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**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, AND
CATHARINE MILLER,**
Defendants and Respondents; and

**EILEEN RODRIGUEZ-DEL RIO AND
MIREYA RODRIGUEZ-DEL RIO,**
Real Parties in Interest.

APPEAL FROM KERN COUNTY SUPERIOR COURT
J. ERIC BRADSHAW, JUDGE – CASE No. BCV-18-102633

RESPONDENTS' APPENDIX
File 1 of 8, Volume 1, pp. RA.0001-RA.0300

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF KERN**

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

20 Plaintiff,

21 v.

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

24 Defendants.

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

26 Real Parties in Interest.
27
28

CASE NO.: BCV-18-102633

IMAGED FILE

**DEFENDANTS CATHARINE
MILLER AND TASTRIES
BAKERY'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

1 **TO: PLAINTIFF DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2 **NOTICE IS HEREBY GIVEN** that on **Thursday, November 4, 2021, at 8:30 a.m.,**
3 or as soon thereafter as the matter may be heard before the Honorable David R. Lampe, in
4 Department 11 of the above-entitled Court, located at 1415 Truxtun Avenue, Bakersfield, California
5 93301, Defendants Catharine Miller and Cathy's Creations, Inc. d/b/a Tastries will and hereby do
6 move the Court for summary judgment with regard to Plaintiff Department of Fair Employment
7 and Housing's Complaint brought on behalf of Real Parties in Interest Eileen and Mireya
8 Rodriguez-Del Rio.

9 This motion is made on the ground that the undisputed facts demonstrate that: (1.1) Real
10 Parties were not denied full and equal services; (1.2) Real Parties' sexual orientation did not
11 motivate the denial of service; (2.1) the Free Exercise Clause of the California Constitution
12 represents a dispositive defense; (2.2) the Free Exercise Clause of the U.S. Constitution represents
13 a dispositive defense; and (2.3) the Free Speech Clause of the U.S. Constitution represents a
14 dispositive defense. In the alternative, if for any reason summary judgment is not granted
15 Defendants will move the Court for an order adjudicating that Plaintiff is not entitled to any
16 punitive damages. This motion will be based on the fact that Plaintiff has disclaimed seeking
17 punitive damages and no facts support punitive damages.

18 This motion is based on this Notice of Motion and Motion, the Memorandum of Points and
19 Authorities in support thereof, the Separate Statement of Undisputed Material Facts, the Notice of
20 Lodgment, and the Declarations of Jeffrey M. Trissell, Esq., Richard Salpietra, Esq., Thomas
21 Ward, Karyl Miller, and Carol Foreman, all of which are filed and served concurrently herewith,
22 the pleadings and files on record in this action; and any further evidence and argument that the
23 Court may properly receive at or before the hearing on this motion.

24 The motion will be based on this notice of motion and motion, on the supporting
25 memorandum attached hereto, on the declaration of Defendant Catharine Miller, on the declaration
26 of Attorney Jeffrey M. Trissell, on the Appendices of Exhibits authenticated by depositions and the
27 Trissell declaration, on the Request for Judicial Notice supported by the declaration of Milan L.
28

1 Brandon II, Esq., on the records and file herein, and on such evidence as may be presented at the
2 hearing on the motion.

3
4 Respectfully submitted,

5 LiMANDRI & JONNA LLP

6
7 Dated: September 8, 2021

8 By:



9 Charles S. LiMandri

10 Paul M. Jonna

11 Mark D. Myers

12 Jeffrey M. Trissell

13 Robert E. Weisenburger

14 Milan L. Brandon II

15 *Attorneys for Defendants Cathy's*

16 *Creations, Inc. and Catharine Miller*

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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

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

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INTRODUCTION

[F]rom the beginning of creation, “God made them male and female.” “For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh.” So they are no longer two, but one flesh. ~Mark 10:6–8.

This case is about a judicial promise. This is not a case about racial minorities who are so disfavored that their ability to actually find a hotel willing to lodge them is at risk.¹ This is not a case about excluding women from higher education on the sole bases of outdated stereotypes.² This is not a case “inexplicable by anything but animus” against the LGBT community.³ This is a case about enforcing the Supreme Court’s promise—when it overruled the votes of 60 million Americans and made same-sex marriage the law of the land.⁴

The Supreme Court made very clear, when it made same-sex marriage the law of the land, that the Constitution protects both sexual minorities and religious minorities. To some, “it would demean a timeless institution if the concept and lawful status of marriage were extended to two persons of the same sex. Marriage in their view is a gender-differentiated union of man and woman. This view has long been held-and continues to be held-in good faith by reasonable and sincere people here and throughout the world.”⁵ “Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here.”⁶ “Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate [for traditional marriage] with utmost, sincere conviction[.]”⁷

The facts of this case are not materially in dispute. Defendant Catharine Miller is a life-long devout Christian who believes marriage is instituted by God to be a union between one man and one woman. This traditional view of marriage is a central doctrine of the Christian faith shared by millions

¹ (See *Heart of Atlanta Motel, Inc. v. U.S.* (1964) 379 U.S. 241, 253.)

² (See *U.S. v. Virginia* (1996) 518 U.S. 515, 550.)

³ (See *Romer v. Evans* (1996) 517 U.S. 620, 632.)

⁴ (*Obergefell v. Hodges* (2015) 576 U.S. 644, 664–668.)

⁵ (*Id.* at 657.)

⁶ (*Id.* at 672.)

⁷ (*Id.* at 679–680.)

1 of Americans across many denominations and is also shared by most of the major religions. She is the
2 sole proprietor of Tastries Bakery and runs it in accordance with her religious beliefs.

3 Real Parties in Interest Eileen Del Rio and Mireya Rodriguez are a same-sex couple who are
4 married in the eyes of the State of California as Mrs. & Mrs. Rodriguez-Del Rio. They sought to
5 commission Cathy Miller and Tastries Bakery to make a traditional wedding cake for their same-sex
6 wedding ceremony. Due to her sincerely held religious beliefs, Mrs. Miller declined and offered to
7 arrange service through another bakery. Mrs. & Mrs. Rodriguez-Del Rio chose not to go with that
8 bakery, but ended up getting a cake they loved from another baker—one of many in the larger
9 Bakersfield metropolitan area that were more than willing to make their wedding cake. Then, alleging
10 sexual orientation discrimination, Real Parties in Interest complained to the Department of Fair
11 Employment & Housing (“DFEH”), which brought this suit.

12 As stated above, this case is about a judicial promise. That promise was that when the
13 Supreme Court made same-sex marriage the law of the land, it—and the courts below it—would not
14 go further and require all Americans to have to make a choice between their professions, their
15 livelihoods, their reputations—or fidelity to their God. For the reasons discussed below, this Court
16 should enforce that promise.

17 **FACTUAL & PROCEDURAL HISTORY**

18 On Saturday, August 26, 2017, Real Parties in Interest Eileen Del Rio and Mireya Rodriguez
19 visited Tastries Bakery to commission Defendants Cathy Miller and Tastries Bakery to create
20 custom wedding cake for their forthcoming same-sex wedding ceremony. (Compl., ¶¶ 36–38.). The
21 Real Parties were already legally married, but wanted to also host a traditional wedding ceremony.
22 (Compl., ¶ 34.) Although Defendants provide services to LGBT customers, they do not provide
23 services for same-sex weddings based on their religious beliefs; however, Defendants offered to assist
24 the Real Parties to arrange service from another local bakery. (Compl., ¶¶ 26–30, 41; DSS #1–2.)

25 After their wedding ceremony, on October 18, 2017, Real Parties filed an administrative
26 complaint with Plaintiff the Department of Fair Employment & Housing—the California agency
27 tasked with enforcing California’s non-discrimination statute, the Unruh Civil Rights Act. (Compl.
28 ¶¶ 1, 8.) Plaintiff then began an administrative investigation into Defendants and, as part of that

1 investigation, filed a petition for preliminary injunctive relief with the Superior Court on December
2 13, 2017, in action no. BCV-17-102855. On February 5, 2018, the Court declined to grant Plaintiff
3 DFEH preliminary injunctive relief, which then continued with its investigation. (See *Dept. of Fair*
4 *Employment and Housing v. Miller* (Cal. Super. 2018) 2018 WL 747835.)

5 On October 17, 2018, having completed its investigation, Plaintiff DFEH brought the present
6 action. On November 29, 2018, Plaintiff filed the operative First Amended Complaint, raising a single
7 cause of action: violation of the Unruh Civil Rights Act. (Compl., ¶¶ 45-54.) Following various
8 discovery disputes, trial is now set for December 13, 2021. Pursuant to a stipulated briefing schedule,
9 the parties are now bringing cross-motions for summary judgment.

10 LEGAL STANDARD

11 “A party may move for summary judgment in any action or proceeding if it is contended that
12 the action has no merit[.]” (Code Civ. Proc., § 437c(a)(1).) Similarly, “[a] party may move for
13 summary adjudication as to one or more causes of action . . . if the party contends that the cause of
14 action has no merit[.]” (*Id.* at subd. (f)(1).) “A cause of action has no merit if either of the following
15 exists: (1) One or more of the elements of the cause of action cannot be separately established, even if
16 that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of
17 action.” (*Id.* at subd. (o).) A party may also move for summary adjudication as to a claim of punitive
18 damages. (*Id.* at subd. (f)(1); *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 92.)

19 A “motion for summary judgment shall be granted if all the papers submitted show that there
20 is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter
21 of law.” (Code Civ. Proc., § 437c, subd. (c).) “A defendant . . . has met his or her burden of showing
22 that a cause of action has no merit if the party has shown that one or more elements of the cause of
23 action, even if not separately pleaded, cannot be established, or that there is a complete defense to the
24 cause of action.” (*Id.* at subd. (p)(2).) “Once the defendant . . . has met that burden, the burden shifts
25 to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of
26 action or a defense thereto.” (*Id.*)

ARGUMENT

1. THERE IS NO MERIT TO PLAINTIFF'S CAUSE OF ACTION

Plaintiff's operative First Amended Complaint pleads a single cause of action: discrimination on the basis of sexual orientation in violation of the Unruh Civil Rights Act. (Compl., ¶¶ 45-54.) To establish this claim, Plaintiff must show that (1) Defendants discriminated or made a distinction that denied full and equal services to Real Parties; (2) that a substantial motivating reason for Defendant's conduct was their perception of Real Parties' sexual orientation; (3) that Real Parties were harmed; and (4) that Defendants' conduct was a substantial factor in causing Real Parties' harm. (CACI No. 3060 [citing *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1149].)

"[T]here are two causation elements. There must be a causal link between the discriminatory intent and the adverse action (see element 2), and there must be a causal link between the adverse action and the harm (see element 4)." (CACI No. 3060, Directions for Use.) However, "harm is presumed, and elements 3 and 4 may be considered established if no actual damages are sought," leaving the party with \$4,000 in statutory damages. (*Id.* [citing Civ. Code, § 52(a); *Koire v. Metro Ctr. Wash* (1985) 40 Cal.3d 24, 33].)

Here, Plaintiff and Real Parties seek only statutory damages. (DSS #36.) Therefore, there are only two elements: (1) that Defendants discriminated or made a distinction that denied full and equal services to Real Parties; and (2) that a substantial motivating reason for Defendant's conduct was their perception of Real Parties' sexual orientation. Plaintiff can establish neither element.

1.1. Real Parties were not Denied Full and Equal Services

In *Minton v. Dignity Health*, a California court was tasked with adjudicating whether a Catholic hospital violated the Unruh Act when it declined to perform a hysterectomy on a female-to-male transgender patient. (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155.) The patient had obtained a diagnosis of gender dysphoria, along with a professional medical opinion that a hysterectomy was necessary to treat the gender dysphoria. As a result, the patient's doctor scheduled a hysterectomy at the Catholic hospital for August 30, 2016. (*Id.* at 1159.) Due to its religious beliefs, the Catholic hospital performs hysterectomies for diagnoses such as "chronic pelvic pain and uterine fibroids," but

1 not gender dysphoria. As a result, the hospital cancelled the operation. (*Id.*)

2 According to the patient, in response to the cancellation, there was a “flurry of advocacy on
3 Minton’s behalf,” which led the hospital’s President to suggest that the patient could have the
4 operation done at a nearby Methodist hospital. (*Id.* at 1159–1160.) Following this suggestion, three
5 days later on September 2 at the nearby hospital, the patient had the hysterectomy. (*Id.* at 1159.) The
6 patient then sued under the Unruh Act, contending a denial of “full and equal access to medical care.”
7 (*Id.* at 1158.) The trial court sustained the hospital’s demurrer without leave to amend, holding that
8 the patient cannot contend that “receiving the procedure he desired from the physician he selected to
9 perform that procedure three days later than he had planned and at a different hospital than he desired
10 deprived him of full and equal access to the procedure.” (*Id.* at 1161 [quoting trial court].) The court of
11 appeal reversed on slightly different grounds, stating:

12 To be clear, we do not question the observation in *North Coast* that “to
13 avoid any conflict between their religious beliefs and the state Unruh
14 Civil Rights Act’s antidiscrimination provisions, defendant physicians
15 can avoid such a conflict by ensuring that every patient requiring a
16 procedure receives ‘full and equal’ access to that medical procedure
17 through a hospital physician lacking defendants’ religious objections.”
18 [citation] But the . . . facts alleged in the amended complaint are that
19 Dignity Health *initially* did not ensure that Minton had “full and
20 equal” access to a facility for the hysterectomy. . . . Dignity Health’s
21 *subsequent* reactive offer to arrange treatment elsewhere was not the
implementation of a policy to provide full and equal care to all. . . . [I]t
cannot constitute full equality under the Act to cancel his procedure
for a discriminatory purpose, wait to see if his doctor complains, and
only then attempt to reschedule the procedure at a different hospital.
“Full and equal” access requires avoiding discrimination, not merely
remedying it after it has occurred.

22 (*Id.* at 1164–1165 [quoting *North Coast Women’s Care Medical Group, Inc. v. Superior Court* (2008) 44
23 Cal.4th 1145, 1159] [*“North Coast”*] [cleaned up; italics added].)

24 In other words, as applied here, so long as the wedding bakery does not have a “subsequent
25 reactive offer” to provide “full and equal” services, but has a policy of “ensuring that every [client]
26 requiring a [custom wedding cake] receives ‘full and equal’ access to that [cake] through a [cake artist]
27 lacking defendants’ religious objections” (*id.*), there is no violation of the Unruh Act. That is precisely
28 the case here. (DSS ## 1–3.)

1 **1.2. Real Parties' Sexual Orientation Did Not Motivate the Denial of Service**

2 As stated above, the second element of an Unruh Act claim is that a substantial motivating
3 reason for Defendant's conduct was their perception of Real Parties' sexual orientation. (CACI No.
4 3060.) Plaintiff cannot meet this element either.

5 "The Unruh Act does not prohibit discrimination against persons based upon their conduct,
6 but only prohibits that discrimination resulting from the individual's membership in a particular class
7 of persons." (*Cloutier v. Prudential Ins. Co. of America* (N.D. Cal. 1997) 964 F.Supp. 299, 304; see Civ.
8 Code, § 51(c).) "A policy that is neutral on its face is not actionable under the Unruh Act, even when
9 it has a disproportionate impact on a protected class." (*Turner v. Association of American Medical*
10 *Colleges* (2008) 167 Cal.App.4th 1401, 1408.) For example, "having sexual relations with an HIV-
11 infected individual" is a *conduct* based justification for the denial of life insurance. It cannot be
12 characterized as the *status* of being in a relationship with a disabled individual. (*Cloutier, supra*, 964
13 F.Supp. at 304.)⁸

14 As applied here, the U.S. Supreme Court has made clear that "there is some force to the
15 argument that the baker was not unreasonable in deeming it lawful to decline to take an action that he
16 understood to be an expression of support for the[] validity [of same-sex marriages] when that
17 expression was contrary to his sincerely held religious beliefs, at least insofar as his refusal was limited
18 to refusing to create and express a message in support of gay marriage[.]" (*Masterpiece Cakeshop, Ltd.*
19 *v. Colorado Civil Rights Com'n* (2018) 138 S.Ct. 1719, 1728 ["*Masterpiece I*"].) The message-based
20 reason is distinctive: "Phillips does claim he would have declined the specific cake Scardina
21 requested—a cake designed to celebrate the anniversary of a gender transition—no matter who
22 requested it." (*Masterpiece Cakeshop Inc. v. Elenis* (D. Colo. 2019) 445 F.Supp.3d 1226, 1244.)

