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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 7 of 8, Volume 7, pp. RA.1530-RA.1813**

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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.

CASE NO.: BCV-18-102633

IMAGED FILE

**DEFENDANTS CATHARINE MILLER
AND TASTRIES BAKERY'S
SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS &
RESPONSE TO PLAINTIFF'S
ADDITIONAL MATERIAL FACTS**

Date: November 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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Defendants Catharine Miller and Tastries Bakery hereby submit this Separate Statement of Undisputed Material Facts, with Response to Plaintiff DFEH's Additional Material Facts, together with references to supporting evidence, in support of their Motion for Summary Judgment or, in the alternative, Summary Adjudication, against Plaintiff Department of Fair Employment & Housing with regard to Plaintiff's Complaint for Violation of the Unruh Civil Rights Act.

DEFENDANTS' UNDISPUTED MATERIAL FACTS¹

ISSUE NO. 1.1: Defendants are entitled to summary adjudication of Plaintiff's Claim for Violation of the Unruh Act because Real Parties in Interest were not denied full and equal services

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 1. On August 26, 2017, at the same time that Defendants declined to make Real Parties' wedding cake, Defendants offered to connect Real Parties with another bakery that could make their cake. <u>Evidence:</u> • Miller Decl., ¶¶ 18, 33–38, 43 • App. Ex. 1, Compl., 2:27–3:4, 8:19–21, 11:10–11, 11:13–15	<u>Undisputed</u> that defendants declined to make Real Parties' wedding cakes. <u>Undisputed</u>, but not material, that defendants offered to connect Real Parties with another bakery because as a matter of law, attempting to send Real Parties to another bakery did not constitute providing full and equal services as required under the Unruh Civil Rights Act (Civ. Code, § 51 [Unruh]). (See Plaintiff DFEH's Opposition to Defendants' Motion for Summary Judgment [DFEH Opposition], § II.A.1.)

¹ In this section of the separate statement, concerning Defendants' material facts and evidence, and Plaintiff DFEH's response, the text is copied verbatim from the prior filings. Thus, "Miller Decl." refers to Defendant Miller's declaration filed in support of summary judgment, dated September 8, 2021. In the next section where Defendants respond to Plaintiff DFEH's additional facts, Defendants have followed the citation format from their opposition papers, such that "1st Miller Decl." refers to Defendant Miller's declaration in opposition to a preliminary injunction dated January 16, 2018; "2d Miller Decl." refers to her declaration in support of summary judgment dated September 8, 2021; and "3d Miller Decl." refers to her declaration in opposition to summary judgment, dated October 5, 2021.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
- App. Ex. 3, DFEH Resp. to Tastries SROGs No. 24 - App. Ex. 14, Mireya Dep., 64:25–65:12² - App. Ex. 15, Samuel Dep., 47:19–49:15, 54:17–55:3 - App. Ex. 16, Patrick Dep., 60:14–62:2	
<u>Undisputed Material Fact</u> 2. If Real Parties had informed Defendants that they rejected the bakery to which they were referred, Defendants would have offered to connect Real Parties with another bakery that could have made their cake. <u>Evidence:</u> - Miller Decl., ¶ 18 - App. Ex. 13, Eileen Dep., 121:14–20 - App. Ex. 18, Johnson Dep., 101:10–13	Undisputed that Real Parties had rejected the bakery to which defendants referred them. (See below, Plaintiff's Additional Undisputed Material Facts [PAUMF] No. 51.) Undisputed, but not material, that defendants assert they would have offered to connect Real Parties with another bakery had Real Parties informed defendants that they rejected the bakery to which they were referred, but this is not a material fact because as a matter of law, connecting Real Parties with another bakery would not constitute providing full and equal services as required under Unruh. (<i>See</i> DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 3. Real Parties actually obtained a wedding cake for their wedding ceremony. <u>Evidence:</u> - App. Ex. 3, DFEH Resp. to Tastries SROGs No. 12 - App. Ex. 4, DFEH Resp. to Tastries RFAs No. 19	Undisputed, but not material, that Real Parties obtained their cakes from another baker, who was not referred by defendants, after defendants refused to take Real Parties' order. This fact is not material because as a matter of law, Real Parties' ability to obtain a wedding cake elsewhere did not cure defendants' refusal to provide full and equal services. (<i>Minton v. Dignity Health</i> (2019) 39 Cal.App.5th 1155, 1165-66.)

² If the witnesses have the same last name (i.e., Mrs. & Mrs. Rodriguez-Del Rio and Mr. & Mr. Salazar), then their first name is used. No disrespect is intended.

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MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE
• App. Ex. 13, Eileen Dep., 121:5–13, 175:13–176:2 & Ex. 631 • App. Ex. 14, Mireya Dep., 150:19–152:13 & Ex. 631, 153:5–154:1 • App. Ex. 17, Criollo Dep., 17:5–18:23, 20:7–11, 21:19–21, 33:10–34:1	

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ISSUE NO. 1.2: Defendants are entitled to summary adjudication of Plaintiff's Claim for Violation of the Unruh Act because Real Parties' sexual orientation did not motivate the denial of service

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 4. Defendants object to celebrating any form of marriage other than a marriage between one man and one woman. <u>Evidence</u> • Miller Decl., ¶¶ 10-11, 19-21, 24 & Ex. A • App. Ex. 1, Compl., 2:27-3:4, 8:8-18, 11:10-11, 11:13-15 • App. Ex. 3, DFEH Resp. to Tastries SROGs Nos. 17, 22, 24	Undisputed, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)
<u>Undisputed Material Fact</u> 5. Defendants' objection to celebrating any form of marriage other than a marriage between one man and one woman was the basis of the denial of service to Real Parties on August 26, 2017. <u>Evidence</u> • Miller Decl., ¶¶ 10-11, 19-21, 24, 43 & Ex. A • App. Ex. 1, Compl., 2:27-3:4, 8:8-18, 11:10-11, 11:13-15 • App. Ex. 3, DFEH Resp. to Tastries SROGs Nos. 17, 22, 24	Undisputed that defendants object to celebrating any form of marriage other than a marriage between one man and one woman, which as a matter of law was discrimination based on sexual orientation when defendants denied service to Real Parties on August 26, 2017. (See DFEH Opposition, § II.A.2; <i>Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez</i> (2010) 561 U.S. 661, 689; <i>In re Marriage Cases</i> (2008) 43 Cal.4th 757, 839-40.)

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• App. Ex. 7, DFEH Resp. to Miller SROGs No. 16 • App. Ex. 9, DFEH Resp. to Miller RFAs No. 27 • App. Ex. 13, Eileen Dep., 115:12-24 • App. Ex. 15, Samuel Dep., 57:7-10 • App. Ex. 16, Patrick Dep., 65:1-5 • App. Ex. 17, Criollo Dep., 88:11-89:7; Errata 89:2 • App. Ex. 18, Johnson Dep., 19:18-20:10, 29:6-30:3, 30:21-31:2, 32:18-34:1, 92:20-93:6, 94:7-16	
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Document received by the CA 5th District Court of Appeal.

ISSUE NO. 2.1: Defendants are entitled to summary adjudication of Plaintiff's Claim for Violation of the Unruh Act due to their affirmative defense of the Free Exercise Clause of the California Constitution

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 6. Defendants have a religious objection to celebrating any form of marriage other than a marriage between one man and one woman. <u>Evidence</u> • Miller Decl., ¶¶ 10-11, 19-21, 24 & Ex. A • App. Ex. 1, Compl., 2:27-3:4, 8:8-18, 11:10-11, 11:13-15 • App. Ex. 4, DFEH Resp. to Tastries' RFA's No. 9 • App. Ex. 9, DFEH Resp. to Millers' RFA's Nos. 8, 9, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26 • App. Ex. 13, Eileen Dep., 72:5-21, 77:4-78:12, 142:5-13 • App. Ex. 14, Mireya Dep., 52:18-53:22 & Ex. 231, 93:8-13, 109:25-110:8, 166:1-7 • App. Ex. 15, Samuel Dep., 47:19-49:15, 98:2-12 • App. Ex. 16, Patrick Dep., 55:14-18, 60:14-62:2, 63:3-12 & Ex. 231 • App. Ex. 17, Criollo Dep., 79:6-80:9	<u>Undisputed</u>, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)

1	App. Ex. 18, Johnson Dep., 23:20–24:2, 27:11–28:8, 32:18–33:7	
3	<u>Undisputed Material Fact</u> 7. The revenue from creating wedding cakes is a substantial portion of Defendants’ bakery business. <u>Evidence:</u> Miller Decl., ¶ 52	Undisputed, but not material, that Miller has declared wedding cake revenues are 25-30% of Tastries’ total revenues. This fact is not material because Tastries can continue selling wedding cakes and comply with Unruh by allowing employees who lack Miller’s religious objections to create wedding cakes for same-sex couples. (DFEH Opposition, at pp. 16-17.) This fact is also not material because “[a]n economic cost ... does not equate to a substantial burden for purposes of the [California Constitution’s] free exercise clause. To the contrary, ‘[i]t is well established that there is no substantial burden placed on an individual’s free exercise of religion where a law or policy [regulating secular conduct] merely ‘operates so as to make the practice of [the individual’s] religious beliefs more expensive.’ [Citations.]” (<i>Smith v. Fair Employment & Housing Com.</i> (1996) 12 Cal.4th 1143, 1171-75; see also PAUMF No. 56, below.)
17	<u>Undisputed Material Fact</u> 8. Without the revenue from making wedding cakes, Defendants’ bakery business is not financially viable. <u>Evidence</u> Miller Decl., ¶ 52	Disputed. (PAUMF No. 56.) This fact is not material because Tastries can continue selling wedding cakes and comply with Unruh by allowing employees who lack Miller’s religious objections to create wedding cakes for same-sex couples. (DFEH Opposition, at pp. 16-17.) This fact is also not material because “[a]n economic cost ... does not equate to a substantial burden for purposes of the [California Constitution’s] free exercise clause. To the contrary, ‘[i]t is well established that there is no substantial burden placed on an individual’s free exercise of religion where a law or policy [regulating secular conduct] merely ‘operates so as to make the practice of [the individual’s] religious beliefs more expensive.’ [Citations.]” (<i>Smith v. Fair Employment & Housing Com.</i> (1996) 12 Cal.4th 1143, 1171-75.)

Undisputed Material Fact

9. On August 26, 2017, at the same time that Defendants declined to make Real Parties' wedding cake, Defendants offered to connect Real Parties with another bakery that could make their cake.

