

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("**Agreement**") is made by and between Plaintiffs Robert Ingersoll and Curt Freed (collectively, "**Plaintiffs**") and Defendants Arlene's Flowers, Inc. d/b/a Arlene's Flowers and Gifts and Barronelle Stutzman (collectively, "**Defendants**") (together, the "**Parties**"). This Agreement shall be dated, and shall be fully effective as of the date on which it has been executed by the last of the Parties (the "**Effective Date**").

RECITALS

WHEREAS, on April 18, 2013, Plaintiffs filed a complaint in the Superior Court of Washington for Benton County (No. 13-2-00953-3) (the "**Dispute**") against Defendants, alleging (1) discrimination based on sexual orientation in violation of the Washington Law Against Discrimination, RCW 49.60.030(1); (2) aiding a violation of the Washington Law Against Discrimination, in violation of RCW 40.60.220; and (3) violation of the Washington Consumer Protection Act, RCW 19.86.020. The complaint sought injunctive relief, damages, and an award of reasonable attorneys' fees and costs;

WHEREAS, on July 24, 2013, the Benton County Superior Court issued an Order Granting in Part Defendants' Motion to Consolidate the Dispute with a case filed by the State of Washington, Benton County Superior Court Cause No. 13-2-00871-5 (the "**Consolidated Cases**");

WHEREAS, on January 7, 2015, the Benton County Superior Court issued a Memorandum Decision and Order [in the Consolidated Cases] Granting Plaintiff State of Washington's Motion for Partial Summary Judgment on Defendants' Non-Constitutional Defenses, Denying Defendants' First Motion for Summary Judgment Against Plaintiff State of Washington, and Denying in Part and Granting in Part Defendants' Motion for Partial Summary Judgment on Plaintiffs' Claims Against Barronelle Stutzman in Her Personal Capacity (Dkt. 205);

WHEREAS, on February 18, 2015, the Benton County Superior Court issued a Memorandum Decision and Order [in the Consolidated Cases] Denying Defendants' Motion for Summary Judgment Based on Plaintiffs' Lack of Standing; Granting Plaintiff State of Washington's Motion for Summary Judgment Based on Liability and Constitutional Defenses, and Granting Ingersoll and Freed's Motion for Partial Summary Judgment (Dkt. 220).

WHEREAS, on March 27, 2015, the Benton County Superior Court issued a Judgment and Order of Permanent Injunction [in the Dispute], based on its

January 7, 2015 and February 18, 2015 Orders (“**Judgment and Order of Permanent Injunction**”), in relevant part as follows:

1. Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert of participation with them who receive actual notice of the order by personal service or otherwise, are permanently enjoined and restrained from violating the Washington Law Against Discrimination, RCW ch. 49.60, and the Consumer Protection Act, RCW ch. 19.86, by discriminating against any person because of their sexual orientation. The terms of this permanent injunction include a prohibition against any disparate treatment in the offering or sale of goods, merchandise, or services to any person because of their sexual orientation, including but not limited to the offering or sale of goods, merchandise, or services to same-sex couples. All goods, merchandise, and services offered or sold by Defendants shall be offered and sold on the same terms to all customers without regard to sexual orientation. All goods, merchandise, and services offered or sold to opposite sex couples shall be offered or sold on the same terms to same-sex couples, including but not limited to goods, merchandise and services for weddings and commitment ceremonies. Defendants shall immediately inform all of their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, of the terms and conditions of this Judgment and Permanent Injunction.
2. Plaintiffs Robert Ingersoll and Curt Freed are entitled to an award of actual damages from Defendants, jointly and severally, under RCW 49.60.030 and RCW 19.86.090. The Court reserves determination of the amount of actual damages until after any appeal of this Judgment and Permanent Injunction has been exhausted.
3. Plaintiffs are entitled to an award of costs of suit, including reasonable attorneys’ fees, pursuant to RCW 49.60.030 and RCW 19.86.090. The Court reserves determination of the amount of costs and fees to be awarded until after any appeal of this Judgment and Permanent Injunction has been exhausted.

