

No. F085800

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

CIVIL RIGHTS DEPARTMENT, FORMERLY THE DEPARTMENT OF
FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF
CALIFORNIA,

Plaintiff and Appellant,

v.

CATHY'S CREATIONS, INC., D/B/A TASTRIES, A CALIFORNIA
CORPORATION, ET AL.

Defendants and Respondents;

EILEEN RODRIGUEZ-DEL RIO AND MIREYA RODRIGUEZ-DEL
RIO,

Real Parties in Interest.

Kern County Superior Court, Case No. BCV-18-102633
Honorable J. Eric Bradshaw, Judge (Division J)

APPELLANT'S APPENDIX
File 13 of 13, Volume 13, pp. AA02446-AA02658

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October 20, 2023

Exhibit QQQ

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Kern County Superior Court
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(Fee Exempt Pursuant to Gov. Code, § 6103)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

vs.

CATHY'S CREATIONS, INC. d/b/a TASTRIES,
a California corporation; and CATHARINE
MILLER,

Defendants,

EILEEN RODRIGUEZ-DEL RIO and MIREYA
RODRIGUEZ-DEL RIO,

Real Parties in Interest.

Case No. BCV-18-102633-JEB

**PLAINTIFF CALIFORNIA CIVIL
RIGHTS DEPARTMENT'S (formerly
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING)
OBJECTION TO "DEFENDANTS'
RESPONSE & OBJECTIONS TO
PLAINTIFF'S REQUEST FOR A
STATEMENT OF DECISION"**

Tentative Decision: October 21, 2022

Time: 8:30 a.m.

Dept: J

Judge: Hon. J. Eric Bradshaw

1 **I. INTRODUCTION**

2 CRD (formerly DFEH) filed Plaintiff's Request for a Statement of Decision on October 31,
3 2022 pursuant to Code of Civil Procedure, section 632. In addition to serving and filing a proposed
4 Statement of Decision and proposed Judgment, Defendants also served and filed "Defendants'
5 Response & Objections To Plaintiff's Request for a Statement of Decision" on November 9, 2022.
6 There is no legal authority for this filing. CRD objects to this improperly filed document.

7 **II. LEGAL ARGUMENT**

8 Code Civ. Proc., section 632 provides that "[t]he court shall issue a statement of decision
9 explaining the factual and legal basis for its decision as to each of the principal controverted issues at
10 trial upon the request of any party appearing at the trial." California Rules of Court, Rule 3.1590,
11 subdivision (f) further provides that "[a] party that has been ordered to prepare the statement must
12 within 30 days after the announcement or service of the tentative decision, serve and submit to the
13 court a proposed statement of decision and a proposed judgment." As it pertains to objections, "[a]ny
14 party may . . . serve and file objections to the proposed statement of decision or judgment." (*Id.* at
15 subd. (g).) However, no code section or rule authorizes Defendants to object and file Defendants'
16 response and objections as to Plaintiff's request for a statement of decision.¹ Therefore, CRD objects
17 to Defendants' improperly filed response and objection to Plaintiff's Request for a Statement of
18 Decision, which lacks any legal basis or authority. It should not be considered by the Court.
19 Alternatively, the Court should strike "Defendants' Response & Objections To Plaintiff's Request for
20 a Statement of Decision".

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27 ¹ In the conclusion, Defendants state: "Pursuant to this Court's order and Cal. Rules of Court, rule 3.1590, and in
28 accordance with the above discussion and explanation, Defendants hereby submit the attached proposed Statement of
Decision to this Court." (See Defendants' DEFENDANTS' RESPONSE & OBJECTIONS TO PLAINTIFF'S REQUEST
FOR A STATEMENT OF DECISION, p. 8:12-14.) Neither the Court's order nor Cal. Rules of Court, rule 3.1590
authorize this pleading.

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiff CRD respectfully requests that the Court not consider this
3 improper pleading and/or strike Defendants' Response & Objections to Plaintiff's Request for
4 Statement of Decision.

5
6 Dated: December 05, 2022

CALIFORNIA CIVIL RIGHTS DEPARTMENT

7
8 
9 _____
KENDRA TANACEA, Associate Chief Counsel

PROOF OF SERVICE BY ELECTRONIC MAIL

I am a citizen of the United States and am employed in Los Angeles County. I am over the age of eighteen (18) years and not a party to the within action. My business address is 320 West 4th Street, Suite # 1000, Los Angeles, California 90013.

My e-mail address is valentina.martinez@dfeh.ca.gov.

On the date below I served by electronic mail:

PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) OBJECTION TO "DEFENDANTS' RESPONSE & OBJECTIONS TO PLAINTIFF'S REQUEST FOR A STATEMENT OF DECISION"

(In the matter of *Department of Fair Employment & Housing vs. Cathy's Creations, Inc., et al. (Eileen Rodriguez-Del Rio, et al., Real Parties in Interest)*; Case Number: BCV-18-102633) to each of the persons named below, addressed follows:

☒ **By E-Mail** by forwarding a true and correct copy of the above document(s) via e-mail to the person(s) at the e-mail address(es) set forth below.

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THOMAS MORE SOCIETY
309 West Washington Street, Suite # 1250
Chicago, Illinois 60606

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 05, 2022, at Los Angeles, California.

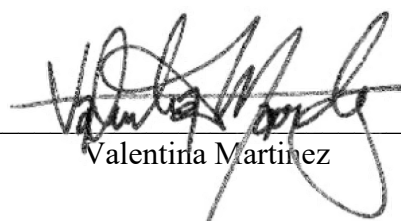

Valentina Martinez

Exhibit RRR

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
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Plaintiff,

vs.

CATHY'S CREATIONS, INC. d/b/a
TASTRIES, a California corporation; and
CATHARINE MILLER,

Defendants.

EILEEN RODRIGUEZ-DEL RIO and MIREYA
RODRIGUEZ-DEL RIO,

Real Parties in Interest.

Case No. BCV-18-102633-JEB

**PLAINTIFF CRD'S (formerly
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING)
OBJECTIONS TO DEFENDANTS'
PROPOSED STATEMENT OF
DECISION AND PROPOSED
JUDGMENT**

Tentative Decision: October 21, 2022

Dept.: J

Judge: Hon. J. Eric Bradshaw

I. INTRODUCTION

After a July 2022 bench trial, on October 21, 2022, the Court issued its Tentative Decision in favor of Defendant Cathy's Creations, Inc. dba Tastries ("Tastries") and Defendant Catharine Miller ("Miller"). On October 31, 2022, consistent with Code of Civil Procedure section 632 and California Rules of Court, Rule 3.1590, Plaintiff filed and served a Request for a Statement of Decision ("Request"). Plaintiff's Request enumerated controverted issues and proposed modifications, addressing multiple points that were either omitted from or ambiguous in the Tentative Decision, and

asked that the Court address those matters in its final decision. On November 9, 2022, Defendants submitted a Proposed Statement of Decision (“Proposed Decision”) that mirrored the Tentative Decision without addressing the controverted issues or proposed modifications set forth in Plaintiff’s Request, and a Proposed Judgment in favor of Defendants. Pursuant to this Court’s order, Plaintiff objects to the Proposed Decision and Proposed Judgment on the grounds set forth hereunder.¹ In the interests of economy, Plaintiff incorporates by reference its Request herein and provides the additional analysis below. The Court may order, and Plaintiff requests, a hearing on these Objections. (Cal. Rules of Court, Rule 3.1590.)

II. OBJECTIONS

A. The Proposed Decision Fails to Resolve, By Omission and Ambiguity, the Nature and Extent of Tastries’ Business Operations Which Is Material to the Court’s Legal Analysis of the Unruh Civil Rights Act Claim and Defendants’ Affirmative Defenses

The Proposed Decision states that Tastries is a small, religiously-themed bakery with only Miller and her husband and a few employees (Proposed Decision, ¶¶1, 8, 57), instead of the fast-paced, fully staffed commercial operation Tastries, in fact, is. As a California corporation, Tastries and Miller benefit from corporate protections and realize tax and other legal benefits. Accordingly, Tastries must comply with all California laws, including the Unruh Civil Rights Act (“Unruh Act”).

These omitted facts also bear on Defendants’ Affirmative Defenses. With respect to the Free Exercise affirmative defense (see *infra* Part II.C.), these facts establish that Tastries is not a religious entity or affiliated with any religious organization, and therefore, has no religious basis for rejecting cakes for same-sex couples as a California corporation subject to the Unruh Act and open to the public.

With respect to the Free Speech affirmative defense (see *infra* Part II.D), these facts bear on material issues including whether the type of plain white cake with no writing, image, or topper that the Rodriguez-del Rios wanted to purchase could possibly constitute pure speech or expressive

¹ In accordance with the Court’s November 22, 2022, order granting an extension, these objections to the Proposed Decision and Proposed Judgment are timely filed.

conduct when it was not a bespoke cake made by one person from start to finish (let alone Miller) nor created with a specific couple or wedding reception in mind.

1. A team of Tastries employees is responsible for baking, decorating, and selling Tastries' products

The Proposed Decision omits evidence that Tastries is a for-profit bakery operating out of a storefront in Bakersfield. Miller is the sole shareholder and an employee of Tastries.² Tastries is a California corporation that employs approximately sixteen employees at any given time³ and has employed over 130 employees since it opened for business.⁴ Tastries is a legal entity separate and apart from Miller.⁵ Tastries files separate tax returns from Miller;⁶ procures insurance for the bakery;⁷ holds the bakery's business license⁸ and insurance policies,⁹ registration with the state,¹⁰ health permits,¹¹ and bank accounts;¹² and leases the bakery space in the Rosedale Mall.¹³ Tastries has an employee handbook and provides anti-discrimination training to its employees.¹⁴ As of 2020, Miller has been a W2 employee of Tastries.¹⁵

Moreover, a large team of employees is responsible for baking, decorating, and selling Tastries products, including cakes served at wedding receptions like the one the Rodriguez-Del Rios desired to purchase. Generally, Tastries has five front-end employees that interact with the customers,

² Trial Exhibit 115, Articles of Incorporation.

³ Miller Testimony, 7/28/2022, p. 151:11-14.

⁴ Miller Testimony, 7/28/2022, p. 151:6-10; Trial Exhibit 134, employee list.

⁵ Trial Exhibits 131, 132 and 133; Trial Exhibit 700A, Miller's Response to RFAs, Set 1, No. 9

⁶ Michael Miller Testimony, 7/28/2022, p. 60:13-20.

⁷ Michael Miller Testimony, 7/28/2022, p. 60:21-28.

⁸ Michael Miller Testimony, 7/28/2022, p. 61:10-12.

⁹ Michael Miller Testimony, 7/28/2022, p. 60:21-28.

¹⁰ Trial Exhibit 118.

¹¹ Michael Miller Testimony, 7/28/2022, p.61:10-14.

¹² Michael Miller Testimony, 7/28/2022, p. 61:18-20.

¹³ Michael Miller Testimony, 7/28/2022, p. 61:15-17.

¹⁴ Perez was trained while at Tastries that under California law businesses are required to provide full and equal services regardless of a customer's sexual orientation. (Perez Testimony, 7/26/2022, p. 17:24-28.) This explains why Perez took the Rodriguez-Del Rios' order in the first instance and did not turn them away as Miller did. It also explains why Natalie Boatwright and other employees believed, under the law, they *had* to make cakes for same-sex couples and did so. As employee Mary Johnson testified: "I don't think it's kind to discriminate against others based on their sexual orientation." (Johnson Testimony, 7/26/2022, p. 122:15-21.)

¹⁵ Michael Miller Testimony, 7/28/2022, p. 60:8-9.

1 answer questions, show customers different baked goods, help the customers obtain items from the
2 refrigerated cases, handle sales, run the cash register, answer the phone, and make sure product is
3 stocked and the bakery is cleaned.¹⁶ Rosemary Perez (“Perez”), as a front-end employee/manager,¹⁷
4 helps customers when they want to order baked goods in advance.¹⁸ When Tastries’ employees
5 Natalie [Boatwright] and Nicole were managers, they performed the entire design consultation for
6 cakes ordered for weddings.¹⁹ When it comes to the design consultations, the **customer** decides the
7 type of baked good, the design, the type of frosting, the flavors and decoration.²⁰ Often customers
8 bring in a photo from Pinterest (or another source) of a cake made by another bakery and request that
9 Tastries make the same cake for them.²¹

10 In addition to the front-end employees, there is a team of bakers and a team decorators in the
11 back who produce cakes and other baked goods. As employee and lead baker Melissa Massey
12 (“Massey”) testified, in 2017, the baking team of five to six employees arrived early and baked all the
13 case cakes and preordered cakes and “were typically responsible for packaging it – making it,
14 packaging it, and getting it to the customer.”²² On any given day, many cake layers were baked by
15 flavor for the sake of efficiency.²³ Tastries has three commercial ovens for baking.²⁴ Extra batter from
16 a wedding cake order or another preordered cake is used to produce additional case cakes.²⁵ As

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18 ¹⁶ Perez Testimony, 7/26/2022, p. 20:17-28.

19 ¹⁷ Perez was hired by Tastries in 2016 and was promoted to morning manager in 2018. (Perez
20 Testimony, 7/26/2022, p. 18:1-15.) She managed the entire store although she worked primarily up
21 front. (Perez Testimony, 7/26/2022, p. 18:16-18.) There were team leaders in the kitchen in the back
22 of the store that focused on baking and decorating baked goods. (Perez Testimony, 7/26/2022, p.
23 19:9-14.) Perez handled advance orders for birthday cakes, anniversary cakes, and other cakes. (Perez
24 Testimony, 7/26/2022, p. 20:8-10.) Perez was an employee acting on behalf of Tastries when she
25 met with the Rodriguez-Del Rios and took their order. When Perez is working, she is the manager of
26 the entire bakery. (Perez Testimony, 7/26/2022, p. 36:20-22.)

27 ¹⁸ Perez Testimony, 7/26/2022, p. 21:1-4.

28 ¹⁹ Perez Testimony, 7/26/2022 p. 24:4-7.

²⁰ Perez Testimony, 7/26/2022, p. 31:17-28.

²¹ Perez Testimony, 7/26/2022, p. 32:1-12.

²² Massey Testimony, 7/26/2022, p. 92:14-93:14 [As we got into 2017, Cathy actually had a young
man come back there and just make cakes to try to take some pressure off just because we -- you
know, we had a lot to put out.]

²³ Massey Testimony, 7/26/2022, p. 95:5-11.

²⁴ Massey Testimony, 7/26/2022 p. 94:25-95:4.

²⁵ Massey Testimony, 7/26/2022 p. 95:17-26.

1 Massey testified: “we would bake hundreds of layers. So we would have 50 strawberry layers and – I
2 mean, there were countless flavors. So our ovens were just full all the time rotating cakes. And I
3 would give Lizette the red velvet and the chocolate to do, and I would give Kristin the – the whites
4 and some of the more extravagant flavors because she was more experienced.”²⁶ All preordered and
5 case cakes (except for a small percentage of vegan or gluten-free cakes) are made from box mixes.²⁷
6 Tastries purchases and utilizes Betty Crocker and Pillsbury box cake mix and Sam’s Club premade
7 buttercream frosting to make its cakes.²⁸

8 In addition to the baking team, Tastries also employs a decorating team of eight employees.²⁹
9 Miller herself decorates cakes “[o]nly when we got really backed up.”³⁰ For the most part, it is the
10 team of bakers and decorators who are producing Tastries’ cakes without Miller’s involvement.³¹
11 Miller testified that “at least” five to eight employees are involved in producing and delivering a
12 wedding cake.³² One employee takes the order; the team of bakers bakes the cake layers, other
13 employees make the filling and buttercream frosting; another employee spreads the filling on the
14 cake, stacks the layers, and crumb-coats the cake; and a decorator finishes the cake.³³ In 2018,
15 Tastries employees were baking hundreds of cakes a week.³⁴ In 2017, Tastries employees produced
16 75 preordered cakes a week, not including case cakes.³⁵ These omitted facts tend to show that each
17 preordered cake is not an artistic masterpiece created with the couple or marriage in mind. Most of
18 the cake designs are taken from other websites, the Styrofoam display cakes that have been made
19 numerous times, or from a photo brought in by the customer and, therefore, are facsimiles of other’s
20 designs. The cake production process is more akin to a product assembly line with extra batter from
21 one cake used to produce other cakes.

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23 ²⁶ Massey Testimony, 7/26/2022 p. 94:9-24.

24 ²⁷ Johnson Testimony, 7/26/2022 p. 117:12-15.

25 ²⁸ Michael Miller Testimony, 7/28/2022, p. 63:20-64:24.

26 ²⁹ Massey Testimony, 7/26/2022 p. 96:18-97:5.

27 ³⁰ Massey Testimony, 7/26/2022 p. 97:6-9.

28 ³¹ Massey Testimony, 7/26/2022 p. 97:15-18; Johnson Testimony, 7/26/2022, p. 112:7-9; 112:21-
113:6 [never saw Miller decorate a wedding cake].

29 ³² Miller Testimony, 7/28/2022, p. 136:22-137:4.

30 ³³ Miller Testimony, 7/28/2022, p. 155:21-157:2.

31 ³⁴ Miller Testimony, 7/28/2022, p. 154:8-11.

32 ³⁵ Miller Testimony, 7/28/2022, p. 155:3-11.

1 Although the Proposed Decision acknowledges that “[t]he entire process [cake making]
2 generally involves three to six people,” it includes an erroneous factual finding that “Miller is
3 personally involved in every production-related aspect of her bakery, and, as it pertains to wedding
4 cakes, she is personally involved in *some* aspect of the design and making of virtually every wedding
5 cake.” (Proposed Decision, ¶¶6, 57.) Miller admits she does not make the preordered cakes herself;
6 she monitors the process and touches base with her teams, but cakemaking and decorating is a team
7 effort.³⁶ The overwhelming but omitted evidence shows that Miller employs teams of bakers and
8 decorators to physically produce Tastries’ cakes. Therefore, Miller and Tastries are separate and
9 distinct from one another with Tastries’ staff producing numerous preordered and case cakes a day
10 without Miller’s direct involvement.

11 **2. Tastries is not religiously affiliated**

12 The Proposed Decision states that “[a]s the owner of Tastries, Miller considers herself a
13 ‘steward’ of ‘the Lord’s business he put in [her] hands,’ and that she ‘cannot participate in something
14 that would hurt him and not abide by his precepts in the Bible.’ Much of Tastries décor includes
15 Christian symbols and messages, such as crosses and Bible verses, and it openly displays and sells
16 such items.” (Proposed Decision, ¶8.)

17 However, Tastries is a for-profit “business establishment” within the meaning of the Unruh
18 Act.³⁷ (Civ. Code, § 51, subd. (b).) Tastries conducts business in the State of California and derives
19 legal benefits from its corporate structure which protects Miller from individual liability.³⁸
20 Concomitantly, Tastries must comply with regulatory laws such as the Unruh Act.³⁹ Tastries’
21 business operations are not officially affiliated with any religious organization.⁴⁰ Tastries is not
22 incorporated as a religious entity.⁴¹

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26 ³⁶ Miller Testimony, 7/28/2022, p. 153:14-25.

27 ³⁷ Trial Exhibit 700B, Tastries’ Response to RFAs, No. 1.

28 ³⁸ Michael Miller Testimony, 7/28/2022, p. 60:10-12.

³⁹ Miller Testimony, 7/29/2022, p. 17:14-27.

⁴⁰ Trial Exhibit 700A, Miller’s Response to RFAs, Set 1, No. 29.

⁴¹ Trial Exhibit 700A, Miller’s Response to RFAs, Set 1, No. 30.

1 **B. The Proposed Decision Fails to Resolve, By Omission and Ambiguity, Whether**
2 **Defendants’ Conduct Violates the Unruh Act**

3 The Proposed Statement fails to resolve, by omission and ambiguity, that Defendants’
4 challenged conduct—refusing to sell a plain cake with no topper and no writing for a same-sex
5 couple’s wedding reception—did not violate the Unruh Act. This flawed holding is based on the
6 following factual omissions, improper reliance on irrelevant facts, and ambiguities.

7 The Unruh Act provides that “[a]ll persons within the jurisdiction of this state are free and
8 equal, and no matter what their... **sexual orientation**...are entitled to the full and equal
9 accommodations, advantages, facilities, privileges, or services in all business establishments of every
10 kind whatsoever.” (Civ. Code, § 51, subd. (b); emphasis added.) The primary purpose of the Unruh
11 Act “is to compel recognition of the equality of all persons in the right to the particular service
12 offered by an organization or entity covered by the act.” (*Curran v. Mount Diablo Council of the Boy*
13 *Scouts* (1983) 147 Cal.App.3d 712, 733.) “[A] person suffers discrimination under the [Unruh] Act
14 when the person presents himself or herself to a business with an intent to use its services but
15 encounters an exclusionary policy or practice that prevents him or her from using those services.”
16 (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1023.)

17 To find a violation of the Unruh Act in this case, the trier of fact must answer two questions in
18 the affirmative: (1) Did Defendants **make a distinction** that denied **full and equal services** to Real
19 Parties? (2) Was Defendants’ perception of the Rodriguez-Del Rios’ sexual orientation a
20 [substantial⁴²] **motivating reason** for Tastries’ conduct? (CACI No. 3060; CACI Verdict Form (VF)
21 3030, emphasis added.) Under the “substantial motivating reason” analysis, the trier of fact must find
22 that a reason that contributed to the [denial of goods and services] is “more than a remote or trivial
23 reason.” (CACI No. 2507.) A substantial motivating reason “does not have to be the only reason
24 motivating the [denial of goods and services].” (CACI No. 2507.) Notably, “the term ‘substantial
25 motivating reason’ [is used] **to express both intent and causation** between the protected
26

27 ⁴² It is proper to consider the articulation of the standard for purposes of FEHA because the Unruh
28 Act, Civil Code section 51, is expressly incorporated into FEHA. (Gov. Code, § 12948.) (Cf.
Proposed Decision, ¶29 [noting that “[w]hether the FEHA standard applies under the Unruh Act has
not been addressed by the courts”].)

1 classification and the defendant's conduct." (CACI No. 3060, Directions for Use, emphasis added.)
2 "The intent requirement is encompassed within the motivating-reason element." (Proposed Decision,
3 p. 9:16-18.) No other proof of "intent" is required.

4 Properly considered, material facts omitted from the Proposed Decision establish a violation
5 of the Unruh Act. Defendants have a blanket policy against providing any preordered cake, no matter
6 how basic or plain, when it is ordered by a same-sex couple to serve at their wedding reception,⁴³ and
7 Defendants applied that policy when refusing to sell a plain white cake with no writing, image, or
8 topper to the Rodriguez-Del Rios. The Rodriguez-Del Rios faced a policy akin to an unprotected
9 "refusal to sell any cake at all" as the refusal was based on a policy targeting the identity of the
10 couple, not the nature of the product. (See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights*
11 *Comm.* ("*Masterpiece*") (2018) 138 S.Ct. 1719, 1723.) *Masterpiece* makes clear that such a policy is
12 unprotected "and is subject to a neutrally applied and generally applicable public accommodations
13 law." (*Id.* at p. 1728.)

14 **1. The Proposed Decision omits relevant facts, considers immaterial facts, and**
15 **contains ambiguities on the material issue of the nature of Defendants'**
16 **motivation in refusing to sell the Rodriguez-Del Rios a cake and whether**
those facts constitute a motivating factor for the denial

17 The full record compels a conclusion that the Rodriguez-Del Rio's sexual orientation
18 motivated Defendants' refusal to sell them a cake, in violation of the Unruh Act's prohibition on
19 intentional discrimination based on a protected classification. (Cf. Proposed Decision ¶¶28, 31-36.)
20 The Proposed Decision omitted material evidence and failed to resolve by ambiguity whether
21 Defendants' actions constituted a motivating factor for the denial.

22 **a. The Unruh Act does not require a showing of malice or arbitrariness;**
23 **evidence that Defendants "made a distinction" motivated at least in**
24 **part by a protected classification suffices**

25 Although a plaintiff must prove intentional discrimination to prevail on an Unruh Act claim,
26 the plaintiff need not prove that the defendant was motivated by malice, bigotry or hate. (*Bray v.*

27 _____
28 ⁴³ Defendants have enforced this policy to deny all pre-ordered cakes for same-sex couples' weddings, engagement parties, etc. since January 2013 and memorialized the policy in the Tastries Design Standards in 2015. (See *infra* notes 45 and 46 and accompanying text.)

1 *Alexandria Women's Health Clinic* (1993) 506 U.S. 263, 269-270 ["We do not think that the
2 'animus' requirement can be met only by maliciously motivated, as opposed to assertedly benign
3 (though objectively invidious), discrimination against women."]; see also *Rotary Club of Duarte v.*
4 *Board of Directors of Rotary Intern.* (1986) 178 Cal.App.3d 1035 [In revoking local club's charter
5 and terminating its membership because it admitted women into membership and refused to expel
6 them, board of international organization violated Unruh Act, holding that "[t]o the extent that
7 International's freedom of expressive association is involved, infringement of this right is clearly
8 justified by this state's compelling interest in abolishing sex discrimination by business
9 establishments.].) Indeed, all that the Unruh Act requires is that defendant "make a distinction" based
10 on sexual orientation or treat members of the protected classes unequally.

11 Relatedly, where the discrimination is based on an enumerated classification, there is no
12 requirement to show that the defendant was motivated by invidious or arbitrary discrimination. (Cf.
13 Proposed Decision, ¶¶34–36.)⁴⁴ Therefore, Plaintiff was not required to show that Defendants' intent
14 was malicious or arbitrary, and the law does not require that a protected classification be the *only*
15 reason that Defendants made a distinction in denying full and equal services, just "more than a
16 remote or trivial reason." (CACI No. 2507.)

17 The case of *Smith v. Fair Empl. & Hous. Com.* ("FEHC") (1996) 12 Cal.4th 1143 is
18 instructive. In *FEHC*, the defendant landlord owned and leased four rental units which were not
19 organized or classified as a religious, charitable or other nonprofit concern. (*Id.* at p. 1151.) When
20 prospective tenants inquired about a vacant unit, the landlord, a Christian who believed that sex
21 outside of marriage is sinful, told them she prefers married couples because she believes it is a sin for
22

23 _____
24 ⁴⁴ In cases addressing claims of discrimination based on an unenumerated classification, courts have
25 at times considered whether the discrimination was arbitrary. (See *Harris v. Capital Growth Investors*
26 *XIV* ("Harris") (1991) 52 Cal.3d 1142, 1149, 1158-59.) Case law construing the Unruh Act confirms
27 that "arbitrary" discrimination is an additional, catchall category that courts apply when considering
28 discrimination based on a classification that is not enumerated in the Act. (*Ibid.*; see also *Isbister v.*
Boys' Club of Santa Cruz, Inc. (1985) 40 Cal.3d 72, 75 ["The Unruh Act is this state's bulwark
against arbitrary discrimination in places of public accommodation"].) The term "arbitrary" should
not be used here, where there is an enumerated classification: sexual orientation. (See Proposed
Decision ¶66 [the term "arbitrary" should serve only as "a qualitative description of the intent
required to violate the Unruh Civil Rights Act [in certain cases and] not a categorical exemption."])

1 her to rent her units to people who will engage in nonmarital sex on her property and that God will
2 judge her if she permits people to engage in sex outside of marriage in her rental units and that if she
3 does so, she will be prevented from meeting her deceased husband in the hereafter. (*Ibid.*)

4 Considering these facts, *FEHC* concluded that “one who earns a living through the return on
5 capital invested in rental properties can, if she does not wish to comply with an anti-discrimination
6 law that conflicts with her religious beliefs, avoid the conflict, without threatening her livelihood, by
7 selling her units and redeploying the capital in other investments.” (*Id.* at p. 1169.) Applying the
8 reasoning of *FEHC*, a business owner may violate the Unruh Act and, at the same time, be following
9 their sincerely held religious beliefs.

10 **b. Because of its material factual omissions and ambiguities, the**
11 **Proposed Decision fails to resolve whether sexual orientation was a**
12 **substantial motivating factor for Defendants’ refusal to sell the**
13 **Rodriguez-Del Rios a cake**

14 The Proposed Decision omits material facts and is ambiguous as to whether Defendants’
15 perception of the Rodriguez-Del Rios as a lesbian couple was a “motivating factor” in Defendants’
16 decision to deny them goods and services, even if their sexual orientation was not the *only* factor.
17 (CACI 2507.) In so doing, it ignores the record showing that Defendants intended to deny services
18 based on the Rodriguez-Del Rios’ sexual orientation. Even accepting the Proposed Decision’s finding
19 that Defendants refused to sell the Rodriguez-Del Rios a cake based on Miller’s sincerely held
20 religious beliefs and that, as such, the refusal was not “unreasonable, or arbitrary,” (Proposed
21 Decision, ¶36), that finding does not negate Plaintiff’s proof that Defendants *also* intended to deny
22 services because of sexual orientation.

23 From January 2013 to the present, Defendants enforced a policy (hereinafter “Policy”) to
24 deny all preordered cakes for same-sex couples’ wedding receptions, engagement parties, and
25 anniversary parties.⁴⁵ The Policy was memorialized in Tastries’ Design Standards.⁴⁶ Consistent with
26 their Policy, Defendants made a distinction, and refused to provide goods or service to the Rodriguez-
27 Del Rios based on their sexual orientation.

28 ⁴⁵ Miller Testimony, 7/28/2022, p. 174:26-175:18.

⁴⁶ Trial Exhibit No. 8, Tastries Design Standards.

1 Initially, Tastries promised the Rodriguez-Del Rios goods and services by taking their order
2 and inviting them back for a complimentary tasting, an explicit promise of service. Then, on August
3 26, 2017, the Rodriguez-Del Rios, Eileen’s mother and their best men returned to Tastries for the
4 cake tasting.⁴⁷ Perez turned their order over to Miller.⁴⁸ At that point, the Rodriguez-Del Rios
5 encountered Miller’s exclusionary Policy and practice based on who they were—a lesbian couple—
6 which prevented them from obtaining Tastries’ goods and services. Miller greeted the Rodriguez-Del
7 Rio party and asked for some details about their order.⁴⁹ During their conversation, Miller discovered
8 the Rodriguez-Del Rios were a lesbian couple who wanted the cakes for their wedding reception.⁵⁰
9 As a result, Miller refused to take their order.⁵¹

10 In the course of this interaction, Miller admitted her *intention* to deny a lesbian couple the
11 same goods and services she would provide to a heterosexual couple because of their sexual
12 orientation status.⁵² Miller never told the couple that there was a problem with the design of their
13 cake. Indeed, she agreed that the Rodriguez-Del Rios were not seeking a religious themed cake or a
14 rainbow cake to make a political statement.⁵³ As Miller testified: “I can’t do a wedding cake for
15 people of the same sex.”⁵⁴ At the time of the denial, Miller told both Eileen and Mireya Rodriguez-
16 Del Rio that the reason Defendants could not supply the cake was because Miller did not “condone
17 same-sex marriage.”⁵⁵ Miller admitted that if a straight couple came in and ordered the same cake the

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19 ⁴⁷ Perez Testimony, 7/26/2022, p. 48:16-25.

20 ⁴⁸ Perez Testimony, 7/26/2022, p. 49:2-13.

21 ⁴⁹ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 140:16-141:20.

22 ⁵⁰ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 141:9-28.

23 ⁵¹ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 141:21-28.

24 ⁵² Miller Testimony, 7/29/2022, p. 25:1-10; p. 25:23-26.

25 ⁵³ Miller Testimony, 7/29/2022, p. 25:1-6.

26 ⁵⁴ Miller Testimony, 7/28/2022, p. 173:8-9. Likewise, Mireya Rodriguez-Del Rio testified at trial that
27 Miller would not provide the cake “[b]ecause we’re lesbians.” Mireya Rodriguez-Del Rio Testimony,
28 7/27/2022, p. 74:4-9.

⁵⁵ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 172:10-14 [Miller says she doesn’t condone
same-sex marriage]; Eileen Rodriguez-Del Rio, 7/27/22 p. 141:21-142:5 [“And at that point, she
[Miller] says, well, I will get this over to Stephanie [owner of Gimme Some Sugar bakery, a
competitor]. I don’t condone same-sex marriages. And she started to walk off, and I says, what? And
she says, I don’t condone same-sex marriages.”]; see also, Eileen Rodriguez-Del Rio Testimony,
7/28/22 p. 13:27-14:4; Trial Exhibit 700B, Tastries’ Response to RFAs Set 1, No. 5 [Admitted that
Tastries did not attempt to refer the Rodriguez-Del Rios to another bakery until after it learned they
were a same-sex couple.]

Rodriguez-Del Rios wanted, she would have taken their order and Tastries would have provided that cake.⁵⁶ In the ten years that Tastries has been open to the public, Miller has never refused to make a cake for a heterosexual couple's wedding reception.⁵⁷

Thus, even if Miller's religious beliefs are a reason why Defendants denied services and goods to the Rodriguez-del Rios, those religious beliefs only ever result in the refusal of services and goods to same-sex couples, and not to other couples whose relationship may also contravene Miller's religious beliefs. Defendants' Policy, and application thereof, therefore "makes a distinction" based on sexual orientation. In other words, "but for" the Rodriguez-Del Rios' sexual orientation, Defendants would have served them and sold them the cakes they sought for their wedding reception.

c. The Proposed Decision fails to resolve, by omission and ambiguity, whether application of Defendants' Design Standards only result in the denial of services to same-sex couples

The Proposed Decision omits facts that show that Defendants' refusal to provide cakes for same-sex couples' wedding receptions is based on a discriminatory intent to treat people differently because of sexual orientation, incorrectly characterizing the Design Standards that were the basis for the denial of service as being allegedly neutral with regard to sexual orientation. (Proposed Decision, ¶33.⁵⁸) Although Tastries' Design Standards state that Tastries will not make a cake that violates Defendants' fundamental Christian principles, Tastries only applies this standard to a single principle—one held by Miller that she attributes to her Christian faith—that biblical marriage is between a man and a woman.⁵⁹ Pursuant to Defendants' Policy, Miller specifically instructed her employees in a team meeting that Tastries "would no longer be accepting any LGBTQ wedding cakes."⁶⁰

⁵⁶ Miller Testimony, 7/29/2022, p. 24:25-25:10.

⁵⁷ Perez Testimony, 7/26/2022, p. 71:3-6.

⁵⁸ "The evidence showed that Eileen and Mireya requested a wedding cake, *the design for which* was at odds with the Tastries standards pertaining to 'fundamental Christian principles' and 'God's sacrament of marriage between a man and a woman.'" (Emphasis added.)

⁵⁹ As Perez testified: "Q. But you're not aware of the fundamental Christian principle standard being applied to refuse an advance order for any other situation, right? A. Yes." (Perez Testimony, 7/26/2022, p. 40:12-15.)

⁶⁰ Johnson Testimony, 7/26/2022, p. 114:12-14.

1 As required by Defendants’ Policy, in assessing whether to provide a cake, Defendants must
2 first determine whether the couple seeking a cake is a gay couple (woman/woman or man/man). If it
3 is a gay couple, Defendants must then determine if the couple is ordering a cake for their wedding
4 reception. If the answer to both questions is yes, only then do Defendants apply the Design Standards
5 and refuse to sell the same-sex couple a cake.⁶¹ By contrast, if Defendants determine that the couple
6 is heterosexual (man/woman) and want to order a cake for *their* wedding reception, then pursuant to
7 the Design Standards, Defendants will make the cake.⁶²

8 In either scenario, before they apply the Design Standards, Defendants must first make a
9 distinction based on the couple’s sexual orientation. The couple’s sexual orientation is therefore a
10 “substantial motivating reason” for the decision to sell or refuse to sell a cake. (See *Minton v. Dignity*
11 *Health* (“*Minton*”) (2019) 39 Cal.App.5th 1155, 1163 [finding that plaintiff sufficiently alleged an
12 Unruh Act violation when defendant denied the procedure because of plaintiff’s gender identity when
13 it would have provided the procedure to other cis-gender patients, and that “[d]enying a procedure as
14 treatment for a condition that affects only transgender persons supports an inference that Dignity
15 Health discriminated against Minton based on his gender identity.”].) “California law does not
16 exempt discrimination that is motivated by religious belief.” (*FEHC, supra*, 52 Cal.3d at p. 1192
17 (conc. & dis. opn. of Kennard, J.).)

18 Moreover, the provision in the Tastries’ Design Standards providing that Defendants will
19 refuse “requests that violate fundamental Christian principals [sic]; wedding cakes must not
20 contradict God’s sacrament of marriage between a man and a woman” only excludes gay and lesbian
21 couples. The Proposed Decision wrongly concludes that “Miller and Tastries do not design and do
22 not offer to *any* person—*regardless of sexual orientation*— custom wedding cakes that ‘contradict
23 God’s sacrament of marriage between a man and a woman.’” (Proposed Decision, ¶ 33, emphasis
24 added.) This is an oxymoron. The *only* individuals denied a cake under Tastries’ policy are gay
25 couples (man/man; woman/woman) who seek a cake for their wedding reception. It also omits the
26
27

28 ⁶¹Exhibit 700A, Miller’s Admissions No. 5; Exhibit 700B, Tastries’ Admissions No. 5.

⁶² Miller Testimony, 7/29/2022, p. 25:1-10; p. 25:23-26.

1 fact that, as shown above, Defendants do not enforce the design standard for any other principle that
2 Miller ascribes to her Christian faith, just same-sex marriage.

3 Indeed, although Miller testified to several other fundamental beliefs that she attributes to her
4 Christian faith, she does not apply the Design Standards to screen for any other violation of those
5 beliefs, other than same-sex marriage. One example is a Christian marrying an atheist, which violates
6 Miller's fundamental Christian beliefs, but Miller does not ask couples whether they are atheists.⁶³
7 Miller testified that couples who cohabit before marriage violate her Christian beliefs, thus
8 violating Tastries' Design Standards.⁶⁴ Yet, Miller will provide and has provided a cohabitating,
9 unmarried couple a wedding cake.⁶⁵ When asked why, Miller testified that she does not inquire about
10 whether a couple is cohabitating, because inquiring about "that would be discriminatory."⁶⁶ While
11 cohabitation before marriage is not enumerated as a protected classification under the Unruh Act,
12 sexual orientation is.

13 In sum, despite her other sincerely held Christian beliefs concerning marriage, Miller only
14 screens for (in order to deny services to) same-sex couples, by requiring the name of the bride and
15 groom on her wedding cake order forms. If it is not a male (groom) and female (bride), the order is
16 automatically refused.⁶⁷ The Proposed Decision omits facts and is ambiguous on the material issue
17 that Defendants only enforce Tastries' Design Standards as to one principle that, according to
18 Miller's belief system, is fundamental to her Christian faith: denying a cake to a same-sex couple for
19 their wedding reception. This evidence, omitted from the Proposed Decision, establishes Defendants'
20 intentional discrimination based on sexual orientation, even if the refusal was also based on religious
21 belief, and proves a violation of the Unruh Act.

22 ///

23 ///

24 ///

26 ⁶³ Miller Testimony, 7/28/2022, p. 180:21-181:1.

27 ⁶⁴ Miller Testimony, 7/28/2022, p. 180:2-5.

28 ⁶⁵ Johnson Testimony, 7/26/2022, p. 115:21-116:6.

⁶⁶ Miller Testimony, 7/28/2022, p. 180:6-8.

⁶⁷ Miller Testimony, 7/29/2022, p. 19:1-20.

d. The Proposed Decision relies on irrelevant evidence that Defendants do not discriminate based on sexual orientation in other contexts

The Proposed Decision fails to resolve, by omission and ambiguity, whether Defendants' conduct was motivated by the Rodriguez-Del Rio's sexual orientation. The Proposed Decision is based, in part, on irrelevant factual findings that Defendants do not deny services or employment based on sexual orientation in other situations. (Proposed Decision, ¶¶5, 32.) There is no legal requirement that Plaintiff, to prove an Unruh Act violation in this instance, must establish that Defendants discriminate against gay citizens in any, let alone every, other context. The Unruh Act exists to prevent not only outright exclusion, but also separate and unequal treatment such as refusing to sell a particular product because of a customer's sexual orientation, even if the business will sell other products to the same customer. (*Cf. Katzenbach v. McClung* (1964) 379 U.S. 294, 296-97 [discussing restaurant that served African-American customers through a take-out window but refused to permit them in the dining area].)

Whether Defendants will sell some products to some gay customers in some contexts does not negate the undisputed evidence of discriminatory intent in refusing to sell the Rodriguez-Del Rios a cake. (See *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289 [holding the restaurant violated the Unruh Act when it refused to seat a lesbian couple in a semiprivate booth, and instead offered the couple a seat at a table in the main dining room].)⁶⁸ And the fact Miller hired gay employees is irrelevant, especially without proof that Miller even knew their sexual orientation.⁶⁹ Plaintiff need only prove that Defendants made a distinction based on conduct or attributes that are correlated to protected status of the Rodriguez-Del Rios. (Civ. Code, § 51.) That is, Defendants violate the Unruh Act when they refuse to provide goods and services to the Rodriguez-Del Rios because of their sexual orientation; it does not require Plaintiff to show that Defendants refused to provide baked goods to all gay customers in all contexts.

⁶⁸ See also, *Masterpiece*, *supra*, at p. 1750 (dis. opn. of Ginsberg, J.) ["The fact that Phillips might sell other cakes and cookies to gay and lesbian customers was irrelevant to the issue Craig and Mullins' case presented. What matters is that Phillips would not provide a good or service to a same-sex couple that he would provide to a heterosexual couple."].

⁶⁹ Johnson Testimony, 7/26/2022, p. 142:5-21.

1 **e. The Proposed Decision fails to resolve, by omission and ambiguity,**
2 **whether Defendants’ refusal, alleged to be based only on the *conduct* of**
3 **entering into a same-sex marriage, constitutes discrimination based on**
4 **the protected *status* of sexual orientation**

5 The Proposed Decision omits material evidence and fails to resolve whether Defendants
6 intended to (and did) treat the Rodriguez-Del Rios differently because of their *status* as a same-sex
7 couple and not only based on their *conduct* of holding a same-sex wedding reception. (Proposed
8 Decision, ¶¶31–36.) That is, can the conduct (entering into a same-sex marriage), be parsed from
9 intentional discrimination based on sexual orientation, thereby negating intent? The answer is no. The
10 Proposed Decision’s finding that Defendants declined to take the Rodriguez-Del Rios’ cake order
11 because Miller is religiously opposed to the couple’s *conduct* of entering into their same-sex
12 marriage (*id.* ¶36) overlooks evidence that such conduct is inextricably linked to sexual orientation.
13 As Miller testified, “[W]hen we’re talking about same-sex marriage, we’re talking about sexual
14 orientation.”⁷⁰ And Defendants apply the Design Standards to exclude only those entering in same-
15 sex marriages, thereby targeting their sexual orientation, a protected classification under the Unruh
16 Act.

17 *Christian Legal Society Chapter of the Univ. of Cal., Hastings College of the Law v. Martinez*
18 (“*Martinez*”) (2010) 561 U.S. 661 is instructive. In *Martinez*, the U.S. Supreme Court explicitly
19 rejected the artificial distinction between *conduct* and *status* asserted here. In that case, a student
20 religious group applying for official recognition, Christian Legal Society (CLS), challenged a
21 Hastings College of Law requirement that officially recognized student groups must comply with the
22 school’s nondiscrimination policy by accepting all members. (*Id.* at p. 668.) CLS’s bylaws stated
23 “that sexual activity should not occur outside of marriage between a man and a woman,” and in
24 violation of Hasting’s policy, CLS excluded members who engaged in “unrepentant homosexual
25 conduct.” (*Ibid.*) CLS asserted in its challenge to Hastings’ denial of its application that it barred gay
26 students based on their conduct and beliefs, not their status as gay people. (*Id.* at p. 689.) The U.S.
27 Supreme Court rejected this distinction, stating that “[o]ur decisions have declined to distinguish

28 ⁷⁰ Miller Testimony, 7/28/2022 at 173:17-20 [“QUESTION: So it is fair to say that when we are
 talking about same-sex marriage, we are talking about sexual orientation? ANSWER: Yes.”]

1 between status and conduct in this context.” (*Ibid.*, citing *Lawrence v. Texas* (“*Lawrence*”) (2003)
2 539 U.S. 558, 575.)

3 Just as Miller testified, making a distinction based on an objection to same-sex marriage (i.e.,
4 marriage between gay individuals) is automatically “making a distinction” based on sexual
5 orientation. By refusing to sell the Rodriguez-Del Rios a cake for their woman/woman wedding
6 reception, Defendants therefore “made a distinction” that denied full and equal ... services” (CACI
7 3060) to them because of their homosexual status (i.e., their sexual orientation), a protected
8 characteristic under the Unruh Act (Civ. Code, § 51, subds. (b) & (e)(7).)

9 Discrimination—making a distinction that denies a member of a protected class full and equal
10 services (CACI 3060)—is not excused simply because it is aimed at an individual’s demonstration of
11 their protected status. U.S. Supreme Court and California Supreme Court decisions make clear that
12 the status of a protected person under anti-discrimination laws is inextricably entwined with their
13 conduct where that conduct is “engaged in exclusively or predominantly by a particular class of
14 people.” (*Bray v. Alexandria Women’s Health Clinic*, *supra*, 506 U.S. at p. 270; see also *id.* [“A tax
15 on wearing yarmulkes is a tax on Jews.”].) This is equally true in the treatment of discrimination
16 claims based on sexual orientation. (See *Martinez*, *supra*, at 561 U.S. at p. 688–89); *Lawrence*, *supra*,
17 539 U.S. at p. 583 [O’Connor, J., concurring in judgment] [“While it is true that the law applies only
18 to conduct, the conduct targeted by this law is conduct that is closely correlated with being
19 homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead
20 directed toward gay persons as a class.”].)

21 The California Supreme Court has likewise rejected any status versus conduct distinction,
22 holding that California’s former laws prohibiting same-sex marriage “properly must be understood as
23 classifying or discriminating on the basis of sexual orientation,” not conduct. (*In re Marriage Cases*
24 (2008) 43 Cal.4th 757, 783-84, [superseded by Constitutional amendment as stated in *Hollingsworth*
25 *v. Perry* (2013) 570 U.S. 693, 701].) In *In re Marriage Cases*, the California Supreme Court held that
26 “the statutory provisions **restricting marriage to a man and a woman . . . must be viewed as directly**
27 **classifying and prescribing distinct treatment on the basis of sexual orientation.**” (*Ibid.*, emphasis
28 added.) Indeed, “[b]y limiting marriage to opposite-sex couples, the marriage statutes, realistically

viewed, operate clearly and directly to impose different treatment on gay individuals because of their sexual orientation.” (*Ibid.*)

Based on the foregoing, making a distinction between homosexual individuals ordering a cake for their wedding receptions and heterosexual individuals doing the same is discrimination based on sexual orientation, not discrimination based on the conduct of marriage. Courts have repeatedly rejected similar status versus conduct arguments like the one the Proposed Decision advances here. In *United States v. Windsor* (“*Windsor*”) (2013) 133 S.Ct. 2675, the Supreme Court recognized that the status of sexual orientation is fundamentally connected with conduct—such as same-sex marriage—that relates to that status. (*Id.* at p. 2693.) *Obergefell v. Hodges* (2015) 135 S.Ct. 2584 likewise recognized that status of one’s sexual orientation (homosexuality) and conduct are so interconnected that the essence of homosexual identity encompasses conduct. (*Id.* at p. 2600.) Rejecting the status versus conduct distinction, *Obergefell* held: “Under the Constitution, same-sex couples seek in marriage [i.e., conduct] the same legal treatment as opposite-sex couples, and it would disparage their choices and diminish their personhood [i.e., status] to deny them this right.” (*Id.* at p. 2602.) The majority of lower courts that have considered the anti-discrimination question at issue in this case have agreed that the U.S. Supreme Court’s decisions direct that homosexuality as a status and the conduct of same-sex marriage cannot be separated from each other.⁷¹

Thus, there is no legal distinction between the Rodriguez-Del Rio’s lesbian status and their conduct of entering into a same-sex marriage. Even Miller admits this:

15 “Q. And when gay couples get married, those
16 couples do not consist of one man and one woman, right?”

17 A. That is correct.

18 Q. When that happens, it’s a woman marrying a
19 woman or a man marrying a man, correct?

20 A. Correct.⁷²

⁷¹See *Elane Photography, LLC v. Willock* (N.M. 2013) 309 P.3d 53, 61, cert. denied, (2014) 134 S.Ct. 1787 [holding it is impossible and inappropriate “to distinguish between an individual’s status of being homosexual and his or her conduct in openly committing to a person of the same sex”]; *State v. Arlene’s Flowers* (2019) 193 Wash.2d 469, 505 [rejecting proposed distinction between status and conduct fundamentally linked to that status]; *Craig v. Masterpiece Cakeshop, Inc.* (Colo. App. 2015) 370 P.3d 272, 281 [“when the conduct is so closely correlated with the status that it is engaged in exclusively or predominately by persons who have that particular status,” the status-conduct distinction becomes “one without a difference.”]

⁷² Miller Testimony 7/28/2022, p. 170:15-20.

1 5. Q. So it is fair to say that when somebody is
2 6 talking about same-sex marriage, they are talking
3 7 about gay people?

4 8 A. Yes. Clarifying, ‘gay’ meaning
5 9 LGBTQ, the whole group?

6 10 Q. Exactly.

7 11 A. Okay.⁷³

8 17 Q. So it is fair to say
9 18 that when we are talking about same-sex marriage, we
10 19 are talking about sexual orientation?

11 20 A. Yes.”⁷⁴

12 When the law is applied to all material facts, the evidence established Defendants intentionally made
13 a distinction between the Rodriguez-Del Rios, a lesbian couple, and heterosexual couples, based on
14 the Rodriguez-Del Rios’ sexual orientation, even if the manifestation of that status in this case was
15 the act of hosting a wedding reception.

16 **2. The Proposed Decision fails to resolve, by omission and ambiguity, whether**
17 **Defendants’ referral to a competitor bakery provided full and equal services**

18 The Proposed Decision wrongly holds that a mere referral to a competitor (simply telling the
19 customer to go elsewhere) provides “full and equal services” and negates a finding of intentional
20 discrimination in violation of the Unruh Act. (Proposed Decision, ¶¶37–44.) Although the Proposed
21 Decision states that “both *Minton* [*v. Dignity Health* (2019) 39 Cal.App.5th 1155] and *North Coast*
22 [*v. Super. Ct.* (“*North Coast*”) (2008) 44 Cal.4th 1145] acknowledge that a physician with religious
23 objections to performing certain medical procedure can avoid the conflict by ensuring ‘full and equal’
24 access to that procedure by a physician who lacks the religious objections (Proposed Decision, ¶37),
25 that is not what *North Coast* says.

26 In *North Coast*, a lesbian patient sued a medical group and two of its employee physicians
27 alleging that their refusal to perform artificial insemination for her violated the Unruh Act. (*Id.* at pp.
28 1152–1153.) Defendant doctors, citing their religious beliefs and free speech rights, refused to
29 artificially inseminate the patient because of her sexual orientation. (*Ibid.*) Addressing the doctors’

⁷³ Miller Testimony 7/28/2022, p. 172:5-11.

⁷⁴ Miller Testimony 7/28/2022, p. 173:17-20.

1 free exercise defense, the Court held that their First Amendment right did not exempt them from
2 conforming their conduct to the Unruh Act’s requirement to provide “‘full and equal
3 accommodations, advantages, facilities, privileges, or service’” regardless of the patient’s sexual
4 orientation, because the Unruh Act is a “valid and neutral law of general applicability.” (*Id.* at p.
5 1150, 1154–1155, citing the Unruh Act.) Specifically, *North Coast* held: “...defendant physicians can
6 avoid such a conflict by ensuring that every patient requiring IUI receives ‘full and equal’ access to
7 that medical procedure though a ***North Coast physician*** lacking defendants’ religious objections” (*id.*
8 at p. 1159), meaning, *North Coast*, not an unaffiliated business, must provide the service.

9 **a. As a legal matter, any referral to a different bakery with different**
10 **goods and services did not negate Defendants’ discriminatory denial of**
11 **service based on sexual orientation**

12 As a legal matter, Defendants’ offer to refer the Rodriguez-Del Rios to a competitor—a
13 bakery the couple had already rejected—did not satisfy its obligation to provide full and equal
14 services. (Civ. Code, § 51.) Providing full and equal services is a straightforward concept: businesses
15 must provide their full range of goods and services to all their customers irrespective of a customer’s
16 protected characteristic. (See *Masterpiece, supra*, 138 S.Ct. at p. 1727, citing *Newman v. Piggie Park*
17 *Enters. Inc.* (“*Piggie Park*”) (D.S.C. 1966) 256 F. Supp. 941, 945, *aff’d* in relevant part (4th Cir.
18 1967) 377 F.2d 433, *aff’d* in relevant part (1968) 390 U.S. 400 [per curiam].) In *Piggie Park*, the
19 Court “refuse[d] to lend credence or support to [a business owner’s] position that he ha[d] a
20 constitutional right to refuse to serve members of the Negro race in his business establishment upon
21 the ground that to do so would violate his sacred religious beliefs.” (*Piggie Park, supra*, 256 F. Supp.
22 at p. 945; see also *Piggie Park, supra*, 390 U.S. at 402 n.5 [rejecting as “patently frivolous” the
23 “defendants’ contention that the [1964 Civil Rights Act] was invalid because it contravenes the will
24 of God and constitutes an interference with the free exercise of the Defendant’s religion” (quotation
25 marks omitted)].)

26 The Proposed Decision’s assertion that Defendants can avoid the reach of this State’s anti-
27 discrimination protections and refuse to serve gay couples if the Rodriguez-Del Rios can find other
28 bakers to serve them (Proposed Decision, ¶22) entirely misses the point of anti-discrimination laws:

1 to ensure that people will not be turned away from the place of public accommodation of their choice
2 on account of their sexual orientation or membership in other protected classifications. The “just go
3 elsewhere” argument would eviscerate the Unruh Act’s central purpose and create an unworkable
4 legal standard wherein businesses in a metropolitan area could discriminate but a business in an
5 isolated area, where there is no competitor, could not.