23 ⁸ (See also *North Coast, supra*, 44 Cal.4th at 1161 [noting that "defendant physicians [are] free to later
24 offer evidence at trial that their religious objections were to participating in the medical insemination
25 of an unmarried woman and were not based on plaintiff's sexual orientation, as her complaint
26 alleged"]; *Minton, supra*, 39 Cal.App.5th at 1162 [noting that Catholic hospital may be able to later
27 argue that refusal to sterilize patient through hysterectomy was not based on transgender status, but
28 adherence to facially neutral religious policy against sterilizing any patient]; *Roth v. Rhodes* (1994) 25
Cal.App.4th 530, 538 [a party's "profession" is conduct, not status]; *Gayer v. Polk Gulch, Inc.* (1991)
231 Cal.App.3d 515, 519 [being a "civil rights litigant" is conduct, not status]; *Frantz v. Blackwell*
(1987) 189 Cal.App.3d 91, 96 [being an "investor-speculator" is conduct, not status].)

1 ["*Masterpiece II*"] [citing *Masterpiece I, supra*, 138 S.Ct. at 1738–1739 (Gorsuch, J., concurring)].)

2 Recognizing the “serious respect” that this distinction commands, it has been followed by
3 both the Supreme Courts of Arizona and the United Kingdom:

4 Our decision today is limited . . . and the protection afforded . . . is
5 based solely on the celebratory *messages* Plaintiffs convey (or refuse to
6 convey), not the race, gender or sexual orientation of the customer.
7 [citation] Indeed, Plaintiffs have never asserted that their faith
8 precludes them from serving same-sex couples, or that it requires them
9 to refuse service to a customer based on their sexual orientation.
10 Rather, as noted above, Plaintiffs consistently testified that they are
11 willing to serve all customers, regardless of their status. But what they
12 refuse to do is violate their religious convictions by creating a message
13 for anyone that celebrates same-sex marriage.

14 (*Brush & Nib Studio, LC v. City of Phoenix* (2019) 247 Ariz. 269, 304.)

15 The important message from the *Masterpiece Bakery* case is that there
16 is a clear distinction between refusing to produce a cake conveying a
17 particular message, for any customer who wants such a cake, and
18 refusing to produce a cake for the particular customer who wants it
19 because of that customer’s characteristics.

20 (*Lee v. Ashers Baking Co. Ltd.* [2018] UKSC 49, ¶ 62 [appeal taken from N. Ir.])

21 In sum, Defendants did not refuse to provide services to Real Parties based on their sexual
22 orientation, but rather based on Defendants’ religious beliefs against conveying a particular message
23 (DSS ## 4–5.) In this context, there is no Unruh Act claim.

24 **2. THERE IS A COMPLETE DEFENSE TO PLAINTIFF’S CAUSE OF ACTION**

25 Even if Plaintiff can establish the elements of its sole claim for violation of the Unruh Act,
26 Defendants’ answer raises affirmative defenses under: (1) the Free Exercise Clause of the California
27 Constitution (eleventh affirmative defense); (2) the Free Exercise Clause of the U.S. Constitution
28 (twelfth affirmative defense); and (3) the Free Speech Clause of the U.S. Constitution (thirteenth
affirmative defense). Each of these defenses defeats Plaintiff’s claim as a matter of law.

29 **2.1. The Free Exercise Clause of the California Constitution**

30 In California, “[f]ree exercise and enjoyment of religion without discrimination or preference
31 are guaranteed.” (Cal. Const., art. I, § 4.) “California courts alone determine the rights guaranteed by
32 the California Constitution *so long as those rights extend equal or greater protection* to those guaranteed by

1 the federal Constitution under totally similar provisions of the Bill of Rights.” (*Feminist Women’s*
2 *Health Center, Inc. v. Philibosian* (1984) 157 Cal.App.3d 1076, 1086 [italics added] [citing *Mandel v.*
3 *Hodges* (1976) 54 Cal.App.3d 596, 616]; see also *Burfitt v. Newsom* (Cal. Super. 2021) 2021 WL
4 2152961, at *3 [“Article I, Section 4, of the California Constitution [] is at least as protective of
5 religious liberties as the First Amendment”].)

6 Prior to the U.S. Supreme Court decision in *Employment Division v. Smith* (1990) 494 U.S. 872
7 [“*Smith*”], California courts applied to the California Free Exercise clause “the test set out in *Sherbert*
8 *v. Verner* (1963) 374 U.S. 398, and *Wisconsin v. Yoder* (1972) 406 U.S. 205, and now codified in RFRA.”
9 (*Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1179 [plur. opn.] [“*FEHC*”]
10 [citations cleaned up].) Following *Employment Division v. Smith*, the California Supreme Court has
11 revisited the California Free Exercise Clause three times, and in each instance it has applied a pre-
12 *Smith* strict scrutiny test. (See *North Coast, supra*, 44 Cal.4th 1145; *Catholic Charities of Sacramento,*
13 *Inc. v. Superior Court* (2004) 32 Cal.4th 527; *FEHC, supra*, 12 Cal.4th 1143.) Thus, until the California
14 Supreme Court rules otherwise, all California courts are required to continue applying a pre-*Smith*
15 strict scrutiny test. (*Valov v. Department of Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1126 & fn.7.)

16 Under this standard, there is “a two-fold analysis which calls for a determination of, first
17 whether the application of the statute imposes any burden upon the free exercise of the defendant’s
18 religion, and second, if it does, whether some compelling state interest justifies the infringement.”
19 (*Montgomery v. Board of Retirement* (1973) 33 Cal.App.3d 447, 451 [quoting *People v. Woody* (1964) 6
20 Cal.2d 716, 719].) “The first step . . . requires two determinations, i.e., whether the statute imposes
21 any burden upon the free exercise of the . . . religious beliefs the defendant asserts he embraces and
22 whether the defendant actually [believes] in good faith in that religion.” (*People v. Mullins* (1975) 56
23 Cal.App.3d 61, 70.) Under the second step, “when the [party] has made a sufficient showing to trigger
24 strict scrutiny review, the burden of justification is both demanding and entirely upon the
25 government.” (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 43 [equal protection context]
26 see also *id.* at 35–38 [discussing strict scrutiny test in detail].)

27 Although California courts purport to have tied the California free exercise clause to the
28 *Sherbert/Yoder/RFRA* test (*FEHC, supra*, 12 Cal.4th at 1179 [plur. opn.]), and are bound to apply a

1 test at least as fulsome as the First Amendment (*Feminist Women's Health Center, supra*, 157
2 Cal.App.3d at 1086), they have sometimes enunciated that test differently than the U.S. Supreme
3 Court. With respect to the burden analysis, the U.S. Supreme Court has made clear that *any* monetary
4 burden is a constitutionally significant burden. (See *Burwell v. Hobby Lobby Stores, Inc.* (2014) 573 U.S.
5 682, 710 [under RFRA, “a law that operates so as to make the practice of religious beliefs more
6 expensive in the context of business activities imposes a burden on the exercise of religion.”] [cleaned
7 up].) In contrast, without drawing where the line is, the California Supreme Court has held that “a law
8 that indirectly made a religious practice more expensive might at some point become a constitutionally
9 significant burden on religious exercise.” (*Catholic Charities, supra*, 32 Cal.4th at 563, fn.19.) It is not
10 clear how this reasoning translates to decreased revenue, as opposed to increased expenses, since the
11 former is arguably far more burdensome.

12 California courts’ strict scrutiny analysis has also sometimes differed from the U.S. Supreme
13 Court’s analysis, especially with respect to the “compelling state interest.” The U.S. Supreme Court
14 has held that non-discrimination laws, by themselves, are not sufficient. Rather, the State must show it
15 has a compelling interest in applying the laws in the specific situation at issue:

16 The City asserts that its non-discrimination policies serve three
17 compelling interests: maximizing the number of foster parents,
18 protecting the City from liability, and ensuring equal treatment of
19 prospective foster parents and foster children. The City states these
20 objectives at a high level of generality, but the First Amendment
21 demands a more precise analysis. Rather than rely on broadly
22 formulated interests, courts must scrutinize the asserted harm of
granting specific exemptions to particular religious claimants. The
question, then, is not whether the City has a compelling interest in
enforcing its non-discrimination policies generally, but whether it has
such an interest in denying an exception to CSS.

23 (*Fulton v. City of Philadelphia, Pennsylvania* (2021) 141 S.Ct. 1868, 1881 [citations omitted; cleaned up
24 [quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (2006) 546 U.S. 418, 430–432].) In
25 contrast, California courts have simply accepted that the State has a compelling interest in eradicating
26 all discrimination. (*FEHC, supra*, 12 Cal.4th at 1177 [housing discrimination against unmarried
27 couples]; *Catholic Charities, supra*, 32 Cal.4th at 564 [sex discrimination in employer health insurance
28 benefits]; *North Coast, supra*, 44 Cal.4th at 1158 [sexual orientation discrimination in access to medical

1 treatment]; but see *Schmoll v. Chapman University* (1999) 70 Cal.App.4th 1434, 1443 [application of
2 anti-discrimination laws to religious organization's sex discrimination in hiring of employees violated
3 free exercise clause].)

4 Here, even using California's weaker slant on the pre-*Smith* test, Defendants are protected as a
5 matter of law. Defendants have a religious objection to sending a message celebrating any marriage
6 except between one man and one woman. (DSS # 6.) Applying the Unruh Act to Defendants' making
7 of wedding cakes is a "substantial burden" because such cakes constitute a significant portion of
8 Defendants' business. Without the decreased revenue from that portion of their business, the Bakery
9 is not financially viable. (DSS ## 7-8.) Thus, the burden shifts to Plaintiff to satisfy strict scrutiny, i.e.,
10 to identify a compelling government interest that cannot be established through less restrictive means.
11 Although Defendants believe that Plaintiff cannot show a compelling state interest (and will discuss
12 that below), for purposes of this section, that is irrelevant because Plaintiff cannot establish the least
13 restrictive means prong. The U.S. Supreme Court, the California Supreme Court, and a California
14 appellate court have all recognized that the least restrictive means of ensuring "full and equal access"
15 to services in the face of a conflict between an anti-discrimination statute and religious beliefs is to
16 connect the customer with another provider of the same service. (See *Fulton, supra*, 141 S.Ct. at 1875
17 1882; *North Coast, supra*, 44 Cal.4th at 1159; *Minton, supra*, 39 Cal.App.5th at 1164-1165.) That is
18 exactly what occurred here. (DSS ## 9-11.)

19 2.2. The Free Exercise Clause of the U.S. Constitution

20 Under the U.S. Constitution, the states "shall make no law respecting an establishment of
21 religion, or prohibiting the free exercise thereof." (U.S. Const., amend. I.) When looking at the federal
22 Free Exercise clause, the analysis is in many respects similar to above. However, where the
23 examination of the federal Free Exercise clause by the U.S. and California Supreme Courts differ, the
24 former controls. (See *Forsyth v. Jones* (1997) 57 Cal.App.4th 776, 782.)

25 The main difference from the California Free Exercise clause is that under the First
26 Amendment, a law burdening religion need only pass rational basis scrutiny if it is "of general
27 application" and "neutral." (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S.
28 520, 531 ["*Lukumi*"].) On the other hand, a law that is not generally applicable or not neutral must

1 satisfy strict scrutiny. (*Id.*) A law is not “generally applicable” if it is underinclusive in achieving their
2 ends. (*Id.*) “As a rule of thumb, the more exceptions to a prohibition, the less likely it will count as a
3 generally applicable, non-discriminatory law.” (*Roberts v. Neace* (6th Cir. 2020) 958 F.3d 409, 413.)

4 A law is not “neutral” “if the object of a law is to infringe upon or restrict practices *because of*
5 their religious motivation[.]” (*Lukumi, supra*, 508 U.S. at 533 [italics added].) Obviously, “the
6 minimum requirement of neutrality is that a law not discriminate on its face.” (*Lukumi, supra*, 508
7 U.S. at 533.) But “[t]he Free Exercise Clause . . . extends beyond facial discrimination. The Clause
8 forbids subtle departures from neutrality, and covert suppression of particular religious beliefs. . . .
9 The Free Exercise Clause protects against governmental hostility which is masked, as well as overt.”
10 (*Id.* at 534 [cleaned up].) The neutrality requirement is not merely a negative command. Rather, under
11 it, “all officials must pause to remember their own high duty to the Constitution and to the rights it
12 secures.” (*Masterpiece I, supra*, 138 S.Ct. at 1731 [quoting *Lukumi, supra*, 508 U.S. at 547]; see also *id.*
13 at 1734–1740 [Gorsuch, J., concurring] [expounding on the lack of neutrality].) Here, applying the
14 Unruh Act to Defendants, who have a legitimate religious objection (DSS #12), is neither “generally
15 applicable” nor “neutral,” triggering strict scrutiny.

16 **2.2.1. Neutrality & General Applicability**

17 The Unruh Act itself, and its application by Plaintiff to Defendants, is neither neutral nor
18 generally applicable for three distinct reasons

19 **First**, and most recently, a unanimous U.S. Supreme Court explained that “[a] law is not
20 generally applicable if it ‘invite[s]’ the government to consider the particular reasons for a person’s
21 conduct by providing ‘a mechanism for individualized exemptions.’” (*Fulton, supra*, 141 S.Ct. at 1877
22 [quoting *Smith, supra*, 494 U.S. at 884].) For example, permitting “the government to grant
23 exemptions based on the circumstances underlying each” situation, i.e., a “good cause” exemption,
24 makes the law not generally applicable. (*Id.*) In that context, “where the State has in place a system of
25 individual exemptions, it may not refuse to extend that system to cases of ‘religious hardship’ without
26 compelling reason.” (*Id.* [quoting *Smith, supra*, 494 U.S. at 884].)

27 The facts of *Fulton* are very analogous to the present case. There, the Catholic Church had
28 provided for the needs of abandoned or orphaned children in Philadelphia, Pennsylvania for “over two

centuries.” (*Id.* at 1874.) By the 21st Century, there were “20 other agencies in the City” who also provided for those children’s needs, in addition to Catholic Social Services (“CSS”). (*Id.* at 1875) In line with the requirements of the Catholic faith, no Catholic agency could certify a couple as acceptable to receive a foster youth if they were unmarried according to the Church’s definition, which included same-sex couples. (*Id.*) “No same-sex couple ha[d] ever sought certification from CSS,” but “[i]f one did, CSS would direct the couple to one of the more than 20 other agencies in the City, all of which currently certify same-sex couples.” (*Id.*)

In 2018, citing CSS’s adherence to Catholic religious beliefs—which it characterized as discrimination on the basis of sexual orientation—Philadelphia refused to refer foster-youth to CSS for placement with couples certified as fit to accept foster-youth. (*Id.*) CSS and several foster-parents (including Ms. Sharonell Fulton) then brought suit. The Supreme Court concluded that because Philadelphia’s own contracts permitted it to grant an exemption to CSS, its refusal to do so required application of strict scrutiny. (*Id.* at 1877.) As stated above, all nine Justices answered this question of whether strict scrutiny was satisfied with a resounding “no.” According to the U.S. Supreme Court although “equal treatment of prospective foster parents” “is a weighty one, the factual history of the case—described above—made clear that such an interest was insufficient. (*Id.* at 1882.)

Here, like Philadelphia’s contracts, the Unruh Act provides multiple avenues for individualized exemptions. The Unruh Act provides that it “shall not be construed to confer any right or privilege on a person that is conditioned or limited by law[.]” (Civ. Code, § 51(c).) This allows wide range of individualized exemptions from multiple sources: legislative actions to local ordinances, judicial rulings to administrative agency policies. (See *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1505 [because Vehicle Code permits age discrimination in rental cars, doing so does not violate Unruh Act]; *Harrison v. City of Rancho Mirage* (2015) 243 Cal.App.4th 162, 176 [noting that municipality is per se not subject to the Unruh Act because its actions limit the Act]; *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 30–31 & fn.8 [noting that “when there is a strong public policy in favor of such treatment,” discrimination may be justified by the “nature of the business enterprise and of the facilities provided”]; *Ross v. Forest Lawn Memorial Park* (1984) 153 Cal.App.3d 988, 993 [due to “the sensitive nature of the services offered by the cemetery,” public policy would justify excluding

1 certain people even if in violation of the Unruh Act[.])