Evidence:

- Miller Decl., ¶¶ 18, 33–38, 43
- App. Ex. 1, Compl., 2:27–3:4, 8:19–21, 11:10–11, 11:13–15
- App. Ex. 3, DFEH Resp. to Tastries SROGs No. 24
- App. Ex. 14, Mireya Dep., 64:25–65:12
- App. Ex. 15, Samuel Dep., 47:19–49:15, 54:17–55:3
- App. Ex. 16, Patrick Dep., 60:14–62:2

Undisputed that defendants declined to make Real Parties' wedding cakes.

Undisputed, but not material, that defendants offered to connect Real Parties with another bakery. Real Parties had already tasted cakes from the bakery defendants recommended and declined to order their wedding cakes from there. (See, below, Plaintiff's Additional Undisputed Material Facts [PAUMF] No. 51.) This fact is also not material because as a matter of law, offering to connect Real Parties with another bakery did not constitute providing full and equal services as required under Unruh. (See DFEH Opposition, § II.A.1.)

Undisputed Material Fact

10. If Real Parties had informed Defendants that they rejected the bakery to which they were referred, Defendants would have offered to connect Real Parties with another bakery that could have made their cake.

Evidence:

- Miller Decl., ¶ 18
- App. Ex. 13, Eileen Dep., 121:14–20
- App. Ex. 18, Johnson Dep., 101:10–13

Undisputed that Real Parties had rejected the bakery to which defendants referred them. (See below, Plaintiff's Additional Undisputed Material Facts [PAUMF] No. 51.)

Undisputed, but not material, that defendants assert they would have offered to connect Real Parties with another bakery had Real Parties informed defendants that they rejected the bakery to which they were referred, but this is not a material fact because as a matter of law, connecting Real Parties with another bakery would not constitute providing full and equal services as required under Unruh. (See DFEH Opposition, § II.A.1.)

Undisputed Material Fact

11. Real Parties actually obtained a wedding cake for their wedding ceremony.

Undisputed, but not material, that Real Parties obtained their cakes from another baker, who was not referred by defendants, after defendants refused to take Real Parties' order. This fact is not material because as a

Evidence:

- App. Ex. 3, DFEH Resp. to Tastries SROGs No. 12
- App. Ex. 4, DFEH Resp. to Tastries RFAs No. 19
- App. Ex. 13, Eileen Dep., 121:5-13, 175:13-176:2 & Ex. 631
- App. Ex. 14, Mireya Dep., 150:19-152:13 & Ex. 631, 153:5-154:1
- App. Ex. 17, Criollo Dep., 17:5-18:23, 20:7-11, 21:19-21, 33:10-34:1

matter of law, Real Parties' ability to obtain a wedding cake elsewhere did not cure defendants' refusal to provide full and equal services. (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1165-66.)

ISSUE NO. 2.2: Defendants are entitled to summary adjudication of Plaintiff's Claim for Violation of the Unruh Act due to their affirmative defense of the Free Exercise Clause of the U.S. Constitution

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 12. Defendants have a religious objection to celebrating any form of marriage other than a marriage between one man and one woman. <u>Evidence</u> • Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A • App. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15 • App. Ex. 4, DFEH Resp. to Tastries' RFA's No. 9 • App. Ex. 9, DFEH Resp. to Millers' RFA's Nos. 8, 9, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26 • App. Ex. 13, Eileen Dep., 72:5–21, 77:4–78:12, 142:5–13 • App. Ex. 14, Mireya Dep., 52:18–53:22 & Ex. 231, 93:8–13, 109:25–110:8, 166:1–7 • App. Ex. 15, Samuel Dep., 47:19–49:15, 98:2–12 • App. Ex. 16, Patrick Dep., 55:14–18, 60:14–62:2, 63:3–12 & Ex. 231 • App. Ex. 17, Criollo Dep., 79:6–80:9	<u>Undisputed</u>, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)

1	App. Ex. 18, Johnson Dep., 23:20–24:2, 27:11–28:8, 32:18–33:7	
3	<u>Undisputed Material Fact</u> 13. If Defendants ceased making all wedding cakes, that would cause a decrease in the bakery’s revenue. <u>Evidence:</u> Miller Decl., ¶ 52	Undisputed, but not material, that Miller has declared wedding cake revenues are 25-30% of Tastries’ total revenues. This fact is not material because Tastries can continue selling wedding cakes and comply with Unruh by allowing employees who lack Miller’s religious objections to create wedding cakes for same sex couples. (DFEH Opposition at pp. 16-17.) This fact is also not material because “[a]n economic cost . . . does not equate to a substantial burden for purposes of the [California Constitution’s] free exercise clause. To the contrary, ‘[i]t is well established that there is no substantial burden placed on an individual’s free exercise of religion where a law or policy [regulating secular conduct] merely ‘operates so as to make the practice of [the individual’s] religious beliefs more expensive.’ [Citations.]” (<i>Smith v. Fair Employment & Housing Com.</i> (1996) 12 Cal.4th 1143, 1171-75.)
16	<u>Undisputed Material Fact</u> 14. During the DFEH’s administrative investigation, and presently, Defendants contended that they objected to sending any message that celebrated any form of marriage except between one man and one woman. <u>Evidence:</u> - Trissell Decl., ¶ 9 - Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A	Undisputed, but not material, because selling blank cakes to the Rodriguez-Del Rios would have sent no message from defendants. (<i>Anderson v. City of Hermosa Beach</i> (9th Cir. 2010) 621 F.3d 1051, 1058 [the U.S. Supreme Court has consistently rejected “the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”].)
25	<u>Undisputed Material Fact</u> 15. The DFEH does not believe that expressive business owners violate the Unruh Act if they decline to create a custom item expressing homophobic or	This purported fact is not a fact. Rather, it states an incomplete hypothetical and calls for speculation regarding the application of Unruh to a scenario not at issue in this case. As such, it is not properly included in a separate statement in support of a motion for summary

1	anti-LGBT messages, but still contends that Defendants violated the Unruh Act.	judgment. (Cal. Rules of Court, rule 3.1350.)
2		This purported fact is not material because Unruh is applied here to regulate the sale or refusal to sell goods and services, not speech. (See DFEH Opposition, § B.)
3	<u>Evidence:</u>	
4	• App. Ex. 9, DFEH Resp. to Miller RFA's No. 4, 22	Unruh prohibits business establishments from denying full and equal goods and services based on a protected characteristic, not a written message. (Civ. Code, § 51.)
5	• App. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
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8	<u>Undisputed Material Fact</u>	<u>This purported fact is not a fact.</u> Rather, it states an incomplete hypothetical and calls for speculation regarding the application of Unruh to a scenario not at issue in this case. As such, it is not properly included in a separate statement in support of a motion for summary judgment. (Cal. Rules of Court, rule 3.1350.)
9	16. The DFEH does not believe that the Unruh Act requires cake artists create custom cakes that they consider offensive, but still contends that Defendants violated the Unruh Act.	
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12	<u>Evidence:</u>	This purported fact is not material because Unruh is applied here to regulate the sale or refusal to sell goods and services, not speech. (See DFEH Opposition, § B.)
13	• App. Ex. 9, DFEH Resp. to Miller RFA's No. 5, 22	Unruh prohibits businesses from denying full and equal goods and services based on a customer's protected characteristics. (Civ. Code, § 51.)
14	• App. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
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18	<u>Undisputed Material Fact</u>	<u>Undisputed</u> , but misleading and not material. This purported fact is not a fact. Rather, it states an incomplete hypothetical and calls for speculation regarding the application of Unruh to a scenario not at issue in this case. As such, it is not properly included in a separate statement in support of a motion for summary judgment. (Cal. Rules of Court, rule 3.1350.)
19	17. The DFEH purports to not use its enforcement authority under the Unruh Act to compel speech, but still contends that Defendants violated the Unruh Act.	
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23	<u>Evidence:</u>	This purported fact is not material because Unruh is applied here to regulate the sale or refusal to sell goods and services, not speech. (See DFEH Opposition, § B.)
24	• App. Ex. 9, DFEH Resp. to Miller RFA's No. 6, 22	Unruh prohibits businesses from denying full and equal goods and services based on a customer's protected characteristics. (Civ.
25	• App. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
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1		Code, § 51.)
2	<u>Undisputed Material Fact</u>	<u>This purported fact is not a fact.</u> Rather, it
3	18. The DFEH believes that the Unruh Act	states an incomplete hypothetical and calls for
4	does not require businesses to create	speculation regarding the application of Unruh
5	custom cakes that express messages	to a scenario not at issue in this case. As such,
6	they would not communicate for	it is not properly included in a separate
7	anyone, but still contends that	statement in support of a motion for summary
8	Defendants violated the Unruh Act.	judgment. (Cal. Rules of Court, rule 3.1350.)
9	<u>Evidence:</u>	This purported fact is not material because
10	• App. Ex. 9, DFEH Resp. to Miller	Unruh is applied here to regulate the sale or
11	RFA's No. 7, 22	refusal to sell goods and services, not speech.
12	• App. Ex. 6, DFEH Resp. to Miller	(See DFEH Opposition, § B.)
13	FROGs No. 14.1	Unruh prohibits businesses from denying full
14		and equal goods and services based on a
15		customer's protected characteristics. (Civ.
16		Code, § 51.)
17	<u>Undisputed Material Fact</u>	<u>Undisputed</u> , but not material. (DFEH
18	19. Defendants responses to the DFEH's	Opposition, at pp. 13, n.6.)
19	administrative interrogatories were due	
20	on December 15, 2017. Nevertheless,	
21	without waiting to hear from	
22	Defendants, on December 13, 2021, the	
23	DFEH initiated a petition for	
24	preliminary injunctive relief with Case	
25	No. BCV-17-102855. The next day, the	
26	DFEH sought a temporary restraining	
27	order and an order to show cause re:	
28	preliminary injunction.	
	<u>Evidence:</u>	
	• Trissell Decl., ¶¶ 2-6	
	<u>Undisputed Material Fact</u>	<u>Undisputed</u> , but not material. (DFEH
	20. The DFEH brought the prior action	Opposition, at pp. 13, n.6.)
	with Case No. BCV-17-102855 less than	
	10 days after oral argument in the	
	Supreme Court case <i>Masterpiece</i>	
	<i>Cakeshop, Ltd. v. Colorado Civil Rights</i>	
	<i>Com'n</i> (2018) 138 S.Ct. 1719	