6 **b. The Proposed Decision omits material facts that Gimme Some Sugar**
7 **was not “equal” to Tastries**

8 Even if referral to another place of business accommodations could, in theory, satisfy the
9 Unruh Act (it cannot), here Defendants’ offer to refer the Rodriguez-Del Rios to a different bakery,
10 with different ownership, staffed by different bakers and decorators using different recipes and
11 ingredients, and located in a different facility, would not have provided equal services. Mireya
12 Rodriguez-Del Rio did not believe that the offer to refer them to Gimme Some Sugar amounted to
13 Tastries providing them with full and equal services. She testified: “No. They’re two different
14 businesses.”⁷⁵ Miller also agreed that the bakeries, their staff, and their products are different.⁷⁶ And
15 when asked about the offer to refer the couple to Gimme Some Sugar, Eileen Rodriguez-Del Rio
16 testified: “Well, it was a place that we had already went to and declined, so I don’t know how she
17 [Miller] felt like she was offering me equal services, when it’s not equal. Every – the bakeries are
18 different. They are not owned by the same person, so it’s not the same cake.”⁷⁷ The Rodriguez-Del
19 Rios wanted Defendants’ cakes, not cakes from Gimme Some Sugar. Moreover, Miller’s suggestion
20 that Gimme Some Sugar *might* take their order, in addition to being legally deficient for purposes of
21 the Unruh Act, was factually ineffective because Gimme Some Sugar offered different goods and
22 services that the couple had already decided against ordering.⁷⁸

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27 ⁷⁵ Mireya Rodriguez-Del Rio Testimony, 7/27/2022, p. 28:9-12.

28 ⁷⁶ Miller Testimony, 7/29/2022 p. 16:9-15; 16:19-17:5.

⁷⁷ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 145:24-146:2.

⁷⁸ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 131:4-23.

1 **c. The Proposed Decision fails to resolve, by omission and ambiguity,**
2 **whether there was an oral agreement between Defendants and Gimme**
3 **Some Sugar that required Gimme Some Sugar to accept the referral**
 and provide the cake for the requested date

4 Even if referral to another bakery could remedy intentionally denying the sale of a wedding
5 cake (it cannot), the Proposed Decision finds an “oral agreement” between Miller and Gimme Some
6 Sugar (Proposed Decision, ¶42), when none existed. There was no written agreement with Stephanie
7 of Gimme Some Sugar to take referrals from Tastries and there was no written process or procedure
8 for how such referrals would work.⁷⁹ Stephanie of Gimme Some Sugar just gave Miller some
9 business cards.⁸⁰ Gimme Some Sugar and Tastries were competitors and had no shared ownership
10 and were separate and different bakeries, and, as Miller admitted, Gimme Some Sugar’s wedding
11 cakes were not Tastries’ wedding cakes.⁸¹ These omitted facts show that the finding of a referral
12 arrangement is illusory.

13 The Proposed Decision also fails to consider whether there was a guarantee that Gimme Some
14 Sugar would provide the cakes to the Rodriguez-Del Rios on the date requested. Tastries admittedly
15 has no control over Gimme Some Sugar⁸² (or any other bakery). Tastries cannot guarantee the other
16 bakery will provide the same service, a cake using Tastries’ recipe, through another business over
17 which it has no control. There is no written or oral agreement that Gimme Some Sugar must fulfill
18 the order for any gay couple referred by Defendants. In short, there is no affiliation and no guarantee
19 of service, not to mention all the differences between Defendants and other bakeries. Therefore,
20 Defendants did not provide “full and equal” services by offering to refer, or even by referring, the
21 Rodriguez-Del Rios to a competitor lacking Defendants’ religious objections.

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26 ⁷⁹ Miller Testimony, 7/29/2022 p. 15:12-19.

27 ⁸⁰ Miller Testimony, 7/29/2022 p. 15:12-19.

28 ⁸¹ Miller Testimony, 7/29/2022 p. 16:9-15; 16:19-17:5.

⁸² Trial Exhibit 700B, Tastries Response to RFAs, Set 1, No. 19 [Admitted that Tastries cannot
guarantee that potential customers it refers to another bakery will actually be able to obtain a cake
from them.]

d. The Proposed Decision does not consider whether the Rodriguez-Del Rios suffered stigmatic harm

Critically, and omitted from the Proposed Decision, public accommodations laws provide protection from the “stigmatizing injury” and “deprivation of personal dignity” that necessarily “accompanies denials of equal access to public establishments.” (*Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 625.)

When the Rodriguez-Del Rios first visited Tastries bakery, they were assisted by front-end manager Perez⁸³ in filling out an order form.⁸⁴ During the ordering process, Perez was smiling and friendly to the Rodriguez-Del Rios, asking them: how many layers of cakes do you want? Do you already know flavors? Any colors? Do you have a color scheme for your wedding? For how many people?⁸⁵ After discussing the details of the cakes with Perez, the Rodriguez-Del Rios considered ordering their cakes from Tastries on the spot but, after Perez *invited* them back for a complimentary cake tasting - a promise of service - they agreed to return.⁸⁶ Perez did not tell them about the Design Standards when she took their order, even though she knew of the Policy,⁸⁷ and by inviting them back for a tasting she led them to believe Tastries had indeed accepted their order. This made the Rodriguez-Del Rios feel welcome and as if they had found the right bakery. They invited Perez to their wedding and Mireya Rodriguez-Del Rio purchased a tote bag before leaving, an obvious gesture of goodwill.⁸⁸

Over a week later, the Rodriguez-Del Rios, along with Eileen’s mother and close friends arrived at the bakery and reasonably expected to be treated like any other customers. Then, Miller took over the cake tasting and upon discovering they were a lesbian couple, told them Tastries would not serve them and that they should go elsewhere. Miller’s denial was stated in public, in front of the couple, Eileen’s mother, and two gay men in a relationship, causing severe humiliation the Unruh Act

⁸³ Perez managed the entire store and handled advance orders for birthday cakes, anniversary cakes, and other cakes. (Perez Testimony, 7/26/2022, p. 20:4-10.)

⁸⁴ Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p. 132:21-134:3; Trial Exhibit 11.

⁸⁵ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 162:21-163:5; 163:17-164:8.

⁸⁶ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 165:8-21.

⁸⁷ Perez Testimony, 7/26/2022, p. 48:7-11.

⁸⁸ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 45:8-11; p. 165:22-166:1; p. 166:17-20; Eileen Rodriguez-Del Rio, 7/27/2022, p. 137:27-138:7.

1 aims to prevent. Overwhelmed, upset, and stigmatized by Miller’s refusal to serve them because they
2 were a lesbian couple, the Rodriguez-Del Rios and their party left Tastries.⁸⁹

3 **C. Although the Proposed Decision Correctly Finds that Defendants Did Not**
4 **Establish a Defense Under the Free Exercise Clause, It Fails to Resolve, By**
5 **Omission and Ambiguity, Whether Defendants’ Commercial Activity of Baking**
6 **and Selling a Cake Constitutes a Religious Practice and that Compliance with**
7 **the Unruh Act Would Substantially Burden Defendant Miller’s Free Exercise of**
8 **Religion**

9 Plaintiff agrees with the Proposed Decision that Defendants did not establish a Free Exercise
10 of Religion defense to liability under the Unruh Act. However the Proposed Decision omits and/or
11 mischaracterizes relevant facts in holding that (1) Defendants’ commercial baking and selling of
12 cakes constitutes a religious practice, and (2) complying with the Unruh Act would substantially
13 burden Defendants’ free exercise of religion.

14 **1. The Proposed Decision fails to resolve, by omission and ambiguity, whether**
15 **Defendants’ commercial baking and selling of cakes is or is not a protected**
16 **religious practice, regardless of Miller’s sincerely held religious beliefs**

17 The Proposed Decision erroneously finds that, if Defendants provided same-sex couples with
18 a cake for their wedding reception, “Miller’s ability to practice her faith by supporting and
19 participating in marriage ceremony preparations that align with her Christian views would be stifled.
20 Miller’s participation in the wedding cake part of her business with her time, talent, and resources, is
21 inextricably linked to her sincere Christian beliefs about what the Bible teaches regarding the
22 marriage of a man and a woman as a sacrament.” (Proposed Decision, ¶56.)

23 This finding overlooks evidence that Tastries’ doors are open to the public, and the
24 Rodriguez-Del Rios did not ask Tastries or Miller to “participate in their marriage ceremony,” only to
25 provide a plain, white cake with no writing, image, or topper for their guests at the reception.
26 Commercially baking and selling a cake for a wedding reception does not constitute a protected
27 religious practice under these facts, regardless of Miller’s sincerely held religious beliefs.

28 ⁸⁹ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 168:23-174:7; Eileen Rodriguez-Del Rio
Testimony, 7/27/2022, p. 139:23-144:7.

1 Courts have rejected the argument that participating in commerce by selling goods and
2 services can constitute a religious practice to justify a defense under the Free Exercise Clause to the
3 enforcement of a public accommodations law of general applicability. (See *Piggie Park*, 256 F. Supp.
4 941 [rejecting a claim that the Free Exercise clause provided a restaurant a right to discriminate
5 against African Americans based on sincerely held religious beliefs].)

6 Since *Piggie Park*, the United States Supreme Court has clarified that, more generally, the
7 Free Exercise Clause does not allow a business to refuse to comply with neutral laws of general
8 applicability, because doing so is not protected religious exercise. (*Employment Div. v. Smith*
9 (“*Smith*”) (1990) 494 U.S. 872, 878-79 [“We have never held that an individual’s religious beliefs
10 excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to
11 regulate.”].)

12 *Smith* articulates the applicable standard for showing whether compliance with the anti-
13 discrimination law (as a neutral law of general applicability) impermissibly burdens religious practice
14 and establishes that for free exercise purposes, a law is neutral and generally applicable if it does not
15 target religion and “prohibit[s] conduct the State is free to regulate.” (*Id.* at p. 878-79.) Enforcing
16 content and viewpoint neutral public accommodations laws to prevent commercial businesses from
17 refusing to serve customers because of their race, gender, religion, or sexual orientation thus does not
18 deny the rights of free exercise (or free speech, as relevant below). (See *Smith, supra*, 494 U.S. at pp.
19 878-79; *Arcara v. Cloud Books, Inc.* (“*Arcara*”) (1986) 478 U.S. 697, 707.)

20 In *Smith*, the United States Supreme Court concluded that government action prohibits the
21 free exercise of religion in violation of the First Amendment whenever it seeks to bar an individual
22 from holding or professing whatever religious belief he chooses, but that government action does *not*
23 inhibit free exercise rights when the prohibition [e.g. application of the state law] is neutral and of
24 general applicability and merely happens to prevent an individual from engaging in religious conduct.
25 (*Smith, supra*, 494 U.S. at p. 879; see also *FEHC, supra*, at pp. 1180-1181, Mosk concurrence
26 [holding that the First Amendment’s free exercise clause grants an individual “an absolute right to
27 hold and profess whatever religious belief he chooses, but it does not grant the individual any right to
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engage in such conduct *exempt from neutral and generally applicable government action*”].)⁹⁰ The inquiry ends here: if there is a neutral and generally applicable anti-discrimination law such as the Unruh Act, there is no free exercise defense.

2. The Proposed Decision fails to resolve, by omission and ambiguity, whether, pursuant to *Smith*, the baking and selling of a cake to the Rodriguez-Del Rios would have substantially burdened Miller’s religious exercise

Smith abandoned balancing as a way of adjudicating religiously motivated challenges to generally applicable laws such as the Unruh Act. Yet, the Proposed Decision does just that when addressing whether the application of the Unruh Act to Defendants substantially burdened Miller’s free exercise of her Christian faith and addressing whether there was a less restrictive means of achieving the state’s interest. (Proposed Decision, ¶52, ¶54, ¶59.)⁹¹ Even if it were correct to apply a balancing analysis, however, the Proposed Decision reaches an incorrect conclusion that application of the Unruh Act to Defendants’ business activity would substantially burden Miller’s religious exercise.

North Coast concerned similar legal and factual issues as this case and is instructive here. *North Coast* held that “under the United States Supreme Court’s most recent holdings, a religious objector has *no federal constitutional right* to an exemption from a neutral and valid law of general applicability on the ground that compliance with that law is contrary to the objector’s religious beliefs.” (*Id.* at p. 1154, citing *Smith, supra*, 494 U.S. at p. 879 and *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (1993) 508 U.S. 520, 531.)

⁹⁰ As recognized in *FEHC*, in *Smith* the Supreme Court “abandoned the so-called ‘compelling government interest’ test.” (*FEHC, supra*, at p. 1181, citing *Smith, supra*, 494 U.S. at p. 888, fn. 4.)

⁹¹ With respect to the level of scrutiny to apply to review of the Unruh Act, Plaintiff argues for rational basis review under *Smith* (free exercise) and intermediate scrutiny review under *FAIR* (free speech). Defendants argue for strict scrutiny under both defenses. The California Supreme Court has not decided the level of scrutiny to apply in these situations. (*North Coast, supra*, 44 Cal.4th at p. 1158.) For analytical purposes only, *North Coast* cut to the chase and applied strict scrutiny review, and conclusively found that the Unruh Act satisfies strict scrutiny as the least restrictive means to achieve California’s compelling interest in prohibiting discrimination based on sexual orientation. (*North Coast, supra*, 44 Cal.4th at p. 1158.) But it did not conclude, as a matter of law, that strict scrutiny applied. As stated above, the rational basis review under *Smith* applies, but *North Coast* holds that there would be no exemption even if strict scrutiny applied.

1 Under *North Coast*, Defendants have at least three options to comply with the Unruh Act. (1)
2 Defendants can follow Unruh’s explicit language and sell all its preordered goods and provide its
3 services to all customers regardless of sexual orientation. (2) Rather than provide all services to all
4 customers irrespective of sexual orientation, Defendants may choose to cease offering preordered
5 wedding cakes for sale to anyone. (3) Miller and any employees that share her religious beliefs can
6 step aside from participating in the preparation of preordered baked goods sold to same-sex couples
7 and allow Defendants’ willing employees to manage the process. (*North Coast, supra*, at p. 1159.)⁹²
8 Under *North Coast*, the availability of these options eliminates any risk of substantial burden on
9 Miller’s religious exercise. The California Supreme Court in *FEHC, supra*, 12 Cal.4th at p. 1170
10 went even further, stating that a landlord whose religious beliefs motivated her to deny rental housing
11 to non-married couples could avoid conflict between her beliefs and FEHA “by selling her units and
12 redeploying the capital in other investments.”

13 The options presented in these cases are illustrative, but not exhaustive, of the options
14 available to Defendants to comply with the Unruh Act. By allowing for alternative methods of
15 compliance, the Unruh Act as interpreted by the California Supreme Court in *North Coast* protects
16 First Amendment rights while also ensuring compliance with the State’s interest in eliminating
17 discrimination in public accommodations based on sexual orientation. Defendants may choose any
18 option, including affiliating with a church or operating as a cottage/home baker instead of opening its
19 doors to the public if they prefer that to operating a commercial bakery that provides goods and
20 services to the public. The Proposed Decision is ambiguous as to why enforcement of the Unruh Act
21 here was a substantial burden on religious exercise given the availability of such options to
22 Defendants.

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28 ⁹² The Proposed Decision posits DFEH proffered these options. (Proposed Decision, ¶ 54.) However they come from *North Coast, supra*, at p. 1159.

1 **3. The Proposed Decision’s free exercise analysis fails to resolve, by omission**
2 **and ambiguity, factual questions regarding Miller’s actual involvement in**
3 **the cakemaking process and whether Tastries’ business operations is**
4 **religious**

5 The Proposed Decision erroneously finds that “Miller’s Tastries is a small business” and that
6 “Miller is involved in some aspect of every wedding cake’s design and creation...” (Proposed
7 Decision, ¶57.) In so finding, the Proposed Decision omits material facts, set forth more fully above
8 in Part II.A., that Tastries’ business operations are not officially affiliated with any religious
9 organization⁹³ nor is Tastries incorporated as a religious entity.⁹⁴ There is ambiguity as to whether
10 baking and selling cakes in a commercial setting constitutes a religious practice and, if so, how.
11 Moreover, Miller is not, for the most part, involved in the wedding cake design and production, and
12 there are at least sixteen Tastries’ employees at any given time taking orders and producing cakes.
13 (See Omitted Facts set forth in Part II.A.) The Proposed Decision’s ambiguous legal analysis of
14 Defendants’ free exercise defense arises, in part, from these factual omissions.

15 **D. The Proposed Decision Fails to Resolve, By Omission and Ambiguity, Whether**
16 **Baking and Selling a Plain Cake with No Writing, Image, or Topper Is Pure Speech**
17 **or Expressive Conduct**

18 The Proposed Decision holds that, assuming Defendants’ conduct did violate the Unruh Act,
19 Defendants established a defense to liability under the Free Speech Clause on the grounds that
20 Defendants’ challenged conduct—refusing to sell a plain cake with no writing, image, or topper to
21 the Rodriguez-Del Rios for their wedding reception—constituted pure speech and/or expressive
22 conduct. This conclusion arose out of omitted and/or mischaracterized facts.

23 Laws prohibiting businesses from discriminating against customers in the commercial sale of
24 goods and services do not regulate speech or expressive activity protected by the First Amendment.
25 (See *Arcara, supra*, 478 U.S. at p. 707 [holding that application of a closure statute to a bookstore did
26 not violate the First Amendment where the closure statute was directed at unlawful conduct having
27 nothing to do with books or other expressive activity].) Public accommodations laws like the Unruh

28 ⁹³ Trial Exhibit 700A, Miller’s Response to RFAs, Set 1, No. 29.

⁹⁴ Trial Exhibit 700A, Miller’s Response to RFAs, Set 1, No. 30.

Act are content-neutral, generally applicable statutes that neither compel nor regulate speech or expression. (See, e.g., *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte* (“Duarte”) (1987) 481 U.S. 537, 549; *Roberts, supra*, 468 U.S. at pp. 628-29.) The Unruh Act does not target any conduct because of its expressive content, nor does it single out businesses engaged in First Amendment protected activities for any special burden. Applying the Unruh Act to find a violation based on the trial record would not prohibit speech. It would only prohibit Defendants, in operating a business as a public accommodation, from discriminating against prospective customers like the Rodriguez-Del Rios.

1. The Proposed Decision fails to resolve, by omission and ambiguity, whether the commercial act of baking and selling a plain cake with no writing, image, or topper, constitutes pure speech

The Proposed Decision incorrectly holds that the commercial baking and selling of a plain cake with no writing, image, or topper ordered for a wedding reception constitutes pure speech, that “[t]he wedding cake has a purpose.” (Proposed Decision, ¶¶ 77, 80, 85.) These assertions are belied by the omitted facts, considered under applicable law.

Tastries has dozens of “display” cakes— Styrofoam sample cakes that provide customers with ideas—throughout the bakery.⁹⁵ To create some of these display cakes, Miller prints out cake photos she finds on Pinterest or other websites and assigns a decorator to make a replica display cake to exhibit at Tastries.⁹⁶ If a customer brings in a photo of the cake they want, Tastries strives to replicate the model cake depicted in the photo.⁹⁷ Therefore, many of Tastries’ cakes are copies, not original designs.

Because the Rodriguez-Del Rios wanted a simple cake design, for their main cake they chose a cake based on one of Tastries’ sample Styrofoam display cakes.⁹⁸ During their discussion with Perez, the Rodriguez-Del Rios selected the details of their main cake—round, three tiers, white

⁹⁵ Miller Testimony, 7/28/2022, p. 94:26-95:3.

⁹⁶ Johnson Testimony, 7/26/2022, p. 119:1-13.

⁹⁷ Johnson Testimony, 7/26/2022, p. 120:2-9.

⁹⁸ Perez Testimony, 7/26/2022, p. 121:5-11

1 buttercream frosting, decorated with frosting rosettes—along with matching sheet cakes.⁹⁹ The
2 Rodriguez-Del Rios did not request a written message, image, or cake topper.¹⁰⁰ The main cake was a
3 popular cake that Tastries often makes for events in addition to wedding receptions, including
4 anniversaries, birthdays, bridal showers, baby showers, and quinceañeras.¹⁰¹

5 Such a cake made for any wedding reception, on its own, divorced from its setting, speaks no
6 message at all. Miller admits that the cake the Rodriguez-Del Rios wanted had been ordered and
7 served at birthdays (making it a birthday cake) and quinceañeras (making it a quinceañera cake).¹⁰²
8 The cake only becomes a “wedding cake” in the context of its appearance at a wedding reception
9 hosted by the couple, not Defendants. For example, Tastries has made and provided a “shamrock
10 cake”¹⁰³ and a “Phantom of the Opera cake”¹⁰⁴ for wedding receptions, and neither cake, on their
11 own, announced anything about marriage. If a square chocolate cake is ordered by a couple to serve
12 at a wedding reception, it becomes a “wedding cake” only when it is served. The subject cake at issue
13 in this case did not have the inherent meaning the Proposed Decision ascribes to it: it was not akin to
14 an American flag or a swastika. Indeed, to Plaintiff’s awareness, no court has held a cake to be pure
15 speech. Moreover, the design of the cake is irrelevant because the denial is automatic when ordered
16 for a same-sex wedding reception, regardless of design.

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23 ⁹⁹ Mireya Rodriguez-Del Rio Testimony, 7/26/2022, p. 161:28-162:15; 163:11-164:8; 164:19-24.

24 ¹⁰⁰ Perez Testimony, 7/26/2022, p. 70:17-19; Eileen Rodriguez-Del Rio Testimony, 7/27/2022, p.
135:17-19; Mireya Rodriguez-Del Rio, 7/27/2022, p. 72:3-5; Eileen Rodriguez-Del Rio, 7/27/2022,
p. 135:20-28.

25 ¹⁰¹ Perez Testimony, 7/26/2022, p. 42:18-28; Johnson Testimony, 7/26/2022, p. 121:7-19; Miller
26 Testimony, 7/29/2022, p. 24:25-28.

27 ¹⁰² Trial Exhibit 700A, Miller’s Response to RFA No. 32 [Tastries has sold white or off-white, round,
there-tiered cakes with buttercream frosting and no written message for use as part of events other
than weddings.]

28 ¹⁰³ Johnson Testimony, 7/26/2022, p. 124:3-125:10.

¹⁰⁴ Michael Miller Testimony, 7/28/2022, p. 57:24-58:3.

1 **2. The Proposed Decision fails to resolve, by omission and ambiguity, whether**
2 **the commercial act of baking and selling a cake with no writing, image, or**
3 **topper was nonetheless expressive conduct**

4 The Proposed Decision incorrectly holds that the commercial baking and selling of a plain
5 cake with no writing, image, or topper to serve at a wedding reception constitutes expressive conduct.
6 (Proposed Decision, ¶ 78).

7 The Free Speech Clause protects only “inherently expressive” conduct. (*Rumsfeld v. Forum*
8 *for Academic and Institutional Rights, Inc.* (“FAIR”) (2006) 547 U.S. 47, 66.)¹⁰⁵ Conduct becomes
9 “sufficiently imbued with elements of communication” to be inherently expressive, and thus
10 protected by the Free Speech Clause, only where “[a]n intent to convey a particularized message was
11 present, and in the surrounding circumstances the likelihood was great that the message would be
12 understood by those who viewed it.” (*Spence v. Washington* (1974) 418 U.S. 405, 410-11; accord
13 *United States v. O’Brien* (1968) 391 U.S. 367, 376 [rejecting “the view that an apparently limitless
14 variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends
15 thereby to express an idea”].)

16 By contrast, prohibiting commercial businesses from discriminating against customers does
17 not target expressive conduct. The First Amendment “has no relevance to a statute directed at
18 imposing sanctions on nonexpressive activity.” (*Arcara, supra*, 478 U.S. at p. 707.) Here, Plaintiff
19 has not sought to enforce the Unruh Act against Defendants on the ground that they engage in
20 “artistic expression,” but instead because they discriminate against customers in the commercial sale
21 of goods and services. The act of selling customers baked goods is a distinctly nonexpressive activity;
22 it lacks the “inherently expressive quality of a parade, a newsletter, or the editorial page of a
23 newspaper.” (*FAIR, supra*, 547 U.S. at p. 64; see also *Bell v. Maryland* (1964) 378 U.S. 226, 254-55
24 (Douglas, J., concurring) [explaining that a business has no “constitutional right to pick and choose
25 its customers”].) Thus, Defendants cannot bring ordinary commercial activity within the scope of the
26 First Amendment by asserting that it has some indirect and ill-defined expressive quality—e.g., that
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¹⁰⁵ The Proposed Decision does not consider *FAIR*.

1 selling a same-sex couple a cake for their wedding reception on the same terms as all other customers
2 would communicate a personal endorsement of their marriage.

3 The First Amendment protects this type of activity only if it communicates a message that
4 will be understood, and attributed to the speaker, by a reasonable member of the public. (See *FAIR*,
5 *supra*, 547 U.S. at p. 66.) Defendants’ conduct—baking and selling plain cakes from a commercial
6 bakery—does not meet that standard. *FAIR* “rejected the view that conduct can be labeled ‘speech’
7 whenever the person engaging in the conduct intends thereby to express an idea.” (*Id.* at p. 65-66
8 quoting *United States v. O’Brien* (1968) 391 U.S. 367, 376 (quotation marks omitted).) Noting that
9 some conduct becomes “expressive” only when the actor “accompanie[s] their conduct with speech
10 explaining it,” *FAIR* explained that “[i]f combining speech and conduct were enough to create
11 expressive conduct, a regulated party could always transform conduct into ‘speech’ simply by talking
12 about it.” (*Id.* at p. 66.)

13 Here, there was no evidence that the presence of a particular cake baked and sold by Tastries
14 at a particular wedding expressed any message about Defendants’ views regarding marriage—or,
15 indeed, any other subject. (Cf. Proposed Decision ¶ 78 [claiming that “the evidence affirmatively
16 showed that defendants’ participation in the design, creation, delivery and setting up of a wedding
17 cake is *expressive conduct*, conveying a particular message of support for the marriage that is very
18 likely to be understood by those who view it”].) Even if Miller believes, as she stated at trial, that
19 “Tastries is a stamp of approval on the wedding”¹⁰⁶ simply because it provided the cake,¹⁰⁷ this does
20 not make it so. As Justice Ginsberg stated in *Masterpiece*:

21 The record in this case is replete with Jack Phillips’ own views on the messages he
22 believes his cakes convey. [Citation.] ***But Phillips submitted no evidence showing***
23 ***that an objective observer understands a wedding cake to convey a message, much***
24 ***less that the observer understands the message to be the baker’s, rather than the***
25 ***marrying couple’s.*** Indeed, some in the wedding industry could not explain what
26 message, or whose, a wedding cake conveys. [Citations.] ***And Phillips points to no***
27 ***case in which this Court has suggested the provision of a baked good might be***
expressive conduct. Cf. *ante*, at 7, n. 2 (THOMAS, J., concurring in part and
concurring in judgment); *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group*
of Boston, Inc., 515 U. S. 557, 568–579 (1995) (citing previous cases recognizing
parades to be expressive); *Barnes v. Glen Theatre, Inc.*, 501 U. S. 560, 565 (1991)

28 ¹⁰⁶ Miller testimony, 7/28/2022, p. 163:23-26.

¹⁰⁷ Miller testimony, 7/28/2022, p. 164:2-5.

1 (noting precedents suggesting nude dancing is expressive conduct); *Spence v.*
2 *Washington*, 418 U. S. 405, 410 (1974) (observing the Court’s decades-long
3 recognition of the symbolism of flags).

4 (*Masterpiece, supra*, at p. 1748, fn. 1., emphasis added (dis. opn. of Ginsberg, J.))

5 Defendants presented no evidence at trial showing that an *objective observer* (as opposed to
6 Miller’s own personal, subjective views) understands a cake at a wedding reception conveys a
7 message, much less that the observer understands the message to be Miller’s and Tastries’ rather than
8 the Rodriguez-Del Rios’. This is fatal to Defendants’ expressive conduct defense. The Proposed
9 Decision does not address the omission of important facts, including the lack of any evidence that an
10 observer would have any way of knowing whether a Tastries cake was there because Defendants
11 supported the marriage, or because the baker and the couple were personal friends, or because a bride
12 walked into a bakery and ordered a cake without introducing her fiancée. (Cf. *FAIR, supra*, 547 U.S.
13 at p. 66 [“An observer who sees military recruiters interviewing away from the law school has no
14 way of knowing whether the law school is expressing its disapproval of the military, all the law
15 school’s interview rooms are full, or the military recruiters decided for reasons of their own that they
16 would rather interview someplace else.”].)

17 Moreover, there was no evidence that Tastries, or bakeries in general, play any role in its
18 customers’ wedding receptions that reasonably suggests anything other than a commercial
19 relationship with the event or with the couple, regardless of what Miller believes. Most relevant here,
20 “the fact that a nonsymbolic act is the product of deeply held personal belief—even if the actor would
21 like to *convey* his deeply held personal belief—does not transform action into First Amendment
22 speech.” (*Nevada Comm’n on Ethics v. Carrigan* (2011) 564 U.S. 117, 127, italics original.)

23 Expressive activity must be evaluated “in context” to determine whether it is constitutionally
24 protected. (*Texas v. Johnson* (1989) 491 U.S. 397, 405.) Bakers are not wedding officiants; they do
25 not bless or celebrate the marriage. The Proposed Decision makes much of “cutting the cake” and
26 other rituals that occur at many (but not all) receptions (§86)—but the couple is holding the knife, not
27 Defendants. The message of celebration that accompanies this ritual is not communicated by the
28 cake-baker, but by the married couple, along with their family and friends. No evidence was

presented at trial to show that anyone would have understood a message from the presence or absence of a Tastries' cake at the wedding reception.

Thus, the Proposed Decision fails to resolve whether Defendants' denial of equal services to the Rodriguez-Del Rios was inherently expressive. Guests observing the absence of a Tastries cake at the Rodriguez-Del Rio's wedding reception had no way of knowing why a Tastries cake was not present. (Cf. *FAIR*, *supra*, at p. 66.)

3. The Proposed Decision fails to resolve, by omission and ambiguity, whether enforcement of the Unruh Act as to Defendants' challenged conduct would unconstitutionally compel speech

The Proposed Decision asserts that based on this record, requiring Defendants to sell a plain cake with no writing, image, or topper to a same-sex couple for their wedding reception would have unconstitutionally compelled Defendants' speech. (Proposed Decision ¶¶ 89–92.) Because Tastries' preordered cakes are neither pure speech nor inherently expressive,¹⁰⁸ compliance with the Unruh Act does not regulate Defendants' First Amendment protected activity.

a. The Proposed Decision fails to resolve, by omission and ambiguity, whether baking and selling a generic, plain cake for the Rodriguez-Del Rio's wedding reception would have compelled Defendants to support and celebrate same-sex marriages

Free speech protections prohibit the government from telling people what to say or from requiring them to "speak the government's message." (*FAIR*, *supra*, 547 U.S. at p. 61 and 63; see also *West Virginia Bd. of Ed. v. Barnette* (1943) 319 U.S. 624, 642 [schoolchildren cannot be required to recite the Pledge of Allegiance and salute the flag]; *Wooley v. Maynard* (1977) 430 U.S. 705, 717 [motorists cannot be forced to display the New Hampshire state motto—Live Free or Die—on their license plates].) Strict scrutiny under the First Amendment compelled speech doctrine

¹⁰⁸ Defendants' admissions establish that the cake ordered by the Rodriguez-Del Rios could be used for events other than a wedding, meaning the cake does not speak a message of marriage. (See Trial Exhibit 700A, Miller's Response to RFA No. 31 [White or off-white, round, three-tiered cakes with buttercream frosting and no written message can be used as part of events other than weddings.]; Exhibit 700A, Miller's Response to RFA No. 32 [Tastries has sold white or off-white, round, three-tiered cakes with buttercream frosting and no written message for use as part of events other than weddings.]

1 applies when the government forces an individual to speak a specific message. As shown above,
2 application of the Unruh Act would not achieve this end here, making the strict scrutiny doctrine
3 inapposite. (Cf. Proposed Decision ¶¶ 81, 92.)

4 As demonstrated above in Part D (1) and (2), the commercial baking and selling of a plain
5 cake with no writing, image, or topper is neither pure speech nor expressive conduct. Thus, the
6 application of the Unruh Act here to require that Defendants provide the same service (a plain cake
7 with no writing, image, or topper) to the Rodriguez-Del Rios that they would have provided to a
8 couple hosting an opposite-sex wedding reception would not unconstitutionally compel speech or
9 expressive conduct. Indeed, contrary to the Proposed Decision’s assertion that enforcement of the
10 Unruh Act here would compel Defendants to celebrate same-sex marriage (Proposed Decision, ¶91),
11 doing so would not regulate Defendants’ speech at all. As set forth above, the Rodriguez-Del Rios
12 did not ask Tastries to participate or celebrate their marriage. They only asked for a cake to serve
13 their guests at their wedding reception.

14 “The First Amendment’s plain terms protect ‘speech,’ not conduct.” (*State v. Arlene’s*
15 *Flowers, Inc.*, *supra*, 193 Wash.2d 511 quoting U.S. Const. 1st Amend.) As a general matter,
16 prohibiting discrimination (conduct) does not infringe on free speech rights. (*FAIR*, *supra*, 547 U.S.
17 at p. 62 [“Congress, for example, can prohibit employers from discriminating in hiring on the basis of
18 race. The fact that this will require an employer to take down a sign reading ‘White Applicants Only’
19 hardly means that the law should be analyzed as one regulating the employer’s speech rather than
20 conduct.]”.) Thus, free speech challenges to application of public accommodation and anti-
21 discrimination laws typically fail. This case is no exception: by prohibiting Defendants from denying
22 equal services, the Unruh Act permissibly regulates only what Defendants must *do*, not what they
23 may or may not *say*. (Cf. *FAIR*, *supra*, 547 U.S. at p. 60.) The Proposed Decision makes no factual
24 findings that could justify deviating from this clear precedent, and there are none.

25 The Unruh Act also leaves businesses like Tastries free to disclaim any message that
26 Defendants worry may be communicated in the course of providing non-discriminatory service to
27 customers. The Unruh Act does not restrict Defendants’ ability to express opinions about same-sex
28 marriage. (Cf. *FAIR*, *supra*, 547 U.S. at p. 65; cf. *North Coast*, *supra*, 44 Cal.4th at p. 1157

1 “[D]efendant[s] ... remain free to voice their objections, religious or otherwise, to [Unruh’s]
2 prohibition against sexual orientation discrimination.”.) The record evidence is replete with
3 Defendants’ statements, press interviews, and testimony that Miller holds the religious belief that
4 biblical marriage is between a man and a woman. No one is preventing Miller from stating her views,
5 and she has done so.

6 Application of the Unruh Act here is a quintessential application of a public accommodations
7 law. Tastries is a for-profit business selling its baked products from a storefront in the commercial
8 marketplace. (See *Arlene’s Flowers*, *supra*, 193 Wash.2d 469 at p. 514.) The Unruh Act does not
9 regulate Defendants’ creation of cakes. It simply requires that they provide them to everyone, without
10 regard for one’s protected status. Accordingly, the neutral law applies “to [Defendants’] business
11 operation, and in particular, [their] business decision not to offer [their] services to protected classes
12 of people,” and not their constitutionally protected speech. (*Elane Photography, LLC v. Willock*,
13 *supra*, 309 P.3d at p. 68.) Providing full and equal services to same-sex couples ordering a cake for
14 their wedding reception neither regulates Defendants’ speech nor compels it to endorse same-sex
15 marriage. (Cf. *FAIR*, *supra*, 547 U.S. at pp. 64-65.)

16 Furthermore, the Proposed Decision cites no evidence, and there was none, that by selling
17 plain cakes to paying customers Defendants would have been perceived as agreeing with its
18 customers’ beliefs. (Cf. *FAIR*, *supra*, at p. 65 [observers can “appreciate the difference between
19 speech a school sponsors and speech the school permits because legally required to do so.”]; cf.
20 *Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 558-59 [“For purposes of
21 the free speech clause, simple obedience to a law that does not require one to convey a verbal or
22 symbolic message cannot reasonably be seen [as] a statement of support for the law or its purpose.
23 Such a rule would, in effect, permit each individual to choose which laws he would obey merely by
24 declaring his agreement or opposition.”].)

25 **b. Even if the conduct at issue here were speech, enforcement of the**
26 **Unruh Act was nonetheless the least restrictive means**

27 But even if the challenged conduct in this case were speech (it is not), the application of the
28 Unruh Act to the record evidence satisfies the applicable level of constitutional review because its

1 application is the least restrictive means to accomplish California’s compelling interest in eradicating
2 discrimination. (See *North Coast*, *supra*, 44 Cal.4th at p. 1158.) A content neutral state law directed
3 at conduct—like the Unruh Act’s mandate that businesses serve all customers regardless of race,
4 gender, religion, or sexual orientation, in addition to other protected classifications—that incidentally
5 burdens freedom of speech is constitutional if “it furthers an important or substantial government
6 interest; if the governmental interest is unrelated to the suppression of free expression; and if the
7 incidental restriction on alleged First Amendment freedoms is no greater than is essential to the
8 furtherance of that interest.” (*United States v. O’Brien* (1968) 391 U.S. 367, 376-77.) Such a law
9 need only promote a substantial interest “that would be achieved less effectively absent the
10 regulation.” (*FAIR*, *supra*, 547 U.S. at pp. 67-68 quoting *United States v. Albertini* (1985) 472 U.S.
11 675, 689.) The Unruh Act satisfies *O’Brien*—a point not mentioned in the Proposed Decision.
12 Therefore, as stated in *North Coast*, the Unruh Act survives the applicable level of constitutional
13 review. As United States Supreme Court cases have held, “public accommodations laws ‘plainly
14 serv[e] compelling state interests of the highest order.’” (*Duarte*, *supra*, 481 U.S. at p. 549, quoting
15 *Roberts*, *supra*, 468 U.S. at p. 624.)

16 The Proposed Decision questions whether California’s compelling interest in combatting
17 discrimination extends to discrimination motivated by “sincerely held religious beliefs.” (Proposed
18 Decision, ¶31, ¶35, ¶54.) The answer is “yes.” Courts have refused to divide the state interest in
19 combatting discrimination into “religious” and “secular/invidious” categories. (See *Bob Jones Univ.*
20 *v. United States* (1983) 461 U.S. 574, 604-605 [holding that the federal government has a compelling
21 interest in eradicating racial discrimination based on religious opposition to interracial dating and
22 marriage].) Many forms of discrimination have been justified on the basis of “sectarian [religious]
23 doctrine.” (*Boy Scouts of Am. v. Dale* (“*Dale*”) (2000) 530 U.S. 640, 699 (Stevens, J., dissenting).)
24 This is particularly true in the context of marriage. Opposition to interracial marriage was explicitly
25 justified on religious grounds. (See *Loving v. Virginia* (1967) 388 U.S. 1, 3 [quoting the trial judge’s
26 opinion that “Almighty God” disapproved of interracial marriage].) Such discrimination is no less
27 harmful to its victims when motivated by sincerely held religious belief. Defendants have an
28 unquestioned constitutional right to hold and advocate their beliefs. The Unruh Act does not interfere

1 with that right. But California has a compelling interest in ensuring that when a business enters the
2 commercial marketplace, it does not discriminate against customers based on its owner's or
3 employees' beliefs, religious or otherwise. (See *Piggie Park, supra*, 256 F. Supp. at p. 945; *North*
4 *Coast, supra*, 44 Cal.4th 1145.)

5 The Unruh Act directly combats the economic, personal, and social harms caused by
6 discrimination. By guaranteeing full and equal access to the commercial marketplace, these laws
7 ensure that gay citizens are not denied "tangible goods and services." (*Roberts, supra*, 468 U.S. at pp.
8 625-26; see also *Romer v. Evans* (1996) 517 U.S. 620, 631 ["[T]hese are protections against
9 exclusion from an almost limitless number of transactions and endeavors that constitute ordinary
10 civic life."].) Given these "compelling state interests of the highest order" directly served by public
11 accommodations laws, (*Duarte, supra*, 481 U.S. at p. 549 (quotation marks omitted), the First
12 Amendment does not require creating an exemption from these laws based on a business owner's
13 views. There is no justification for doing so based on the record here.

14 **c. The Proposed Decision fails to resolve, by omission and ambiguity,**
15 **whether there is a difference between governmental efforts to prohibit**
16 **discrimination by commercial enterprises as compared to speech by**
non-commercial, expressive associations

17 The Proposed Decision has not identified a single case in which a court expressed concern
18 about the constitutionality of a state's effort to prohibit discrimination by commercial enterprises.
19 Instead, relying on *Hurley v. Irish American Gay, Lesbian & Bisexual Group of Boston* (1995) 515
20 U.S. 557 (Proposed Decision, ¶70), the Proposed Decision seeks to extend protections afforded to
21 private, non-commercial organizations engaged in activity at the core of the First Amendment's
22 protections—expressive association—to cover discrimination by commercial businesses and
23 "stretch[es] a number of First Amendment doctrines well beyond the sort of activities these doctrines
24 protect." (*FAIR, supra*, 547 U.S. at p. 70.) As the Court pointed out in *Hurley*, a state's attempt to
25 dictate who marches in a private parade implicates speech and associational rights that are not at
26 issue in cases involving discrimination by ordinary commercial enterprises. (See *Hurley, supra*, 515
27 U.S. at pp. 572-73; see also *Roberts, supra*, 468 U.S. at p. 638 (O'Connor, J., concurring).)
28

1 Tastries is a “clearly commercial entity” and not a private, non-commercial organization.
2 (*Dale, supra*, 530 U.S. at p. 657.) Defendants’ sale of goods and services is not analogous to putting
3 on a parade, and unlike the expressive associational rights addressed in *Dale*, Defendants’ have no
4 protected expressive interest in their relationship with its customers. (See *FAIR, supra*, 547 U.S. at p.
5 69 [holding that *Dale* is inapplicable to cases that do not involve state attempts to force an
6 “expressive association” to “accept members it does not desire”]; *Roberts, supra*, 468 U.S. at p. 638
7 (O’Connor, J., concurring); *Bell, supra*, 378 U.S. at pp. 254-55 (Douglas, J., concurring).)
8 California’s compelling interest in prohibiting discrimination in the commercial marketplace is
9 directly implicated by a commercial bakery’s refusal to serve same-sex couples in a way that it would
10 not be by the activities of a non-commercial, distinctly private group. (Cf. *Dale, supra*, 530 U.S. at
11 pp. 657-59; *Hurley*, 515 U.S. at p. 578.)

12 Were courts to adopt the Proposed Decision’s overly broad approach to protected speech
13 under the First Amendment, it would re-entrench the “community-wide stigma” against gay couples
14 (*Masterpiece, supra*, 138 S.Ct. at p. 1727) and vitiate the “general rule” that a business’s objections
15 to same-sex marriage “do not allow business owners ... to deny protected persons equal access to
16 goods and services under a neutral and generally applicable public accommodations law.” (*Ibid.*,
17 citing *Piggie Park, supra*, 390 U.S. at p. 402, fn. 5.)

18 **III. OBJECTIONS TO THE PROPOSED JUDGMENT**

19 Pursuant to California Rules of Court, Rule 3.1590(g), Plaintiff objects to the proposed
20 judgment and entry of said judgment because (1) Plaintiff did establish a violation of the Unruh Act
21 and Defendants did not establish defenses under the Free Exercise Clause or the Free Speech Clause
22 and (2) therefore Defendants should not be judged to be prevailing parties, and Defendants are not
23 entitled to fees or costs. Alternatively, if the Court finds Defendants to be the prevailing party,
24 Defendants are not entitled to fees or costs because Plaintiff’s action was not frivolous within the
25 meaning of Government Code section 12965, subdivision (c)(6).

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff objects to the Proposed Decision and Proposed Judgment.
3 Plaintiff respectfully requests the Court reconsider the Proposed Decision and Proposed Judgment
4 according to Plaintiff's objections and set a hearing on the matter.

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8 Dated: December 05, 2022

CALIFORNIA CIVIL RIGHTS DEPARTMENT

9
10
11 By:


Kendra Tanacea
Attorneys for CRD (formerly DFEH)

PROOF OF SERVICE BY ELECTRONIC MAIL

I am a citizen of the United States and am employed in Los Angeles County. I am over the age of eighteen (18) years and not a party to the within action. My business address is 320 West 4th Street, Suite # 1000, Los Angeles, California 90013.

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On the date below I served by electronic mail:

**PLAINTIFF CRD'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING)
OBJECTIONS TO DEFENDANTS' PROPOSED STATEMENT OF DECISION AND
PROPOSED JUDGMENT**

(In the matter of *Department of Fair Employment & Housing vs. Cathy's Creations, Inc., et al.*
(*Eileen Rodriguez-Del Rio, et al., Real Parties in Interest*); Case Number: BCV-18-102633) to each
of the persons named below, addressed follows:

☒ **By E-Mail** by forwarding a true and correct copy of the above document(s) via e-mail to the person(s) at the e-mail address(es) set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Executed on December 05, 2022, at Los Angeles, California.

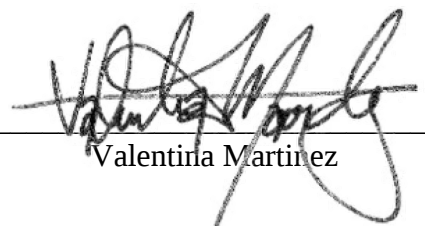

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF KERN

17 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
18 California,

19 Plaintiff,

20 v.

21 CATHY'S CREATIONS, INC. d/b/a
TASTRIES, a California Corporation; and
22 CATHARINE MILLER, an individual,

23 Defendants.

24 EILEEN RODRIGUEZ-DEL RIO and
MIREYA RODRIGUEZ-DEL RIO,

25 Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' PROPOSED
STATEMENT OF DECISION**

Trial Date: July 25, 2022

Time: 9:00 a.m.

Div.: J

Judge: Hon. J. Eric Bradshaw

Action Filed: Oct. 17, 2018

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a. “The Proposed Decision fails to resolve, by omission and ambiguity, whether baking and selling a generic, plain cake for the Rodriguez-Del Rio’s wedding reception would have compelled Defendants to support and celebrate same-sex marriages.”12

b. “Even if the conduct at issue here were speech, enforcement of the Unruh Act was nonetheless the least restrictive means.”12

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I. INTRODUCTION

As the party responsible for filing the Proposed Statement of Decision, to which Plaintiff DFEH has filed forty pages of objections, Defendants have reviewed those objections, and prepared the below response to assist the Court in ruling upon them. (See Code Civ. Proc., § 632 [“After a party has requested the statement, any party may make proposals as to the content of the statement of decision.”].) Defendants’ review indicates that the objections are procedurally improper, primarily consisting of re-argument against the Court’s factual and legal conclusions, which is not proper in objections to a statement of decision. (See Code Civ. Proc., § 634; Cal. Rules of Court, rule 3.1590(g).)

Substantively, the objections track Plaintiff DFEH’s October 31 request for a statement of decision. Only one of the objections is even procedurally proper (*i.e.*, actually identifying a material “omission or ambiguity,” Code Civ. Proc., § 634)—Plaintiff’s request for an explicit “stigma” finding. (See § II.B.2.d, *infra*.) As Defendants noted in their initial November 9 response, however, this is not a “principal controverted issue,” Code Civ. Proc., § 632, and so an explicit finding is not necessary. But if the Court wishes to make one, Defendants have offered a proposed finding. (See Defendants’ Response & Objections to Plaintiff’s Request for a Statement of Decision (Nov. 9, 2022) § III; see also addition in § II.B.2.d, *infra*.) In response to Plaintiff DFEH’s improper objections, Defendants have also identified one other potential amendment that the Court could make to the Proposed Statement of Decision regarding intermediate scrutiny. This is explicitly not necessary and is left to the Court’s discretion. (See § II.D.3.b, *infra*.)

This is now the fourth time that Defendants have had to respond to Plaintiff DFEH’s same legal arguments: (1) in the petition proceeding; (2) at summary judgment; (3) during motions in limine; and (4) at trial (in response to Plaintiff’s 31 page trial brief). These are all the same arguments that two judges have now rejected. Reviewing Plaintiff’s objections reveals that they are in actuality a premature motion for a new trial. (See Code Civ. Proc., § 656 [“A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a ... court”]; § 657 [“decision may be modified” through granting new trial on basis of “[i]nsufficiency of the evidence to justify the ... decision” or “[e]rror in law”].) Thus, Plaintiff DFEH will apparently have the

1 opportunity to re-package these arguments a fifth time, even if the Court summarily overrules all of
2 its objections, which it should do.

3 Recognizing the large volume of Plaintiff DFEH's frivolous objections, Defendants have
4 drafted the below response in summary fashion, addressing the objections in as brief a manner as
5 possible. Defendants' table of contents within Section II also mirrors Plaintiff's verbatim, for ease
6 of cross-reference.

7 **II. RESPONSE TO THE FOLLOWING FRIVOLOUS "OBJECTIONS"**

8 "The main purpose of an objection to a proposed statement of decision is *not to reargue the*
9 *merits*, but to bring to the court's attention *inconsistencies* between the court's ruling and the
10 document that is supposed to embody and explain that ruling." (*Heaps v. Heaps* (2004) 124
11 Cal.App.4th 286, 292 [italics added].) It is also a proper "purpose for objections to a statement of
12 decision ... to identify issues presented during the trial which are not addressed in the decision." (*Id.*
13 at 293.) Thus, when the "objections were sixty-seven pages arguing that the evidence should be
14 reweighed in her favor," such "objections went to the underlying *merits* of the proposed decision,
15 not its *conformity* with what the trial court had previously announced," and therefore could be
16 ignored. (*Id.* at 292 [original italics].)

17 A party may not use the procedure for requesting a statement of decision to seek an
18 "inquisition" or a "rehearing of the evidence." (*People v. Casa Blanca Convalescent Homes, Inc.*
19 (1984) 159 Cal.App.3d 509, 525.) As part of this, it is not proper to object to a statement of decision
20 on the basis that "there really was no evidence to support most of the statements in the statement of
21 decision," as a party is "perfectly free to point out that lack of evidence in th[e] appeal from the
22 merits of the judgment." (*Heaps, supra*, 124 Cal.App.4th at 292, fn.4.)

23 Here, in significant part, Plaintiff's December 5 objections are a re-tread of its October 31
24 request for a statement of decision. As explained in Defendants' initial November 9 response to that
25 request, Plaintiff DFEH simply seeks reconsideration of this Court's legal and factual conclusions.
26 Instead of identifying a material "omission or ambiguity," Plaintiff's objections consist almost
27 entirely of arguing that the Court's conclusions are simply erroneous and should be reconsidered—
28

often by falsely stating that no evidence supported a finding. But there is no factual or legal reason for the Court to reconsider its decision.

A. “The Proposed Decision Fails to Resolve, By Omission and Ambiguity, the Nature and Extent of Tastries’ Business Operations Which Is Material to the Court’s Legal Analysis of the Unruh Civil Rights Act Claim and Defendants’ Affirmative Defenses.”

Plaintiff DFEH first begins by asserting that “[t]he Proposed Decision states that Tastries is a small, religiously-themed bakery with only Miller and her husband and a few employees (Prop. Dec., ¶¶1, 8, 57), instead of the fast-paced, fully staffed commercial operation Tastries, in fact, is.” (Plt. Obj., p.2:13-15.) As is clear from this statement, Plaintiff DFEH is simply asking the Court to re-weigh the evidence and reconsider its conclusion that “Miller’s Tastries is a small business.” (Prop. Dec., ¶57.) There is no reason for the Court to do so.¹

1. “A team of Tastries employees is responsible for baking, decorating, and selling Tastries’ products.”

This section raises two main points. First, Plaintiff DFEH criticizes the statement of decision for failing to focus on Tastries Bakery’s separate legal status and for-profit nature. (Plt. Obj., p.3:5-13.) But the statement of decision notes that there are two distinct defendants, and identifies Miller as the sole shareholder of Tastries Bakery. (Prop. Dec., ¶1.) The additional details that Plaintiff DFEH raises (such as separate tax returns and bank accounts) are irrelevant.

Second, Plaintiff DFEH cites a supposed litany of “overwhelming” evidence to dispute the statement of decision’s conclusions in paragraphs 6 and 57 that Defendant Miller is involved in all aspects of her bakery. (Plt. Obj., pp.3:14-6:10 & fn.16-36.) There is no reason for the Court to re-weigh the evidence.

2. “Tastries is not religiously affiliated.”

Plaintiff DFEH next takes issue with the statement of decision’s failure to make a specific factual finding that “Tastries is not religiously affiliated.” (Plt. Obj., pp.2:18-22, 6:11-22.) According to Plaintiff, because it “is not a religious entity or affiliated with any religious organization, [it] therefore has no religious basis for rejecting cakes for same-sex couples[.]” (Plt.

¹ Notably, this section is incorporated by reference into Section II.C.3, *infra*, as it primarily concerns Plaintiff DFEH’s free exercise contentions.

Obj., p.2:19-21.) This is an erroneous premise and therefore no additional factual finding is needed. (See Defendants’ Response & Objections to Plaintiff’s Request for a Statement of Decision (Nov. 9, 2022) § IV; *Masterpiece Cakeshop, Ltd v. Colorado Civil Rights Comm.* (2018) 138 S.Ct. 1719 [for-profit bakery succeeded using free exercise defense].)

B. “The Proposed Decision Fails to Resolve, By Omission and Ambiguity, Whether Defendants’ Conduct Violates the Unruh Act.”

This section has two-subsections, dealing with the two elements of the Unruh Civil Rights Act: (1) intentional discrimination on the basis of a protected characteristic; and (2) the provision of full and equal services. This section largely involves a repeat of Plaintiff DFEH’s trial brief and motions in limine, merely re-arguing the law, and contains nothing that need be re-addressed, except potentially the stigmatic harm finding that Defendants proffered in their original response to Plaintiff’s request for a statement of decision; however, that is not a principal issue.

1. “The Proposed Decision omits relevant facts, considers immaterial facts, and contains ambiguities on the material issue of the nature of Defendants’ motivation in refusing to sell the Rodriguez-Del Rios a cake and whether those facts constitute a motivating factor for the denial.”

a. “The Unruh Act does not require a showing of malice or arbitrariness; evidence that Defendants ‘made a distinction’ motivated at least in part by a protected classification suffices.”

In this section, Plaintiff DFEH simply lays out its understanding of the law. Plaintiff DFEH argues that under the Unruh Act, “[a] substantial motivating reason does not have to be the only reason motivating the denial of goods and services” (Plt. Obj., p.7:23-24 [citing CACI No. 2507] [cleaned up]), and that “a business owner may violate the Unruh Act and, at the same time, be following their sincerely held religious beliefs.” (Plt. Obj., p.10:8-9.) In this section, there is no actual objection and therefore nothing to address. Moreover, even if these are generally correct legal standards, Plaintiff DFEH still seeks to misapply them in this case, as explained below.

b. “Because of its material factual omissions and ambiguities, the Proposed Decision fails to resolve whether sexual orientation was a substantial motivating factor for Defendants’ refusal to sell the Rodriguez-Del Rios a cake.”

