence of actual damages. *Id.* at 947-48.

Here, Robert and Curt suffered significant distress and mental anguish caused by the Defendants' discrimination, along with other economic damages described below in connection with their CPA claim. Nevertheless, Robert and Curt do not seek actual damages relating to non-economic harms. Robert and Curt seek only injunctive relief and nominal damages for Defendants' violation of the WLAD.

4. *Arlene's Flowers and Ms. Stutzman Are Both Liable for the Discriminatory Refusal to Sell Robert and Curt Flowers.*

Under the WLAD, it is unlawful for "any person or the person's agent or employee to commit an act which directly or indirectly results in any . . . discrimination." RCW 49.60.215. The WLAD defines "person" to include "one or more individuals" or "corporations," and includes "any owner, lessee, proprietor, manager, agent, or employee." RCW 49.60.040(19). As the Washington Supreme Court has confirmed, those definitions broadly encompass both the employee who discriminates and the company for whom that employee was acting. *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 360-61, 20 P.3d 921 (2001).

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Ms. Stutzman, the owner, president, and chief policy maker for Arlene's Flowers, decided, on behalf of Arlene's Flowers, not to sell flowers to Robert and Curt for their wedding. She is personally liable for that decision under the WLAD, and Arlene's Flowers is liable for the actions Ms. Stutzman took on its behalf.[7]

B. Arlene's Flowers and Ms. Stutzman Violated the CPA.

A violation of the WLAD is also a violation of the CPA if the WLAD violation occurred in the course of trade or commerce and caused injury to business or property. RCW 49.60.030(3); *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 37, 204 P.3d 885 (2009) (listing elements of CPA action). Because the discrimination experienced by Robert and Curt at Arlene's Flowers plainly occurred in the course of trade or commerce and caused economic injury, Arlene's Flowers and Ms. Stutzman are liable for that discrimination under the CPA.

To establish a CPA violation, a plaintiff must show (1) an unfair or deceptive act or practice, (2) that occurred in trade or commerce, (3) that affected the public interest, and (4) that caused (5) injury to business or property. *Panag*, 166 Wn.2d at 37. Under the WLAD, any violation of the WLAD "committed in the course of trade or commerce . . . is, for the purpose of applying [the CPA], a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce." RCW 49.60.030(3). A violation of the WLAD committed in the course of trade or commerce thus satisfies the first three elements of the CPA. Because Arlene's Flowers and

[7] These issues are discussed more thoroughly in Ingersoll and Freed's Opposition to Defendants' Motion for Partial Summary Judgment on Plaintiffs' Claims Against Barronelle Stutzman in Her Personal Capacity, filed November 12, 2013.

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Ms. Stutzman violated the WLAD in the course of trade or commerce, the first three elements of Plaintiffs' CPA claim are established.

Robert and Curt were also injured in their business or property. When a place of public accommodation unlawfully refuses to serve a customer, as happened here, emotional injuries are inevitably accompanied by economic injuries. Although the economic injuries Robert and Curt incurred in this case were relatively minimal—and significantly less important to them personally than the emotional distress caused by the discrimination—they are more than sufficient to support a claim under the CPA.[8] Indeed, in the aggregate, discrimination can distort entire marketplaces, and modern civil rights law is built in part on efforts to protect economic activity from the negative effects of discrimination. *See, e.g., Katzenbach v. McClung*, 379 U.S. 294, 299-301, 85 S. Ct. 377, 13 L. Ed. 2d 290 (1964) (discussing the effect of discrimination on the Southern economy and affirming the constitutionality of the Civil Rights Act of 1964). Because this motion seeks partial summary judgment only as to liability, the extent of Plaintiffs' damages will be presented to the court at another time.[9]

Finally, like the WLAD, the CPA applies to both the corporation violating the CPA and the employee who committed the wrongful act. Under the CPA, "[i]f a corporate officer