1	<u>Evidence:</u>	
2	Trissell Decl., ¶ 7	
3	<u>Undisputed Material Fact</u>	Disputed as to “aggressive litigation tactics,”
4	21. When the court in the prior action set	which is a vague and argumentative statement
5	an OSC re: preliminary injunction for	of opinion.
6	February 2, 2021, as part of its	Undisputed , but not material, as to DFEH
7	aggressive litigation tactics, on January	filing a motion for preliminary injunction.
8	10, 2018, the DFEH filed a revised	(DFEH Opposition, at pp. 13, n.6.)
9	memorandum in support of their	
10	motion for a preliminary injunction	
11	motion.	
12	<u>Evidence:</u>	
13	Trissell Decl., ¶ 8	
14	<u>Undisputed Material Fact</u>	Undisputed , but misleading and not material.
15	22. During a discovery hearing in this case,	Counsel’s next sentence was “But, again, <i>there</i>
16	in response to Defendants argument	<i>is no evidence of that here</i> , and it doesn't change
17	that the Real Parties in Interest may	anything.” (Trissell Decl., ¶ 13 & Ex. A [italics
18	have been primarily looking for a	added].)
19	lawsuit, counsel for the DFEH	
20	responded with the following statement.	
21	“Plaintiffs have looked for cases to push	
22	the law forever. Rosa Parks was not just	
23	happened to be taking the bus that day.	
24	[sic] So whether or not there is	
25	knowledge going in there does not	
26	change the fact that there was a	
27	violation.”	
28	<u>Evidence:</u>	
	Trissell Decl., ¶ 13 & Ex. A	
	<u>Undisputed Material Fact</u>	Undisputed that defendants declined to make
	23. On August 26, 2017, at the same time	Real Parties’ wedding cakes.
	that Defendants declined to make Real	Undisputed , but not material, that defendants
	Parties’ wedding cake, Defendants	offered to connect Real Parties with another
	offered to connect Real Parties with	bakery. Real Parties had already tasted cakes
	another bakery that could make their	from the bakery defendants recommended and
	cake.	declined to order their wedding cakes from
		there. (See, below, Plaintiff’s Additional

<u>Evidence:</u> • Miller Decl., ¶¶ 18, 33–38, 43 • App. Ex. 1, Compl., 2:27–3:4, 8:19–21, 11:10–11, 11:13–15 • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 24 • App. Ex. 14, Mireya Dep., 64:25–65:12 • App. Ex. 15, Samuel Dep., 47:19–49:15, 54:17–55:3 • App. Ex. 16, Patrick Dep., 60:14–62:2	Undisputed Material Facts [PAUMF] No. 51.) This fact is also not material because as a matter of law, offering to connect Real Parties with another bakery did not constitute providing full and equal services as required under Unruh. (<i>See</i> DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 24. If Real Parties had informed Defendants that they rejected the bakery to which they were referred, Defendants would have offered to connect Real Parties with another bakery that could have made their cake. <u>Evidence:</u> • Miller Decl., ¶ 18 • App. Ex. 13, Eileen Dep., 121:14–20 • App. Ex. 18, Johnson Dep., 101:10–13	Undisputed that Real Parties had rejected the bakery to which defendants referred them. (See below, Plaintiff’s Additional Undisputed Material Facts [PAUMF] No. 51.) Undisputed, but not material, that defendants assert they would have offered to connect Real Parties with another bakery had Real Parties informed defendants that they rejected the bakery to which they were referred, but this is not a material fact because as a matter of law, connecting Real Parties with another bakery would not constitute providing full and equal services as required under Unruh. (<i>See</i> DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 25. Real Parties actually obtained a wedding cake for their wedding ceremony. <u>Evidence:</u> • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 12 • App. Ex. 4, DFEH Resp. to Tastries RFAs No. 19	Undisputed, but not material, that Real Parties obtained their cakes from another baker, who was not referred by defendants, after defendants refused to take Real Parties’ order. This fact is not material because as a matter of law, Real Parties’ ability to obtain a wedding cake elsewhere did not cure defendants’ refusal to provide full and equal services. (<i>Minton v. Dignity Health</i> (2019) 39 Cal.App.5th 1155, 1165–66.)

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• App. Ex. 13, Eileen Dep., 121:5-13, 175:13-176:2 & Ex. 631 • App. Ex. 14, Mireya Dep., 150:19-152:13 & Ex. 631, 153:5-154:1 • App. Ex. 17, Criollo Dep., 17:5-18:23, 20:7-11, 21:19-21, 33:10-34:1	
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Document received by the CA 5th District Court of Appeal.

ISSUE NO. 2.3: Defendants are entitled to summary adjudication of Plaintiff's Claim for Violation of the Unruh Act due to their affirmative defense of the Free Speech Clause of the U.S. Constitution

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 26. Defendants object to celebrating any form of marriage other than a marriage between one man and one woman. <u>Evidence</u> • Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A • App. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15 • App. Ex. 3, DFEH Resp. to Tastries SROGs Nos. 17, 22, 24	Undisputed, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)
<u>Undisputed Material Fact</u> 27. The DFEH seeks to compel Defendants to provide wedding cakes for same-sex weddings if they do so for traditional, opposite-sex weddings. <u>Evidence</u> • App. Ex. 1, Compl., Prayer ¶ 2 • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 23	Defendants assert a legal contention, not a fact. DFEH seeks an order requiring defendants to comply with Unruh, which prohibits business establishments from denying full and equal goods and services based on protected characteristics. (Civ. Code, § 51.)
<u>Undisputed Material Fact</u> 28. All preordered wedding cakes made by Defendants are custom cakes. <u>Evidence</u> • Miller Decl., ¶ 25	Undisputed that Tastries refers to all pre-ordered cakes as "custom" cakes, even if such pre-ordered cakes are exactly the same as a pre-made "case" cake.

- App. Ex. 1, Compl., 5:17-18 - App. Ex. 17, Criollo Dep., 64:21-65:6	
<u>Undisputed Material Fact</u> 29. Ordering a custom wedding cake from Defendants involves a collaborative process between Defendants and the client in selecting the number of tiers, the size, the shape, the cake flavors, the filling flavors, the types of frosting, and other options. <u>Evidence</u> - Miller Decl., ¶¶ 25-27, 29 & Ex. B - App. Ex. 1, Compl., 5:23-26, 6:20-21	Undisputed that pre-ordering a wedding cake involves a Tastries representative obtaining information about a client's preferences regarding size, shape, flavors, types of frosting, and other options.
<u>Undisputed Material Fact</u> 30. The baking aspect of making a wedding cake is artistic. <u>Evidence</u> App. Ex. 18, Johnson Dep., 85:16-86:3	Disputed as vague ("artistic"), lacking evidentiary support, and calls for a legal conclusion. (See Defendants' App. Ex. 18, Johnson Dep., 85:16-24: [16· . . .Q· ·Would you separate sort of baking from the 17· ·decorating as separate components of the process? 18· . . .A· ·I would say yes. 19· . . .Q· ·So the baking, that's when you talk about 20· ·whether it's made from scratch or whether it's boxed, 21· ·but then the decorating part is more of the art 22· ·component? 23· . . .A· ·I would say yes.· But also the tasting of the 24· ·cake can be an art if it's pursued.]·)
<u>Undisputed Material Fact</u> 31. The decorating aspect of making a wedding cake is artistic. <u>Evidence</u>	Undisputed, but vague as to the meaning of "artistic," which, as stated, is an expression of opinion and, to the extent that defendants attempt to invoke the concept of "art" for purposes of the Frist Amendment analysis, a legal conclusion. Further, this purported fact is not material because an "artistic" cake is not

• Miller Decl., ¶ 25 & Ex. D • App. Ex. 14, Mireya Dep., 175:14–177:24 & Ex. 230 • App. Ex. 18, Johnson Dep., 64:1–9 • App. Ex. 17, Criollo Dep., 47:16–49:7, 49:22–50:22, 77:4–78:2, 112:1–18; Errata 49:6–7, 77:8–9, 78:2	necessarily “art” for free speech purposes. Neither the U.S. Supreme Court nor the California Supreme Court has held that wedding cakes are “art” for free speech purposes. (DFEH Opposition, §II.B.3.)
<u>Undisputed Material Fact</u> 32. Even simple, white, three-tiered wedding cakes such as Real Parties had at their wedding are artistic and beautiful. <u>Evidence</u> • App. Ex. 14, Mireya Dep., 153:5–17 • App. Ex. 16, Patrick Dep., 99:7–13 • App. Ex. 17, Criollo Dep., 47:16–49:7, 49:22–50:22, 77:4–78:2, 112:1–18; Errata 49:6–7, 77:8–9, 78:2 • App. Ex. 18, Johnson Dep., 64:1–9 • App. Ex. 631	<u>Undisputed</u> but vague as to “artistic,” which, as stated, is an expression of opinion and, to the extent that defendants attempt to invoke the concept of “art” for purposes of the Frist Amendment analysis, a legal conclusion. Further, this purported fact is not material because an “artistic” cake is not necessarily “art” for free speech purposes. Neither the U.S. Supreme Court nor the California Supreme Court has held that wedding cakes are “art” for free speech purposes. (DFEH Opposition, §II.B.3.)
<u>Undisputed Material Fact</u> 33. When Defendants design and create custom wedding cakes, they intend to express a message that is celebratory and that identifies the union of two individuals as a marriage. <u>Evidence</u> • Miller Decl., ¶ 19 • App. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15	<u>Undisputed</u>, but not material, because defendants would have sent no message by selling blank cakes to the Rodriguez-Del Rios. (<i>Anderson v. City of Hermosa Beach</i> (9th Cir. 2010) 621 F.3d 1051, 1058 [the U.S. Supreme Court has consistently rejected “the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”].)

Undisputed Material Fact

34. The reasonable observer of Defendants' custom wedding cakes would identify them as expressing a message that is celebratory and that identifies the union of two individuals as a marriage.

Evidence

- Miller Decl., ¶¶ 20–23, 28 & Ex. C
- App. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13, –15
- App. Ex. 3, DFEH Resp. to Tastries SROGs No. 14
- App. Ex. 13, Eileen Dep., 90:18–91:7, 171:6–173:9 & Exs. 627A, 627B
- App. Ex. 14, Mireya Dep., 78:2–7:12 & Ex. 527, 99:9–100:16, 147:1–148:17 & Exs. 627A, 627B
- App. Ex. 17, Criollo Dep., 85:5–86:6

This is a matter of law. (*Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006) 547 U.S. 47, 66.)

To the extent defendants assert that this is a matter of fact, it is unsupported by the evidence cited. Because defendants have failed to offer supporting evidence, they have failed to shift the burden to plaintiff. (*E.g.*, (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 738.)

Undisputed Material Fact

35. Defendants have a religious objection to celebrating any form of marriage other than a marriage between one man and one woman.