Next, Plaintiff DFEH states that “[t]he Proposed Decision omits material facts and is

1 ambiguous as to whether Defendants’ perception of the Rodriguez-Del Rios as a lesbian couple was
2 a ‘motivating factor’ in Defendants’ decision to deny them goods and services, even if their sexual
3 orientation was not the *only* factor.” (Plt. Obj., p.10:13-16 [original italics].) This is not true. The
4 Proposed Decision clearly states: “The evidence affirmatively showed that Miller’s *only* intent, her
5 *only* motivation, was fidelity to her sincere Christian beliefs.” (Prop. Dec., ¶31 [italics added].)

6 Plaintiff DFEH then puts forward a “but for” causation argument. Plaintiff argues that
7 Defendants’ religious beliefs only ever result in the refusal of services and goods to same-sex
8 couples” (not true) and so “‘but for’ the Rodriguez-Del Rios’ sexual orientation, Defendants
9 would have served them and sold them the cakes they sought for their wedding reception.” (Plt.
10 Obj., p.12:5-9.) This is strange because “but for” does not apply in the Unruh Act context. (*Harris*
11 *v. City of Santa Monica* (2013) 56 Cal.4th 203, 226-230.) In any event, this section boils down to an
12 argument that the evidence shows that at least one of Defendants’ motivating reasons for their
13 action was the Real Parties’ sexual orientation. (See Plt. Obj., pp.10:22-12:9 & fn.45-57.) But there
14 is no need for the Court to re-weigh the selective evidence that Plaintiff DFEH cites.

15 **c. “The Proposed Decision fails to resolve, by omission and ambiguity,**
16 **whether application of Defendants’ Design Standards only result in the**
17 **denial of services to same-sex couples.”**

18 Here, Plaintiff DFEH takes issue with the statement of decision’s interpretation of
19 Defendants’ design standards. In paragraph 33, it states:

20 Miller and Tastries do not design and do not offer to *any* person—regardless of
21 sexual orientation—custom bakery items that “violate fundamental Christian
22 principles.” Miller and Tastries do not design and do not offer to *any* person—
23 regardless of sexual orientation—custom wedding cakes that “contradict God’s
24 sacrament of marriage between a man and a woman.” The evidence showed that
25 Eileen and Mireya requested a wedding cake, the design for which was at odds
26 with the Tastries standards pertaining to “fundamental Christian principles” and
27 “God’s sacrament of marriage between a man and a woman.”

28 (Prop. Dec., ¶33 [original italics].)

Plaintiff DFEH states that this “incorrectly characteriz[es] the Design Standards ... as
being ... neutral with regard to sexual orientation,” and that “[t]his is an oxymoron” because the
Design Standards “only exclude[] gay and lesbian couples.” (Plt. Obj., pp.12:15-17, 13:18-25.) First,
this argument misunderstands “intent” under the Unruh Act. Making a distinction on the basis of a

1 conduct closely associated with a protected characteristic can be *evidence* of hidden discriminatory
2 intent, but is not itself *proof* of discriminatory intent. (See *Koebke v. Bernardo Heights Country Club*
3 (2005) 36 Cal.4th 824, 853-854 [cited at Prop. Dec., ¶28].)

4 Second, on its face, the Design Standards prohibit: (1) cakes for a marriage between a man
5 and two women; (2) cakes for a marriage between a man and a child; (3) cakes for a marriage
6 between a man and a parrot (see Prop. Dec., ¶88), and (4) cakes for a marriage that denies the
7 “sacrament[al]” nature of marriage. (See Prop. Dec., ¶13.) For example, *303 Creative LLC v. Elenis*
8 concerns a website designer who wishes to design custom wedding websites, including by
9 interviewing the bride and groom and writing their story, but only in a manner consistent with her
10 religious beliefs. This excludes both same-sex weddings *and* de-sacramentalized opposite-sex
11 weddings. In response to questions from Justice Barrett, counsel for the website designer confirmed
12 that she would not write “their story” for two hypothetical couples:

13 So I want to ask you a hypothetical about a heterosexual couple that comes to your
14 client, and their wedding story, you know, that they want to write under the
15 engagement story page goes like this: We are both cisgender and heterosexual, but
16 that is irrelevant to our relationship which transcends such categories. We knew
17 we were soulmates from the moment that we met and on and on....

18 A heterosexual couple comes to her and in the engagement story part writes a
19 story that goes like this: We met at work, we were both married to other people,
20 but what began as late nights at the office quickly turned into love. After six
21 months, we realized we could be happy only with each other, so we decided to
22 begin our story today, got divorced, and are marrying each other.

23 (Oral Argument Transcript at 18:5-20:23, *303 Creative LLC v. Elenis*, Supreme Court No. 21-476
24 (argued Dec. 5, 2022), [https://www.supremecourt.gov/oral_arguments/argument_transcripts/](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-476_8n59.pdf)
25 [2022/21-476_8n59.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/21-476_8n59.pdf).)

26 Plaintiff DFEH also states that “Defendants do not enforce the design standard for any
27 other principle that Miller ascribes to her Christian faith, just same-sex marriage,” and cited
28 “gotcha” style questions establishing alleged inconsistencies in how Miller understands the
requirements of her faith. (Plt. Obj., pp.14:1-21 & fn.63-67; see also Plt. Obj., p.12:2-3.) It is simply
not true that Defendants’ only concern is with same-sex weddings (see Prop. Dec., ¶¶8-13), and
there is no reason why the Court should re-weigh Plaintiff DFEH’s alleged inconsistencies to see

whether they are sufficient evidence of a pretext for discrimination when “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others[.]” (*Fulton v. City of Philadelphia* (2021) 141 S.Ct. 1868, 1876.)

d. “The Proposed Decision relies on irrelevant evidence that Defendants do not discriminate based on sexual orientation in other contexts.”

Here, Plaintiff DFEH states that the statement of decision should not include allegedly irrelevant factual findings that Defendants have served LGBT customers in non-wedding contexts and have employed LGBT employees, because “[t]he Unruh Act exists to prevent not only outright exclusion, but also separate and unequal treatment[.]” (Plt. Obj., p.15:8-9 [citing Prop. Dec., ¶¶5, 32].) Despite Plaintiff’s legal recitation, these factual findings are important evidence that Defendants’ intent is *never* to discriminate on the basis of sexual orientation, including in this case.

e. “The Proposed Decision fails to resolve, by omission and ambiguity, whether Defendants’ refusal, alleged to be based only on the conduct of entering into a same-sex marriage, constitutes discrimination based on the protected status of sexual orientation.”

This section takes issue with the statement of decision’s paragraphs 31-36, all concerning “intentional discrimination” under the Unruh Act. Plaintiff DFEH first copies and pastes its “status v. conduct” argument, which was already extensively briefed. (Plt. Obj., pp. 16:4-18:17; see Plaintiff DFEH’s Motion in Limine, No. 1 (July 8, 2022) § II, pp.3:24-10:22.) Plaintiff DFEH then focuses on Defendant Miller’s testimony that “it is fair to say” that only members of the LGBT community enter into same-sex marriages. (Plt. Obj., pp.18:18-19:12.)

But Defendants do not distinguish between status (member of the LGBT community) and conduct (participant in a same-sex marriage). Rather, Defendants distinguish between status (member of the LGBT community) and message (creating speech supporting same-sex marriage). If the former were the case, Defendants would not serve individuals who have entered into a same-sex marriage in any context (*i.e.*, creating birthday cakes, etc.), and would bar them entirely from their store. Defendants will serve and have served members of the LGBT community generally, and they will also generally serve people who have entered into same-sex marriages. What they will not do is accept commissions to create speech supporting same-sex marriage—*requested by anybody*.

1 This was also already briefed (see Defendants’ Opposition to Plaintiff DFEH’s Motion in Limine,
2 No. 1 (July 18, 2022) § III.A, pp.4:4-13:6), and is included in the statement of decision, at
3 paragraphs 77 and 80.

4 **2. “The Proposed Decision fails to resolve, by omission and ambiguity, whether**
5 **Defendants’ referral to a competitor bakery provided full and equal services.”**

6 **a. “As a legal matter, any referral to a different bakery with different goods**
7 **and services did not negate Defendants’ discriminatory denial of service**
8 **based on sexual orientation.”**

9 Plaintiff DFEH erroneously states that the statement of decision simply misinterprets *Minton*
10 *v. Dignity Health* (2019) 39 Cal.App.5th 1155, and that a referral can never constitute full and equal
11 services. (Plt. Obj., pp.20:12-21:5.) There is no reason for the Court to revisit its legal conclusion.

12 **b. “The Proposed Decision omits material facts that Gimme Some Sugar**
13 **was not ‘equal’ to Tastries.”**

14 Plaintiff DFEH next asks the Court to reconsider its factual finding on “full and equal
15 services.” The statement of decision provides: “DFEH argues that the referral to a ‘different
16 bakery, with different ownership, staffed by different bakers and decorators using different recipes
17 and ingredients, and located in a different facility’ does not satisfy the ‘full and equal’ access
18 requirement. This court disagrees.” (Prop. Dec., ¶40.) Citing the same evidence, Plaintiff DFEH
19 continues to make this argument, but there is no reason for the Court to reconsider.

20 **c. “The Proposed Decision fails to resolve, by omission and ambiguity,**
21 **whether there was an oral agreement between Defendants and Gimme**
22 **Some Sugar that required Gimme Some Sugar to accept the referral and**
23 **provide the cake for the requested date.”**

24 The statement of decision reads: “*Minton* does not state the two hospitals would need a
25 ‘written or oral’ agreement for the referral to satisfy the ‘full and equal’ service requirement, as
26 DFEH suggests. [But, in any event,] The evidence in present case affirmatively showed that Miller
27 had such an ‘oral agreement’ with Stephanie at *Gimme Some Sugar*. No evidence was presented
28 otherwise.” (Prop. Dec., ¶42.) Plaintiff DFEH says there was no oral agreement, but continues to
cite no supporting evidence, so no change is needed.

///

1 d. **“The Proposed Decision does not consider whether the Rodriguez-Del**
2 **Rios suffered stigmatic harm.”**

3 In this section, Plaintiff DFEH criticizes the statement of decision for failing to include a
4 finding on “stigmatizing injury” suffered by the Real Parties. (Plt. Obj., pp.23:3-24:2.) Such a
5 discussion properly occurs in the strict scrutiny analysis of a constitutional defense—not as part of
6 an analysis of the Unruh Act itself.² As Defendants have previously explained, in that context, such
7 a finding is unnecessary. Defendants leave it to the Court’s discretion as to whether such a finding
8 should be included. (See Defendants’ Response & Objections to Plaintiff’s Request for a Statement
9 of Decision (Nov. 9, 2022) § III [stating finding is unnecessary, but drafting proposed finding].)
10 The only potential addition Defendants would add to their prior proffer and in response to this
11 section is:

- 12 • Moreover, any stigmatizing harm that the Real Parties may have received was not
13 the result of being turned away for who they are. Defendants did *not* deny them
14 service on the basis of their sexual orientation, but because of Defendants’ religious
15 inability to send a message supporting same-sex marriage.

16 C. **“Although the Proposed Decision Correctly Finds that Defendants Did Not Establish**
17 **a Defense Under the Free Exercise Clause, It Fails to Resolve, By Omission and**
18 **Ambiguity, Whether Defendants’ Commercial Activity of Baking and Selling a Cake**
19 **Constitutes a Religious Practice and that Compliance with the Unruh Act Would**
20 **Substantially Burden Defendant Miller’s Free Exercise of Religion.”**

21 1. **“The Proposed Decision fails to resolve, by omission and ambiguity, whether**
22 **Defendants’ commercial baking and selling of cakes is or is not a protected**
23 **religious practice, regardless of Miller’s sincerely held religious beliefs.”**

24 This section makes the nonsensical argument that the Court should find that “baking and
25 selling a cake for a wedding reception does not constitute a protected religious practice[.]” (Plt.

26 ² In a constitutional analysis, the issue has arisen in the Free Exercise context, *Masterpiece Cakeshop,*
27 *Ltd v. Colorado Civil Rights Comm.* (2018) 138 S.Ct. 1719, 1727, and the Freedom of Association
28 context, *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 625. It is expressly not a permissible issue in
the Free Speech context: “the public expression of ideas may not be prohibited merely because the
ideas are themselves offensive to some of their hearers.” (*Matal v. Tam* (2017) 137 S.Ct. 1744, 1763
[collecting cases]; accord *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995)
515 U.S. 557, 574, 578-579.)

Obj., p.24:24-25.) In support, Plaintiff pivots and cites cases for the proposition that where a neutral and generally applicable law burdens free exercise rights, there is no defense beyond arguing that the law lacks any rational basis. (Plt. Obj., pp.25:1-26:3.) For the first proposition, the Court cannot rule that Defendants’ religious practice is not an actual “religious practice,” unless it finds it pretextual—which is clearly not the case. (See *Capitol Hill Baptist Church v. Bowser* (D.D.C. 2020) 496 F.Supp.3d 284, 295 [“It is for the Church, not the District or this Court, to define for itself the meaning of ‘not forsaking the assembling of ourselves together.’ Hebrews 10:25.”].) For the second proposition, the Court has already concluded that the Unruh Act is neutral and generally applicable. (Prop. Dec., ¶60.) Nothing else need be done here.

2. “The Proposed Decision fails to resolve, by omission and ambiguity, whether, pursuant to *Smith*, the baking and selling of a cake to the Rodriguez-Del Rios would have substantially burdened Miller’s religious exercise.”

In this section, Plaintiff DFEH simply asks the Court to reconsider its substantial burden analysis. (See Plt. Obj., pp.26:7-27:22; Prop. Dec., ¶¶52-58.) But Plaintiff simply repeats its prior arguments. There is nothing to do here.

3. “The Proposed Decision’s free exercise analysis fails to resolve, by omission and ambiguity, factual questions regarding Miller’s actual involvement in the cakemaking process and whether Tastries’ business operations is religious.”

This section merely incorporates by reference the objections in Section A above. (Plt. Obj., p.28:4-13.) There is nothing that needs to be corrected.

D. “The Proposed Decision Fails to Resolve, By Omission and Ambiguity, Whether Baking and Selling a Plain Cake with No Writing, Image, or Topper Is Pure Speech or Expressive Conduct.”

1. “The Proposed Decision fails to resolve, by omission and ambiguity, whether the commercial act of baking and selling a plain cake with no writing, image, or topper, constitutes pure speech.”

Here, Plaintiff DFEH asks the Court to reconsider its factual conclusions that Defendants’ wedding cakes are pure speech (Plt. Obj., pp.29:12-30:16), but cites both the pure speech paragraph (Prop. Dec., ¶77), and the expressive conduct paragraphs (Prop. Dec., ¶¶80, 85). There is no meaningful reason identified why the Court should re-weigh the evidence; the Court should not do so. (See Prop. Dec., ¶83 [“What DFEH dismissively characterizes as a ‘blank cake’ and ‘baked

goods,’ Miller and Tastries intend as a creation that ‘*speaks*’ a ‘meaningful,’ ‘positive,’ ‘affirming’ message of support for a marriage. She does not want to speak a different message. Yet that is precisely what DFEH wants her to do.”] [quoting Design Standards].)

2. **“The Proposed Decision fails to resolve, by omission and ambiguity, whether the commercial act of baking and selling a cake with no writing, image, or topper was nonetheless expressive conduct.”**

In this lengthy section, Plaintiff DFEH asks the Court to reconsider its conclusion that Defendants’ creation and provision of custom wedding cakes constitutes expressive conduct. (Plt. Obj., pp.31:4-34:6; Prop. Dec., ¶¶78-88.) Under expressive conduct: (1) “a message may be delivered by conduct that is intended to be communicative” and (2) “that, in context, would reasonably be understood by the viewer to be communicative.” (*Clark v. Community for Creative Non-Violence* (1984) 468 U.S. 288, 294.) Under the second prong, a “narrow, succinctly articulable message is not a precondition of constitutional protection,” otherwise, the “painting of Jackson Pollock, music of Arnold Schönberg, or Jabberwocky verse of Lewis Carroll” would not be protected. (*Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557, 569; accord *Shurtleff v. City of Boston* (2022) 142 S.Ct. 1583, 1598 [conc. opn. of Alito, J.])

In support, Plaintiff states: (1) “there was no evidence that the presence of a particular cake baked and sold by Tastries at a particular wedding expressed any message about Defendants’ view regarding marriage—or, indeed, any other subject” (Plt. Obj., p.32:13-15); (2) “Defendants presented no evidence at trial showing that an *objective observer* (as opposed to Miller’s own personal, subjective views) understands a cake at a wedding reception conveys a message” (Plt. Obj., p.33:5-7); and (3) “there was no evidence that Tastries, or bakeries in general, play any role in its customers’ wedding receptions that reasonably suggests anything other than a commercial relationship with the event or with the couple.” (Plt. Obj., p.33:17-19.) None of these statements are true; there is no need for any modification here.³

³ In this section, Plaintiff relies heavily on *Rumsfeld v. FAIR* (2006) 547 U.S. 47. Yet, during oral argument in *303 Creative LLC*, Chief Justice Roberts, who authored *FAIR*, appeared dismissive of the government’s argument that the case would be a basis of regulating speech in the wedding context. (See Oral Argument Transcript at 64:9-66:7, *303 Creative LLC v. Elenis*, Supreme Court

1 **3. “The Proposed Decision fails to resolve, by omission and ambiguity, whether**
2 **enforcement of the Unruh Act as to Defendants’ challenged conduct would**
3 **unconstitutionally compel speech.”**

4 **a. “The Proposed Decision fails to resolve, by omission and ambiguity,**
5 **whether baking and selling a generic, plain cake for the Rodriguez-Del**
6 **Rio’s wedding reception would have compelled Defendants to support**
7 **and celebrate same-sex marriages.”**

8 This section assumes that the Court has reconsidered its pure speech and expressive
9 conduct analyses, discussed above, and then asks the Court to reconsider its conclusion that the
10 relief Plaintiff seeks would compel speech. (Plt. Obj., pp.34:18-36:24.) Beyond re-arguing the law,
11 Plaintiff states: “the Proposed Decision cites no evidence, and there was none, that by selling plain
12 cakes to paying customers Defendants would have been perceived as agreeing with its customers’
13 beliefs.” (Plt. Obj., p.36:16-18.) This is a slanted and incorrect recitation of the law of both pure
14 speech and expressive conduct, and an incorrect application of the law to the facts of this case, so
15 no modification is needed here.

16 **b. “Even if the conduct at issue here were speech, enforcement of the**
17 **Unruh Act was nonetheless the least restrictive means.”**

18 Here, Plaintiff DFEH first asks the Court to make a finding that intermediate scrutiny
19 would be satisfied. (Plt. Obj., p.37:2-15.) But this Court rightly concluded that strict scrutiny, not
20 intermediate scrutiny, is the appropriate test. (Prop. Dec., ¶89.) In any event, under intermediate
21 scrutiny, a law is valid if: “[1] if it is within the constitutional power of the Government; [2] if it
22 furtheres an important or substantial governmental interest; [3] if the governmental interest is
23 unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First
24 Amendment freedoms is no greater than is essential to the furtherance of that interest.” (*Anderson*
25 *v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1059, fn.3.) Plaintiff DFEH’s application of
26 the Unruh Act here clearly fails under prongs 2-3 and 4 because the fact that government finds
27 speech offensive is a basis for protecting it, not restricting it, and because there are less restrictive
28 means of achieving the government’s legitimate interests in ensuring same-sex couples actually

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1 receive wedding cakes. (See *Matal v. Tam* (2017) 137 S.Ct. 1744, 1764 [lead opn.] [applying
2 intermediate scrutiny].)⁴ Thus, the Court could add the following to the end of paragraph 59:

- 3 • Any greater restriction on Defendants’ rights would not be essential to the
4 furtherance of the government’s legitimate interests, such that even intermediate
5 scrutiny would not be satisfied.

6 Plaintiff DFEH next pivots to an argument that the Court has implicitly concluded that the
7 government lacks a “compelling interest in combatting discrimination ... motivated by ‘sincerely
8 held religious beliefs.’” (Plt. Obj., p.37:16-18.) But the statement of decision instead finds that there
9 was no discrimination. (Prop. Dec., ¶¶31-36.) Plaintiff DFEH argues that courts previously rejected
10 spurious, purported religious bases for engaging in racial discrimination (Plt. Obj., pp.37:16-38:13),
11 but this is not a case about racial discrimination. The parties have already briefed these issues; no
12 modification is necessary.

13 c. **“The Proposed Decision fails to resolve, by omission and ambiguity,
14 whether there is a difference between governmental efforts to prohibit
15 discrimination by commercial enterprises as compared to speech by non-
commercial, expressive associations.”**

16 Finally, Plaintiff DFEH asks the Court to make a finding distinguishing between the First
17 Amendment rights of “commercial enterprises” and “non-commercial organizations.” (Plt. Obj.,
18 p.38:18-21.) But Plaintiff fails to define the contours of what would make an entity “commercial”
19 enough for this distinction to matter. (See *Irish-American Gay, Lesbian and Bisexual Group of Boston*
20 *v. City of Boston* (1994) 418 Mass. 238, 248, fn.13 [concluding that parade was a public
21 accommodation because it charged a fee for participation], rev’d sub nom. *Hurley v. Irish-American*
22 *Gay, Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557.) Courts generally make no such
23 distinction. (See *Burwell v. Hobby Lobby Stores, Inc.* (2014) 573 U.S. 682, 714-716; *NIFLA v. Becerra*
24 (2018) 138 S.Ct. 2361, 2372.) No modification is warranted.

25
26 ⁴ The Court in *Matal* held that the restriction could not satisfy even intermediate scrutiny, and
27 therefore did not reach strict scrutiny. Justice Thomas wrote separately to make clear that strict
28 scrutiny should apply. (*Matal, supra*, 137 S.Ct. at 1769 [conc. opn. of Thomas, J.].) His view in this
respect would later prevail. (See *NIFLA v. Becerra* (2018) 138 S.Ct. 2361 [maj. opn. of Thomas J.].)

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III. CONCLUSION

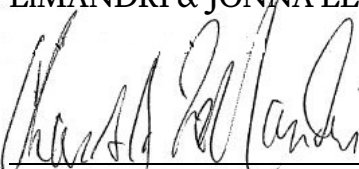
For the foregoing reasons, Plaintiff's purported objections to the proposed statement of decision are frivolous and procedurally defective. Only one of them need be considered by the Court, and, if deemed appropriate, can be resolved through the Court's exercise of its discretion. Thus, there is no good cause to set a hearing on the objections (Cal. Rules of Court, rule 3.1590(k)), and no good cause to extend the December 12, 2022 deadline for the Court to enter the judgment. (Cal. Rules of Court, rule 3.1590(l).) The Court should either sign the proposed statement of decision as is, or incorporate the minor additions that Defendants identified in their initial November 9 response and above, all of which are within the Court's sound discretion.

Respectfully submitted,

LIMANDRI & JONNA LLP

Dated: December 8, 2022

By:



Charles S. LiMandri

Paul M. Jonna

Mark D. Myers

Jeffrey M. Trissell

Robert E. Weisenburger

Milan L. Brandon II

Attorneys for Defendants Cathy's

Creations, Inc. and Catharine Miller

COURT OF THE STATE OF CALIFORNIA KERN COUNTY SUPERIOR COURT - METROPOLITAN DIVISION		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) Dept. of Fair Employment & Housing v. Cathy's Creations, Inc. dba Tastries		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, SBN 110841 Paul M. Jonna, SBN 265389 LiMANDRI & JONNA LLP P.O. Box 9120 Rancho Santa Fe, California 92067 Tele: (858) 759-9930; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendants CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California Corporation; and CATHY MILLER, an individual	HEARING Dept. J	CASE NO.: BCV-18-102633 JUDGE: Hon. J. Eric Bradshaw

CERTIFICATE OF SERVICE

I, Kathy Denworth, declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is P.O. Box 9520, Rancho Santa Fe, CA 92067, Telephone number (858) 759-9948; Facsimile number (858) 759-9938. I further declare that I served the following document(s) on the parties in this action:

- **DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS TO DEFENDANTS' PROPOSED STATEMENT OF DECISION .**

by one or more of the following methods of service to:

Jamie L. Crook, Chief Counsel
Nelson Chan, Assistant Chief Counsel
Kendra Tanacea, Associate Chief Counsel
Soyeon C. Mesinas, Staff Counsel
California Civil Rights Department
320 West 4th Street, Suite 1000
Los Angeles, California 90013
Tel: (213) 439-6799
Fax: (888) 382-5293
E-Mail: Jamie.crook@dfeh.ca.gov
E-Mail: Nelson.chan@dfeh.ca.gov
E-Mail: Kendra.tanacea@dfeh.ca.gov
E-Mail: Soyeon.mesinas@dfeh.ca.gov
**Attorneys for Plaintiff Department of Fair
Employment and Housing**

 X **(BY U.S. MAIL)** I caused such document(s) to be sealed in envelopes, and with the correct postage thereon fully prepaid, either deposited in the United States Postal Service or placed for collection and mailing following ordinary business practices.

 (BY E-MAIL/ELECTRONIC MAIL) I caused a copy of the foregoing document(s) to be sent to the persons at the e-mail addresses listed above, this date via internet/electronic mail.

 X **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service through the One Legal System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 8, 2022.

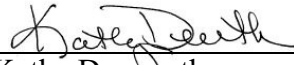

Kathy Denworth

Exhibit TTT

EXHIBIT LISTPage 1 of 5Case #: **BCV-18-102633**

Party: Department of Fair Employment and Housing VS Cathy's Creations, Inc.

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: J

Counsel for Parties: Gregory Mann, Kendra Tanacea, and Soyeon C. Mesinas / Charles Limandri, Paul M. Janna, Jeffrey M. Trissell

Exhibit #	Date I/D	Date Evidence	Description	Previous Ex. #
*****JOINT EXHIBITS*****				
001-001	07/25/2022	07/28/2022	Photo of Cakes/Boutique Store	
001-006	07/25/2022	07/28/2022	Photo of Cakes/Boutique Store	
231-013	07/25/2022	07/28/2022		
7B-003	07/25/2022	07/28/2022	Photo of 6 Tier Cake	
7B-011	07/25/2022	07/28/2022	Photo of table and desserts	
7B-025	07/25/2022	07/28/2022	Photo of 3 Tier Cake	
7B-059	07/25/2022	07/28/2022	Photo of 6 Tier Cake	
8	07/25/2022	07/27/2022	Tastries Bakery Standard of Service, bates numbered CM26, CM646, CM662-CM663	
104-001	07/26/2022	07/26/2022	Tastries Order form dated 06/22	
11	07/26/2022	07/27/2022	Tastries Bakery Form re Eileen & Mireya Rodriguez - Del Rio [DFEH00180]	
2	07/27/2022	07/27/2022	Seven photographs depicting Tastries Bakery display cakes	
3	07/27/2022	07/27/2022	Tastries Bakery blank order forms [DFEH00041-00050]	
10	07/27/2022	07/27/2022	Check to Gimmee Some Sugar from Cathy's Creations, dated 09/07/2016	
554	07/27/22	07/27/2022	Social Media Post regarding Tastries dated 08/26/2017	
627-A	07/25/22	07/27/2022	Photos of the Rodriguez-Del Rio's wedding, bates # DFEH00295-DFEH00299	
630	07/27/22	07/27/2022	Rodriguez-Del Rio wedding day schedule, bates # DFEH00237	
631	07/25/22	07/27/2022	Photo of 3 tier white wedding cake with flowers, bates # DFEH00175	
555-A	07/27/2022	07/28/2022	Eileen Rodriguez-Del Rio's Facebook Review of Tastries, dated 08/26/2017, bates # CM1903	
7B-42	07/27/2022	07/27/2022	Photo of 4 tier cake	
7B-54	07/27/2022	07/27/2022	Photo of 3 tier cake	Here
7B-1	07/27/2022	07/27/2022	Photo of 7 tier cake	
7B-13	07/27/2022	07/27/2022	Photo of 5 tier cake	
7B-92	07/27/2022	07/27/2022	Photo of 5 tier cake	
671	07/27/2022	07/27/2022	Text messages to Patrick Salazar, Mireya Rodriguez	
568	07/28/2022		Social media post and comments	
553 D - 3	07/27/2022	07/28/2022	Social media comments/likes	
553 D - 1	07/27/2022		Social media comments/likes	
553 D - 7	07/28/2022	07/28/2022	Social media comments/likes	
553 D - 29	07/28/2022	07/28/2022	Social media comments/likes	

JCA

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RETURNED/RELEASED Exhibit numbers released: _____Attorney: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(Signature)Attorney: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(Signature)Agency: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(BPD, KCSO, etc.)

AA02517

EXHIBIT LISTPage 2 of 5Case #: **BCV-18-102633**

Party: Department of Fair Employment and Housing VS Cathy's Creations, Inc.

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: J

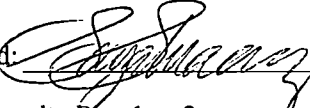
Counsel for Parties: Gregory Mann, Kendra Tanacea, and Soyeon C. Mesinas / Charles Limandri, Paul M. Jonna, Jeffrey M. Trissell

Exhibit #	Date I/D	Date Evidence	Description	Previous Ex. #
			*****Joint Exhibits*****	
103	07/27/2022	07/27/2022	Tastries Cake Tasting Sign-in Sheet (08/26/2017) [DFEH00026-00027]	
104	07/26/2022	07/27/2022	Elena Davis Cake Order Form (06/22/2017) [DFEH00028-00031]	
108	07/27/2022	07/27/2022	Receipt from the Rodriguez-Del Rios' First Trip to Tastries (08/17/2017) [DFEH00179]	
110	07/27/2022	07/27/2022	Photo of Marriage Certificate	
111	07/27/2022	07/27/2022	Metro Special Events of Rental Agreement and House Rules dated 08/17/2016	
113	07/26/2022	07/27/2022	Email Chain Between Mireya Rodriguez-Del Rio and Natalie Boatwright aka Natalie Martens re Cake Tasting 08/23/2017 [DFEH 00184-00185]	
114	07/26/2022	07/27/2022	Text Exchange between Mireya Rodriguez-Del Rio	
115	07/27/2022	07/27/2022	Articles of Incorporation of Cathy's Creations, Inc. and Bylaws 12/20/2012 [CM00001-00023]	
117	07/27/2022	07/27/2022	Cathy's Creations, Inc. dba Tastries	
118	07/27/2022	07/27/2022	Cathy's Creations Inc. Registration with State of California, Secretary of State 08/28/2017; 01/31/2013 [DFEH0010100103]	
123	07/26/2022	07/27/2022	Photos of Tastries Cakes Exh #3 from 02/24/2022 Deposition of Def. Catharine Miller and Others	
125	07/26/2022	07/27/2022	Photograph of Tastries Display Cake [DFEH00166]	
126	07/27/2022	07/27/2022	Photo of Tastries Four Tier Cake [CM00978]	
127	07/27/2022	07/27/2022	Photo of Tastries Slot Machine Cake [DFEH00999]	
128	07/27/2022	07/27/2022	Photo of Tastries 3 tier Baby Shower Cake [DFEH00984]	
129	07/27/2022	07/27/2022	Photo of Tastries 3 tier cake [DFEH00981]	
138	07/27/2022	07/27/2022	Adam Ramos and Ted Freitas Cake Order and Pymnt Transfer to Gimme Some Sugar 09/27/2017 [DFEH00036-00039]	
139	07/27/2022	07/27/2022	Ted G. Freitas Facebook Post regarding Tastries Discrimination 08/26/2017 [CM1900-1902]	
140	07/27/2022	07/27/2022	Patrick Grijalva Salazar email exchange with DeCoeur Bake Shop re Wedding Tasting and Attachments [DFEH00222-00234]	
144	07/27/2022	07/27/2022	Facebook messages between Jessica Criollo and Eileen Rodriguez Del-Rio re Wedding Cake [DFEH00246-257]	
150	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text Exchange re wedding planning [dep exh 503]	
151	07/26/2022	07/27/2022	Eileen and Mireya Rodriguez-Del Rio, Sam Salazar and Patrick Grijalva Salazar Text exchange re wedding dresses/tux [dep exh 504]	
152	07/27/2022	07/27/2022	Eileen and Mireya Rodriguez-Del Rio, Sam Salazar and Patrick Grijalva Salazar Text exchange re bouquet, shoes, cake [dep exh 505]	
153	07/27/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re flower and dress colors [dep exh 506]	
154	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting and bouquet [dep exh 507]	
155	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting [dep exh 509]	
156	07/27/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting availability [dep exh 511]	
157	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re Tastries cake tasting confirmation [dep exh 515]	
498	07/26/2022	07/27/2022	Email between Eileen Del Rio and Don Martin with Metro Galleries dated 08/14/2016 - 08/15/2016 bates # DFEH00307-DFEH00310	

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(Signature)Agency: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(BPD, KCSO, etc.)

AA02518

EXHIBIT LISTPage 3 of 5Case #: **BCV-18-102633**

Party: Department of Fair Employment and Housing VS Cathy's Creations, Inc.

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: J

Counsel for Parties: Gregory Mann, Kendra Tanacea, and Soyeon C. Mesinas / Charles Limandri, Paul M. Jonna, Jeffrey M. Trissell

Exhibit #	Date I/D	Date Evidence	Description	Previous Ex. #
			*****Joint Exhibits*****	
553 D -19	07/27/2022	07/28/2022	Social media comments/likes	
553 D - 23	07/27/2022	07/28/2022	Social media comments/likes	
553 D -38	07/27/2022	07/28/2022	Social media comments/likes	
553 D - 13	07/27/2022	07/28/2022	Social media comments/likes	
700A	07/28/2022	07/29/2022	Defendant Catharine Miller's Objections & Responses to Request for Admission Set One	
700B	07/28/2022	07/29/2022	Defendant Cathy's Creations, Inc. dba Tastries Bakery's Objections and Responses to Requests for Admissions Set One	
134	07/28/2022	07/29/2022	Tastries Employee List dated 3/1/22	
1 - 003	07/28/2022	07/28/2022	1 page photo	
1 - 004	07/28/2022	07/28/2022	1 page photo	
1 - 005	07/28/2022	07/28/2022	1 page photo	
1 - 010	07/28/2022	07/28/2022	1 page photo	
1 - 013	07/28/2022	07/28/2022	1 page photo	
1 - 014	07/28/2022	07/28/2022	1 page photo	
231 - 001	07/28/2022	07/28/2022	1 page photo	
231 - 002	07/28/2022	07/28/2022	1 page photo	
231 - 004	07/28/2022	07/28/2022	1 page photo	
231 - 005	07/28/2022	07/28/2022	1 page photo	
231 - 006	07/28/2022	07/28/2022	1 page photo	
231 - 008	07/28/2022	07/28/2022	1 page photo	
231 - 009	07/28/2022	07/28/2022	1 page photo	
231 - 010	07/28/2022	07/28/2022	1 page photo	
231 - 012	07/28/2022	07/28/2022	1 page photo	
231 - 013	07/28/2022	07/28/2022	1 page photo	
5 - 001	07/28/2022	07/28/2022	1 page document titled Tastries bakery-boutique-events; bottom right corner reads DFEH00091	
5 - 002	07/28/2022	07/28/2022	1 page document bottom right corner reads DFEH00092	
5 - 004	07/28/2022	07/28/2022	1 page document bottom right corner reads DFEH00094	
4 - 036	07/28/2022	07/28/2022	1 page document titled Tastries bakery-boutique-events Design Standards	
4 - 001	07/28/2022	07/28/2022	1 page document bottom right corner reads CM-0900	
4 - 015	07/28/2022	07/28/2022	1 page document title Layered Cake Stands	

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(BPD, KCSO, etc.)

AA02519

EXHIBIT LISTPage 4 of 5Case #: **BCV-18-102633**Party: Department of Fair Employment and Housing VS Cathy's Creations, Inc.Judge: BradshawJCA: Suzanne Sayabuaovong

Dept: _____

Counsel for Parties: Gregory Mann, Kendra Tanacea, and Soyeon C. Mesinas / Charles Limandri, Paul M. Jonna, Jeffrey M. Trissell

Exhibit #	Date I/D	Date Evidence	Description	Previous Ex. #
			*****Joint Exhibits*****	
5-003	07/29/2022	07/29/2022	1 page document bottom right corner reads DFEH00093	
4-022	07/28/2022	07/28/2022	1 page document titles Fun Shapes Take the Cake	
7A-001	07/28/2022	07/28/2022	1 page photo of cookie cutters	
7A-011	07/28/2022	07/28/2022	1 page photo of two tier cake	
7B-013	07/28/2022	07/28/2022	1 page photo of five tier cake	
7B-014	07/28/2022	07/28/2022	1 page photo of three tier cake	
7B-015	07/28/2022	07/28/2022	1 page photo of five tier cake	
7B-017	07/28/2022	07/28/2022	1 page photo of four tier cake	
7B-024	07/28/2022	07/28/2022	1 page photo of three tier cake	
7B-030	07/28/2022	07/28/2022	1 page photo of five tier cake	
7B-031	07/28/2022	07/28/2022	1 page photo of five tier cake	
7B-134	07/28/2022	07/28/2022	1 page photo of four tier cake	
7B-052	07/28/2022	07/28/2022	1 page photo of bottom right reads CM-0988	
13A	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
13D	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
13E	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
13F	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
13G	07/28/2022		1 page photo of three tier cake	
14A	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
14B	07/28/2022		1 page document titled "This exhibit is contained on provided flashdrive"	
231-014	07/28/2022	07/28/2022	1 page photo	
553B-001	07/27/2022	07/27/2022	Copy of a social media post	
553A-001	07/27/2022	07/27/2022	Copy of a social media post	
130	07/29/2022	07/29/2022	3 page document	
131	07/29/2022	07/29/2022	5 page document - Environment Health Permit	
132	07/29/2022	07/29/2022	2 page document titled California State Board of Equalization Seller's Permit	
133	07/29/2022	07/29/2022	4 page document titled California Secretary of State Electronic Certified Copy	
148	07/29/2022	07/29/2022	2 page document of an email subject: Re: Rodriguez/Del Rio Wedding October 7	
104-002	07/26/2022	07/27/2022	1 page document Tastries Bakery Receipt dated 06/22/2017	

JCA

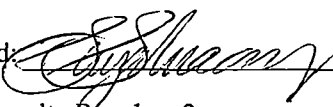
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(Signature)Attorney: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(Signature)Agency: _____ Name: _____ Date: _____ Released by Clerk Initials: _____
(BPD, KCSO, etc.)

AA02520

Exhibit UUU



Superior Court of California
County of Kern
Bakersfield Division J

Date: 12/27/2022

Time: 8:00 AM - 5:00 PM

BCV-18-102633

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S CREATIONS, INC.

Courtroom Staff

Honorable: J. Eric Bradshaw

Clerk: Erin Montgomery

NATURE OF PROCEEDINGS: RULING

The court has received, reviewed and considered the proposed statement of decision prepared by defendants, plaintiff's objections thereto, and defendants' response to plaintiff's objections. The proposed statement of decision fully and accurately explains the legal and factual basis for the court's decision as to each of the principal controverted issues at trial. Defendant's objections to the proposed statement of decision are OVERRULED.

RULING
Page 1 of 3

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S
CREATIONS, INC.

BCV-18-102633

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the ***Ruling dated December 27, 2022*** attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: December 27, 2022

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: December 27, 2022

By: Erin Montgomery
Erin Montgomery, Deputy Clerk

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S CREATIONS, INC.
BCV-18-102633

MAILING LIST

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LAW OFC
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NELSON H CHAN
DEPT FAIR EMPLOYMENT AND HOUSING
2218 KAUSEN DR #100
ELK GROVE CA 95758

KENDRA L TANACEA
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

SOYEON C MESINAS
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

JAIME L CROOK
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

Exhibit VVV

ELECTRONICALLY RECEIVED 11/9/2022 8:58 AM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

v.

CATHY’S CREATIONS, INC. d/b/a
TASTRIES, a California Corporation; and
CATHARINE MILLER, an individual,

Defendants.

EILEEN RODRIGUEZ-DEL RIO and
MIREYA RODRIGUEZ-DEL RIO,

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

JUDGMENT

JUDGMENT

1 **JUDGMENT**

2 Plaintiff the Department of Fair Employment and Housing, on behalf of the State of
3 California, brought this civil action under Government Code section 12965 against Defendants
4 Cathy's Creations, Inc. dba Tastries and Catharine Miller, alleging a violation of the Unruh Civil
5 Rights Act, Civil Code section 51, as incorporated into the Fair Employment and Housing Act,
6 Government Code section 12948, based on the administrative complaint of Real Parties in Interest
7 Eileen Rodriguez-Del Rio and Mireya Rodriguez-Del Rio.

8 This action came on regularly for court trial on July 29, 2022, in the Superior Court of Kern
9 County, Division J of Metropolitan Division Justice Building, the Hon. J. Eric Bradshaw presiding;
10 the plaintiff appearing by attorneys Gregory J. Mann, Kendra Tanacea, and Soyeon C. Mesinas, and
11 the defendants appearing by attorney Charles S. LiMandri, Paul M. Jonna, and Jeffrey M. Trissell.
12 The Court's Statement of Decision is attached hereto and incorporated by reference.

13 On Plaintiff the Department of Fair Employment and Housing's civil action:

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is hereby
15 rendered and to be entered in favor of Defendants Cathy's Creations, Inc. dba Tastries and
16 Catharine Miller, and against Plaintiff Department of Fair Employment and Housing for the reasons
17 stated in the attached Statement of Decision.

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Cathy's
19 Creations, Inc. dba Tastries and Catharine Miller are deemed the prevailing party for purposes of
20 the right to recover litigation costs and fees as permitted by law. Therefore, Judgment in favor of
21 Defendants and against Plaintiff shall include costs in the amount of \$_____ and
22 attorneys' fees in the amount of \$_____.

23 **IT IS SO ORDERED.**

JUDGE OF THE SUPERIOR COURT

24 Dated: Signed: 12/27/2022 12:14 PM



Hon. J. Eric Bradshaw

Exhibit WWW

1/5/2023 2:35 PM

Kern County Superior Court

By Veronica Urena, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

v.

CATHY'S CREATIONS, INC. d/b/a
TASTRIES, a California Corporation; and
CATHARINE MILLER, an individual,

Defendants.

EILEEN RODRIGUEZ-DEL RIO and
MIREYA RODRIGUEZ-DEL RIO,

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

**NOTICE OF ENTRY OF JUDGMENT
AND STATEMENT OF DECISION**

Div.: J

Judge: Hon. J. Eric Bradshaw

Action Filed: October 17, 2018

1 **TO: PLAINTIFF AND ITS ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a Judgment, in the above-referenced matter was entered on
3 December 27, 2022. A conformed copy of said Judgment is attached hereto as Exhibit "A" and a
4 conformed copy of the Statement of Decision, entered on December 27, 2022, is attached hereto
5 as Exhibit "B."

6

7

8

9 Dated: January 5, 2023

By:

LiMANDRI & JONNA LLP

Charles S. LiMandri

Paul M. Jonna

Mark D. Myers

Jeffrey M. Trissell

Robert E. Weisenburger

Milan L. Brandon II

Attorneys for Defendants Cathy's

Creations, Inc. and Catharine Miller

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EXHIBIT A

ELECTRONICALLY RECEIVED 11/9/2022 8:58 AM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

v.

CATHY’S CREATIONS, INC. d/b/a
TASTRIES, a California Corporation; and
CATHARINE MILLER, an individual,

Defendants.

EILEEN RODRIGUEZ-DEL RIO and
MIREYA RODRIGUEZ-DEL RIO,

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

JUDGMENT

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JUDGMENT

Plaintiff the Department of Fair Employment and Housing, on behalf of the State of California, brought this civil action under Government Code section 12965 against Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller, alleging a violation of the Unruh Civil Rights Act, Civil Code section 51, as incorporated into the Fair Employment and Housing Act, Government Code section 12948, based on the administrative complaint of Real Parties in Interest Eileen Rodriguez-Del Rio and Mireya Rodriguez-Del Rio.

This action came on regularly for court trial on July 29, 2022, in the Superior Court of Kern County, Division J of Metropolitan Division Justice Building, the Hon. J. Eric Bradshaw presiding; the plaintiff appearing by attorneys Gregory J. Mann, Kendra Tanacea, and Soyeon C. Mesinas, and the defendants appearing by attorney Charles S. LiMandri, Paul M. Jonna, and Jeffrey M. Trissell. The Court's Statement of Decision is attached hereto and incorporated by reference.

On Plaintiff the Department of Fair Employment and Housing's civil action:
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment is hereby rendered and to be entered in favor of Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller, and against Plaintiff Department of Fair Employment and Housing for the reasons stated in the attached Statement of Decision.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller are deemed the prevailing party for purposes of the right to recover litigation costs and fees as permitted by law. Therefore, Judgment in favor of Defendants and against Plaintiff shall include costs in the amount of \$_____ and attorneys' fees in the amount of \$_____.

IT IS SO ORDERED.

JUDGE OF THE SUPERIOR COURT

Dated: Signed: 12/27/2022 12:14 PM

Hon. J. Eric Bradshaw

EXHIBIT B

FILED
KERN COUNTY SUPERIOR COURT
12/27/2022

BY Urena, Veronica
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

v.

CATHY'S CREATIONS, INC. d/b/a
TASTRIES, a California Corporation; and
CATHARINE MILLER, an individual,

Defendants.

EILEEN RODRIGUEZ-DEL RIO and
MIREYA RODRIGUEZ-DEL RIO,

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

STATEMENT OF DECISION

STATEMENT OF DECISION

AA02536

INTRODUCTION

1. Plaintiff Dept. of Fair Employment and Housing (“DFEH”) filed this enforcement action under the Unruh Civil Rights Act on behalf of real parties in interest Eileen Rodriguez-del Rio (“Eileen”) and Mireya Rodriguez-del Rio (“Mireya”). Eileen and Mireya have a homosexual sexual orientation, and were married in California in December 2016. The defendants are Catharine Miller (“Miller”) and Cathy’s Creations, Inc. Miller is the sole shareholder of Cathy’s Creations, Inc., which is a small boutique and bakery doing business as “Tastries.”

2. DFEH alleges the defendants discriminated against Eileen and Mireya in 2017 because of their sexual orientation, in violation of the Unruh Civil Rights Act. DFEH failed to prove its claim. The evidence showed that real parties in interest have standing. However, DFEH failed to prove the discriminatory intent required under the Unruh Civil Rights Act. The evidence also affirmatively showed that defendants offered full and equal service to real parties in interest by referring them to a comparable bakery. These issues are dispositive.

3. To complete the trial record, this court has determined the remaining issues raised by the parties, assuming—for the sake of the discussion—DFEH had proven its cause of action. Defendants’ state and federal constitutional defense based on the free exercise of religion fail, based on controlling California authority. DFEH is barred by defendants’ right to Free Speech under the First Amendment of the U.S. Constitution from enforcing the Unruh Civil Rights Act to compel or prohibit defendants’ speech.

FACTUAL BACKGROUND

4. Miller is a married woman of sincere Christian faith. She and her husband of over 40 years met at church, where her husband was formerly a church youth director. Miller was a school teacher for approximately 30 years while she raised a family and also pursued interests in floral arranging, event planning and baking. In 2013, she started “Tastries.”

5. The bakery items that Miller sells at Tastries include items that are made for the bakery case, and items that are made to fill custom orders. The case items are not made for a particular purpose, they are replenished frequently as needed, and they are for sale to anyone on a “first-come, first-served” basis. The custom bakery items are ordered in advance and are made for

1 particular events, such as a birthdays, quinceañeras, and weddings.

2 6. The process of making wedding cakes varies, depending on the design, e.g., number
3 of tiers, type of cake, ingredients, flavors, colors, frosting, decorations and finish. The specific
4 ingredients may change depending on the venue and anticipated environmental conditions for the
5 cake before it is cut and served. Custom orders are often delivered to the venue, and are artistically
6 “constructed” on site. The entire process generally involves three to six people. Miller is personally
7 involved in every production-related aspect of her bakery, and, as it pertains to wedding cakes, she
8 is personally involved in *some* aspect of the design and making of virtually every wedding cake.

9 7. Approximately 70 percent of all custom orders at Tastries are wedding cakes,
10 ranging from four to twelve deliveries each week depending on the season. In 2017, custom
11 wedding cake orders represented approximately \$10,000-\$12,000, or twenty percent, of Miller’s
12 ~~gross~~ ^{monthly} revenues at Tastries. In addition to direct revenues, custom wedding orders generate indirect
13 revenues from referrals by guests and vendors at the weddings. Total revenues associated with
14 wedding orders approximate 25-30 percent of Miller’s business. Miller developed order forms
15 specifically for custom wedding cake orders.

16 8. The uncontroverted evidence showed that Miller’s sincere faith permeates her life
17 and work, and is “founded on God’s word.” As it pertains to the present case, Miller testified,
18 “God’s word says in Genesis that God created man and woman in his likeness, and marriage was
19 between a man and a woman.” Miller testified that the teaching “throughout the Bible” is that,
20 “Marriage is between a man and a woman and is very, very sacred, and it’s a sacrament...” As the
21 owner of Tastries, Miller considers herself a “steward” of “the Lord’s business he put in [her]
22 hands,” and that she “cannot participate in something that would hurt him and not abide by his
23 precepts in the Bible.” Much of Tastries décor includes Christian symbols and messages, such as
24 crosses and Bible verses, and it openly displays and sells such items. During design consultations
25 for wedding cakes, Miller discusses the meaning and religious significance of a wedding cake.

26 9. Over time, Miller has established written design standards for all custom bakery
27 items. The design standards are part of the employee handbook. The standards are rooted in
28 Miller’s Christian beliefs, which are in turn rooted in the Bible, and have evolved in response to

1 Miller's experiences with peoples' custom orders. Some of the requests people have made include
2 orders for "penis cookies," "breast cookies and cakes," marijuana-related items (when marijuana
3 laws changed), and designs with "adult cartoons." The design standards address such requests.
4 Miller created the bakery design standards to conform to her Christian faith in the Bible and what
5 she believes the Bible teaches regarding marriage.

6 10. There were several versions of the design standards in existence during the relevant
7 time frame in 2017, but those versions vary in only minor detail. All versions quote a Bible verse at
8 the bottom of the page, "Whatever is true, whatever is noble, whatever is right, whatever is pure,
9 whatever is lovely, whatever is admirable—if anything is excellent or praiseworthy—think about
10 such things." The concepts from that quote form the introductory question for all Tastries bakery
11 designs: "Is it lovely, praiseworthy, or of good report?"

12 11. Two versions of the design standards refer to the custom bakery design being
13 prepared "as a Centerpiece to Your Celebration." Each version refers to "options that we can offer
14 at Tastries," or "our criteria for what we are able to offer." One version includes the statement, "If
15 we are unable to meet your design needs, we can refer you to several other bakers and bakeries in
16 town." Another version asks, "Is the design based on godly themes...?" A number of such themes
17 are listed as part of the question. The design standard also states: "Our cakes are a reflection of our
18 business and speak volumes when sitting center stage."

19 12. In August 2017, the design standards stated, in relevant part:

20 * * * * *

21 All custom orders must follow Tastries Design Standards:

- 22 • Look as good as it tastes, and taste as good as it looks []
 - 23 • Beautiful and balanced: size is proportional to design
 - 24 • Complimentary colors: color palettes are compatible; work with the design
 - 25 • Appropriate design suited to the celebration theme
 - 26 • Themes that are positive, meaningful and in line with the purpose
 - 27 • We prefer to make cakes that would be rated PG or G
- 28

1 Order requests that do not meet Tastries Design Standards and we do not offer:

- 2 • Designs promoting marijuana or casual drug use
- 3 • Designs featuring alcohol products or drunkenness
- 4 • Designs presenting explicit sexual content
- 5 • Designs portraying anything offensive, demeaning or violent
- 6 • Designs depicting gore, witches, spirits, and satanic or demonic content
- 7 • Designs that violate fundamental Christian principals; wedding cakes must not
- 8 contradict God's sacrament of marriage between a man and a woman

9 * * * * *

10 13. The list of requests that do not meet the design standards, and that are not offered—
11 designs that “violate fundamental Christian principles,” including wedding cakes that “contradict
12 God's sacrament of marriage between “a man and a woman”—apply regardless of who makes the
13 request. On one occasion, a man requested a custom seven-tier cake for a wedding anniversary at
14 which he planned to announce to his wife he was divorcing her. Miller declined to make the cake,
15 telling the man that she was “not going to be part of something like that.”

16 14. Not all of the employees at Tastries agreed with, or abided by, the Tastries design
17 standards in every circumstance. One such former employee testified that Tastries is compelled to
18 make a cake with writing on it that says, “Hail satan,” if requested to do so. On two occasions
19 before the events giving rise to the present case, employees had taken and processed orders that
20 violated the design standards regarding marriage, and they concealed their activities from Miller.

21 15. For custom order requests that do not meet Tastries design standards, Miller
22 arranged for another local bakery, *Gimme Some Sugar*, to handle those orders by referral. This has
23 occurred several times. One such referral customer came back to Tastries and reported being “very
24 happy” with the referral, and had Tastries make custom orders for other events. *Gimme Some Sugar*
25 is not otherwise affiliated with Miller or Tastries. Before going to Tastries, Eileen and Mireya tried
26 *Gimme Some Sugar*, but were not satisfied because the cakes were too sweet. They wanted to try
27 something else, and Eileen had seen the Tastries sign while driving by.

28 ///

1 16. On August 17, 2017, Eileen and Mireya visited Tastries to buy a custom wedding
2 cake for their upcoming ceremony to repeat marriage vows and celebrate their marriage. They had
3 a pleasant visit with Rosemary, an employee who was familiar with the design standards, and who
4 talked to them about what they wanted. Eileen and Mireya chose a popular design for a wedding
5 cake that was on display—a three-tier white wedding cake with “wavy” frosting, i.e., a “wispy
6 cake,” with flowers on it, but no writing or “cake topper.” Rosemary began filling out the custom
7 order form, asking about flavor, color, number of guests, etc. During the discussion, they discussed
8 having Rosemary attend the ceremony and cut the cake. Rosemary came to understand that the
9 cake was probably for a same-sex wedding. She did not inform Eileen or Mireya about the design
10 standards.

11 17. During the course of the meeting, Rosemary spoke privately to the employee
12 manager, Natalie. Natalie was one of the employees who had previously processed a custom order
13 that violated the design standards regarding marriage, and she kept that information from Miller.
14 Rosemary informed Natalie that she was being asked to take an order that she believed was for a
15 same-sex wedding celebration. Natalie told Rosemary to give the order form to her when Rosemary
16 was finished, but not tell Miller about it. Rosemary did as Natalie suggested. She scheduled a cake
17 tasting for Eileen and Mireya on August 26, and Mireya bought a tote bag before they left the
18 bakery. Rosemary said nothing to Eileen and Mireya about the design standards, and she said
19 nothing to Miller about the order.