2 Whenever the law—either a statute or case law—sets conditions that are different than those
3 prescribed by the Unruh Act, that creates the potential for an individualized exemption. Some laws
4 may provide specific criteria for the exemption (see *Lazar, supra*, 69 Cal.App.4th at 1505 [granting
5 authority to rental car companies to set minimum age]), but many laws will require an assessment
6 based on the nature of the activity or conduct (see, e.g., U.S. Const., amend. I [free speech clause]),
7 which leads to individualized exemptions. The free speech provisions of the U.S. Constitution
8 establish rights of the highest order that must be reconciled with the Unruh Act. Exemption is not
9 automatic, but it does require individualized consideration based on the facts and circumstances. (See
10 DSS ## 17–18 [DFEH stating it “does not use its enforcement authority under the Unruh Civil Rights
11 Act to compel speech”].) But as stated in *Fulton*, “where the State has in place a system of individual
12 exemptions, it may not refuse to extend that system to cases of ‘religious hardship’ without
13 compelling reason.” (*Fulton, supra*, 141 S.Ct. at 1877.) Application of strict scrutiny is triggered.

14 In addition, the Unruh Act states, “[t]his section shall not be construed to confer any right or
15 privilege on a person that . . . is applicable alike to persons [regardless of protected characteristic].”
16 (Civ. Code, § 51(c).) Plaintiff DFEH understands this, thus, it “does not use its enforcement authority
17 under the Unruh Civil Rights Act to compel speech,” and Plaintiff DFEH denies that “cake artists
18 violate the Unruh Act by declining to create custom cakes that express messages they would not
19 communicate for anyone.” (DSS ## 17–18.) But this provides an avenue for an unwritten
20 gerrymander—one that the DFEH has exploited.

21 Here, Defendants have established standards for the services they will provide and a policy to
22 offer a referral or assistance in contacting another bakery when Defendants are unable to provide the
23 requested service. (DSS # 23.) Among the standards followed by Defendants is a requirement that
24 wedding services must not contradict God’s sacrament of marriage between one man and one woman
25 in order to avoid a conflict with their sincerely held religious beliefs regarding marriage. (DSS # 12,
26 14.) This policy is applied consistently to all customers regardless of any protected characteristic
27 (DSS # 12, 14, 23.) Yet, the DFEH has determined that other cake artists, in a similar situation, do not
28 violate the Unruh Act. (DSS # 18.) At the end of the day, this is either an individualized exemption for

1 other cake artists, or an individualized prosecution targeting Defendants for their disfavored religious
2 beliefs. Regardless, the circumstances of *Fulton* exist, and strict scrutiny should be applied.

3 **Second**, with respect to neutrality, “[t]he Supreme Court held in *Masterpiece I* that one
4 element of Colorado’s ‘clear and impermissible hostility’ toward [baker] Phillips’ religious beliefs was
5 ‘the difference in treatment between Phillips’ case and the cases of other bakers[.]’ ” (*Masterpiece II*,
6 *supra*, 445 F.Supp.3d at 1240.) Thus, where certain bakeries are “excused . . . from baking cakes with
7 messages the bakers deemed offensive,” but the defendant baker is not (*id.* at 1241), and indeed the
8 government uses the baker’s assertion that he “will not create cakes ‘that promote the idea that a
9 person’s sex is anything other than an immutable God-given biological reality,’ as evidence ‘that the
10 refusal to provide service to [the plaintiff] was based on [her] transgender status,’ ” “this disparate
11 treatment reveals . . . hostility.” (*Id.* [italics added]; see also *Masterpiece I*, *supra*, 138 S.Ct. at 1736
12 [Gorsuch, J., concurring] [noting that “[t]he problem here is that the Commission failed to act
13 neutrally by applying a consistent legal rule.”].)

14 Here, since the very beginning, Defendants’ have held to the traditional Christian idea that
15 they will serve all members of the LGBT community, but that they cannot express messages
16 promoting any form of marriage except as between one man and one woman, including by creating
17 wedding cakes for same-sex wedding ceremonies. (DSS #14.) But both during the administrative
18 investigation phase of this case, and the present litigation, Plaintiff DFEH has rejected this message-
19 based justification for Defendants’ actions, arguing that it is evidence of discrimination on the basis of
20 sexual orientation. (DSS #15–18.) The DFEH’s neutral, administrative investigation was also not
21 neutral, but extremely contentious and adversarial. (DSS #19–21.) Indeed, since Plaintiff DFEH
22 admitted that it “does not use its enforcement authority under the Unruh Civil Rights Act to compel
23 speech,” and denied that “cake artists violate the Unruh Act by declining to create custom cakes that
24 express messages they would not communicate for anyone” (DSS ##17–18), and yet continues with
25 this prosecution, this is evidence of hostility triggering strict scrutiny.

26 **Third**, the timing of Plaintiff’s administrative investigation indicates bad faith. (*Masterpiece II*,
27 *supra*, 445 F.Supp.3d at 1242.) Where “twenty-four days after the Supreme Court announced
28 *Masterpiece I*, the [Colorado analog to the DFEH] issued a probable cause determination,” the timing

1 of “this decision . . . supports the existence of bad faith.” (*Id.* at 1237, 1242.) Here, during the
2 administrative investigation, Plaintiff raced into court to obtain a temporary restraining order on
3 December 14, 2017—less than ten days after the Supreme Court heard oral argument in *Masterpiece I*,
4 where Justice Kennedy several times indicated that he would probably lead a five-justice majority in
5 reversing the lower court decision. (DSS # 20.) The timing of the onslaught of this litigation is
6 suspicious and indicates retaliation. (See *Aziz v. Trump* (E.D. Va. 2017) 234 F.Supp.3d 724, 737 [“The
7 Court’s conclusion rests on the highly particular ‘sequence of events’ leading to this specific EO”].)

8 **2.2.2. Hybrid Rights**

9 Laws that burden religious exercise along with other constitutional rights violate a hybrid of
10 rights and trigger strict scrutiny. (See *Smith, supra*, 494 U.S. at 881-882 [strict scrutiny for “hybrid
11 situation[s]” where free-exercise claim is linked with “other constitutional protections, such as
12 freedom of speech”].) Although the California Supreme Court has called this doctrine into doubt, it
13 has not explicitly rejected it (*Catholic Charities, supra*, 32 Cal.4th at 558), and other courts have more
14 recently relied upon it. (*Telescope Media Group v. Lucero* (8th Cir. 2019) 936 F.3d 740, 753 [“TMG”].)
15 As explained below, because applying the Unruh Act to Defendants here would also violate their free
16 speech rights (see § 2.3, *infra*), strict scrutiny is required.

17 **2.2.3. Strict Scrutiny**

18 Because the Unruh Act is not generally applicable and not neutral, applying it here must
19 satisfy strict scrutiny. “A government policy can survive strict scrutiny only if it advances ‘interests of
20 the highest order’ and is narrowly tailored to achieve those interests. Put another way, so long as the
21 government can achieve its interests in a manner that does not burden religion, it must do so.” (See
22 *Fulton, supra*, 141 S.Ct. at 1881 [citations omitted].)

23 As stated above, California cases have held that uniform application of non-discrimination
24 statutes is an adequate “interest[] of the highest order.” (*FEHC, supra*, 12 Cal.4th at 1177; *Catholic*
25 *Charities, supra*, 32 Cal.4th at 564; *North Coast, supra*, 44 Cal.4th at 1158.) But there is not uniform
26 application here. (See §§ 1.1, 2.2.1, *supra*.) The fact that exceptions exist necessarily defeats any
27 interest in *uniform* application. (*Brown v. Entertainment Merchants Ass’n* (2011) 564 U.S. 786, 802
28 *Yellowbear v. Lampert* (10th Cir. 2014) 741 F.3d 48, 60 [Gorsuch, J.].) In any event, the U.S. Supreme

1 Court has rejected the California Supreme Court’s reasoning, requiring that the government identify
2 an “interest[] of the highest order” in specifically denying a religious objector an exemption. (*Fulton*,
3 *supra*, 141 S.Ct. at 1881; *Gonzales, supra*, 546 U.S. at 431[.] And although “equal treatment” of “gay
4 persons and gay couples” “is a weighty” interest,” it is not per se a compelling interest of the highest
5 order when it does not cause gay couples to actually “be treated as social outcasts or as inferior in
6 dignity and worth.” (*Fulton, supra*, 141 S.Ct. at 1882.) In other words, the DFEH cannot simply argue
7 that pushing a political, gay-rights v. religious-rights agenda is a compelling interest. (See DSS # 22
8 [DFEH: “Plaintiffs have looked for cases to push the law forever. Rosa Parks was not just happened to
9 be taking the bus that day. [sic] So whether or not there is knowledge going in there does not change
10 the fact that there was a violation.”].)⁹

11 Nor can Plaintiff rely on the *actual* provision of wedding-related services as a compelling
12 interest. The Real Parties *actually* obtained a wedding cake. (DSS # 25.) And if this were the
13 compelling interest of the highest order, there are many less restrictive and more narrowly tailored
14 means of achieving that interest than forcing Defendants to provide services in violation of their
15 religious beliefs. Most simply, as noted above, Defendants offered to connect the Real Parties with
16 another wedding-service provider. (See DSS ## 23–24; *Fulton, supra*, 141 S.Ct. at 1875, 1882; *North*
17 *Coast, supra*, 44 Cal.4th at 1159; *Minton, supra*, 39 Cal.App.5th at 1164–1165.)

18 2.3. The Free Speech Clause of the U.S. Constitution

19 Under the U.S. Constitution, the states “shall make no law . . . abridging the freedom of
20 speech.” (U.S. Const., amend. I.) This protects “the right to refrain from speaking at all” and “the
21 right to speak freely.” (*Wooley v. Maynard* (1977) 430 U.S. 705, 714.) In other words, Defendants
22 cannot be compelled to speak, and if they choose to speak, the content of their speech cannot be
23 regulated, unless the government satisfies strict scrutiny.

24 ⁹ (See also *Brush & Nib, supra*, 247 Ariz. at 301 [“As noted above, the Ordinance generally serves
25 the compelling purpose of eradicating discrimination in the provision of publicly available goods and
26 services. However, . . . that interest is not sufficiently overriding to force Plaintiffs to create custom
27 wedding invitations celebrating same-sex marriage in violation of their sincerely held religious
28 beliefs.”] [citations omitted]; *North Coast, supra*, 44 Cal.4th at 1162 [Baxter, J., concurring] [“[T]he
state’s interest—here represented in a statute—must be balanced, in appropriate cases, against the
fundamental *constitutional* right to the free exercise of religion.”].)

2.3.1. Compelled Speech

A compelled-speech defense has three elements: (1) speech, (2) the government compels, (3) and the speaker objects to. (See *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557, 572–573 [applying elements]; *Cressman v. Thompson* (10th Cir. 2015) 798 F.3d 938, 951 [identifying elements].) If the three elements are satisfied, strict scrutiny is triggered. (See *Pacific Gas and Elec. Co. v. Public Utilities Com’n of California* (1986) 475 U.S. 1, 19–20 [“PG&E”]; *Taking Offense v. State* (2021) 66 Cal.App.5th 696.) Elements two and three are conceded: because Defendants make wedding cakes celebrating traditional marriages, Plaintiff seeks to use the Unruh Act to compel Defendants to make wedding cakes celebrating same-sex weddings. (DSS ## 26–27.) The only question is whether Defendants’ wedding cakes are speech. The Free Speech clause of the First Amendment protects both “pure speech” and “expressive conduct.” Under both theories, Defendants’ designing and creation of custom cakes for certain events is protected.

Pure Speech. Pure speech includes such matters as “pictures, films, paintings, drawings, and engravings.” (*Kaplan v. California* (1973) 413 U.S. 115, 119), “photographs, videos, or sound recordings” (*U.S. v. Stevens* (2010) 559 U.S. 460, 468), and “video games” (*Brown, supra*, 564 U.S. at 790.) Pure speech is not limited to written or spoken words, but rather, “[a]rt is speech.” (*Chelsea Nelson Photography LLC v. Louisville/Jefferson County Metro Government* (W.D. Ky. 2020) 479 F.Supp.3d 543, 548; see *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 246; *National Endowment for the Arts v. Finley* (1998) 524 U.S. 569, 580.) Thus, pure speech includes wordless music (*Ward v. Rock Against Racism* (1989) 491 U.S. 781, 790), dance (*Schad v. Borough of Mount Ephraim* (1981) 452 U.S. 61, 65), and nonsense poetry. (*Hurley, supra*, 515 U.S. at 569.) It also includes silent protest through a sit-in (*Brown v. State of La.* (1966) 383 U.S. 131, 141–142), and parades. (*Hurley, supra*, 515 U.S. at 569.)

As stated by the Supreme Court:

[T]he Constitution looks beyond written or spoken words as mediums of expression. Noting that symbolism is a primitive but effective way of communicating ideas, our cases have recognized that the First Amendment shields such acts as saluting a flag (and refusing to do so), wearing an armband to protest a war, displaying a red flag, and even marching, walking or parading in uniforms displaying the swastika. As some of these examples show, a narrow, succinctly articulable message

1 is not a condition of constitutional protection, which if confined to
2 expressions conveying a particularized message, would never reach the
3 unquestionably shielded painting of Jackson Pollock, music of Arnold
Schöenberg, or Jabberwocky verse of Lewis Carroll.

4 (*Hurley, supra*, 515 U.S. at 569 [citations omitted; cleaned up].)

5 As applied here, “[a] wedding cake is not just a cake in a Free Speech analysis. It is an artistic
6 expression by the person making it that is to be used traditionally as a centerpiece in the celebration of a
7 marriage.” (*Miller, supra*, 2018 WL 747835, at *3.)¹⁰ Thus, because “art is speech” (*Chelsey, supra*, 479
8 F.Supp.3d at 548), compelling Defendants to create wedding art necessarily triggers strict scrutiny.

9 The two cases perhaps most supportive of this principle are cases which held that the creation
10 of both wedding invitations and tattoos are pure speech. (*Brush & Nib, supra*, 247 Ariz. at 287;
11 *Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1061.) Custom wedding invitations
12 constitute “pure speech” because each invitation “contains [] hand-drawn words, images, and
13 calligraphy, as well as [] hand-painted images and original artwork.” (*Brush & Nib, supra*, 247 Ariz. at
14 287.) Similarly, “[t]attoos are generally composed of words, realistic or abstract images, symbols, or a
15 combination of these, all of which are forms of pure expression that are entitled to full First
16 Amendment protection.” (*Anderson, supra*, 621 F.3d at 1061.) Moreover, “[t]he fact that both the
17 tattooist and the person receiving the tattoo contribute to the creative process . . . does not make the
18 tattooing process any less expressive activity, because there is no dispute that the tattooist applies his
19 creative talents as well.” (*Id.* at 1062.) Here, when Defendants create a custom wedding cake, they are
20 engaged in artistic expression. Cake designs can range from simple to elaborate, but all styles require
21 skill and each design portrays an image and message intended by the customer. (DSS ## 28–32.) In
22 this case, the Real Parties wanted to communicate this was a traditional wedding, so the traditional all
23 white three tier cake was chosen because this would create the image and statement the Real Parties
24 intended. (See DSS # 34.) This is art entitled to full First Amendment protection.

25 ***Expressive Conduct.*** Separate from pure speech, the First Amendment protects “conduct”
26 that is “sufficiently imbued with elements of communication.” (*Texas v. Johnson* (1989) 491 U.S. 397.

27 ¹⁰ (See *Department of Fair Employment and Housing v. Superior Court of Kern County* (2020) 54
28 Cal.App.5th 356, 401–402 & fn.12 [noting that this order is binding absent satisfaction of requirements
for reconsideration of Code Civ. Proc., § 1008].)

