THE HONORABLE ALEXANDER C. EKSTROM

IN THE SUPERIOR COURT OF WASHINGTON 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 ROBERT INGERSOLL AND CURT FREED'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON PLAINTIFFS' LACK OF STANDING

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I. INTRODUCTION AND RELIEF REQUESTED

Defendants injured Plaintiffs Robert Ingersoll and Curt Freed, a same-sex couple, by refusing to sell them flowers for their wedding based solely on their sexual orientation. Before Robert was even able to describe what he wanted, Defendant Barronelle Stutzman, owner and president of Defendant Arlene's Flowers, refused categorically to sell Robert and Curt anything for their wedding because they are a same-sex couple. Defendants now assert that Robert and Curt lack standing because Ms. Stutzman testified that she would have sold them some items they might have wanted, although she still admits she would not have sold them everything Arlene's Flowers offers to the public. Defendants also assert Robert and Curt's claims are moot because they married after Defendants refused to sell them anything for their wedding. Defendants' arguments are meritless.

Robert and Curt have standing because they are asserting their personal rights to be free from discrimination in places of public accommodation—rights that Defendants directly violated. Defendants' violation of those rights has not yet been remedied, so Robert and Curt's claims are active controversies that are not moot.

Even if Robert and Curt did not strictly satisfy the tests for standing and mootness—and they do—the Court should still hear this case because it involves a critically important public issue: the civil right to be free from discrimination in places of public accommodation. This issue will recur again in this state, and the Court is well-positioned to decide this case. The Court should deny Defendants' motion.

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II. STATEMENT OF THE ISSUE PRESENTED

Do Plaintiffs have a justiciable claim against Defendants for Defendants' refusal to offer Plaintiffs the same goods and services they offer to the public solely because Robert and Curt are gay men who were planning to marry?

III. EVIDENCE RELIED UPON

Plaintiffs rely upon the Declaration of Jake Ewart in Support of Plaintiffs Ingersoll and Freed's Opposition to Defendants' Motion for Summary Judgment Based on Plaintiffs' Lack of Standing ("Ewart Decl.") and the other papers and pleadings on file with the Court.

IV. STATEMENT OF FACTS

On February 28, 2013, Robert Ingersoll, a longtime Arlene's Flowers customer, drove to Arlene's Flowers to speak with someone about ordering flowers for his upcoming wedding to Curt Freed. Decl. of Robert Ingersoll in Supp. of Opp'n to Defs.' Mot. for Partial Summ. J. on CPA Claim by Ingersoll and Freed ("Ingersoll Decl.") (Dkt. No. 82) ¶ 6.[1] Robert spoke with Janell Becker, an Arlene's Flowers employee. *Id.* He told Ms. Becker he was getting married to Curt Freed and that he wanted Arlene's to do the flowers. *Id*. Ms. Becker told Robert he would have to speak with Arlene's Flowers' owner, Barronelle Stutzman. *Id.* Robert had ordered flowers from Ms. Stutzman many times over the years, and both he and Curt considered Arlene's Flowers as "their florist." *Id.* at ¶¶ 5, 7.

Robert returned to Arlene's on March 1, 2013, and spoke with Ms. Stutzman. *Id*. at ¶¶ 7-8. Robert and Curt had previously discussed having simple floral arrangements for their wedding, which they had planned to take place in a formal garden setting, but they had not yet made any decisions when Robert spoke with Ms. Stutzman. Defs.' Third Set of Disc.

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

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Reqs. to Pl. Robert Ingersoll and Resps. Thereto at Answer to Interrog. No. 34;[2] Ingersoll Dep. 50:21-52:1.[3] Robert therefore started his conversation with Ms. Stutzman by explaining that he and Curt had been thinking of simple arrangements for their wedding. Stutzman Dep. 79:20-21.[4] Before Robert had a chance to describe anything further—such as the planned setting for the wedding—Ms. Stutzman cut off the conversation by announcing that she would not be able to sell Robert anything for his wedding:

> A: And I just put my hands on his and told him because of my relationship with Jesus Christ I couldn't do that, couldn't do his wedding.
>
> Q: Did you tell him that before he finished telling you what he wanted?
>
> A: He said it was going to be very simple.
>
> Q: Did he tell you what types of flowers he would want?
>
> A: We didn't get into that.

