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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

VISUAL ARTS COLLECTIVE, LLC, et al.,)
) Case No. 1:16-cv-00414-BLW
)
) Plaintiffs,)
)
 vs.) **JOINT MOTION FOR ENTRY OF**
) **PERMANENT INJUNCTION**
)
) COLONEL RALPH POWELL, Director of the Idaho)
) State Police, et al.,)
)
)
) Defendants.)
)
)

The Parties, through their undersigned counsel, jointly move the Court to enter a permanent injunction in this case consistent with the terms of the Stipulation for Entry of Permanent Injunction attached hereto as Exhibit 1, without further hearing or delay.

DATED: September 28, 2016

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**

FERGUSON DURHAM, PLLC

/s/ Richard Alan Eppink

*/s/ Deborah A. Ferguson
/s/ Craig H. Durham*

VAN VALKENBURGH LAW, PLLC

/s/ Jack Van Valkenburgh

Attorneys for Plaintiffs

**OFFICE OF THE IDAHO
ATTORNEY GENERAL**

/s/ Cynthia L. Yee-Wallace

/s/ Clay Smith

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
chd@fergusondurham.com

Richard Alan Eppink
reppink@acluidaho.org

Craig H. Durham
daf@fergusondurham.com

Jack Van Valkenburgh
jack@vanvalkenburghlaw.com

/s/ Cynthia Yee-Wallace

EXHIBIT 1
TO THE JOINT MOTION FOR
PERMANENT INJUNCTION

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

VISUAL ARTS COLLECTIVE, LLC, <i>et al.</i> ,)	
)	Case No. 1:16-cv-00414-BLW
Plaintiffs,)	
vs.)	STIPULATION FOR ENTRY OF
)	PERMANENT INJUNCTION
COLONEL RALPH POWELL, Director of the Idaho)	
State Police, <i>et al.</i> ,)	
)	
Defendants.)	
)	

This Stipulation for Entry of Permanent Injunction (“Stipulation”) is entered into by and between Plaintiffs Visual Arts Collective, LLC (“VAC”), Anne McDonald, and Alley Repertory Theater, Incorporated (collectively, “Plaintiffs”), through their undersigned counsel of record, and Defendants Colonel Ralph Powell, Lieutenant Colonel Kedrick Wills, Captain Russell Wheatley, Detective George Szeles, and Specialist Jeremiah West (collectively, “Defendants”),

through their undersigned counsel of record. Plaintiffs and Defendants are collectively referred to as the “Parties” below.

The Parties stipulate and agree to the following:

1. The Court may enter an order permanently enjoining enforcement of Idaho Code § 23-614(1)(a)-(c) against any persons operating theaters, concert halls, art centers, museums, event centers, or any other establishments or venues where theatrical or artistic performances are typically offered, and when considered as a whole, and in the context in which it is used, the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

2. The Court may enter an order permanently enjoining enforcement of the provision in Idaho Code § 23-614(1)(d) prohibiting simulated sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or other sexual acts, against persons operating theaters, concert halls, art centers, museums, event centers, or any other establishments or venues where theatrical or artistic performances are typically offered, and when considered as a whole, and in the context in which it is used, the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. This stipulation and agreement do not otherwise affect the State’s or the Defendants’ enforcement of § 23-614(1)(d).

3. The Parties agree that this case shall remain open, but the litigation of this case shall be stayed, including all discovery and submissions in this matter, through the 2017 Legislature’s session. The stay is for the purpose of allowing sufficient time for the Idaho Legislature to amend Idaho Code § 23-614(1)(a)-(d). If the Legislature amends Idaho Code § 23-614(1)(a)-(d) in a manner consistent with paragraphs 1 and 2 in the proposed order attached hereto as Exhibit A or in a way that it is otherwise constitutional, this case shall be dismissed

with prejudice. If the Legislature does not amend Idaho Code § 23-614(1)(a)-(d) in a manner consistent with paragraphs 1 and 2 in the proposed order attached hereto as Exhibit A or in a way that it is otherwise constitutional, the stay in this litigation shall be lifted, and this case shall resume as active litigation.

4. Defendants agree to immediately vacate the stipulated penalty in the amount of \$8,000 (eight thousand dollars), the 20-day suspension of liquor license No. 3223 running from October 9, 2016 through October 29, 2016, and the underlying charges associated with the Complaint for Revocation of Retail Alcohol Beverage License issued against the Visual Arts Collective, LLC in administrative case No. 16ABC013. Within 15 days from the date that this Stipulation is submitted to the Court, Defendants shall return to the VAC the penalty amount of \$8,000.00 which has been paid by the VAC.

5. The Parties agree that Plaintiffs will be entitled to reasonable costs and attorney's fees under 42 U.S.C. § 1988 incurred in this case through the date that this Stipulation is submitted to the Court. Counsel for Plaintiffs shall provide to counsel for Defendants an itemized statement of fees and costs that they may claim through the date this Stipulation is submitted to the Court, no later than 30 days after the Court enters the order granting the joint motion filed herewith. If the Parties are unable to reach a negotiated agreement as to fees and costs through the date that this Stipulation is submitted to the Court, Plaintiffs may petition the Court for an award of fees and costs for services performed through the date that this Stipulation is submitted to the Court, as well as for all services performed in pursuing any petition for an award of fees and costs. Except for costs and fees related to services performed in pursuing any petition for an award of fees and costs as well as any costs and fees performed in obtaining a lift of the stay described above, the Parties agree to bear their own costs and attorney's fees incurred

in connection with this matter from the date that this Stipulation is submitted to the Court, through the date that either the stay is lifted or this case is dismissed with prejudice, whichever occurs first.

