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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FULL CIRCLE OF LIVING AND
DYING, et al.,

Plaintiffs,

v.

GINA SANCHEZ in her official capacity as
Bureau Chief of the Cemetery and Funeral
Bureau, et al.,

Defendants.

No.: 2:20-cv-01306-KJM-KJN
**AGREED NOTICE OF SETTLEMENT
AND JOINT MOTION FOR ENTRY OF
ORDER**

Judge: Hon. Kimberly J. Mueller

1 Pursuant to Local Rule 160, all parties, through their respective counsel, submit the
2 following notice that they have reached an agreement that settles the issues reserved by the Court
3 for trial and thus resolves all remaining claims. The parties describe that agreement here and
4 respectfully move the Court to enter the attached agreed order.

5 BACKGROUND

6 The Court comprehensively summarized the facts of this case in its summary-judgment
7 order, ECF No. 63.¹ The parties accept that accurate summary and provide here only a shortened
8 version as background to explain the remaining legal issue and the parties' agreed resolution of
9 that issue.

10 Plaintiffs are a non-profit organization called Full Circle of Living and Dying (Full Circle),
11 along with two of Full Circle's volunteer "end-of-life doulas" and several past and potential clients
12 of Full Circle. *See id.* at 4–5. Full Circle's end-of-life doulas "help families perform home funerals,
13 which may include informal counseling before death for the dying and after death for the family;
14 providing information about and assisting in organizing an end-of-life plan; and providing hands-
15 on assistance in preparing a home funeral, including moving, washing, and dressing human
16 remains, if requested by a family." *Id.* (internal quotation marks omitted).

17 In November 2019, the California Cemetery and Funeral Bureau (the Bureau) issued a
18 citation against Full Circle, which stated that Full Circle was in violation of California law by
19 advertising as a funeral establishment without having a funeral-establishment license. *Id.* at 6. The
20 citation ordered Full Circle to "immediately discontinue advertising and operating as a funeral
21 establishment until a license is issued by the Bureau." *Id.* at 7 (citation omitted). After an informal
22 conference with Full Circle, the Bureau affirmed the citation. *Id.*

23 Plaintiffs then filed this lawsuit. As the Court explained, it asserted "two as-applied First
24 Amendment challenges and one as-applied Fourteenth Amendment challenge to the Bureau's
25 enforcement of California's funeral statutes and regulations." *Id.* at 7–8. The First Amendment
26 claims sought protection against the Bureau's regulation of (1) Full Circle's individualized advice

27 _____
28 ¹ Available in West's online service as *Full Circle of Living & Dying v. Sanchez*, No. 2:20-cv-01306-KJM-KJN, 2023 WL 373681 (E.D. Cal. Jan. 24, 2023).

1 about the end of life and (2) its commercial speech in the form of advertising its services. *Id.* at 8.
2 The Fourteenth Amendment claim was that the Bureau was violating substantive due process by
3 citing Full Circle and its doulas for providing hands-on services in a manner that was not rationally
4 related to a legitimate government interest. *See id.* at 20–22.

5 On cross-motions for summary judgment, the Court resolved most of the claims. It granted
6 summary judgment to Plaintiffs on most aspects of their First Amendment claims regarding Full
7 Circle’s ability to offer individualized advice to clients about the end of life and to advertise its
8 services. The Court granted summary judgment to Plaintiffs and permanently enjoined the Bureau
9 “from citing Full Circle for providing any free guidance or advice without a funeral establishment
10 or director license, whether before or during a home funeral.” *Id.* at 33. It also granted judgment
11 to Plaintiffs and granted them permanent injunctions to protect the following speech: “selling or
12 advertising individualized end-of-life plans,” *id.* at 36–37; “selling or advertising educational
13 events about end-of-life planning,” *id.* at 37; “using language about caskets” and other language
14 on Full Circle’s website identified by the Court, *id.* at 38–39; “using the title ‘home funeral guide,’”
15 *id.* at 39; and including disclaimers on Full Circle’s website that they are not a funeral
16 establishment, *id.* at 39–40. All these judgments and injunctions applied against enforcement of
17 either funeral-establishment or funeral-director licensure requirements. *See id.* at 40–41.²