20 18. On Saturday, August 26, 2017, Eileen and Mireya arrived at Tastries for the cake
21 tasting with two male friends, and Eileen’s mother. Rosemary greeted them, and the sample cakes
22 for tasting were already set out and available, sitting next to the group. Rosemary went to speak
23 privately with Natalie. Natalie told Rosemary to do the tasting, but not tell Miller what was
24 happening. Uncomfortable with that approach, Rosemary told Miller that a group was there for
25 wedding cake tasting, but gave Miller little information. Miller agreed to handle the tasting. She
26 had no knowledge of Eileen’s and Mireya’s earlier visit to Tastries, or of their sexual orientation, or
27 that Rosemary had already started a custom order form.

28 ///

1 19. Miller greeted Eileen’s and Mireya’s group with a blank form, and began asking
2 standard questions for a wedding cake order, e.g., wedding venue, time of the event, type of cake,
3 etc. Eileen and Mireya assumed they would be finalizing their custom order, and were perplexed by
4 Miller’s questions, which they had previously answered for Rosemary. Miller could not understand
5 the apparent confusion.

6 20. During the course of the conversation, Miller became aware she was being asked to
7 design a wedding cake for a same-sex marriage celebration. After taking a moment to pray, Miller
8 told Eileen and Mireya she could not make the wedding cake, but would refer them to another
9 bakery that had similar recipes, *Gimme Some Sugar*. Miller was asked why she could not make the
10 cake, and was pressed for an answer. Miller told Eileen and Mireya, “I can’t be a part of a same-sex
11 wedding because of my deeply held religious convictions, and I can’t hurt my Lord and Savior.”
12 Eileen and Mireya never tasted the cakes at Tastries. They declined Miller’s offer to refer them to
13 *Gimme Some Sugar*. Someone from the group took the order form clipboard from Miller, and the
14 group left the bakery, upset about the encounter.

15 21. Within hours of Eileen and Mireya leaving Tastries that day, social media posts
16 appeared, expressing various viewpoints, not all of them friendly. In the hours and days that
17 followed, media appeared. Pornographic emails and messages were sent to Tastries, necessitating a
18 shut-down of the computer. An article was written about Eileen and Mireya that was not true.
19 Property was damaged. Hurtful things were said about Eileen and Mireya, and Miller and Tastries.

20 22. Eileen and Mireya found another bakery and ordered a cake they believed was
21 “delicious” and “beautiful,” similar in appearance to what they intended to order from defendants.
22 On October 7, 2017, they renewed vows in a ceremony and had a reception attended by their
23 guests. During the reception, the cake was placed in a central area of the venue where Eileen and
24 Mireya participated in a cake-cutting ceremony. Flowers had been placed on the cake, and Eileen
25 and Mireya were both happy with it. Approximately two weeks later, Eileen and Mireya filed an
26 administrative complaint with DFEH, alleging discrimination by the defendants.

27 23. On October 17, 2018, DFEH filed the present enforcement action. DFEH’s first
28 amended complaint alleges one cause of action against Miller and Tastries for discrimination in

violation of the Unruh Civil Rights Act.

DISCUSSION

A. DFEH's Cause of Action for a Violation of the Unruh Civil Rights Act.

24. Civil Code § 51, known as the Unruh Civil Rights Act, states in relevant part:

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their ... sexual orientation, ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every ... sexual orientation....

25. Civil Code § 52 of the Unruh Civil Rights Act states in relevant part:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 ..., is liable for each and every offense for the actual damages, ... up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000), and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 51

26. The objective of the Unruh Civil Rights Act is to prohibit "unreasonable, arbitrary, or invidious discrimination." *Sunrise Country Club Assn. v. Proud* (1987) 190 Cal.App.3d 377, 380. Unreasonable, arbitrary, or invidious discrimination is present where the defendant's policy or action "emphasizes irrelevant differences" or "perpetuate[s] [irrational] stereotypes." *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 34, 36; see also, *Pizarro v. Lamb's Players Theatre* (2006) 135 Cal.App.4th 1171, 1176. The Unruh Civil Rights Act applies not merely in situations where businesses exclude individuals altogether, but also where treatment is unequal. *Koire v. Metro Car Wash, supra*, 40 Cal.3d at p. 29.

27. To have "standing" to assert rights under the Unruh Civil Rights Act, a person "cannot sue for discrimination in the abstract," *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1025, but must possess "a bona fide intent to sign up for or use [the defendant's] services." *Id.* at p. 1032.

28. To prove a violation of the Unruh Civil Rights Act, the plaintiff must "plead and prove intentional discrimination in public accommodations." *Harris v. Capital Growth Investors*

XIV (1991) 52 Cal.3d 1142, 1175 (superseded by statute on other grounds as stated in *Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 664); *Koebke v. Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 854. A disparate impact analysis or test does not apply to claims under the Unruh Civil Rights Act. *Koebke, supra*, 36 Cal.4th p. 854. For purposes of the Unruh Civil Rights Act, “sexual orientation” means “heterosexuality, homosexuality, and bisexuality.” Civ. Code § 51(e)(7) [adopting definition in Govt. Code § 12926].

29. The parties in the present case have referred to form jury instructions for claims under the Unruh Civil Rights Act, CACI No. 3060, and BAJI No. 7.92. The Judicial Council’s “Directions for Use” for CACI No. 3060 state:

... [E]lement 2 uses the term “substantial motivating reason” to express both intent and causation between the protected classification and the defendant’s conduct. “Substantial motivating reason” has been held to be the appropriate standard under the Fair Employment and Housing Act to address the possibility of both discriminatory and nondiscriminatory motives.” (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232; CACI No. 2507, “Substantial Motivating Reason” Explained.) Whether the FEHA standard applies under the Unruh Act has not been addressed by the courts.

... [I]ntentional discrimination is required for violations of the Unruh Act. (See *Harris v. Capital Growth Investors XIV* [“*Harris*”] (1991) 52 Cal.3d 1142, 1149.) The intent requirement is encompassed within the motivating-reason element.

1. Standing

30. The unusual circumstance of another gay couple visiting Tastries to get a wedding cake earlier the *same day* that Eileen and Mireya visited Tastries, and the fact Eileen and Mireya decided against *Gimme Some Sugar* because its cakes were too sweet but decided for Tastries without ever tasting its cakes, and other circumstances, have raised a question whether real parties in interest intended to use Tastries, or were just “looking for a lawsuit.” The evidence showed that Eileen and Mireya had a bona fide intent to use the defendants’ services. It was not a “shakedown.” Eileen and Mireya have standing.

///

///

2. No Intentional Discrimination

31. DFEH failed to prove that defendants intentionally discriminated against Eileen and Mireya because of their sexual orientation. The evidence affirmatively showed that Miller's *only* intent, her only motivation, was fidelity to her sincere Christian beliefs. Miller's only motivation in creating and following the design standards, and in declining to involve herself or her business in designing a wedding cake for a marriage at odds with her faith, was to observe and practice her own Christian faith, i.e., to avoid "violat[ing] fundamental Christian principles" or "contradict[ing] God's sacrament of marriage between a man and a woman."

32. The evidence affirmatively showed that Miller and Tastries serve, and employ, persons with same-sex orientations. Miller and Tastries serve each person—regardless of sexual orientation—who desires to purchase items in the bakery case. Miller and Tastries serve each person—regardless of sexual orientation—who requests a custom bakery item, the design for which does not violate the design standards.

33. Miller and Tastries do not design and do not offer to *any* person—regardless of sexual orientation—custom bakery items that "violate fundamental Christian principles." Miller and Tastries do not design and do not offer to *any* person—regardless of sexual orientation—custom wedding cakes that "contradict God's sacrament of marriage between a man and a woman." The evidence showed that Eileen and Mireya requested a wedding cake, the design for which was at odds with the Tastries standards pertaining to "fundamental Christian principles" and "God's sacrament of marriage between a man and a woman."

34. DFEH argues that defendants intended to make "a distinction between their gay and straight customers seeking marriage-related preordered baked goods;" that through the design standards, Tastries "willfully denies services to gay couples, thereby making a distinction on account of their sexual orientation;" that it is "undisputed that Miller intended to make a distinction based on ... sexual orientation;" that Eileen and Mireya "encountered Tastries' exclusionary policy and practice based on who they were—a lesbian couple—which prevented them from obtaining Tastries goods and services;" and that "'but for' gay customers' sexual orientation, Tastries would sell them products." DFEH failed to prove any of these assertions.

35. DFEH’s argument seems to take issue with *what* Miller believes the Bible teaches regarding marriage, even though DFEH concedes she sincerely does believe it.

36. Also, the design standards apply uniformly to all persons, regardless of sexual orientation. The evidence affirmatively showed that at no time was Miller’s conduct a pretext to discriminate or make a distinction based on a person’s sexual orientation. The evidence affirmatively showed that at no time was a Tastries design standard created, or applied, as a pretext to discriminate or make a distinction based on a person’s sexual orientation. Miller’s only motivation, at all relevant times, was to act in a manner consistent with her sincere Christian beliefs about what the Bible teaches regarding marriage. That motivation was not unreasonable, or arbitrary, nor did it emphasize irrelevant differences or perpetuate stereotypes. DFEH failed to prove the requisite intent.

3. Full and Equal Service

37. The evidence affirmatively showed that Miller immediately referred Eileen and Mireya to another good bakery when she was unable to design the wedding cake, but Eileen and Mireya declined. Both parties cite and discuss *Minton v. Dignity Health* (“*Minton*”) (2019) 39 Cal.App.5th 1155, which quotes *North Coast Women’s Care Medical Group, Inc. v. Superior Court* (“*North Coast*”) (2008) 44 Cal.4th 1145. Both *Minton* and *North Coast* acknowledge that a physician with religious objections to performing certain medical procedures can avoid the conflict by ensuring “full and equal” access to that procedure by a physician who lacks the religious objections. The parties disagree on whether defendants’ referral to an “an unaffiliated bakery” in the present case was “full and equal” access.

38. The Catholic hospital in *Minton* declined—for religious reasons—to allow a medical procedure on a patient that a physician deemed medically necessary, and that the Catholic hospital normally allowed on others at its facility. According to *Minton*, the hospital “initially did not ensure that [the patient] had ‘full and equal’ access to a facility,” and the hospital’s “subsequent reactive offer to arrange treatment elsewhere was not the implementation of a policy to provide full and equal care to all persons at comparable facilities not subject to the same religious restrictions...” (Emphasis added.) *Id.* pp. 1164-1165.

1 39. In the present case, Miller’s conduct was materially different than the Catholic
2 hospital in *Minton*, and in fact, Miller did precisely what the *Minton* decision suggests is adequate.
3 Miller’s offer to refer Eileen and Mireya to *Gimme Some Sugar* was almost simultaneous with
4 Miller’s discovery that she was being asked to design a wedding cake at odds with her Christian
5 faith and not offered under the Tastries design standards. Miller arranged, in advance, for *Gimme*
6 *Some Sugar* to take referrals from Tastries in such circumstances, before Eileen and Mireya ever
7 visited Tastries. Miller “initially” did ensure that Eileen and Mireya had “full and equal” access,
8 and her immediate offer to refer them to a comparable, good bakery was reasonable and timely, and
9 not a “subsequent reactive offer.”

10 40. DFEH contends that “businesses must provide their full range of goods and services
11 to all customers.” *Minton* does not say that. DFEH argues that *Minton* involved a referral to an
12 “affiliated” hospital in the same “network,” and that defendants in the present case have “no written
13 or oral agreement” with *Gimme Some Sugar* that requires it to “fulfill the order of any gay couple
14 referred by Tastries.” DFEH argues that the referral to a “different bakery, with different ownership,
15 staffed by different bakers and decorators using different recipes and ingredients, and located in a
16 different facility” does not satisfy the “full and equal” access requirement. This court disagrees.

17 41. The proposed alternative Methodist hospital in *Minton* was “a non-Catholic Dignity
18 Health hospital.” *Id.* at p. 1159. There is nothing in *Minton* to suggest that the two hospitals were
19 anything other than separate and distinct business organizations, e.g., corporations, that were
20 “owned” by a third entity known as “Dignity Health,” i.e., a corporation that owned the shares of
21 two separate corporations. There is nothing in *Minton* to suggest that the two hospitals had
22 anything *other than* different doctors, nurses and administrative staff, using different equipment
23 and medicines. It is apparent from *Minton* that the two hospitals were in different buildings
24 “nearby,” that a physician’s privileges at one hospital did not automatically translate to privileges at
25 the other, and that a person’s health insurance might apply to one hospital, but not the other.

26 42. *Minton* does not state the two hospitals would need a “written or oral” agreement for
27 the referral to satisfy the “full and equal” service requirement, as DFEH suggests. The evidence in
28 present case affirmatively showed that Miller had such an “oral agreement” with Stephanie at

1 *Gimme Some Sugar*. No evidence was presented otherwise.

2 43. DFEH argues that Eileen and Mireya had already tried and rejected *Gimme Some*
3 *Sugar*. The evidence showed that Miller was never made aware of that fact, or why, as Eileen and
4 Mireya simply declined Miller’s referral offer before walking out.

5 44. Because DFEH failed to prove the defendants violated the Unruh Civil Rights Act,
6 resolution of this case does not require this court to address defenses and other issues the parties
7 have raised. However, to complete the trial record, those defenses and issues will be addressed, and
8 this court will assume—for discussion purposes—a violation of the Unruh Civil Rights Act.

9 **B. Free Exercise of Religion**

10 45. The U.S. Supreme Court stated in *Masterpiece Cakeshop, Ltd v. Colorado Civil*
11 *Rights Comm.* (“*Masterpiece*”) (2018) 138 S.Ct. 1719:

12 Our society has come to the recognition that gay persons and gay
13 couples cannot be treated as social outcasts or as inferior in dignity
14 and worth. For that reason the laws and the Constitution can, and in
15 some instances must, protect them in the exercise of their civil rights.
16 The exercise of their freedom on terms equal to others must be given
17 great weight and respect by the courts. At the same time, the
18 religious and philosophical objections to gay marriage are protected
19 views and in some instances protected forms of expression. As this
20 Court observed in *Obergefell v. Hodges* [(2015) 576 U.S. 644], “[t]he
21 First Amendment ensures that religious organizations and persons
22 are given proper protection as they seek to teach the principles that
23 are so fulfilling and so central to their lives and faiths.” [*Id.* at 679-
24 680.] Nevertheless, while those religious and philosophical
25 objections are protected, it is a general rule that such objections do
26 not allow business owners and other actors in the economy and in
27 society to deny protected persons equal access to goods and services
28 under a neutral and generally applicable public accommodations law.
(Citations.)

When it comes to weddings, it can be assumed that a member of the
clergy who objects to gay marriage on moral and religious grounds
could not be compelled to perform the ceremony without denial of
his or her right to the free exercise of religion. This refusal would be
well understood in our constitutional order as an exercise of religion,
an exercise that gay persons could recognize and accept without
serious diminishment to their own dignity and worth. Yet if that
exception were not confined, then a long list of persons who provide
goods and services for marriages and weddings might refuse to do so
for gay persons, thus resulting in a community-wide stigma
inconsistent with the history and dynamics of civil rights laws that

1 ensure equal access to goods, services, and public accommodations.
2 *Masterpiece, supra*, at p. 1727.

3 46. Both the federal and state constitutions protect the free exercise of religion. The
4 First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an
5 establishment of religion, or prohibiting the free exercise thereof...” U.S. Const. 1st Amend. This
6 provision applies to the states because of its incorporation into the Fourteenth Amendment.
7 *Employment Div., Ore. Dept. of Human Res. v. Smith* (“*Smith*”) (1990) 494 U.S. 872, 876-877.

8 47. Article I, section 4 of the California Constitution states in relevant part: “Free
9 exercise and enjoyment of religion without discrimination or preference are guaranteed.”

10 48. With respect to the free exercise of religion, the First Amendment “first and
11 foremost” protects “the right to believe and profess whatever religious doctrine one desires.” *Smith*,
12 at p. 877. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to
13 others in order to merit First Amendment protection.” *Fulton v. City of Philadelphia* (2021) 141
14 S.Ct. 1868, 1876.

15 49. The First Amendment’s right to the free exercise of religion “does not relieve an
16 individual of the obligation to comply with a ‘valid and neutral law of general applicability on the
17 ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’”
18 *Smith, supra*, at p. 879. A “law that is neutral and of general applicability need not be justified by a
19 compelling governmental interest even if the law has the incidental effect of burdening a particular
20 religious practice.” *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (“*Lukumi*”) (1993) 508 U.S. 520,
21 531.

22 50. In California, the Supreme Court specifically declined to hold that courts should
23 apply strict scrutiny “to neutral, generally applicable laws that incidentally burden religious
24 practice” in cases involving free exercise claims under the state Constitution. *Catholic Charities of*
25 *Sacramento, Inc. v. Superior Court* (“*Catholic Charities*”) (2004) 32 Cal.4th 527, 566. The
26 California Supreme Court has endorsed the *Smith* rule that a “valid and neutral law of general
27 applicability” is not subject to strict scrutiny. *Id.* at p. 549; see also *North Coast, supra*, 44 Cal.4th
28 1145, 1155.

1 51. DFEH argues that the decision in *North Coast* dictates a decision against the
2 defendants in the present case. Defendants take a contrary view, and articulate a different analytical
3 path. Defendants cite *Montgomery v. Bd. of Retirement* (1973) 33 Cal.App.3d 447, 451 [quoting
4 *People v. Woody* (1964) 61 Cal.2d 716, 719], stating that there is a “two-fold analysis which calls
5 for a determination of, first, whether the application of the statute imposes any burden upon the free
6 exercise of the defendant’s religion, and second, if it does, whether some compelling state interest
7 justifies the infringement.”

8 52. The evidence in the present case proves clearly and convincingly that application of
9 the anti-discrimination provisions of the Unruh Civil Rights Act, as advanced by DFEH in the
10 present case, *substantially* burdens Miller’s free exercise of her Christian faith and does not survive
11 strict scrutiny, because there is a less restrictive means of achieving the state’s interest.

12 53. Apart from the punitive fines and other relief DFEH seeks in its operative pleading,
13 DFEH states that it “does not seek an order forcing Tastries to sell preordered wedding cakes in the
14 retail marketplace to all customers, including gay couples.” At the same time, DFEH argues,
15 seemingly inconsistently, that Tastries has three options: (1) sell all its goods and services to all
16 customers; (2) cease offering wedding cakes for sale to anyone; (3) have Miller and employees
17 sharing her religious objections to same-sex marriage “step aside ... and allow her willing
18 employees to manage the process.”

19 54. The evidence affirmatively showed that DFEH’s proposed “options” would
20 substantially burden defendants’ free exercise of religious faith under the circumstances, as their
21 blunt force rigidity lacks any sensitivity to the rational, reasonable, sincere religious beliefs the
22 DFEH *says* it acknowledges.

23 55. DFEH’s “option” of defendants selling all goods to all customers, i.e., the option for
24 defendants to ignore sincere religious convictions, is sophistry. Apart from the fact Miller generally
25 *does* sell all goods to all customers, including those who are gay, this case presents a focused
26 scenario. Miller’s sincere Christian faith is simply buried and paved over by DFEH’s first option.

27 56. DFEH’s second option, defendants not selling wedding cakes at all, would have a
28 devastating effect on Miller’s business—loss of approximately 25-30 percent in gross revenues—

1 and could potentially put her out of business. Apart from the financial impact, Miller's ability to
2 practice her faith by supporting and participating in marriage ceremony preparations that align with
3 her Christian views would be stifled. Miller's participation in the wedding cake part of her
4 business, with her time, talent, and resources, is inextricably linked to her sincere Christian beliefs
5 about what the Bible teaches regarding the marriage of a man and a woman as a sacrament. She
6 created design standards consistent with her sincere beliefs. DFEH stated several times during the
7 trial of this case it did not dispute the sincerity of Miller's Christian beliefs.

8 57. DFEH's third "option," that Miller "step aside ... and allow her willing employees
9 to manage the process," is no more viable than the first two. Miller's Tastries is a small business.
10 The evidence affirmatively showed that Miller is involved in some aspect of every wedding cake's
11 design and creation, and they are being made almost all the time. Presumably, under this "option,"
12 DFEH would *not* ask Miller to instruct her employees to keep their activities a secret from her. It
13 seems self-evident that a policy of encouraging employees to hide their work-related activities from
14 their employer would be problematic, as is more than amply demonstrated by the evidence in this
15 case. Would DFEH ask Miller to step outside? When? How long? DFEH does not explain what
16 happens if there are no "willing employees."

17 58. Although the third "option" has a *theoretical* advantage of avoiding the financial
18 impact of the second option, the evidence affirmatively showed it would not work that way in
19 reality, and that option does not address the other substantial burdens. Miller does not live her
20 Christian life only at church. The evidence showed that she does not artificially separate her faith
21 from her work, and weddings are a large part of her life. She believes whole-heartedly in what a
22 marriage between a man and a woman represents. Miller cannot turn a blind eye to what is
23 happening in her bakery, and it would be unreasonable to compel her to do so.

24 59. Under the circumstances of this case and the analysis advocated by defendants, the
25 *substantial* burden the state seeks to impose on defendants' free exercise of religion, by application
26 of the Unruh Civil Rights Act, is not justified by the state's legitimate interest in preventing
27 discrimination where, as here, the evidence affirmatively demonstrates there is a less restrictive
28 means to achieve the state's objective. As discussed *supra*, the evidence affirmatively showed that

1 Miller arranged to refer wedding cakes to another good bakery when the designs requested at
2 Tastries were at odds with defendants’ Christian beliefs and design standards. That accommodation
3 was, and is, reasonable under the circumstances, and fulfills the requirement of “full and equal
4 service.” Miller offered that accommodation to Eileen and Mireya.

5 60. DFEH contends that defendants’ analytical approach—applying strict scrutiny—is
6 incorrect and that defendants’ constitutional free exercise claims under both the federal and state
7 Constitutions must be rejected. Notwithstanding this court’s determinations above under the strict
8 scrutiny analysis advocated by defendants, DFEH correctly argues that the holding in *North Coast*
9 controls the decision in the present case as it pertains to the defense based on free exercise of
10 religion, and that *North Coast* held the Unruh Civil Rights Act survives strict scrutiny.

11 61. *North Coast* summarizes the U.S. Supreme Court’s Free-Exercise analytical
12 approaches in *Sherbert v. Verner* (“*Sherbert*”) (1963) 374 U.S. 398 [Seventh-day Adventist denied
13 unemployment benefits because eligibility requirements required work on Saturdays, contrary to
14 applicant’s religion], and *Wisconsin v. Yoder* (“*Yoder*”) (1972) 406 U.S. 205, [state law compelling
15 school attendance for children ages 7-16 contrary to Amish religious objection to education beyond
16 eighth grade]. *North Coast* acknowledges that both *Sherbert* and *Yoder* determined the First
17 Amendment Free Exercise Clause required a “compelling” governmental interest to justify the
18 burden on religion. *North Coast* then notes the change in the high court’s analysis in 1990, in
19 *Smith*:

20 [T]he high court repudiated the compelling state interest test it had
21 used in [*Sherbert*] and in [*Yoder*]. Instead, it announced that the First
22 Amendment’s right to the free exercise of religion “does not relieve
23 an individual of the obligation to comply with a ‘valid and neutral
24 law of general applicability on the ground that the law prescribes (or
25 prescribes) conduct that his religion prescribes (or proscribes).’ ”
26 [*Smith, supra*, at p. 879.] Three years later, the court reiterated that
holding in [*Lukumi*], stating that “a law that is neutral and of general
applicability need not be justified by a compelling governmental
interest even if the law has the incidental effect of burdening a
particular religious practice.” *North Coast, supra*, p. 1155.

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1 62. *North Coast* applied the *Smith* test, and found:

2 California’s Unruh Civil Rights Act, from which defendant
3 physicians seek religious exemption, is “a valid and neutral law of
4 general applicability.” (Citation.) As relevant in this case, it requires
5 business establishments to provide “full and equal accommodations,
6 advantages, facilities, privileges, or services” to all persons
7 notwithstanding their sexual orientation. (Civ. Code, § 51, subds. (a)
8 & (b).) Accordingly, the First Amendment’s right to the free exercise
9 of religion does not exempt defendant physicians here from
 conforming their conduct to the [Unruh Civil Rights] Act’s
 antidiscrimination requirements even if compliance poses an
 incidental conflict with defendants’ religious beliefs. (Citations.)
 North Coast, *supra*, at p. 1156.

10 63. The analysis in *North Coast* was repeated in *Catholic Charities*, where the *Smith*
11 rule was applied, and the court stated that a “valid and neutral law of general applicability” is not
12 subject to strict scrutiny. *Id.* at pp. 548-549. The Supreme Court of California also stated in
13 *Catholic Charities* that it was not holding that courts should apply strict scrutiny “to neutral,
14 generally applicable laws that incidentally burden religious practice” (emphasis added) in cases
15 involving free exercise claims under the state Constitution, which the court specifically left open
16 for another day. *Id.* at p. 566.

17 64. As stated *supra*, the present case involves a *substantial* burden where there are less
18 restrictive means of achieving the state’s legitimate interest. The evidence affirmatively showed
19 that this case does not involve merely an “incidental burden” on the Miller’s practice and
20 observance of her sincere Christian beliefs.

21 65. Nevertheless, DFEH correctly argues in the present case that *North Coast* controls
22 the legal analysis, and *North Coast* does not allow for anything other than a rejection of defendants’
23 defenses based on the right to free exercise of religion under the federal and state Constitutions. It
24 appears the analysis can go no further, notwithstanding the substantial burden on the free exercise
25 of defendants’ religion.

26 66. Defendants argue that the Unruh Civil Rights Act is not “generally applicable”
27 because it allows for “exemptions.” Defendants argue that the Unruh Civil Rights Act only
28 prohibits “arbitrary” discrimination, rendering it a “‘good cause’ system of individualized

1 exemptions that triggers strict scrutiny.” It is true that this court has determined, as a factual matter,
2 that defendants’ religious beliefs, motivations and actions were not “arbitrary.” But that term is a
3 qualitative description of the intent required to violate the Unruh Civil Rights Act, not a categorical
4 exemption.

5 67. Defendants argue that, because the Unruh Civil Rights Act may not be “construed to
6 confer any right or privilege on a person that is conditioned or limited by law,” the Unruh Civil
7 Rights Act must give way to other laws and is therefore not generally applicable. Defendants cite a
8 number of such laws in their trial brief. This court must agree with DFEH that the Supreme Court
9 has determined the Unruh Civil Rights Act *is* a neutral, generally applicable law, that survives strict
10 scrutiny.

11 68. Defendants argue that DFEH’s administrative investigation and prosecution have not
12 been neutral, and that there has been disparate treatment and hostility. The evidence showed that
13 DFEH was at times insensitive to Miller’s sincere Christian beliefs. It has also been difficult to
14 grasp what DFEH means to convey when it claims not to doubt the sincerity of Miller’s beliefs.
15 DFEH apparently did not understand those beliefs, leading to irrelevant discovery that can
16 reasonably be interpreted as a lack of respect for Miller’s beliefs. Still, litigation—by its nature—
17 requires inquiry, analysis and argument, which are not always well received. Miller did not indict
18 her opposition when given the opportunity to do so while testifying at trial. It is an adversarial
19 process. While DFEH may have stepped on the line at times, it did not commit a personal foul
20 sufficient to constitute a defense in this case.

21 C. Free Speech

22 69. The First Amendment to the U.S. Constitution states that “Congress shall make no
23 law ... abridging the freedom of speech....” U.S. Const. 1st Amend. This provision applies to the
24 states because of its incorporation into the Fourteenth Amendment. *Smith, supra*, 494 U.S. 872,
25 876-877.

26 70. The right of freedom of thought protected by the First Amendment includes both the
27 right to speak freely and the right to refrain from speaking at all. *Wooley v. Maynard* (1977) 430
28 U.S. 705, 714. In *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995) 515

1 U.S. 557, 573-574, the U.S. Supreme Court stated:

2 “Since *all* speech inherently involves choices of what to say and
3 what to leave unsaid,” (citation) (emphasis in original), one
4 important manifestation of the principle of free speech is that one
5 who chooses to speak may also decide “what not to say,” (citation).
6 Although the State may at times “prescribe what shall be orthodox in
7 commercial advertising” ... it may not compel affirmance of a belief
8 with which the speaker disagrees. (citation). Indeed this general rule,
9 that the speaker has the right to tailor the speech, applies not only to
10 expressions of value, opinion, or endorsement, but equally to
11 statements of fact the speaker would rather avoid... Nor is the rule’s
benefit restricted to the press, being enjoyed by business
corporations generally and by ordinary people engaged in
unsophisticated expression as well as by professional publishers. Its
point is simply the point of all speech protection, which is to shield
just those choices of content that in someone’s eyes are misguided,
or even hurtful. (Citations) (Emphasis added.)

12 71. Defendants in the present case contend that the wedding cake Eileen and Mireya
13 sought was itself artistic expression protected under the First Amendment as both “pure speech”
14 and “expressive conduct.” Defendants contend that, because of the broad injunctive relief DFEH
15 seeks in this enforcement action, the Free Speech analysis must expand beyond *just* the wedding
16 cake. This court agrees.

17 72. The Constitution looks beyond written or spoken words as mediums of expression,
18 and the cases have recognized that the First Amendment shields acts such as saluting a flag (and
19 refusing to do so), wearing an armband to protest a war, displaying a red flag, and even marching,
20 walking or parading in uniforms displaying the swastika. (*Id.* at p. 569.) A narrow, succinctly
21 articulable message is not a condition of constitutional protection. (*Ibid.*)

22 73. “In order to compel the exercise or suppression of speech, the government measure
23 must punish, or threaten to punish, protected speech by governmental action that is ‘regulatory,
24 prescriptive, or compulsory in nature.’ *Cressman v. Thompson* (“*Cressman*”) (10th Cir. 2015) 798
25 F.3d 938, 951. In order to make out a valid compelled-speech defense, a party must establish (1)
26 speech, (2) that is compelled by governmental action, and (3) to which the speaker objects. *Ibid.* If
27 the three elements are satisfied, strict scrutiny is triggered. See *Pacific Gas and Elec. Co. v. Public*
28 *Utilities Comm. of California* (1986) 475 U.S. 1, 19-20 (“*PG&E*”); *Taking Offense v. State* (2021)

1 66 Cal.App.5th 696.

2 74. The concept of pure speech includes fiction, music without words, dance, theater,
3 movies, pictures, paintings, drawings, sound recordings, engravings, art, tattoos, the sale of original
4 artwork, custom-painted clothing, and stained-glass windows, among others. See e.g., *Cressman*, at
5 p. 952; *Kaplan v. California* (1973) 413 U.S. 115, 119; *Chelsey Nelson Photography LLC v.*
6 *Louisville/Jefferson County Metro Government* (W.D. Ky. 2020) 479 F.Supp.3d 543, 548; *Ashcroft*
7 *v. Free Speech Coalition* (2002) 535 U.S. 234, 246; *National Endowment for the Arts v. Finley*
8 (1998) 524 U.S. 569, 580.

9 75. The justification for protecting these various media is “simply ... their expressive
10 character, which falls within a spectrum of protected ‘speech’ extending outward from the core of
11 overtly political declarations.” See *Cressman*, at p. 952 [quoting *Nat’l Endowment for the Arts v.*
12 *Finley* (1998) 524 U.S. 569, 602-603.] All images are not categorically pure speech. Instead,
13 courts, on a case-by-case basis, must determine whether the “disseminators of [an image] are
14 genuinely and primarily engaged in ... self-expression.” (Emphasis added.) *Cressman*, at p. 953
15 [quoting *Mastrovincenzo v. City of N.Y.* (2d Cir. 2006) 435 F.3d 78, 91].

16 76. In addition to “pure speech,” the First Amendment protects “conduct” that is
17 “sufficiently imbued with elements of communication.” *Texas v. Johnson* (“*Johnson*”) (1989) 491
18 U.S. 397, 404. Such conduct is protected speech if: (1) there is “an intent to convey a particularized
19 message,” and (2) “the likelihood is great that the message will be understood by those who view
20 it.” *Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1058. This test only applies
21 to expressive conduct, not pure speech. (*Id.* at p. 1060.) Examples include burning a flag, *Johnson*,
22 at p. 411, burning a draft card, *U.S. v. O’Brien* (1968) 391 U.S. 367, 370, and wearing a black
23 armband, *Tinker v. Des Moines Independent Community School Dist.* (1969) 393 U.S. 503, 505-506
24 [wearing armband in silent protest of war “closely akin to ‘pure speech.’”].

25 77. The evidence affirmatively showed that defendants’ wedding cakes are pure speech,
26 designed and intended—genuinely and primarily—as an artistic expression of support for a man
27 and a woman uniting in the “sacrament” of marriage, and a collaboration with them in the
28 celebration of their marriage. The wedding cake expresses support for the marriage. The wedding

1 cake is an expression that the union *is* a “marriage,” and *should* be celebrated.

2 78. In addition, the evidence affirmatively showed that defendants’ participation in the
3 design, creation, delivery and setting up of a wedding cake is *expressive conduct*, conveying a
4 particular message of support for the marriage that is very likely to be understood by those who
5 view it.

6 79. The Tastries wedding cake designs range from simple to elaborate, but all are labor-
7 intensive, artistic and require skill to create, generally involving three to six people. The *visual*
8 design standards require wedding cakes that are “beautiful and balanced,” “proportional to design,”
9 with “complimentary colors,” “colors palettes [that] are compatible” and that “work with [the]
10 design.”

11 80. Apart from the visual, the evidence showed that a simple, specific message is
12 intended and understood by the presence of defendants’ wedding cakes, and separately, by
13 defendants’ participation in the wedding cake process. The Tastries wedding cake by itself, *and* the
14 people who are observed in the bakery or the wedding venue designing, delivering, setting up, or
15 cutting the wedding cake, are associated with support for the marriage. That is precisely how Miller
16 and Tastries view it, and intend it.

17 81. The design standards on which DFEH so heavily relies as evidence of Miller’s
18 intent, leave *no* room to doubt that Miller intends a message, which DFEH fails to acknowledge or
19 misunderstands. The evidence shows that *all* of Miller’s wedding cake designs are intended as an
20 expression of support for the sacrament of “marriage,” that is, the marriage of a man and a woman.
21 It is not a message that everyone may perceive, or accept.

22 82. *All* of Miller’s designs are specifically intended to *answer* the question at the top of
23 the design standard page: “Is it lovely, praiseworthy, or of good report?” Miller’s standard is
24 derived from a Bible verse quoted at the bottom of the design standards: “Whatever is true,
25 whatever is noble, whatever is right, whatever is pure, whatever is lovely, whatever is admirable—
26 if anything is excellent or praiseworthy—think about such things.” The designs must be “Creative,
27 Uplifting, Inspirational and Affirming.” Notably, Miller’s design standard also states, “Our cakes
28 are a reflection of our business and *speak* volumes when sitting center stage.”

1 83. What DFEH dismissively characterizes as a “blank cake” and “baked goods,” Miller
2 and Tastries intend as a creation that “*speaks*” a “meaningful,” “positive,” “affirming” message of
3 support for a marriage. She does not want to speak a different message. Yet that is precisely what
4 DFEH wants her to do.

5 84. It can hardly be questioned that openly participating, or an unwillingness to
6 participate, in a same-sex wedding ceremony conveys a social/political message as well:

- 7 • For or Against?
- 8 • Enlightened or Old-school?
- 9 • Red or Blue?
- 10 • Accepting or Judgmental?

11 None of these monikers may be true, but a message is nevertheless “heard” by a watching public.

12 85. For defendants, the wedding cake is intended as a “Centerpiece” to the celebration,
13 “suited to the celebration *theme*,” with a design “*theme*” that must be “*positive, meaningful* and in
14 line with the *purpose*.” The wedding cake has a purpose.

15 86. Symbols and acts associated with weddings become focal points of interest, e.g.,
16 walking down the aisle, recital of vows in front of “witnesses,” being introduced “for the first
17 time,” the toast, throwing rice, driving away. A just-married couple cutting wedding cake, and
18 being photographed doing so, is traditionally one of the last acts before a newly-married couple
19 “begins life together,” and some people stay only as long as “the cake-cutting.” A multi-tiered
20 white wedding cake is iconic. Eileen and Mireya understood all of this.

21 87. The evidence shows that Eileen and Mireya desired to do, and to be seen doing,
22 what “to-be-married” and “just-married” people generally do. It was important them. They were
23 already married before they heard of Tastries. They planned to marry in 2017, but decided to marry
24 in December 2016 out of concern for the future of same-sex weddings after the election. They
25 *never* let go of the idea of a wedding with lots of guests. They planned it. Their “to-do” list
26 included buying a wedding cake. They selected a three-tier white wedding cake. They visited
27 Tastries with friends and Eileen’s mother. After exchanging vows, their cake was moved to a
28 central area of the wedding venue, in full view of guests, as Eileen and Mireya participated in a

1 traditional ceremony cutting their wedding cake together.

2 88. From Miller’s standpoint, a wedding cake offered for any purpose *other* than the
3 union of a man and a woman, e.g., wedding of a man and a parrot, a man and multiple wives, a
4 man getting divorced, could *never* be “praiseworthy” or “of good report.” Nor would such purposes
5 align with Miller’s Christian beliefs. Miller’s concern was “hurt[ing] [her] Lord and Savior” by
6 being “part” of a same-sex wedding. There is a very high likelihood that a person who designs,
7 makes and delivers a wedding cake to a same-sex wedding ceremony will be understood as
8 conveying a message of support for that event.

9 89. Compelled expressive conduct is subject to strict scrutiny (as opposed to
10 intermediate scrutiny) if the compulsion is content or viewpoint—based. A regulation is content-
11 based if it “applies to particular speech because of the topic discussed or the idea or message
12 expressed.” *Reed V. Town of Gilbert, AZ* (“*Reed*”) (2015) 576 U.S. 155, 163-165; see *Telescope*
13 *Media Group v. Lucero* (8th Cir. 2019) 936 F.3d 740, 753 [law regulated based on content by
14 treating wedding videographers’ “choice to talk about one topic—opposite-sex marriages—as a
15 trigger for compelling them to talk about a topic they would rather avoid—same-sex marriages”].)
16 The phrase “content based” requires a court to consider whether a regulation of speech “on its face”
17 draws distinctions based on the message a speaker conveys. Some facial distinctions based on a
18 message are obvious, defining regulated speech by particular subject matter, and others are more
19 subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on
20 the message a speaker conveys, and, therefore, are subject to strict scrutiny. (*Reed, supra*, pp. 163-
21 164.)

22 90. Applying the foregoing legal principles, DFEH’s enforcement of the Unruh Civil
23 Rights Act under the circumstances of the present case compels expressive conduct based on
24 content, or viewpoint.

25 91. DFEH seeks to compel defendants to celebrate same-sex weddings, which changes
26 the content of defendants’ desired expressive conduct. DFEH also seeks to require defendants to
27 create wedding cakes celebrating same-sex weddings because they design and create wedding
28 cakes for traditional, opposite-sex weddings. It is only because Miller and Tastries design wedding

1 cakes celebrating marriage between a man and a woman that DFEH seeks to compel the defendants
2 to convey a different message celebrating same-sex marriage. DFEH's enforcement action would
3 also restrict access to the marketplace based on "viewpoint," i.e., defendants make cakes
4 celebrating weddings, the law does not require defendants to make cakes for every occasion, just
5 cakes for the celebration of same-sex weddings. Defendants disagree with that viewpoint.

6 92. Defendants' pure and expressive speech is entitled to protection under the First
7 Amendment. Application and enforcement of the Unruh Civil Rights Act under the circumstances
8 presented is not justified by a compelling governmental interest. DFEH's enforcement action seeks
9 to compel Miller and Tastries to express support for same-sex marriage, or be silent. No compelling
10 state interest justifies such a result under strict scrutiny.

11 **DISPOSITION**

12 93. Judgment for the defendants. Plaintiff shall take nothing by way of its first amended
13 complaint against the defendants.

14 94. Defendants are ordered to prepare a proposed judgment.

15 95. Costs of suit and attorneys' fees may be claimed and will be awarded in accordance
16 with applicable statutes and rules of court.

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20 **IT IS SO ORDERED.**

JUDGE OF THE SUPERIOR COURT

21
22 Dated: Signed: 12/27/2022 12:13 PM



Hon. J. Eric Bradshaw

Exhibit XXX

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: 324046 NAME: Soyeon C. Mesinas FIRM NAME: Cal. Civil Rights Department (fka Department of Fair Employment & Housing) STREET ADDRESS: 320 West 4th Street, 10th Floor, Suite # 1000 CITY: Los Angeles STATE: CA ZIP CODE: 90013 TELEPHONE NO.: 213-723-6035 FAX NO.: 888-382-5293 E-MAIL ADDRESS: soyeon.mesinas@dfeh.ca.gov ATTORNEY FOR (name): Department of Fair Employment and Housing	FOR COURT USE ONLY FILED SUPERIOR COURT OF CA, COUNTY OF KERN FEB 24 2023 BY:  DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, California 93301 BRANCH NAME: Metropolitan Division Justice Building	
PLAINTIFF/PETITIONER: Department of Fair Employment and Housing DEFENDANT/RESPONDENT: Cathy's Creations, Inc. d/b/a Tastries, et al.	
☒ NOTICE OF APPEAL ☐ CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER: BCV-18-102633

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Department of Fair Employment and Housing
 appeals from the following judgment or order in this case, which was entered on (date): December 27, 2022

- ☐ Judgment after jury trial
☒ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
☐ Other (describe and specify code section that authorizes this appeal):

2. For cross-appeals only:
- Date notice of appeal was filed in original appeal:
 - Date superior court clerk mailed notice of original appeal:
 - Court of Appeal case number (if known):

Date: February 23, 2023

Soyeon C. Mesinas

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

1 JAMIE L. CROOK, Chief Counsel (#245757)
NELSON CHAN, Assistant Chief Counsel (#109272)
2 KENDRA TANACEA, Associate Chief Counsel (#154843)
BRETT WATSON, Senior Staff Counsel (#327669)
3 SOYEON C. MESINAS, Staff Counsel (#324046)
CALIFORNIA CIVIL RIGHTS DEPARTMENT
4 320 West 4th Street, Suite # 1000
Los Angeles, California 90013
5 Telephone: (213) 439-6799
Facsimile: (888) 382-5293
6

7 Attorneys for Plaintiff,
CA Civil Rights Department

(Fee Exempt Pursuant to Gov. Code, § 6103)

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF KERN**

10 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
11 California,

12 Plaintiff,

13 vs.

14 CATHY'S CREATIONS, INC. d/b/a
15 TASTRIES, a California corporation; and
16 CATHARINE MILLER,

17 Defendants.

18 EILEEN RODRIGUEZ-DEL RIO and MIREYA
19 RODRIGUEZ-DEL RIO,

20 Real Parties in Interest.

Case No.: BCV-18-102633-JEB
Court of Appeals Case No.:

**PLAINTIFF'S NOTICE OF FEE
EXEMPT STATUS**

Dept.: 1
Judge: Hon. J. Eric Bradshaw

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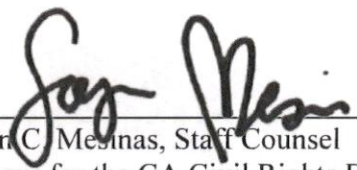
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Plaintiff California Civil Rights Department (formerly the Department of Fair
Employment and Housing) respectfully provides notice to this Court and the Court of
Appeal that is exempt from all filing fee requirements, pursuant to Government Code
section 6103.

Dated: February 24, 2023

CALIFORNIA CIVIL RIGHTS DEPARTMENT

By: 
Soyeon C. Mesinas, Staff Counsel
Attorneys for the CA Civil Rights Department

1 **PROOF OF SERVICE BY ELECTRONIC MAIL**

2 I am a citizen of the United States and am employed in Los Angeles County. I am over the
3 age of eighteen (18) years and not a party to the within action. My business address is 320 West 4th
4 Street, Suite # 1000, Los Angeles, California 90013.

5 My e-mail address is valentina.martinez@dfeh.ca.gov.

6 On the date below I enclosed a true copy of the:

7 **1. PLAINTIFF'S NOTICE OF FEE EXEMPT STATUS**

8 **2. PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly**
9 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) NOTICE OF**
10 **APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)**

11 (In the matter of *Department of Fair Employment & Housing vs. Cathy's Creations, Inc., et al.*
12 (*Eileen Rodriguez-Del Rio, et al., Real Parties in Interest*); Case Number: BCV-18-102633) in a
13 separate envelope for each of the persons named below, addressed follows:

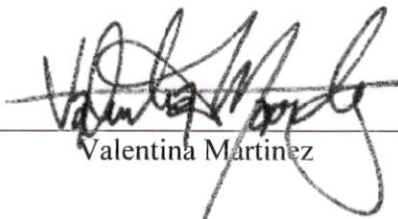
14 ☒ **By E-Mail** by forwarding a true and correct copy of the above document(s) via e-mail to the
15 person(s) at the e-mail address(es) set forth below.

16 Charles S. LiMandri – Email: climandri@limandri.com
17 Jeffrey M. Trissell – Email: jtrissell@limandri.com
18 Paul Jonna – pjonna@limandri.com
19 Kathy Denworth – Kdenworth@limandri.com
20 LiMANDRI & JONNA, LLP
21 16236 San Dieguito Road, Building 3, Suite # 3-15
22 P.O. Box # 9120
23 Rancho Santa Fe, California 92067

24 Thomas Brejcha – Email: tbrejcha@thomasmoresociety.org
25 Peter Breen – Email: pbreen@thomasmoresociety.org
26 THOMAS MORE SOCIETY
27 309 West Washington Street, Suite # 1250
28 Chicago, Illinois 60606

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct.

31 Executed on February 24, 2023, at Los Angeles, California.

32 
33 Valentina Martinez

PROOF OF SERVICE BY U.S. MAIL

I am a citizen of the United States and am employed in Sacramento County. I am over the age of eighteen (18) years and not a party to the within action. My business address is 2218 Kausen Drive, Suite 100, Elk Grove, California 95758.

On the date below I enclosed a true copy of the:

1. PLAINTIFF'S NOTICE OF FEE EXEMPT STATUS

2. PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)

(In the matter of *Department of Fair Employment & Housing vs. Cathy's Creations, Inc., et al. (Eileen Rodriguez-Del Rio, et al., Real Parties in Interest)*; Case Number: BCV-18-102633) in a separate envelope for each of the persons named below, addressed follows:

☒ **By United States Mail** by placing a true and correct copy of the above document(s) enclosed in a sealed envelope with postage thereon fully prepaid following the Department's ordinary business practices for the collection and processing of mail, of which I am readily familiar. On the same day, that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

Charles S. LiMandri – Email: climandri@limandri.com
Jeffrey M. Trissell – Email: jtrissell@limandri.com
Paul Jonna – pjonna@limandri.com
Kathy Denworth – Kdenworth@limandri.com
LiMANDRI & JONNA, LLP
16236 San Dieguito Road, Building 3, Suite # 3-15
P.O. Box # 9120
Rancho Santa Fe, California 92067

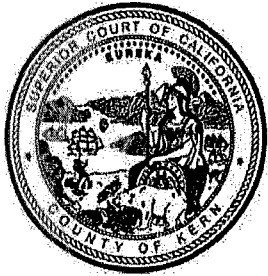
Thomas Brejcha – Email: tbrejcha@thomasmoresociety.org
Peter Breen – Email: pbreen@thomasmoresociety.org
THOMAS MORE SOCIETY
309 West Washington Street, Suite # 1250
Chicago, Illinois 60606

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2023, at Sacramento, California.


Vy Pham

Exhibit YYY

 SUPERIOR COURT OF CALIFORNIA COUNTY OF KERN APPEALS DIVISION 1415 Truxtun Avenue Bakersfield, CA 93301 661-868-7203	FOR COURT USE ONLY FILED KERN COUNTY SUPERIOR COURT 02/24/2023 BY <u>Hackler, Jamie</u> DEPUTY
Plaintiff / Appellant DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING Defendant / Respondent CATHY'S CREATIONS, INC. DBA TASTRIES, ET AL	
Notice of Filing of Appeal	CASE NUMBER: BCV-18-102633

To the Clerk of the Court of Appeal, Fifth Appellate District, in and for the State of California, and to the attorney(s) of record of each party other than the appellant, or to the party if not represented by an attorney:

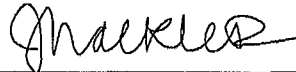
This is to notify you, pursuant to the California Rules of Court, Title Eight Rules on Appeal adopted by the Judicial Council of the State of California, a Notice of Appeal for the Judgment / Ruling / Order entered on 01/05/2023 in the above-entitled case was filed on 02/24/2023 by Department of Fair Employment and Housing.

Enclosures to the Clerk, Court of Appeal:

- Photocopy of the Notice of Appeal
- Photocopy of the Judgment, Ruling or Order
- Filing Fee: \$775.00 Not Offered

Date: February 24, 2023

Tamarah Harber-Pickens
 CLERK OF THE SUPERIOR COURT

By: 
 Jamie Hackler, Deputy Clerk

Signed: 2/24/2023 01:37 PM

CERTIFICATE OF MAILING

The undersigned, of said Kern Court, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Notice of Filing of Appeal* attached hereto on all interested parties and any respective counsel of record in the within action by (a) electronic means as laid forth in CCP 1010.6, (b) depositing true copies thereof, enclosed in a sealed envelope(s) or box(es) with postage fully prepaid and placed for collection and mailing on this date, following standard court practices, in the United States mail at BAKERSFIELD, CA addressed as indicated on the attached mailing list or (c) depositing true copies thereof in a Kern County interoffice envelope(s) and placing for collection and delivery on this date.

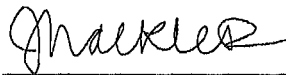
Date of Mailing: February 24, 2023

Place of Mailing: BAKERSFIELD, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: February 24, 2023

By: 

Jamie Hackler, Deputy Clerk

Signed: 2/24/2023 01:37 PM

MAILING LIST

CHARLES S LIMANDRI
LAW OFC
PO BOX 9520
RANCHO SANTA FE CA 92067-

KENDRA L TANACEA
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

JAIME L CROOK
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

NELSON H CHAN
DEPT FAIR EMPLOYMENT AND HOUSING
2218 KAUSEN DR #100
ELK GROVE CA 95758

SOYEON C MESINAS
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST STE 1000 10TH FL
LOS ANGELES CA 90013

BRETT WATSON
CALIFORNIA CIVIL RIGHTS DEPARTMENT
320 W 4TH ST #1000
LOS ANGELES CA 90013

FIFTH DISTRICT COURT OF APPEAL
2424 VENTURA ST
FRESNO CA 93721

Certificate of Mailing

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN
METROPOLITAN DIVISION
1415 TRUXTUN AVENUE
BAKERSFIELD, CA 93301-5215

RETURN SERVICE REQUESTED

neopost[®]
02/27/2023
FIRST-CLASS MAIL
US POSTAGE \$000.60⁰



ZIP 93301
041L12205143

RECEIVED

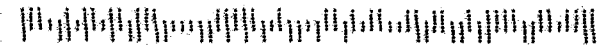
MAR 1 - 2023

California Civil Justice Department
Legal Division
Elk Grove

BCV-18-102633

NELSON H CHAN
DEPT FAIR EMPLOYMENT AND HOUSING
2218 KAUSEN DR #100
ELK GROVE CA 95758

9575857178 R061



AA02570

Exhibit *ZZZ*

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Kendra L. Tanacea FIRM NAME: Cal. Civil Rights Department (fka Department of Fair Employment & Housing) STREET ADDRESS: 320 West 4th Street, 10th Floor, Suite # 1000 CITY: Los Angeles TELEPHONE NO.: 510-972-6823 E-MAIL ADDRESS: kendra.tanacea@dfeh.ca.gov ATTORNEY FOR (name): Department of Fair Employment and Housing		STATE BAR NUMBER: 154843 STATE: CA ZIP CODE: 90013 FAX NO.: 888-382-5293		FOR COURT USE ONLY FILED SUPERIOR COURT OF CA, COUNTY OF KERN MAR 30 2023 BY: <u>Thalkeer</u> DEPUTY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Civil Division, Metro Justice Building					
PLAINTIFF/PETITIONER: Department of Fair Employment and Housing DEFENDANT/RESPONDENT: Cathy's Creations, Inc., et al. OTHER PARENT/PARTY:					
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)				SUPERIOR COURT CASE NUMBER: BCV-18-102633	
RE: Appeal filed on (date): 3/21/2023				COURT OF APPEAL CASE NUMBER (if known): F085800	
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.					

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I choose to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section (item 4) on pages 2 and 3 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rules 3.50–3.58; or
- (b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58. (Use *Request to Waive Court Fees* (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate (agree) to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I choose to proceed (you must check a or b below):

- a. ☐ WITHOUT a record of the oral proceedings (what was said at the hearing or trial) in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in deciding whether an error was made in the superior court proceedings.

3-30-23

AA02572

CASE NAME: Department of Fair Employment and Housing v. Cathy's Creations, Inc., et al.

SUPERIOR COURT CASE NUMBER:
BCV-18-102633

2. b. ☒ WITH the following record of the oral proceedings in the superior court (you must check (1), (2), or (3) below):
- (1) ☒ A reporter's transcript under rule 8.130. (You must fill out the reporter's transcript section (item 5) on pages 3 and 4 of this form.) I have (check all that apply):
- (a) ☒ Deposited with the superior court clerk the approximate cost of preparing the transcript by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (check either (i) or (ii)):
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) ☐ An agreed statement. (Check and complete either (a) or (b) below.)
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have stipulated (agreed) in writing to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137. (You must check (a), (b), or (c) below, and fill out the settled statement section (item 6) on page 4.)
- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but I have an order waiving fees and costs.
- (c) ☐ I am asking to use a settled statement for reasons other than those listed in (a) or (b). (You must serve and file the motion required under rule 8.137(b) at the same time that you file this form. You may use form APP-025 to prepare the motion.)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE COURT OF APPEAL

- ☐ I request that the clerk transmit to the Court of Appeal under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (give the title and date or dates of the administrative proceeding):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a above indicating that you choose to use a clerk's transcript as the record of the documents filed in the superior court.)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
--------------------------------	----------------

- (1) Notice of appeal
- (2) Notice designating record on appeal (this document)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (if any)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (if any)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (if any)

CASE NAME: Department of Fair Employment and Housing v. Cathy's Creations, Inc., et al.