404.) Such conduct is only protected if (1) there is “an intent to convey a particularized message;” and (2) “the likelihood is great that the message will be understood by those who view it.” (*Anderson, supra*, 621 F.3d at 1058 [cleaned up].) This test only applies to expressive conduct, not pure speech. (*Id.* at 1060.) Examples include burning a flag (*Johnson, supra*, 491 U.S. at 411), burning a draft card (*U.S. v. O’Brien* (1968) 391 U.S. 367, 370), and wearing a black armband. (*Tinker v. Des Moines Independent Community School Dist.* (1969) 393 U.S. 503, 505–506.)

As applied here, “[a] wedding cake . . . is to be used traditionally as a centerpiece in the celebration of a marriage.” (*Miller, supra*, 2018 WL 747835, at *3.) Most simply, therefore, the cake expresses the message that this union is a “marriage” and that it should be celebrated. (*Masterpiece I, supra*, 138 S.Ct. at 1740–1745 [Thomas, J., concurring] [expounding upon wedding cakes as expressive conduct]; *Kaahumanu v. Hawaii* (9th Cir. 2012) 682 F.3d 789, 799 [wedding ceremony itself is expressive conduct].) When Defendants design and create custom wedding cakes, that is the message that they intend to convey. (DSS # 33.) It is also the message most likely to be understood by those who view their cakes. (DSS # 34.) Thus, Defendants’ wedding cakes are also entitled to First Amendment protection as expressive conduct. Applying the Unruh Act here must satisfy strict scrutiny.

2.3.2. Content Discrimination

In addition to compelled speech, Plaintiff DFEH seeks to apply the Unruh Act in a content and view-point based way, which triggers strict scrutiny. (*Reed v. Town of Gilbert* (2015) 576 U.S. 155, 164–165.) A regulation is content based if it “applies to particular speech because of the topic discussed or the idea or message expressed.” (*Id.* at 163.) As applied to Defendants, Plaintiff’s interpretation of the Unruh Act compels speech based on content and viewpoint in three ways.

First, Plaintiff’s interpretation of the Unruh Act would compel Defendants to celebrate same-sex weddings (see DSS # 27), which changes the content of their desired speech. (See *Riley v. National Federation of the Blind of North Carolina, Inc.* (1988) 487 U.S. 781, 795.)

Second, Plaintiff’s interpretation of the Unruh Act would require Defendants to create cakes celebrating same-sex weddings because they create cakes celebrating opposite-sex weddings. If Defendants only created cakes celebrating quinceañeras (even a quinceañera cake very similar to a wedding cake), they’d be safe. It is only because Defendants create cakes celebrating traditional

1 marriage that Plaintiff seeks to compel Defendants to also create cakes celebrating same-sex marriage.
2 (See DSS # 27.) In this way, the Unruh Act is triggered by the content of Defendants' prior speech.
3 That makes its application content-based. (See *Miami Herald Publishing Co. v. Tornillo* (1974) 418 U.S.
4 241, 256 [statute "exact[s] a penalty on the basis of the content" by requiring newspapers to print
5 editorial only if they printed editorial with particular content earlier].)¹¹

6 Third, applying the Unruh Act here would confer access to the marketplace based on
7 viewpoint. (See *Rosenberger v. Rector and Visitors of University of Virginia* (1995) 515 U.S. 819, 829
8 ["Viewpoint discrimination is . . . an egregious form of content discrimination."].) According to
9 Plaintiff, if Defendants make cakes celebrating weddings, the law does not require them to make cakes
10 on every subject requested of them; rather, according to Plaintiff, the law only requires them to create
11 cakes promoting one specific view—cakes celebrating same-sex weddings. (See DSS # 27.) That is a
12 viewpoint-based access requirement that requires Defendants to speak views with which they
13 disagree. (See *PG&E*, *supra*, 475 U.S. at 13 [law discriminates based on viewpoint when it awards
14 access "only to those who disagreed with the [speaker's] views"].)¹²

15 2.3.3. Strict Scrutiny

16 As noted above, compelling individuals or businesses to engage in unwanted speech requires
17 satisfaction of strict scrutiny. Further, as explained above, the Real Parties actually got their wedding
18 cake. (DSS # 38.) Thus, the only interest they have is in compelling Defendants to violate their
19 religious beliefs and endorse the Real Parties' definition of "marriage." This is not a compelling
20 interest. (*Miller*, *supra*, 2018 WL 747835, at *5.) "[T]he point of all speech protection . . . is to shield
21 just those choices of content that in someone's eyes are . . . hurtful." (*Hurley*, *supra*, 515 U.S. at 574.)

22
23 ¹¹ (See also *PG&E*, *supra*, 475 U.S. at 13–14 [law regulates based on content if it "condition[s] [access]
24 on any particular expression" conveyed]; *TMG*, *supra*, 936 F.3d at 753 [law regulated based on content
25 by treating filmmakers "choice to talk about one topic—opposite-sex marriages—as a trigger for
compelling them to talk about a topic they would rather avoid—same-sex marriages"].)

26 ¹² (See also *Turner Broadcasting System, Inc. v. F.C.C.* (1994) 512 U.S. 622, 654 [law in *PG&E*
27 viewpoint-based because it "conferred benefits to speakers based on viewpoint, giving access only to a
consumer group opposing the utility's practices"]; *Arizona Free Enterprise Club's Freedom Club PAC v.*
28 *Bennett* (2011) 564 U.S. 721, 742, fn.8 [campaign finance law problematic because a candidate's speech
triggered funds given "to his opponent" to speak hostile views].)

Thus, “regulating speech because it is discriminatory or offensive is not a compelling state interest, however hurtful the speech may be.” (*TMG, supra*, 936 F.3d at 755 [statute could not compel videographers to participate in same-sex weddings].)

3. THERE IS NO BASIS FOR PUNITIVE DAMAGES

As stated above, a party can move for summary adjudication as to a claim for punitive damages. (Code Civ. Proc., § 437c(f)(1); *Basich v. Allstate Ins. Co.* (2001) 87 Cal.App.4th 1112, 1119.) Here, although Plaintiff’s complaint includes a prayer for punitive damages (Compl., ¶ 51, Prayer ¶ 12), Plaintiff later stated that the only damages it is seeking are statutory damages of \$4,000 per violation. (DSS # 39.) Further, there is no evidence that Defendants acted with “malice, oppression or fraud,” let alone “clear and convincing evidence.” (DSS ## 40–43; *Basich, supra*, 87 Cal.App.4th at 1121.) Accordingly, this Court should grant summary adjudication with respect to Plaintiff’s prayer for punitive damages.

CONCLUSION

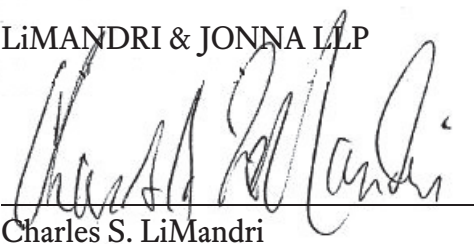
Applying the Unruh Act to this case really is like trying to fit a square peg into a round hole: there is an imperfect fit. There is no evidence of animus against the LGBT community. From Defendants’ perspective, this case has nothing to do with LGBT individuals—it has everything to do with their religious beliefs about *marriage*, religious beliefs that have a longstanding pedigree and that have been called “honorable” by the Supreme Court. This case presents many elements that should trigger strict scrutiny. In any event, because Defendants offered to connect the Real Parties in Interest with another bakery, the Unruh Act is not even applicable and strict scrutiny is not possibly satisfied—yet the DFEH obstinately refuses to recognize this.

There are no material facts are in dispute and the matters to be decided are matters of law. “In cases involving free speech [and other First Amendment rights], a speedy resolution is desirable because protracted litigation may chill the exercise of First Amendment rights. For that reason summary judgment is a favored remedy in free speech cases.” (*Kirby v. Sega of America, Inc.* (2006) 144 Cal.App.4th 47, 54.) For the foregoing reasons, this Court should grant Defendants’ motion for summary judgment, and protect their right to continue making a living while not violating their sincerely held religious beliefs.

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Respectfully submitted,

LiMANDRI & JONNA LLP



Dated: September 8, 2021

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF KERN**

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

20 Plaintiff,

21 v.

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

Defendants.

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

26 Real Parties in Interest.
27
28

CASE NO.: BCV-18-102633

IMAGED FILE

**DECLARATION OF
CATHARINE MILLER IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

1 I, Catharine Miller, declare and state as follows:

2 1. I am a named defendant in the above entitled action. Accordingly, I have personal
3 knowledge of the matters set forth below and could and would competently testify thereto if called
4 upon to do so in court.

5 **OVERVIEW OF MY ARTISTIC BACKGROUND**

6 2. I am a creative designer who owns and operates Cathy's Creations, Inc., doing
7 business as Tastries Bakery—a small bakery in Bakersfield, California. I am the 100% shareholder of
8 Tastries Bakery. Opened in January 2013, Tastries Bakery is primarily a custom bakery that will
9 collaborate with clients to design custom cakes, cookies and pastries for their event or occasion.

10 3. I have used my creative talents in many ways over the years: through music,
11 elementary education, floral arrangements, interior design, and event planning. I have always had a
12 unique ability to provide inspiring and creative vision to every project and service. With Tastries
13 Bakery, I direct a team of culinary artists who, by creating a vast selection of artistic bakery designs,
14 help enrich my clients' life celebrations.

15 4. Music has been a part of my artistic expression for most of my life. Some of my
16 fondest memories center around playing the clarinet in various bands and orchestras. I continue to
17 play my clarinet today and have been part of a worship orchestra at my church for many years.

18 5. Prior to owning Tastries Bakery, I was a teacher in preschool, elementary school,
19 middle school, and high school for 30 years. My classrooms were a work of art. Every single wall
20 and ceiling was decorated to inspire my students based on a theme I wanted to emphasize. I have
21 led chorus groups and directed musicals where I put together the music, the script, the
22 choreography, and the scenery. For five years, I lead drama teams for our church youth group and
23 Bakersfield Christian High School where we put on skits and plays.

24 6. In addition to being a teacher, I have run events for about 30 years. I have
25 orchestrated company parties, birthdays, anniversaries, and weddings. In addition to coordinating
26 these events, I have provided the cake, photography, and floral arrangements. I also ran a floral
27 business for four years and for a time I worked in interior design, modeling or remodeling homes or
28 buildings.

1 7. Finally, I've been decorating cakes from home since I was 18 and created my own
2 recipes. Over the years, I took classes in both baking and decorating. The baking classes have
3 focused on ingredient interaction—allowing me to develop recipes for a wide range of products in
4 different applications.

5 **OVERVIEW OF MY SINCERELY HELD RELIGIOUS BELIEFS**

6 8. I am a practicing Christian and woman of deep faith; I seek to honor God in all
7 aspects of my life. Jesus taught us that the greatest commandments are to “Love the Lord your God
8 with all your heart and with all your soul and with all your mind and with all your strength. The
9 second is this: Love your neighbor as yourself.” (Mark 12:30–31.) How I treat people and how I run
10 my business is very important to me. I believe God has called me to abide by His precepts that He
11 set forth in the Bible. In other words, I strive to honor God by making my life edifying to Him.

12 9. Although I still organize some events, I have coordinated fewer events lately because
13 it is harder to coordinate events that abide by my Christian principles. I have to work in accordance
14 with my faith, which teaches that, “Whatever you do, work at it with all your heart, as working for
15 the Lord, not for human masters” (Colossians 3:3), and “All whatsoever you do in word or in work
16 do all in the name of the Lord Jesus Christ.” (Colossians 3:17; see also 1 Corinthians 10:31; 1 Peter
17 4:11.)

18 10. As a Christian, I desire my life to be one of grace, love, compassion, and truth.
19 Among the fundamental principles of my faith is the belief that God designed marriage to be
20 covenant between one man and one woman. Accordingly, this belief guides Tastries Bakery's
21 marriage-related products and services. I understand that others may hold views that are different
22 from mine (including customers and employees), but I do not require anyone to share my views on
23 marriage as a condition for service or employment. In fact, the bakery has served many LGBT
24 customers and I have hired multiple members of the LGBT community.

25 11. My faith also teaches me to welcome and serve everyone. And I do. I welcome
26 people from all lifestyles, including individuals of all races, creeds, marital situations, gender
27 identities, and sexual orientations. In other words, I offer my artistic vision to create specially
28 designed custom cakes and desserts for anyone. I eagerly seek to serve all people, but I cannot

1 design custom cakes that express ideas or celebrate events that conflict with my core religious
2 beliefs. It would violate the first and greatest commandment if I were to create custom cakes that
3 express messages or celebrate events that conflict with my love for God. (See Ephesians 4:29;
4 1 Timothy 5:22; 1 Corinthians 10:1–22; 2 Corinthians 6:14–18.)

5 12. My decisions on whether to design a custom cake or coordinate an event never focus
6 on the client's identity. Rather, they focus on what the custom cake or event will express or
7 celebrate. These limitations on my custom work have no bearing on my premade items, which were
8 not tailored for any specific purpose or message and are available to all customers for any use they
9 may choose.

10 13. A potential customer's identity or characteristic simply has no bearing on whether I
11 accept a custom cake order. Although I do not ask, sometimes customers tell me or it is obvious that
12 a customer is a member of the LGBT community, and so I know that I have created cakes that
13 celebrate birthdays, graduations, and adoptions for LGBT customers or for one of their family
14 members or friends. I welcome LGBT customers and am honored to serve them as they celebrate
15 important people in their lives.

16 14. There are many custom cakes that I will not create. For example, I will not design
17 cakes that celebrate divorce, that display violence, that glorify drunkenness or drug use, that contain
18 explicit sexual content, that present gory or demonic images or satanic symbols. I also will not design
19 cakes that demean any person or group for any reason, or that promote racism, or any other message
20 that conflicts with fundamental Christian principles.

21 15. In the baking profession, my policy is not unusual: it is standard industry practice for
22 cake artists to decline to create custom cakes expressing messages or celebrating events that would
23 conflict with their beliefs or worldview. This has been Tastries Bakery policy from the beginning and
24 has been a written policy for many years. A true and correct copy of our written design standards
25 which have been slightly tweaked over the years, is attached as **Exhibit A**. Copies of these written
26 design standards are kept in the binders showing prior cakes we have made, as well as posted in the
27 bakery.

28 ///

1 16. I first wrote down these design standards, probably in 2016, when marijuana became
2 legal and prolific in Bakersfield. At that time, we were receiving requests for marijuana laced or
3 themed products, and I could not in good conscience promote those messages. Then, we were also
4 getting more requests for X-rated cakes for bachelorette parties, or other bachelorette cakes with
5 drunken Barbie dolls that I would not create. Thus, I decided that we needed a written policy. I have
6 declined numerous requested Halloween cakes or marijuana cakes and have referred many such
7 custom requests to one of the many other competent bakeries in Bakersfield.

8 17. Once, a man requested a beautiful seven-tier cake that he planned to use at a vow-
9 renewal ceremony that he was planning for his wife. He intended to surprise her at the ceremony by
10 announcing his intention to obtain a divorce. Because using our cakes in this manner violates my
11 policy about demeaning and humiliating people, I declined the order.

12 18. Whenever a customer requests a cake that we cannot make, I first try to design a cake
13 that fits their theme and will meet our standards. That often will resolve the issue, but if that does not
14 work, I will help them find a bakery with the skill for the design they want. I know that there are many
15 other competent store-front bakeries in Bakersfield, and hundreds of “cottage” bakers who make
16 wedding cakes out of their home as allowed under California law. Through my calls to other bakeries
17 I know that Tastries Bakery is the only bakery that does not provide custom products for same-sex
18 weddings. I can refer couples to any of these competent bakeries and will provide more referrals if a
19 couple does not like a specific bakery.

20 19. Tastries Bakery’s design standards apply across all products, and my custom wedding
21 cakes are no exception. They are my artistic expression because, through them, I and my business
22 communicate a message of profound importance. For example, my custom wedding cakes announce a
23 basic message: this event is a wedding, and the couple’s union is a marriage. They also declare an
24 opinion: the couple’s marriage should be celebrated. These expressions have a lasting value through
25 pictures presenting the wedding cake as a centerpiece of their wedding celebration. Therefore
26 whenever I create a custom wedding cake, I am expressing a message about marriage.