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[8] Robert and Curt's economic injuries included the costs of the trips to Arlene's Flowers and the trips to other florists, as well as costs associated with the time they spent identifying and selecting new florists. Pls.' Opp'n to Defs.' Mot. for Partial Summ. J. on CPA Claim (Dkt. No. 81) and Declarations of Robert Ingersoll (Dkt. No. 82) and Curt Freed (Dkt. No. 83) in support; Defs.' Third Set of Disc. Reqs. to Pl. Robert Ingersoll and Resps. Thereto at Answer to Interrog. No. 37 (attached as Exhibit E to the Ewart Decl.); Defs.' Third Set of Disc. Reqs. to Pl. Curt Freed and Resps. Thereto at Answer to Interrog. No. 34 (attached as Exhibit D to the Ewart Decl.); *see also, e.g., Panag*, 166 Wn.2d at 57-58 ("Pecuniary losses occasioned by inconvenience," including travel costs, "may be recoverable as actual damages" under the CPA, and time taken away from business activities results in an injury cognizable under the CPA); *Smith v. Stockdale*, 166 Wn. App. 557, 565, 271 P.3d 917 (2012) (finding that a person claiming five dollars in economic damages was injured for purposes of the CPA).

[9] The Court has already denied Defendants' motion for partial summary judgment based on lack of injury under the CPA. Dkt. No. 122. CPA damages are discussed more fully in Plaintiffs Robert Ingersoll and Curt Freed's Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim, filed September 23, 2013. Dkt. No. 81.

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participates in the wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as the corporation, is liable for the penalties." *State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976); *accord Grayson v. Nordic Constr. Co.*, 92 Wn.2d 548, 552, 599 P.2d 1271 (1979) (corporate officers can be held liable, along with corporation, for participating in violation of the CPA). In this case, Ms. Stutzman, Arlene's Flowers's president, committed the act of discrimination at issue on behalf of Arlene's Flowers. Both she and Arlene's Flowers therefore violated the CPA and are liable for the consequences.[10]

C. Arlene's Flowers's and Ms. Stutzman's Discrimination Against Robert and Curt Cannot Be Justified by Ms. Stutzman's Sincerely-Held Religious Beliefs.

Arlene's Flowers and Ms. Stutzman claim that the refusal to serve Robert and Curt was justified by the free speech and religious exercise guarantees of the federal and state constitutions. Answer ¶¶ 32-33, Dkt. No. 15 (Cause No. 13-2-00953-3). Although these claims have not been asserted in any detail, neither the federal nor Washington constitution gives Arlene's Flowers and Ms. Stutzman the right to engage in unlawful discrimination.

1. *The Purpose of the Washington Law Against Discrimination Is to Prevent Invidious Discrimination by Businesses, Such as Arlene's Flowers, Open to the General Public.*

The WLAD was enacted for the very purpose of prohibiting the kind of discrimination Arlene's Flowers and Ms. Stutzman contend is justified. It is therefore not incidental, but intentional, that the law forbids Arlene's Flowers from discriminating based on protected

[10] This issue is more fully discussed in Ingersoll and Freed's Opposition to Defendants' Motion for Partial Summary Judgment on Plaintiffs' Claims Against Barronelle Stutzman in her Personal Capacity, filed November 12, 2013.

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characteristics. As the preamble to the WLAD explains:

> This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability . . . are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

RCW 49.60.010. The Supreme Court of Washington has also explained that the WLAD, which itself was enacted in 1949, was based on an even earlier series of antidiscrimination laws. *Fraternal Order of Eagles Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 243, 59 P.3d 655 (2002). In fact, the State of Washington enacted its first law prohibiting discrimination in public accommodations in 1889, the year the state was admitted to the union. *Id.* In conjunction with the long-recognized importance of prohibiting invidious discrimination in the public arena, the Supreme Court has held that the WLAD reflects state policy "of the highest order." *Id.* at 246; *Allison v. Hous. Auth.*, 118 Wn.2d 79, 86, 821 P.2d 34 (1991) ("Plaintiffs bringing discrimination cases assume the role of a private attorney general, vindicating a policy of the highest priority.") (internal citations omitted).

2. *The Religious Exemptions under the WLAD and Washington's Marriage Law Do Not Apply to Commercial Businesses Open to the General Public.*

Like non-discrimination, religious freedom is a core value protected by Washington law. For that reason, the Washington Legislature acted to respect religious liberty in passing the WLAD and in expanding Washington's marriage law to include same-sex couples. But the

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exemptions in both laws are limited to religious organizations; neither law exempts commercial businesses open to the general public. In other words, after taking into account the importance of religious freedom in both the WLAD and Washington's marriage law, the legislature chose not to exempt businesses like Arlene's Flowers.