SUPERIOR COURT CASE NUMBER:
BCV-18-102633

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

☐ I request that the clerk include in the transcript the following documents that were filed in the superior court proceeding. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		

☐ See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 4b," and start with number (12).)

c. Exhibits to be included in clerk's transcript

☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			

☐ See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 4c," and start with number (5).)

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you choose to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

a. Format of the reporter's transcript

I request that the reporters provide (check one):

- (1) ☒ My copy of the reporter's transcript in electronic format.
- (2) ☐ My copy of the reporter's transcript in paper format.
- (3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271.)

CASE NAME: Department of Fair Employment and Housing v. Cathy's Creations, Inc., et al.

SUPERIOR COURT CASE NUMBER:
BCV-18-102633

5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1) 07/22/2022	J	Partial	Motions in Limine	Cynthia R. Pola	☒ Yes ☐ No
(2) 07/25/2022	J	Full	Motions in Limine/Openings	Cynthia R. Pola	☒ Yes ☐ No
(3) 07/26/2022	J	Full	Witness Testimony	Cynthia R. Pola	☒ Yes ☐ No
(4) 07/27/2022	J	Full	Witness Testimony	Cynthia R. Pola	☒ Yes ☐ No

☒ See additional pages. (Check here if you need more space to list additional proceedings. List these exhibits on a separate page or pages labeled "Attachment 5b," and start with number (5).)

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you choose to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					☐ Yes ☐ No
(2)					☐ Yes ☐ No
(3)					☐ Yes ☐ No
(4)					☐ Yes ☐ No

☐ See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 6," and start with number (5).)

7. a. The proceedings designated in 5b or 6 ☐ include ☐ do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal. (Rule 8.130(a)(2) and rule 8.137(d)(1) provide that your appeal will be limited to these points unless the Court of Appeal permits otherwise.) Points are set forth: ☐ Below ☐ On a separate page labeled "Attachment 7."

Date: 3/30/2023

Kendra L. Tanacea

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

Superior Court Case No. BCV-18-102633; Appellate Court Case. No. F085800 *Department of Fair Employment and Housing v. Cathy's Creations, Inc., et al.*

Attachment 5b to Appellant's Notice Designating Record on Appeal (APP-003)

Additional Responses to Part 5b "Proceedings":

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
5.	07/28/2022	J	Full	Witness Testimony	Cynthia R. Pola	Yes
6.	07/29/2022	J	Full	Witness Testimony/Closings	Cynthia R. Pola	Yes

1 **PROOF OF SERVICE BY ELECTRONIC MAIL**

2 I am a citizen of the United States and am employed in Los Angeles County. I am over the
3 age of eighteen (18) years and not a party to the within action. My business address is 320 West 4th
4 Street, Suite # 1000, Los Angeles, California 90013.

5 My e-mail address is valentina.martinez@dfeh.ca.gov.

6 On the date below I enclosed a true copy of the:

7 **1. APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL**
8 **(UNLIMITED CIVIL CASE)**

9 (In the matter of *Department of Fair Employment & Housing vs. Cathy's Creations, Inc., et al.*
10 (*Eileen Rodriguez-Del Rio, et al., Real Parties in Interest*); Case Number: BCV-18-102633) in a
11 separate envelope for each of the persons named below, addressed follows:

12 ☒ **By E-Mail** by forwarding a true and correct copy of the above document(s) via e-mail to the
13 person(s) at the e-mail address(es) set forth below.

14 Charles S. LiMandri – Email: climandri@limandri.com
15 Jeffrey M. Trissell – Email: jtrissell@limandri.com
16 Paul Jonna – pjonna@limandri.com
17 Kathy Denworth – Kdenworth@limandri.com
18 LiMANDRI & JONNA, LLP
16236 San Dieguito Road, Building 3, Suite # 3-15
17 P.O. Box # 9120
Rancho Santa Fe, California 92067

18 Thomas Brejcha – Email: tbrejcha@thomasmoresociety.org
19 Peter Breen – Email: pbreen@thomasmoresociety.org
20 THOMAS MORE SOCIETY
309 West Washington Street, Suite # 1250
21 Chicago, Illinois 60606

22 I declare under penalty of perjury under the laws of the State of California that the foregoing
23 is true and correct.

24 Executed on March 30, 2023, at Los Angeles, California.

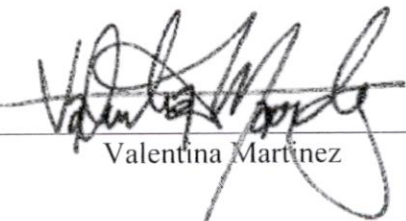
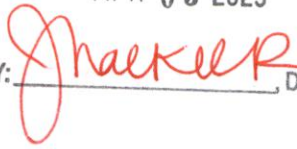
25
26
27 
Valentina Martinez
28

Exhibit AAAA

APR 03 2023

APP-010

ATTORNEY: Charles S. LiMandri, SBN 110841; Paul M. Jonna, SBN 265389 Jeffrey M. Trissell, SBN 292480; Milan L. Brandon, SBN 326953 LiMandri & Jonna LLP STREET ADDRESS: P.O. Box 9120 CITY: Rancho Santa Fe STATE: CA ZIP CODE: 92067 TELEPHONE NO.: (858) 759-9930 FAX NO.: (858) 759-9938 E-MAIL ADDRESS: cslimandri@limandri.com; pjonna@limandri.com; jtrissell@limandri.com ATTORNEY FOR (name): Defendants Cathy's Creations, Inc. and Catharine Miller	FOR COURT USE ONLY FILED SUPERIOR COURT OF CA, COUNTY OF KERN APR 03 2023 BY:  DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division	
PLAINTIFF/PETITIONER: Department of Fair Employment and Housing DEFENDANT/RESPONDENT: Cathy's Creations, Inc., and Catharine Miller OTHER PARENT/PARTY: Eileen Rodriguez-Del Rio and Mireya Rodriguez-Del Rio	
RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	SUPERIOR COURT CASE NUMBER: BCV-18-102633
Re: Appeal filed on (date): March 21, 2023	COURT OF APPEAL CASE NUMBER (if known): F085800
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

The appellant has chosen to use a clerk's transcript under rule 8.122.

- a. ☐ **Additional documents.** (If you want any documents from the superior court proceedings in addition to the documents designated by the appellant to be included in the clerk's transcript, you must identify those documents here.)

In addition to the documents designated by the appellant, I request that the clerk include in the transcript the following documents from the superior court proceedings. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		

- ☐ See additional pages. (Check here if you need more space to list additional documents. List these documents on a separate page or pages labeled "Attachment 1(a)," and start with number (8).)

FILED BY FAX

AA02579

CASE NAME:

Department of Fair Employment and Housing v. Cathy's Creations, Inc.

SUPERIOR COURT CASE NUMBER:

BCV-18-102633

1. b. ☐ **Additional exhibits.** (If you want any exhibits from the superior court proceedings in addition to those designated by the appellant to be included in the clerk's transcript, you must identify those exhibits here.)

In addition to the exhibits designated by the appellant, I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court. (For each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence. If the superior court has returned a designated exhibit to a party, the party in possession of the exhibit must deliver it to the superior court clerk within 10 days after service of this notice designating the record. (Rule 8.122(a)(3).))

Exhibit Number	Description	Admitted (Yes/No)
(1)		
(2)		
(3)		
(4)		

☐ See additional pages. (Check here if you need more space to list additional exhibits. List these exhibits on a separate page or pages labeled "Attachment 1(b)," and start with number (5).)

- c. ☐ **Copy of clerk's transcript.** I request a copy of the clerk's transcript. (Check (1) or (2).)

- (1) ☐ I will pay the superior court clerk for this transcript when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, I will not receive a copy.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rules 3.50–3.58; or
- (b) ☐ An application for a waiver of court fees and costs under rules 3.50–3.58. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

The appellant has chosen to use a reporter's transcript under rule 8.130.

- a. ☒ **Designation of additional proceedings.** (If you want any oral proceedings in addition to the proceedings designated by the appellant to be included in the reporter's transcript, you must identify those proceedings here.)

- (1) In addition to the proceedings designated by the appellant, I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings (for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions), the name of the court reporter who recorded the proceedings (if known), and whether a certified transcript of the designated proceeding was previously prepared.)

CASE NAME:

Department of Fair Employment and Housing v. Cathy's Creations, Inc.

SUPERIOR COURT CASE NUMBER:

BCV-18-102633

2. a. (1) (continued)

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(a)	1/22/2020	Metro. Div. Dept. 11	Partial	Motion to Compel Discovery Initial Hearing	Virginia A. Greene, CSR 12270	☒ Yes ☐ No
(b)	6/5/2020	Metro. Div. Dept. 11	Partial	Motion to Compel Discovery Supplemental Hearing	Virginia A. Greene, CSR 12270	☒ Yes ☐ No
(c)						☐ Yes ☐ No
(d)						☐ Yes ☐ No
(e)						☐ Yes ☐ No
(f)						☐ Yes ☐ No
(g)						☐ Yes ☐ No

☐ See additional pages. (Check here if you need more space to list additional proceedings. List these proceedings on a separate page or pages labeled "Attachment 2a(1)," and start with letter (h).)

(2) Deposit for additional proceedings.

I have (check a, b, c, or d):

- (a) ☒ Deposited with the superior court clerk the approximate cost of preparing the additional proceedings by including the deposit with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit under rule 8.130(b)(3)(A) for (check either (i) or (ii)):
- (i) ☐ All of the designated proceedings.
- (ii) ☐ Part of the designated proceedings.
- (d) ☐ Attached a certified transcript under rule 8.130(b)(3)(C).

b. Copy of reporter's transcript.

- (1) ☒ I request a copy of the reporter's transcript.
- (2) ☒ I request that the reporters provide (check (a), (b), or (c)) :
- (a) ☒ My copy of the reporter's transcript in electronic format.
- (b) ☐ My copy of the reporter's transcript in paper format.
- (c) ☐ My copy of the reporter's transcript in electronic format and a second copy of the reporter's transcript in paper format.

(Code Civ. Proc., § 271.)

Date: March 31, 2023

Charles S. LiMandri, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF RESPONDENT OR ATTORNEY)

COURT OF THE STATE OF CALIFORNIA KERN COUNTY SUPERIOR COURT - METROPOLITAN DIVISION		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) Dept. of Fair Employment & Housing v. Cathy's Creations, Inc. dba Tastries		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, SBN 110841 Paul M. Jonna, SBN 265389 LiMANDRI & JONNA LLP P.O. Box 9120 Rancho Santa Fe, California 92067 Tele: (858) 759-9930; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendants CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California Corporation; and CATHY MILLER, an individual	HEARING Dept. J	CASE NO.: BCV-18-102633 JUDGE: Hon. J. Eric Bradshaw

CERTIFICATE OF SERVICE

I, Kathy Denworth, declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is P.O. Box 9520, Rancho Santa Fe, CA 92067, Telephone number (858) 759-9948; Facsimile number (858) 759-9938. I further declare that I served the following document(s) on the parties in this action:

• **RESPONDENT'S NOTICE DESIGNATING RECORD ON APPEAL.**

by one or more of the following methods of service to:

Jamie L. Crook, Chief Counsel
Nelson Chan, Assistant Chief Counsel
Kendra Tanacea, Associate Chief Counsel
Brett Watson, Senior Staff Counsel
Soyeon C. Mesinas, Staff Counsel
California Civil Rights Department
320 West 4th Street, Suite 1000
Los Angeles, CA 90013
Tel: (213) 439-6799; Fax: (888) 382-5293
E-Mail: Jamie.crook@dfeh.ca.gov
E-Mail: Nelson.chan@dfeh.ca.gov
E-Mail: Kendra.tanacea@dfeh.ca.gov
E-Mail: Brett.watson@dfeh.ca.gov
E-Mail: Soyeon.mesinas@dfeh.ca.gov
E-Mail: Valentina.martinez@dfeh.ca.gov
Attorneys for California Civil Rights Department
(formerly Department of Fair
Employment and Housing)

____ (BY U.S. MAIL) I caused such document(s) to be sealed in envelopes, and with the correct postage thereon fully prepaid, either deposited in the United States Postal Service or placed for collection and mailing following ordinary business practices.

X (BY E-MAIL/ELECTRONIC MAIL) I caused a copy of the foregoing document(s) to be sent to the persons at the e-mail addresses listed above, this date via internet/electronic mail.

X (BY ELECTRONIC FILING/SERVICE) I caused such document(s) to be Electronically Filed and/or Service through the One Legal System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 31, 2023.

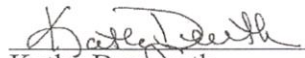

Kathy Denworth

Exhibit BBBB

REGISTER OF ACTIONS**CASE No. BCV-18-102633****DEPARTMENT OF FAIR EMPLOYMENT AND
HOUSING VS CATHY'S CREATIONS, INC.**§
§
§
§Location: **B-Civil**
Judicial Officer: **Bradshaw, J. Eric**
Filed on: **10/17/2018****CASE INFORMATION****Statistical Closures**

12/27/2022 Judgment - Entry of Judgment / Order After Court Trial

Case Type: **08-CV Civil Rights - Civil
Unlimited**Case
Status: **04/11/2023 Appeal****PARTY INFORMATION**

Plaintiff	DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA	<i>Lead Attorneys</i> TANACEA, KENDRA L <i>Retained</i> 213-439-6799(W)
Defendant	CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION	LIMANDRI, CHARLES S <i>Retained</i> 858-759-9930(W)
	MILLER, CATHARINE	LIMANDRI, CHARLES S <i>Retained</i> 858-759-9930(W)

DATE**EVENTS & ORDERS OF THE COURT****EVENTS**

10/17/2018	 Complaint Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/17/2018	 Civil Case Cover Sheet (CM-010) Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/17/2018	 Summons Issued and Filed <i>Returned Via E File</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/17/2018	 Order to Show Cause <i>Re: 3.110</i> <i>Hearing Date: 01/30/2019</i> <i>Hearing Time: 8:30 AM</i> <i>Hearing Department/Division: 11</i>
11/29/2018	 First Amended Complaint <i>FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF THE UNRUH CIVIL RIGHTS ACT AND THE FAIR EMPLOYMENT AND HOUSING ACT</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
12/05/2018	 Proof of Service - Summons / Complaint <i>As to Cathy's Creations, Inc. DBA Tastries, A California Corporation, Personal Service</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
12/05/2018	 Proof of Service - Summons / Complaint

REGISTER OF ACTIONS**CASE No. BCV-18-102633**

	<i>As to Catharine Miller, Personal Service</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
01/11/2019	 Media Request to Photograph Record or Broadcast <i>Media Agency: KGET-TV</i> <i>Channel/Frequency No.: 17</i> <i>Date of Proposed Coverage: 1/30/19</i>
01/22/2019	 Notice of Motion <i>Anti-Slapp Motion to Strike the Complaint</i> <i>Hearing Date: 3/5/19 at 8:30 a.m. in Department 11</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/22/2019	 Points and Authorities <i>in support of Anti-Slapp Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/22/2019	 Declaration <i>of Charles S. Limandri Esq. in support of Anti-Slapp Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/22/2019	 Declaration <i>of Catharine Miller in support of Anti-Slapp Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/22/2019	 Certificate <i>Certificate OF SERVICE</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/24/2019	 Notice of Insufficient Filing Fees
01/30/2019	 Media Request to Photograph Record or Broadcast <i>Media Agency: KGET TV</i> <i>Channel/Frequency No.: 17</i> <i>Date of Proposed Coverage: 3/5/19</i>
02/01/2019	 Errata <i>Notice of Errata Re: anti-SLAPP Motion to Strike Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/20/2019	 Declaration <i>DECLARATION OF GREGORY J. MANN IN SUPPORT OF DFEH S OPPOSITION TO DEFENDANTS CATHARINE MILLER S AND TASTRIES ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT- PART 2 OF 2- EXHIBITS 20- 24</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF TIMOTHY MARTIN IN SUPPORT OF DFEH S OPPOSITION TO DEFENDANTS CATHARINE MILLER S AND TASTRIES ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Proof of Service <i>OMNIBUS PROOF OF SERVICE</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

REGISTER OF ACTIONS**CASE No. BCV-18-102633**

02/20/2019	 Opposition <i>HRG 3-5-19- PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS CATHARINE MILLER S AND TASTRIES ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Objections <i>PLAINTIFF DFEH S OBJECTIONS TO EVIDENCE FILED IN SUPPORT OF DEFENDANTS ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF EILEEN RODRIGUEZ-DEL RIO</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF MARY JOHNSON</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF JESSICA CRIOLLO</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF MARISSA DELGADO</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/20/2019	 Declaration <i>DECLARATION OF GREGORY J. MANN IN SUPPORT OF DFEH S OPPOSITION TO DEFENDANTS CATHARINE MILLER S AND TASTRIES ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT- PART 1 OF 2- DECLARATION AND EXHIBITS 1-19</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/26/2019	 Reply Brief <i>Defendants' Reply in Support of anti-SLAPP Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Objections <i>And Response In Support of Anti-SLAPP Motion to Strike the Complaint; and (proposed) Order Thereon</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Objections <i>To Defendant's Brief Filed in Violation of California Rules of the Court, and Request for Striking of the Same</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Objections <i>to Defendant's Evidence Filed in Opposition to Anti-Slapp Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Declaration <i>Re: Anti-SLAPP Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

	TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Declaration <i>Of Charles S. LiMandri Re: Anti-SLAPP Motion to Strike the Complaint</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/26/2019	 Proof of Service <i>Re: Anti-Slapp Motion</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/27/2019	 Errata <i>Opposition to Defendants Catharine Miller s and Tastries Anti-Slapp Motion to Strike the Complaint</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/27/2019	 Proof of Service <i>Re: Opposition to Defenants MOtion to Strike Complaint</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/01/2019	 Response <i>Plaintiff Department of Fair Employment and Housing's Response to Defendants' Evidentiary Objections and (PROPOSED) Order ****NOT USED****</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/01/2019	 Objections <i>Plaintiff Department of Fair Employment and Housing's Objections to Defendant's Reply Evidence and (PROPOSED) Order ****NOT USED****</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/01/2019	 Declaration <i>Supplemental Declaration of Eileen Rodriguez-Del Rio</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/01/2019	 Proof of Service <i>Omnibus Proof of Service by Electronic Mail and Golden State Overnight (GSO) Mail</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/07/2019	 Electronic Rejection Notice <i>Notice of Jury Deposit: Missing fee of \$150.00</i>
03/07/2019	 Notice of Posting Non-Refundable Jury Fees Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
03/11/2019	 Notice of Posting Non-Refundable Jury Fees Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/15/2019	 Miscellaneous Filing <i>Proposed Order Cover Sheet *No stand alone proposed order submitted*</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
03/27/2019	 Order Denying Motion (Judicial Officer: Lampe, David R.) <i>Defendants Catharine Millers and Tastries Anti-Slapp Motion to Strike the Complaint</i>
03/29/2019	 Case Management Statement

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

04/02/2019



Case Management Statement

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

04/02/2019



Proof of Service by Mail

Re: Case Management Statement

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

04/11/2019



Answer to First Amended Complaint

By Cathy's Creations, Inc. DBA Tastries, a California Corporation and Catharine Miller

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

04/16/2019



Minute Order/Notice of Trial/MSF/Final Case Management Conf

Jury Trial set June 22, 2020 at 9:00 a.m. in Department 11.

Final Case Management Conference set June 19, 2020 at 1:30 p.m. in Department 11.

Mandatory Settlement Conference set May 22, 2020 at 9:00 a.m. in Department 1.

04/22/2019



Answer to First Amended Complaint

(Amended Answer) by Cathy's Creations, Inc. DBA Tastries and Catharine Miller

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

06/18/2019



Reporter's Transcript

Re Proceedings of March 5, 2019

Reporter ANGela McCauley

11/15/2019



Notice of Motion

Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

Hearing Date: 12/18/19 at 8:30 a.m. in Department 11

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

11/15/2019



Points and Authorities

in support of Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

11/15/2019



Separate Statement

in support of Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

11/15/2019



Declaration

of Jeffrey M. Trissell, Esq. in support of Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

11/15/2019



Proof of Service

re Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

11/19/2019



Proof of Service

re Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/02/2019



Stipulation to Continue and Order (Judicial Officer: Lampe, David R.)

This Court, having duly considered the stipulation of the parties, hereby orders that the hearing date on Defendants' Motion to Compel is continued from December 18, 2019, at 8:30 a.m. to

January 10, 2020, at 8:30 a.m. All deadlines for opposing and replying to the motion shall be calculated from the new hearing date.

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/06/2019



Electronic Rejection Notice

Stipulation & Order: Previous stipulation and order was signed by Judge and filed 12/2/19. The motion to compel is now on for January 10, 2020 so this stipulation needs to be corrected to state the new change from 1/10 to 1/22

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/12/2019



Electronic Rejection Notice

Stipulation and Order: 2nd Rejection. Stipulation does not state anything about an attachment. Either remove or explain what the reason for the attachment is in the stipulation.

12/20/2019



Stipulation and Order (Judicial Officer: Lampe, David R.)

to Continue Hearing Date on Defendants' Motion to (1) Compel Responses to Interrogatories; (2) Compel Production of Documents; and (3) For Leave to Depose Specific Individuals

This Court, having duly considered the stipulation of the parties, hereby orders that the hearing date on Defendants' Motion to Compel is continued from January 10, 2020, at 8:30 a.m. to

January 22, 2020 at 8:30 am. All deadlines for opposing and replying to the motion shall be calculated from the new hearing date.

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Notice of Motion

Notice of Motion to Compel Department of Fair Employment and Housing and Real Parties to Provide Further Responses to Documents Requests

Hearing Date: 1/22/20

Time: 8:30 a.m.

Department: 11

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Points and Authorities

Memorandum of Points and Authorities in Support of Motion to Compel The Department of Fair Employment and Housing and Real Parties to Provide Further Responses to Documents Requests

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Separate Statement

Separate Statement in Support of Motion to Compel the Department of Employment and Housing and Real Parties to Provide Further Responses to Document Requests

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Declaration

Declaration of Jeffrey M. Trissell, Esq. In Support of Motion to Compel Department of Fair Employment and Housing and Real Parties to Provide Further Responses to Document Requests

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Notice of Motion

Notice of Motion to Compel the Department of Employment and Housing to Provide Further Responses to Three Sets of Interrogatories

Hearing Date: 1/22/20

Time: 8:30 a.m.

Department: 11

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Points and Authorities

Memorandum of Points and Authorities in Support of Motion to Compel the Department of Employment and Housing to Provide Further Responses to Three Sets of Interrogatories

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/26/2019



Separate Statement

Separate Statement in Support of Motion to Compel the Department of Employment and Housing to Provide Further Responses to Three Sets of Interrogatories

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

01/08/2020



Stipulation and Order (Judicial Officer: Lampe, David R.)

To Continue Hearing Date on Defendants' (1) Motion to Compel the DFEH to Provide Further Responses to Three Sets of Interrogatories; And

(2) Motion to Compel the DFEH and Real Parties to Provide Further Responses to Document Requests

This Court, having duly considered the stipulation of the parties, hereby orders that the hearing date on Defendants' Two Motions to Compel (Reservation Nos. 36720, 36714) is continued

from January 22, 2020, at 8:30 a.m. to February 5, 2020 at 8:30 am. All deadlines for opposing and

replying to the motions shall be calculated from the new hearing date.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/08/2020



Opposition

Department Of Fair Employment And Housings Opposition To Defendants Motion To (1) Compel Responses To Interrogatories; (2) Compel Production Of Documents; And (3) For Leave To Depose Specific Individuals (DFEH Attorneys)

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/08/2020



Opposition

Department Of Fair Employment And Housings Opposition To Defendants Separate Statement In Support Of Motion To (1) Compel Responses To Interrogatories; (2) Compel Production Of Documents; And (3) For Leave To Depose Specific Individuals (Dfeh Attorneys)

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/08/2020



Declaration

Declaration Of Gregory J. Mann In Support Of DFH's Opposition To Defendants Motion To (1) Compel Responses To Interrogatories; (2) Compel Production Of Documents; And (3) For Leave To Depose Specific Individuals (DFH's Attorneys)

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/08/2020



Declaration

Declaration Of Dfeh Assistant Chief Counsel Paula D. Pearlman Re Assertion Of Privileges In Support Of Dfefs Opposition To Defendants' Motion To (1) Compel Responses To Interrogatories; (2) Compel Production Of Documents; And (3) For Leave To Depose Specific Individuals (Dfeh Attorneys)

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

OF THE STATE OF CALIFORNIA

01/08/2020

**Objections**

DFEH's Objections To Evidence Filed In Support Of Defendants Motion To (1) Compel Responses To Interrogatories; (2) Compel Production Of Documents; And (3) For Leave To Depose Specific Individuals (DFEH's Attorneys)

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/08/2020

**Proof of Service**

Omnibus Proof of Service by Electronic Mail and Golden State Overnight (GSO) Mail

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/14/2020

**Reply**

Reply In Support of Defendants' Motion to (1) Compel Responses to Interrogatories; (2) Compel Production of Documents; and (3) For leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

01/14/2020

**Response**

Response to DFEH's Objections to Evidence in Support of Defendants' Motion to (1) Compel Responses to Interrogatories; (2) Compel Production of Documents; and (3) For leave to Depose Specific Individuals

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

01/14/2020

**Objections**

Defendants' Evidentiary Objections to DFEH Evidence in Opposition to Motion to (1) Compel Responses to Interrogatories; (2) Compel Production of Documents; and (3) For Leave to Depose Specific Individuals; and (Proposed) Order

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

01/14/2020

**Proof of Service**

Re: Reply, Evidentiary Objections, and Response to Objections in Opposition to Motion to Compel

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

01/28/2020

**Withdrawal**

Notice of Withdrawal of Motions to Compel Further Responses (1) Three Interrogatories (2) Requests for Documents

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

02/03/2020

**Electronic Rejection Notice**

Stipulation & Order: Page 2 line 8 has the incorrect time for trial; Page 2 line 11 incorrectly states "trial date on Defendants' Motion to Compel" There is no Motion to Compel on calendar. If wanting to move all trial dates, the stipulation must address the 5/22/20 MSC, the 6/19/20 Final Case Management, and the 6/22/20 Trial date.

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

02/05/2020

**Stipulation to Continue**

Trial

****Refer to minutes issued 2/10/2020****

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

02/10/2020

**Reporter's Transcript**

Re Proceedings of January 22, 2020

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Reporter Virginia A Greene*

03/17/2020



Notice

of Supplemental Authority in support of Motion to Compel Responses to Interrogatories, Compel Production of Documents and for Leave to Depose

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

06/15/2020



Reporter's Transcript

*Re: Proceedings for 6/5/20**Reporter: Virginia A Greene*

07/10/2020



Brief

07-10-20 - Suppl. Briefing iso Motion to Compel

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/10/2020



Declaration

07-10-20 - Suppl. Declaration of Jeffrey Trissell

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/10/2020



Proof of Service

07-10-20 - Proof of Service

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/10/2020



Opposition

Department Of Fair Employment And Housings Supplemental Opposition

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/10/2020



Request for Judicial Notice

Department Of Fair Employment And Housings Request For Judicial Notice

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/29/2020



Case Management Statement

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

08/07/2020



Case Management Statement

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

08/07/2020



Proof of Service

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

08/17/2020



Minute Order/Notice of Trial/MSD/Final Case Management Conf

*Jury Trial/Final Case Management Conference are continued to December 13, 2021 at 9:00 a.m. in Department 11.**Mandatory Settlement Conference is continued to November 12, 2021 at 9:00 a.m. in Department 1.*

09/11/2020



Ex Parte Application / Petition

for Temporary Stay of Discovery Order Pending Application for Appellate Review

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/11/2020



Points and Authorities

Memorandum of Points and Authorities in Support of Plaintiff Department of Fair Employment and Housings's Ex Parte Application for Temporary Stay of Discovery Order Pending Application for Appellate Review

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/11/2020

**Declaration**

of Gregory J. Mann in Support of Department of Fair Employment and Housing's Ex Parte Application for Temporary Stay of Discovery Order Pending Application for Appellate Review
 Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/11/2020

**Proof of Service**

Re: [Proposed] Order, Memorandum of Points and Authorities; Ex Parte Application and Declaration of Gregory J. Mann
 Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/11/2020

**Opposition**

Opposition to Ex Parte for Stay of Discovery Order Pending Writ Petition
 Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
 TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/30/2020

**Letter Received**

Letter From: Attorney General
Date of Letter: 09/29/20
Re: incorrect case number

10/01/2020

**Order from Fifth District Court of Appeal filed**

Ruling on Defendants' Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) For Leave to Depose Specific Individuals" issued 08/11/2020 is hereby ordered stayed pending determination of the Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief.

10/02/2020

**Letter Received**

Letter From: Court of Appeal
Date of Letter: 09/29/20
Re: Amicus Letter of Public Counsel

11/18/2020

**Service/Courtesy Copy Received**

Petitioner's Informal Reply to Informal SUPPLEMENTAL Briefing in Opposition to Petition for Writ of Mandate, Prohibition, or other Appropriate Relief

01/27/2021

**Order from Fifth District Court of Appeal filed**

01/27/2021

**Order from Fifth District Court of Appeal filed**

Alternative Writ of Mandate and Order to Show Cause

03/04/2021

**Order from Fifth District Court of Appeal filed**

The petition is dismissed.

08/09/2021

**Stipulation**

Regarding Summary Judgment Briefing Schedule
 Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
 TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

08/10/2021

**Order (Judicial Officer: Lampe, David R.)**

This Court, having duly considered the stipulation of the parties, hereby adopts the Parties' proposed cross-summary judgment briefing schedule, and ORDERS that:
o The Parties' Cross-Motions for Summary Judgment are due on September 8, 2021;
o The Parties' Oppositions to Summary Judgment are due on October 6, 2021;
o The Parties' Replies in Support of Summary Judgment are due on October 20, 2021;
o The Hearing on the Parties' Cross-Motions for Summary Judgment is set for November 4, 2021, at 8:30 a.m.
IT IS SO ORDERED:

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
 TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/01/2021

**Ex Parte Application / Petition**

Defendants' Ex Parte Application for Approval and Entry of a Confidentiality Discovery

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

	<i>Protective Order</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/01/2021	 Declaration <i>of Jeffrey M. Trissell in Support of Defendants' Ex Parte Application for Approval and Entry of a Confidentiality Discovery Protective Order</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/01/2021	 Proof of Service <i>Certificate of Service</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/02/2021	 Electronic Rejection Notice <i>Stipulation and Proposed Order: Right hand corner of page one is designated for Court Use Only. Filing is not in compliance with C.R.C 2.110(2)</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
09/02/2021	Audio streaming announced.
09/03/2021	 Protective Order (Judicial Officer: Lampe, David R.) **Stipulated** Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/07/2021	 Notice <i>Notice of Change in Firm Information</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Notice of Motion <i>Motion for Summary Judgment</i> <i>Hearing Date: 11/4/21 at 8:30 a.m. in Department 11</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Separate Statement of Undisputed Facts <i>in support of Motion for Summary Judgment</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Declaration <i>of Catharine Miller in support of Motion for Summary Judgment</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Declaration <i>of Jeffrey M Trissell, Esq. in support of Motion for Summary Judgment</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Appendix <i>of Exhibits, Volume I, in support of Catharine Miller and Tastries Bakery's Motion for Summary Judgment</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
09/08/2021	 Appendix <i>of Exhibits Volume II, in support of Catharine Miller and Tastries Bakery's Motion for Summary Judgment</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/08/2021



Notice of Motion

Motion to Seal in support of Motion for Summary Judgment
Hearing Date: 11/4/21 at 8:30 a.m. in Department 11

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/08/2021



Points and Authorities

in support of Motion to Seal

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/08/2021



Declaration

of Milan Brandon in support of Motion to Seal

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/08/2021



Notice of Motion

Plaintiff Department of Fair Employment and Housing's Notice of Motion and Motion for Summary Judgment or, in the Alternative, Summary Adjudication
Hearing Date: 11/4/21 at 8:30 a.m. in Department 11

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Points and Authorities

Plaintiff Department of Fair Employment and Memorandum of Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Separate Statement of Undisputed Facts

Plaintiff Department of Fair Employment and Housing's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Exhibits in Support

Appendix of Exhibits in Support of Plaintiff Department of Fair Employment and Housing's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Proof of Service

Omnibus Proof of Service by Electronic Mail re Motion for Summary Judgment

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Declaration

of Gregory J. Mann in Support of Plaintiff Department of Fair Employment and Housing's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Declaration

of Mireya Rodriguez-DelRio in Support of Plaintiff Department of Fair Employment and Housing's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/08/2021



Request for Judicial Notice

Plaintiff Department of Fair Employment and Housing's Request for Judicial Notice in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/09/2021



Points and Authorities

in support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/09/2021



Appendix

of Exhibits, Volume III re Motion for Summary Judgment

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/09/2021



Appendix

of Authorities in support of Motion for Summary Judgment

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/09/2021



Proof of Service

re Motion for Summary Judgment

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/09/2021



Request for Judicial Notice

in support of Motion for Summary Judgment

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/09/2021



Declaration

of Milan Brandon in support of Motion for Summary Judgment

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/01/2021



Electronic Rejection Notice

RE: Stipulation and Proposed Order, please separate the proposed order and file as a separate document.

10/01/2021



Stipulation

Regarding Length of Summary Judgment Briefs and Continuance of Trial and All Associated Dates

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/01/2021



Proof of Service

of Service by Electric Mail

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

10/01/2021



Errata

PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING???S NOTICE OF ERRATA TO ITS (1) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AND (2) SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

10/01/2021



Proof of Service

PROOF OF SERVICE BY ELECTRONIC MAIL

10/04/2021



Order (Judicial Officer: Lampe, David R.)

*Regarding Length of Summary Judgment Brief and Continuance of Trial and All Associated Dates**This Court, having duly considered the stipulation of the Parties, hereby orders that, with respect to Defendants' motion for summary judgment or adjudication, currently set for hearing*

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

on November 4, 2021, and filed with the Court on September 8, 2021, the Parties may submit moving and opposing memoranda of points and authorities up to 21 pages in length.

This Court, having duly considered the stipulation of the Parties, hereby orders that the trial date in this action is continued from December 13, 2021, at 9:00 a.m. to February 28, 2022 at 9:00 a.m. This Court further orders that the Mandatory Settlement Conference is continued from November 12, 2021, at 9:00 a.m. to January 28, 2022 at a time and department to be set by the clerk. and that the Final Case Management Conference is continued from December 13, 2021 at 9:00 a.m. to Date of Trial. All dates associated with the trial date, including the discovery cut-off date, are continued accordingly.

IT IS SO ORDERED.

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

10/06/2021



Opposition

Opposition to Plaintiff DFEH Motion for Summary Judgment

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Separate Statement

Separate Statement

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Declaration

Declaration of Catharine Miller

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Declaration

Declaration of Jeffrey Trissell

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Objections

Evidentiary Objections

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Exhibits in Support

Appendix of Exhibits Vol. IV

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/06/2021



Points and Authorities

Plaintiff Department Of Fair Employment And Housing s Memorandum Of Points And Authorities In Opposition To Defendants Catharine Miller And Tastries Bakery s Motion For Summary Judgment Or, In The Alternative, Summary Adjudication

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

10/06/2021



Response

Plaintiff Department Of Fair Employment And Housing s Response To Defendants Catharine Miller And Tastries Bakery s Separate Statement Of Material Facts And Additional Undisputed Material Facts In Support Of Its Opposition To Defendants Motion For Summary Judgment

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

10/06/2021



Declaration

Declaration Of Gregory J. Mann In Support Of Plaintiff Department Of Fair Employment And Housing s Opposition To Defendants Motion For Summary Judgment Or, In The Alternative, Summary Adjudication

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

OF THE STATE OF CALIFORNIA

10/06/2021	 Proof of Service <i>OMNIBUS PROOF OF SERVICE BY ELECTRONIC MAIL</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/06/2021	 Objections <i>Plaintiff Department Of Fair Employment And Housing s Objections To Evidence Filed In Support Of Defendants Motion For Summary Judgment Or, In The Alternative, Summary Adjudication</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/06/2021	 Points and Authorities <i>PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS CATHARINE MILLER AND TASTRIES BAKERY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/07/2021	 Minute Order/Notice of Trial/MSJ/Final Case Management Conf
10/14/2021	 Appendix <i>of Exhibits in Support of Opposition to Motion for Summary Judgment or, in the Alternative, Summary Adjudication</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/20/2021	 Notice of Reassignment from Judge Lampe to Judge Clark
10/20/2021	 Reply <i>Memorandum in support of Defendants' Motion for Summary Judgment, or in the Alternative, Summary Adjudication</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
10/20/2021	 Separate Statement of Undisputed Facts <i>& Response to Plaintiff's Additional Material Facts</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
10/20/2021	 Reply <i>in support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/20/2021	 Separate Statement <i>in Response to Defendants' Separate Statement in Opposition to Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/20/2021	 Objections <i>to Evidence Filed in support of Defendants' Opposition to DEFH's Motion for Summary Judgment or, in the Alternative, Summary Adjudication</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
10/20/2021	 Proof of Service

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***[Omnibus] by Electronic Mail*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

10/27/2021



Ex Parte Application / Petition

to Continue the Cross-Summary Judgment Hearing

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/27/2021



Declaration

of Paul M. Jonna, Esq. in Support of Defendants' Unopposed Ex Parte Application to Continue the Cross-Summary Judgment Hearing

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

10/28/2021



Order (Judicial Officer: Clark, Thomas S.)

ORDER CONTINUING THE CROSS-SUMMARY JUDGMENT HEARING

11/15/2021



Notice of Reassignment from Judge Lampe to Judge Bradshaw

11/24/2021



Electronic Rejection Notice

Re: Stipulation and Proposed Order, please separate the proposed order and field as a separate document.

11/24/2021



Stipulation

to Continue Trial and All Associated Dates

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J; Plaintiff
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE
STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A
CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/02/2021



Rejection/Correction Notice

Proposed Order: Order does not conform to stipulation per JEB.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/15/2021



Order (Judicial Officer: Bradshaw, J. Eric)

*on Defendants Motion to Seal**This Court, having considered Defendants Catharine Miller and Cathy's Creations, Inc.'s Motion to Seal, and good cause having been shown therefore,**IT IS ORDERED that Defendants' Motion to seal is hereby GRANTED. Accordingly, the following records are ordered to be filed under seal:*

1. Exhibit B to Declaration of Catharine Miller filed in connection with Defendants Motion for Summary Judgment or, in the Alternative, Summary Adjudication; and

2. Exhibit F to the Declaration of Catharine Miller filed in connection with Defendants Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

IT IS SO ORDERED.

Party: Attorney LIMANDRI, CHARLES S; Defendant MILLER, CATHARINE

12/15/2021



Order (Judicial Officer: Bradshaw, J. Eric)

*Granting Defendants Catharine Miller and Tastries Bakery's Request for Judicial Notice in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication**This Court, having considered the Request for Judicial Notice of Defendants Catharine Miller and Cathy's Creations, Inc., and good cause having been shown therefore,**IT IS ORDERED that this Court takes judicial notice of:*

(1) The May 1, 2018 judgment -incorporating and attaching the February 5, 2018 preliminary injunction order-entered in Plaintiff Department of Fair Employment and Housing's Petition

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

for Preliminary Injunction titled Department of Fair Employment and Housing vs. Cathy's Creations, Inc. et. al., Case No. BCV-17-102855.

IT IS SO ORDERED.

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/15/2021

 Order (Judicial Officer: Bradshaw, J. Eric)

Granting Plaintiff Department of Fair Employment and Housing's Request for Judicial Notice in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Plaintiff Department of Fair Employment Housing's Request for Judicial Notice ("Request") came on for hearing before the above-captioned court on November 4, 2021 at 8:30 a.m. The court, having considered the Request and any opposition thereto, and good cause having been shown, hereby orders as follows:

The Request is GRANTED, and the court takes judicial notice of the following civil complaints:

- 1. DFEH v. M&N Financing Corporation, et al., Los Angeles Superior Court Case No. BC591206;*
- 2. DFEH v. Vasona Management, Inc., et al., Alameda Superior Court Case No. RG20078727;*
- 3. DFEH v. Grisez-Buchanan LLC, et al., San Francisco Superior Court Case No. CGC-17-557864; and*
- 4. DFEH v. Law School Admission Council, Inc., United States District Court for the Northern District of California Case No. CV-12-1830-EMC.*

IT IS SO ORDERED.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/15/2021

Audio streaming announced.

12/15/2021

Audio streaming announced.

12/27/2021

 Miscellaneous Filing

Proposed Order Cover Sheet

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/30/2021

 Electronic Rejection Notice

Proposed Order on Defendants Motion for Summary Judgment x 2 and Proof of Service: Duplicate orders are attached to filing. Proof of service states Order on Plaintiffs MSJ and Order on Defendants MSJ were served but only one of the 2 was included in the filing and it was attached twice. Please review and resubmit.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/30/2021

 Proof of Service

OMNIBUS PROOF OF SERVICE BY ELECTRONIC MAIL

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/04/2022

 Electronic Rejection Notice

Re: Proposed order on Plaintiff's Motion for Summary Judgement or in the Alternative Summary Adjudication, Proposed order is a duplicate, a proposed order was electronically received by the court on 12/27/2021.

01/06/2022

 Order (Judicial Officer: Bradshaw, J. Eric)

on Plaintiff Department of Fair Employment & Housing's Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Plaintiff Department of Fair Employment & Housing's Motion for Summary Judgment or , in the Alternative, Summary Adjudication , in the above entitled action came on for hearing on

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

December 15, 2021 at 8:30 a.m. in Department 11 of the Kern County Superior Court, Metropolitan Division, the Honorable J. Eric Bradshaw presiding. Plaintiff Department of Fair Employment & Housing appeared through its counsel of record, Gregory J. Mann. Defendants Catharine Miller and Cathy's Creations, Inc. dba Tastries Bakery appeared through their counsel of record, Paul M. Jonna and Jeffrey M. Trissell.

Based on the evidence presented, submissions of the parties, the complete file in this matter, the oral argument of the parties, and good cause appearing, and as stated in this Court's Minute Order dated December 15, 2021, which is copied and incorporated below, it is hereby ORDERED and DECREED as follows: The Court denies Plaintiff Department of Fair Employment & Housing's Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

DISCUSSION

Plaintiff has failed to meet its initial burden as the moving party to demonstrate that there are no triable issues of material fact as to its cause of action for discrimination and violation of the Unruh Act. The plaintiff has not demonstrated the requisite intent. The plaintiff bases its motion on unsupported conclusions and what the Court views as a skewed view of the facts such as the nature of the defendant's business and how to characterize its output.

The plaintiff has failed to meet its burden as to the defendants' affirmative defenses, has failed to, for example, show that the defendants do not possess evidence to support their defenses and that they cannot reasonably obtain the needed evidence.

In the Court's view, there are triable issues of material fact on both plaintiff's Unruh claim and defendants' affirmative defenses. This case involves nuances of law and fact that are not eliminated as a matter of law.

The Court does not find that the May 21st, 2018, ruling on defendants' anti SLAPP motion proves as a matter of law that the plaintiff has demonstrated its prima facie case.

The Court OVERRULES the defendants' objections to the plaintiff's evidence and OVERRULES the plaintiff's objections to the defendants' evidence.

IT IS SO ORDERED.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

01/11/2022



Minute Order/Notice of Trial/MSJ/Final Case Management Conf

01/28/2022



Order (Judicial Officer: Bradshaw, J. Eric)

on Defendants Catharine Miller's and Cathy's Creations, Inc dba Tastries Bakery's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

05/20/2022



Ex Parte Application / Petition

Regarding Pre-Trial Preparations

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

06/20/2022



Electronic Rejection Notice

To: Gregory J. Mann

Re: Stip and Consent to Bench Trial

Reason: Please resubmit and correct the time listed as well as update the Department and Court address to 1215 Truxtun Avenue, Division J, Bakersfield Ca 93301. When resubmitting please make sure there is a designated area for Judicial Signature with the \$20 fees attached. Please review.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

06/21/2022



Stipulation

Stipulation and Consent to Bench Trial

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY

REGISTER OF ACTIONS**CASE No. BCV-18-102633**

OF THE STATE OF CALIFORNIA

06/21/2022



Proof of Service

Omnibus Proof of Service by United States Postal Service (Mail) and Electronic Mail as to Stipulation and Consent to Bench Trial and Proposed Order

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/06/2022



Order (Judicial Officer: Bradshaw, J. Eric)

***GRANTED

TO ALL PARTIES AND COUNSEL ON RECORD:

Having reviewed the parties' Joint Stipulation and Consent to Bench Trial:

IT IS HEREBY ORDERED THAT:

This case will be tried before this Court in Department J, located at 1215 Truxtun Ave, Bakersfield, CA 93301, commencing on July 25, 2022, at 9:00 a.m., for a bench trial.

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Electronic Rejection Notice

To: Kathy Denworth

Re: Defendants Motions in Limine and Declaration and Prop. Order

Reason: Kathy per our conversation, please resubmit all documents with the correct time of 9 am of Trial on 7/25/22. Please review.

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Electronic Rejection Notice

To: Paul Jonna

Re: Defendant Exhibit List for Trial

Reason: Kathy per our conversation, the time listed on all documents is incorrect. Also, please update the Court address to 1215 Truxtun Avenue, Division J, Bakersfield Ca 93301. Please review.

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Electronic Rejection Notice

To: Gregory J. Mann

Re: Kenjainm, per our conversation, please resubmit and correct the date and time for all documents submitted. Please review.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Electronic Rejection Notice

To: Gregory J. Mann

Re: Declaraion ISO Plaintiff

Reason: Kenjmain per conversation please correct the date and time listed. Please review.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Electronic Rejection Notice

To: Gregory Mann

Re: Continuation of Declaration

Reason: Kejainm per our conversation, Improper filing. Please review.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Electronic Rejection Notice

To: Gregory Mann

Re: Continued Declaration

Reason: Kenjainm per our conversation, Improper filing of continued Declaration, Please review.

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Electronic Rejection Notice

To: Gregory J. Mann

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Re: Continued Declaration**Reason: Kenjamin per our conversatio, Improper Filine of of Continued Declaration. Please review.*Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/11/2022



Proposed Exhibit List - Defendant

*Proposed Defendants Corrected and Amended Trial Exhibit List*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Proposed Witness List - Defendant

*Proposed Defendants Corrected Witness List*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 1 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 2 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 3 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 4 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 5 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 6 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 7 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 8 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 9 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/11/2022



Motion in Limine - Defendant

*Corrected Motion in Limine No. 10 - Defendant*Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA
TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

07/11/2022	 Motion in Limine - Defendant <i>Corrected Motion in Limine No. 11 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Corrected Motion in Limine No. 12 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Corrected Motion in Limine No. 13 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Suppl. Motion in Limine No. 14 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Suppl. Motion in Limine No. 15 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Suppl. Motion in Limine No. 16 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Motion in Limine - Defendant <i>Suppl. Motion in Limine No. 17 - Defendant</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Declaration <i>Corrected Declaration of Jeffrey M Trissell ESQ ISO Defedants' Motion in Limine & other Preliminary Motions</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Declaration <i>Suppl. Declaration of Jeffrey M Trissell, ESQ. ISO of Defendants Motions in Limine & Other Preliminary Motions</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/11/2022	 Proof of Service <i>as to Motions in Limine 1-17, Declarations and Supplemental Declarations , and 1-17 Proposed Orders</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/12/2022	 Declaration <i>Vol. 1 of 4, Exhibits 1 to 11 of Declaration of Gregory J. Mann ISO of Plaintiff Dept. of Fair Employment and Housings motion in Limine and Exhibits thereto</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/12/2022	 Declaration <i>Vol. 4 of 4, Exhibits 13 to 22 of Declaration of Gregory J. Mann ISO Plaintiff Department of Fair Employment and Housing's Motions in Limine and Exhibits thereto</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

REGISTER OF ACTIONS**CASE No. BCV-18-102633**

07/12/2022

**Declaration***Vol. 2 of 4, Exhibit 12 of Declaration of Gregory J. Mann ISO Plaintiff Dept. of Fair employment and Housing's Motions in Limine and Exhibits thereto*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Declaration***Vol. 3 of 4, Exhibit 12 of DECLARATION OF GREGORY J. MANN IN SUPPORT OF PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTIONS IN LIMINE AND EXHIBITS THERETO*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 1 TO EXCLUDE ANY EVIDENCE OR ARGUMENT THAT, UNDER THE UNRUH ACT, STATUS IS SEPARATE FROM CONDUCT ; POINTS AND AUTHORITIES IN SUPPORT THEREOF*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 2 TO EXCLUDE ANY EVIDENCE OR ARGUMENT IN SUPPORT OF CERTAIN AFFIRMATIVE DEFENSES; POINTS AND AUTHORITIES IN SUPPORT THEREOF*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 3 TO EXCLUDE ARGUMENT THAT PLAINTIFF DFEH IS BIASED AGAINST DEFENDANTS OR FAILED TO ACT NEUTRALLY*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 4 TO EXCLUDE ANY EVIDENCE OR ARGUMENT THAT REAL PARTIES IN INTEREST WERE SHOPPING FOR A LAWSUIT, HAD A VINDICTIVE DESIRE TO SEE TASTRIES BAKERY SHUT DOWN AND SEE CATHY GO BANKRUPT, AND SUFFERED NO SHOCK OR EMOTIONAL DISTRESS*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 5 TO EXCLUDE ANY EVIDENCE OR ARGUMENT OF SOCIAL MEDIA POSTS AND CRIMES THAT OCCURRED AFTER DEFENDANTS DENIED FULL AND EQUAL SERVICES THAT DEFENDANTS ATTRIBUTE TO REAL PARTIES*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Motion in Limine - Plaintiff***PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 6 TO EXCLUDE IRRELEVANT AND PREJUDICIAL EVIDENCE RELATED TO WITNESSES*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/12/2022

**Proposed Exhibit List - Plaintiff***Plaintiff Department of Fair Employment and Housing's Proposed Exhibit List*

Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

07/12/2022	 Proposed Witness List - Plaintiff <i>Plaintiff Department of Fair Employment and Housings Proposed Witness List</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/12/2022	 Proof of Service <i>Ominous Proof of Service by Electronic mail as to Plaintiff's Motions in Limine 1-6, and Proposed Order for Motions in Limine 1-6, and Declarations and Exhibits 1-4, and Plaintiffs Proposed Witness and Exhibit list</i> Party: Attorney MANN, GREGORY J; Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>Defendants Opposition to DFEH MIL 1 of 6 to Exclude Evidence or Argument that Status is Separate from Conduct.</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition to Motion in Limine <i>Opposition to DFEH MIL 2 of 6 to Exclude Evidence or Argument ISO Affirmative Defenses nos. 1, 3, 5, 7, 8, 10, 14, 15</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition to Motion in Limine <i>Defendants' Opposition to DFEH MIL 3 of 6 to Exclude Evidence that Plaintiff DFEH is Biased or Failed to Act Neutrally.</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition <i>Defendants' Opposition to DFEH MIL 4of 6-to Exclude Evidence that Real Parties were Shopping for a Lawsuit, had a Vindictive Desire to Shut Defendants Down, and Suffered no emotional Distress.</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition <i>Defendants' Opposition to DFEH MIL 5 of 6 to Exclude Evidence or Social Media Harassment and Criminal Activity that resulted from real parties public statements.</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition <i>Defendants' Opposition to DFEH MIL 6 of 6 to Exclude Three Pieces of Irrelevant and Prejudicial Evidence Related to Witnesses</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Declaration <i>Declaration of Jeffrey M Trissell, ESQ. (Third) ISO Defendants' Oppositions to Plaintiffs Motion in Limine</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Proof of Service <i>Defendants' Oppositions to Plaintiffs DFEH's Motion in Limine 1-6 and Declaration of Jeffrey M. Trissell ESQ. ISO Defendants Oppositions to Plaintiff's Motion in Limine</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
07/18/2022	 Opposition to Motion in Limine 1. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 1 Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY

REGISTER OF ACTIONS

CASE No. BCV-18-102633

OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

2. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 2*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

3. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 3*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

4. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 4*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

5. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 5*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

6. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 6*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

7. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 7*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

8. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 8*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

9. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 9*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

10. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 10*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

11. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 11*

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/18/2022



Opposition to Motion in Limine

12. *PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 12*

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

	Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>13. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 13</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>14. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 14</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>15. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S NONOPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 15</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>16. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 16</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Opposition to Motion in Limine <i>17. PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITION TO DEFENDANTS MOTION IN LIMINE NO. 17 TO EXCLUDE CUMULATIVE EVIDENCE THAT DEFENDANTS WILL NOT MAKE WEDDING CAKES FOR SAME-SEX WEDDINGS</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Declaration <i>18. DECLARATION OF GREGORY J. MANN IN SUPPORT OF PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S OPPOSITIONS TO DEFENDANTS MOTIONS IN LIMINE AND EXHIBITS THERETO</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/18/2022	 Proof of Service <i>as to Plaintiffs Dept. of Fair Employment and Housing's Opposition to Defendants' Motion in Limine 1-17, Declaration of Gregory J. Mann ISO Plaintiff Dept. of Fair Employment and Housings Oppositions to Defendants Motion in Limine and Exhibits thereto</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/21/2022	 Trial Brief <i>Plaintiff Department of Fair Employment and Housing's Trial Brief</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/21/2022	 Proposed Exhibit List - Defendant <i>Joint Trial Exhibit List-Defendant</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/21/2022	 Proposed Witness List - Defendant <i>Proposed Joint Trial Witness List-Defendant</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
07/21/2022	 Brief Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

CORPORATION; Defendant MILLER, CATHARINE

07/22/2022



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
Agency Making Request; Ishani Desai / Bakersfield Californian

07/22/2022



Notice of Motion
Defendants Trial Motion for Judicial Notice
 Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/22/2022



Declaration
Declaration of Jeffrey M Trissell
 Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/22/2022



Media Request to Photograph Record or Broadcast
Media Agency: BAKERSFIELD CALIFORNIAN
Channel/Frequency No.: ISHANI DESAI
Date of Proposed Coverage: 07/25/22 TO END OF TRIAL

07/25/2022



Brief
Defendants Instructions on Elements and Burden for Each Claim and Defense
 Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/25/2022



Opposition
PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING'S OPPOSITION TO DEFENDANTS' TRAIL MOTION FOR JUDICIAL NOTICE
 Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/25/2022



Motion in Limine - Plaintiff
PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 8 TO EXCLUDE MILLER S TESTIMONY (AND OTHER TASTRIES BAKER S TESTIMONY) ABOUT THE DESIGN AND ARTISTRY INVOLVED IN MAKING CAKES AND BAKED GOODS AT TASTRIES; AND THAT DEFENDANTS WILL SERVE SOME GAY INDIVIDUALS IN OTHER NONMARRIAGE CONTEXTS; TANACEA DECLARATION IN SUPPORT THEREOF
 Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/25/2022



Motion in Limine - Plaintiff
PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING S MOTION IN LIMINE NO. 9 TO EXCLUDE ANY EVIDENCE OR ARGUMENT OF SPECULATIVE LOST PROFITS; POINTS AND AUTHORITIES IN SUPPORT THEREOF; MESINAS DECLARATION IN SUPPORT THEREOF
 Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

07/25/2022



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
As to KERO 23 ABC

07/25/2022



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
as to KBAK/KBFX

07/25/2022



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
as to KGET-TV 17

07/25/2022



Media Request to Photograph Record or Broadcast
Media Agency: KERO-TV
Channel/Frequency No.: 23ABC
Date of Proposed Coverage: 07/25/22

07/25/2022



Media Request to Photograph Record or Broadcast
Media Agency: KGET-TV
Channel/Frequency No.: 17

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Date of Proposed Coverage: 07/25/22 TO 07/29/22*

07/25/2022



Media Request to Photograph Record or Broadcast

*Media Agency: KBAK/KBFX-TV**Channel/Frequency No.: CBS-29/FOX-58**Date of Proposed Coverage:*

07/26/2022



Request and order for audio stream access/non-party denied (Judicial Officer: Bradshaw, J. Eric)

as to email awaldon@clifford-brownlaw.