27 20. Like many Christians, I believe that marriage is a sacred union between one man and
28 one woman. God’s plan for marriage comes straight from His Word: “[F]rom the beginning of

1 creation, God made them male and female, for this reason, a man will leave his father and mother
2 and be united with his wife and the two will become one flesh. So they are no longer two, but one.”
3 (Mark 10:6–9.) Weddings therefore signify that the “two [have] become one flesh.” (*Id.*)

4 21. I also believe, in accordance with the Bible’s teachings, that marriage represents the
5 relationship between Jesus Christ and His Church. Thus, for me, my creative message is also
6 transcendent. In each custom wedding cake, I am affirming that marriage is not only a sacred union
7 between man and wife but representative of the relationship between Jesus Christ and His Church.
8 Regardless of whether my wedding clients plan an overtly religious event, I believe that all weddings
9 are sacred and that they create an inherently religious relationship.

10 22. Even from a secular perspective—absent any religious undertone—the wedding
11 cake has been a symbol of a marital union dating back to the 1700’s. The wedding cake is the
12 centerpiece of the wedding reception and a focal point for pictures and ceremony during the
13 reception. Cutting the cake together is a tradition signifying the first act as man and wife, providing
14 hospitality to their guests as a new family. Feeding each other the first bite of their wedding cake is
15 another ritual reflecting the vows the couple made to each other only moments before to provide for
16 each other.

17 23. In the past, the wedding ceremony was the primary focus and the reception was
18 short event held in the hall at the church. Even then, the wedding cake was the centerpiece of the
19 reception. Today, the reception has become a much bigger part of the wedding. Now, couples put
20 much more focus on their reception and organize a full day event, but through the years and
21 changing customs, the wedding cake continues to be the traditional centerpiece of the marriage
22 celebration.

23 24. Because of my religious beliefs, I would consider it sacrilegious to express through
24 Tastries designs an idea about marriage that conflicts with my religious beliefs. For this reason,
25 cannot provide custom products and services that celebrate any form of marriage other than the
26 Biblical model of a husband and wife.

27 ///

28 ///

1 **THE DESIGN PROCESS FOR CREATING A TASTRIES WEDDING CAKE**

2 25. All pre-ordered wedding cake made by Tastries Bakery are custom cakes, and I
3 participate in every part of the custom cake design and creation process. First, I participate in the
4 creation of all recipes used at Tastries Bakery. Some recipes were made by me over many years.
5 Others were developed after I started the bakery. The development of recipes is both an art and a
6 science that takes time to master. Any time we design a new flavor or product, it can take 3 to 6
7 months to make its way into use at the bakery. Although no professional bakery produces all products
8 entirely from scratch, we go above and beyond most bakeries to produce custom flavors and products
9 with carefully selected ingredients validated through our testing and by customer reviews. All
10 decorators at Tastries are gifted artists. Some have come to us with prior cake decorating experience,
11 but all decorators have received specialized training in decorating techniques, sculpting and color
12 selection. Each decorator has specialized skills that are shared through cross training and teamwork.
13 We also have many specialized tools to help decorators accomplish amazing designs.

14 26. Most clients interested in a custom designed wedding cake are pre-scheduled for a
15 cake tasting where up to four people can sample cake and filling flavors. After sampling flavors and
16 reviewing our wedding packet, I (or one of my designers) will sit down with the client to develop
17 specific features of the custom wedding cake. First, we talk about the overall theme, color palette,
18 venue (indoor or outdoor), and style of the wedding. Then we turn to the details of the cake by
19 learning of their preferences or any inspirational pictures, discuss cake and filling flavors, dietary
20 needs (i.e., free of gluten, sugar, nuts, eggs, dairy), expected outdoor temperature, and how many
21 people will be served. All these factors can dramatically alter the design options.

22 27. During this process, I don't just let the client know about our 16 cake flavors, 20 filling
23 flavors, 5 types of frosting, 11 tier shapes, and other details—expecting the client to randomly pick
24 what they want. Rather, it is a collaborative process where I offer the best design options for
25 appearance and integrity of the cake based on the client's preferences. Sometimes, we need to
26 dissuade clients from poor choices, which usually is greatly appreciated. Attached as **Exhibit B** is a
27 true and correct copy of the wedding cake binder used by my designers to consult with prospective
28 wedding cake customers. Although we show the binder to clients while in the store, we do not let

1 anybody take a copy because the binder has proprietary business information. For this reason, my
2 attorneys are submitting the binder under seal.

3 28. Also, during this process, I discuss the meaning and importance of marriage and how
4 they need to spend as much time on marriage preparation—preparing to be husband and wife—as
5 they spend on wedding planning. For Christian couples, I will discuss how the Lord brought them
6 together and how they could incorporate Bible verses into their vows. I also have a wedding packet
7 that I give to couples that discusses these topics and is attached as **Exhibit C**.

8 29. This process can take considerable time, often lasting over an hour to design a
9 unique creation for each bride and groom. Once this design process is complete and the client wishes
10 to commission Tastries for the custom wedding cake, my client and I complete the order form. The
11 order form oftentimes includes a hand-drawn design of the cake or a picture with notes to reflect
12 specific changes. The order will usually include details of delivery and set-up at the wedding venue.

13 30. My custom wedding cakes are often delivered close to the time that the event begins.
14 My husband, Mike Miller, delivers most of the wedding cakes, but on some occasions I or a staff
15 member will help with deliveries. We will often be seen during delivery and set-up. Most of the time
16 we deliver in the Tastries Bakery car with our logo on the side. And all staff delivering cakes are
17 supposed to be wearing Tastries' uniforms, and they oftentimes interact with guests as they're
18 placing the cake, adding flowers or setting up a dessert bar.

19 31. Guests will often ask who designed the cake, and I will receive follow-up custom
20 cake requests from wedding guests. Our standard practice is to leave a Tastries card that says
21 "Thank you for letting us be a part of your sweet event." Some clients even ask for my business
22 cards to display at the reception. They know that their custom wedding cake will stand as the iconic
23 centerpiece of the wedding celebration and that some of their friends will want to know who
24 designed it. My clients often share my contact information with those who are interested in
25 commissioning Tastries for their own events.

26 32. To show the artistry that goes into each and every wedding cake that we design and
27 create, I have selected some photos of our cakes. Those photos are attached as **Exhibit D**.

28 ///

TASTRIES BAKERY'S GUARANTEE OF FULL AND EQUAL SERVICES

33. As explained above, if Tastries Bakery cannot make a custom product because it violates our design standards, I will connect the customer with another one of Bakersfield's many competent bakeries or home bakers.

34. In the summer of 2016, two gentlemen came into Tastries Bakery seeking a wedding cake. It was the first time that I ever had a same-sex couple come in, and I was not prepared for what to do. I ended up meeting with them, and designing a beautiful, Disney-themed cake, and they left a deposit. That evening I struggled with my conscience and did not know what to do, but then I remembered Stephanie from Gimme Some Sugar. She was a member of the LGBT community that I had tried to hire—she was an amazing decorator—but now owned and ran a bakery called Gimme Some Sugar. When I had first opened Tastries Bakery, she had told me to come to her if I ever needed any help.

35. I contacted Stephanie and met with her at her shop. I told her I had a situation and needed help. I was upset because my conscience was telling me that I could not do the wedding cake for the two gentlemen. I wanted to be kind, and make sure they got what they needed, but I knew I couldn't be a part of it. I told her, "Stephanie I am not sure what to do, and I don't want to offend you, but at the same time I am hoping we can work together. I have two men who would like me to do their wedding cake and I just can't do it. I know you are in a relationship with another woman, I know that we both are Christians and we see things differently, but would you be willing to do their cake? I don't want to hurt anyone, but with my Christian beliefs I just can't bake the cake, but I want to help them get what they need."

36. Stephanie came around the counter and hugged me. By then we were both teary-eyed and we talked about our beliefs. She said, "I totally understand how you feel because you are just like my mother. She loves me but does not understand my relationship." We talked about our religious convictions and understood each other. Again she said, "I totally understand, my mother and you think the same way. It is ok." Then she said, "Why don't you just send me their contact information and I can give them a call. Here are my business cards, you can just refer your clients to me, I understand." She went behind the counter, gave me her business cards. I was choked up and

1 very appreciative. I thanked her and told her I would bring their order form and deposit by.

2 37. After meeting with Stephanie, I contacted the two men that had placed the order and
3 explained my concerns. They were very gracious and accepted my request to transfer their order to
4 Gimme Some Sugar.

5 38. Since then, I have referred three couples to Stephanie. All of them were very
6 understanding of my sincerely held religious beliefs about marriage, and two of them have continued
7 to frequent the bakery. Stephanie has since sold her bakery. Gimme Some Sugar is now called
8 Cornerstone Bakery and the new owner (Jennifer) has agreed to accept referrals for same-sex
9 wedding orders. All other bakeries in Bakersfield would do the same, so there are several options for
10 referrals based on the style of cake and how busy each bakery may be.

11 **SUMMARY OF THE INCIDENT WITH EILEEN AND MIREYA**

12 39. Tastries Bakery offers a complementary cake-tasting party for newly engaged
13 couples who are interested in ordering a custom wedding cake. I specifically designed the party to
14 be a memorable occasion for couples during the often-stressful rite of wedding planning. During the
15 appointment, couples enjoy a selection of cupcakes with an assortment of fillings and frostings.
16 While the couple samples the cupcakes, I help them create a vision for their wedding cake or
17 custom dessert bar.

18 40. During one of these tastings, I welcomed Mireya and Eileen Rodriguez Del-Rio to
19 my cake shop on August 26, 2017, just like I would any other prospective client. They came into the
20 shop with an older woman (Eileen's mother) and joined a couple of men who were already there.
21 This was not unusual; I often meet with couples along with members of the wedding party.
22 I believed these five were the bride and groom along with the maid of honor, the best man, and the
23 mother.

24 41. Strangely, however, no one began filling out the custom cake request form or wished
25 to sample the cupcakes that had been prepared for tasting. So, I asked for some details. Mireya told
26 me that she wanted a custom three-tiered wedding cake with decorative ribbon and two sheet cakes
27 with matching finish. I then asked Mireya to fill out the custom cake request form. Mireya said that
28 Eileen would do it. As I handed the clipboard with the form to Eileen, I asked, "Which one of you is

1 the groom?” One of the men pointed to Eileen and said, “She is.” I turned to Eileen, who was
2 filling out the custom cake request form. Eileen laughed and said, “I still have trouble remembering
3 to write Rodriguez-Del Rio.” This perplexed me. Ordinarily, people change names after they
4 marry, not before.

5 42. So, I asked where they were getting married. They said, “At the Metro.” I asked
6 some other general questions like “What time are you getting married?” and “Did you get the early
7 or late set-up time at the Metro?” These questions were important because delivering cakes to the
8 Metro is inordinately difficult—they have a very short delivery window. But Mireya and Eileen had
9 difficulty answering these questions. To me, it appeared that they were thinking about these details
10 for the first time.

11 43. At this point, the design consultation had just begun—we hadn’t discussed flavors
12 or fillings or other details. I knew that I could not create custom cakes to celebrate a same-sex
13 wedding, so I assumed the best and told them that I could not make their wedding cake because
14 doing so would violate my Christian beliefs. I offered to connect them with Stephanie at Gimme
15 Some Sugar. I also invited them to stay and sample the cake flavors.

16 44. Suddenly, one of the men startled me by reaching over my shoulder to grab the order
17 form. Then the group abruptly left the shop. I later learned the two men had signed up for a cake
18 tasting at a separate time, and that Mireya and Eileen had been legally married since December 26
19 2016, nine months before, but were planning a delayed traditional wedding ceremony and reception.

20 AFTERMATH: NEWS FRENZY AND CRIMINAL HARASSMENT

21 45. The cake tasting with Eileen and Mireya began shortly after 1:00 p.m., and lasted five
22 to seven minutes. Shortly after leaving Tastries Bakery, Eileen posted on Facebook. This began a
23 social media storm that went viral. My business was engulfed in negative Facebook and Yelp reviews
24 along with a call to action by local LGBT advocate Whitney Weddell. Tastries social media pages
25 were under siege by vicious written attacks on my character and about the bakery. The bakery was
26 also inundated with malicious emails and phone calls that included pornographic images and threats
27 of violence. A collection of hate mail we received is attached as **Exhibit E**.

28 ///

1 46. Within a few hours of the Eileen's Facebook posting, we also began receiving calls
2 from numerous media outlets, demanding statements and interviews. Reporters swarmed the
3 Tastries Bakery parking lot and began interviewing customers.

4 47. In one incident, a man called Tastries Bakery to order a sheet cake. He specified that
5 he wanted the caking frosting to be a specific picture. The man told the Tastries employee, an 18-
6 year-old girl, that he had just emailed the picture. He also told the employee that he wanted her to
7 stay on the line while she opened the picture so he could tell her how he wanted it placed on the
8 cake. The email arrived, and the employee opened the attached image. To her horror, it was a
9 photograph of two naked men engaged in a pornographic act. The young woman screamed; the
10 caller burst out laughing. Another employee rushed to her side, and the two girls frantically tried to
11 delete the image. But the image expanded to full screen, and the only way to remove it was to
12 print it.

13 48. In another example, an anonymous man would call the bakery incessantly
14 threatening violence. The first time the man had called, my female employees were so distraught
15 that they fled to the back of the bakery, sobbing and shaking. The threats of violence became so
16 pervasive and extreme that I had to call the police. When the police arrived at the bakery, the phone
17 calls immediately stopped. The police officer stayed for approximately thirty minutes. During that
18 time, the man did not call. But as soon as the officer left, the man called again—and again. I then
19 realized in terror that I and my employees were being watched. Our tormentor had been lying in wait
20 until the police had left.

21 49. The chronic phone, email and social media harassment lasted for three months.
22 They start up again every time Tastries Bakery is mentioned in the news. After these events, we lost
23 many employees due to the threats and hateful comments.

24 50. The threats of harassment led to actual violence. My car was broken into and an
25 employee was assaulted in back of the bakery by an individual who mentioned this case during the
26 attack. Attached as **Exhibit F** are portions of my deposition where I describe these criminal acts.
27 They were designated confidential under the protective order, my attorneys are submitting that
28 exhibit under seal, and I request that the court maintain the seal to protect the employee's privacy.

1 51. I later learned that other wedding professionals came forward to offer services free of
2 charge for Mireya and Eileen's celebration, including a baker that provided a free wedding cake
3 along with cake cutting services.

4 52. Tastries will suffer significant harm if the Court issues an order that requires
5 Tastries to either accept same-sex wedding cake orders or to stop taking wedding cake orders
6 altogether. Wedding services account for 25-30% of Tastries' sales revenue with many customer
7 relationships that follow-on from the initial wedding order (baby showers, birthdays, anniversaries,
8 etc.). Should Tastries stop selling wedding cakes, it would likely become insolvent and be forced to
9 close.

10 I declare under penalty of perjury under the laws of the United States and the State of
11 California that the foregoing is true and correct. Executed this 8th day of September 2021, at
12 Bakersfield, California.

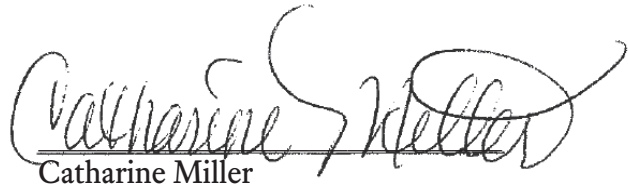
13
14 
Catharine Miller

EXHIBIT A



Design Standards

Is it lovely, praiseworthy, or of good report?

Tastries provides custom designs that are
Creative, Uplifting, Inspirational and Affirming
prepared especially for you as a
Centerpiece to your Celebration

All custom orders must follow Tastries Design Standards:

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

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

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

**Our designers are ready to help you explore
the many design options that we can offer at Tastries!**

*"... whatever is true, whatever is noble, whatever is right,
whatever is pure, whatever is lovely, whatever is of good report,
if anything is virtuous or praiseworthy, think about these things." Phil 4:8*



Standards of Service

Is it lovely, praiseworthy, or of good report?