WHEREAS, on February 16, 2017, the Washington Supreme Court issued an En Banc Opinion in the Consolidated Cases, No. 91615-2, affirming the Benton County Superior Court’s rulings;

WHEREAS, on July 14, 2017, Defendants filed a Petition for a Writ of

Certiorari in the U.S. Supreme Court in the Consolidated Cases, Docket No. 17-108;

WHEREAS, on June 25, 2018, the U.S. Supreme Court granted Defendants' Petition, Docket No. 17-108, vacated the judgment of the Washington Supreme Court, and remanded the Consolidated Cases to the Washington Supreme Court "for further consideration in light of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018)";

WHEREAS, on June 6, 2019, the Washington Supreme Court issued an En Banc Opinion in the Consolidated Cases, No. 91615-2, holding: "After careful review on remand, we are confident that the courts resolved this dispute with tolerance, and we therefore find no reason to change our original judgment in light of *Masterpiece Cakeshop*. We again affirm the trial court's rulings";

WHEREAS, on September 11, 2019, Defendants filed a Petition for a Writ of Certiorari in the U.S. Supreme Court in the Consolidated Cases, Docket No. 19-333;

WHEREAS, on July 2, 2021, the U.S. Supreme Court denied Defendants' Petition, Docket No. 19-333; and

WHEREAS, on July 27, 2021, Defendants filed a Petition for Rehearing in the U.S. Supreme Court ("**Petition**"), Docket No. 19-333, in the Consolidated Cases.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby memorialize the terms of their settlement:

I. WARRANTIES

- A. Each Party warrants and represents to the other that it has been fully informed and has full knowledge of the terms, conditions, and effects of this Agreement and that it enters into this Agreement with knowledge of its content and of its own free will.
- B. Each Party warrants and represents to the other that no promise, commitment, agreement, or inducement has been offered or made, except as explicitly set forth in this Agreement, to induce such Party to sign this Agreement and that this Agreement is being executed without reliance upon any statement or representation by any other Party or its agents.
- C. Each Party warrants and represents to the other that it is represented

by competent counsel in connection with the negotiation of this Agreement, that it has had ample time to confer with counsel prior to the execution hereof, and has done so prior to executing this Agreement.

- D. Each Party warrants that the execution, delivery, and performance of this Agreement by each Party is within each Party's corporate or statutory powers, as applicable, has been duly authorized by all necessary authority, and does not and will not require any additional consent or approval.

II. MUTUAL RELEASE

- A. Effective upon each Party's satisfaction of its obligations as provided in Section III below, each of the Parties, on behalf of itself, themselves, and all persons or entities claiming by, through or under them, and their respective heirs, successors and assigns, hereby fully, completely and finally waives, releases, remises, acquits, and forever discharges and covenants not to sue any other Party with respect to any and all claims, demands, suits, obligations, debts, liabilities, torts, covenants, contracts, or causes of action of any kind whatsoever, at law or in equity, including without limitation, from all known and unknown charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys' fees and costs actually incurred) and punitive damages, of any nature whatsoever, known or unknown, which any Party has, or may have had, against any other Party, whether or not apparent or yet to be discovered, or which may hereafter develop, for any acts or omissions related to or arising from, directly or indirectly, the Dispute. Each of the Parties represents and warrants that they have not assigned or otherwise transferred any claim or cause of action released by this Agreement.
- B. The Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their respective decisions to enter into this Agreement. The Parties specifically do not, however, waive or release any claim that may arise for breach of this Agreement.