07/26/2022



Points and Authorities

Defendants' Memorandum of Points & Authorities re: Admissibility of Testimony re: Tastries Finances

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/26/2022



Declaration

Declaration of Jeffrey M Trisell ISO Defendants' Memorandum RE: Admissibility of Testimony About Tastries Finances

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

07/27/2022



Media Request to Photograph Record or Broadcast

*Media Agency: Joseph Julian Gonzalez**Channel/Frequency No.:**Date of Proposed Coverage: 07/26/2022 until it ends.*

07/27/2022



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)

as to Joseph Julian Gonzalez for 07/26/22 until it ends

07/29/2022



Exhibit(s) List

Pages 1-5; Joint Exhibits

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J

07/29/2022



Exhibit(s) List

JOINT TRIAL EXHIBIT LIST, AMENDED, WITH OBJECTIONS

Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J

08/19/2022



Electronic Rejection Notice

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

08/25/2022



Request

Letter to Clerk re Refund Request

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/01/2022



Notice

Defendants' Notice of New Authority

Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/06/2022



Notice

Defendants Second Notice of New Authority

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

09/13/2022



Response

Plaintiff Department of Fair Employment and Housing's Response to Defendants Notice of New Authority

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

09/20/2022



Notice

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

	<i>of Defendants' Third Notice of New Authority</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
10/11/2022	 Notice <i>of Defendants Fourth Notice of New Authority</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
10/27/2022	 Exhibit(s) List AMENDED
10/31/2022	 Request PLAINTIFF CRD (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) REQUEST FOR STATEMENT OF DECISION Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
11/02/2022	 Notice - Withdrawal of Attorney PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) NOTICE OF WITHDRAWAL OF COUNSEL Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
11/02/2022	 Notice PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) NOTICE OF APPEARANCE OF COUNSEL Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
11/09/2022	 Response Defendants Response & Objections to Plaintiffs Request for a Statement of Decision Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/09/2022	 Proof of Service as to Defendants Response & Objections to Plaintiffs Request for Statement of Decision & Proposed Order Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/14/2022	 Ex Parte Application / Petition PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) EX PARTE APPLICATION FOR AN EXTENSION OF THE 15 DAY DEADLINE TO OBJECT TO DEFENDANT'S PROPOSED STATEMENT OF DECISION AND PROPOSED JUDGMENT FROM NOVEMBER 28, 2022 TO DECEMBER 5, 2022; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, TANACEA DECLARATION IN SUPPORT THEREOF Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
11/15/2022	 Order (Judicial Officer: Myers, Brett) Granting Plaintiff California Civil Rights Department's (formerly Department of Fair Employment and Housing) Ex Parte Application for an Extension of the 15 Day Deadline to Object to Defendant's Proposed Statement of Decisions and Proposed Judgment From November 28, 2022 to December 5, 2022 IT IS HEREBY ORDERED that the 15-day deadline for Plaintiff to object to Defendants' proposed statement of decision and proposed judgment pursuant to California Rules of Court, Rule 3.1590(g), is hereby continued to and including December 5, 2022 pursuant to California Rules of Court, Rule 3.1590(m). Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Attorney TANACEA, KENDRA L
11/15/2022	 Notice of Motion

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

	<i>Motion for Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/15/2022	 Points and Authorities <i>Memorandum of Points & Authorities iso Motion for Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/15/2022	 Declaration <i>Declaration of Charles S LiMandri</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/15/2022	 Declaration <i>Declaration of Mike Miller</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/15/2022	 Memorandum of Costs Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/16/2022	 Exhibit(s) List CORRECTED
11/17/2022	 Proof of Service <i>Proof of Service CCRD - Motion for Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/17/2022	 Proof of Service <i>Proof of Service - CCDR - Memorandum of Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/21/2022	 Ex Parte Application / Petition PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) EX PARTE APPLICATION TAKING MOTION FOR ATTORNEYS FEES OFF-CALENDAR AND STRIKING THE MEMORANDUM OF COSTS; ALTERNATIVELY, REQUEST FOR EXTENSION TO FILE MOTION TO TAX COSTS AND TO FILE OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; TANACEA DECALRATION IN SUPPORT THEREOF; [PROPOSED] ORDER
11/22/2022	 Opposition <i>Defendant's Opposition to Plaintiffs Ex Parte Appl. to Strike Fees & Costs Request or to extend deadline to Respond to same</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
11/28/2022	 Amended Notice <i>First Amended Notice of Motion and Defendants Motion for Attorneys Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/05/2022	 Objections PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) OBJECTION TO DEFENDANTS RESPONSE & OBJECTIONS TO PLAINTIFF S REQUEST FOR A STATEMENT OF DECISION Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
12/05/2022	 Objections PLAINTIFF CRD S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING)

REGISTER OF ACTIONS**CASE NO. BCV-18-102633****OBJECTIONS TO DEFENDANTS PROPOSED STATEMENT OF DECISION AND PROPOSED JUDGMENT**

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/07/2022

**Notice**

Defendants Notice of Withdrawal of Separately Filed Memo of Costs

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/08/2022

**Response**

Defendants Response to Plaintiff's objections to Defendants Proposed Statement of Decision

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/16/2022

**Opposition to Motion**

PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/16/2022

**Declaration**

DECLARATION OF KENDRA TANACEA AND EXHIBITS THERETO IN SUPPORT OF PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/16/2022

**Objections**

PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) EVIDENTIARY OBJECTIONS

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/16/2022

**Request for Judicial Notice**

PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT'S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/16/2022

**Proof of Electronic Service**

OMNIBUS PROOF OF SERVICE BY ELECTRONIC MAIL

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

12/21/2022

**Exhibit(s) List**

JOINT EXHIBITS # 001-001 THROUGH 104-004

Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/22/2022

**Notice of Assignment to Judge for All Purposes**

remaining with Judge Bradshaw. Managed in Department 1 effective January 1, 2023

12/22/2022

**Reply**

Reply Memorandum In Support of Defendants' Motion for Attorney's Fees & Costs

Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

12/22/2022

**Response**

Response to Evidentiary Objections to Declaration of Charles S. LiMandri, Esq. in Support of

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

	<i>Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/22/2022	 Declaration <i>of Jeffrey Trissell, Esq. in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/22/2022	 Declaration <i>Supplemental Declaration of Charles S. LiMandri, Esq. in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/22/2022	 Response <i>to Plaintiffs Request for Judicial Notice of Out- of - State Cases in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/22/2022	 Objections <i>to New Evidence and Argument Presented in Defendants' Reply Papers, Request for Leave to File a Surreply and Request for a Continued Hearing Date to</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
12/22/2022	 Proof of Service <i>Omnibus Proof of Service by Electronic Mail</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
12/23/2022	 Response <i>to Plaintiffs Objections to Reply Declarations in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/27/2022	 Order (Judicial Officer: Bradshaw, J. Eric) <i>Statment of Decision</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION
12/27/2022	 Judgment (Judicial Officer: Bradshaw, J. Eric) Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
12/29/2022	 Appointment of Official Reporter Pro Tempore (Judicial Officer: Bradshaw, J. Eric) Party: Attorney LIMANDRI, CHARLES S
12/29/2022	 Media Request to Photograph Record or Broadcast <i>Media Agency: KGET</i> <i>Date of Proposed Coverage: 12/29/22</i>
12/29/2022	 Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
01/05/2023	 Notice of Entry of Judgment <i>and Statement of Decision</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/05/2023	 Proof of Service <i>Proof of Service - Notice of Entry of Judgment-Statement of Decision</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE

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CASE NO. BCV-18-102633

01/19/2023	 Brief <i>Supplemental Memorandum of Points & Authorities in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/19/2023	 Declaration <i>Third Declaration of Charles LiMandri, ESQ, in Support of Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
01/31/2023	 Stipulation <i>and Proposed Order to Continue Supplemental Hearing on Defendants' Motion for Attorneys' Fees & Costs</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/01/2023	 Order (Judicial Officer: Bradshaw, J. Eric) <i>Order to Continue Supplemental Hearing on Defendant's Motion for Attorneys' Fees and Costs</i> <i>This Court, having duly considered the stipulation of the Parties, hereby orders that, with respect to Defendants' motion for attorneys' fees and costs filed with the Court on November 15, 2022, the supplemental hearing currently set for February 23, 2023, is hereby CONTINUED to March 2, 2023 at 1:30 p.m</i> <i>IT IS SO ORDERED:</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION
02/09/2023	 Opposition <i>PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/09/2023	 Declaration <i>DECLARATION OF SOYEON C. MESINAS AND EXHIBITS THERETO IN SUPPORT OF PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/09/2023	 Declaration <i>DECLARATION OF SANFORD JAY ROSEN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/09/2023	 Proof of Service <i>OMNIBUS PROOF OF SERVICE BY ELECTRONIC MAIL</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/14/2023	 Notice <i>Plaintiff California Civil Rights Department's (formerly Department of Fair Employment and Housing) Notice of Appearance of Counsel</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA

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02/15/2023	 Reply <i>Suppl. Reply iso Motion for Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/15/2023	 Objections <i>Objections to Plaintiff Suppl. Opposition to Motion for Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/15/2023	 Declaration <i>Rebuttal Declaration of Charles S. LiMandri</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
02/23/2023	 Electronic Rejection Notice <i>Re: Form APP-002 Notice of Appeal is to be filed in the Appeals Division, please contact the Appeals Division at (661) 868-7203 for further assistance.</i>
02/23/2023	 Response <i>PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) RESPONSES TO DEFENDANTS OBJECTIONS TO THE DECLARATIONS OF SOYEON C. MESINAS AND SANFORD JAY ROSEN</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/23/2023	 Objections <i>PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT S (formerly DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING) EVIDENTIARY OBJECTIONS TO REBUTTAL DECLARATION OF CHARLES S. LIMANDRI IN SUPPORT OF DEFENDANTS MOTION FOR ATTORNEYS FEES AND COSTS</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/23/2023	 Declaration <i>SECOND DECLARATION OF SANFORD JAY ROSEN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEY'S FEES</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/23/2023	 Request for Judicial Notice <i>PLAINTIFF CALIFORNIA CIVIL RIGHTS DEPARTMENT S REQUEST FOR JUDICIAL NOTICE</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/23/2023	 Proof of Service <i>Proof of Service by Electronic Mail</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA
02/24/2023	 Notice of Appeal <i>F085800</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; Attorney MESINAS, SOYEON C
02/24/2023	 Notice of Filing Appeal
03/01/2023	 Letter received from Fifth District Court of Appeal - <i>re: Mediation Screening Questionnaire</i>
03/02/2023	 Appointment of Official Reporter Pro Tempore (Judicial Officer: Bradshaw, J. Eric) <i>Julie Foreman</i> Party: Attorney LIMANDRI, CHARLES S

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03/02/2023	 Media Request to Photograph Record or Broadcast <i>Media Agency: kget tv</i> <i>Channel/Frequency No.: 17</i> <i>Date of Proposed Coverage: 03/02/23</i>
03/02/2023	 Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
03/08/2023	 Order from Fifth District Court of Appeal filed <i>Sub of Attorney for Appellant</i>
03/17/2023	 Miscellaneous Filing <i>Proposed Order Cover Sheet</i> Party: Attorney LIMANDRI, CHARLES S; Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
03/17/2023	 Letter Received <i>re Proposed Order</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
03/17/2023	 Proof of Service <i>re Proposed Order Cover Sheet, Proposed Order and Letter</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
03/21/2023	 Letter received from Fifth District Court of Appeal - <i>not suitable/not selected (as appropriate) for mediation.</i>
03/30/2023	 Appellant's Designation of Record of Appeal
03/30/2023	Designation for Appendix Pursuant to CRC 8.124
04/03/2023	 Order (Judicial Officer: Bradshaw, J. Eric) <i>Awarding Defendants' Attorneys' Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
04/03/2023	 Receipt for Records Mailed <i>Register of Actions provided to parties on appeal pursuant to CRC 8.124</i>
04/03/2023	 Electronic Rejection Notice <i>RE: Respondent's Notice Designating Record on Appeal, form is to be filed with the Appeal Division. Please submit documents directly with the Appeals Division, Local Rule 1.110(k) (14).</i>
04/03/2023	 Respondent's Designation of Record of Appeal
04/03/2023	 Receipt for Records Returned <i>Received From: Fifth District Court of Appeal</i>
04/04/2023	 Notice to parties regarding fee/deposit for Reporter's <i>Transcript on Appeal</i>
04/10/2023	 Notice <i>Notice of Entry of Order Awarding Defendants Attorneys Fees</i> Party: Defendant CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; Defendant MILLER, CATHARINE
04/11/2023	 Mail Returned Undelivered <i>Receipt for Records and Register of Actions</i> Party: Attorney LIMANDRI, CHARLES S
04/11/2023	 Notice of Appeal <i>F086083</i> Party: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY

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OF THE STATE OF CALIFORNIA; Attorney MESINAS, SOYEON C

04/12/2023	 Notice of Filing Appeal
04/14/2023	 Letter received from Fifth District Court of Appeal - <i>re: Mediation Screening Questionnaire</i>
04/17/2023	 Receipt for Records Returned <i>Received From: Valentina Martinez</i>
04/18/2023	 Notice to Court Reporter Re Appeal
05/01/2023	 Letter Mailed <i>re: Request for Additional Funds for Preparation of the Record on Appeal</i>
05/03/2023	 Letter received from Fifth District Court of Appeal - <i>not suitable/not selected for mediation.</i>
05/09/2023	 Appellant's Designation of Record of Appeal
05/09/2023	 Rejection/Correction Notice <i>Checks # 7022 & 7023</i>
05/09/2023	Designation for Appendix Pursuant to CRC 8.124
05/10/2023	 Receipt for Records Mailed <i>Register of Actions provided to parties on appeal pursuant to CRC 8.124</i>
05/11/2023	 Mail Returned Undelivered <i>Notice re: Addiotnal Fees, Forwarded: Paul Michael Jonna LiMandri & Jonna LLP PO Box 9120 Rancho Santa Fe, CA 92067-4120 Party: Attorney LIMANDRI, CHARLES S</i>
05/16/2023	 Notice - Default on Appeal <i>Additional Fees</i>
05/23/2023	 Notice to parties regarding fee/deposit for Reporter's <i>Transcript on Appeal</i>
05/26/2023	 Notice to Court Reporter Re Appeal
06/07/2023	 Notice to Court Reporter Re Appeal
06/07/2023	 Receipt for Records Returned <i>Received From: Court of Appeal, Fifth Appellate District</i>
06/29/2023	 Receipt for Records Mailed
06/29/2023	Record on Appeal Mailed to Fifth District Court of Appeal
06/29/2023	 Letter received from Fifth District Court of Appeal - <i>Record on Appeal Rejected - Corrections Needed to Reporter's Transcripts. Due Date: 7/7/23</i>
07/10/2023	 Receipt for Records Mailed
07/10/2023	Record on Appeal Mailed to Fifth District Court of Appeal
07/10/2023	 Letter received from Fifth District Court of Appeal - <i>Record on Appeal Rejected - Corrections Needed to Reporter's Transcripts. Due Date: 7/18/23</i>
07/12/2023	 Receipt for Records Mailed
07/12/2023	Record on Appeal Mailed to Fifth District Court of Appeal
07/12/2023	 Receipt for Records Returned

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Received From: Soyeon Mesinas*

07/12/2023



Receipt for Records Returned

Received From: Fifth District Court of Appeal

07/14/2023



Receipt for Records Returned

Received From: CA Civil Rights Department, Los Angeles

08/03/2023



Order from Fifth District Court of Appeal filed

Late Order: Record is to be sent no later than 9/5/2023

08/16/2023

Withdrawal From Trust Fund

*PROCESSED TRUST FUND WITHDRAWAL AS FOLLOWS \$3828 TO CYNTHIA POLE
\$66.25 TO VIRGINIA GREENE \$1124.75 TO ACE ATTORNEY SERVICES \$1040 CHARLES
S LIMANDRI (FOR A TOTAL OF \$6059) COMPLETED ON 08/07/2023 DC*

09/12/2023



Order from Fifth District Court of Appeal filed

Request to Stay Appeal F085800 denied

09/12/2023



Service/Courtesy Copy Received

Joint Request to Stay Appeal in F086083 Pending Final Resolution of Case F085800

10/02/2023



Receipt for Records Mailed

10/02/2023

Record on Appeal Mailed to Fifth District Court of Appeal

10/03/2023



Receipt for Records Returned

*Received From: Fifth District Court of Appeal***DISPOSITIONS**

12/27/2022

Judgment - Entry of Judgment / Order After Court Trial (Judicial Officer: Bradshaw, J. Eric)
Party (CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION)

Judgment - Non-Monetary Award

Awarded To: CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

Awarded Against: DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING,
AN AGENCY OF THE STATE OF CALIFORNIA

Status: Judgment

Status Date: 12/27/2022

HEARINGS

01/30/2019

**CANCELED Order to Show Cause - CRC 3.110 (8:30 AM)** (Judicial Officer: Lampe,
David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
Other

03/04/2019

**Ruling (3:30 PM)** (Judicial Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Ruling;

Journal Entry Details:

*MOTION: Defendants' Anti-SLAPP Motion to Strike the Complaint TENTATIVE RULING:
The court denies the motion of defendants Catharine Miller and Cathy's Creations, Inc. d/b/a
Tastries to strike the complaint of plaintiff Department of Fair Employment and Housing ("the
Department") under section 425.16 of the California Code of Civil Procedure, known as the
anti-SLAPP (strategic lawsuit against public participation) law. In light of this ruling, the
court overrules the Department's objections to Defendants' evidence, and Defendants'
objections to the Department's objections to Defendants' evidence, as moot. As to Defendants'
objections to the Department's evidence, the court overrules objections 1, 8, 10, 11, 13, 16-21,
24, 25, 28, 30, 35, 40-42, and 44-46. The court also overrules objections 3-4 and notes that
hearsay exceptions would apply under section 1220 of the Evidence Code (admission of a
party) and/or section 1221 (adoptive admission). Next, the court overrules objections 2, 5, and
9 and notes that Defendants' "sham declaration" arguments are impeachment matters that go
to weight and not admissibility. In addition, the court overrules objections 14, 22, and 51. "[V]
iolation of duty to protect Miller's rights" is not a recognized evidentiary objection and
Defendants' claims that simple statements of fact concerning baking practices "drip[]" with the
DFEH's animus and anti-religious bigotry" amount to gross hyperbole. To the extent*

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Defendants' true concern is with trade secrets, section 1060 would have provided recourse. The court sustains the following objections based on the grounds asserted: 7, 15, 23, 26-27, 29, 31, 32, 34, 36-37, 39, 43, and 47-50. The court also sustains objections 6, 12, and 33 on relevance grounds and objection 38 for lack of foundation. The court overrules Defendants' remaining objections to the extent not expressly discussed herein. The court overrules Defendants' objections to the ten-point footnotes in the Department's brief and request for striking of the same based on "the guiding principle of deciding cases on their merits rather than on procedural deficiencies." [Citation.] (Oliveros v. County of Los Angeles (2004) 120 Cal.App.4th 1389, 1395.) As Defendants have had a full opportunity to rebut the contents of these footnotes in their reply brief and have not petitioned this court for additional pages to respond, they can claim no prejudice or due process violation resulting from the noncompliance. The court further notes a rough parity in overall content based on the Department's use of 28 double-spaced lines per page and Defendants' use of 37 lines per page using 1.5 spacing. The court recognizes the length and wordiness of some of the footnotes and gives them the weight they deserve. The Department will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312. 1.

Procedural History In December 2017, the Department initiated a proceeding (case number BCV-17-102855) under section 12974 of the Government Code on its own behalf and on behalf of real parties in interest Eileen and Mireya Rodriguez-Del Rio, seeking temporary and preliminary relief under the Unruh Civil Rights Act as incorporated into the Fair Employment and Housing Act. The court declined to provide temporary relief but overruled a subsequent demurrer by Defendants. Defendants opposed the request for preliminary relief based on the Free Exercise Clauses of the United States and California constitutions, and the Free Speech Clause of the United States Constitution. The court denied the Department's motion for preliminary relief based solely on the merits of Defendants' Free Speech defense. Following denial of preliminary relief but before entry of judgment, Defendants brought an anti-SLAPP motion, which this court denied in an order entered May 1, 2018. As stated in that order, the Fifth District has articulated the following standard for evaluating an anti-SLAPP motion: Section 425.16 was enacted in 1992 to provide a procedure for expeditiously resolving "nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue." [Citation.] (Sipple v. Foundation for Nat. Progress (1999) 71 Cal.App.4th 226, 235, 83 Cal.Rptr.2d 677.) It is California's response to meritless lawsuits brought to harass those who have exercised these rights. (Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 644, 49 Cal.Rptr.2d 620, disapproved on another ground in Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 68, fn. 5, 124 Cal.Rptr.2d 507, 52 P.3d 685 (Equilon Enterprises).) This type of suit, referred to under the acronym SLAPP, or strategic lawsuits against public participation, is generally brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff. (Kajima Engineering & Construction, Inc. v. City of Los Angeles (2002) 95 Cal.App.4th 921, 927, 116 Cal.Rptr.2d 187.) When served with a SLAPP, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process. (City of Cotati v. Cashman (2002) 29 Cal.4th 69, 76, 124 Cal.Rptr.2d 519, 52 P.3d 695 (City of Cotati).) The court first decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. (City of Cotati, supra, 29 Cal.4th at p. 76, 124 Cal.Rptr.2d 519, 52 P.3d 695.) The moving defendant must demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant's] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue...." (425.16, subd. (b)(1); Equilon Enterprises, supra, 29 Cal.4th at p. 67, 124 Cal.Rptr.2d 507, 52 P.3d 685.) If the court concludes that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. (Navellier v. Sletten (2002) 29 Cal.4th 82, 88, 124 Cal.Rptr.2d 530, 52 P.3d 703 (Navellier).) To establish the requisite probability of prevailing, the plaintiff need only have "stated and substantiated a legally sufficient claim." (Navellier, supra, 29 Cal.4th at p. 88, 124 Cal.Rptr.2d 530, 52 P.3d 703.) "Put another way, the plaintiff must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (Id. at pp. 88-89, 124 Cal.Rptr.2d 530, 52 P.3d 703.) The plaintiff need only establish that his or her claim has minimal merit to avoid being stricken as a SLAPP. (Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291, 46 Cal.Rptr.3d 638, 139 P.3d 30 (Soukup).) Nevertheless, a plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence. (Roberts v. Los Angeles County Bar Assn. (2003) 105 Cal.App.4th 604, 614, 129 Cal.Rptr.2d 546.) (Grenier v. Taylor (2015) 234 Cal.App.4th 471, 479-480.) The court declined to rule on the first prong, finding instead that the Department's case had minimal merit necessary to survive an anti-SLAPP motion under the second prong. The court noted the Department's mandate to enforce anti-discriminatory public accommodation laws and found

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

that "Defendant's conduct was discriminatory, and fell within the ambit of the law and may be actionable if not otherwise constitutionally protected." That same day (May 1, 2018), the court entered judgment for Defendants under Government Code section 12974. In September 2018, the court granted in part and denied in part a motion to enforce judgment brought by Defendants, finding that its decision on the merits of the constitutional defense was plenary in nature while recognizing that it was "necessarily based upon the facts which are known or knowable at the time it is rendered." Accordingly, the court allowed the Department to continue its investigation and concluded "that any such further proceeding should be brought before this court in the nature of action or petition for modification of the court's original judgment." Defendants sought a writ from the Fifth District concerning the court's September 2018 order. Pending final resolution of Defendants' petition, the Fifth District stayed the court's order and specifically noted "that petitioner may continue its investigation and file a complaint pursuant to Government Code section 12965." The appellate matter remains pending (case number F078245). The Department filed a complaint in October 2018 and an amended complaint in November 2018. Defendants then filed the instant anti-SLAPP motion. II. Legal Analysis As an overarching principle and before turning to the two-pronged test under the anti-SLAPP law, the court reiterates its previous conclusion that "[t]his does not appear to be the type of action addressed by section 425.16." The nature of the proceedings and evidence presented show that the Department, consistent with its mandate, has brought the instant complaint to vindicate a legally cognizable right belonging to the real parties in interest rather than to obtain an economic advantage over Defendants. Moreover, as the Fifth District's interim order authorized the instant complaint pending final resolution of the writ proceeding, a decision from this court granting the anti-SLAPP motion could be viewed as conflicting. Regardless, the two-pronged test confirms that SLAPP relief is unwarranted. A. A Determination Under the First Prong of the Anti-SLAPP Law Is Unnecessary. Defendants claim that their refusal to fill the order for the Rodriguez-Del Rios' wedding cake amounted to "conduct in furtherance of the exercise of the constitutional right of . . . free speech in connection with . . . an issue of public interest" protected under the statute's first prong. (Code Civ. Proc., 425.16(e)(4).) The Supreme Court recently recognized that the anti-SLAPP law "uses certain open-ended terms that raise nuanced questions of interpretation," and accordingly endeavored "to clarify the scope of the statute." (Rand Resources, LLC v. City of Carson (Feb. 4, 2019, S235735) __ Cal.5th __ [2019 WL 418745 at pp. *5, *8].) To this end, it affirmed that "a topic of widespread, public interest" falls "within the ambit of" the first prong, but only where "the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech." (Id. at p. *5 (quotation marks omitted).) It is not sufficient that a claim "was filed after, or because of, protected activity, or when protected activity merely provides evidentiary support or context for the claim," unless the activity supplies an element of the challenged claim. (Ibid.) "[W]hile discrimination may be carried out by means of speech . . . and an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory consideration." (Park v. Bd. of Trustees of Cal. State U. (2017) 2 Cal.5th 1057, 1066.) "Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute 'fatal for most harassment, discrimination and retaliation actions against public employers.' [Citation.]" (Id. at p. 1067.) Thus, there is certainly an argument to be made under the first prong on the Department's side. Assuming arguendo that Defendants' activity satisfies the first prong, the Department's complaint nevertheless has minimal merit. B. The Department's Complaint Has at Least Minimal Merit. Defendants raises three arguments under the second prong of the anti-SLAPP law: First, [the Department's] complaint is barred by principles of res judicata and collateral estoppel because the main issue has already been adjudicated. The issue of whether Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery [sic], has already been found constitutional. Second, intervening case law makes clear that Miller did not discriminate on the basis of sexual orientation, but rather refused to announce a specific message, which is not something prohibited by the Unruh Act. Third, if this Court were to look past res judicata, and re-examine its prior holding, its substance remains valid-Miller's decision not to make the cake is constitutionally protected. As Defendants rely on their characterization of the court's prior rulings, a review of the same is in order. 1. This Court's Prior Rulings Prior to applying a rule to the facts of a particular case "[i]t is, emphatically, the province and duty of the judicial department, to say what the law is." (Marbury v. Madison (1803) 1 Cranch 137, 5 U.S. 137, 177, 2 L.Ed. 60.)" (McClung v. Employment Development Dept. (2004) 34 Cal.4th 467, 469-470.) In evaluating the Department's entitlement to preliminary relief under Government Code section 12974, this court first had to examine the tension between the Unruh Civil Rights Act and the Free Speech Clause of the First Amendment and to determine, as a matter of statutory and constitutional interpretation, the extent to which one must yield to the other. It is this determination that the court views as final-

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its finding that the constitutional right to free speech supersedes the ability of the Department to enforce the Unruh Civil Rights Act against otherwise discriminatory practices in certain circumstances; in other words, that the Unruh Civil Rights Act may be unconstitutional as applied. Exploring this principle's constraints, the court pronounced a legal test of general applicability as to compelled expression, a test which stands or falls apart from the particular facts of this case. To wit, does the factual scenario involve a baker's mere refusal to sell an existing cake made available for public sale, or to provide cake-baking services not fundamentally founded upon speech, based on the baker's perception of the customer's gender identification? Or does it concern, instead, a baker refusing to use her talents to design and create an artistic work not yet conceived, with knowledge that others will deem such work an endorsement of same-sex marriage, when she does not wish to convey and does not condone that message? The court's ruling was plenary in its announcement of the applicable legal standard as to co opted speech, because understanding the legal standard is a prerequisite to resolving any specific case or controversy between real parties in interest. While the court also applied its test to the facts it had in front of it based on the Department's preliminary investigation, it never intended by entering judgment to foreclose the Department's ability to complete its full investigation and see the matter through to its logical conclusion, as contemplated by the Government Code. Indeed, the court's order on the motion to enforce judgment explicitly stated that "[t]he DFEH is not foreclosed from reasonably investigating the factual underpinnings of this court's adjudication, provided that the investigation proceeds in a lawful and legitimate manner." Instead, its entry of judgment, and ruling on the motion to enforce judgment, resulted from the application of simple logic in ascertaining the path the legislature intended the Department to follow under the Government Code, in light of section 12974's unique statutory scheme. It is an "elementary rule" of statutory construction that "statutes in pari materia-that is, statutes relating to the same subject matter-should be construed together." (Droeger v. Friedman, Sloan & Ross (1991) 54 Cal.3d 26, 50.) In so doing, the court must harmonize these statutes "both internally and with each other" and avoid an interpretation that would produce "absurd results[.]" (Tuolumne Jobs & Small Business Alliance v. Super. Ct. (2014) 59 Cal.4th 1029, 1037 (quotation marks omitted).) Additionally, as a "general rule" it is well established that "one trial judge cannot reconsider and overrule an order of another trial judge. [Footnote.]" (People v. Riva (2003) 112 Cal.App.4th 981, 991.) "[I]mportant public policy reasons" underlie this rule, including to avoid "plac[ing] the second judge in the role of a one-judge appellate court." [Footnote.]" (Ibid.) "The rule also discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a case ongoing before another judge and prevents a second judge from ignoring or arbitrarily rejecting the order of the previous judge which can amount to a violation of due process." (Ibid. (footnotes omitted).) At the same time, however, another rule holds that one trial court cannot bind a second trial court "called upon to rule on the same issue"- This is akin to saying that the first trial court to rule on a particular issue establishes the "law of the case." This doctrine, however, does not apply to rulings of the trial court. (9 Witkin; Cal. Procedure (4th Ed.1997) 896, p. 930; Provience v. Valley Clerks Trust Fund (1984) 163 Cal.App.3d 249, 256, 209 Cal.Rptr. 276.) (People v. Sons (2008) 164 Cal.App.4th 90, 100 (hereafter Sons).) There is one "obvious" solution: "Once a designated trial court hears a matter, it should continue to hear it, including retrials, until final judgment is rendered." (Sons, supra, 164 Cal.App.4th at p. 100 n.7.) Applying these rules, the court's reading of section 12965 together with section 12974 was necessary to avoid the absurd potential for nullification of the court's prior ruling as to the applicable legal standard were a new complaint assigned to a different judge. While the court stands by its theoretical analysis of the procedural aspects of sections 12974 and 12965, the formal complaint that the Fifth District authorized (at least temporarily) in the writ proceeding has been assigned to this court, assuaging the court's concerns as a practical matter. The court has spoken conclusively as to the applicable legal test but has made only preliminary pronouncements on a limited record as to the application of that test to the case at bar (finding that the Department "could not succeed on the facts presented" while recognizing that the factual record was subject to further development). With this background in mind, the court turns now to Defendants' arguments under the second prong of the anti-SLAPP law. 2. Res Judicata and Collateral Estoppel The court entered judgment in May 2018 because it had resolved all matters then in front of it and sought to preserve its constitutional analysis, and followed up with its September 2018 order on the motion to enforce judgment. As a jurisdictional matter, the court may issue a ruling on the anti-SLAPP motion despite pending proceedings before the Fifth District, as that proceeding involves a writ not subject to the automatic stay in section 916 of the Code of Civil Procedure, as opposed to a direct appeal. (In re Brandy R. (2007) 150 Cal.App.4th 607, 609-610.) Even so, it is not necessary for this court to take up the question of whether the May 2018 judgment and the court's ruling on the issues presented therein were "final" and "on the merits," (Cf. Civic Western Corp. v. Zila Industries, Inc. (1977) 66 Cal.App.3d 1, 12 [noting that the terms "judgment" and "final judgment" "are meaningless unless qualified by context, i.e., a judgment may be final, but modifiable at the trial level, or final for the purpose of appeal. (See 4 Witkin, Cal. Procedure (2d ed. 1971)

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Judgment, 2, pp. 3182-3183.)") Regardless, the doctrines of res judicata and collateral estoppel are not impediments to the Department's probability of success in the instant matter. "[A] court may not give preclusive effect to the decision in a prior proceeding if doing so is contrary to the intent of the legislative body that established the proceeding in which res judicata or collateral estoppel is urged." [Citation.] (Pacific Lumber Co. v. State Water Resources Control Bd. (2006) 37 Cal.4th 921, 945.) In other words, all or part of a claim "subsists as a possible basis for a second action by the plaintiff against the defendant" where "it is the sense of the [statutory or constitutional] scheme that the plaintiff should be permitted to split his claim," as illustrated by the following scenario- For nonpayment of rent, landlord A brings a summary action to dispossess tenant B from leased premises. A succeeds in the action. A then brings an action for payment of the past due rent. The action is not precluded if, for example, the statutory system discloses a purpose to give the landlord a choice between, on the one hand, an action with expedited procedure to reclaim possession which does not preclude and may be followed by a regular action for rent, and, on the other hand, a regular action combining the two demands. (Rest.2d Judgments, 26, com. e, illus. 5; cf. Samara v. Matar (2018) 5 Cal.5th 322, 331-332 [favorably citing the Restatement (Second) of Judgments].) This example is on point. Defendants describe "the main issue" as "Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery." As discussed above, the court's ruling on the merits of Defendants' Free Speech defense was based on a preliminary record. The court agreed that the Government Code contemplated further investigation by the Department and the potential for further court proceedings upon "final disposition" of its internal review, whether through a motion for modification of judgment or the new complaint. (Gov. Code, 12974.) Further, the initial proceeding was an expedited matter seeking preliminary relief while the instant complaint presents a regular action that also demands actual and punitive damages. Thus, despite ambiguities in the legislature's intended execution of the mechanics of this scheme as identified by this court, it is clear that giving preclusive effect to the judgment at issue would violate the legislature's design. Moreover, as previously noted, assignment of the new complaint to the undersigned has satisfied the procedural concerns the court otherwise would have had with maintaining judicial integrity.

3. Minimal Merits Analysis - Free Speech Defendants' citation to case law from the United Kingdom provides no basis for the court to reconsider its prior finding under settled California jurisprudence that Defendants' refusal to fill the Rodriguez-Del Rios' order for a wedding cake amounted to discrimination on the basis of sexual orientation within the ambit of the Unruh Civil Rights Act that would be actionable absent a viable constitutional defense. Nevertheless, this court previously determined under strict scrutiny (and based on the limited factual record in front of it) that "[t]he State cannot meet the test that its interest outweighs the Free Speech right at issue in this particular case, or that the law is being applied by the least restrictive means." Here, the focus of the parties' minimal merits analysis is the threshold question of whether Defendants' refusal to fill the order for the Rodriguez-Del Rios' wedding cake was expressive, amounting to protected speech. While the Department would normally have the burden of substantiating its case under section 425.16, there is conflicting case law as to whether their advancement of an affirmative defense shifts the burden to Defendants for purposes of an anti-SLAPP motion. (Dickinson v. Cosby (2017) 17 Cal.App.5th 655, 683.) "What is important is that, regardless of the burden of proof, the court must determine whether the plaintiff can establish a prima facie case of prevailing, or whether the defendant has defeated the plaintiff's evidence as a matter of law." (Ibid.) The parties have identified no intervening case law that would control the court's analysis, although intervening dicta has bolstered the validity of the court's test differentiating between the simple denial of goods and the creation of expressive works. The Supreme Court recently stated the following: "[I]f a baker refused to sell any goods or any cakes for gay weddings, that would be a different matter and the State would have a strong case under this Court's precedents that this would be a denial of goods and services that went beyond any protected rights of a baker who offers goods and services to the general public and is subject to a neutrally applied and generally applicable public accommodations law. (Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Com. (2018) 138 S.Ct. 1719, 1728.) In a concurrence, two justices affirmed the distinction between "whether [a baker] had refused to create a custom wedding cake for the [same-sex couple] or whether he refused to sell them any wedding cake (including a premade one)." (Id. at p. 1740 (Thomas, J. & Gorsuch, J., concurring).) The Department now argues that the facts developed from its continuing investigation show (1) the Rodriguez-Del Rios sought to purchase a cake that, while labeled as "custom," was equivalent to a premade, or store-bought display cake, (2) Defendants nevertheless refused to sell to them, and (3) Defendants had a policy of refusing to supply wedding cakes for same-sex couples regardless of whether or not those cakes were custom, such that the Rodriguez-Del Rios would not have been able to purchase any wedding cake from Defendants. In other words, the Department argues that Defendants' actions amounted to a complete denial of goods or services. The Department has supplied sufficient admissible evidence in this respect to substantiate a prima facie case if accepted as true (leaving aside conflicting evidence proffered by Defendants and making no

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determination on the merits). 4. Minimal Merits Analysis - Free Exercise In the court's ruling on the request for preliminary relief, it stated the following: The Unruh Act is neutral on its face and does not per se constitute a direct restraint upon religion. In fact, by its terms, the Unruh Act itself protects religious discrimination in the marketplace. By its terms it does not constitute an indirect restraint. There is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement under these circumstances. Designing and creating a cake, even a wedding cake, may not in and of itself constitute a religious practice under the Free Exercise clause. It is the use that Miller's design effort will be put to that causes her to object. Whether the application of the Unruh Act in these circumstances violates the Free Exercise clause is an open question . . . Defendants essentially concede the minimal merit of Plaintiff's complaint under the Free Exercise Clause of the United States Constitution by admitting that the Free Exercise Clause no longer "relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Assuming arguendo that strict scrutiny would apply under the Free Exercise Clause of article I, section 4 of the California Constitution, the minimal merits analysis would require evidence that application of the Unruh Civil Rights Act (1) does not substantially burden a religious belief or practice, or (2) represents the least restrictive means for achieving a compelling government interest. (North Coast Women's Care Medical Group, Inc. v. Super. Ct. (2008) 44 Cal.4th 1145, 1158 (hereafter North Coast) [finding where a physician had refused to provide certain fertility treatment a same-sex couple that the Act furthered "California's compelling interest in ensuring full and equal access to medical treatment irrespective of sexual orientation, and there are no less restrictive means for the state to achieve that goal"].) First, the court has already found it to be an open question as to whether Defendants' actions could even qualify as a religious practice. The unsettled nature of the law in this area supports a finding of minimal merit. Second, assuming the likelihood that Defendants can establish a substantial burden on a religious belief or practice, the Department's evidence discussed above goes to the question of least-restrictive means by asking whether the Rodriguez-Del Rios are seeking to compel Defendants to bake a custom wedding cake for their same-sex celebration or merely to sell them a cake that Defendants would ordinarily sell to other customers. Thus, the Department's evidence in this regard is sufficient to substantiate a prima facie case to the same extent as discussed above in the Free Speech context. Moreover, the question of the Department's compelling state interest in preventing discrimination in public accommodations is unsettled but passes minimal merit in light of the North Coast case. III. Conclusion For the foregoing reasons, the court denies Defendants' anti-SLAPP motion. Copy of minute order mailed, and faxed or emailed to counsel as stated on the attached certificate of mailing.;

Ruling

03/05/2019



Motion to Strike (ANTI SLAPP) Per CCP 425.16 (8:30 AM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
1/22/19

*Defendants, CATHY'S CREATIONS, INC DBA TASTRIES, CALIFORNIA CORPORATION;
CATHARINE MILLER*

Anti-Slapp Motion to Strike the Complaint

ResID: 33978

MINUTES

Held;

Journal Entry Details:

The court is in receipt of media request from KGET-TV Channel 17. Defense counsel objects the media as stated. The court approves media request as stated. The Court previously issued a tentative ruling. Matter argued by counsel and submitted. Issue of Defendants' Anti-SLAPP Motion to Strike the Complaint stands submitted to the Court. ;

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

03/06/2019



Ruling (9:00 AM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Ruling;

Journal Entry Details:

Ruling on Matter Submitted March 5, 2019 MOTION: Defendants' Anti-SLAPP Motion to Strike the Complaint RULING: The court denies the motion of defendants Catharine Miller

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and Cathy's Creations, Inc. d/b/a Tastries to strike the complaint of plaintiff Department of Fair Employment and Housing ("the Department") under section 425.16 of the California Code of Civil Procedure, known as the anti-SLAPP (strategic lawsuit against public participation) law. In light of this ruling, the court overrules the Department's objections to Defendants' evidence, and Defendants' objections to the Department's objections to Defendants' evidence, as moot. As to Defendants' objections to the Department's evidence, the court overrules objections 1, 8, 10, 11, 13, 16-21, 24, 25, 28, 30, 35, 40-42, and 44-46. The court also overrules objections 3-4 and notes that hearsay exceptions would apply under section 1220 of the Evidence Code (admission of a party) and/or section 1221 (adoptive admission). Next, the court overrules objections 2, 5, and 9 and notes that Defendants' "sham declaration" arguments are impeachment matters that go to weight and not admissibility. In addition, the court overrules objections 14, 22, and 51. "[V]iolation of duty to protect Miller's rights" is not a recognized evidentiary objection and Defendants' claims that simple statements of fact concerning baking practices "drip[]" with the DFEH's animus and anti-religious bigotry" amount to gross hyperbole. To the extent Defendants' true concern is with trade secrets, section 1060 would have provided recourse. The court sustains the following objections based on the grounds asserted: 7, 15, 23, 26-27, 29, 31, 32, 34, 36-37, 39, 43, and 47-50. The court also sustains objections 6, 12, and 33 on relevance grounds and objection 38 for lack of foundation. The court overrules Defendants' remaining objections to the extent not expressly discussed herein. The court overrules Defendants' objections to the ten-point footnotes in the Department's brief and request for striking of the same based on "the guiding principle of deciding cases on their merits rather than on procedural deficiencies." [Citation.] (Oliveros v. County of Los Angeles (2004) 120 Cal.App.4th 1389, 1395.) As Defendants have had a full opportunity to rebut the contents of these footnotes in their reply brief and have not petitioned this court for additional pages to respond, they can claim no prejudice or due process violation resulting from the noncompliance. The court further notes a rough parity in overall content based on the Department's use of 28 double-spaced lines per page and Defendants' use of 37 lines per page using 1.5 spacing. The court recognizes the length and wordiness of some of the footnotes and gives them the weight they deserve. The Department will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312. I. Procedural History In December 2017, the Department initiated an action (case number BCV-17-102855) under section 12974 of the Government Code on its own behalf and on behalf of real parties in interest Eileen and Mireya Rodriguez-Del Rio, seeking temporary and preliminary relief under the Unruh Civil Rights Act as incorporated into the Fair Employment and Housing Act. The court declined to provide temporary relief but overruled a subsequent demurrer by Defendants. Defendants opposed the request for preliminary relief based on the Free Exercise Clauses of the United States and California constitutions, and the Free Speech Clause of the United States Constitution. The court denied the Department's motion for preliminary relief based solely on the merits of Defendants' Free Speech defense. Following denial of preliminary relief but before entry of judgment, Defendants brought an anti-SLAPP motion, which this court denied in an order entered May 1, 2018. As stated in that order, the Fifth District has articulated the following standard for evaluating an anti-SLAPP motion: Section 425.16 was enacted in 1992 to provide a procedure for expeditiously resolving "nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue. [Citation.]" (Sipple v. Foundation for Nat. Progress (1999) 71 Cal.App.4th 226, 235, 83 Cal.Rptr.2d 677.) It is California's response to meritless lawsuits brought to harass those who have exercised these rights. (Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 644, 49 Cal.Rptr.2d 620, disapproved on another ground in Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 68, fn. 5, 124 Cal.Rptr.2d 507, 52 P.3d 685 (Equilon Enterprises).) This type of suit, referred to under the acronym SLAPP, or strategic lawsuits against public participation, is generally brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff. (Kajima Engineering & Construction, Inc. v. City of Los Angeles (2002) 95 Cal.App.4th 921, 927, 116 Cal.Rptr.2d 187.) When served with a SLAPP, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process. (City of Cotati v. Cashman (2002) 29 Cal.4th 69, 76, 124 Cal.Rptr.2d 519, 52 P.3d 695 (City of Cotati).) The court first decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. (City of Cotati, supra, 29 Cal.4th at p. 76, 124 Cal.Rptr.2d 519, 52 P.3d 695.) The moving defendant must demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant's] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue...." (425.16, subd. (b)(1); Equilon Enterprises, supra, 29 Cal.4th at p. 67, 124 Cal.Rptr.2d 507, 52 P.3d 685.) If the court concludes that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. (Navellier v. Sletten (2002) 29 Cal.4th 82, 88, 124 Cal.Rptr.2d 530, 52 P.3d 703 (Navellier).) To establish the requisite

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probability of prevailing, the plaintiff need only have ""stated and substantiated a legally sufficient claim."" (Navellier, supra, 29 Cal.4th at p. 88, 124 Cal.Rptr.2d 530, 52 P.3d 703.) ""Put another way, the plaintiff ""must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."" (Id. at pp. 88-89, 124 Cal.Rptr.2d 530, 52 P.3d 703.) The plaintiff need only establish that his or her claim has minimal merit to avoid being stricken as a SLAPP. (Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291, 46 Cal.Rptr.3d 638, 139 P.3d 30 (Soukup).) Nevertheless, a plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence. (Roberts v. Los Angeles County Bar Assn. (2003) 105 Cal.App.4th 604, 614, 129 Cal.Rptr.2d 546.) (Grenier v. Taylor (2015) 234 Cal.App.4th 471, 479-480.) The court declined to rule on the first prong, finding instead that the Department's case had minimal merit necessary to survive an anti-SLAPP motion under the second prong. The court noted the Department's mandate to enforce anti-discriminatory public accommodation laws and found that "Defendant's conduct was discriminatory, and fell within the ambit of the law and may be actionable if not otherwise constitutionally protected." That same day (May 1, 2018), the court entered judgment for Defendants under Government Code section 12974. In September 2018, the court granted in part and denied in part a motion to enforce judgment brought by Defendants, finding that its decision on the merits of the constitutional defense was plenary in nature while recognizing that it was "necessarily based upon the facts which are known or knowable at the time it is rendered." Accordingly, the court allowed the Department to continue its investigation and concluded "that any such further proceeding should be brought before this court in the nature of action or petition for modification of the court's original judgment." The Plaintiff sought a writ from the Fifth District concerning the court's September 2018 order. Pending final resolution of Defendants' petition, the Fifth District stayed the court's order and specifically noted "that petitioner may continue its investigation and file a complaint pursuant to Government Code section 12965." The appellate matter remains pending (case number F078245). The Department filed a complaint in October 2018 and an amended complaint in November 2018. Defendants then filed the instant anti-SLAPP motion. II. Legal Analysis As an overarching principle and before turning to the two-pronged test under the anti-SLAPP law, the court reiterates its previous conclusion that "[t]his does not appear to be the type of action addressed by section 425.16." The nature of the proceedings and evidence presented show that the Department, consistent with its mandate, has brought the instant complaint to vindicate a legally cognizable right belonging to the real parties in interest rather than to obtain an economic advantage over Defendants. Moreover, as the Fifth District's interim order authorized the instant complaint pending final resolution of the writ proceeding, a decision from this court granting the anti-SLAPP motion could be viewed as conflicting. Regarding, the two-pronged test confirms that SLAPP relief is unwarranted. A. A Determination Under the First Prong of the Anti-SLAPP Law Is Unnecessary. Defendants claim that their refusal to fill the order for the Rodriguez-Del Rios' wedding cake amounted to "conduct in furtherance of the exercise of the constitutional right of . . . free speech in connection with . . . an issue of public interest" protected under the statute's first prong. (Code Civ. Proc., 425.16(e)(4).) The Supreme Court recently recognized that the anti-SLAPP law "uses certain open-ended terms that raise nuanced questions of interpretation," and accordingly endeavored "to clarify the scope of the statute." (Rand Resources, LLC v. City of Carson (Feb. 4, 2019, S235735) __ Cal.5th __ [2019 WL 418745 at pp. *5, *8].) To this end, it affirmed that "a topic of widespread, public interest" falls "within the ambit of" the first prong, but only where "the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech." (Id. at p. *5 (quotation marks omitted).) It is not sufficient that a claim "was filed after, or because of, protected activity, or when protected activity merely provides evidentiary support or context for the claim," unless the activity supplies an element of the challenged claim. (Ibid.) "[W]hile discrimination may be carried out by means of speech . . . and an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory consideration." (Park v. Bd. of Trustees of Cal. State U. (2017) 2 Cal.5th 1057, 1066.) "Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute 'fatal for most harassment, discrimination and retaliation actions against public employers.' [Citation.]" (Id. at p. 1067.) Thus, there is certainly an argument to be made under the first prong on the Department's side. Assuming arguendo that Defendants' activity satisfies the first prong, the Department's complaint nevertheless has minimal merit. B. The Department's Complaint Has at Least Minimal Merit. Defendants raises three arguments under the second prong of the anti-SLAPP law: First, [the Department's] complaint is barred by principles of res judicata and collateral estoppel because the main issue has already been adjudicated. The issue of whether Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery [sic], has

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already been found constitutional. Second, intervening case law makes clear that Miller did not discriminate on the basis of sexual orientation, but rather refused to announce a specific message, which is not something prohibited by the Unruh Act. Third, if this Court were to look past *res judicata*, and re-examine its prior holding, its substance remains valid-Miller's decision not to make the cake is constitutionally protected. As Defendants rely on their characterization of the court's prior rulings, a review of the same is in order. 1. This Court's Prior Rulings Prior to applying a rule to the facts of a particular case "[i]t is, emphatically, the province and duty of the judicial department, to say what the law is." (Marbury v. Madison (1803) 1 Cranch 137, 5 U.S. 137, 177, 2 L.Ed. 60.)" (McClung v. Employment Development Dept. (2004) 34 Cal.4th 467, 469-470.) In evaluating the Department's entitlement to preliminary relief under Government Code section 12974, this court first had to examine the tension between the Unruh Civil Rights Act and the Free Speech Clause of the First Amendment and to determine, as a matter of statutory and constitutional interpretation, the extent to which one must yield to the other. It is this determination that the court views as final-its finding that the constitutional right to free speech supersedes the ability of the Department to enforce the Unruh Civil Rights Act against otherwise discriminatory practices in certain circumstances; in other words, that the Unruh Civil Rights Act may be unconstitutional as applied. Exploring this principle's constraints, the court pronounced a legal test of general applicability as to compelled expression, a test which stands or falls apart from the particular facts of this case. To wit, does the factual scenario involve a baker's mere refusal to sell an existing cake made available for public sale, or to provide cake-baking services not fundamentally founded upon speech, based on the baker's perception of the customer's gender identification? Or does it concern, instead, a baker refusing to use her talents to design and create an artistic work not yet conceived, with knowledge that others will deem such work an endorsement of same-sex marriage, when she does not wish to convey and does not condone that message? The court's ruling was plenary in its announcement of the applicable legal standard as to compelled speech, because understanding the legal standard is a prerequisite to resolving any specific case or controversy between real parties in interest. While the court also applied its test to the facts it had in front of it based on the Department's preliminary investigation, it never intended by entering judgment to foreclose the Department's ability to complete its full investigation and see the matter through to its logical conclusion, as contemplated by the Government Code. Indeed, the court's order on the motion to enforce judgment explicitly stated that "[t]he DFEH is not foreclosed from reasonably investigating the factual underpinnings of this court's adjudication, provided that the investigation proceeds in a lawful and legitimate manner." Instead, its entry of judgment, and ruling on the motion to enforce judgment, resulted from the application of simple logic in ascertaining the path the legislature intended the Department to follow under the Government Code, in light of section 12974's unique statutory scheme. It is an "elementary rule" of statutory construction that "statutes in pari materia-that is, statutes relating to the same subject matter-should be construed together." (Droeger v. Friedman, Sloan & Ross (1991) 54 Cal.3d 26, 50.) In so doing, the court must harmonize these statutes "both internally and with each other" and avoid an interpretation that would produce "absurd results[.]" (Tuolumne Jobs & Small Business Alliance v. Super. Ct. (2014) 59 Cal.4th 1029, 1037 (quotation marks omitted).) Additionally, as a "general rule" it is well established that "one trial judge cannot reconsider and overrule an order of another trial judge. [Footnote.]" (People v. Riva (2003) 112 Cal.App.4th 981, 991.) "[I]mportant public policy reasons" underlie this rule, including to avoid "plac[ing] the second judge in the role of a one-judge appellate court." [Footnote.]" (Ibid.) "The rule also discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a case ongoing before another judge and prevents a second judge from ignoring or arbitrarily rejecting the order of the previous judge which can amount to a violation of due process." (Ibid. (footnotes omitted).) At the same time, however, another rule holds that one trial court cannot bind a second trial court "called upon to rule on the same issue"- This is akin to saying that the first trial court to rule on a particular issue establishes the "law of the case." This doctrine, however, does not apply to rulings of the trial court. (9 Witkin; Cal. Procedure (4th Ed.1997) 896, p. 930; Providence v. Valley Clerks Trust Fund (1984) 163 Cal.App.3d 249, 256, 209 Cal.Rptr. 276.) (People v. Sons (2008) 164 Cal.App.4th 90, 100 (hereafter Sons).) There is one "obvious" solution: "Once a designated trial court hears a matter, it should continue to hear it, including retrials, until final judgment is rendered." (Sons, supra, 164 Cal.App.4th at p. 100 n.7.) Applying these rules, the court's reading of section 12965 together with section 12974 was necessary to avoid the absurd potential for nullification of the court's prior ruling as to the applicable legal standard were a new complaint assigned to a different judge. While the court stands by its theoretical analysis of the procedural aspects of sections 12974 and 12965, the formal complaint that the Fifth District authorized (at least temporarily) in the writ proceeding has been assigned to this court, assuaging the court's concerns as a practical matter. The court has spoken conclusively as to the applicable legal test but has made only preliminary pronouncements on a limited record as to the application of that test to the case at bar (finding that the Department "could not succeed on the facts presented" while