Evidence

- Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A
- App. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15
- App. Ex. 4, DFEH Resp. to Tastries' RFA's No. 9
- App. Ex. 9, DFEH Resp. to Millers' RFA's Nos. 8, 9, 13, 14, 15, 16, 17, 21,

Undisputed, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)

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22, 23, 24, 25, 26 • App. Ex. 13, Eileen Dep., 72:5–21, 77:4–78:12, 142:5–13 • App. Ex. 14, Mireya Dep., 52:18–53:22 & Ex. 231, 93:8–13, 109:25–110:8, 166:1–7 • App. Ex. 15, Samuel Dep., 47:19–49:15, 98:2–12 • App. Ex. 16, Patrick Dep., 55:14–18, 60:14–62:2, 63:3–12 & Ex. 231 • App. Ex. 17, Criollo Dep., 79:6–80:9 • App. Ex. 18, Johnson Dep., 23:20–24:2, 27:11–28:8, 32:18–33:7	
<u>Undisputed Material Fact</u> 36. On August 26, 2017, at the same time that Defendants declined to make Real Parties’ wedding cake, Defendants offered to connect Real Parties with another bakery that could make their cake. <u>Evidence:</u> • Miller Decl., ¶¶ 18, 33–38, 43 • App. Ex. 1, Compl., 2:27–3:4, 8:19–21, 11:10–11, 11:13–15 • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 24 • App. Ex. 14, Mireya Dep., 64:25–65:12 • App. Ex. 15, Samuel Dep., 47:19–49:15, 54:17–55:3 • App. Ex. 16, Patrick Dep., 60:14–62:2	<u>Undisputed</u> that defendants declined to make Real Parties’ wedding cakes. Undisputed, but not material, that defendants offered to connect Real Parties with another bakery. Real Parties had already tasted cakes from the bakery defendants recommended and declined to order their wedding cakes from there. (See, below, Plaintiff’s Additional Undisputed Material Facts [PAUMF] No. 51.) This fact is also not material because as a matter of law, offering to connect Real Parties with another bakery did not constitute providing full and equal services as required under Unruh. (See DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 37. If Real Parties had informed	<u>Undisputed</u> that Real Parties had rejected the bakery to which defendants referred them.

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Defendants that they rejected the bakery to which they were referred, Defendants would have offered to connect Real Parties with another bakery that could have made their cake. <u>Evidence:</u> • Miller Decl., ¶ 18 • App. Ex. 13, Eileen Dep., 121:14–20 • App. Ex. 18, Johnson Dep., 101:10–13	(See below, Plaintiff’s Additional Undisputed Material Facts [PAUMF] No. 51.) Undisputed, but not material, that defendants assert they would have offered to connect Real Parties with another bakery had Real Parties informed defendants that they rejected the bakery to which they were referred, but this is not a material fact because as a matter of law, connecting Real Parties with another bakery would not constitute providing full and equal services as required under Unruh. (<i>See</i> DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 38. Real Parties actually obtained a wedding cake for their wedding ceremony. <u>Evidence:</u> • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 12 • App. Ex. 4, DFEH Resp. to Tastries RFAs No. 19 • App. Ex. 13, Eileen Dep., 121:5–13, 175:13–176:2 & Ex. 631 • App. Ex. 14, Mireya Dep., 150:19–152:13 & Ex. 631, 153:5–154:1 • App. Ex. 17, Criollo Dep., 17:5–18:23, 20:7–11, 21:19–21, 33:10–34:1	Undisputed, but not material, that Real Parties obtained their cakes from another baker, who was not referred by defendants, after defendants refused to take Real Parties’ order. This fact is not material because as a matter of law, Real Parties’ ability to obtain a wedding cake elsewhere did not cure defendants’ refusal to provide full and equal services. (<i>Minton v. Dignity Health</i> (2019) 39 Cal.App.5th 1155, 1165-66.)

ISSUE NO. 3: Defendants are entitled to summary adjudication of Plaintiff's prayer for punitive damages

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<u>Undisputed Material Fact</u> 39. The DFEH is only seeking statutory damages, not punitive damages in this action. <u>Evidence</u> - App. Ex. 2, DFEH Resp. to Tastries FROGs, Nos. 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 9.1, 10.2, 10.3, - App. Ex. 5, DFEH Resp. to Tastries RPDs Nos. 3, 4, 5, 6	<u>Undisputed.</u>
<u>Undisputed Material Fact</u> 40. Defendants have a religious objection to celebrating any form of marriage other than a marriage between one man and one woman. <u>Evidence</u> - Miller Decl., ¶¶ 10-11, 19-21, 24 & Ex. A - App. Ex. 1, Compl., 2:27-3:4, 8:8-18, 11:10-11, 11:13-15 - App. Ex. 4, DFEH Resp. to Tastries' RFA's No. 9 - App. Ex. 9, DFEH Resp. to Millers' RFA's Nos. 8, 9, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26 - App. Ex. 13, Eileen Dep., 72:5-21, 77:4-78:12, 142:5-13 - App. Ex. 14, Mireya Dep., 52:18-53:22	<u>Undisputed</u>, that Miller has a religious objection to celebrating any form of marriage other than marriage between one man and one woman. This fact is not material because Tastries can comply with Unruh by allowing employees lacking Miller's religious objection to create wedding cakes for same sex couples. Further, Real Parties did not seek to hire defendants to celebrate their marriage. (DFEH Opposition at pp. 4, 6 [Real Parties sought to order wedding cakes from defendants].)

1	& Ex. 231, 93:8-13, 109:25-110:8, 166:1-7	
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3	• App. Ex. 15, Samuel Dep., 47:19-49:15, 98:2-12	
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5	• App. Ex. 16, Patrick Dep., 55:14-18, 60:14-62:2, 63:3-12 & Ex. 231	
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7	• App. Ex. 17, Criollo Dep., 79:6-80:9	
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9	• App. Ex. 18, Johnson Dep., 23:20-24:2, 27:11-28:8, 32:18-33:7	
10	<u>Undisputed Material Fact</u>	<u>Undisputed</u> that defendants declined to make Real Parties' wedding cakes.
11	41. On August 26, 2017, at the same time that Defendants declined to make Real Parties' wedding cake, Defendants offered to connect Real Parties with another bakery that could make their cake.	<u>Undisputed</u> , but not material, that defendants offered to connect Real Parties with another bakery. Real Parties had already tasted cakes from the bakery defendants recommended and declined to order their wedding cakes from there. (See, below, Plaintiff's Additional Undisputed Material Facts [PAUMF] No. 51.) This fact is also not material because as a matter of law, offering to connect Real Parties with another bakery did not constitute providing full and equal services as required under Unruh. (See DFEH Opposition, § II.A.1.)
12	<u>Evidence:</u>	
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14	• Miller Decl., ¶¶ 18, 33-38, 43	
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16	• App. Ex. 1, Compl., 2:27-3:4, 8:19-21, 11:10-11, 11:13-15	
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18	• App. Ex. 3, DFEH Resp. to Tastries SROGs No. 24	
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20	• App. Ex. 14, Mireya Dep., 64:25-65:12	
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22	• App. Ex. 15, Samuel Dep., 47:19-49:15, 54:17-55:3	
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24	• App. Ex. 16, Patrick Dep., 60:14-62:2	
25	<u>Undisputed Material Fact</u>	<u>Undisputed</u> that Real Parties had rejected the bakery to which defendants referred them. (See below, Plaintiff's Additional Undisputed Material Facts [PAUMF] No. 51.)
26	42. If Real Parties had informed Defendants that they rejected the bakery to which they were referred, Defendants would have offered to connect Real Parties with another bakery that could have made their cake.	<u>Undisputed</u> , but not material, that defendants assert they would have offered to connect Real Parties with another bakery had Real Parties

<u>Evidence:</u> • Miller Decl., ¶ 18 • App. Ex. 13, Eileen Dep., 121:14–20 • App. Ex. 18, Johnson Dep., 101:10–13	informed defendants that they rejected the bakery to which they were referred, but this is not a material fact because as a matter of law, connecting Real Parties with another bakery would not constitute providing full and equal services as required under Unruh. (<i>See</i> DFEH Opposition, § II.A.1.)
<u>Undisputed Material Fact</u> 43. Real Parties actually obtained a wedding cake for their wedding ceremony. <u>Evidence:</u> • App. Ex. 3, DFEH Resp. to Tastries SROGs No. 12 • App. Ex. 4, DFEH Resp. to Tastries RFAs No. 19 • App. Ex. 13, Eileen Dep., 121:5–13, 175:13–176:2 & Ex. 631 • App. Ex. 14, Mireya Dep., 150:19–152:13 & Ex. 631, 153:5–154:1 • App. Ex. 17, Criollo Dep., 17:5–18:23, 20:7–11, 21:19–21, 33:10–34:1	Undisputed, but not material, that Real Parties obtained their cakes from another baker, who was not referred by defendants, after defendants refused to take Real Parties’ order. This fact is not material because as a matter of law, Real Parties’ ability to obtain a wedding cake elsewhere did not cure defendants’ refusal to provide full and equal services. (<i>Minton v. Dignity Health</i> (2019) 39 Cal.App.5th 1155, 1165-66.)

PLAINTIFF DFEH'S ADDITIONAL UNDISPUTED MATERIAL FACTS

Plaintiff DFEH's Additional Undisputed Material Facts & Supporting Evidence	Defendants' Response & Supporting Evidence
44. Fact: On August 17, 2017, Eileen and Mireya Rodriguez-Del Rio first visited Tastries looking for cakes to use in the celebration of their wedding and were assisted by front-end associate Rosemary Perez. Evidence: Appendix of Exhibits in Support of Plaintiff DFEH's Opposition to Defendants' Motion for Summary Judgment [DFEH Opp. App.] Ex. 5, [Mireya Depo., 26:13-27:23]; <i>Id.</i> Ex. 4 [Eileen Depo., 43:6-45:6]; <i>Id.</i> Ex. 3 [Perez Depo., 30:4-19].	<u>Objection/Disputed.</u> Defendants object to this "fact" as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. (See <i>Weiss, supra</i>, 9 Cal.5th at 864 ["These separate statements [are intended to] help the court isolate and identify the facts that are in dispute, which facilitates the court's determination whether trial is necessary."].)
45. Fact: During their discussion with Perez, the Rodriguez-Del Rios selected the details of their main cake, which was based on a design just like one of the pre-existing sample display cakes at Tastries—round, three tiers, white buttercream frosting, decorated with frosting rosettes/flowers—along with a matching sheet cake. Neither of the cakes would display any written message. Evidence: DFEH Opp. App. Ex. 8 [Mireya Decl., ¶ 4]; <i>Id.</i> Ex. 5 [Mireya Depo., 26:20-27:14; 45:5-11; 83:24-84:10; 84:15-21; 150:19-151:12; 152:14-16; 153:9-22]; <i>Id.</i> Ex. 4 [Eileen Depo., 43:20-44:1; 50:22-51:3; 89:15-90:6]; <i>Id.</i> Ex. 3 [Perez Depo., 31:5-21; 32:4-33:3; 35:7-11; 48:25-49:6]; <i>Id.</i> Ex. 2 [Miller Depo., 127:17-20]; <i>Id.</i> Ex. 7 [Declaration of Mary Johnson, ¶ 9].	<u>Disputed.</u> Defendants dispute the characterization that the Real Parties "selected the details" of their wedding cake. Ordering a custom wedding cake from Defendants involves a collaborative process between Defendants and the client in selecting the number of tiers, the size, the shape, the cake flavors, the filling flavors, the types of frosting, and other options. No customer can simply "select[] the details" on a design on their own. (Declaration of Catharine Miller in Support of Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication (Sep. 8, 2021) ¶¶ 25-27, 29 & Ex. B ["2d Miller Decl."]; Defs. App. Ex. 1, Compl., 5:23-26, 6:20-21.) The meeting between Real Parties and Ms. Perez resulted in the Real Parties identifying basic elements of the order such as number of guests and date of their wedding. They did not finish the wedding design consultation and collaboration process because Ms. Perez was not qualified to complete it. (See Plt. MSJ App. Ex. 10, Perez Depo., 30:4-31:11, 33:9-16, 35:7-15, 45:25-49:6; Plt. MSJ App. Ex. 12, Mireya