Stutzman Dep. 79:21-80:4.

Robert has the same recollection of Ms. Stutzman's refusal:

> A: We wanted to be very simple and understated.
>
> Q: Did you tell Barronelle that you wanted to do sticks or twigs?
>
> A: Barronelle never gave me the opportunity to discuss the flower arrangements.

Ingersoll Dep. 49:3-8.

Without any regard to the type of goods or services Robert and Curt might have wanted, Ms. Stutzman made clear that neither she nor Arlene's Flowers would be providing

[2] Attached as Exhibit B to Ewart Decl.
[3] Attached as Exhibit C to Ewart Decl.
[4] Attached as Exhibit D to Ewart Decl.

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any goods or services to Robert and Curt because they wanted the goods and services for their wedding and are a same-sex couple:

> A: I told him I couldn't do his wedding flowers.
>
> Q: Robert did not ask you to attend his wedding, did he?
>
> A: No, sir.
>
> Q: He didn't even ask you to deliver flowers to his wedding, did he?
>
> A: We didn't get that far.
>
> Q: Okay. You didn't get that far because you told him you would not provide services for his wedding, right?
>
> A: I told him I could not do his wedding.

Stutzman Dep. 81:15-82:1.

After Ms. Stutzman categorically refused to sell anything to Robert and Curt for their wedding, Robert left Arlene's Flowers and returned to work in shock. Ingersoll Decl. ¶¶ 8-9.

Robert and Curt were extremely upset by Defendants' refusal to sell them floral goods and services for their wedding. *Id*. at ¶ 11. Robert was particularly shocked and hurt by Ms. Stutzman's refusal given his long-standing 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." 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. *Id*.; Ingersoll Decl. ¶ 11. Ultimately they decided to have a small wedding at their home. *Id*. ¶ 15. They were married on July 21, 2013, with 11 people in attendance. *Id.*; Ingersoll Dep. 74:3-4. They bought

[5] Attached as Exhibit E to Ewart Decl.

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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 their refusal to sell Robert and Curt floral goods and services for their wedding, seeking primarily injunctive relief under the Consumer Protection Act ("CPA"). Several days later, Robert and Curt filed this action under both the Washington Law Against Discrimination ("WLAD") and the CPA, also primarily seeking injunctive relief. The cases were consolidated for all purposes except trial. Dkt. No. 62.

After this case was publicized, Defendants instituted a policy that formalizes their discriminatory practices. Stutzman Dep. 44:10-25. Defendants are adamant that they will not sell anything wedding-related to same-sex couples other than prearranged flowers or raw materials. *Id*. 45:3-46:7; 80:15-23; 105:15-106:15.

V. AUTHORITY AND ARGUMENT

Summary judgment is appropriate only if the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and reasonable inferences are considered in the light most favorable to the nonmoving party. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989).

Defendants move to dismiss this case because they assert Robert and Curt lack standing and the case is moot. Defendants are wrong. Robert and Curt have standing as the actual victims of Defendants' discriminatory actions. This case remains an existing, actual controversy because Robert and Curt's rights to be free from discrimination have not been vindicated. Further, those rights present an issue of public importance that would warrant this

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Court's resolution even if Robert and Curt did not strictly satisfy Washington's standing and mootness requirements. Defendants' motion should be denied.

A. ROBERT AND CURT HAVE STANDING BECAUSE THEY ARE ASSERTING THEIR PERSONAL RIGHTS TO BE FREE FROM DISCRIMINATION.

Robert and Curt have standing because Defendants denied them goods and services on the basis of their sexual orientation. Robert and Curt directly suffered from Defendants' refusal to sell them anything for their wedding. "The doctrine of standing requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit." *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). The personal stakes Robert and Curt have in this case are their rights under the WLAD and CPA—rights that the Defendants violated. Robert and Curt were injured by that violation, and are seeking vindication of their rights, so they satisfy Washington's test for standing. In addition, the standing requirements are lower in this case because it involves the important public issue of the right to be free from discrimination. Even without that relaxed standard, the Court should find Robert and Curt have standing in this case.