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recognizing that the factual record was subject to further development). With this background in mind, the court turns now to Defendants' arguments under the second prong of the anti-SLAPP law. 2. *Res Judicata and Collateral Estoppel* The court entered judgment in May 2018 because it had resolved all matters then in front of it and sought to preserve its constitutional analysis, and followed up with its September 2018 order on the motion to enforce judgment. As a jurisdictional matter, the court may issue a ruling on the anti-SLAPP motion despite pending proceedings before the Fifth District, as that proceeding involves a writ not subject to the automatic stay in section 916 of the Code of Civil Procedure, as opposed to a direct appeal. (In *re Brandy R.* (2007) 150 Cal.App.4th 607, 609-610.) Even so, it is not necessary for this court to take up the question of whether the May 2018 judgment and the court's ruling on the issues presented therein were "final" and "on the merits," (Cf. *Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 12 [noting that the terms "judgment" and "final judgment" "are meaningless unless qualified by context, i.e., a judgment may be final, but modifiable at the trial level, or final for the purpose of appeal. (See 4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, 2, pp. 3182-3183.)"].) Regardless, the doctrines of *res judicata* and *collateral estoppel* are not impediments to the Department's probability of success in the instant matter. "[A] court may not give preclusive effect to the decision in a prior proceeding if doing so is contrary to the intent of the legislative body that established the proceeding in which *res judicata* or *collateral estoppel* is urged." [Citation.] (Pacific Lumber Co. v. State Water Resources Control Bd. (2006) 37 Cal.4th 921, 945.) In other words, all or part of a claim "subsists as a possible basis for a second action by the plaintiff against the defendant" where "it is the sense of the [statutory or constitutional] scheme that the plaintiff should be permitted to split his claim," as illustrated by the following scenario- For nonpayment of rent, landlord A brings a summary action to dispossess tenant B from leased premises. A succeeds in the action. A then brings an action for payment of the past due rent. The action is not precluded if, for example, the statutory system discloses a purpose to give the landlord a choice between, on the one hand, an action with expedited procedure to reclaim possession which does not preclude and may be followed by a regular action for rent, and, on the other hand, a regular action combining the two demands. (Rest.2d Judgments, 26, com. e, illus. 5; cf. *Samara v. Matar* (2018) 5 Cal.5th 322, 331-332 [favorably citing the Restatement (Second) of Judgments].) This example is on point. Defendants describe "the main issue" as "Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery." As discussed above, the court's ruling on the merits of Defendants' Free Speech defense was based on a preliminary record. The court agreed that the Government Code contemplated further investigation by the Department and the potential for further court proceedings upon "final disposition" of its internal review, whether through a motion for modification of judgment or the new complaint. (Gov. Code, 12974.) Further, the initial proceeding was an expedited claim seeking preliminary relief while the instant complaint presents a regular action that also demands actual and punitive damages. Thus, despite ambiguities in the legislature's intended execution of the mechanics of this scheme as identified by this court, it is clear that giving preclusive effect to the judgment at issue would violate the legislature's design. Moreover, as previously noted, assignment of the new complaint to the undersigned has satisfied the procedural concerns the court otherwise would have had with maintaining judicial integrity. 3. *Minimal Merits Analysis - Free Speech Defendants'* citation to case law from the United Kingdom provides no basis for the court to reconsider its prior finding under settled California jurisprudence that Defendants' refusal to fill the Rodriguez-Del Rios' order for a wedding cake amounted to discrimination on the basis of sexual orientation within the ambit of the Unruh Civil Rights Act that would be actionable absent a viable constitutional defense. Nevertheless, this court previously determined under strict scrutiny (and based on the limited factual record in front of it) that "[t]he State cannot meet the test that its interest outweighs the Free Speech right at issue in this particular case, or that the law is being applied by the least restrictive means." Here, the focus of the parties' minimal merits analysis is the threshold question of whether Defendants' refusal to fill the order for the Rodriguez-Del Rios' wedding cake was expressive, amounting to protected speech. While the Department would normally have the burden of substantiating its case under section 425.16, there is conflicting case law as to whether their advancement of an affirmative defense shifts the burden to Defendants for purposes of an anti-SLAPP motion. (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 683.) "What is important is that, regardless of the burden of proof, the court must determine whether the plaintiff can establish a *prima facie* case of prevailing, or whether the defendant has defeated the plaintiff's evidence as a matter of law." (*Ibid.*) The parties have identified no intervening case law that would control the court's analysis, although intervening dicta has bolstered the validity of the court's test differentiating between the simple denial of goods and the creation of expressive works. The Supreme Court recently stated the following: [I]f a baker refused to sell any goods or any cakes for gay weddings, that would be a different matter and the State would have a strong case under this Court's precedents that this would be a denial of goods and services that went beyond any protected rights of a baker who offers goods and services to the general public and is subject to a neutrally applied and generally

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applicable public accommodations law. (*Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Com.* (2018) 138 S.Ct. 1719, 1728.) In a concurrence, two justices affirmed the distinction between "whether [a baker] had refused to create a custom wedding cake for the [same-sex couple] or whether he refused to sell them any wedding cake (including a premade one)." (*Id.* at p. 1740 (Thomas, J. & Gorsuch, J., concurring).) The Department now argues that the facts developed from its continuing investigation show (1) the Rodriguez-Del Rios sought to purchase a cake that, while labeled as "custom," was equivalent to a premade, or store-bought display cake, (2) Defendants nevertheless refused to sell to them, and (3) Defendants had a policy of refusing to supply wedding cakes for same-sex couples regardless of whether or not those cakes were custom, such that the Rodriguez-Del Rios would not have been able to purchase any wedding cake from Defendants. In other words, the Department argues that Defendants' actions amounted to a complete denial of goods or services. The Department has supplied sufficient admissible evidence in this respect to substantiate a prima facie case if accepted as true (leaving aside conflicting evidence proffered by Defendants and making no determination on the merits). 4. Minimal Merits Analysis - Free Exercise In the court's ruling on the request for preliminary relief, it stated the following: The Unruh Act is neutral on its face and does not per se constitute a direct restraint upon religion. In fact, by its terms, the Unruh Act itself protects religious discrimination in the marketplace. By its terms it does not constitute an indirect restraint. There is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement under these circumstances. Designing and creating a cake, even a wedding cake, may not in and of itself constitute a religious practice under the Free Exercise clause. It is the use that Miller's design effort will be put to that causes her to object. Whether the application of the Unruh Act in these circumstances violates the Free Exercise clause is an open question . . . Defendants essentially concede the minimal merit of Plaintiff's complaint under the Free Exercise Clause of the United States Constitution by admitting that the Free Exercise Clause no longer "relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Assuming arguendo that strict scrutiny would apply under the Free Exercise Clause of article I, section 4 of the California Constitution, the minimal merits analysis would require evidence that application of the Unruh Civil Rights Act (1) does not substantially burden a religious belief or practice, or (2) represents the least restrictive means for achieving a compelling government interest. (*North Coast Women's Care Medical Group, Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1158 (hereafter *North Coast*) [finding where a physician had refused to provide certain fertility treatment a same-sex couple that the Act furthered "California's compelling interest in ensuring full and equal access to medical treatment irrespective of sexual orientation, and there are no less restrictive means for the state to achieve that goal"].) First, the court has already found it to be an open question as to whether Defendants' actions could even qualify as a religious practice. The unsettled nature of the law in this area supports a finding of minimal merit. Second, assuming the likelihood that Defendants can establish a substantial burden on a religious belief or practice, the Department's evidence discussed above goes to the question of least-restrictive means by asking whether the Rodriguez-Del Rios are seeking to compel Defendants to bake a custom wedding cake for their same-sex celebration or merely to sell them a cake that Defendants would ordinarily sell to other customers. Thus, the Department's evidence in this regard is sufficient to substantiate a prima facie case to the same extent as discussed above in the Free Speech context. Moreover, the question of the Department's compelling state interest in preventing discrimination in public accommodations is unsettled but passes minimal merit in light of the *North Coast* case. III. Conclusion For the foregoing reasons, the court denies Defendants' anti-SLAPP motion. Copy of minute order mailed to all parties as stated on the attached certificate of mailing. A courtesy copy is emailed to counsel as stated on the attached certificate of mailing.;

Ruling

04/15/2019



Case Management Conference (8:30 AM) (Judicial Officer: Lampe, David
R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

MINUTES

Held; Jeffrey Trissell appeared telephonically via courtcall on behalf of the defendants.

Journal Entry Details:

Counsel are ready to set trial dates. The Court sets the following trial dates: Jury Trial set June 22, 2020 at 9:00 a.m. in Department 11. Final Case Management Conference set June 19, 2020 at 1:30 p.m. in Department 11. Mandatory Settlement Conference set May 22, 2020 at 9:00 a.m. in Department 1. The case is assigned to Retired Judge Gary T. Friedman to serve as Judge Pro Tem for Mandatory Settlement Conference only. Location in Court to be assigned by the clerk. The Clerk of the Court is authorized to re-set the date, time and location and is to notify counsel. Time estimate: 7 days. Plaintiff and defendnat have posted jury fees. Jury for plaintiff and defendant. Notice to issue from court.;

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Held**Parties Present: Attorney MANN, GREGORY J***SCHEDULED HEARINGS****CANCELED Jury Trial** (06/22/2020 at 9:00 AM) (Judicial Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*T/E 7 DAYS JURY FOR BOTH SIDES**Stipulation Filed***CANCELED Final Case Management Conference** (06/19/2020 at 1:30 PM) (Judicial

Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*J/T SET 6/22/19 9AM DEPT 11 T/E 7 DAYS JURY FOR BOTH SIDES**Stipulation Filed***CANCELED Mandatory Settlement Conference** (05/22/2020 at 10:30 AM) (Judicial

Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

*J/T SET 6/22/20 9AM DEPT 11 T/E 7 DAYS AND FSC SET 6/19/20 130PM DEPT 11**Stipulation Filed*

01/22/2020

**Motion to Compel** (8:30 AM) (Judicial Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*11/15/19**Defendants, CATHY'S CREATIONS, INC. DBA TASTRIES; CATHARINE MILLER**Motion to Compel Responses to Interrogatories; Compel Production of Documents; and for Leave to Depose Specific Individuals**ResID: 36392**12/18/2019**Continued to 01/10/2020 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; MILLER, CATHARINE**01/10/2020**Continued to 01/22/2020 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; MILLER, CATHARINE***MINUTES***Held; Jeffrey Trissel appeared in court on behalf of the defendant. Paul Jonna appeared via courtcall on behalf of the defendant.**Journal Entry Details:**Matter argued by counsel and submitted. Issue of Defendant, Cathy's Creations, Inc dba Tasteries, and Catherine Miller's Motion to Compel Responses to Interrpgatories, Compel Production of Documents, and for Leave to Depose Specific Individuals stands submitted to the Court.;**Held**Parties Present: Attorney MANN, GREGORY J*

01/30/2020

**Ruling** (8:00 AM)*Ruling;**Journal Entry Details:**The Mandatory Settlement Conference scheduled for May 22, 2020 at 9:00 a.m. in Department 1 is hereby re-set to take place at 10:30 a.m. in Department 1, before Judge Gary T Friedman (Retired). Counsel/parties to report to reception on the 2nd floor Copy of minute order mailed to all parties as stated on certificate of mailing. ;**Ruling*

02/05/2020

**CANCELED Motion to Compel Further Discovery Responses** (8:30 AM) (Judicial

Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*12/26/2019**Defendants: CATHY'S CREATIONS, INC. dba TASTRIES; CATHARINE MILLER*

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ResID: 36714

Other

01/22/2020

Continued to 02/05/2020 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; MILLER, CATHARINE

02/05/2020



CANCELED Motion to Compel Further Discovery Responses (8:30 AM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue) 12/26/2019

Defendants: CATHY'S CREATIONS, INC. dba TASTRIES; CATHARINE MILLER

Motion to Compel The Department of Fair Employment to Provide Further Responses to Three Sets of Interrogatories

ResID: 36720

Other

01/22/2020

Continued to 02/05/2020 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION; MILLER, CATHARINE

02/10/2020



Ruling (4:30 PM) (Judicial Officer: Lampe, David R.

Ruling;

Journal Entry Details:

Joint Stipulation to continue trial filed 02/05/2020 The court orders as follows: A Further Case Management Conference is set for 03/19/2020 at 8:30 am in Department 11. The Mandatory Settlement Conference scheduled on 05/22/2020 is vacated. The Final Case Management Conference scheduled on 06/19/2020 is vacated. The Trial scheduled on 06/22/2020 is vacated. Copy of minutes mailed to all parties as stated on Certificate of Mailing.;

Ruling

03/06/2020



Ruling (4:00 PM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

MINUTES

Ruling;

Journal Entry Details:

Department of Fair Employment & Housing v. Cathy's Creations, Inc., et al. BCV-18-102633 The court re-opens this matter for further hearing on the following tentative ruling. The matter will be set on March 27, 2020 at 1:30 p.m. in D-11, on such further date and at such further time as the Court may order should counsel so agree and stipulate. Tentative Ruling on Matter Submitted January 22, 2020 MOTION: Defendants' Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals. RULING: The Court, having taken the above-entitled matter under submission on January 22, 2020, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows: The Court grants in part Defendants' Motion to Compel Responses to Interrogatories, Compel Production of Documents, and for Leave to Depose Specific Individuals. Defendant Miller propounded the discovery at issue on DFEH and, despite extensive meet and confer efforts, the parties have reached an impasse regarding Defendant's questions inquiring into DFEH's investigation of Defendants following Defendant Miller's unlawful refusal to create a wedding cake celebrating a same-sex marriage between real parties in interest, Eileen and Mireya Rodriguez-Del Rio. Defendant DFEH's position is that the pending discovery is immaterial to the issues framed by the pleadings, and it is privileged pursuant to the attorney-client privilege and official information privilege. Relevance Because the issue of whether Defendants Miller and Cathy's Creations, Inc.'s Constitutional rights to free speech and the free exercise of religion protect her decision is one of first impression in California, Defendants have propounded discovery aimed at eliciting evidence of prosecutorial bias, like that found in Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission (2018) 138 S.Ct. 1719 ("Masterpiece"). In Masterpiece, the Colorado Civil Rights Commission, like the DFEH, prosecuted a discrimination complaint against a cake designer and baker after he declined to create a wedding cake for a same-sex couple on grounds it went against his deeply held religious beliefs. The defendant baker in Masterpiece established the Commission's "treatment of his case [had] some elements of a clear and impermissible hostility toward the sincere beliefs that motivated his objection,"

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prompting the Supreme Court to reverse the state court rulings. (Masterpiece at 1729.) The Supreme Court found the Commission had failed to comport with its "obligat[ion] under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [the baker's] religious beliefs." (Masterpiece at 1731, quoting Church of Lukumi Babalu Aye, Inc. v. Hialeah (1993) 508 U.S. 520, 547.) With Masterpiece as a guide, Miller explains the discovery at issue is the only means by which Defendants can examine whether DFEH pursued and conducted its investigation and prosecution of its claim of discrimination against Defendants with improper motives, in violation of its obligation of religious neutrality. In the absence of any controlling California authority, Defendants are entitled to pursue a Masterpiece defense. Accordingly, DFEH's contention that the pending discovery is immaterial to the issues framed by the pleadings is unavailing. Attorney-Client Privilege Neither the parties nor the Court has located any authority unequivocally supporting DFEH's contention that an attorney-client relationship can exist between the DFEH and aggrieved claimants under the Fair Employment and Housing Act. DFEH offers several theories in support of its position that an order requiring it to further respond to the pending discovery would violate the attorney-client privilege. Specifically, Evidence Code section 951, Government Code section 12965(a), the de facto attorney-client relationship created under federal law between the federal Equal Employment Opportunity Commission ("EEOC") and claimants, and the common interest doctrine. DFEH fails to persuade the Court that these theories viewed individually, or in combination support a finding of an attorney-client privilege between the DFEH and real parties in interest or parties claiming to be aggrieved generally. DFEH's position is that Evidence Code section 951 mandates a finding of an attorney-client relationship between DFEH and real parties in interest here. Evidence Code section 951 defines a client as a person who, directly or through an authorized representative consults a lawyer for the purpose of retaining the lawyer or securing legal services or advice in the lawyer's professional capacity. DFEH offers the declarations of real parties as evidence of an attorney-client relationship. Both state: "From the beginning we felt that the DFEH lawyers represented us, and we wanted to hear their advice and about the legal process. We felt comfortable to be open and honest with them about this and other private information because we felt our conversation was confidential. We didn't know much about the law, but we knew about the attorney client privilege. Even though DFEH is plaintiff, DFEH filed the case on our behalf and represents our interests. We think of them as our lawyers and have always communicated with them with the understanding that our conversations and emails are confidential." At first blush, the declarations appear to imply a subjective belief that DFEH attorneys represent the real parties in interest; however, missing from these declarations is an assertion that the real parties in interest's purpose in engaging the DFEH in the first place was for purposes of retaining counsel or securing legal services or advice. An individual's subjective belief, standing alone, does not create an attorney-client relationship. (Zenith Ins. Co. v. O'Connor (2007) 148 Cal.App.4th 998.) Furthermore, the unavoidable fact is that real parties in interest, like every other individual who contacts the DFEH claiming he or she is aggrieved under the FEHA, were legally required to initiate the claim process through the DFEH attorneys. The mere fact a claimant files a claim with the DFEH, a step that inevitably includes advice and counseling as to the process, does not create an attorney-client relationship. This is because the DFEH's administrative function precludes such a relationship. Focusing on a single clause, DFEH also contends Government Code section 12965 supports a finding of an attorney-client relationship between DFEH and real parties in interest. DFEH suggests its statutory ability to bring an action "on behalf of the person claiming to be aggrieved," combined with the real parties' subjective belief that DFEH represents them demonstrates an attorney-client relationship. Section 12965 provides in relevant part: In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved. Prior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation. In any civil action, the person claiming to be aggrieved shall be the real party in interest and shall have the right to participate as a party and be represented by that person's own counsel. Taken as a whole, section 12965 cannot be interpreted as DFEH suggests and the lack of any California authority interpreting it as DFEH suggests speaks volumes. Before the DFEH director can bring a civil action, it must first mediate the dispute between the purportedly aggrieved party and the defendant, placing the DFEH squarely in the position of neutral fact-finder. Should a real party in interest opt to participate, he or she does so through separate counsel, not the DFEH. The conduct of the parties in this case contradicts DFEH's argument. In responding to Defendants' discovery in this action, real parties did so through separate counsel, not the DFEH, which implies a lack of any attorney-client relationship with DFEH. DFEH simultaneously acknowledges the lack of an attorney-client relationship and argues in favor of one by raising the common interest doctrine, arguing its communications with real parties are "essential to DFEH's legal

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representation of its actual client-the State-and its de facto clients[, real parties in interest]" and therefore protected. DFEH misapplies the doctrine. The common interest doctrine would only apply in the absence of an attorney-client relationship between DFEH and real parties and if the holder of the privilege-real parties and their counsel-divulged information otherwise protected by their attorney-client relationship and sought protection. (See Evid. Code, 912 952; *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 768; and *OXY Resources California, LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889.) There is no evidence this occurred and there is simply no authority supporting DFEH's contention that it has a simultaneously separate and unified attorney-client relationship with the State and real parties here. DFEH's alternate argument that this Court should conclude an attorney-client relationship exists by virtue of the federal de facto attorney-client relationship that exists between the EEOC and aggrieved claimants under the federal equivalent of the FEHA is similarly inapplicable. As argued by Defendants, "the privileges contained in the Evidence Code are exclusive and the courts are not free to create new privileges as a matter of judicial policy." (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656 [original italics].) In the absence of any California case authority applying this privilege, the Court is unwilling to do so here. Other provisions of the Government Code further buttress the Court's conclusion that Government section 12965 does not support DFEH's position. Section 12930 defines the DFEH's purpose-to receive, investigate, conciliate, and prosecute discrimination claims on behalf of the State. When the DFEH carries out these duties, Government Code section 12920 states it is "deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state," not individual claimants. Where an attorney is "performing tasks on behalf of and in the name of the government to which greater standards of neutrality apply, he must adhere to those standards." (*People ex rel. Clancy v. Superior Court* (1985) 39 Cal. 3d 740, 747.) Because the DFEH acts in the name of the state, its attorneys are held to principles of heightened neutrality and "are subject to a heightened standard of ethical conduct applicable to public officials acting in the name of the public-standards that would not be invoked in an ordinary civil case." (*County of Santa Clara v. Superior Court* (2010) 50 Cal. 4th 35, 57.) The DFEH's role is comparable to that of a district attorney. The mere fact the district attorney's office communicates with victims does not create an attorney-client relationship. Those discussions are discoverable. DFEH's contention that its relationship with real parties in interest constitutes an attorney-client privilege is diametrically opposed to the Legislature's definition of the DFEH as a neutral fact-finder investigating and prosecuting claims on behalf of the People of the State. In order for an attorney-client relationship to exist, DFEH would advocate only for the interests of a single individual to the exclusion of others, which is impractical in light of the fact the DFEH represents the people of the entire State of California. Taking DFEH's argument a step beyond the motion before the Court, DFEH's contention that it represents the real parties in interest in this case and the People of California would place the DFEH in an untenable position. Hypothetically speaking, if real parties in interest communicated with third parties in a way that denigrated the traditional religious belief that a marriage is between a man and woman, or involved themselves with organizations that express those views, those views could be imputed to the DFEH and the State itself. This would imply an unequivocal animus towards religious beliefs in violation of the DFEH's purpose and duties under the law-i.e., to approach the matters before it with a neutrality towards religion. Based on the foregoing, the Court concludes there is no attorney-client relationship between DFEH and real parties in interest, nor can there be. Official Information Privilege Subject to statutory conditions, a public entity has the privilege to refuse to disclose, and to prevent others from disclosing, "official information." (Evid. Code, 1040(b).) "Official information" means information required in confidence by a public employee in the course of his or her official duty and not open, or officially disclosed, to the public before the privilege is asserted. (Evid. Code, 1040(a).) Unless disclosure "is forbidden by either a federal or state statute," the privilege "is expressly conditional, not absolute." (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1126.) Because disclosure is not expressly barred here, the privilege is conditional. The privilege "must be applied conditionally on a clear showing that disclosure is against the public's interest" based on the circumstances presented. (*California State University v. Superior Court* (2001) 90 Cal.App.4th 810, 832, quoting *CBS, Inc. v. Block* (1986) 42 Cal.3d. 646, 656; and see *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 763; *Suarez v. Office of Administrative Hearings* (2004) 123 Cal.App.4th 1191, 1195.) DFEH contends public interests such as maintaining the confidentiality of its analysis of the claims and its discretionary decision-making, thereby undermining its ability to perform its duties, and preserving an uninhibited exchange of information outweigh any countervailing consequences in denying Defendants' motion. DFEH further contends Defendants' failure to offer any evidence of prosecutorial bias thus far in the case prevents a ruling in their favor. Preliminarily, to the extent any of the information DFEH contends is protected by the official information privilege was shared in any fashion with real parties, their counsel, or any other third party, the privilege is waived. As for information DFEH has not shared with real parties, their counsel,

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or third parties unrelated to this case, the issue is whether the public interest in maintaining the confidentiality of the information outweighs the necessity for disclosure in the interest of justice. As held in *People v. Montes* (2014) 58 Cal.4th 809, "a showing of 'plausible justification' [for the discovery at issue] requires a defendant to 'show by direct or circumstantial evidence that prosecutorial discretion was exercised with intentional and invidious discrimination in his case.'" (Id. at 829, quoting *People v. Keenan* (1988) 46 Cal.3d 478, 506; and see *People v. Superior Court* (1977) 70 Cal.App.3d 341, 344 (same showing required in civil prosecutions).) "[A]bsent some substantial and credible showing of invidious discrimination, disclosure of official investigative material is against the public interest." (*People v. Superior Court*, supra, 70 Cal.App.3d 344.) The DFEH has conceded in this case that Defendant Miller, as the owner of Defendant Tastries, has a sincerely held religious belief that is protected by California and federal Constitutions, and her refusal to create a wedding cake for real parties in interest arose from that belief. Rather than issue real parties a right-to-sue letter, which is the most common response to DFEH complaints, the DFEH nonetheless chose to pursue this case. In light of the fact that the DFEH has a duty to protect religious discrimination, one could arguably conclude that implicit in the DFEH's decision to prosecute Defendants is the DFEH's determination that the real parties' rights supersede those of Defendants. Additionally, DFEH has shared certain information and documents with real parties in interest, a point that DFEH concedes in arguing the applicability of the attorney-client privilege. If real parties are privy to the information and evidence DFEH obtained during its investigation and discharge of its role as neutral fact-finder, it would be unfair and unjust to bar Defendants' access to such information and evidence. As stated by the United States Supreme Court and persuasive here, "since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense." (*U.S. Reynolds* (1953) 345 U.S. 1, 12.) California discovery statutes are to be construed liberally in favor of disclosure unless statutory or public policy considerations clearly prohibit it. (*Shepherd v. Superior Court* (1976) 17 Cal. 3d 107, 118, overruled on other grounds in *People v. Holloway* (2004) 33 Cal.4th 96, 131.) In balancing Defendants' ability to pursue a Masterpiece defense against the stated public interests, the Court concludes Defendants should be permitted to inquire into whether the exercise of prosecutorial discretion is motivated by an impermissible unconstitutional bias. Put another way, Defendants are entitled to confirm the DFEH has complied with its obligation toward religious neutrality. The Court concludes that Defendants' right to pursue their defense combined with the reality that there is no other means by which they can obtain the information at issue outweighs the DFEH's desire to maintain the confidentiality of its investigation. *Discovery at Issue* While the Court concludes the official information privilege does not bar production here, the Court is cognizant of the fact that the information at issue may remain protected under the attorney work product doctrine. Code of Civil Procedure section 2018.030 defines work product, distinguishing between work product that is absolutely privileged and work product other than an attorney's mental impressions, which is entitled only to qualified protection: (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice. Generally speaking, "a court may not require disclosure of information claimed to be privileged in order to rule on a claim of privilege. In camera review of privileged documents is generally prohibited because 'the privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any other particular circumstances peculiar to the case.'" [Citations omitted.]" (*OXY Res. California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 896.) This is in line with the strictures of Evidence Code section 915(a), which provides that a court "may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege...." However, "if necessary to determine whether an exception to the privilege applies, the court may conduct an in camera hearing notwithstanding section 915. [Citation.]" (*Ibid.*, italics added.) Generally, in camera hearings should be limited to a determination whether there is an exception to, or waiver of, the privilege, and "whether the exception or waiver depends on the content of the communication. [Citation.]" [Citation.] "[W]here an exception to a privilege depends upon the content of a communication, the court may require disclosure in camera in making its ruling." [Citation.] (*OXY Res. California LLC v. Superior Court*, supra, 115 Cal.App.4th at 896.) In contrast, qualified work product can be reviewed in camera. (Code Civ. Proc., 2018.030 ("[t]he work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.")) In line with the above authority, the Court directs DFEH to produce for in camera review all matters

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it contends constitutes work product within the meaning of Code of Civil Procedure section 2018.030 including but not limited to work product that (1) DFEH and its staff has communicated to or shared in any fashion with third parties, including real parties in interest or their counsel, (2) reflects or documents any statements of others (excluding client), (3) reflects or documents third party communications made to counsel, or (4) contains anything other than thoughts, analysis, impressions as defined by Code of Civil Procedure section 2018.030(b). As to any writings withheld, the DFEH should produce a privilege log. All responses ordered herein shall encompass the entire action, to include the date on which real parties made contact with the DFEH through the present. The Court concludes that DFEH's role as neutral fact-finder pursuant to the FEHA does not warrant DFEH's limitation of its responses to only the investigation phase of this action. Special Interrogatories 6 & 7: Defendant Miller asks DFEH to "[d]escribe all actions undertaken by the DFEH as part of its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants, through which the DFEH complied with its Constitutional duty to avert religious discrimination," and "to ensure that none of its actions were motivated by a hostility towards disfavored religious beliefs." The Court orders DFEH to respond to the following modified version, which combines special interrogatories 6 and 7: What specific measures were taken by DFEH to fulfill the DFEH's duty under the FEHA to investigate and prosecute real parties' claim against Miller free of any discrimination against Miller's religious beliefs from the date on which DFEH received, investigated, and litigated Eileen and Mireya Rodriguez-Del Rios' complaint to the present. Request for Production of Documents 6-9, 19 & 20: The specific requests for production state: 6. Please produce all DOCUMENTS which evidence the DFEH'S compliance with its Constitutional duty to ensure that none of its actions were motivated by a hostility towards disfavored religious beliefs, with respect to its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants. 7. Please produce all DOCUMENTS which evidence the DFEH's compliance with its Constitutional duty to avert religious discrimination, with respect to its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants. 8. Please produce all DOCUMENTS and COMMUNICATIONS sent between the DFEH and Eileen and Mireya Rodriguez-Del Rio. 9. Please produce all DOCUMENTS and COMMUNICATIONS sent between the DFEH and legal counsel for Eileen and Mireya Rodriguez-Del Rio. 19. Produce all non-privileged DOCUMENTS in your possession, custody, or control relating to Eileen and Mireya Rodriguez-Del Rios which are not being produced in response to other document requests. 20. Produce all non-privileged DOCUMENTS in your possession, custody, or control relating to Defendants which are not being produced in response to other document requests. Keeping in mind the attorney-client privilege and official information privileges have been found inapplicable, DFEH shall produce all responsive documents to the Court for an in camera determination of whether the responsive documents constitute attorney work product in accord with the parameters previously set forth by the court. Depositions: Defendant Miller seeks the deposition testimony of Jon Ichinaga, Timothy Martin, Jenna Kincade, Patrice Doehrn, and Clara Hernandez regarding the administrative investigation and about Miller's special interrogatory numbers 4, 8-11, and 17. As explained by Miller, Martin is a former DFEH attorney that has appeared in connection with this action, while Ichinaga and Kincade are former DFEH attorneys unconnected with this action. Doehrn and Hernandez are DFEH investigators. The deposition questions at issue state: 4. Identify ... every individual involved with or in the DFEH's decision to apply ex parte for injunctive relief on December 13, 2017, in California Superior Court. 8. For each individual identified in response to Special Interrogatory Nos. 2 and 3 [(DFEH employees working on the investigation and/or the litigation)], identify whether they approve or disapprove of the legalization of same-sex marriage. 9. For each individual identified in response to Special Interrogatory Nos. 2 and 3, identify whether they approve or disapprove of tolerating the beliefs of others who generally disapprove of same-sex marriage. 10. For each individual identified in response to Special Interrogatory No. 8 who approves of tolerating the same-sex marriage beliefs of others, identify the boundaries of that toleration, including whether that includes permitting them to enter the marketplace but decline to participate in same-sex weddings. 11. For each individual identified in response to Special Interrogatory Nos. 2 and 3, explain why they were assigned to the administrative investigation or action. 17. State whether the DFEH corresponded or otherwise engaged in any communications with representatives from any non-governmental organization or with any individual regarding a possible claim against Tastries before filing this action. If so, describe in detail the nature and substance of that communication; identify the name, title, address, and telephone number for that representative or individual; the date(s) on which the correspondence or communication took place; and the individual who initiated the communication. Numbers 2 and 3 ask DFEH to "[i]dentify by name, title, and relationship to the investigation, every individual involved with or in the DFEH's administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, to which the DFEH

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assigned the case no. 935123-315628," and "[i]dentify by name, title, and relationship to the action, every individual involved with or in the DFEH's civil action actions against Defendants, which the California Superior Court has assigned the case nos. BCV-17-102855 and BCV-18-102633," respectively. The Court denies the motion as to special interrogatories 8, 9, and 10 based on its conclusion the questions invade the privacy rights of these individuals. The DFEH employees' personal beliefs bear no relation to the exercise of their public function. The Court grants the motion as to special interrogatories 4, 11, and 17. The depositions of the named individuals shall be overseen by a referee for purposes of determining whether the questions seek information protected as attorney work-product. The Court overrules DFEH's objection to paragraph 10 of Attorney Trissell's declaration and sustains Defendants' objections. Defendants shall prepare an order pursuant to California Rules of Court, Rule 3.1312. Copy of tentative ruling mailed to all parties as stated on the attached certificate of mailing.;

Ruling

SCHEDULED HEARINGS

Further Hearing - Pre-Disposition (06/05/2020 at 1:30 PM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Continued from 04/03/2020 by Standing Order.

The court re-opens this matter for further hearing on the tentative ruling issued 3/6/20 as to Defendants Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals.

03/27/2020 Reset by Court to 04/03/2020

04/03/2020 Reset by Court to 06/03/2020

06/03/2020 Reset by Court to 06/05/2020

Held

Parties Present: Attorney MANN, GREGORY J

03/16/2020



Ruling (8:00 AM) (Judicial Officer: Lampe, David R.

Ruling;

Journal Entry Details:

Upon the Court's own motion, the following hearings have been continued; Further Hearing scheduled for March 27, 2020 is hereby continued to April 3, 2020 at 1:30 PM in Department 11. Further Case Management Conference scheduled for March 27, 2020 is hereby continued to May 8, 2020 at 8:30 AM in Department 11. A copy of the Minutes have been mailed and sent electronically via email as stated on the attached Certificate of Mailing. ;

Ruling

05/15/2020



Ruling (3:00 PM) (Judicial Officer: Lampe, David R.

Ruling;

Journal Entry Details:

Upon the Court's own motion, Further Case Management Conference has been trailed from 8:30 a.m. to 1:30 p.m. Date remains the same. A copy of the Minutes have been mailed and sent electronically via email as stated on the attached Certificate of Mailing. ;

Ruling

05/22/2020



CANCELED Mandatory Settlement Conference (10:30 AM) (Judicial Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

J/T SET 6/22/20 9AM DEPT 11 T/E 7 DAYS AND FSC SET 6/19/20 130PM DEPT 11

Stipulation Filed

06/01/2020



Ruling (2:00 PM) (Judicial Officer: Lampe, David R.

Ruling;

Journal Entry Details:

Upon the Court's own motion, the following hearings have been continued; Further Case Management Conference scheduled for June 3, 2020 is hereby continued to June 5, 2020 @ 1:30 PM in Department 11. Further Hearing on the tentative ruling issued 3/6/20 as to Defendants Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals scheduled for June 3, 2020 is hereby continued to June 5, 2020 @ 1:30 PM in Department 11. A copy of the Minutes have been mailed and sent electronically via email as stated on the attached Certificate of Mailing. ;

Ruling

06/05/2020



Further Case Management Conference (1:30 PM) (Judicial Officer: Lampe, David

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R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

***continued from 05/08/2020 by Standing Order ***

*Stipulation to continue filed 2/5/20***03/19/2020 Reset by Court to 03/27/2020****03/27/2020 Reset by Court to 05/08/2020****05/08/2020 Reset by Court to 06/03/2020****06/03/2020 Reset by Court to 06/03/2020****06/03/2020 Reset by Court to 06/05/2020****MINUTES**

see minutes 3/6/20

***continued from 05/08/2020 by Standing Order ***

Held; Nelson Chan is also present via courtcall on behalf of the plaintiff. Catherine Miller and Jeffrey Trissell are both present via courtcall on behalf of the defendant.

Journal Entry Details:

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*Held**Parties Present: Attorney MANN, GREGORY J***SCHEDULED HEARINGS****Further Case Management Conference** (08/14/2020 at 8:30 AM) (Judicial

Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*CONT'D FROM 6/5/2020**Held**Parties Present: Attorney MANN, GREGORY J***Further Hearing - Pre-Disposition** (1:30 PM) (Judicial Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*Continued from 04/03/2020 by Standing Order.**The court re-opens this matter for further hearing on the tentative ruling issued 3/6/20 as to Defendants Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals.***03/27/2020 Reset by Court to 04/03/2020****04/03/2020 Reset by Court to 06/03/2020****06/03/2020 Reset by Court to 06/05/2020****MINUTES**

Held; Nelson Chan appeared via courtcall on behalf of the plaintiff as co-counsel. Catherine Miller and Jeffery Trissell appeared via courtcall on behalf of the defendant.

Journal Entry Details:

*The court issued a written tentative to counsel on March 6, 2020 and set a further hearing for additional briefing and argument on Defendants' Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals. Matter argued by counsel and submitted. The Court finds as follows: The Defendant's Motion to Compel Responses to Interrogatories, Compel Production of Documents, and for Leave to Depose Specific Individuals remains open for additional briefing as stated. Simultaneous briefs to be filed and served by the close of business on July 10, 2020. Service shall be made by personal service, fax service, or some other agreed upon method of same day service. The motion will stand submitted on July 10, 2020. Further Case Management Conference is continued to August 14, 2020 at 8:30 a.m. in Department 11. Copy of minutes mailed to all parties as stated on the attached certificate of mailing.;**Held**Parties Present: Attorney MANN, GREGORY J***CANCELED Final Case Management Conference** (1:30 PM) (Judicial Officer: Lampe,

David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

*J/T SET 6/22/19 9AM DEPT 11 T/E 7 DAYS JURY FOR BOTH SIDES**Stipulation Filed***CANCELED Jury Trial** (9:00 AM) (Judicial Officer: Lampe, David

06/05/2020

06/19/2020

06/22/2020

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R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
 T/E 7 DAYS JURY FOR BOTH SIDES
 Stipulation Filed

08/11/2020



Ruling (11:00 AM) (Judicial Officer: Lampe, David

R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
 Ruling;
 Journal Entry Details:

Ruling on Matter Submitted June 5, 2020 MOTION: Defendants' Motion to (1) Compel Responses to Interrogatories, (2) Compel Production of Documents, and (3) for Leave to Depose Specific Individuals. RULING: The Court grants in part Defendants' Motion to Compel Responses to Interrogatories, Compel Production of Documents, and for Leave to Depose Specific Individuals as herein specified. Otherwise, the court denies the motion. The discovery in question has been narrowed by the parties to those matters addressed in this ruling. Defendant Miller propounded the discovery at issue on DFEH and, despite extensive meet and confer efforts, the parties have reached an impasse regarding Defendant's questions inquiring into DFEH's investigation of Defendants following Defendant Miller's unlawful refusal to create a wedding cake celebrating a same-sex marriage between real parties in interest, Eileen and Mireya Rodriguez-Del Rio. Defendant DFEH's position is that the pending discovery is objectionable for a number of stated reasons, including that the discovery is immaterial to the issues framed by the pleadings, and that it is privileged pursuant to the attorney-client privilege, attorney work-product privilege, and official information privilege. In making this ruling, the court confronts a difficult and entangled question, in part brought about by the relatively recent U.S. Supreme Court case of Masterpiece (infra). The court is somewhat aided by the recent Fourth District decision in Wood v. Superior Court of San Diego Cty. (2020) 46 Cal. App. 5th 562, 259 Cal. Rptr. 3d 798 (2020), as modified (Apr. 8, 2020), review filed (May 21, 2020). The court takes judicial notice of the California Supreme Court docket in the Wood case which reveals that (as reflected in the citation) a petition for review and also petition for decertification has been filed, but that the matter before the California Supreme Court has been presently stayed due to the bankruptcy of the underlying defendant. In making this ruling, the court recognizes that the Wood decision may be published precedential authority. Discovery Relevance and Scope of Discovery Because the issue of whether Defendants Miller and Cathy's Creations, Inc.'s constitutional rights to free speech and the free exercise of religion protect her decision is one of first impression in California, Defendants have propounded discovery aimed at eliciting evidence of bias, like that found in Masterpiece Cakeshop, LTD v. Colorado Civil Rights Commission (2018) 138 S.Ct. 1719 ("Masterpiece"). In Masterpiece, the Colorado Civil Rights Commission pursued a discrimination complaint against a cake designer and baker after he declined to create a wedding cake for a same-sex couple on grounds it went against his deeply held religious beliefs. The defendant baker in Masterpiece established the Commission's "treatment of his case [had] some elements of a clear and impermissible hostility toward the sincere beliefs that motivated his objection," prompting the Supreme Court to reverse the state court rulings. (Masterpiece at 1729.) The Supreme Court found the Commission had failed to comport with its "obligat[ion] under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of [the baker's] religious beliefs." (Masterpiece at 1731, quoting Church of Lukumi Babalu Aye, Inc. v. Hialeah (1993) 508 U.S. 520, 547.) With Masterpiece as a guide, Miller explains the discovery at issue is the only means by which Defendants can examine whether DFEH pursued and conducted its investigation and prosecution of its claim of discrimination against Defendants with improper motives, in violation of an obligation of religious neutrality. In the absence of any controlling California authority, Defendants are entitled to pursue a Masterpiece defense. Accordingly, DFEH's contention that the pending discovery is immaterial to the issues framed by the pleadings is unavailing. "Unless otherwise limited by order of the court ... any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence" (Code Civ. Proc., 2017.010 (emphasis added).) The court also addresses the DFEH's prosecutorial discretion argument within the context of the court's consideration of the scope of discovery. The DFEH argues that the Defendants claim is one of impermissible prosecutorial discrimination, and Defendants have not shown the requisite direct or circumstantial evidence of bias necessary to obtain the matters sought by their discovery. The cases regarding prosecutorial discrimination are not directly helpful in the context of this civil discovery, particularly since they commonly involve equal protection claims not put at issue in Defendants' motion. In California, such motions for discovery are commonly referred to as Murgia motions, following Murgia v. Mun. Court (1975) 15 Cal. 3d 286. In Murgia, the court stated "[w]e begin with the established principle that in a criminal prosecution an accused is generally entitled to discover all relevant and material information in the possession of the prosecution that will assist him in the preparation and presentation of his defense." As held in

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People v. Montes (2014) 58 Cal.4th 809, "a showing of 'plausible justification' [for the discovery at issue] requires a defendant to 'show by direct or circumstantial evidence that prosecutorial discretion was exercised with intentional and invidious discrimination in his case.'" (Id. at 829, quoting *People v. Keenan* (1988) 46 Cal.3d 478, 506; and see *People v. Superior Court* (1977) 70 Cal.App.3d 341, 344 (same showing required in civil prosecutions).) "[A]bsent some substantial and credible showing of invidious discrimination, disclosure of official investigative material is against the public interest." (*People v. Superior Court*, supra, 70 Cal.App.3d 344.) However, the Defendants are not asserting selective enforcement. The Defendants are asserting a Masterpiece defense as this matter has been applied to them. Here, the Defendants are not put to any extraordinary pre-discovery standard that might obtain in a criminal prosecution or selective enforcement question. The ordinary rules of civil discovery apply. It is not disputed that Ms. Miller acted upon sincerely held religious beliefs. Under Masterpiece, this fact is sufficient for the Defendants to seek discovery of any matter not privileged that is reasonably calculated to lead to admissible evidence that the treatment of the Defendants had some elements of a clear and impermissible hostility toward the sincere beliefs that motivated the Defendants' objection. The court overrules DFEH's relevance objections. The overriding question presented is whether the discovery seeks matters that are privileged.

Attorney-Client Privilege The recent Fourth District decision in *Wood v. Superior Court of San Diego Cty.* (2020) 46 Cal. App. 5th 562, 259 Cal. Rptr. 3d 798 (2020), as modified (Apr. 8, 2020), review filed (May 21, 2020), while subject to a petition for review, offers guidance. This court reaches similar conclusions. The court intends to make clear that the DFEH is entitled to assert the attorney-client privilege as to any communications solely between its staff and counsel, or writings intended to be communicated to counsel. The court sustains the objection as to any such matters. The question presented is whether DFEH may assert the privilege as to matters communicated between it and real parties in interest or their counsel. DFEH offers several theories in support of its position that an order requiring it to further respond to the pending discovery would violate the attorney-client privilege. Specifically, Evidence Code section 951, Government Code section 12965(a), the de facto attorney-client relationship created under federal law between the federal Equal Employment Opportunity Commission ("EEOC") and claimants, and the common interest doctrine. DFEH fails to persuade the Court that these theories viewed individually, or in combination support a finding of an attorney-client privilege between the DFEH and real parties in interest or parties claiming to be aggrieved generally. DFEH's position is that Evidence Code section 951 mandates a finding of an attorney-client relationship between DFEH and real parties in interest here. Evidence Code section 951 defines a client as a person who, directly or through an authorized representative consults a lawyer for the purpose of retaining the lawyer or securing legal services or advice in the lawyer's professional capacity. DFEH offers the declarations of real parties as evidence of an attorney-client relationship. Both state: "From the beginning we felt that the DFEH lawyers represented us, and we wanted to hear their advice and about the legal process. We felt comfortable to be open and honest with them about this and other private information because we felt our conversation was confidential. We didn't know much about the law, but we knew about the attorney client privilege. Even though DFEH is plaintiff, DFEH filed the case on our behalf and represents our interests. We think of them as our lawyers and have always communicated with them with the understanding that our conversations and emails are confidential." At first blush, the declarations appear to imply a subjective belief that DFEH attorneys represent the real parties in interest; however, missing from these declarations is an assertion that the real parties in interest's purpose in engaging the DFEH in the first place was for purposes of retaining counsel or securing legal services or advice. An individual's subjective belief, standing alone, does not create an attorney-client relationship. (*Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998.) Furthermore, the unavoidable fact is that real parties in interest, like every other individual who contacts the DFEH claiming he or she is aggrieved under the FEHA, were legally required to initiate the claim process through the DFEH attorneys. The mere fact a claimant files a claim with the DFEH, a step that inevitably includes advice and counseling as to the process, does not create an attorney-client relationship. This is because the DFEH's administrative function precludes such a relationship. Focusing on a single clause, DFEH also contends Government Code section 12965 supports a finding of an attorney-client relationship between DFEH and real parties in interest. DFEH suggests its statutory ability to bring an action "on behalf of the person claiming to be aggrieved," combined with the real parties' subjective belief that DFEH represents them demonstrates an attorney-client relationship. Section 12965 provides in relevant part: In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, mediation, or persuasion, or in advance thereof if circumstances warrant, the director in the director's discretion may bring a civil action in the name of the department on behalf of the person claiming to be aggrieved. Prior to filing a civil action, the department shall require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation. In any civil action, the person claiming to be aggrieved shall be the real

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party in interest and shall have the right to participate as a party and be represented by that person's own counsel. Taken as a whole, section 19265 cannot be interpreted as DFEH suggests. Before the DFEH director can bring a civil action, DFEH must first mediate the dispute between the purportedly aggrieved party and the defendant, placing the DFEH squarely in the position of neutral fact-finder. Should a real party in interest opt to participate, he or she does so through separate counsel, not the DFEH. The conduct of the parties in this case contradicts DFEH's argument. In responding to Defendants' discovery in this action, real parties did so through separate counsel, not the DFEH, which implies a lack of any attorney-client relationship with DFEH. Other provisions of the Government Code further buttress the Court's conclusion that Government section 12965 does not support DFEH's position. Section 12930 defines the DFEH's purpose-to receive, investigate, conciliate, and prosecute discrimination claims on behalf of the State. When the DFEH carries out these duties, Government Code section 12920 states it is "deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state," not individual claimants. Where an attorney is "performing tasks on behalf of and in the name of the government to which greater standards of neutrality apply, he must adhere to those standards." (People ex rel. Clancy v. Superior Court (1985) 39 Cal. 3d 740, 747.) Because the DFEH acts in the name of the state, its attorneys are held to principles of heightened neutrality and "are subject to a heightened standard of ethical conduct applicable to public officials acting in the name of the public-standards that would not be invoked in an ordinary civil case." (County of Santa Clara v. Superior Court (2010) 50 Cal. 4th 35, 57.) The DFEH's role is comparable to that of a district attorney. The mere fact the district attorney's office communicates with victims does not create an attorney-client relationship. Those discussions are discoverable. DFEH's contention that its relationship with real parties in interest constitutes an attorney-client privilege is diametrically opposed to the Legislature's definition of the DFEH as a neutral fact-finder investigating and prosecuting claims on behalf of the People of the State. In order for an attorney-client relationship to exist, DFEH would advocate only for the interests of a single individual to the exclusion of others, which is impractical in light of the fact the DFEH represents the people of the entire State of California. Taking DFEH's argument a step beyond the motion before the Court, DFEH's contention that it represents the real parties in interest in this case and the People of California would place the DFEH in an untenable position. Hypothetically speaking, if real parties in interest communicated with third parties in a way that denigrated the traditional religious belief that a marriage is between a man and woman, or involved themselves with organizations that express those views, those views could be imputed to the DFEH and the State itself. This would imply an unequivocal animus towards religious beliefs in violation of the DFEH's purpose and duties under the law-i.e., to approach the matters before it with a neutrality towards religion. Based on the foregoing, the Court concludes there is no attorney-client relationship between DFEH and real parties in interest, nor can there be. DFEH also argues in favor of a privilege by raising the common interest doctrine, arguing its communications with real parties are "essential to DFEH's legal representation of its actual client-the State-and its de facto clients[, real parties in interest]" and therefore protected. DFEH misapplies the doctrine. The court finds the "common interest doctrine" inapplicable. The "joint defense privilege" and the "common interest privilege" have not been recognized by statute in California. For this reason, it is referred to as the joint defense or common interest doctrine, rather than the joint defense or common interest privilege, to avoid suggesting that communications between parties with common interests are protected from disclosure by virtue of a privilege separate from the attorney-client privilege, the work product doctrine, or any other statutorily recognized evidentiary privilege. Rather, the common interest doctrine is more appropriately characterized under California law as a nonwaiver doctrine, analyzed under standard waiver principles applicable to the attorney-client privilege and the work product doctrine. The statute regarding waiver of privileges, Evidence Code section 912, provides: "A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege) ..., when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer ... was consulted, is not a waiver of the privilege." Thus, for example, the "privilege extends to communications which are intended to be confidential, if they are made to attorneys, to family members, business associates, or agents of the party or his attorneys on matters of joint concern, when disclosure of the communication is reasonably necessary to further the interest of the litigant." (Insurance Co. of North America v. Superior Court (1980) 108 Cal.App.3d 758, 767, 166 Cal.Rptr. 880, quoting Cooke v. Superior Court (1978) 83 Cal.App.3d 582, 588, 147 Cal.Rptr. 915.). "While involvement of an unnecessary third person in attorney-client communications destroys confidentiality, involvement of third persons to whom disclosure is reasonably necessary to further the purpose of the legal consultation preserves confidentiality of communication." (Insurance Co. of North America v. Superior Court, supra, 108 Cal.App.3d at p. 765, 166 Cal.Rptr. 880.)" (OXY Res. California LLC v. Superior Court (2004) 115 Cal. App. 4th 874, 889- 890, as modified.) The doctrine does not apply to disclosures made between the DFEH and Real Parties in Interest because such

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disclosures are not reasonably essential to carry out the duties of their separate counsel to advance their separate interests. The doctrine is typically applicable in situations of agency, such as in matters of vicarious liability, where an employer may be liable for the conduct of an employee, and yet the employer must consider the alleged conduct beyond the scope of employment. This typically requires an employer to hire a separate attorney for the accused employee, and the employer must communicate with that attorney to develop its own theories of defense. It also may apply in indemnity or insurance situations. Even where applicable, the "common interest doctrine" is interpreted narrowly, and does not shield all communications. For reasons stated herein, the DFEH and Real Parties in Interest do not have the type of unity of interests sufficient to invoke the common interest doctrine. Official Information Privilege Subject to statutory conditions, a public entity has the privilege to refuse to disclose, and to prevent others from disclosing, "official information." (Evid. Code, 1040(b).) "Official information" means information acquired in confidence by a public employee in the course of his or her official duty and not open, or officially disclosed, to the public before the privilege is asserted. (Evid. Code, 1040(a).) Unless disclosure "is forbidden by either a federal or state statute," the privilege "is expressly conditional, not absolute." (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1126.) Because disclosure is not expressly barred here, the privilege is conditional. The privilege "must be applied conditionally on a clear showing that disclosure is against the public's interest" based on the circumstances presented. (*California State University v. Superior Court* (2001) 90 Cal.App.4th 810, 832, quoting *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656; and see *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759, 763; *Suarez v. Office of Administrative Hearings* (2004) 123 Cal.App.4th 1191, 1195.) DFEH contends public interests such as maintaining the confidentiality of its analysis of the claims and its discretionary decision-making, thereby undermining its ability to perform its duties, and preserving an uninhibited exchange of information outweigh any countervailing consequences in denying Defendants' motion. DFEH further contends Defendants' failure to offer any evidence of prosecutorial bias thus far in the case prevents a ruling in their favor. Preliminarily, to the extent any of the information DFEH contends is protected by the official information privilege was shared in any fashion with real parties, their counsel, or any other third party, the privilege is waived. As for information DFEH has not shared with real parties, their counsel, or third parties unrelated to this case, the issue is whether the public interest in maintaining the confidentiality of the information outweighs the necessity for disclosure in the interest of justice. The DFEH has conceded in this case that Defendant Miller, as the owner of Defendant Tastries, has a sincerely held religious belief that is protected by California and federal Constitutions, and her refusal to create a wedding cake for real parties in interest arose from that belief. Rather than issue real parties a right-to-sue letter, which is the most common response to DFEH complaints, the DFEH nonetheless chose to pursue this case. In light of the fact that the DFEH has a duty to protect religious discrimination, one could arguably conclude that implicit in the DFEH's decision to prosecute Defendants is the DFEH's determination that the real parties' rights supersede those of Defendants. Additionally, DFEH has shared certain information and documents with real parties in interest, a point that DFEH concedes in arguing the applicability of the attorney-client privilege. If real parties are privy to the information and evidence DFEH obtained during its investigation and discharge of its role as neutral fact-finder, it would be unfair and unjust to bar Defendants' access to such information and evidence. As stated by the United States Supreme Court and persuasive here, "since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense." (*U.S. Reynolds* (1953) 345 U.S. 1, 12.) California discovery statutes are to be construed liberally in favor of disclosure unless statutory or public policy considerations clearly prohibit it. (*Shepherd v. Superior Court* (1976) 17 Cal. 3d 107, 118, overruled on other grounds in *People v. Holloway* (2004) 33 Cal.4th 96, 131.) In balancing Defendants' ability to pursue a Masterpiece defense against the stated public interests, the Court concludes Defendants should be permitted to inquire into whether the exercise of prosecutorial discretion is motivated by an impermissible unconstitutional bias. Put another way, Defendants are entitled to confirm the DFEH has complied with its obligation toward religious neutrality. The Court concludes that Defendants' right to pursue their defense combined with the reality that there is no other means by which they can obtain the information at issue outweighs the DFEH's desire to maintain the confidentiality of its investigation. The court has sustained the objection as to attorney client privilege, except as herein stated. The official information privilege does not provide any broader scope of privilege, and the court overrules that objection. Attorney Work-Product Privilege While the Court concludes the official information privilege does not bar production here, the Court is cognizant of the fact that the information at issue may remain protected under the attorney work product doctrine. Code of Civil Procedure section 2018.030 defines work product, distinguishing between work product that is absolutely privileged and work product other than an attorney's mental impressions, which is entitled only to qualified