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		Depo., 26:20–25, 27:17–20; Plt. MSJ App. Ex. 13, Eileen Depo., 43:19–44:1.) Further, the cake the Real Parties wanted from Tastries Bakery was a 3-tiered square cake with a smooth buttercream finish and teal ribbon around the bottom. (Defendant Catharine Miller’s Declaration in Opposition to Plaintiff DFEH’s Motion for Summary Judgment or, in the Alternative, Summary Adjudication (Oct. 5, 2021) ¶ 21 [“3d Miller Decl.”]; Plt. MSJ App. Ex. 8, 1st Miller Decl., 5:18–19; Plt. MSJ App. Ex. 9, Miller Depo., 131:2–9; Defs. App. Ex. 14, Mireya Depo., 150:19–151:12; 2d Miller Decl., 10:25–27.) Whether a cake is simple or elaborate (even without words or toppers incorporated) the cake is designed and created by Tastries Bakery to present the image or sentiment intended by the customer. That message can be enhanced by other items added to the cake display at the event, such as pictures, mementos, signs and a topper. While the customer is the one adding these items, their presence amplifies the message of the cake that was created by Tastries Bakery. (2d Miller Decl., ¶ 12; 3d Miller Decl., ¶¶ 12–15.) <u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The design of the cake is not a material fact for this motion. Further, what is material is that the cake would transmit a message, not how it would, i.e., through symbols and art or through writing.
46.	<u>Fact:</u> After discussing the details of the cakes with Perez, the Rodriguez-Del Rios considered ordering their cakes from Tastries on the spot, but agreed to return	<u>Disputed.</u> Defendants dispute the characterization that Real Parties “considered” ordering a wedding cake during their first visit. The evidence

1	for a cake tasting.	indicates that Real Parties were overall happy with Tastries and wanted to order a cake from them. (Defs. App. Ex. 12, Mireya Depo., 71:6-10; Defs. App. Ex. 13, Eileen Depo., 44:2-45:6.)
2	<u>Evidence:</u>	But Ordering a custom wedding cake from Defendants involves a collaborative process between Defendants and the client in selecting the number of tiers, the size, the shape, the cake flavors, the filling flavors, the types of frosting, and other options. (2d Miller Decl., ¶¶ 25-27, 29 & Ex. B; Defs. App. Ex. 1, Compl., 5:23-26, 6:20-21.) That process was not completed. (See Plt. MSJ App. Ex. 10, Perez Depo., 35:7-11, 45:25-49:6; Plt. MSJ App. Ex. 12, Mireya Depo., 26:20-25, 27:17-20; Plt. MSJ App. Ex. 13, Eileen Depo., 43:19-44:1.) It could not have been completed on the first visit because Ms. Perez was not qualified to complete it. (Plt. MSJ App. Ex. 10, Perez Depo., 30:4-31:11, 33:9-16, 35:7-15.)
3	DFEH Opp. App. Ex. 5 [Mireya Depo., 27:13-20; 71:6-10];	
4	<i>Id.</i> Ex. 4 [Eileen Depo., 43:14-44:17; 44:18-45:6; 46:6-17; 65:21-24];	
5	<i>Id.</i> Ex. 3 [Perez Depo., 30:21-23; 31:3-9; 31:22-24; 36:20-22];	
6	<i>Id.</i> Ex. 2 [Miller Depo., 136:21-137:2].	
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15	47. <u>Fact:</u>	<u>Disputed.</u>
16	Miller assisted the couple when they returned for a tasting on August 26, 2017, along with members of their wedding party.	Defendants dispute the characterization that the Real Parties returned solely for a cake “tasting.” During their first visit, Real Parties met with a junior, front-end sales associate who could not meaningfully discuss their desired wedding cake with them. They returned to finalize the collaborative process, including by tasting flavors. (Plt. MSJ App. Ex. 10, Perez Depo., 30:4-31:11, 33:9-16, 35:7-15.)
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18	<u>Evidence:</u>	
19	DFEH Opp. App. Ex. 5 [Mireya Depo., 73:9-11; 74:21-24];	
20	<i>Id.</i> Ex. 4 [Eileen Depo., 48:20-24];	
21	<i>Id.</i> Ex. 3 [Perez Depo., 41:20-24];	
22	<i>Id.</i> Ex. 1 [Declaration of Catharine Miller in Support of Opposition to OSC re Preliminary Injunction [Miller Decl.], 5:11-18];	
23	<i>Id.</i> Ex. 2 [Miller Depo., 127:9-22].	
24	48. <u>Fact:</u>	<u>Undisputed.</u>
25	Eileen described the details of the cakes they wanted to order to Miller, who asked the couple and members of their wedding party, “Which one of you is the groom?”	
26	One of the men pointed to Eileen and said, “She is.”	
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1		Evidence: Miller Declaration in Support of 2 Defendants' Motion for Summary 3 Judgment, ¶¶ 41, 43.	
4	49.	Fact: After she discovered the Rodriguez-Del 5 Rios wanted cakes to celebrate their same- 6 sex wedding, Miller declined to take their 7 order. Evidence: DFEH Opp. App. Ex. 1 [Miller Decl., 8 5:20-23; 6:1-3]; 9 <i>Id.</i> Ex. 2 [Miller Depo., 129:18-21]; 10 <i>Id.</i> Ex. 5 [Mireya Depo., 64:12-65:6].	Disputed. Defendants agreed to take Real Parties information and order and then provide that information to another baker. Defendants did not refuse to take Real Parties order altogether. (Plt. MSJ App. Ex. 8, 1st Miller Decl., 6:1-3; Plt. MSJ App. Ex. 9, Miller Depo., 128:22- 129:5; Plt. MSJ App. Ex. 12, Mireya Depo., 64:25-65:12; 2d Miller Decl., ¶ 43.)
11	50.	Fact: The generic, blank cakes the Rodriguez- 12 Del Rios wanted to order did not violate 13 any of Tastries' Design Standards, except 14 that the couple wanted them for use in the 15 celebration of their same-sex wedding 16 (i.e., "wedding cakes must not contradict God's sacrament of marriage between a man and a woman"). Evidence: Declaration of Catharine Miller in 18 Support of Defendants' Motion for 19 Summary Judgment, Ex. A ("Design 20 Standards").	Disputed. It remains unclear to what extent Real Parties were really searching for a wedding cake or simply searching for a lawsuit. If the latter, the cake orders would be denied on the basis that it is "offensive," "demeaning," or "derogatory" to target religious minorities for persecution. (Plt. MSJ App. Ex. 8, 1st Miller Decl., ¶¶ 16- 18; Defs. App. Ex. 23, Benitez Decl., ¶¶ 2-7; Declaration of Jeffrey M. Trissell, Esq. in Support of Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication (Sep. 8, 2021) ¶ 13 & Ex. A.)
21	51.	Fact: Miller referred the couple to another 22 bakery, but Eileen had already visited it 23 and decided against ordering from there. Evidence: DFEH Opp. App. Ex. 4 [Eileen Depo., 24 38:16-40:4; 51:12-52:2; 120:2-4]; 25 <i>Id.</i> Ex. 5 [Mireya Depo., 42:25-44:11]; 26 <i>Id.</i> Ex. 1 [Miller Decl., 6:2-4].	Disputed. As presented, the fact implies that Real Parties rejected Defendants' effort to connect them with another bakery because they knew that they bakery was one they did not like. This is not the case. (Plt. MSJ App. Ex. 13, Eileen Depo., 51:22-52:5.) It was only later that Real Parties realized that the first bakery to whom Defendants would have referred them was a bakery they did not like. (Defs. App. Ex. 1, 27 Compl., 11:18-20.) 28