In enacting the WLAD, the Washington Legislature exempted certain traditionally private organizations, as well as "bona fide religious or sectarian" institutions. RCW 49.60.040(2). The Washington Supreme Court has recognized that this exemption serves to protect "religious freedom by avoiding state interference with religious autonomy and practice." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 784, 317 P.3d 1009 (2014). Yet organizations may not simply designate themselves as private or religious to exempt themselves from the law; given the importance of the law's purpose, the Washington Supreme Court has insisted that organizations be truly private or religious in nature to access the law's exemption. *Fraternal Order of Eagles*, 148 Wn.2d at 254-55.

Similarly, Washington's marriage law provides that "[n]o religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage." RCW 26.04.010(5). The law also states that "[a] religious organization shall be immune from any civil claim or cause of action, including a claim pursuant to chapter 49.60 RCW, based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage." RCW 26.04.010(6). These exemptions were enacted into Washington's marriage law as part of Senate Bill 6239, the bill that extended the freedom to marry to same-sex couples in 2012 (and was approved by the general electorate through a ballot referendum that same year).

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S.B. 6239 § 1(5), -(6), 62nd Leg., Reg. Sess. (Wash. 2012). Significant debate took place in the legislature regarding the scope of this exemption, and the legislature explicitly rejected amendments that would have extended the exemption to businesses open to the general public. *See, e.g.*, Hearing on S.B. 6239 Before the S. Comm. on Gov't Operations, Tribal Relations & Elections, 62nd Leg., Reg. Sess. (Wash. Jan. 26, 2012), *available at* http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012010185; Senate Floor Debate on S.S.B. 6239, 62nd Leg., Reg. Sess. (Wash. Feb. 2, 2012), *available at* http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012020049; Hearing on S.S.B. 6239 Before the H. Judiciary Comm., 62nd Leg., Reg. Sess. (Wash. Feb. 6, 2012), *available at* http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012020081.

Thus, both the WLAD and Washington's marriage law reflect an existing legislative balancing between the interests of the state in prohibiting discrimination—in public accommodations and in marriage—and religious freedom. As a business open to the general public, Arlene's Flowers does not qualify for either exemption.

3. *Courts Have Rejected Claims that an Owner's Personal, Religious Belief Justifies the Refusal of a Public Business to Sell Goods or Services.*

Courts have consistently upheld antidiscrimination laws in the face of constitutional challenges raising personal religious beliefs. Historically, litigants have claimed that sincerely-held religious beliefs should constitutionally justify their discrimination based on race, *Bob Jones Univ.*, 461 U.S. at 605 (religious school excluded students who engaged in or advocated for interracial romantic relationships); sex, *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362, 1364-65 (9th Cir. 1986) (religious school provided health benefits only to men, as "heads of

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households"); marital status, *McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844, 850 (1985) (sports and health club owned by religious individuals discriminated in hiring and firing based on marital status and religion) (Minn. 1985); and religious beliefs different from their own, *Pines v. Tomson*, 160 Cal. App. 3d 370, 375, 206 Cal. Rptr. 866 (Cal. Ct. App. 1984) (organization Christian Yellow Pages only accepted advertisements by born-again Christians). In all these cases, courts defended antidiscrimination laws for protected classes from erosion based on individual beliefs.

The same has been true in challenges involving discrimination based on sexual orientation. *See, e.g., North Coast Women's Care Med. Grp., Inc. v. San Diego Cnty. Superior Court*, 44 Cal. 4th 1145, 1161, 189 P.3d 959 (Cal. 2008) (upholding California's antidiscrimination law as applied to a fertility clinic whose doctors invoked their religion as a basis for discriminating against a lesbian patient); *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 38 (D.C. 1987) (upholding the District of Columbia's human rights law as applied to a Catholic school that invoked its religious views on homosexuality in refusing to provide benefits to gay students). *Cf. Christian Legal Soc'y*, 561 U.S. at 689 (upholding a university's antidiscrimination policy as applied to school-sponsored clubs that invoked their religious beliefs in order to exclude students who engaged in or supported the right to same-sex intimacy).