Tastries provides custom designs that are
Creative, Uplifting, Inspirational and Affirming
prepared especially for you as a
Centerpiece to your Celebration

All custom orders must follow Tastries Standards of Service:

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

We do not accept requests that do **not** meet Tastries Standards of Service, including but not limited to designs or an intended purpose based on the following:

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

**Our designers are ready to help you explore
the many design options that we can offer at Tastries!**

*"... whatever is true, whatever is noble, whatever is right,
whatever is pure, whatever is lovely, whatever is of good report,
if anything is virtuous or praiseworthy, think about these things." Phil 4:8*

Tastries

bakery · boutique · events
Design Standards

Is it lovely, praiseworthy, or of good report?

Is this design based on godly themes such as the idea of peace, freedom, kindness, love, respect, happiness, joy, goodness or does the design bring to mind feelings of fear, obsession, sadness, and bondage? Our cakes are a reflection of our business and speak volumes when sitting center stage.

All cakes have to meet the Tastries Design Standards:

- Look as good as it tastes, and taste as good as it looks ☺
- Beautiful and balanced: size is proportional to design
- Complimentary colors: color palettes are complimentary; work with design
- Appropriate design complimenting theme of celebration
- Themes that are positive, uplifting and in line with the intent of a celebration of someone or something.
- We prefer to make cakes that would be rated PG or G

Cakes that will not meet Tastries Design Standards:

- No cake or cookies depicting marijuana or any other drugs with the exception of nurse or doctor appreciation or medical field related gifts.
- No cake or cookies depicting alcohol or drunkenness.
- No cake or cookies depicting anything derogatory.
- No cake or cookies depicting witches, ghosts, satanic or demonic representations or gore.
- Wedding cakes must not contradict God's sacrament of marriage between a man and a woman.

Our designers are happy to work with you to design a custom cake that meets our criteria for what we are able to offer at Tastries!

Philippians 4:8 says, "... whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report; if there be any virtue, and if there be any praise, think on these things."

Thank you,
Cathy

PS. If we are unable to meet your design needs, we can refer you to several other bakers and bakeries in town.



RA.0067

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EXHIBIT B

SUBMITTED UNDER SEAL

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RA.0069

EXHIBIT C

Bride



Lasstries

bakery · boutique · events

Groom



Some of our traditions and rituals are so old we have forgotten the reasons behind them. Ritual and traditions, though, are an important part of every culture. The wedding ceremony itself is one of our culture's oldest and most significant rituals. The sacrament of marriage was ordained by God and represents the depth of love God has for each of us. "As a bridegroom rejoices over his bride, so will your God rejoice over you." Is 62:5 Taking vows, making public declarations, and serving your guests and each other are all important parts of our culture's wedding ritual. You will spend a lot of time and money preparing to perform these rituals. Understanding the meaning behind each one will make your wedding day even that much more meaningful and memorable for both of you.



The Wedding Cake



Many engaged couples spend hours searching for the right cake for their special celebration. But, do you know that as we enjoy the variety of wedding cakes available to us now, these cakes have a long deep history? The number of tiers, the color of the cake, the cake cutting and the existence of wedding cakes comes from a carefully planned longstanding tradition dating back to Roman and Medieval times. For centuries The Wedding Cake has often been the centerpiece of the wedding, typically sitting in a place of honor at the reception.



Helpful Hint: Think about where you want your cake to be placed? Whatever is directly behind the cake will be in your pictures. Is there enough space for people to gather around as you complete two of the 4 rituals at your reception? What is the lighting surrounding your cake... will your guests be able to see both of you?

Stacking of the Cake

In some cultures the tradition of stacking the cake represented fertility. Couples would stack as many layers as they could as this symbolized the number of children they would have.

"So God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them. And God said to them,

'Be fruitful and multiply and fill the earth.'" Genesis 1:27-28

So how many tiers would you like your wedding cake to be? ____ ☺

The Creative Custom Design

It is our desire to create a unique cake that captures your theme, personality, colors and taste blended together in a way that expresses the simplicity of you as a couple. So... What are your favorite 4 flavors of cake? ☺



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The theme of your wedding is the picture you see in your minds eye when you close your eyes and envision one of the most life changing events you will ever have. For some it is simply seeing your future spouse for the first time on your wedding day. For others it is the décor and colors that set the tone and mood for the celebration.

Wedding colors are an important part of setting the theme and tone for your ceremony and reception.

What colors are you thinking about for your wedding? _____

What color would you like your wedding cake to be? _____

Do you know what shape you would like your cake? _____

"Then the LORD God said, 'It is not good that the man should be alone; I will make him a helper fit for him.' ... So the LORD God caused a deep sleep to fall upon the man, and while he slept he took one of his ribs and closed up its place with flesh. And the rib that the LORD God had taken from the man, he made into a woman and brought her to the man." Genesis 2:18-25



If you have a picture of your cake email it to us now at Tastriesbakery@gmail.com and we will print it out and use it for inspiration. If you see a cake in the bakery that you like, let one of the girls at the front desk know and they will take a picture and print it for you.



Making the Magical Cut

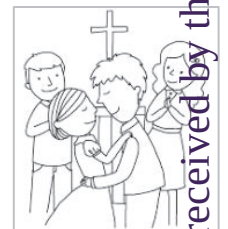
As with all wedding traditions, cutting your first slice of wedding cake together is meant to represent something. Do you know what it represents? Do you know why you have that fancy silver knife and cake server? Do you know why the slicing of the cake is such a popular photo opportunity? Do you plan to smash that first slice of cake into the face of your new spouse? Perhaps once you learn more about this tradition, you'll re-think that plan...



"Be devoted to one another in love. Honor one another above yourselves." Romans 12:10

Cutting your wedding cake together, hands together on the knife, is the first domestic act you will perform together. You have ordered a large, beautiful cake, or maybe a smaller cake with the perfect dessert bar big enough to serve all of your family and friends. Just as you will offer hospitality to friends and family in your new home together, cutting and serving your cake as husband and wife is the first act of hospitality you will perform together. It is a ceremonial representation of the hospitality you will show to others, together as a new family unit.

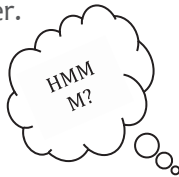
"But at the beginning of creation God 'made them male and female.'
For this reason a man will leave his father and mother and be united to his wife,
and the two will become one flesh.' So they are no longer two, but one.
Therefore what God has joined together, let man not separate." Mark 10:6-9



If you choose to book with us today and "Save the Date", you can put a deposit down and we will "Save your Date!".
If you would prefer to wait and think about it a little longer, we will put your order in the pending file and wait to hear from you. ☺



The second part of the cake cutting tradition involves the husband and wife feeding each other a piece of the cake they've just cut together. This too, is a very important ceremonial act. When the husband takes a piece of cake and feeds his wife, he is showing the world how he will take care of her. It is a ceremonial representation of his intention to provide food for his wife and his family. Likewise, when the wife feeds her husband, she is also ceremonially showing everyone gathered how she will take care of her husband, and provide for him as well. Centuries before, the Romans used bread loaves in place of today's wedding cake. The groom would break the bread loaf over his bride's head hoping for lots of crumbs, showing the many blessings they would have together.



To Smash or not to smash... HMMM? That is the Question?



Maybe consider the hours of wedding preparation, the desire to be the most beautiful or handsome you have ever been in your life, perhaps this should be thought through... but at least it isn't as bad as having bread crumbs all over you!

The ritual has nothing to do with who makes the money or who does the cooking. Feeding each other the first bite of their Wedding Cake is a visual representation of the vows the couple made to each other only moments before the cake was cut. It is your first opportunity to provide for each other – ritually, yes, but no less important.



Helpful Hint: Even if you think you're a pro at cutting cakes—maybe your birthday cake?—here are your special instructions to make the first cut. You wouldn't want to place the knife in the wrong spot and cause your delicate tower to topple over. We recommend you cut from the bottom tier, but at Tastries, when you purchase your custom cake or dessert bar from us (\$350+), you will receive a 6" top tier replica for your One Year Anniversary at a cost of \$25, so you may serve the top if you would like. Traditionally, the bottom tier is used for the Magical Cut but that was so the top tier could be saved. Which tier would you like to cut? Top or Bottom? (Circle one) This might sound obvious, but remember to use the knife, not the server, for the quickest and cleanest cut. Now the groom places his hand over the bride's hand to help her slice the first piece. Now Slide the slice onto the server and place it on a plate. Use the knife to cut the slice into two small pieces. You can each take your pieces from the same plate for the ceremonial feeding.

Smile & Say “Tastries”

Along with the first dance and bouquet toss, this charming tradition of cutting the cake is one of those photo opportunities that graces every wedding album. It provides both a fabulous photo opportunity and symbolizes your first joint task as newlyweds.



Helpful Hint: Before the celebration, be clear and specific on where your cake will be placed. Let us know if you would like a stand for your cake. A cake stand is an inexpensive way to “add a layer” or height to your Wedding Cake. Do you think you are interested in a stand? _____



Many photographers take pictures of the cake being set up, the cake with the guests gathered around, and the moment make your magical cut and feed each other for the first time as man and wife. Giving consideration to the background, lighting and visibility of your wedding cake will make these portraits extend these beautiful memories for a lifetime.



The Groom's Cake

Early American weddings had groom's cakes and many weddings have resurrected the tradition of this cake to showcase the groom's hobbies, individual taste, and even their favorite sports teams. They are usually chocolate to contrast the actual wedding cake, although any flavor or design is acceptable. Recently some newer trends have shown up:



- The Half and Half Wedding cake: Half of the cake is decorated as a beautiful white wedding cake and the other half is a delectable chocolate design or groom themed cake.
- The Grooms cake for the rehearsal dinner: A cake totally designed by the bride (secretly) as a gift to her future husband and a surprise for him the night before their wedding.



The Gift of Hospitality

A wedding reception is all about hospitality. We sometimes forget that wedding guests are just that - guests. They are guests who are witnesses to, and participants in, one of our most sacred traditions. Because they have honored us by playing important roles in our lives, and by agreeing to participate in our wedding ceremony, it is our privilege to honor them in return with hospitality after the ceremony is complete. In the past, the bride and groom would send guests home with a piece of their wedding cake similar to a wedding favor, later guests were given a little memento; something like flower seeds, mints or chocolates wrapped in a little piece of tulle or box with a matching ribbon. That tradition has evolved into treats being taken home. Some couples have chosen a personalized cookie with the bride and grooms initials or their wedding date tied in a little bag with a wedding color ribbon. Some have chosen to have little boxes at a dessert bar with a thank you note for the guests to choose treats to take home with them... all of these are examples of appreciation to your guests for taking the time to spend the day supporting and celebrating you becoming husband and wife. Always remember that the wedding reception is your way of thanking your guests.



"Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh." Genesis 2:24



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EXHIBIT D



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Tastres



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Tastries

RA.0089

CM-0950



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RA.0093

CM-0954



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Clasries

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Tastries

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RA.0105

CM-0966



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Clasires



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Clastries



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Clasres



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Tastries



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Tastries Bakery

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Tastries
Bakery



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Tastries
Bakery



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GB
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Comments



Andrea Amador Navarrete

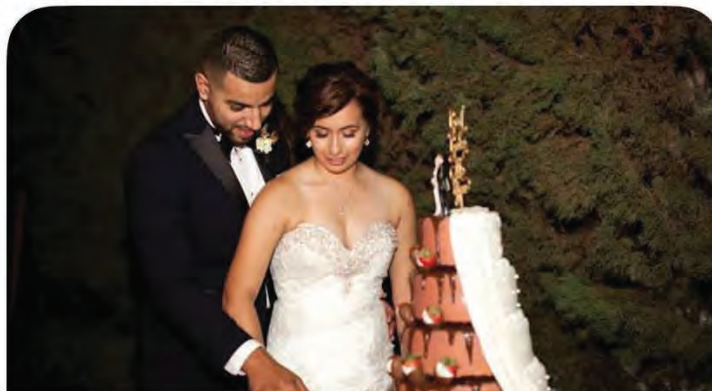
I can't thank you enough for my gorgeous cake. ❤️ It got so many compliments, not just because it represent both my husband and I perfectly but also because it tasted beyond delicious! 😊



3m Like Reply



Andrea Amador Navarrete



Write a comment...







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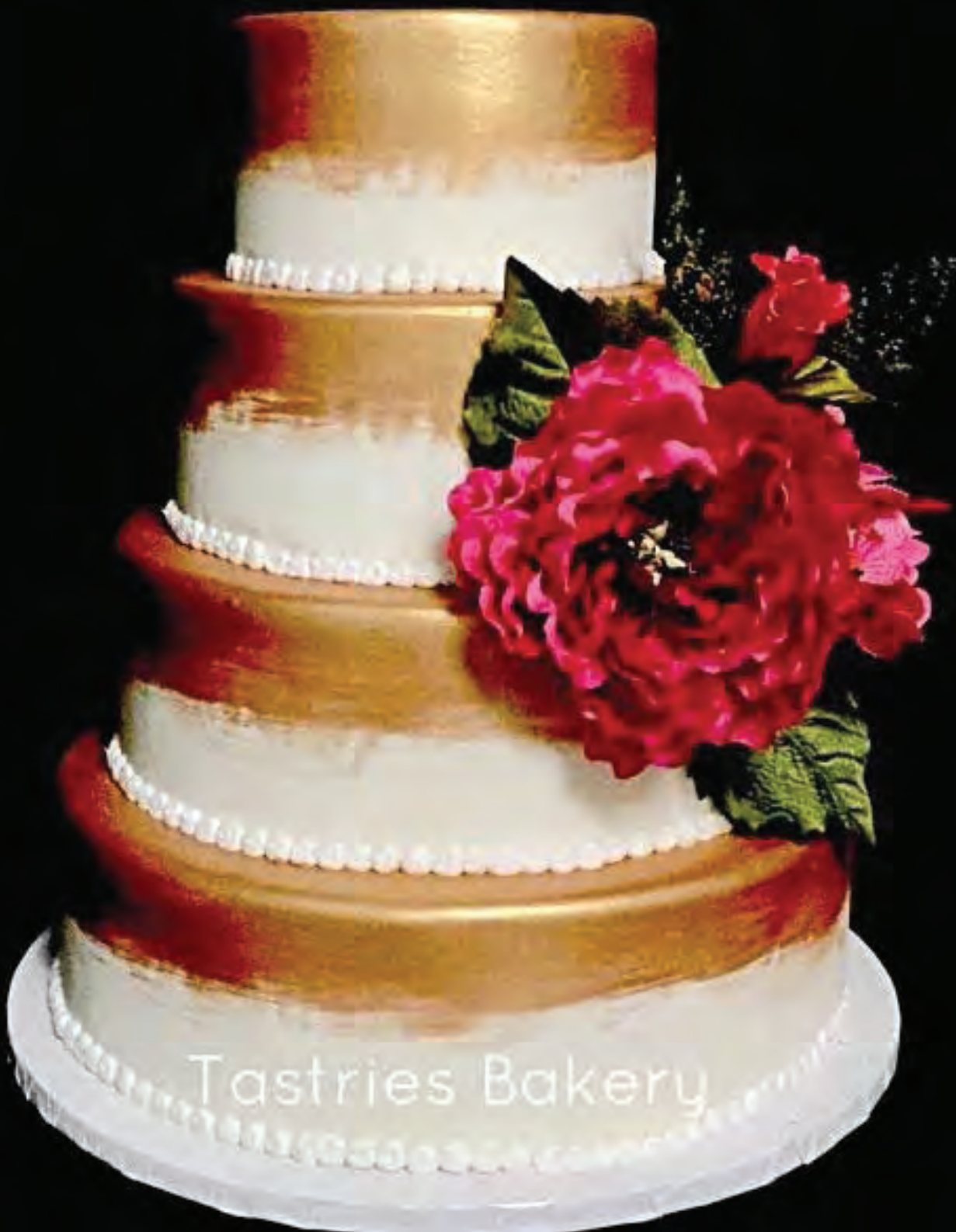




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Tastries
Bakery



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Tastries
Bakery.