1. Robert and Curt satisfy Washington's test for standing.

Robert and Curt have standing because they were the actual victims of Defendants' discrimination. Washington applies a two-part test to determine whether a party has standing: First, "whether the interest asserted is arguably within the zone of interests protected by the statute or constitutional right at issue. Second, the court asks whether the party seeking standing has suffered an injury in fact, economic or otherwise." [6] *Nelson v. Appleway*

[6] The same test is used to determine standing under the Uniform Declaratory Judgment Act ("UDJA"). *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 653, 278 P.3d 632, 638 (2012). Robert and Curt did not bring a claim under the UDJA, but to the extent the Defendants' arguments are

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Chevrolet, Inc., 129 Wn. App. 927, 939, 121 P.3d 95 (2005) *aff'd*, 160 Wn.2d 173, 157 P.3d 847 (2007). Whether a party has standing to sue is a question of law. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 199, 312 P.3d 976 (2013) *review denied*, 179 Wn.2d 1010, 316 P.3d 494 (2014).

a. Robert and Curt's claims fall within the zone of interests protected by the WLAD and the CPA.

Robert and Curt's claims fall squarely within the zone of interests protected by the WLAD and the CPA; indeed, these laws were enacted for the purpose of preventing the kind of discrimination that Robert and Curt suffered here. The WLAD protects Washington inhabitants from discrimination on the basis of sexual orientation in public accommodations because "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 legislature further found that discrimination occurring in the course of trade or commerce is "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). The CPA prohibits "unfair or deceptive acts or practices" in trade or commerce. RCW 19.86.020. Robert and Curt attempted to access the goods and services of Arlene's Flowers in the course of trade or commerce, but were denied that right because of their sexual orientation. By asserting their rights under the WLAD and the CPA, their claims fall directly in the zone of interests protected by those statutes.

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relevant to Robert and Curt's claims, Robert and Curt adopt the arguments presented in the State's parallel response. Also, because the Defendant's UDJA arguments rely on mootness and the lack of standing, their arguments fail as applied to Robert and Curt for the reasons described in this response.

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b. Defendants' discrimination injured Robert and Curt.

Defendants' discriminatory acts caused injuries in fact to Robert and Curt. Washington courts have "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 award may be made." *Id.* at 587-88 (quoting *Anderson v. Pantages Theatre Co.*, 114 Wash. 24, 31, 194 P. 813 (1921)). Robert and Curt felt a "tremendous emotional toll" from Defendants' discrimination that has not yet been remedied. Their personal injuries provide them with standing under the WLAD.[7]

Robert and Curt also suffered economic injuries as a result of Defendants' discrimination. These injuries included the costs of the trips to Arlene's Flowers and 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; Defs.' Third Set of Disc. Reqs. to Pl. Curt Freed and Resps. Thereto at Answer to Interrog. No. 34.[8] Although the economic injuries Robert and Curt incurred were relatively minimal—and significantly less important to them personally than the emotional distress

[7] Although these injuries are sufficient to provide Robert and Curt with standing under the WLAD, Robert and Curt do not seek actual damages relating to non-economic harms. Robert and Curt instead seek injunctive relief and nominal damages for Defendants' violation of the WLAD.

[8] Attached as Exhibit F to Ewart Decl.

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caused by the discrimination—they are more than sufficient to provide standing under the CPA. *See 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).

2. The test for standing is relaxed in this case because it involves the important public issue of freedom from discrimination in places of public accommodation.

Although Robert and Curt easily pass Washington's usual test for standing, the bar is lowered for this case. "Where a controversy is of serious public importance the requirements for standing are applied more liberally." *City of Seattle v. State*, 103 Wn.2d 663, 668, 694 P.2d 641(1985), *accord City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45, *review denied*, 178 Wn.2d 1020, 312 P.3d 650 (2013) ("Moreover, even if [the plaintiff] did not have clear standing, we would address its claims because they involve significant and continuing matters of public importance that merit judicial resolution.").

This case involves the civil right to be able to access the goods and services offered at a place of public accommodation without discrimination. *See* RCW 49.60.030(1). The Washington State Supreme Court has already recognized that the purpose of the WLAD—"to deter and eradicate discrimination in Washington"—is a policy interest of the highest order. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 246, 59 P.3d 655 (2002). Defendants' assertion that they cannot be held liable for refusing to serve Robert and Curt threatens the efficacy of the WLAD and, by extension, the CPA. *See* RCW 49.60.030(3). The Court should hear this case to protect the civil rights of Washington inhabitants and affirm that places of public accommodation cannot engage in invidious discrimination against their patrons.