18 The summary-judgment order also resolved Plaintiffs’ First and Fourteenth Amendment
19 claims in their favor regarding the constitutionality of the Bureau requiring Full Circle to obtain a
20 funeral-establishment license, either to engage in individualized advising or to offer hands-on
21 services at a home funeral. The Court held that “it would be irrational for the Bureau to conclude
22 that citing Full Circle for not being a licensed funeral establishment would advance” any of its
23 asserted interests. *Id.* at 23–24. It thus granted summary judgment to Plaintiffs on that issue and
24 enjoined Defendants “from enforcing Business and Professions Code section 7619.3 . . . to the
25 extent the Bureau would require the doulas to be employed by or operate a funeral establishment.”

26 _____
27 ² The Court granted summary judgment to Defendants on the First Amendment claim insofar as it applied
28 to “act[ing] as liaison[s] to arrange transportation of human remains after a funeral” because Plaintiffs
disclaimed an interest in such activity and so did not contest the lawfulness of regulating the transportation
of remains. *See* ECF No. 63 at 37.

1 *Id.* at 24. Correspondingly, the Court also granted summary judgment and a permanent injunction
2 on Plaintiffs’ First Amendment claims “to the extent the Bureau seeks to cite Full Circle and its
3 doulas for advertising, speaking about, or directing hands-on services without a funeral
4 establishment license.” *Id.* at 35–36.

5 The Court memorialized the permanent injunctions it had decided to grant in a separate
6 order, which is and shall remain in force. *See* ECF No. 65.

7 With much of Plaintiffs’ speech claims resolved, as well as Plaintiffs’ First and Fourteenth
8 Amendment claims against the funeral-establishment licensure requirement, one issue remained:
9 the extent to which the Bureau could constitutionally require Full Circle’s doulas to be individually
10 licensed as funeral directors to offer their services. The Court found that on the record before it,
11 Plaintiffs had not yet carried their burden to show as a matter of law that it was irrational for the
12 Bureau to require funeral-director licensure to protect public health and safety, ECF No. 63 at 29,
13 but also that the Bureau had not “articulated a ‘rational relation’ between its legitimate interest . . .
14 and applying the funeral director licensure scheme to the doulas for providing their hands-on
15 services,” *id.* at 31. The Court thus denied summary judgment to both sides on this aspect of
16 Plaintiffs’ Fourteenth Amendment claim. *Id.* at 29, 31. Correspondingly, the Court denied
17 judgment to both sides on the First Amendment claims “with respect to the question regarding the
18 Bureau’s ability to cite Full Circle for advertising its hands-on services or offering guidance about
19 how families themselves may perform those same services for a fee, without a funeral director
20 license.” *Id.* at 36.

21 The Court thus reserved for trial the issue of whether Defendants could constitutionally
22 apply funeral-director licensure requirements to Full Circle’s services related to hands-on
23 assistance at a home funeral. As the Court described that issue in its final pretrial order, it boiled
24 down to two questions: “(1) whether Full Circle’s doulas are subject to funeral-director licensure
25 when they assist with home funerals, such as when they help wash, dress, reposition, and place a
26 cooling mechanism (e.g., dry ice), around a body, and when they procure cooling mechanisms for
27 families of the deceased; and (2) whether the United States Constitution permits requiring Full
28 Circle’s doulas to be licensed funeral directors to provide those services.” ECF No. 72 at 7.

1 The parties entered into negotiations to resolve the issue without the need for a trial. As
2 described below, they have reached agreement that, as agreed in the proposed order, the answer to
3 that first question is “No,” and thus the second question is moot.