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Tastries
Bakery

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Tastries Bakery

Tastries
Bakery



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Tastries Bakery

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Tastries Bakery



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Tastries Bakery

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CM-1056

RA.0195



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RA.0196

CM-1057



Tastries Bakery

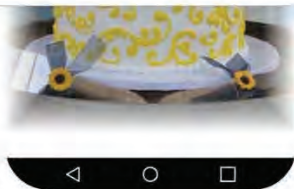
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**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐



2h Like Reply Message

**Caity Geyer**

My favorite photo. :) I absolutely loved this gorgeous snowflake cake you made for me and my husband on our special day!!! It was such a beautiful centerpiece and tasted amazing, too! Thanks **Tastries Bakery, Bakersfield!!!** 🍰



32m Like Reply Message



Write a comment...



**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐

3n Like Reply Message



Write a reply...

**Samantha Garza-Davidson**

Tastries Bakery, Bakersfield my wedding cake was amazing...
Thank you



2h Like Reply Message

**Caity Geyer**

My favorite photo. :) I absolutely loved this gorgeous snowflake cake you made for me and my husband on our special day!!! It was such a beautiful



Write a comment...



**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐

1d Like Reply Message



Write a reply...

**Jaime Reed**

@tasteriesbakery

This cake tasted like heaven,
looked like heaven, and they put
on every single flower I gave
them and it turned out
absolutely stunning!



15h Like Reply Message

**Jaime Reed**

I have so many pictures of



Write a comment...



**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐



Write a reply...

**Andrea Amador Navarrete**

I can't thank you enough for my gorgeous cake. ❤️ It got so many compliments, not just because it represent both my husband and I perfectly but also because it tasted beyond delicious! 😊



1d Like Reply Message

**Andrea Amador Navarrete**

Write a comment...



**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐

**Virginia Fisher**

Loved our wedding cake and have been going to **Tastries Bakery, Bakersfield** ever since!



1d Like Reply Message

**Virginia Fisher**

Write a comment...



**Tastries Bakery, Bakersfield**

Yesterday at 8:00 AM • 🌐

1d Like Reply Message

**Ladyne Blu**

1d Like Reply Message

**Ladyne Blu**

1d Like Reply Message



Write a comment...





Tastries Bakery, Bakersfield



Yesterday at 8:00 AM • 🌐



Ladyne Blu

Tastries Bakery, Bakersfield



1d Like Reply Message



Ladyne Blu



1d Like Reply Message



Write a comment...







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RA.0208

CM-1069



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Tastries



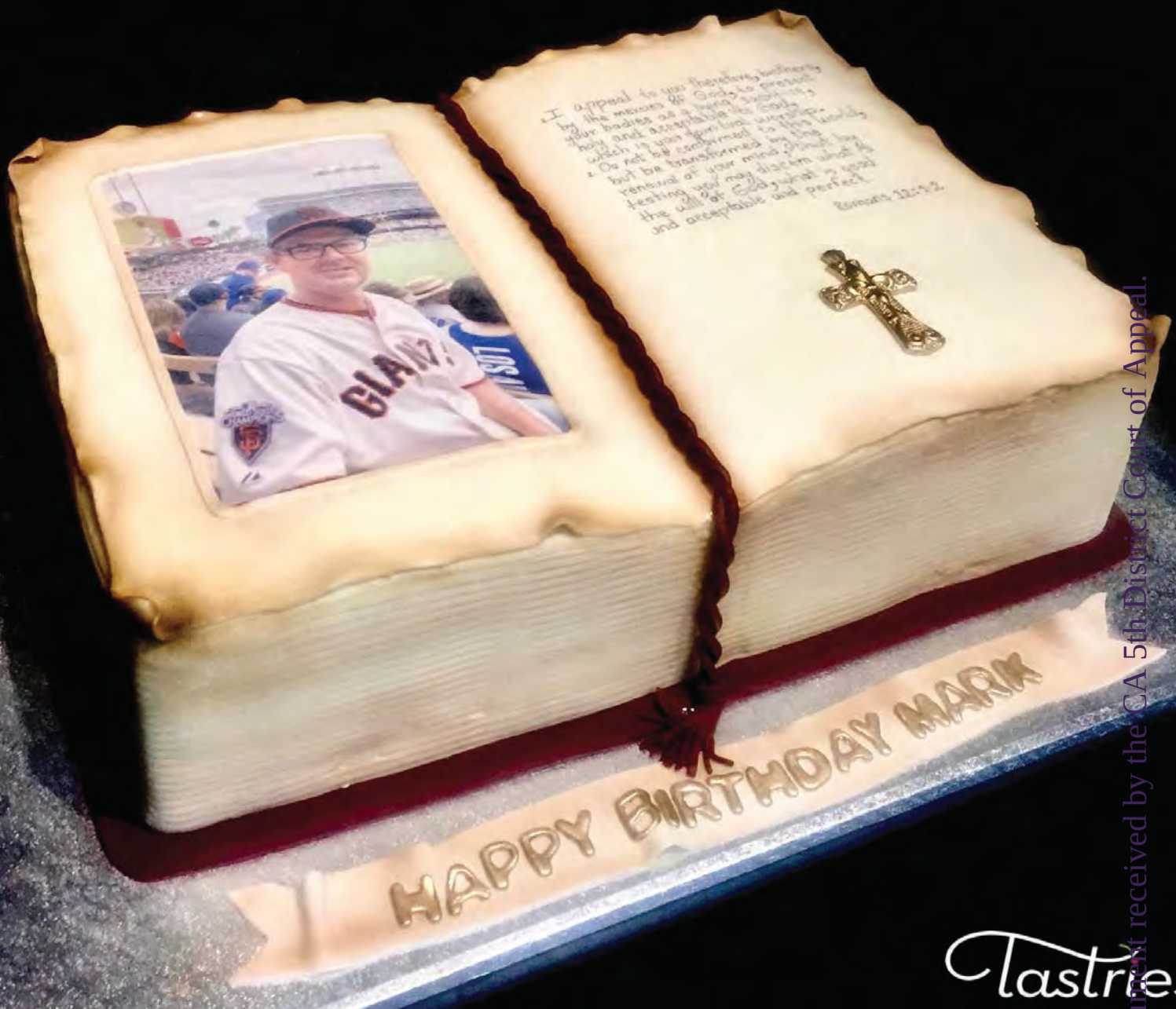
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RA.0212

CM-1073



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Tastries

1. I appeal to you therefore, brothers,
by the mercies of God, to present
your bodies as a living sacrifice,
holy and acceptable to God,
which is your spiritual worship.
2. Do not be conformed to this world,
but be transformed by the
renewal of your mind, that by
testing you may discern what is
the will of God, what is good
and acceptable and perfect.

Romans 12:1-2



LasTries

EXHIBIT E



Serenity H.

28 2 1

You pretty much fucked yourselves by being nazi bigots. Not in my town you don't! Turn away gay couples who were ready and willing to give you their hard earned money, then I see you take down your Facebook page instead of handling it head on. Cowardly and bigoted. Soon out of business.

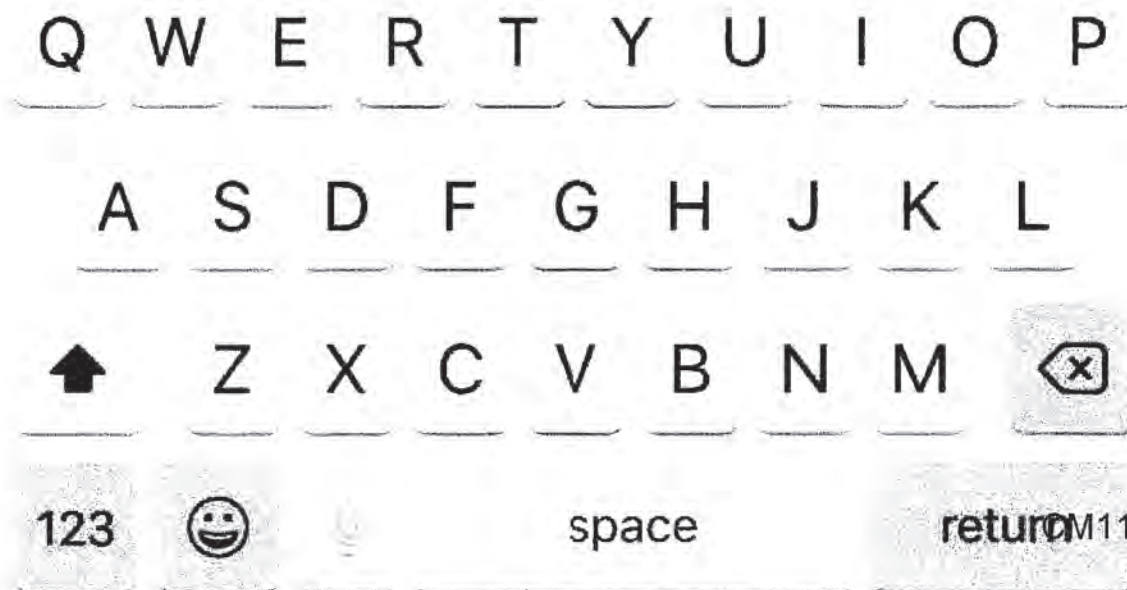
Aug 23, 2017, 3:26 PM

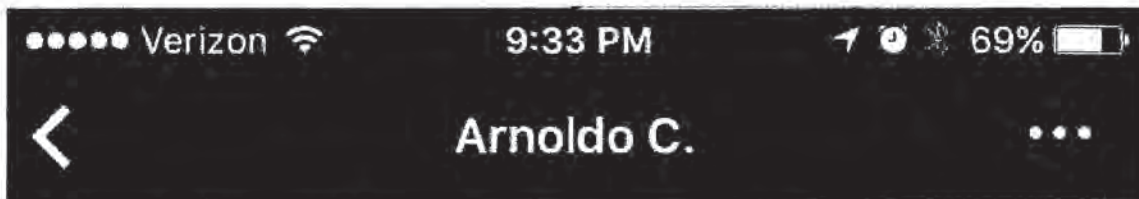
Replied outside of Yelp? Mark this as replied



Write a response...

Send





Arnoldo C.

👤 0 📌 1 📷 0

Not currently recommended

This review is not currently recommended, and its rating is not factored into this business's overall star rating. [Learn more](#)

Aug 26, 2017, 9:13 PM

It was extremely hard to place an order. She kept insisting that she will not bake any cake for any groups of people that she, as a loving Christian, hates. After I finally got my order of cookies it turned out they were bad. Gave all my friends and I food poisoning. Our toilet was clogged for a week because of her. Just found out her secret ingredients are bigotry, ignorance and hatred. I would recommend you eat dirt rather than anything from here.

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CM1125

RA.0218



Mary Tibbetts

Big Mistake....HUGE!!! ASS HATS!!

Yesterday at 1:19 PM · Like · Reply · 2



Sam Salazar

Exactly, **Mary!** Because my fat ass eats a lot of pastries! 🍰 she could have made a killing off me.

Yesterday at 1:20 PM · Like · Reply · 12



Mary Tibbetts

That woman has a stick up her ass anyway. Bad career move. I think you need to get the word out. Everyone post it on Facebook. Sorry that happened. And sorry some people suck!!

Yesterday at 1:25 PM · Like · Reply · 1



Write a reply...



Mathew Sullivan

Fuck them. They're about to feel the wrath.



Write a comment...



CM1135



Review



Enkel Brintrup reviewed **Tastries Bakery, Bakersfield** —

Saturday at 2:49 PM ·

Simple... Bakersfield + Illiteracy = Biggot
There's a reason people who think move away from this intellectual spot.

You CAN get wedding cakes made here, as long as you fuck the right holes, and the shop owner tells what those are.

So far, they include heterosexual holes, but with their brand of Christianity, I'd be checking their computers for child porn.



Comment as Tastri...



Q W E R T Y U I O P

A S D F G H J K L



Z

X

C

V

B

N

M



123



space

return

Recent Recommended Reviews



Mara K.

2 days ago

↓ 87 📱 15 📷 2

A local gay couple was refused service. This is illegal. I refuse to support a company that treats our community this way. #boycotttastriesbakery



Danielle H.

2 days ago

↓ 2 📱 16 📷 0

Beware of Discrimination! This place is despicable. They deserve 0 stars. This place does not deserve business and should realize they can not treat peo...



Karmel D.

3 days ago

↓ 6 📱 35 📷 0

Great, so you'll make me a cake for my hetero wedding, but my LGBT friends can't get cakes made by you. Fuck you. I'm a better baker than you anyw...



Frankfurt A.

3 days ago

↓ 91 📱 1 📷 0

What a waste of money! I honestly think I could have gotten better macarons at a wal mart...



Home



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Activity



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EM1258

👤 27

Done



Ellie Sivesind



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media.tenor.co

20 minutes ago · Like · 1 · Reply · More



James Kopp



media1.giphy.com

media1.giphy.com

15 minutes ago · Like · 1 · Reply · More



Michael Mejia

If you aren't spilling that SCALDING HOT tea on this New Testament Cake
Withholding ho, I mean the inside inside scoop, pap smear with an ice cream scoop inside scoop, I'm gonna make a video about you and your lies.

12 minutes ago · Like · 2 · Reply · More



Michael Mejia



media.tenor.co

media.tenor.co

7 minutes ago · Like · 1 · Reply · More



Write a comment...

More

CM1263

Kourtney

0 0 0 0

Hi Cathy Miller - Hope you get your ass beat for being a rude judgmental bitch. See where your God is then. And remember people who judge and have hate in their heart will never get through heavens gate. Let me see you in public and see what happens. You'll be smeared just like that icing

Aug 21, 2017, 8:57 PM

Replied outside of Yelp? Mark this as replied

What's your response?

Send

Q W E R T Y U I O P

A S D F G H J K L

↑ Z X C V B N M

123



space

return M1302



Comments

**Jim Blair**

What Christian values you have. NOT!!!
Your hateful, deplorable, fake
christians. There are places in hell for
people like the people that own this
bakery.

2 hours ago · Like ·  2 · Reply · Message

**Patsy Purcell**

why not let GOD decide who ends
up in hell, shall we?

**Jim Blair**

Patsy Purcell WE?! Who is we? If
you support these hateful people
then we do not have the same
God.

1 hour ago · Like · Reply · Message

**Patsy Purcell**

WE....is people other than
yourself!

**Patsy Purcell**

and despite what you think, God
WILL make the final decision!



Comment as Tastrie...



CM1337

4:50



Comments



Like



Comment



Share

653 people reached >

Edit Boost

Organic Reach

182
Paid Reach

15
Post Clicks



Veronica Manzo

Call the number above and tell them what a bunch of shit heads they are, Do not buy anything from this assholes.



Comment as Tastries Bakery...



CM1399

 Back

Reviews



Recent Recommended Reviews



Marina D.

11 1 0

11/11/14

HOMPHOBIC PIECES OF SHITTT fuck youuu, you suckk i hope ur place gets shut down!!!!!!! Fucking cunts!!!



Penny K.

6 82 23

24 hours ago

all the cakes taste like bigotry. HmMMM wonder why



Yaya M.

7 33 33

10/27/14

The fact this bakery is going so low as to refuse service to willing paid customers BASED on their own preferences is horrendous! You don't deserve any service, and for someone with Christian values you sure have your priorities mixed up.



Victoria Z.

2 15 0

13 hours ago

Avoid this place. There are much better options in the area. The owner refuses to sell to same sex couples.



Nearby



Search



Me



Activity



GM1408

More



Comments



4/1 Like Reply Message



Sara Little

Did Jesus refuse to serve loaves and fish to sinners?

2h Like Reply Message



Brett Millar

Still looks like a vagina.



Carmen De León

Taste like shit



Jodi Campbell

Trend alert! Biology isn't a sin. I hope your bakery goes bankrupt.

2h Like Reply



Kurt Runyon

That cake looks as shitty as your ignorant beliefs.



Robert Hardin

I just read an article but you guys denying a same-sex marriage couple you are a sad sad human being

1h Like Reply Message



Comment as Tastries Bakery...





Comments



There is no need.