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B. ROBERT AND CURT'S CLAIMS ARE EXISTING, UNRESOLVED CONTROVERSIES THAT ARE NOT MOOT.

Defendants' violation of Robert and Curt's rights have not yet been remedied, so their WLAD and CPA claims present existing controversies requiring the Court's adjudication. Although Defendants now assert they would sell some goods to Robert and Curt if they came in today, this voluntary and limited change in Defendants' discriminatory practices cannot moot this case. Furthermore, even if Robert and Curt's claims were moot, the Court should still hear this case because it satisfies each factor of the public importance exception to the mootness doctrine.

1. Robert and Curt's rights have not been remedied, so this case is not moot.

Washington applies a three-part test to determine whether a case is moot. "A case is moot where it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." *Washington State Commc'n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 203-04, 293 P.3d 413 *review denied*, 178 Wn.2d 1010, 308 P.3d 643 (2013) (holding the legal question under the WLAD was still a present and existing controversy after the defendants offered nondiscriminatory accommodations to the plaintiffs).

Robert and Curt's claims satisfy each requirement. The undisputed facts of this case are that Robert entered Arlene's Flowers seeking to buy goods and services, and Ms. Stutzman rejected his patronage because he was shopping for his and Curt's wedding. As the victims seeking redress from the perpetrators of discrimination, Robert and Curt have "an existing and genuine, as distinguished from a theoretical right or interest, in the question at hand inasmuch as [the plaintiff] was directly affected by the [defendant's] action."

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Sorenson v. City of Bellingham, 80 Wn.2d 547, 557-58, 496 P.2d 512 (1972) (holding that a property-ownership requirement for elected officials discriminated on the basis of wealth and the case was not moot after the election was held). The substantial question in this case—whether Defendants violated the WLAD or CPA when they refused to sell *anything* to Robert and Curt for their wedding—has not yet been resolved, and the parties remain in disagreement. The Court can provide effective relief by finding Defendants violated the WLAD and the CPA, and awarding Robert and Curt their requested relief. *See Minger v. Reinhard Distrib. Co.*, 87 Wn. App. 941, 946-47, 943 P.2d 400 (1997) (nominal damages are awarded in WLAD actions where actual damages are not sought or awarded).

This case has actual, present, and existing disputes because Robert and Curt's rights to be free from discrimination on the basis of their sexual orientation have not yet been resolved. *See Regal Cinemas*, 173 Wn. App. at 206. Defendants now characterize their refusal to serve Robert and Curt as a "misunderstanding" that moots this case because Robert and Curt wanted simple arrangements that may have included items Ms. Stutzman would have sold. Defs.' Mot. (Dkt. No. 159) at 5. But the fact remains that Robert entered Arlene's Flowers seeking to buy something and Ms. Stutzman sent him out of the shop without determining what he wanted. She refused to sell him *anything* because Robert was seeking goods and services for his wedding to Curt. Robert and Curt, like every Washington inhabitant, have a "right to the full enjoyment" of every place of public accommodation they enter, every time they enter it. Even if it was a misunderstanding on Ms. Stutzman's part to deny services to Robert and Curt, Defendants are liable for her discriminatory mistakes. The Court should

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hear this case and find the discriminatory refusal of services violated the WLAD and the CPA. *See Sorenson*, 80 Wn.2d at 556 ("[R]ights without remedies are inconceivable.")

2. Defendants cannot moot this case by asserting they would have sold *some* goods to Robert and Curt.

Although Ms. Stutzman now asserts that she would sell Robert and Curt *some* items if they came in today, that does not moot this case. At best, that is a voluntary cessation of Defendants' discriminatory practices. "Voluntary cessation does not moot a case or controversy unless subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Regal Cinemas*, 173 Wn. App. at 204. Defendants have a "heavy burden of showing no reasonable expectation that they will repeat their alleged wrongs." *Id.* at 205.