1	52. Fact: Cathy's Creations, Inc. dba Tastries operates a for-profit bakery in Bakersfield, California.	Undisputed.
2	Evidence: DFEH Opp. App., Ex. 10 [Articles of Incorporation of Cathy's Creations, Inc. and Bylaws of Cathy's Creations, Inc.]; <i>Id.</i> Ex. 1 [Miller Decl, 1:10-12].	
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8	53. Fact: Tastries employees have provided pre- ordered wedding cakes to same-sex couples without Miller's knowledge on multiple occasions.	Undisputed.
9	Evidence: DFEH Opp. App. Ex. 2 [Miller Depo., 74:11-75:12]; <i>Id.</i> Ex. 3 [Perez Depo., 22:24-26:6]; <i>Id.</i> Ex. 6 [Mike Miller Depo., 41:4-15; 42:10-17].	
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15	54. Fact: On one occasion, Miller saw a cake ordered for a same-sex wedding reception and did not recognize it as a wedding cake. Thinking it was a birthday cake or for a Quinceañera, Miller approved the order for delivery	Disputed. Defendant Miller did not see the wedding cake, she saw an order form that did not itself indicate that the cake was for a same-sex wedding. (Plt. MSJ App. Ex. 9, Miller Depo., 77:3-18 & Errata to 77:8 [changing "I said" to "It said" referring to the order form]; 3d Miller Decl., ¶¶ 7-8.)
16	Evidence: DFEH Opp. App. Ex. 2 [Miller Depo., 77:3-18].	
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23	55. Fact: Since opening Tastries in 2013, Miller has enforced a policy to deny any and all pre- ordered cakes to same-sex couples celebrating "[a]nything that has to do with the marriage [or] ... [t]he union of a same- sex couple" — whether that be a wedding, anniversary, or bridal shower.	Disputed. The evidence cited shows that Tastries has neutral design standards that identify the content and events served by Tastries. Those standards are neutral as to sexual orientation. One of the many design standards is that Tastries will not create "Designs that violate fundamental Christian principals [sic]; wedding cakes must not contradict God's sacrament of marriage between a man and a
24	Evidence: DFEH Opp. App. Ex. 1 [Miller Decl. 2:26-	
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	27; 6:1-2; Ex. A, pp. 2, 5; Ex. A, Ex. A, p. 18 (“Design Standards”)]; <i>Id.</i> Ex. 2 [Miller Depo. 99:13-100:3; 101:9-15, 102:7-9] <i>Id.</i> Ex. 3 [Perez Depo., 21:16-20].	woman.” (Plt. MSJ App. Ex. 8, 1st Miller Decl., Ex. A, p.18; see also Plt. MSJ App. Ex. 8, 1st Miller Decl., 2:26–27 [“I cannot provide custom wedding products and services that celebrate any form of marriage other than the Biblical model of a husband and wife.”]; Plt. MSJ App. Ex. 8, 1st Miller Decl., Ex. A, pp. 2, 5 [focusing on Miller’s religious beliefs, not anybody’s sexual orientation]; 2d Miller Decl., ¶ 12 [“My decisions on whether to design a custom cake or coordinate an event never focus on the client’s identity.”].) One <i>application</i> of this neutral policy is that Defendants cannot provide custom services celebrating a same-sex marriage, including the wedding cake, a bridal shower cake, or a wedding anniversary cake. (Plt. MSJ App. Ex. 8, 1st Miller Decl., 6:1–2; Plt. MSJ App. Ex. 9, Miller Depo., 101:9–15.) Further, there were no same-sex wedding cake requests until 2016. (2d Miller Decl., ¶ 34.) Further, Tastries Bakery does not “deny” services. Defendants’ policy is to provide a referral to another professional bakery for any cake it cannot make. Tastries has screened several bakeries to confirm their skill and willingness to accept referrals. Tastries will provide additional referrals if requested. (2d Miller Decl., ¶¶ 12–19, 33–38.)
56.	<u>Fact:</u> Selling wedding cakes is not Tastries’ only source of income. Most of Tastries’ income is derived from the sale of goods and services other than wedding cakes. <u>Evidence:</u> Declaration of Catharine Miller in Support of Defendants’ Motion for Summary Judgment, ¶ 52.	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. (See <i>Weiss, supra</i>, 9 Cal.5th at 864 [“These separate statements [are intended to] help the court isolate and identify the facts that are in dispute, which facilitates the court’s determination whether trial is necessary.”].) Whether the majority of Tastries’ income (i.e., 51%) is derived from sales unrelated to

weddings is immaterial to the fact that such a substantial portion is related to weddings that Tastries would not be financially viable if forced out of the wedding industry. (DSS ##7-8 [citing 2d Miller Decl., ¶ 52].)

Respectfully submitted,

LIMANDRI & JONNA LLP

Dated: October 20, 2021

By:



Charles S. LiMandri

Paul M. Jonna

Jeffrey M. Trissell

Milan L. Brandon II

Attorneys for Defendants Cathy's

Creations, Inc. and Catharine Miller

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



Superior Court of California
County of Kern
Bakersfield Department 11

Hearing Date: 12/15/2021 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S CREATIONS, INC.

BCV-18-102633

Honorable: J. Eric Bradshaw

Clerk: Veronica D. Lancaster

Court Reporter: Angela Olvera

Bailiff: Deputy Sheriff

PARTIES: Present:

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, MANN, GREGORY J Attorney, Present in court
AN AGENCY OF THE STATE OF CALIFORNIA Plaintiff,
Not Present

Not Present:

CATHY'S CREATIONS, INC. DBA TASTRIES, A LIMANDRI, CHARLES S Attorney
CALIFORNIA CORPORATION Defendant
MILLER, CATHARINE Defendant LIMANDRI, CHARLES S Attorney
RODRIGUEZ-DEL RIO, EILEEN Real Party Interest
RODRIGUEZ-DEL RIO, MIREYA Real Party Interest

Paul Jonna and Jeffrey Trissell are present in court on behalf of the defendants.

**NATURE OF PROCEEDINGS: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY ADJUDICATION; DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
OR SUMMARY ADJUDICATION RE: PUNITIVE DAMAGES; AND DEFENDANTS' MOTION TO SEAL**

Hearing Start Time: 8:30 AM

The above entitled cause came on regularly on this date and time with parties and/or counsel appearing as reflected above.

The Court appoints Angela Olvera from the Pro Tempore list as the Official Court Reporter for all hearings held this date. Oath on file.

TENTATIVE DECISION is announced in open court at stated on the formal record.

Matter argued by counsel and submitted.

The Court makes the following findings and orders:

Defendants' Motion to Seal.

The court GRANTS Defendants' unopposed motion to seal and finds as follows: (1) the public policies in favor of the right to privacy and the protection of Defendants' proprietary business information and trade secrets that overcome the right of public access to court records; (2) these overriding interests support partially sealing records lodged as attachments to the Declaration of Cathy Miller in Support of Defendants' Motion for Summary Judgment; (3) there is a substantial probability of prejudice to the overriding interests if the records are not sealed;

MINUTES

Page 1 of 3

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

BCV-18-102633

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

RA.1565

(4) the proposed sealing is narrowly tailored, as it does not obscure the nature of the issues involved in the motion or the parties' arguments; and (5) there are no less restrictive means of achieving the overriding interests in the present case.

Defendants will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312.

The defendants' alternative motion for summary adjudication on the issue of punitive damages, is GRANTED. The motions for summary judgment or summary adjudication otherwise, are DENIED.

Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

As to the Department's motion, the request for judicial notice is GRANTED. Although the Court DENIED the motion, the Court is GRANTING that request. Plaintiff has failed to meet its initial burden as the moving party to demonstrate that there are no triable issues of material fact as to its cause of action for discrimination and violation of the Unruh Act. The plaintiff has not demonstrated the requisite intent. The plaintiff bases its motion on unsupported conclusions and what the Court views as a skewed view of the facts such as the nature of the defendant's business and how to characterize its output. The plaintiff has failed to meet its burden as to the defendants' affirmative defenses, has failed to, for example, show that the defendants do not possess evidence to support their defenses and that they cannot reasonably obtain the needed evidence. In the Court's, there are triable issues of material fact. This case involves nuances of law and fact that are not -- frankly, in both motions are not eliminated as a matter of law. The Court does not find that the May 21st, 2018, ruling on defendants' anti-SLAPP motion proves as a matter of law that the plaintiff has demonstrated its prima facie case. The Court OVERRULES the defendants' objections to the Department's evidence and OVERRULES the plaintiff's objections to the defendants' evidence. The defendant is going to be ordered to prepare an order consistent with this Court's ruling on that motion.

Defendants will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312.

Defendants' Motion for Summary Judgment or Summary Adjudication re Punitive Damages.

The defendants' motion for summary judgment, the Court DENIES the motion. The defendants have met their burden as the moving party, but there are triable issues of material fact. The Court is adopting its' comments with respect to the issues that the Court is stating as a reason for DENYING the Department's motion. These issues of intent and the nuances involved in this, how things should be characterized, these are all things that need to get sorted out, and they're not sorted out in these motions as a matter of law. The Court SUSTAINS Plaintiff's objection numbers 3 and 10, the objections are based on lack of foundation, and lack of personal knowledge. Otherwise, the Court is OVERRULING the balance of the plaintiff's objections. The Court GRANTS the request for judicial notice as to the judgment in the case 102855, but the Court is DENYING judicial notice as to the proper proposition regarding cake artists.

Plaintiffs will prepare an order consistent with this ruling for the court's signature and pursuant to California Rules of Court, rule 3.1312.

- Audio streaming announced.

MINUTES
Page 2 of 3

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

BCV-18-102633

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

RA.1566

FUTURE HEARINGS:

December 23, 2021 8:30 AM Further Case Management Conference
Bradshaw, J. Eric
Bakersfield Department 11

January 28, 2022 11:00 AM Mandatory Settlement Conference
Bakersfield Division H
Barmann, Bernard C., Jr.

February 28, 2022 9:00 AM Jury Trial
Bradshaw, J. Eric
Bakersfield Division J

February 28, 2022 9:00 AM Final Case Management Conference
Bradshaw, J. Eric
Bakersfield Division J

MINUTES FINALIZED BY:

VERONICA LANCASTER

ON:

12/21/2021

MINUTES
Page 3 of 3

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

BCV-18-102633

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

RA.1567

FILED

KERN COUNTY SUPERIOR COURT
12/15/2021

BY Urena, Veronica
DEPUTY

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

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

Plaintiff,

v.

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

Defendants.

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

Real Parties in
Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

**~~[PROPOSED]~~ ORDER ON
DEFENDANTS' MOTION TO SEAL**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11 J. Eric Bradshaw

Judge: Hon. ~~David R. Lampe~~

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

[Proposed] Order on Defendants' Motion to Seal

RA.1568

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

[Proposed] Order

This Court, having considered Defendants Catharine Miller and Cathy's Creations, Inc.'s Motion to Seal, and good cause having been shown therefore,

IT IS ORDERED that Defendants' Motion to seal is hereby GRANTED. Accordingly, the following records are ordered to be filed under seal:

1. **Exhibit B** to Declaration of Catharine Miller filed in connection with Defendants Motion for Summary Judgment or, in the Alternative, Summary Adjudication; and

2. **Exhibit F** to the Declaration of Catharine Miller filed in connection with Defendants Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

IT IS SO ORDERED.

Dated: 12/15/2021

By: _____



Signed: 12/15/2021 10:13 AM

Hon. ~~David R. Lampe~~ J. Eric Bradshaw
JUDGE OF THE SUPERIOR
COURT

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

FILED
KERN COUNTY SUPERIOR COURT
01/06/2022
BY Urena, Veronica
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

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

Plaintiff,

v.

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

Defendants.

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

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

ORDER ON PLAINTIFF DEPARTMENT
OF FAIR EMPLOYMENT & HOUSING’S
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION

Date: Dec. 15, 2021
Time: 8:30 a.m.
Dept: 11
Judge: Hon. J. Eric Bradshaw

Action Filed: Oct. 17, 2018

1 **ORDER**

2 Plaintiff Department of Fair Employment & Housing's Motion for Summary Judgment or,
3 in the Alternative, Summary Adjudication, in the above-entitled action came on for hearing on
4 December 15, 2021 at 8:30 a.m. in Department 11 of the Kern County Superior Court,
5 Metropolitan Division, the Honorable J. Eric Bradshaw presiding. Plaintiff Department of Fair
6 Employment & Housing appeared through its counsel of record, Gregory J. Mann. Defendants
7 Catharine Miller and Cathy's Creations, Inc. dba Tastries Bakery appeared through their counsel of
8 record, Paul M. Jonna and Jeffrey M. Trissell.