4 **AGREED RESOLUTION AND REQUEST FOR ENTRY OF ORDER**

5 Following the Court’s entry of its summary-judgment order and the permanent injunction,
6 the Bureau reviewed the activities Plaintiffs perform in view of the Court’s description of those
7 activities and its holdings, summarized above, that the Bureau could not constitutionally require
8 either funeral-establishment or funeral-director licenses at all for most of Full Circle’s educational
9 and advising speech and related advertising, and could not require funeral-establishment licenses
10 for Full Circle’s hands-on activities and related speech.³

11 In light of these findings and limitations, none of Full Circle’s hands-on activities described
12 in the proposed order falls within the statutory requirements to obtain a funeral-director license
13 when: (1) the activities are performed to prepare for a funeral conducted at a home that is not a
14 funeral establishment; (2) the activities are performed at the direction of, or on behalf of, a person
15 with the right to control the disposition of a decedent’s remains pursuant to Health and Safety
16 Code section 7100; and (3) Full Circle and its doulas do not otherwise prepare, direct, or supervise
17 the burial or disposal of human remains. Thus, the Bureau (on behalf of all Defendants) has agreed
18 that it will not cite Full Circle and its doulas for performing the hands-on activities described in
19 the proposed order without funeral-director licenses. Nor will the Bureau cite Full Circle and its
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22 ³ For instance, the Court’s order noted that “Full Circle’s doulas do not . . . declare death, embalm remains,
23 or provide transportation services.” ECF No. 63 at 6. Full Circle does not engage in casketing or in providing
24 assistance in arranging options for burial or cremations. *Id.* at 37–39. And Defendants are not enjoined from
25 enforcing licensing requirements relating to acting as a liaison to arrange transportation of human remains
26 after a funeral. *Id.* at 37. Additionally, the order noted that “California does not regulate home funerals” (*id.*
27 at 27) or “family members’ washing, dressing, repositioning, or placing dry ice around the bodies of the
28 deceased” (*id.* at 29), Full Circle “only provides its hands-on services in private homes” (*id.* at 23), and
Plaintiffs perform services in connection with “preparing a home funeral” (*id.* at 4), rather than for a purpose
that might require funeral director licensure. Last, licensed funeral directors are normally required to be
employed by or working as sole proprietor of a licensed funeral establishment, where funeral services are
often performed and human remains are prepared for burial, but as noted above, Defendants are enjoined
from requiring Full Circle to become a licensed funeral establishment, or requiring that its doulas be
employed by or work as sole proprietor of a licensed funeral establishment. *Id.* at 24, 35–36, 40.

1 doulas for offering verbal advice to families performing a home funeral in concert with providing
2 hands-on assistance.

3 Specifically, and consistent with the Court’s summary-judgment describing Full Circle’s
4 hands-on services, the parties agree that Full Circle’s hands-on services consist of the following
5 activities, *see* ECF No. 63 at 21:

- 6 1) Relocating or positioning the body of the deceased within a home;
- 7 2) Washing the body;
- 8 3) Dressing the body;
- 9 4) Placing a cooling mechanism (e.g., dry ice) around the body; and
- 10 5) Procuring cooling mechanisms for families of the deceased.

11 Defendants agree that these hands-on activities fall outside the scope of Business and
12 Professions Code section 7615 under the following circumstances:

- 13 1) The activities are performed to prepare for a funeral conducted at a home that is not
14 a funeral establishment.
- 15 2) The activities are performed at the direction of, or on behalf of, a person with the
16 right to control the disposition of a decedent’s remains pursuant to Health and
17 Safety Code section 7100.
- 18 3) Full Circle and its doulas do not otherwise prepare, direct, or supervise the burial
19 or disposal of human remains.

20 Thus, Defendants agree that so long as Plaintiffs confine their hands-on activities to these
21 described circumstances, such activities are outside the scope of section 7615, they do not require
22 a funeral-director license, and Defendants will not enforce the statute against performing those
23 activities. Likewise, Plaintiffs’ speech about such activities—including their guidance in preparing
24 for and conducting a home funeral, and their advertising about such activities—are outside the
25 scope of section 7615. Defendants retain authority to enforce section 7615 against actions separate
26 from the hands-on activities identified above, such as embalming remains or holding money in
27 trust for consumers to be used in the future when someone dies.