Instead of showing they will not repeat their discriminatory actions, Defendants have taken steps to guarantee that their wrongs will recur. In response to this dispute, Defendants instituted a company policy that they will not "take same sex marriages." Stutzman Dep. 44:17. Although the Defendants are willing to sell pre-arranged bouquets and raw materials, they candidly admit that they will not sell floral arrangements for same-sex weddings. *Id*. 96:19-98:5 ("If it's -- if I have to make the bouquet for the wedding I will not do it."). If a gay customer wants to buy flowers for their wedding from Defendants, there is every "reasonable expectation that [Defendants] will repeat their alleged wrongs."

Defendants have further not met their heavy burden because they have not acknowledged they violated the WLAD and the CPA. In cases where defendants voluntarily cease their discriminatory actions after plaintiffs initiate litigation, courts will not find a claim is moot when the defendants refuse to acknowledge their previous action was discriminatory.

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See Regal Cinemas, 173 Wn. App. at 205-06 ("Though Regal and Cinemark both installed closed captioning equipment, they never recognized that such accommodation was required under the WLAD. Thus, declaratory relief was not moot."); *see also Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 102, 117 P.3d 1117 (2005) (holding a Public Disclosure Act claim was not moot after the documents were produced by court order because the defendants never admitted the documents were improperly withheld). Thus, Ms. Stutzman's newly stated willingness to partially serve Robert and Curt does not moot this case.

3. Even if this case were moot, the Court should still hear the case because the freedom from discrimination involves issues of public importance.

Even if Robert and Curt's case were moot (it is not), the Court should still hear it because this case presents an issue of public importance. When evaluating whether a moot case presents an issue of public importance that should be heard, courts *must* consider three issues: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994) (omitting internal citations and quotations). Additional factors that *may* be considered are (4) "the level of genuine adverseness and the quality of advocacy of the issues," and (5) "the likelihood that the issue will escape review because the facts of the controversy are short-lived." *Id.* at 287. Robert and Curt's claims satisfy each of the mandatory factors. Defendants' arguments focus on the optional factors, but Robert and Curt satisfy those factors as well. This case should be heard regardless of whether it is moot.

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a. Robert and Curt satisfy each of the mandatory factors to the public importance exception.

Each mandatory factor weighs in favor of hearing Robert and Curt's case. In evaluating a WLAD claim brought by hearing-impaired customers regarding hearing assistance in movie theaters, the Court of Appeals found the case was an issue of "continuing and substantial public interest" because there were other hearing-impaired customers that would likely use a theater. *Regal Cinemas*, 173 Wn. App. at 206. Likewise, there are other same-sex couples who will want goods and services for their weddings. Moreover, an exception to public accommodation laws made in this case could not logically be denied to future defendants who, based on their religious views, want to discriminate on the basis of race, disability, religion, or any other protected characteristic. Whether a shop owner's personal religious beliefs can justify denying a customer goods and services thus constitutes a "substantial public interest" and "there is a high probability that this question will recur in other areas of the state." *Id*. "[T]hus a determination for those communities is desirable." *Id*. As in *Regal Cinemas*, "[t]hese facts support the application of the public interest exception to the mootness doctrine." *Id*.

b. The Court should apply the public importance exception because the parties have competently advocated for their adverse positions, and the underlying merits are not yet resolved.

Robert and Curt satisfy the three mandatory factors for the public interest exception, and also meet the two additional factors that courts may consider. All parties throughout this dispute have been represented by capable counsel who have provided quality advocacy. The parties remain genuinely adverse in that Robert and Curt assert Defendants violated the WLAD and the CPA, and Defendants disagree.

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Defendants' mistaken assertion that Robert and Curt's claims cannot satisfy the public importance exception relates to this fourth—and optional—factor. Defendants cite to *Orwick v. City of Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984), as support for their argument. Defs.' Mot. (Dkt. No. 159) at 14-15. But *Orwick* does not require a hearing on the merits to satisfy the public interest exception. Instead, *Orwick* stands for the proposition that a hearing on the merits merely weighs in favor of hearing a moot appeal because "the facts and legal issues had been fully litigated by parties with a stake in the outcome of a live controversy." *Orwick*, 103 Wn.2d at 253. Under *Orwick*, a hearing on the merits is *not* required to apply the public importance exception, and is merely an indicator of the quality of advocacy and the degree to which the parties have informed the court. *Westerman*, 125 Wn.2d at 286 (citing *Orwick* as support for connecting "the quality of advocacy on the issues" with "cases in which a hearing on the merits has occurred").