III. OBLIGATIONS

- A. In consideration for the promises made by Plaintiffs in Paragraphs III.C and III.D below, Defendants shall file with the Clerk of the U.S. Supreme Court a written agreement among the Parties and the State of Washington that the Consolidated Cases, including the Petition, be dismissed, with each party to bear its own costs. The written agreement shall be filed within two (2) business days of the Effective Date. Defendants shall not refile the Petition, or any similar filing making a similar request, in the Consolidated Cases or in either of the Consolidated Cases individually.
- B. In further consideration for the promises made by Plaintiffs in Paragraphs III.C and III.D below, Defendants shall pay Plaintiffs Robert Ingersoll and Curt Freed five thousand dollars (\$5,000) (the **"Settlement Amount"**).
 - 1. Payment of the Settlement Amount shall be made using the wire instructions set forth in Appendix A and shall be made within seven (7) days of the Effective Date.
 - 2. Defendants shall issue an IRS Form 1099 to Robert Ingersoll and Curt Freed for the Settlement Amount.
- C. In consideration for the promises made by Defendants in Paragraphs III.A and III.B above, Plaintiffs agree to waive, relinquish, and forfeit their right to seek an award of costs of suit, including reasonable attorneys' fees, pursuant to the Judgment and Order of Permanent Injunction.
- D. In consideration for the promises made by Defendants in Paragraphs III.A and III.B above, Plaintiffs agree to waive, relinquish, and forfeit their right to payment of any damages by Defendants, pursuant to the Judgment and Order of Permanent Injunction.
- E. Within three (3) business days of the later of (a) payment of the Settlement Amount and (b) dismissal of the Petition, each of the Parties shall sign, and Plaintiffs shall file with the Benton County Superior Court, a stipulation agreeing to entry of an amended judgment, in the form attached as Appendix B to this Agreement.

IV. ENTIRE AGREEMENT AND AMENDMENT TO THIS AGREEMENT

- A. All Parties agree that this Agreement shall not be subject to any claims of mistake of fact, that it expresses a full and complete settlement, regardless of the adequacy or inadequacy of the consideration provided, that it is intended to avoid further dispute, and that it is final and complete.
- B. All Parties further agree that this Agreement contains the entire agreement between the Parties with regard to the matters set forth herein, that there are no understandings or agreements, verbal or otherwise, not otherwise clearly expressed herein, and that this Agreement fully supersedes any and all prior discussions, agreements and understandings between the Parties pertaining to the subject matter thereof.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties and their agents, officers, employees, successors, assigns, heirs, executors, and administrators.
- D. This Agreement may be amended only by a written amendment that refers to this Agreement and is executed by all of the Parties.

V. CONSTRUCTION OF AGREEMENT AND SEVERABILITY

- A. The Parties acknowledge that this Agreement is the product of negotiation by their respective counsel and that the language of this Agreement shall not be presumptively construed either in favor of or against any of the Parties.
- B. If any of the provisions of this Agreement is determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

VI. SIGNATURES AND EXECUTION

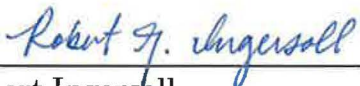
- A. This Agreement may be executed in two or more counterparts, each of which, as well as any electronic copy or photocopy, shall be deemed an original and all of which, together, shall constitute one and the same

instrument. The Parties also agree that electronic or photocopy signatures shall be treated as original signatures.

VII. GOVERNING LAW

- A. It is agreed between the Parties that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

For Plaintiffs:

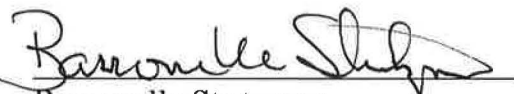

Robert Ingersoll

Dated: November 16, 2021

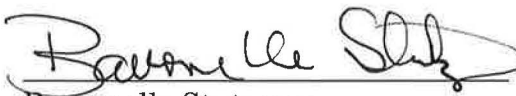

Curt Freed

Dated: November 16, 2021

For Defendants:


Barronelle Stutzman
Arlene's Flowers, Inc., d/b/a Arlene's
Flowers and Gifts

Dated: 11/18, 2021


Barronelle Stutzman

Dated: 11/18, 2021