28

1 In turn, Plaintiffs agree that, with this agreement in place about how the Bureau will apply
2 the funeral-director licensure requirements in the future, the issues that the Court reserved for trial
3 have been fully resolved. Thus, Plaintiffs acknowledge that they have received through this
4 agreement all the relief that they could have received through a constitutional-law declaration and
5 injunction from this Court after a trial. In other words, the agreement renders moot Plaintiffs'
6 unresolved constitutional claims regarding funeral-director licensure.

7 As part of their agreement, the parties also agree that the Court's injunction shall stay in
8 place and that it shall retain jurisdiction to enforce both the injunction and the terms of this
9 agreement. Nothing in this agreement alters the enforceability of the Court's permanent injunction
10 on the speech or substantive due process claims about funeral-establishment licensure. The parties
11 further agree that there is no longer a need for a trial. And the parties agree not to appeal following
12 final judgment in this case, including not to appeal the Court's summary-judgment order and
13 permanent injunction.

14 The parties have also reached an agreement on attorneys' fees. The parties agree that
15 Defendants will pay Plaintiffs \$525,000, which will resolve any claim for attorneys' fees.
16 Defendants shall make such payment upon certification of the funds or approval by the California
17 Department of Finance, on or before 120 days after the Court enters the proposed order. If payment
18 is not made within that time, the parties agree that Plaintiffs may instead move the Court for an
19 award of fees pursuant to 42 U.S.C. § 1988.

20 Attached to this document is a proposed order that reflects the foregoing. The parties
21 respectfully request that the Court approve and enter the proposed order.
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Respectfully submitted,

Dated: January 10, 2024

INSTITUTE FOR JUSTICE

By: /s/ Jeff Rowes
Jeff Rowes
Attorney for Plaintiffs

Dated: January 10, 2024

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DIANN SOKOLOFF
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By: /s/ Julianne Mossler
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Deputy Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system on January 10, 2024.

By: /s/ Jeff Rowes
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FULL CIRCLE OF LIVING AND
DYING, et al.,

Plaintiffs,

v.

GINA SANCHEZ in her official capacity as
Bureau Chief of the Cemetery and Funeral
Bureau, et al.,

Defendants.

No. 2:20-cv-01306-KJM-KJN

[PROPOSED] CONSENT ORDER

1 1. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331,
2 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the U.S. Constitution.

3 2. Venue is proper in the Eastern District of California under 28 U.S.C. § 1391
4 because Defendant officials of the State of California may be found within the District in
5 Sacramento.

6 3. Plaintiffs have standing.

7 4. On January 24, 2023, the Court entered an Order on the parties' cross-motions for
8 summary judgment, which granted judgment and a permanent injunction. ECF No. 63.

9 5. The Court entered a permanent injunction on February 13, 2023, reflecting the
10 conclusions from the summary-judgment order and the parties' agreed language for the terms of
11 the permanent injunction. ECF No. 65.

12 6. The parties agree that the summary-judgment order and permanent injunction shall
13 remain in full effect as to all issues not reserved for trial. The parties do not intend to alter the
14 Court's order or permanent injunction, and they intend for the order and permanent injunction to
15 remain fully enforceable by this Court.

16 7. In its summary-judgment order, the Court denied summary judgment to both parties
17 and reserved for trial the issue of whether the Cemetery and Funeral Bureau can cite Full Circle's
18 doulas for acting as unlicensed funeral directors when they provide "hands-on" services.
19 ECF No. 63 at 29:15–17, 31:28–32:2. As reflected in the Court's final pretrial order, that issue
20 turned on two questions: "(1) whether Full Circle's doulas are subject to funeral-director licensure
21 when they assist with home funerals, such as when they help wash, dress, reposition, and place a
22 cooling mechanism (e.g., dry ice), around a body, and when they procure cooling mechanisms for
23 families of the deceased; and (2) whether the United States Constitution permits requiring Full
24 Circle's doulas to be licensed funeral directors to provide those services." ECF No. 72 at 7.