Defendants actually have it backwards; a moot case will not be heard unless the underlying merits remain unsettled. "Whenever we have proceeded to review an otherwise moot question we have been careful to point out that the real merits of the controversy are unsettled, or that the questions of law and fact survive, or that a continuing question of great public importance exists." *Grays Harbor Paper Co. v. Grays Harbor Cnty.*, 74 Wn.2d 70, 73, 442 P.2d 967, 969 (1968) (omitting internal citations); *accord Sorenson*, 80 Wn.2d at 558 ("[The public importance] exception to the general [mootness] rule obtains only where the real merits of the controversy are unsettled and a continuing question of great public importance exists."). There has been quality advocacy throughout this case, but the central issues have yet to be decided on their merits.

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c. Robert and Curt's marriage should not prevent them from receiving relief for discrimination they suffered during their engagement.

Defendants also argue that, even if Robert and Curt were injured by Defendants' refusal to serve them, they cannot receive effective relief because they have since married. Defs.' Mot. (Dkt. No. 159) at 14. This argument fails. To begin, it presumes the only effective relief Robert and Curt could receive is substitute flowers for their wedding, which is not the case. Aside from an injunction, the Court could provide relief through awarding nominal damages under the WLAD and reimbursement for Robert and Curt's economic damages under the CPA. As courts have recognized, these types of awards are not about the monetary relief received, but rather about the vindication of rights. *See Scott v. Cingular Wireless*, 160 Wn.2d 843, 853, 161 P.3d 1000 (2007) (CPA); *Minger v. Reinhard Distrib. Co.*, 87 Wn.App. at 947 (nominal damages for a WLAD claim are established "merely by showing a deprivation of a civil right.").

Defendants focus their mootness argument on Robert and Curt's request for an injunction, and essentially "argue that plaintiff may enjoin future violations only as to himself, thus protecting his own interests, but that he may not protect the public interest as well." *Hockley v. Hargitt*, 82 Wn.2d 337, 350, 510 P.2d 1123 (1973); *see also* Defs. Mot. (Dkt. No. 159) at 13-14. The Supreme Court has already flatly rejected that reasoning. "Such a constriction of the scope of injunctive relief provided to the individual by [the CPA] is inconsistent with both the language of that section and the spirit and purpose of the [CPA]" and the WLAD. *Hockley*, 82 Wn.2d at 350. The WLAD and CPA share the purpose of protecting the public. RCW 49.60.010, 19.86.920. That broad public policy is "best served" by permitting Robert and Curt to enjoin Defendants from future violations of the WLAD and

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CPA "even if such violations would not directly affect [Robert and Curt's] own private rights." *Hockley*, 82 Wn.2d at 350. Otherwise, each victim of Defendants' discrimination would have to seek "injunctive relief tailored to his own individual interest" while the Defendants continued their discriminatory practices "unchecked while a multiplicity of suits followed." *Id*. It is in the interests of judicial efficiency and the public good for Robert and Curt to obtain an injunction that simultaneously protects their rights and protects the public interest. *Id.* at 351.

Even if Robert and Curt's marriage did moot their claims (which it does not), it would be both cruel and absurd to require Robert and Curt to postpone their marriage throughout this trial and any subsequent appeal just to avoid mooting this case. Fortunately, the law recognizes this absurdity. Courts will hear cases that are moot, but involve controversies that are short-lived and may otherwise escape review. *Westerman*, 125 Wn.2d at 286; *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004). An engagement is generally short-lived, and Robert and Curt's engagement was roughly twenty months. Ingersoll Decl. ¶¶ 4, 15. The significant issues of public importance involved in this case should not be avoided merely because two men who suffered discrimination during their engagement carried on with their lives and got married.

VI. CONCLUSION

Defendants' motion for summary judgment should be denied. Robert and Curt have standing to sue Defendants for their discriminatory actions as the actual victims of that discrimination. Their claims are not moot because their injuries have not been remedied and their rights have not been vindicated. Even if there were significant concerns about mootness

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or Robert and Curt's standing, the Court should hear their claims to resolve the unquestionably important public issues this case presents.

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