4h Like Reply Message



Jimmy Fulton

Looks cheap and terrible! 1

4h Like Reply Message



Cody Hatfield

Burn this fucking bakery to the ground.

Bigots don't deserve to feel safe.
Here's hoping you get run out of
business and out of town soon
enough.



Jennifer Anaforian
EQUALITY



2h Like Reply Message



Mary Alice Beck



Comment as Tastries Bakery...

Following

You



jasterioaleksandr

commented:

@kay_marie_moore pray for
her soul for it is rotted 3h



jasterioaleksandr

commented: This is the face
of a rotten soul 3h



doctor.simba started
following you. 3h

Follow



FROWNIES

frownies liked your post. 3h



beautybyvee liked your
post. 3h



angelicadesireemonroe
started following
you. 3h

Follow



jasterioaleksandr

commented: Too gay 3h



jasterioaleksandr

commented: Seems like a
bra 3h

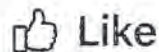
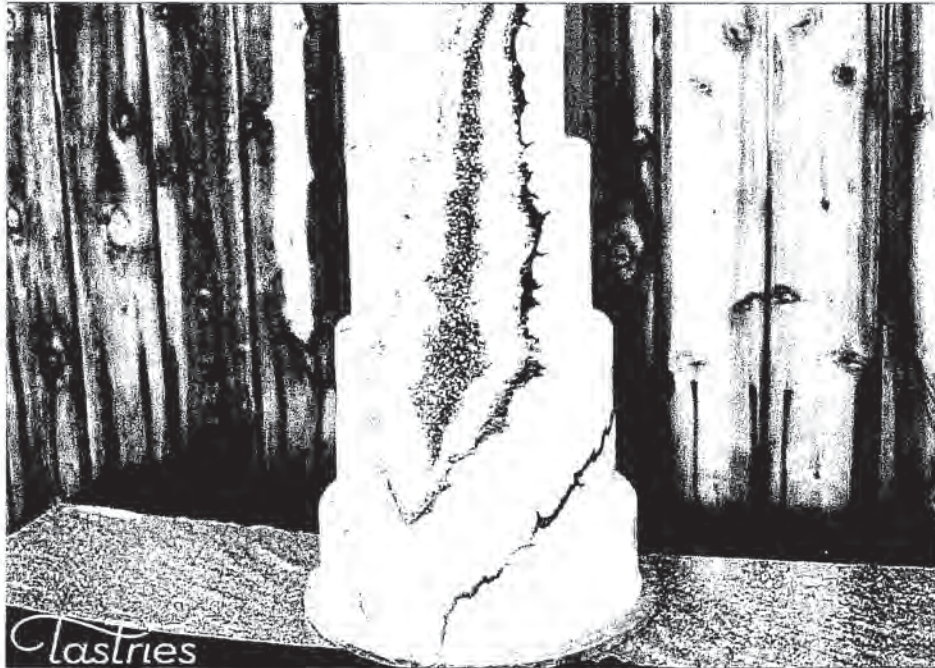


jasterioaleksandr





Comments



Like



Comment



Share

22 people reached >

Boost Post



Scott Leach and 29 others



Laura Lynne Prater

Is that a self portrait of Ms Miller's gigantic rotting vagina? I hope she raptures up soon so the world can be a more tolerant place....



Comment as Tastries Bakery...



15

4

CM1474



Comments

**Veronica Manzo**

Fuck this bitch

Haha wants to sell cakes only to people that live up to her judgment

**Veronica Manzo**

She must think she is jesus 🙄

18h Like Reply Message

**Matt Robinson**

Gotta love the rightwing CHRISTIAN VALUES today... hate, bigotry, pedophile Republican candidates, a adulter president who brags about grabbing PUSSY and pays off porn stars for an affair just after his wife gave birth to Barron.

You are fucken hypricates to call yourselfs Christians

**Johan Bruwer**

More black candles?! Satanists?

14h Like Reply Message

Comment as Tastries Bakery...  

17

5



Comments

**ROBERT BRUCKETT**

You most definitely got that right

54m Like Reply Message

Reply as Tastries Bakery,
Bakersfield**Rhonda Miller**

That's beautiful!

53m Like Reply Message

**Rebecca Murillo**I try to stay away from sugar, but will
but my next cake from your bakery.

47m Like Reply Message



1

**Peter Miller**So you won't bake a cake for the
gays, but you'll make one with a giant
vagina on it. Got it.**Kacie Stetson**This looks like a brown, big and scary
vagina.**Claire Partiot Sarlandie**

VAGINA CAKE !



Comment as Tastries Bakery...





Comments



GIPHY

20m Like Reply



Brett Millar

It looks like a big old vagina.



Ian Reynolds

Looks like someone forgot wipe and left a shit stain on your cake.



Comment as Tastries Bakery...





Photo

**allthatandsprinkles**

39m

just curious what did Cathy miller do ir say? i haven't been following...

**ritalin37**

2h

Cathy motherfucker ignorant white trash cunt

**ritalin37**

2h

@rightonekc I Think She Just Signed Her Death Sentence

**lisa_wanders**

2h

Cathy Miller, God is downright ashamed of you. He is embarrassed at the way you have chosen to lie about his word. He would not want this. He does not want any of what you are doing. You are not a Christian.

**pluto2hot**

2h

Cathy Miller, take your cakes and shove them up your discriminatory morally repugnant ass

**ndndoll**

2h

@rightonekc can't tolerate other people beliefs

**jasterioaleksandr**

2h

I just called this bakery and someone named Rosemary called me a faggot

**barbabu1969**

3h

Add a comment as tastriesba...

CM1487



Comments



Paul Keith

Right?! They will look great at my
GAY WEDDING, dontcha' think?



Reply as Tastries Bakery,
Bakersfield



Reply as Tastries Bakery,
Bakersfield



Eric Elik Garcia
Looks like shit



Cody Hatfield

Bigotted scum like you do not
deserve to feel safe.

Bricks through the window can serve
as excellent reminders that you are
not welcome in our modern society.



Comment as Tastries Bakery...



2



Comments



Amber Jasmine Smith

This is the perfect LESBIAN wedding cake! It totally looks like a VAGINA! It could also work as a WOMEN'S RIGHTS cake too! You did a Fabulous job! Truly inspiring.



Franco Franus

: looks like a big vagina.
congratulations.



Serena Becerra-Carter



6h Like Reply Message



Fred Gred

That looks like my lovers vagina.



Comment as Tastries Bakery...



Comments

**Fred Gred**

I only have lovers with opposite sex organs

6h Like Reply Message



Reply as Tastries Bakery, Bakersfield

**Matt Bjork**

I bet you like stuff like this up your ass

**Matt Bjork**

You're going to get gang raped

2h Like Reply Message

**Jim Smith**

You stooopid stooopid moronic simpleton!

6m Like Reply Message

**Jim Smith**

Sick sick b*****!

5m Like Reply Message

**Jim Smith**

Sharia law is need in the town you live!

1m Like Reply Message



Comment as Tastries Bakery...



Comments



Fred Gred
Bigotaroons 3

6h Like Reply Message



Matt Bjork
Those look disgusting!!!! I hope you
get raped in the ass



Ava Christiansen
 1

58m Like Reply Message



Jess Lopez
You may have won the battle, but
you will lose the war. Bigotry will
never win.

3m Like Reply Message



Dennis Cutts



Comment as Tastries Bakery...



Comments



I LOVE that beautiful cake 🍰

2d Like Reply Message

**Kathy Kearney**

WOW

1d Like Reply Message

**Serena Becerra-Carter**

6h Like Reply Message

**Fred Gred**Looks like my heterosexual female
lovers dripping vaginal juices

6h Like Reply Message

**Jim Smith**There is something wrong with
you mentally! What a sick and
nasty butt hurt bully you really
are!

3m Like Reply Message

Reply as Tastries Bakery,
Bakersfield**Dennis Cutts**

Bigotry is ugly!



Comment as Tastries Bakery...



Comments



Tastries



Like



Comment



Share

530 people reached >

Boost Post



Mary Altee Beale
Beautiful!



1

17h Like Reply Message



Serena Becerra-Carter



6h Like Reply Message



Fred Gred
Reminds me of heterosexual love making. Lots of missionary

6h Like Reply Message



Jackie Acheson-Johnson
Beautiful!

3h Like Reply Message



Matt Bjork
Seen better. Hope you get raped by multiple men.

2h Like Reply Message



Comment as Tastries Bakery...  

8:11

LTE



Matt Bjork



Matt Bjork

11:11 AM local time

Works at Dont Let Daddy Know

4:23 AM



I hope someone violently
rapes you. God knows you
deserve it.



Aa



CM1545

RA.0241

Document received by the CA 5th District Court of Appeal.

7:45

LTE



Comments



1 Share



Like



Comment



Share

535 people reached >

Boost Post



Jacqueline Fae

Honest question: would you sell these to a gay couple?

5h Like Reply Message



Tastries Bakery, Bakersfield
Yes.

4h Like Reply 2



Reply as Tastries Bakery,
Bakersfield



Jeff G Harrington

These cookies look like hatred and bigotry and I'd imagine they have a nasty taste something like vinegar and ass mixed together...



Comment as Tastries Bakery...



Document received by the CA 5th District Court of Appeal.

CM1544



👍 Like

💬 Comment

➦ Share

288 People Reached

Boost Post

👍👍👍 **Tastries Bakery, Bakersfield, Kt Miller and 21 others**



Sue Watts

Not with any product made by bigots! I'll tell you that!



54 mins Like Reply More



Finney Gage

Way to go Cathy! Out here doing the devil's work--spreading hatred and intolerance. You go girl! 🍌🍌🍌



46 mins Like Reply More



Paul Keith

Well. I'm going to "pop the question", and then send my hetero friends into your shop to buy a GAY WEDDING CAKE, for our fabulous GAY WEDDING! isn't that great?! God will know that you made some evil GAY WEDDING CAKES. Better hit those knees extra hard, because you won't even know you're baking GAY WEDDING CAKES.

18 mins Like Reply More

View next comments...

CM1553



Comments

1d Like Reply Message



Rebecca Murillo

I try to stay away from sugar, but will but my next cake from your bakery.

1d Like Reply Message



5



Peter Miller

You won't bake a cake for a gay wedding, but you'll make one with a giant vagina on it?!?!?



Finney Gage

Inspired by the gaping hole Satan put in Cath's cold, dark heart ❤️

2h Like Reply Message



1



Sue Watts

There is faith, then there is the religion of bigotry and hate, which we are seeing a rise in.

2h Like Reply Message



1



Reply as Tastries Bakery, Bakersfield



Paul Keith

That's amazing!!! Perhaps our hetero friends will order that one for our GAY WEDDING!!!

1h Like Reply Message



Ma Shine



Comment as Tastries Bakery, Bake...





Comments



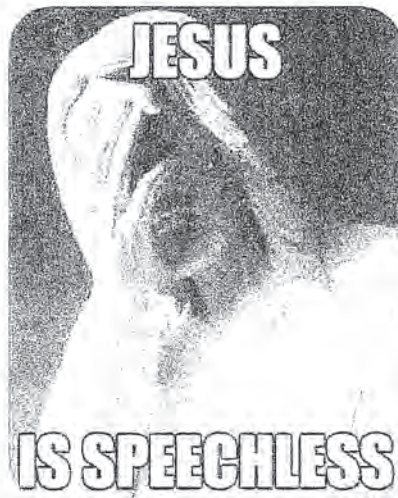
Reply as Tastries Bakery,
Bakersfield



Bill Fink

You look very lesbian like honey.. Us
it jealousy that made you turn
against fellow human beings.. Just
like Jesus taught you.. You are a
mock Christian and God is ashamed
of you.. You are the bitch that will
burn in hell... Pathetic excuse for a
person, a woman and a human
being.. You are no Christian lady,
daughter of Satan..

B😈😈😈😈😈😈



3d Like Reply Message



Tracy Randall

Supporting the Baker 100%....the
haters making comments on this



Comment as Tastries Bakery...



Comments



3d Like Reply Message



Ken Wine

Get off the cross and stop begging for money. This is more about hatred ...sickening. don't hide it behind religion, people hate, not religion. Think about it a-holes

3d Like Reply Message 10



Densel Stringer

dirty bigot whore using the lords name as an excuse to be hateful.. you will burn in hell...

3d Like Reply Message



Jason Cope

If you are in the business of commerce then just bake the damn cake.

3d Like Reply Message



Jennifer Barton Bond

Religion is not an excuse for bigotry. Or is it?

3d Like Reply Message 6



Mike Pearce

Apparently it's their divine right.

2d Like Reply Message 2



Comment as Tastries Bakery...



Comments



Tracy Kawasaki

I pray you go bankrupt. I sincerely wish you homeless and broke. Homophobic bigots should be outcaste and removed from modern society. You deserve to be shown all the compassion that you show to others. Jesus himself will condemn you to hell.

8h Like Reply Message



Tracy Kawasaki

This is why other religions hate Christians, because they are bigoted, sexist and racist.

7h Like Reply Message



Erin Hodgkinson Port

Umm that was a little intense and displayed quite an example of bigotry. Not all Christians are like that. That was a blanket, ignorant statement.

6h Like Reply Message



Tracy Kawasaki

There are enough of them, that that is how they are seen. The stereotype has been created. Even Christians who are not



Comment as Tastries Bakery...  



HOWARD SHORE

Aug 31

to TastriesBakery

**SADLY, YOU FUCKIN'
STUPID BITCH.**

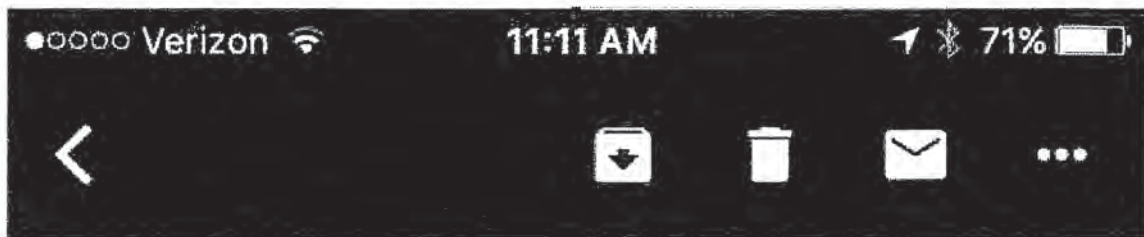
**YOUR BAKERY IS
ABOUT TO FOLD!**

**YOU CAN NOT BE A
RACIST AND
DISCRIMINATE
BASED ON RACE,
RELIGION,
SEXUALITY, CREED.**

RA.0248

CM1872

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**SEXUALITY, CREED,
AGE, DISABILITY,
ETC.**

**YOU ARE ABOUT TO
GET SUED AND IT
WILL BE OVER!**

**PLUS, ALL OF YOUR
CUSTOMERS ARE
NOT GOING BACK TO
YOUR BAKERY
ANYMORE!**

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CM1873

RA.0249



**ALL IN THE NAME OF
YOUR FUCKIN'
RELIGION WHICH
DOES NOT EVEN
DICTATE ON WHO TO
SERVE IN YOUR
BAKERY!**

FUCK YOU

FUCK YOU

FUCK YOU

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CM1874

RA.0250



**IF YOU DID THIS TO
ME, YOU WOULD
NOT SEE THE END OF
IT!**

**AND I WORK FOR
SOCIAL MEDIA!**

**YOU REALLY FUCKED
YOURSELF UP
GOOD!**

IDIOT!

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CM1875

RA.0251



Cathy



Jonathan Caplan

Aug 30

to me

You are un-American, homophobic scum. I will not shop in your bakery anymore. Shame on you. Hiding behind God to be a hateful cunt. FUCK YOU, SKANKY BITCH. You are vile and disgusting. I will be telling everyone I know about you. I hope all of teeth fall out from sugar damage. I hope you die old and alone - that's what you deserve. Jesus is mortified by your judgmental behavior. You are a scum-sucking fuckpig. If I outlive you, I promise to dance on your grave - with as many gay people as I can find. May your dreams be filled with disco balls, Crisco, and men having hot anal sex on a cross. Put that on a cake.

Go with God, you white trash deplorable.



Reply



Forward

CM1876

RA.0252

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RA.0255

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