9 Based on the evidence presented, submissions of the parties, the complete file in this matter,
10 the oral argument of the parties, and good cause appearing, and as stated in this Court's Minute
11 Order dated December 15, 2021, which is copied and incorporated below, it is hereby ORDERED
12 and DECREED as follows: The Court denies Plaintiff Department of Fair Employment &
13 Housing's Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

14 **DISCUSSION**

15 Plaintiff has failed to meet its initial burden as the moving party to demonstrate that there
16 are no triable issues of material fact as to its cause of action for discrimination and violation of the
17 Unruh Act. The plaintiff has not demonstrated the requisite intent. The plaintiff bases its motion on
18 unsupported conclusions and what the Court views as a skewed view of the facts such as the nature
19 of the defendant's business and how to characterize its output.

20 The plaintiff has failed to meet its burden as to the defendants' affirmative defenses, has
21 failed to, for example, show that the defendants do not possess evidence to support their defenses
22 and that they cannot reasonably obtain the needed evidence.

23 In the Court's view, there are triable issues of material fact on both plaintiff's Unruh claim
24 and defendants' affirmative defenses. This case involves nuances of law and fact that are not
25 eliminated as a matter of law.

26 The Court does not find that the May 21st, 2018, ruling on defendants' anti-SLAPP motion
27 proves as a matter of law that the plaintiff has demonstrated its prima facie case.
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1 The Court OVERRULES the defendants' objections to the plaintiff's evidence and
2 OVERRULES the plaintiff's objections to the defendants' evidence.

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5 **IT IS SO ORDERED.**

JUDGE OF THE SUPERIOR COURT

6 Dated: 01/06/2022
7 _____



Signed: 1/6/2022 11:27 AM

Hon. J. Eric Bradshaw

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

FILED
KERN COUNTY SUPERIOR COURT
01/28/2022

BY Urena, Veronica
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

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

Plaintiff,

v.

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

Defendants.

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

Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

**[PROPOSED] ORDER ON DEFENDANTS
CATHARINE MILLER'S AND CATHY'S
CREATIONS, INC DBA TASTRIES
BAKERY'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Dec. 15, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. J. Eric Bradshaw

Action Filed: Oct. 17, 2018

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3. <u>Miller Declaration</u> , ¶ 15: “In the baking profession, my policy is not unusual: it is standard industry practice for cake artists to decline to create custom cakes expressing messages or celebrating events that would conflict with their beliefs or worldview.”	Lacks foundation (Evid. Code, ¶¶ 403, 702, 800); Lacks personal knowledge (Evid. Code, §§ 403(a)(2), 702).	Sustained: <u> X </u> Overruled: <u> </u>
10. <u>Miller Declaration</u> , ¶ 31: “They know that their custom wedding cake will stand as the iconic centerpiece of the wedding celebration and that some of their friends will want to know who designed it.”	Lacks foundation (Evid. Code, ¶¶ 403, 702, 800); Lacks personal knowledge (Evid. Code, §§ 403(a)(2), 702).	Sustained: <u> X </u> Overruled: <u> </u>

The Court OVERRULES all of the defendants’ objections to plaintiff’s evidence.

IT IS SO ORDERED.

JUDGE OF THE SUPERIOR COURT

Dated: 01/28/2022


Hon. J. Eric Bradshaw

Signed: 1/28/2022 03:13 PM

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13 *Application forthcoming

14 *Attorneys for Defendants Cathy's*
15 *Creations, Inc. and Catharine Miller*

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.

CASE NO.: BCV-18-102633

IMAGED FILE

**DEFENDANTS' TRIAL MOTION
FOR JUDICIAL NOTICE**

Date: July 25, 2022

Time: 9:00 a.m.

Dept: J

Judge: Hon. J. Eric Bradshaw

Action Filed: Oct. 17, 2018

27
28
DEFENDANTS' TRIAL MOTION FOR JUDICIAL NOTICE

RA.1576

ELECTRONICALLY FILED
7/22/2022 9:42 AM
Kern County Superior Court
By Maribel Villalon, Deputy

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

I. INTRODUCTION

Pursuant to Evidence Code § 452, Defendants Catharine Miller and Cathy's Creations, Inc. dba Tastries Bakery respectfully request that this Court take judicial notice of: (1) governmental documents from the DFEH's administrative investigation of Defendants (DFEH No. 935123-315628); (2) legal filings from the DFEH's Superior Court petition proceeding (Kern County Superior Court No. BCV-17-102855); (3) legal filings from this civil litigation (Kern County Superior Court No. BCV-18-102633); and (4) deposition transcripts from both the DFEH administrative investigation and this civil litigation.

As Defendants establish below, this Court is authorized to take judicial notice of both the existence and legal effect of these documents. They were previously identified by Defendants as "Trial Exhibits" but are more properly subject to a motion for judicial notice. All of the exhibits are attached to the Declaration of Jeffrey M. Trissell, Esq., dated July 22, 2022.

II. ARGUMENT

1. The Legal Filings from the Prior & Current Proceedings Are Judicially Noticeable

The Court "shall" grant a request for judicial notice of: (c) "[t]he decisional ... law of this state." (Evid. Code, § 451.) Further the Court "may" take judicial notice of: (c) "[o]fficial acts of the ... executive ... departments of ... any state;" (d) "[r]ecords of [] any court of this state;" and (h) "[f]acts and propositions that are not reasonably subject to dispute." (Evid. Code, § 452.)

Under § 452(c), filings in a DFEH administrative investigation are properly subject to judicial notice. (See *Harris v. Civil Service Com.* (1998) 65 Cal.App.4th 1356, 1371, fn.4 ["We have also judicially noticed her related administrative complaint with the DFEH"].) Further, under § 452(d), filings in Superior Court proceedings are properly subject to judicial notice. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565.) Under § 452(h), the Court may take judicial notice of deposition transcripts to the extent that their contents are undisputed. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 758 ["facts disclosed by the deposition and not disputed" are subject to judicial notice]; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 375 [same].)

Finally, under § 451(a), the Judgment entered in to the prior petition proceeding is subject to mandatory judicial notice. Indeed, this Court previously took judicial notice of the Judgment as part

of the summary judgment briefing. (Order Granting Judicial Notice (Dec. 15, 2021), p.2.)

Here, Defendants request that the Court take judicial notice of the attached documents as part of their argument that Plaintiff DFEH's administrative investigation and civil prosecution has been biased and non-neutral, for purposes of their constitutional defenses. The parties have previously briefed the relevance of these documents, with Plaintiff DFEH disputing their relevance. But the documents are clearly relevant to Defendants' affirmative defenses and thus this Court should take judicial notice of them. (See Def. MILs, Nos. 7, 8; Def. Opp. to Plt. MILs, Nos. 3, 4.)

Although uncommon, courts can and do take judicial notice of deposition transcripts when appropriate. Doing so is appropriate here because Defendants do not seek judicial notice of their responses, but rather Plaintiff DFEH's improper questions. If Plaintiff DFEH opposes this request, Defendants should simply be allowed to read the deposition transcripts into the record at trial. The questions at issue concern: (1) improper probing into Defendants' religious beliefs, unrelated to any relevant inquiry in this action because religious sincerity is undisputed (1st C. Miller Depo., pp.96:23-97:22, 99:2-10, 101:18-25; 2d C. Miller Depo., pp.28:16-23, 109:17-110:13, 112:21-117:8, 117:19-123:3, 124:15-126:18, 128:6-129:2, 131:24-133:15, 143:23-144:18, 145:4-20, 223:14-226:18, 227:23-229:11); (2) questions comparing Defendants' constitutionally protected religious beliefs to invidious racism (1st C. Miller Depo., p.99:2-10; 2d C. Miller Depo., p.112:21-117:8); and (3) suggesting to Defendant Miller that she needs to modify her religious beliefs. (2d Miller Depo., pp.161:15-163:6.)

Ex. No.	Description	Basis
21	Letter from Department of Fair Employment and Housing to Cathy Miller Re Notice of Filing of Discrimination Complaint, dated October 26, 2017	Evid. Code, § 452(c)
22A	Department of Fair Employment and Housing's Petition and Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction, filed December 13, 2017, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
22B	Civil Case Cover Sheet, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)

Ex. No.	Description	Basis
22C	Relevant and highlighted portions of Department of Fair Employment and Housing's Memorandum of Points and Authorities in Support of Petition and Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction, filed December 13, 2017, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
22D	Relevant and highlighted portions of Petitioner Department of Fair Employment and Housing's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, filed January 10, 2018, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
22E	Relevant and highlighted portions of Petitioner Department of Fair Employment and Housing's Reply in Support of Motion for Preliminary Injunction, filed January 26, 2018, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
22F	Relevant and highlighted portions of Certified Transcript of February 2, 2018 Hearing re Preliminary Injunction, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
22G	Judgment, filed May 1, 2018, in Case No. BCV-17-102855	Evid. Code, § 452(a), (d)(1)
23	Letter from Department of Fair Employment and Housing to Charles LiMandri Re Notice of Cause Finding and Mandatory Dispute Resolution, dated October 10, 2018	Evid. Code, § 452(c)
24A	Declaration of Reina Benitez, dated January 17, 2018, in Case No. BCV-17-102855	Evid. Code, § 452(d)(1)
24B	Relevant and highlighted portions of Certified Transcript of June 5, 2020 Hearing re attorney-client privilege with respect to discovery motions	Evid. Code, § 452(d)(1)
25A	Relevant and highlighted portions of Plaintiff Department of Fair Employment and Housing's Memorandum of Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative, Summary Adjudication, filed September 8, 2021	Evid. Code, § 452(d)(1)
25B	Relevant and highlighted portions of Plaintiff Department of Fair Employment and Housing's Memorandum of Points and Authorities in Opposition to Defendants Catharine Miller and Tastries Bakery's Motion for Summary Judgment or, in the Alternative, Summary Adjudication, filed October 6, 2021	Evid. Code, § 452(d)(1)

Ex. No.	Description	Basis
25C	Relevant and highlighted portions of Plaintiff Department of Fair Employment and Housing's Reply in Support of its Motion for Summary Judgment or, in the Alternative, Summary Adjudication, filed October 20, 2021	Evid. Code, § 452(d)(1)
26A	Relevant and highlighted portions of the Administrative Deposition of Defendant Catharine Miller, dated September 26, 2018	Evid. Code, § 452(c), (d)(1)
26B	Relevant and highlighted portions of the Deposition of Defendant Catharine Miller, dated February 24, 2022	Evid. Code, § 452(c), (d)(1)

III. CONCLUSION

For the foregoing reasons, this Court should grant Defendants' request for judicial notice of:

(1) governmental documents from the DFEH's administrative investigation of Defendants (DFEH No. 935123-315628); (2) legal filings from the DFEH's Superior Court petition proceeding (Kern County Superior Court No. BCV-17-102855); (3) legal filings from this civil litigation (Kern County Superior Court No. BCV-18-102633); and (4) deposition transcripts from both the DFEH administrative investigation and this civil litigation.