It makes particular sense that non-discrimination laws would be upheld in the context of businesses open to the general public, inasmuch as providing a commercial good or services to a customer does not mean that the business endorses or agrees with the views or activities or even identity of the customer. "The Constitution does not guarantee a right to choose

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employees, customers, suppliers, or those with whom one engages in simple commercial transactions, without restraint from the State." *Roberts*, 468 U.S. at 634 (O'Connor, J., concurring). Courts have approved such governmental restraints for well more than a century—since at least the "the Civil Rights Cases themselves, where Mr. Justice Bradley for the [U.S. Supreme] Court inferentially found that innkeepers, 'by the laws of all the States . . . are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them.'" *Heart of Atlanta Motel*, 379 U.S. at 260 (quoting *The Civil Rights Cases*, 109 U.S. 3, 25, 3 S. Ct. 18, 27 L. Ed. 835 (1883)).

In line with these cases, courts more recently have rejected claims that the personal, religious views of business owners can constitutionally justify their refusal to sell wedding-related goods and services to same-sex couples. As noted above, the New Mexico Supreme Court has ruled that a photography studio violated New Mexico's antidiscrimination law when it refused to photograph the commitment ceremony of a same-sex couple, given that the studio advertised its services as a wedding photographer to the general public. *Elane Photography*, 309 P.3d at 59.

Like Arlene's Flowers, Elane Photography argued that the religious views of its proprietor conferred on the business a right to discriminate under the constitutional guarantees of free speech and free exercise. *Id.* at 60. The New Mexico Supreme Court addressed and rejected these arguments, concluding with respect to the free speech claim that New Mexico's antidiscrimination law did not cause Elane Photography to engage in unconstitutional compelled speech because the law did not compel the business "to either speak a government-mandated message or to publish the speech of another." *Id.* at 59. The court further explained

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that although photography is a "creative" or "expressive" profession, "there is no precedent to suggest that First Amendment protections allow such individuals or businesses to violate antidiscrimination laws." *Id.* at 71. With respect to the free exercise claim, the court concluded that New Mexico's antidiscrimination law was a neutral law of general applicability, and thus could not violate Elane Photography's free exercise rights, assuming the business had such rights. *Id.* at 75.

Similarly, an administrative agency in Colorado recently ruled that a bakery violated Colorado's antidiscrimination law in refusing to sell a same-sex couple a cake for their wedding. Initial Decision Granting Complainants' Mot. for Summ. J. & Denying Resp'ts' Mot. for Summ. J., Craig v. Masterpiece Cakeshop, No. P20130008X (Colo. Civ. Rights Div. Dec. 6, 2013), *available at* https://www.aclu.org/sites/default/files/assets/initial_decision_case_no._cr_2013-0008.pdf. Again, the business owner in that case argued that his personal, religious beliefs should constitutionally justify discrimination based on sexual orientation, and again, the court rejected these arguments. *Id.* And the New York human rights commission recently concluded that a wedding venue in upstate NY violated long-standing New York nondiscrimination law when it refused to allow a lesbian couple to reserve the venue for their wedding, based on the owner's religious objection. Notice and Final Order, McCarthy v. Liberty Ridge Farm, Nos. 10157952 and 10157963 (N.Y. Div. of Human Rights Aug. 8, 2014), *available at* http://www.dhr.ny.gov/sites/default/files/pdf/Commissioners-Orders/mccarthy-v-liberty-ridge-farm.pdf.

Arlene's Flowers and Ms. Stutzman make the same arguments as the businesses that wanted to use their owners' religious beliefs as a basis for discrimination in New Mexico,

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Colorado, and New York. Like the adjudicative bodies in those states, this Court should reject these arguments.

VI. CONCLUSION

Arlene's Flowers is a public accommodation for the purposes of the WLAD, and in refusing to sell Robert and Curt flowers for their wedding based on their sexual orientation, Arlene's Flowers and Ms. Stutzman violated the WLAD, and concurrently violated the CPA. Although Arlene's Flowers and Ms. Stutzman attempt to justify this discrimination based on Ms. Stutzman's sincerely held religious views, courts have clearly and consistently enforced antidiscrimination laws in the face of religion-based efforts to discriminate in providing goods and services to the public. We are all entitled to our religious beliefs, and Robert and Curt do not dispute the sincerity of Ms. Stutzman's beliefs, but Ms. Stutzman is not entitled to act on these beliefs by discriminating against and harming others in the arena of public commerce.

The Court should grant summary judgment for the Plaintiffs, holding Arlene's Flowers and Baronelle Stutzman liable for their violations of the WLAD and CPA.

DATED this 21st day of November, 2014.

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