25 8. The parties have reached a complete agreement as to the first question. None of
26 Full Circle's hands-on activities described in paragraph 9 fall within the statutory requirements to
27 obtain a funeral-director license under Business and Professions Code § 7615, when performed
28 consistent with the conditions described in paragraphs 9 and 10. Thus, the Bureau (on behalf of all

1 Defendants) has agreed that it will not cite or take other adverse action against Full Circle and its
2 doulas for performing the hands-on activities described in paragraphs 9 and 10 without funeral-
3 director licenses. Nor will the Bureau cite Full Circle and its doulas for advertising the hands-on
4 activities described in paragraphs 9 and 10, or for offering guidance about how to perform such
5 activities.

6 9. Specifically, the parties agree that Full Circle and its doulas perform the following
7 hands-on services, *see* ECF No. 63 at 21:

- 8 a. Relocating or positioning the body of the deceased within a home;
- 9 b. Washing the body;
- 10 c. Dressing the body;
- 11 d. Placing a cooling mechanism (e.g., dry ice) around the body; and
- 12 e. Procuring cooling mechanisms for families of the deceased.

13 10. Defendants agree that these hands-on activities fall outside the scope of Business
14 and Professions Code section 7615 under the following circumstances:

- 15 a. The activities are performed to prepare for a funeral conducted at a home
16 that is not a funeral establishment.
- 17 b. The activities are performed at the direction of, or on behalf of, a person
18 with the right to control the disposition of a decedent's remains pursuant to
19 Health and Safety Code section 7100.
- 20 c. Full Circle and its doulas do not otherwise prepare, direct, or supervise the
21 burial or disposal of human remains.

22 11. Because the parties agree that the funeral-licensing statutes do not require Full
23 Circle and its doulas to become individually licensed as funeral directors when performing
24 activities consistent with paragraphs 9 and 10, the second question reserved for trial—does such a
25 requirement violate the U.S. Constitution—is now moot.

26 12. The parties agree that Defendants will pay Plaintiffs \$525,000, which resolves any
27 claim for attorneys' fees. Defendants shall make such payment upon certification of the funds or
28 approval by the California Department of Finance, on or before 120 days after entry of this order.

1 If, however, payment has not been made within that time, Defendants shall owe nothing pursuant
2 to this paragraph and Plaintiffs may move this Court for an award of fees pursuant to 42 U.S.C.
3 § 1988. Accordingly, the deadline for any fees motion is extended to 180 days from entry of this
4 order, pursuant to Federal Rule of Civil Procedure 54(d)(2).

5 13. The parties stipulate, and the Court agrees, that entry of this Consent Order fully
6 resolves this case. The parties agree not to appeal the summary-judgment order, permanent
7 injunction, entry of this Consent Order, or any other aspect of this action.

8 14. The Court shall retain jurisdiction to monitor and enforce the terms of the parties'
9 agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994); *K.C. ex rel.*
10 *Erica C. v. Torlakson*, 762 F.3d 963, 967 (9th Cir. 2014).

11 15. This Consent Order constitutes a final judgment for the purposes of Rule 58 and
12 terminates this case, except insofar as the Court retains jurisdiction to enforce its terms.

13
14 IT IS SO ORDERED.

15
16 Dated:

17 CHIEF UNITED STATES DISTRICT JUDGE

18
19 Respectfully submitted,

20 Dated: January 10, 2024

By: /s/ Jeff Rowes
Jeff Rowes
INSTITUTE FOR JUSTICE
Attorney for Plaintiffs

23 Rob Bonta
Attorney General of California
Diann Sokoloff
Supervising Deputy Attorney General

25 By: /s/ Julianne Mossler
Julianne Mossler
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that a copy of the foregoing was served on all counsel of record via the Court’s CM/ECF system on January 10, 2024.

/s/ Jeff Rowes
Jeff Rowes

Attorney for Plaintiffs