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IOWA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

January 4, 2018

Joe Barry  
Department of Management  
State Appeal Board  
State Capitol Bldg. Room 12  
LOCAL MAIL

Re: Gerlich vs. Leath, et al.  
Case No. 4:14-cv-00264-JEG

Dear Joe,

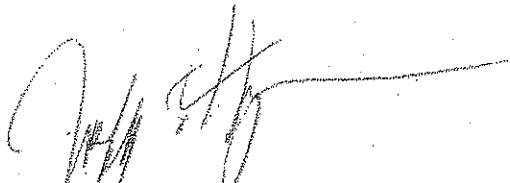
We have reached an agreement to settle this lawsuit subject to the approval for payment by the State Appeal Board. The lawsuit was filed by the Iowa State University (ISU) student chapter of the National Organization for the Reform of Marijuana Laws (NORML) alleging various violations of their First and Fourteenth Amendment rights arising from ISU's refusal to permit their use of the ISU logo on tee-shirt designs that also included a cannabis leaf. The U.S. District Court for the Southern District of Iowa sustained Plaintiffs' claims and that decision was affirmed by the United States Court of Appeals for the 8<sup>th</sup> Circuit. The 8<sup>th</sup> Circuit also awarded attorney fees for the appeal. Thus, only issues on remand to the District Court are damages and additional attorney fees for work at the trial court level.

Consequently, we have determined that it is in the State's best interests to resolve these remaining issues by agreement rather than incurring the additional costs and fees that would result from a trial solely on the question of damages. In short, the agreement provides for a) payment of the existing 8<sup>th</sup> Circuit attorney fee judgment, b) payment of \$150,000 as a stipulated damage award, and c) submission of the outstanding claim for attorney fees and costs to the District Court for review and approval. We request approval for payment of items a) and b) at this time – a separate payment request will be made for item c) once the District Court has made its determination. A settlement term sheet is attached.

Accordingly, please approve the issuance of warrants made payable as follows:

- |  |                  |
|--|------------------|
| 1. Davis Wright Tremaine LLP                       | \$178,825.77     |
| 2. Faegre Baker Daniels LLP                        | \$14,433.74      |
| 3. Davis Wright Tremaine, LLP Client Trust Account | \$150,000.00 for |
| Benefit of Paul Gerlich                            | \$75,000.00      |
| Erin Furleigh                                      | \$75,000.00      |

Respectfully submitted,



Jeffrey S. Thompson  
Solicitor General

Attachment

cc: Barrett Harvey  
Pam O'Brien

Paul Gerlich and Erin Furleigh v. Steven Leath, et al.,  
Case No. 4:14-cv-00264-JEG

Settlement Term Sheet

December 28, 2017

1. Defendants will file a Consent Judgment for approval by the District Court by December 31, 2017, in which they stipulate and agree:
  - a. The District Court's injunction shall be deemed permanent and continuing, and, by the signatures of Defendants' Successor and Iowa State University to this term sheet, shall be binding on her and it.
  - b. Defendants shall pay each Plaintiff, Paul Gerlich and Erin Furleigh, as actual damages the sum of \$75,000, allocated to emotional distress and payable on a Form 1099, with a request for the total \$150,000 damages payment to be presented for approval to the State Appeal Board on January 5, 2018, and thereupon will cause a State of Iowa warrant to be issued promptly and delivered in a check made payable to Davis Wright Tremaine, LLP Client Trust.
  - c. Defendants shall present a request for satisfaction of the outstanding amount of \$193,259.51 owed under the September 20, 2017 Order of the U.S. Court of Appeals for the Eighth Circuit to be presented for approval to the State Appeal Board on January 5, 2018, and thereupon will cause a State of Iowa warrant to be issued promptly and delivered in a check made payable to Davis Wright Tremaine, LLP in the amount of \$178,825.77 and a second State of Iowa warrant to be issued promptly and delivered in a check made payable to Faegre Baker Daniels LLP in the amount of \$14,433.74, in payment of Plaintiffs' appellate attorney fees and costs.
  - d. The District Court shall retain jurisdiction over the parties and the case to determine the remaining issue in the case—the amount of a lodestar award of attorney fees to be awarded to Plaintiffs and their counsel and costs as each were incurred in this litigation before the U.S. District Court for the Southern District of Iowa.
  - e. Plaintiffs shall be deemed prevailing parties in the pending litigation, including without limitation as contemplated under 42 U.S.C. §1983, and as such shall without further proof or motion be deemed entitled to an award of reasonable

attorney fees and costs under 42 U.S.C. §1988 and any other applicable statute, rule, or provision of law.

- f. In connection with that fee and cost issue, Defendants agree that Plaintiffs shall submit an application for attorney fees and costs incurred in the District Court, and that the District Court may decide that application, without hearing, based only on: (1) the Application and its supporting schedules, exhibits, declarations, affidavits, and related filings, (2) any Opposition by Defendants, and (3) any Reply by Plaintiffs thereto, along with any such sworn declarations and exhibits as may accompany those submissions.
- g. The amount of attorney fees and costs awarded by the District Court shall be increased by the sum of \$15,000 as payment for time and costs Plaintiffs and their lawyers incurred in connection with the fee application and the District Court shall enter final judgment for Plaintiffs.
- h. Defendants shall present a request for satisfaction of the outstanding amount of attorney fee and cost award entered by the District Court in accordance with subparagraphs d-g, above, (including the increase of \$15,000 as provided in subparagraph g, above), to the State Appeal Board at its first meeting occurring after the District Court enters its ruling on the fee application, and thereupon will cause a State of Iowa warrant to be issued promptly and delivered in a check made payable to Davis Wright Tremaine, LLP in the amount of fees and costs awarded to it by the District Court (plus the \$15,000, if not included by the District Court) and a second State of Iowa warrant to be issued promptly and delivered in a check made payable to Faegre Baker Daniels LLP in the amount of fees and costs awarded to it by the District Court, in payment of Plaintiffs' district court attorney fees and costs.

2. The parties authorize and direct their attorneys to take such steps as necessary or appropriate to effectuate implementation of these settlement terms, including without limitation, to present consent judgments, stipulations, applications, motions and/or requests to the District Court to obtain approvals, orders, awards, and judgments as are contemplated herein.

Agreed to and accepted effective as of this 28th day of December, 2017.

**Plaintiffs:**

\_\_\_\_\_  
Paul Gerlich

\_\_\_\_\_  
Erin Furleigh

**Defendants:**

\_\_\_\_\_  
Steven Leath

\_\_\_\_\_  
Warren Madden

\_\_\_\_\_  
Thomas Hill

\_\_\_\_\_  
Leesha Zimmerman

**Successors:**

\_\_\_\_\_  
Wendy Wintersteen

*Iowa State University*

By: \_\_\_\_\_  
Wendy Wintersteen, President

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