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

protection: (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice. Generally speaking, "a court may not require disclosure of information claimed to be privileged in order to rule on a claim of privilege. In camera review of privileged documents is generally prohibited because 'the privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any other particular circumstances peculiar to the case.' [Citations omitted.]" (OXY Res. California LLC v. Superior Court (2004) 115 Cal.App.4th 874, 895.) This is in line with the strictures of Evidence Code section 915(a), which provides that a court "may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the claim of privilege...." However, "if necessary to determine whether an exception to the privilege applies, the court may conduct an in camera hearing notwithstanding section 915. [Citation.]" (Ibid., italics added.) Generally, in camera hearings should be limited to a determination whether there is an exception to, or waiver of, the privilege, and 'whether the exception or waiver depends on the content of the communication. [Citation.]" [W] here an exception to a privilege depends upon the content of a communication, the court may require disclosure in camera in making its ruling.' [Citation.]" (OXY Res. California LLC v. Superior Court, supra, 115 Cal.App.4th at 896.) In contrast, qualified work product can be reviewed in camera. (Code Civ. Proc., 2018.030 ("[t]he work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.")) The court sustains the DFEH's attorney work-product privilege as to any writings that reflects an attorney's impressions, conclusions, opinions, or legal research or theories. As to any other writings, the court overrules the objection, orders it produced, or otherwise orders in camera review of such matter for further determination of any asserted privilege. Discovery at Issue Special Interrogatories 6 & 7: Defendant Miller asks DFEH to "[d]escribe all actions undertaken by the DFEH as part of its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants, through which the DFEH complied with its Constitutional duty to avert religious discrimination," and "to ensure that none of its actions were motivated by a hostility towards disfavored religious beliefs." The Court is reluctant to recast these interrogatories. The court considered sustaining the objection that the interrogatories were beyond the scope of permissible discovery (as argumentative), but the court is also mindful that, consistent with the obligation of the parties to meet and confer, the court should not be hindbound or rigid in ruling upon motions to compel in these matters, which can only lead to further protracted discovery disputes. The court interprets these questions to essentially ask, "What specific measures were taken by DFEH to investigate and prosecute real parties' claim against Miller free of any discrimination against Miller's religious beliefs from the date on which DFEH received, investigated, and litigated Eileen and Mireya Rodriguez-Del Rios' complaint to the present?" In this context, the court orders DFEH to provide a further response to the interrogatories as stated by the court, which combines special interrogatories 6 and 7. The court has sustained the attorney-client privilege and attorney work-product privilege as herein stated. The court overrules the other objections. The court notes that the fact of attorney consultation or advice of counsel is not privileged-only the content of the communication or the work-product. To the extent that the response to the interrogatories involves reference to purely administrative matters not involving communications with or matters intended to be communicated to counsel, or involves reference to third-party communications, a response is required. Request for Production of Documents 6-9, 19 & 20: The specific requests for production state: 6. Please produce all DOCUMENTS which evidence the DFEH'S compliance with its Constitutional duty to ensure that none of its actions were motivated by a hostility towards disfavored religious beliefs, with respect to its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants. 7. Please produce all DOCUMENTS which evidence the DFEH's compliance with its Constitutional duty to avert religious discrimination, with respect to its administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, and subsequent civil actions brought against Defendants. The court sustains the "vague and ambiguous" objection to these requests. 8. Please produce all DOCUMENTS and COMMUNICATIONS sent between the DFEH and Eileen and Mireya Rodriguez-Del Rio. 9. Please produce all DOCUMENTS and COMMUNICATIONS sent between the DFEH and legal counsel for Eileen and Mireya Rodriguez-Del Rio. 19. Produce all non-privileged DOCUMENTS in your possession, custody, or control relating to Eileen and Mireya Rodriguez-Del Rios which are not being produced in response to other document requests. 20. Produce all non-privileged DOCUMENTS in your possession, custody, or control relating to Defendants which are not being produced in

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response to other document requests. The court orders these matters to be produced. In reviewing the privilege log produced by DFEH, it appears that some of the matters identified may be privileged. However, these requests specifically address nonprivileged matter. Writings divulged or undertaken with the real parties or their counsel are not privileged, or the privilege has been waived. As to Nos. 19 and 20, to the extent that writings exist that are not specifically attorney-client communications or attorney work-product that reflects an attorney's impressions, conclusions, opinions, or legal research or theories, the matter is ordered produced. Any matter communicated to or from any third party must be produced. If DFEH maintains an attorney work-product objection as to matter not reflecting an attorney's impressions, conclusions, opinions, or legal research or theories, the Court directs DFEH to produce those matters to the court for in camera review. As to any writings withheld, the DFEH should produce an amended privilege log that identifies the capacity or job description of the author, sender, and recipient of the writing. All responses ordered herein shall encompass the entire action, to include the date on which real parties made contact with the DFEH through the present. The Court concludes that DFEH's role as neutral fact-finder pursuant to the FEHA does not warrant DFEH's limitation of its responses to only the investigation phase of this action. Depositions: Defendant Miller seeks the deposition testimony of Jon Ichinaga, Timothy Martin, Jenna Kincade, Patrice Doebrn, and Clara Hernandez regarding the administrative investigation and about Miller's special interrogatory numbers 4, 8-11, and 17. As explained by Miller, Martin is a former DFEH attorney that has appeared in connection with this action, while Ichinaga and Kincade are former DFEH attorneys unconnected with this action. Doebrn and Hernandez are DFEH investigators. The deposition questions at issue state: 4. Identify ... every individual involved with or in the DFEH's decision to apply ex parte for injunctive relief on December 13, 2017, in California Superior Court. 8. For each individual identified in response to Special Interrogatory Nos. 2 and 3 [(DFEH employees working on the investigation and/or the litigation)], identify whether they approve or disapprove of the legalization of same-sex marriage. 9. For each individual identified in response to Special Interrogatory Nos. 2 and 3, identify whether they approve or disapprove of tolerating the beliefs of others who generally disapprove of same-sex marriage. 10. For each individual identified in response to Special Interrogatory No. 8 who approves of tolerating the same-sex marriage beliefs of others, identify the boundaries of that toleration, including whether that includes permitting them to enter the marketplace but decline to participate in same-sex weddings. 11. For each individual identified in response to Special Interrogatory Nos. 2 and 3, explain why they were assigned to the administrative investigation or action. 17. State whether the DFEH corresponded or otherwise engaged in any communications with representatives from any non-governmental organization or with any individual regarding a possible claim against Tastries before filing this action. If so, describe in detail the nature and substance of that communication; identify the name, title, address, and telephone number for that representative or individual; the date(s) on which the correspondence or communication took place; and the individual who initiated the communication. Numbers 2 and 3 ask DFEH to "[i]dentify by name, title, and relationship to the investigation, every individual involved with or in the DFEH's administrative investigation of Eileen and Mireya Rodriguez-Del Rios' complaint against Defendants, to which the DFEH assigned the case no. 935123-315628," and "[i]dentify by name, title, and relationship to the action, every individual involved with or in the DFEH's civil action actions against Defendants, which the California Superior Court has assigned the case nos. BCV-17-102855 and BCV-18-102633," respectively. The Court denies the motion as to a deposition upon interrogatories 8, 9, and 10 based on its conclusion the questions invade the privacy rights of these individuals. The DFEH employees' personal beliefs bear no relation to the exercise of their public function. The Court is inclined to grant the motion as to the questions in interrogatories 4, 11, and 17, but at this time, the court denies this application without prejudice. The court notes that the DFEH has not sought a protective order, but the Defendants have brought this motion in advance of the depositions to avoid the potential for sanctions in line with *Estate of Ruchti* (1993) 12 Cal. App. 4th 1593. It seems to the court that these matters may best be met by resorting to less intrusive means of discovery by in fact treating them as special written interrogatories requiring written responses, before there is any demonstrated need for depositions. The court invites counsel to further meet and confer upon these issues in light of the court's ruling. The Court overrules DFEH's objection to paragraph 10 of Attorney Trissell's declaration and sustains Defendants' objections. To the extent herein ordered, the DFEH shall respond within twenty (20) days of the service of the court's order. Defendants shall prepare an order pursuant to California Rules of Court, Rule 3.1312. Copy of minutes mailed to all parties as stated on the attached certificate of mailing.;

Ruling

08/14/2020



Further Case Management Conference (8:30 AM) (Judicial Officer: Lampe, David
 R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
 CONT'D FROM 6/5/2020

REGISTER OF ACTIONS**CASE NO. BCV-18-102633****MINUTES**

Held; Milan Brandon appeared via courtcall on behalf of the defendants.

Journal Entry Details:

Counsel filed a stipulation to continue the trial dates. The Court continues the trial dates as follows: Jury Trial/Final Case Management Conference are continued to December 13, 2021 at 9:00 a.m. in Department 11. Mandatory Settlement Conference is continued to November 12, 2021 at 9:00 a.m. in Department 1. The case is assigned to Retired Judge Gary T. Friedman to serve as Judge Pro Tem for Mandatory Settlement Conference only. Location in Court to be assigned by the clerk. The Clerk of the Court is authorized to re-set the date, time and location and is to notify counsel. Jury for both sides. Time estimate: 7 days. Trial notice to reissue from court. With respect to the prior ruling issued August 11, 2020 as to discovery the parties have waived notice. The Court deems the clerk's minutes of the court's order of August 11, 2020 to be the Order After Hearing. Discovery is due 35 days from today's date.;

Held

Parties Present: Attorney MANN, GREGORY J

SCHEDULED HEARINGS

Court Trial (07/25/2022 at 9:00 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

Day 1

Court Trial - Stip signed 07/06/22.

T/E 7 DAYS JURY FOR BOTH SIDES

12/13/2021 Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

07/22/2022 Reset by Court to 07/25/2022

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J



Final Case Management Conference (07/22/2022 at 1:30 PM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

12/13/2021 Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J



CANCELED Mandatory Settlement Conference (06/21/2022 at 9:00 AM) (Judicial Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

7 DAYS

Court's Own Motion

11/12/2021 Continued to 01/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

01/28/2022 Reset by Court to 01/28/2022

01/28/2022 Reset by Court to 06/21/2022



Ex Parte Hearing - Pre-Disposition (8:30 AM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Filed: 9/11/2020

Plaintiffs

09/14/2020

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

	<i>Ex Parte Application for Temporary Stay of Discovery Order Pending Application for Appellate Review</i> Held; Paul Jonnarob appeared via courtcall on behalf of the defendants. Journal Entry Details: <i>Cause heard and submitted. The Court makes the following findings and orders: Plaintiff's Ex Parte Application for Temporary Stay of Discovery Order Pending Application for Appellate Review is granted. The Court orders a stay of discovery to October 2, 2020. The Court deems the minutes of the Court's order to be the Order After Hearing. Copy of minutes mailed to all parties as stated on the attached certificate of mailing.;</i> <i>Held</i> <i>Parties Present: Attorney MANN, GREGORY J</i>
03/01/2021	 Ruling (8:00 AM) (Judicial Officer: Lampe, David R. Ruling; Journal Entry Details: <i>Pursuant to Order of the Fifth District Court of Appeal, the Court hereby vacates its August 11, 2020 order granting Defendants' motion to compel discovery. A copy of the Minutes have been mailed and sent electronically via email as stated on the attached Certificate of Mailing.;</i> <i>Ruling</i>
09/02/2021	 Ex Parte Hearing - Pre-Disposition (8:30 AM) (Judicial Officer: Lampe, David R. ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue) <i>9/1/2021</i> <i>Defendants CATHARINE MILLER AND CATHY'S CREATIONS, INC. D/B/A TASTRIES</i> <i>Ex Parte Application for Approval and Entry of A Confidentiality Discovery Protective Order</i> MINUTES Audio streaming announced. Held; Jeffrey Trissell appeared via courtcall on behalf of the defendants. Journal Entry Details: <i>Counsel advise the court the parties have worked out the issue on calendared for ex parte hearing this date. The Court finds as follows: The defendant's ex parte application is moot.;</i> <i>Held</i> <i>Parties Present: Attorney MANN, GREGORY J</i>
10/28/2021	 Ex Parte Hearing - Pre-Disposition (8:30 AM) (Judicial Officer: Clark, Thomas S. ;Location: Bakersfield Department 17 located at 1415 Truxtun Avenue) <i>10/27/2021</i> <i>Defendant: Cathy's Creations, Inc.</i> <i>Ex Parte Application to Continue Motion dates</i> Held; Journal Entry Details: <i>The Court makes the following findings and orders: Ex Parte petition granted. Court signs order in open court.;</i> <i>Held</i> <i>Parties Present: Attorney MANN, GREGORY J</i>
12/08/2021	 Ruling (1:00 PM) (Judicial Officer: Bradshaw, J. Eric Ruling; Journal Entry Details: <i>Joint Stipulation to continue trial filed 11/24/2021 The court orders as follows: A Further Case Management Conference is set for 12/15/2021 at 8:30 am in Department 11. Mandatory Settlement Conference scheduled for 01/28/2022 remains on calendar as set. Final Case Management Conference scheduled for 02/28/2022 remains on calendar as set. Jury Trial scheduled for 02/28/2022 remains on calendar as set. A copy of the Minutes have been mailed and sent electronically via email as stated on the attached Certificate of Mailing. Counsel also notified telephonically.;</i> <i>Ruling</i>
12/15/2021	 Motion for Summary Judgment (8:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

9/8/21

Plaintiff, DFEH

Motion for Summary Judgment or, in the Alternative, Summary Adjudication

11/01/2021 Reset by Court to 11/04/2021

11/04/2021 Reset by Court to 11/04/2021

11/04/2021 Reset by Court to 12/15/2021

12/15/2021 Reset by Court to 12/15/2021

Reset from 11/1/21 to 11/4/21

Held;

Held

12/15/2021

**Motion for Summary Judgment** (8:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

9/8/21

Defendant, CATHY'S CREATIONS, INC.; CATHERINE MILLER

Motion for Summary Judgment

11/04/2021 Reset by Court to 11/04/2021

11/04/2021 Reset by Court to 12/15/2021

12/15/2021 Reset by Court to 12/15/2021

MINUTES

Audio streaming announced.

Held; Paul Jonna and Jeffrey Trissell are present in court on behalf of the defendants.

Journal Entry Details:

(1) Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication; (2) Defendants' Motion for Summary Judgment [or Summary Adjudication re Punitive Damages]; and (3) Defendants' Motion to Seal The Court appoints Angela Olvera from the Pro Tempore list as the Official Court Reporter for all hearings held this date. Oath on file. TENTATIVE DECISION is announced in open court at stated on the formal record. Matter argued by counsel and submitted. The Court makes the following findings and orders: Defendants' Motion to Seal. The court GRANTS Defendants' unopposed motion to seal and finds as follows: (1) the public policies in favor of the right to privacy and the protection of Defendants' proprietary business information and trade secrets that overcome the right of public access to court records; (2) these overriding interests support partially sealing records lodged as attachments to the Declaration of Cathy Miller in Support of Defendants' Motion for Summary Judgment; (3) there is a substantial probability of prejudice to the overriding interests if the records are not sealed; (4) the proposed sealing is narrowly tailored, as it does not obscure the nature of the issues involved in the motion or the parties' arguments; and (5) there are no less restrictive means of achieving the overriding interests in the present case. Defendants will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312. The defendants' alternative motion for summary adjudication on the issue of punitive damages, is GRANTED. The motions for summary judgment or summary adjudication otherwise, are DENIED. Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication. As to the Department's motion, the request for judicial notice is GRANTED. Although the Court DENIED the motion, the Court is GRANTING that request. Plaintiff has failed to meet its initial burden as the moving party to demonstrate that there are no triable issues of material fact as to its cause of action for discrimination and violation of the Unruh Act. The plaintiff has not demonstrated the requisite intent. The plaintiff bases its motion on unsupported conclusions and what the Court views as a skewed view of the facts such as the nature of the defendant's business and how to characterize its output. The plaintiff has failed to meet its burden as to the defendants' affirmative defenses, has failed to, for example, show that the defendants do not possess evidence to support their defenses and that they cannot reasonably obtain the needed evidence. In the Court's, there are triable issues of material fact. This case involves nuances of law and fact that are not -- frankly, in both motions are not eliminated as a matter of law. The Court does not find that the May 21st, 2018, ruling on defendants' anti-SLAPP motion proves as a matter of law that the plaintiff has demonstrated its prima facie case. The Court OVERRULES the defendants' objections to the Department's evidence and OVERRULES the plaintiff's objections to the defendants' evidence. The defendant is going to be ordered to prepare an order consistent with this Court's ruling on that motion. Defendants will prepare an order consistent with this ruling for the court's

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

signature and pursuant to California Rules of Court, rule 3.1312. Defendants' Motion for Summary Judgment or Summary Adjudication re Punitive Damages. The defendants' motion for summary judgment, the Court DENIES the motion. The defendants have met their burden as the moving party, but there are triable issues of material fact. The Court is adopting its' comments with respect to the issues that the Court is stating as a reason for DENYING the Department's motion. These issues of intent and the nuances involved in this, how things should be characterized, these are all things that need to get sorted out, and they're not sorted out in these motions as a matter of law. The Court SUSTAINS Plaintiff's objection numbers 3 and 10, the objections are based on lack of foundation, and lack of personal knowledge. Otherwise, the Court is OVERRULING the balance of the plaintiff's objections. The Court GRANTS the request for judicial notice as to the judgment in the case 102855, but the Court is DENYING judicial notice as to the proper proposition regarding cake artists. Plaintiffs will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312. ;

Held

Parties Present: Attorney MANN, GREGORY J

12/15/2021



Motion (Pre-Disposition) (8:30 AM) (Judicial Officer: Bradshaw, J.
Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
9/8/21

Defendants, CATHY'S CREATIONS, INC.; CATHARINE MILLER

Motion to Seal in support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication

11/04/2021 Reset by Court to 11/04/2021

11/04/2021 Reset by Court to 12/15/2021

12/15/2021 Reset by Court to 12/15/2021

Held;

Held

12/15/2021



Further Case Management Conference (8:30 AM) (Judicial Officer: Bradshaw, J.
Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)
Stipulation to continue trial dates filed 11/24/21

MINUTES

Audio streaming announced.

Held; Paul Jonna and Jeffrey Trissell appeared in court on behalf of the defendants.

Journal Entry Details:

Cause heard and submitted. The Court orders as follows: Further Case Management Conference is continued to December 23, 2021 at 8:30 a.m. in Division J. Reason for continuance: Counsel to meet and confer re: new trial dates. Further notice waived.;

Held

Parties Present: Attorney MANN, GREGORY J

SCHEDULED HEARINGS

Further Case Management Conference (12/23/2021 at 8:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Cont'd from 12/15/21 to reset trial dates currently set 2/28/22 J/T & FSC T/E 7 DAYS

JURY FOR BOTH SIDES MSC SET 1/28/22 11AM DIV. H

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

12/23/2021



Further Case Management Conference (8:30 AM) (Judicial Officer: Bradshaw, J.
Eric ;Location: Bakersfield Department 11 located at 1415 Truxtun Avenue)

Cont'd from 12/15/21 to reset trial dates currently set 2/28/22 J/T & FSC T/E 7 DAYS JURY FOR BOTH SIDES MSC SET 1/28/22 11AM DIV. H

MINUTES

Held; ZOOM

Journal Entry Details:

The Court makes the following findings and orders: Mandatory Settlement Conference set for

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

01/28/2022, vacated. Final case management conference/Jury Trial set for 02/28/2022, vacated. Jury fees posted by both. Final case management conference set for 07/22/2022, at 1:30 p.m., in Division J. Jury Trial set for 07/25/2022, at 9:00 a.m., in Division J. Mandatory Settlement Conference set for 06/21/2022, at 9:00 a.m., in Department 1. Discovery to run with the stipulation that was filed on 11/24/2021. Time estimate: 7 days. Notice to issue from court.

;

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

SCHEDULED HEARINGS**Court Trial** (07/25/2022 at 9:00 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Day 1

Court Trial - Stip signed 07/06/22.

T/E 7 DAYS JURY FOR BOTH SIDES

12/13/2021

Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

07/22/2022 Reset by Court to 07/25/2022

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

**Final Case Management Conference** (07/22/2022 at 1:30 PM) (Judicial

Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

12/13/2021

Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

**CANCELED Mandatory Settlement Conference** (06/21/2022 at 9:00 AM) (Judicial

Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

7 DAYS

Court's Own Motion

11/12/2021

Continued to 01/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

01/28/2022 Reset by Court to 01/28/2022

01/28/2022 Reset by Court to 06/21/2022

05/24/2022

**Ex Parte Hearing - Pre-Disposition** (8:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Filed 5/20/22

Joint Ex Parte for clarification if mediation with Retired Judge Lampe be acceptable

Kathy

858-759-9930

MINUTES

Held;

REGISTER OF ACTIONS**CASE NO. BCV-18-102633****Journal Entry Details:**

Counsel Gregory J. Mann appeared via audio/video communication on behalf of Plaintiff. Counsel Paul Jonna appeared via audio/video communication on behalf of Defendant(s). The Court makes the following findings and orders: Joint Ex Parte for clarification if mediation with Retired Judge Lampe be acceptable - Granted. Mandatory settlement conference set for 06/21/2022, vacated. Counsel informed they are first up for trial on 07/25/2022. Counsel to submit joint and/or separate jury questionnaires for the court to review. Clerk Linda K. Hall emailed counsel regarding questions regarding the ELMO and what documents need to be filed and when. Clerk's minutes will be the order of the court. Further notice waived.;
Held

SCHEDULED HEARINGS

CANCELED Mandatory Settlement Conference (06/21/2022 at 9:00 AM) (Judicial Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

7 DAYS

Court's Own Motion

11/12/2021

Continued to 01/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

01/28/2022 Reset by Court to 01/28/2022

01/28/2022 Reset by Court to 06/21/2022

06/21/2022



CANCELED Mandatory Settlement Conference (9:00 AM) (Judicial Officer: Friedman - Retired, Gary T. ;Location: Bakersfield Department 1)

7 DAYS

Court's Own Motion

11/12/2021

Continued to 01/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

01/28/2022 Reset by Court to 01/28/2022

01/28/2022 Reset by Court to 06/21/2022

07/22/2022



Final Case Management Conference (1:30 PM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

12/13/2021

Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

MINUTES

Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
Agency Making Request; Ishani Desai / Bakersfield Californian



Media Request to Photograph Record or Broadcast

Media Agency: BAKERSFIELD CALIFORNIAN

Channel/Frequency No.: ISHANI DESAI

Date of Proposed Coverage: 07/25/22 TO END OF TRIAL

Held;

Journal Entry Details:

Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. The Court appoints Cynthia Pola from the Pro Tempore list as the Official Court Reporter. Oath on file. 1:41 p.m.: The above entitled cause came on regularly at this time today for trial by court with counsel and parties present in open court as indicated above. Counsel for respective parties state ready for trial and cause proceeds as follows; to wit: Court and counsel discuss procedures to be followed. Both parties to submit burden of

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

proof instructions. No objections as to the Order on Media Request to Permit Coverage. Order on Media Request to Permit Coverage as to Bakersfield Californian signed in open court. Cause proceeds with motions in limine as follows: The Court issues a tentative ruling as to Motions in Limines. Matter argued by counsel and submitted. The Court orders as follows; Plaintiff's motion in limine number #1 To Exclude Any Evidence or Argument That, Under The Unruh Act, "Status" is Separate From "Conduct" is denied. Plaintiff's motion in limine number #2 To Exclude Any Evidence or Argument in Support of Certain Affirmative Defenses is granted to preclude any witness from testifying using the word fraudster and/or the word trespasser otherwise it is denied. Plaintiff's motion in limine number #3 To Exclude Argument That Plaintiff DFEH is Biased Against Defendant's or Failed to Act Neutrally is denied without prejudice. 2:50 p.m.: The Court orders a recess. 3:07 p.m.: Cause resumes with motions in limine as follows: Plaintiff's motion in limine number #4 To Exclude Any Evidence or Argument That Real Parties in Interest Were "Shopping For a Lawsuit," Had a Vindictive Desire To See Tastries Bakery Shut Down and See Cathy Go Bankrupt,; And Suffered No Shock or Emotional Distress is denied without prejudice. Plaintiff's motion in limine number #5 To Exclude Any Evidence or Argument of Social Media Posts and Crimes That Occurred After Defendants Denied Full and Equal Services That Defendants Attribute to Real Parties, is granted in part and denied in part. Plaintiff's motion in limine number #6 To Exclude Irrelevant and Prejudicial Evidence Related to Witnesses is stands submitted as of 07/22/2022. Plaintiff's oral motion #7 - To Exclude Evidence of Social Media comments on all third party posts whether client commented on the social media posts or not is denied without prejudice. The Court orders counsel to return 07/25/2022 at 9:30 a.m in Division J. 4:26 p.m.: Court adjourned. ;

Held

Parties Present: Attorney LIMANDRI, CHARLES S
 Attorney MANN, GREGORY J

07/25/2022

 **Court Trial** (9:00 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

Day 1

Court Trial - Stip signed 07/06/22.

T/E 7 DAYS JURY FOR BOTH SIDES

12/13/2021 Continued to 02/28/2022 - Stipulation - DEPARTMENT OF FAIR
 EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF
 CALIFORNIA; CATHY'S CREATIONS, INC. DBA TASTRIES, A
 CALIFORNIA CORPORATION

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 02/28/2022

02/28/2022 Reset by Court to 07/22/2022

07/22/2022 Reset by Court to 07/25/2022

MINUTES

 Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
 As to KERO 23 ABC

 Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
 as to KBAK/KBFX

 Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)
 as to KGET-TV 17

 Media Request to Photograph Record or Broadcast
 Media Agency: KERO-TV
 Channel/Frequency No.: 23ABC
 Date of Proposed Coverage: 07/25/22

 Media Request to Photograph Record or Broadcast
 Media Agency: KGET-TV
 Channel/Frequency No.: 17
 Date of Proposed Coverage: 07/25/22 TO 07/29/22

 Media Request to Photograph Record or Broadcast
 Media Agency: KBAK/KBFX-TV
 Channel/Frequency No.: CBS-29/FOX-58
 Date of Proposed Coverage:

Held;

REGISTER OF ACTIONS**CASE NO. BCV-18-102633****Journal Entry Details:**

Day 1 Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. The Court appoints Cynthia Pola from the Pro Tempore list as the Official Court Reporter. Oath on file. 9:54 a.m.: The Court receives late filing media requests from KERO-TV 23 ABC and KBAK/KBFX. No objections as to the Order on Media Requests to Permit Coverage. Orders on Media Request to Permit Coverage as to KERO-TV 23 ABC and KBAK/KBFX signed in open court. Cause proceeds with motions in limine as follows: The Court issues a tentative ruling as to Motions in Limine's. The Court orders as follows; Plaintiff's motion in limine #8 To Exclude Miller's Testimony (And Other Tastries' Baker's Testimony) About the Design and Artistry Involved in Making Cakes and Baked Goods at Tastries; And that Defendants will Serve Some Gay Individuals in Other Non-Marriage Contexts is denied. Plaintiff's motion in limine #9 To Exclude any Evidence or Argument of Speculative Lost Profits stands submitted pending further information, giving defendants the opportunity to oppose this motion in limine. Defendant's motion in limine #1 For an Order Finding a Judicial Admission on Sincerity of Defendants' Religious Beliefs; An Exclusion of Contrary Evidence or Argumanet is denied without prejudice, Defendant's motion in limine #2 For an Order Finding of Judicial Admission on Sexual Orientation "Discrimination" Outside the Context of Same- Sex Marriage; And Exclusion of Contrary Evidence or Argument is denied without prejudice. Defendant's motion in limine #3 For An Order Excluding Evidence or Argument Concerning Real Parties' Alleged Emotional Distress is denied without prejudice. Defendant's motion in limine #4 For An Order Finding of Judicial Admissions Concerning Defendants' Referral Practice; And Exclusion of Contrary Evidence or Argument is denied without prejudice to a timely objection. Defendant's motion in limine #5 For An Order Excluding Evidence or Argument Concerning Prior Labor Disputes is granted. Defendant's motion in limine #6 For An Order Excluding Questions About Hypothetical Situations For Which There is No Presently Existing Policy is denied without prejudice subject to a timely objection. Defendant's motion in limine #7 For An Order Finding Admissible Evidence of Non- Neutrality by Plaintiff DFEH in Violation of the Free Exercise Clause stands submitted as of 07/25/2022. Defendant's motion in limine #8 For An Order Excluding Prosecutorial Argument That is Improper Under Masterpiece Cakeshop and Klein withdrawn by counsel. Defendant's motion in limine #9 For A Finding of Judicial Admission Concerning Defendants' Intent: And Exclusion of Prosecutorial Argument Concerning "Dual Intent" Both Religious and Discriminatory is denied. Defendant's motion in limine #10 For An Order Excluding Evidence or Argument Concerning Defendants' Religious Beliefs Outside The Context of Conventional Marriage For The Purpose of Impeaching Defendants is denied without prejudice. Defendant's motion in limine #11 For An Order Excluding Evidence or Argument About Defendants' Proprietary Recipes, Ingredients, and Suppliers is denied. Defendant's motion in limine #12 For An Order Finding Admissibility of Evidence of Hate-Mail Received by Defendants is granted consistently to the ruling made in Plaintiff's motion in limine #5 limited to social media posts that real parties "Liked." 12:01 p.m.: The Court orders a recess, parties and counsel are ordered to return at 1:30 p.m. 1:42 p.m.: The Court resumes with counsel and parties present in open court. The Court receives late filing media requests from KGET-TV 17. No objections as to the Order on Media Requests to Permit Coverage. Orders on Media Request to Permit Coverage as to KGET-TV 17, signed in open court. Cause resumes with motions in limine as follows: Defendant's motion in limine #12 is revisited and the Court's ruling as to motion in limine #12 is granted consistently to the ruling made in Plaintiff's motion in limine #5 limited to social media posts that Real Parties "Liked." Defendant's motion in limine #13 For The Court to Order A Site Visit of Tastries Bakery is dismissed without prejudice. Defendant's motion in limine #14 For An Order Excluding Undisclosed Witnesses is withdrawn by counsel. Defendant's motion in limine #15 For An Order Excluding Testimony of Justin Salinas is withdrawn by counsel. Defendant's motion in limine #16 For An Order Excluding Testimony of Former Employees Relating to Making Wedding Cakes For Same-Sex Couples is denied. Defendant's motion in limine #17 For An Order Excluding Cumulative Evidence That Defendants Will Not Make Wedding Cakes For Same-Sex Weddings is withdrawn by counsel. Plaintiff's oral motion #10 To Exclude Defendants undisclosed witnesses as to Missy Massey is denied, and as to Pastor Roger Spradlin is granted. 2:57 p.m.: The Court orders a recess. 3:13 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. 3:14 p.m.: Attorney Gregory Mann makes opening statement on behalf of the plaintiff. See Exhibit list for items marked for identification or admitted into evidence. 3:47 p.m.: Attorney Charles LiMandri makes opening statement on behalf of the defendant. 4:25 p.m.: The Court orders adjournment until: 07/26/2022, at 9:30 a.m. in Division J. 4:26 p.m.: Court Adjourned.;

Held

Parties Present: Attorney LIMANDRI, CHARLES S

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

Attorney MANN, GREGORY J

SCHEDULED HEARINGS**Court Trial** (07/26/2022 at 9:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

Day 2

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

07/26/2022

**Court Trial** (9:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

Day 2

MINUTES

Request and order for audio stream access/non-party denied (Judicial Officer: Bradshaw, J. Eric)

as to email awaldon@clifford-brownlaw.

Held;

Journal Entry Details:

Day 2 Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. The Court appoints Cynthia Pola from the Pro Tempore list as the Official Court Reporter. Oath on file. 9:45 a.m.: Original deposition transcript taken 02/17/2022 is lodged as to Rosemary Perez. 9:53 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Court and counsel discuss defendant's Request for Judicial Notice, the Court grants the request, except exhibit 24-A is denied. 10:06 a.m. Cause proceeds on behalf of the plaintiff as follows: to wit 10:06 a.m.: Rosemary Perez is duly sworn and testifies on behalf of plaintiff pursuant to Evidence code section 776. 10:08 a.m.: The Court orders a brief recess. 10:12 a.m.: The Court instructs that all witnesses are excluded from the courtroom, witnesses to not converse matters, watch media coverage, read, listen to, or hear any media concerning this court proceeding, however this does not apply to Real Parties in Interest, or representatives including Cathy Miller and Michael Miller. 10:13 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause resumes on behalf of the plaintiff as follows: to wit 10:13 a.m.: Rosemary Perez, having been previously sworn, resumes the stand and testifies further on behalf of plaintiff. Counsel for plaintiff Mr. Gregory Mann begins examination as to witness Rosemary Perez 11:08 a.m.: The Court orders a recess. 11:21 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. 11:21 a.m: Rosemary Perez, having been previously sworn, resumes the stand and testifies further on behalf of plaintiff. Counsel for Defense Mr. Charles S. LiMandri begins cross examination as to witness Rosemary Perez. 11:39 a.m.: Re-direct by counsel for plaintiff Mr. Gregory Mann. 11:41 a.m.: Witness, Rosemary Perez is excused subject to recall. 11:42 a.m.: Plaintiff case is interrupted per agreement of the parties. Defendant's case in chief. Defendant calls witness out of order. Cause proceeds on behalf of the defendant as follows: to wit 11:42 a.m.: Melinda Massey is duly sworn and testifies on behalf of defendant pursuant to Evidence Code Section 776. Counsel for defendant Paul M. Jonna begins examination as to witness Melinda Massey. 11:55 a.m.: Interrupted testimony for a lunch recess. Off the record, court and counsel discuss a motion in limine, parties are reminded by the court to instruct the witnesses concerning in limine rulings. Counsel and parties are ordered to return at 1:30 p.m. 1:34 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. 1:36 p.m.: Melinda Massey having been previously sworn, resumes the stand and testifies further on behalf of defendant. Counsel for defendant Paul M. Jonna resumes examination as to witness Melinda Massey. 1:43 p.m.: Counsel for plaintiff Kendra Tanacea begins cross examination as to witness Melinda Massey. 2:05 p.m.: Counsel for defendant Paul M. Jonna re-directs examination as to witness Melinda Massey. 2:06 p.m.: Witness, Melinda Massey is excused subject to recall. 2:08 p.m.: The Court orders a brief recess. 2:13 p.m.: Cause proceeds on behalf of the plaintiff as follows: to wit 2:14 p.m.: Mary Johnson is duly sworn and testifies on behalf of defendant pursuant to Evidence Code Section 776. 2:14 p.m.: Counsel for plaintiff Soyeon C. Mesinas begins examination on behalf of plaintiff. 2:47 p.m.: Counsel for defendant Paul M. Jonna begins cross examination on behalf of plaintiff. 2:52 p.m.: Original deposition transcript taken 07/14/2021 at 1:06 p.m. is lodged as to Mary Elizabeth Johnson. 3:13 p.m.: Counsel for plaintiff Soyeon C. Mesinas re-directs witness, Mary Johnson. 3:14 p.m.: Witness, Mary Johnson is excused and the Court orders a

REGISTER OF ACTIONS**CASE NO. BCV-18-102633**

recess. 3:33 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause resumes on behalf of the plaintiff as follows: to wit 3:33 p.m.: Mareya Rodriguez-Del Rio is duly sworn and testifies on behalf of defendant pursuant to Evidence Code Section 776. See Exhibit list for items marked for identification or admitted into evidence. 4:21 p.m.: The Court orders adjournment until: 07/27/2022, at 9:30 a.m. in Division J. 4:27 p.m.: Court Adjourned.;

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J

SCHEDULED HEARINGS

Court Trial (07/27/2022 at 9:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Day 3

Held

Parties Present: Attorney LIMANDRI, CHARLES S

Attorney MANN, GREGORY J



Court Trial (9:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Day 3

MINUTES

Media Request to Photograph Record or Broadcast

Media Agency: Joseph Julian Gonzalez

Channel/Frequency No.:

Date of Proposed Coverage: 07/26/2022 until it ends.



Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)

as to Joseph Julian Gonzalez for 07/26/22 until it ends

Held;

Journal Entry Details:

Day 3 Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. 9:55 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Exhibit list incorporated and made a part hereof. Court and counsel discuss evidentiary issues as to internet posts by Patrick Salazar. Cause proceeds on behalf of the plaintiff as follows: to wit 10:21 a.m.: Mareya Rodriguez-Del Rio having been previously sworn, resumes the stand and testifies further on behalf of plaintiff. Attorney Gregory Mann resumes examination as to witness, Mareya Rodriguez-Del Rio. 10:49 a.m.: The Court orders a recess. 11:05 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the plaintiff as follows: to wit 11:05 a.m.: Mareya Rodriguez-Del Rio having been previously sworn, resumes the stand and testifies further on behalf of plaintiff. Attorney Paul M. Jonna begins cross examination as to witness, Mareya Rodriguez-Del Rio on behalf of the plaintiff. Defendants lodge Videotape desposition on 07/28/2021 at 9:55 a.m. as to witness, Mareya Rodriguez-Del Rio. 11:46 a.m.: Attorney Gregory Mann begins re-direct examination as to witness, Mareya Rodriguez-Del Rio on behalf of the plaintiff. 11:54 a.m.: Witness, Mareya Rodriguez-Del Rio is excused. 11:56 a.m.: The Court orders a recess and instructs counse and parties to return at 1:30 p.m. 1:40 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the plaintiff as follows: to wit 1:41 p.m.: Patrick Salazar duly sworn and testifies on behalf of plaintiff under Evidence Code Section 776. Attorney Gregory Mann begins examination as to witness, Patrick Salazar. 2:12 p.m.: Attorney Paul M. Jonna begins cross examination as to witness, Patrick Salazar. Defendants lodge deposition transcript taken on 07/30/2021 at 1:31 p.m. as to witness, Patrick Salazar. 2:45 p.m.: Attorney Gregory Mann begins re-direct examination as to witness, Patrick Salazar. 2:55 p.m.: Attorney Paul M. Jonna begins re-cross examination as to witness, Patrick Salazar. 2:55 p.m.: Witness, Patrick Salazar is excused, and the Court orders a recess. 3:16 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the plaintiff as follows: to wit 3:17 p.m.: Eileen Rodriguez Del-Rio duly sworn and testifies on behalf of plaintiff under Evidence Code Section 776. Attorney Gregory Mann begins examination as to witness, Eileen Rodriguez Del-Rio. 4:14 p.m.: Attorney Paul M. Jonna begins cross examination as to witness, Eileen Rodriguez Del-Rio. 4:30 p.m.: The Court orders adjournment until: 07/28/2022, at 9:30

07/27/2022

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***a.m. in Division J. 4:30 p.m.: Court Adjourned.;**Held**Parties Present: Attorney LIMANDRI, CHARLES S**Attorney MANN, GREGORY J***SCHEDULED HEARINGS****Court Trial** (07/28/2022 at 9:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

*Day 4**Held**Parties Present: Attorney LIMANDRI, CHARLES S**Attorney MANN, GREGORY J***Court Trial** (9:30 AM) (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Day 4

07/28/2022

MINUTES*Held;**Journal Entry Details:*

Day 4 Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. 9:42 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the plaintiff as follows: to wit 9:42 a.m.: Eileen Rodriguez Del-Rio having been previously sworn, resumes the stand and testifies further on behalf of plaintiff. 9:48 a.m.: Deposition transcripts taken on 07/29/2021 at 9:08 a.m. are lodged as to witness, Eileen Rodriguez-Del Rio. Attorney Paul M. Jonna resumes cross examination as to witness, Eileen Rodriguez Del-Rio. 9:59 a.m.: Attorney Gregory Mann re-directs examination as to witness, Eileen Rodriguez Del-Rio. 10:09 a.m.: Witness, Eileen Rodriguez Del-Rio is excused. 10:10 a.m.: Plaintiff rests. 10:11 a.m.: Cause proceeds on behalf of the defendant as follows: to wit 10:11 a.m.: Michael Miller duly sworn and testifies on behalf of defendant under Evidence Code Section 776. Attorney Charles S. LiMandri begins examination as to witness, Michael Miller. 10:36 a.m.: The Court orders a recess. 10:58 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated 10:58 a.m.: Cause proceeds on behalf of the defendant as follows: to wit 10:58 a.m. Michael Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. 10:59 a.m.: Attorney Charles S. LiMandri resumes examination as to witness, Michael Miller. 11:09 a.m.: Attorney Kendra Tanacea begins her cross examination as to witness, Michael Miller. Deposition transcripts taken on 02/23/2022 are lodged as to witness, Michael Miller. 11: 29 a.m.: Attorney Charles S. LiMandri and Attorney Kendra Tanacea take a side bar. 11:33 a.m.: Cause proceeds on behalf of the defendant as follows: to wit Michael Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. Attorney Kendra Tanacea resumes her cross examination as to witness, Michael Miller. 11:55 a.m.: Attorney Charles S. LiMandri re-directs examination as to witness, Michael Miller. 11:58 a.m.: The Court orders a recess. Counsel and parties are ordered to return at 1:30 p.m. 1:39 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Exhibit list incorporated and made a part hereof. Cause proceeds on behalf of the defendant as follows: to wit 1:50 p.m.: Catharine Miller duly sworn and testifies on behalf of defendant under Evidence Code Section 776. 1:51 p.m.: Attorney Charles S. LiMandri begins examination as to witness, Catharine Miller. First Deposition transcripts taken on 09/26/2018 is lodged as to witness, Catharine Miller. Second Deposition transcripts taken on 02/24/2022 is lodged as to witness, Catharine Miller. 3:03 p.m.: The Court orders a recess. 3:19 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the defendant as follows: to wit 3:19 p.m.: Catharine Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. Attorney Charles S. LiMandri resumes examination as to witness, Catharine Miller. 3:39 p.m.: Attorney Gregory Mann begins cross examination as to witness, Catharine Miller. 4:16 p.m.: The Court orders a recess. 4:23 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the defendant as follows: to wit 4:24 p.m.: Counsel and the Court have a brief side bar. 4:25 p.m.: Catharine Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. Attorney Gregory Mann resumes cross examination as to witness, Catharine Miller. 4:45 p.m.: The Court orders adjournment until: 07/29/2022 at 8:45 a.m. in Division J 4:45 p.m.: Court Adjourned;

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Held*

Parties Present: Attorney LIMANDRI, CHARLES S
Attorney MANN, GREGORY J

SCHEDULED HEARINGS

Court Trial (07/29/2022 at 9:30 AM) (Judicial Officer: Bradshaw, J.
 Eric ;Location: Bakersfield Division J)

*Day 5**Held*

Parties Present: Attorney LIMANDRI, CHARLES S
Attorney MANN, GREGORY J



Court Trial (9:30 AM) (Judicial Officer: Bradshaw, J.
 Eric ;Location: Bakersfield Division J)

*Day 5***MINUTES****Exhibit(s) List***Pages 1-5; Joint Exhibits**Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J***Exhibit(s) List***JOINT TRIAL EXHIBIT LIST, AMENDED, WITH OBJECTIONS**Party: Attorney LIMANDRI, CHARLES S; Attorney MANN, GREGORY J**Held;**Journal Entry Details:*

Day 5 Attorney Gregory Mann, Attorney Kendra Tanacea, and Attorney Soyeon C. Mesinas appear on behalf of Plaintiff Department of Fair Employment and Housing vs. Cathy's Creations, Inc. Attorney Charles Limandri, Attorney Paul M. Jonna, and Attorney Jeffrey M. Trissell appear on behalf of Defendants Catherine Miller and Cathy's Creations, Inc. DBA Tastries, A California Corporation. 8:58 a.m.: Off the record the Court discusses evidentiary issues as to stipulated exhibits. 9:00 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the defendant as follows: to wit. 9:01 a.m.: The Court orders a recess. 9:02 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the defendant as follows: to wit. 9:02 a.m.: Catharine Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. Attorney Gregory Mann resumes cross examination as to witness, Catharine Miller. 9:45 a.m.: The Court and counsel have a side bar. 9:48 a.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Cause proceeds on behalf of the defendant as follows: to wit. 9:48 a.m.: Catharine Miller having been previously sworn, resumes the stand and testifies further on behalf of defendant. 9:49 a.m.: Attorney Gregory Mann resumes cross examination as to witness, Catharine Miller. 9:49 a.m.: Attorney Charles S. LiMandri re-directs examination as to witness, Catharine Miller. 9:50 a.m.: Defense rest. 9:52 a.m.: Off the record Court and counsel discuss evidentiary issues as to additional exhibits. 10:09 a.m.: The Court announces exhibits identified and admitted on the record. Time: The Court orders a recess and orders counsel and parties to return at 1:30 p.m. for closing arguments. 1:33 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. 1:35 p.m.: Attorney Gregory Mann makes closing argument on behalf of Plaintiff Department of Fair Employment and Housing, An Agency of the State of California. 2:33 p.m.: The Court orders a recess. 2:40 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. 2:40 p.m.: Attorney Charles S. LiMandri makes closing argument on behalf of Defendant Cathy's Creations, Inc. DBA Tastries, a California Corporation, and Catharine Miller. 3:50 p.m.: The Court orders a recess. 3:59 p.m.: Trial resumes with counsel and parties present in open court as heretofore stated. Attorney Gregory Mann adds to his closing argument. 4:13: Cause stands submitted for decision. A Ruling to issue via U.S. mail. Exhibit list incorporated and made a part hereof. Lodged deposition transcripts were returned as follows; Off the record, Plaintiff's deposition transcripts that were earlier lodged with the Court, were returned, and plaintiff's counsel received their deposition transcripts back as to the following below; Catharine Miller taken in year 2022 Rosemary Perez taken in year 2022 Michael Miller taken in year 2022 Off the record, Defendant's deposition transcripts that were earlier lodged with the Court, were returned, and defendant's counsel received their deposition transcripts back as to the following below; Catharine Miller taken in year 2018 Rosemary Perez taken in year 2018 Michael Miller taken in year 2018 Eileen Rodriguez-Del Rio taken in year 2021 Patrick Salazar taken in year 2021 Mary Elizabeth Johnson taken in year 2021 Mireya Rodriguez-Del Rio taken in year 2021 4:14:

07/29/2022

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

Court Adjourned.;

Held

*Parties Present: Attorney LIMANDRI, CHARLES S
Attorney MANN, GREGORY J*

10/21/2022

 **Ruling (8:00 AM)**

Ruling;

Ruling

11/15/2022

 **Ex Parte Hearing - Pre-Disposition (8:30 AM)** (Judicial Officer: Myers,

Brett ;Location: Bakersfield Division J)

Filed 11/14/22

Plaintiffs Ex Parte to continue the 15 day deadline to object to Defendants Proposed Statement of Decision

Held;

Journal Entry Details:

Parties/Counsel stipulate to Brett Myers acting as Temporary Judge of the Superior Court. Counsel Kendra L Tanacea appeared via audio/video communication on behalf of Plaintiff. Counsel Charles S Limandri appeared via audio/video communication on behalf of all named Defendants. Plaintiffs Ex Parte For An Extension of the 15 Day Deadline to Object to Defendant's Proposed Statement of Decision and Proposed Judgment From November 28, 2022 to December 5, 2022 read and considered. Tentative announced. Matter argued and submitted. The Court makes the following findings and orders: Ex Parte petition GRANTED with the recognition that there may be time constraints as the sitting Judge will be Presiding Judge of the Superior Court. Proposed order submitted to be signed upon review.;

Held

*Parties Present: Attorney LIMANDRI, CHARLES S
Attorney TANACEA, KENDRA L*

11/28/2022

 **Ex Parte Hearing - Pre-Disposition (8:30 AM)** (Judicial Officer: Bradshaw, J.

Eric ;Location: Bakersfield Division J)

Filed 11/21/22

Plaintiff's Ex Parte Request to Extend the Time to to file a tax and Opposition to Defendants Motion for Attorney Fees

MINUTES

Held;

Journal Entry Details:

Counsel Soyeon C Mesinas appeared via audio/video communication on behalf of Plaintiff. Counsel Charles S Limandri appeared via audio/video communication on behalf of all named Defendants. Matter argued and submitted. The Court makes the following findings and orders: Plaintiff's Ex Parte applicaton GRANTED in part, DENIED in part. Motion for Attorney's Fees on 12/15/2022 vacated and reset to 12/29/2022 at 8:30 a.m. in Division J. The Court anticipates a Judgment will be entered within a week of 12/05/2022 (the current deadline for any Objections to the proposed Statement of Decision) If Judgment is not entered, Plaintiff shall have the opportunity to object to the Costs. Opposition to be filed on or before 12/16/2022. Defendant's Reply to be filed on or before 12/22/2022. Defendant to withdraw Memorandum of Costs. Plaintiff need not file any Motion or Objection to Memorandum of Costs or Costs bill before Judgement is entered in the case. The Court allows Plaintiff to address Costs. The Court deems the minute order to be the Order After Hearing.;

Held

*Parties Present: Attorney LIMANDRI, CHARLES S
Attorney MESINAS, SOYEON C*

SCHEDULED HEARINGS

 **Motion for Fees - Pre-Disposition (CL/CV) (12/29/2022 at 8:30 AM)** (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

11/15/22 Defendants Motion

for Attorneys Fees & Costs

12/13/2022 Reset by Court to 12/15/2022

12/15/2022 Reset by Court to 12/29/2022

REGISTER OF ACTIONS**CASE NO. BCV-18-102633***Held*

Parties Present: Attorney LIMANDRI, CHARLES S
 Defendant MILLER, CATHARINE
 Attorney TANACEA, KENDRA L

12/15/2022

CANCELED Court Use Only - Pre-Cleared Regular (8:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

*Reserved Date: 11/15/22**Due Date: 11/18/22**Plaintiffs Motion to Tax Costs**Valentina 916-203-9451**Other*

12/27/2022



Ruling (8:00 AM) (Judicial Officer: Bradshaw, J. Eric(Location: Bakersfield Division J)

*Ruling;**Journal Entry Details:*

The court has received, reviewed and considered the proposed statement of decision prepared by defendants, plaintiff's objections thereto, and defendants ' response to plaintiff's objections. The proposed statement of decision fully and accurately explains the legal and factual basis for the court's decision as to each of the principal controverted issues at trial. Defendant's objections to the proposed statement of decision are OVERRULED.;

Ruling

12/29/2022



Motion for Fees - Pre-Disposition (CL/CV) (8:30 AM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Division J)

*11/15/22 Defendants Motion**for Attorneys Fees & Costs***12/13/2022 Reset by Court to 12/15/2022****12/15/2022 Reset by Court to 12/29/2022****MINUTES**

Appointment of Official Reporter Pro Tempore (Judicial Officer: Bradshaw, J. Eric)

Party: Attorney LIMANDRI, CHARLES S



Media Request to Photograph Record or Broadcast

*Media Agency: KGET**Date of Proposed Coverage:12/29/22*

Order on Media Request Permit Coverage (Judicial Officer: Bradshaw, J. Eric)

Per 11/28/22 m/o

*Held;**Journal Entry Details:*

AND COSTS; FILED BY DEFENDANTS CATHERINE MILLER AND CATHY'S CREATIONS INC. Attorney Kendra L. Tanacea appeared via audio/video communication on behalf of plaintiff Department of Fair Employment and Housing. Attorney Charles S. Limandri appeared and Jeffrey Trissell appeared with defendant Catherine Miller. Tentative announced in open court. Matter argued by counsel and submitted. The Court makes the following findings and orders: Defendant's Motion for Fee's and Costs is continued to 2/23/2023 at 1:30pm in Department 1. Briefing schedule: Defendant's supplemental moving papers to be filed by 1/19/2023 (not to exceed 10 pages) Plaintiff's supplemental opposition, if any, to be filed by 2/9/2023 (not to exceed 10 pages) Defendant's reply brief, without submitting additional evidence, to be filed by 2/17/2023 (not to exceed 5 pages) The Court directs Defendants to produce their billing records for the Court's review. Minute order will be the Court's order. ;

Held

Parties Present: Attorney LIMANDRI, CHARLES S
 Defendant MILLER, CATHARINE
 Attorney TANACEA, KENDRA L

01/23/2023



CANCELED Court Use Only - Pre-Cleared Regular (8:30 AM)

*11/22/22 reservation expires 11/29/22**Plaintiff*

REGISTER OF ACTIONS

CASE NO. BCV-18-102633

*Motion to Strike Memorandum of Cost or in the alternative
Other*

03/02/2023



Motion for Fees (Post-Disposition) (1:30 PM) (Judicial Officer: Bradshaw, J. Eric ;Location: Bakersfield Department 1)

11/15/22 Defendants Motion

for Attorneys Fees & Costs

cont from 12/29/22

02/23/2023 Reset by Court to 03/02/2023

MINUTES

Held;

Journal Entry Details:

Brett Watson appears on Zoom on behalf of plaintiff, Department of Fair Employment and Housing. Jamie Cook appears on Zoom on behalf of plaintiff, Department of Fair Employment and Housing. Soyeon Mesinas appears on Zoom on behalf of plaintiff, Department of Fair Employment and Housing. Jeffrey Trissell appears on behalf of defendant, Catharine Miller. Tentative announced in open court. Matter argued by counsel and submitted. The Court makes the following findings and orders;;

Held

Parties Present: Attorney LIMANDRI, CHARLES S

03/10/2023



Ruling (10:00 AM) (Judicial Officer: Bradshaw, J. Eric

Ruling;

Journal Entry Details:

ON DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS, SUBMITTED ON 3/2/2023 Copy of minute order mailed to parties as stated on the attached Certificate of

Mailing.;

Ruling