6. The Parties have agreed to the form of the Order Granting Joint Motion for Entry of Permanent Injunction effectuating the terms of the permanent injunction, which is attached hereto as Exhibit A. The Parties agree that the Court may enter this order without further hearing or delay.

7. By entering into this Stipulation, the Parties do not make any representations or admissions of any kind regarding the merits of any issue or claim in this case. The Parties have entered into this Stipulation to compromise their claims and to avoid the further time and expense of litigation as set forth herein.

SO STIPULATED:

For Plaintiffs:

DATED: September 28, 2016

AMERICAN CIVIL LIBERTIES UNION OF
IDAHO FOUNDATION

By: /s/ Richard A. Eppink
Richard Alan Eppink

FERGUSON DURHAM, PLLC

By: /s/ Deborah A. Ferguson
Deborah A. Ferguson
Craig H. Durham

VAN VALKENBURGH LAW, PLLC

By: /s/ Jack Van Valkenburgh
Jack Van Valkenburgh

For Defendants:

DATED: September 28, 2016

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Cynthia Yee-Wallace
Cynthia Yee-Wallace
Deputy Attorney General

By: /s/ Clay R. Smith
Clay R. Smith
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 28, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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daf@fergusondurham.com

Jack Van Valkenburgh
jack@vanvalkenburghlaw.com

/s/ Cynthia Yee-Wallace

EXHIBIT A
TO THE STIPULATION FOR ENTRY OF
PERMANENT INJUNCTION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

VISUAL ARTS COLLECTIVE, LLC, <i>et al.</i> ,)	
)	Case No. 1:16-cv-00414-BLW
Plaintiffs,)	
vs.)	ORDER GRANTING JOINT
)	MOTION FOR ENTRY OF
COLONEL RALPH POWELL, Director of the Idaho)	PERMANENT INJUNCTION
State Police, <i>et al.</i> ,)	
)	
Defendants.)	
)	

The Parties have filed a Joint Motion for Entry of Permanent Injunction (“Joint Motion”) asking this Court to enter a permanent injunction consistent with the terms of their Stipulation for Entry of Permanent Injunction (“Stipulation”) submitted herewith. The Court, having reviewed the Stipulation, and finding good cause therefore;

IT IS HEREBY ORDERED that the Joint Motion is granted. IT IS FURTHER ORDERED THAT:

1. Defendants and all of their officers, servants, employees, attorneys, and all those in active concert or participation with them are permanently enjoined from enforcement of Idaho Code § 23-614(1)(a)-(c) against any persons operating theaters, concert halls, art centers, museums, event centers, or any other establishments or venues where theatrical or artistic performances are typically offered, and when considered as a whole, and in the context in which it is used, the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

2. Defendants and all of their officers, servants, employees, attorneys, and all those in active concert or participation with them are also permanently enjoined from enforcing the

provision in Idaho Code § 23-614(1)(d) prohibiting simulated sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or other sexual acts, against persons operating theaters, concert halls, art centers, museums, event centers, or any other establishments or venues where theatrical or artistic performances are typically offered, and when considered as a whole, and in the context in which it is used, the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. This order does not otherwise affect the State's or the Defendants' enforcement of § 23-614(1)(d).

3. This case shall remain open, but the litigation of this case is hereby stayed, including all discovery and submissions in this matter, through the 2017 Idaho Legislature's session. The stay is for the purpose of allowing sufficient time for the Idaho Legislature to amend Idaho Code § 23-614(1)(a)-(d). If the Legislature amends Idaho Code § 23-614(1)(a)-(d) in a manner consistent with paragraphs 1 and 2 above or in a way that is otherwise constitutional, this case shall be dismissed with prejudice. If the Legislature does not amend Idaho Code § 23-614(1)(a)-(d) in a manner consistent with paragraphs 1 and 2 above or in a way that is otherwise constitutional, the stay in this litigation shall be lifted and this case shall continue into active litigation.

4. Plaintiffs are entitled to reasonable costs and attorney's fees under 42 U.S.C. § 1988 incurred in this case through the date that the Stipulation was submitted to the Court. Counsel for Plaintiffs shall provide to counsel for Defendants an itemized statement of fees and costs that they may claim through the date the Stipulation was submitted to the Court, no later than 30 days from the date of this order. If the Parties are unable to reach a negotiated agreement as to fees and costs through the date that the Stipulation was submitted to the Court, Plaintiffs may petition the Court for an award of costs and fees for services performed through the date

that the Stipulation was submitted to the Court, as well as for all services performed in pursuing any petition for an award of fees and costs. Except for costs and fees related to services performed in pursuing any petition for an award of fees and costs as well as any costs and fees performed in obtaining a lift of the stay described above, the Parties shall each bear their own costs and attorney's fees incurred in connection with this matter from the date that the Stipulation was submitted to the Court, through the date that either the stay is lifted or this case is dismissed with prejudice, whichever occurs first. // end of text //

Submitted by Cynthia Yee-Wallace
Deputy Attorney General
Attorney for Defendants