Respectfully submitted,

LiMANDRI & JONNA LLP



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Attorneys for Defendants Cathy's

Creations, Inc. and Catharine Miller

Dated: July 22, 2022

COURT OF THE STATE OF CALIFORNIA KERN COUNTY SUPERIOR COURT - METROPOLITAN DIVISION		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) Dept. of Fair Employment & Housing v. Cathy's Creations, Inc. dba Tastries		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, SBN 110841 Paul M. Jonna, SBN 265389 LiMANDRI & JONNA LLP P.O. Box 9120 Rancho Santa Fe, California 92067 Tele: (858) 759-9930; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendants CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California Corporation; and CATHY MILLER, an individual	HEARING Dept. 11	CASE NO.: BCV-18-102633 JUDGE: Hon. J. Eric Bradshaw

CERTIFICATE OF SERVICE

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

- **DEFENDANTS' TRIAL MOTION FOR JUDICIAL NOTICE;**
- **DECLARATION OF JEFFREY M. TRISSELL, ESQ. (FOURTH) IN SUPPORT OF DEFENDANTS' TRIAL MOTION FOR JUDICIAL NOTICE; and**
- **[Proposed] ORDER GRANTING DEFENDANTS' TRIAL MOTION FOR JUDICIAL NOTICE.**

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

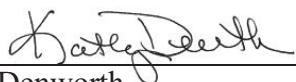
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Attorneys for Plaintiff Department of Fair Employment and Housing

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

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

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

Executed on July 22, 2022.



Kathy Denworth

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

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Fee Exempt (Gov. Code, § 6103)

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

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

Plaintiff,

vs.

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

Defendants.

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

Real Parties in Interest.

Case No. BCV-18-102633

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
OPPOSITION TO DEFENDANTS'
TRIAL MOTION FOR JUDICIAL
NOTICE**

Date: July 25, 2022

Time: 9:00 a.m.

Dept.: J

Judge: Hon. J. Eric Bradshaw

Action Filed: October 17, 2018

Trial Date: July 25, 2022

Plaintiff Department of Fair Employment and Housing (DFEH) hereby opposes defendants' Trial Motion for Judicial Notice. This opposition is based on Evidence Code sections 350, 352, 450, and 452. The matters for which judicial notice is requested is not the proper subject for judicial notice.

This Opposition is based upon the complete files and records in this action, the following Memorandum of Points and Authorities, and any documentary and/or oral evidence as may be

presented at the time of the hearing of the motion.

Dated: July 24, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

By: Kendra Tanacea
Kendra Tanacea
Attorneys for the Department of Fair
Employment and Housing

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

With absolutely no evidence, defendants have wrongfully accused DFEH of bias against them. Defense counsel's arguments regarding alleged bias of DFEH are empty and unsupported by any facts, witnesses, or documents. Whether defendants seek to introduce their purported "evidence" by declaration, trial exhibit or request for judicial notice, it is inadmissible.

In defendants' Trial Motion for Judicial Notice, defendants assert that "the Court take judicial notice of the attached documents as part of their argument that Plaintiff DFEH's administrative investigation and civil prosecution has been biased and non-neutral, for purposes of their constitutional defense." (Def. Trial Motion for Judicial Notice, 2:2-4.) Defendants assert that these documents attached to the Request for Judicial Notice are offered to prove DFEH bias and are offered for that purpose.

These documents cannot be admitted into evidence. First, the court must determine whether these "attached documents" constitute a proper request for judicial notice and, second, even if the court takes judicial notice of some of these documents, the court may not take judicial notice of the truth of the contents. Third, the documents are irrelevant to the stated goal of proving DFEH bias in the investigation and civil prosecution action. And fourth, permitting defendants to argue DFEH bias from legal briefs, which simply cite to and analyze legal precedent, is not probative of bias and is prejudicial to DFEH.

II. STATEMENT OF RELVANT FACTS

A. No Evidence of Bias or Non-Neutrality Disclosed During Discovery

1 In response to special interrogatories designed to elicit all facts, witness and documents that
2 support defendants' contention of DFEH bias, defendants offered only speculative conclusions—not
3 evidence—regarding DFEH's purported bias.

4 **B. Defendant's Trial Motion for Judicial Notice**

5 Undeterred by the lack of evidence of bias, defendants now attempt to offer its "evidence"
6 via a Trial Motion for Judicial Notice accompanied by the supporting Trissell Declaration filed on
7 July 22, 2022. DFEH opposes this motion. Set forth below in **Appendix A** is a summary of the
8 alleged "evidence of bias" defendants seek to offer through their request for judicial notice of
9 sixteen documents.

10 All of Defendants' requests for judicial notice are improper. None are matters or documents
11 that the court may properly take judicial notice of. Some are objectionable hearsay. None of them,
12 even taken together, offer any evidence of DFEH bias or non-neutrality and, therefore, are
13 irrelevant.

14 **III. LEGAL ARGUMENT**

15 **A. The Court May Take Judicial Notice of Only Certain Types of Evidence or Facts**

16 "It is well recognized that the purpose of judicial notice is to expedite the production and
17 introduction of otherwise admissible evidence." (*Mozzetti v. City of Brisbane* (1977) 67 Cal.App.3d
18 565, (abrogation recognized by, *Parker v. Department of Transp.*, 2007 WL 1557476) and
19 (abrogation recognized by, *Vindiola v. City of Modesto* (Cal.App.5th Dist. 2008) 2008 WL
20 4636133).) However, "[j]udicial notice may not be taken of any matter unless authorized or required
21 by law." (Evid. Code, §450.)

22 Evidence Code section 452 relates to permissive judicial notice and states:

23 Judicial notice may be taken of the following matters to the extent that they
24 are not embraced within Section 451:

25 (a) The decisional, constitutional, and statutory law of any state of the
26 United States and the resolutions and private acts of the Congress of the
27 United States and of the Legislature of this state.

28 (b) Regulations and legislative enactments issued by or under the authority
of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

“It is well recognized that the purpose of judicial notice is to expedite the production and introduction of otherwise admissible evidence.” (*Mozzetti v. City of Brisbane, supra*, 67 Cal.App.3d at 578. However, “[j]udicial notice may not be taken of any matter unless authorized or required by law.” (Evid. Code, § 450.)

Here, defendants request for judicial notice should be denied in its entirety. Judicial notice is not proper with respect to these sixteen documents.

B. The Documents Offered Are Not the Proper Subject for Judicial Notice

Judicial notice is limited to matters which are indisputably true. A request for judicial notice can be defeated by showing the matter is reasonably subject to dispute. (*Mack v. State Bd. of Ed.* (1964) 224 Cal.App.2d 370, 373; *JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 760-761.) For example, in *Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, reh'g denied, (Oct. 29, 2010) and review denied, (Jan. 19, 2011), the court denied the request for judicial notice of information contained in certain websites when the requesting party had not demonstrated either that the information had been reviewed by the plaintiffs and was therefore relevant to a defense of knowledge, or that the information was free from dispute.

As with evidence generally, the matter to be judicially noticed must be relevant to the issues in the case. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 (overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276); *Mozzetti v. City of Brisbane, supra*, 67 Cal.App.3d 565; Evid. Code, § 350; see also *People ex rel. Lockyer v. Shamrock Foods*

Co. (2000) 24 Cal. 4th 415; *Aquila Inc. v. Superior Court* (2007) 148 Cal.App.4th 556.) Defendants' request for judicial notice of these documents is based on defendants' claim that these documents are "evidence" of DFEH's bias. Upon review of the documents, the court should deny all requests for judicial notice because they are irrelevant to that issue. This includes **Exhibit 21** [DFEH letter]; **Exhibit 22A** [DFEH Ex Parte Application], **Exhibit 22B** [DFEH Civil Case Cover Sheet], **Exhibit 22C** [DFEH legal brief]; **Exhibit 22D** [DFEH legal brief], **Exhibit 22E** [DFEH reply brief], **Exhibit 22F** [hearing transcript], **Exhibit 22G** [judgment], **Exhibit 23** [DFEH letter], **Exhibit 24A** [Benitez Declaration]; **Exhibit 24B** [discovery hearing transcript]; **Exhibit 25A** [DFEH SJM MPA]; **Exhibit 25B** [DFEH Opposition to Def. MSJ], **Exhibit 25C** [DFEH Reply ISO SJM]; **Exhibit 26A and 26B** [Miller Deposition Testimony].

With respect to records of any federal or state court (Evid. Code, § 452(d)), while the existence of any document in a court file may be judicially noticed, the truth of matters asserted in such documents is not necessarily subject to judicial notice. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1569; *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482-484 [While we may take judicial notice of court records and official acts of state agencies (Evid. Code, § 452, subds. (c), (d)), the truth of matters asserted in such documents is not subject to judicial notice.]; *Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, 14.)¹

While courts may notice official acts and public records, "we do not take judicial notice of the truth of all matters stated therein." (*Love v. Wolf* (1964) 226 Cal.App.2d 378, 403; see also, *Mangini v. R.J. Reynolds Tobacco Co., supra*, 7 Cal.4th at 1063-1064 [in a lawsuit relating to cigarette advertising, even if the court takes judicial notice of a report by the U.S. Surgeon General on tobacco use (an "official act") it will not accept as true the facts stated therein; judicial notice is limited to the existence of the report, not its contents].) "[T]he taking of judicial notice of the official

¹ Defendants' cases are inapposite. In *Harris v. Civil Service Com.* (1998) 65 Cal.App.4th 1356, the Court only discussed taking judicial notice of an undisputed, legally operative document, not deposition testimony. The *Harris* court found *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369 inapposite and distinguishable with respect to its decision. In *Joslin*, the court was reviewing the propriety of judicial notice in ruling on demurrer, even though record did not contain request for judicial notice. As reiterated in *Joslin*, "[t]aking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Id.* at p. 374.)

1 acts of a governmental entity does not in and of itself require acceptance of the truth of factual
2 matters which might be deduced therefrom, since in many instances what is being noticed, and
3 thereby established, is no more than the existence of such acts and not, without supporting evidence,
4 what might factually be associated with or flow therefrom.” (*Cruz v. County of Los Angeles* (1985)
5 173 Cal.App.3d 1131, 1134. Thus, even if the court were to grant judicial notice, it would be limited
6 to the dates a legal document was filed, but not its contents.

7 Additionally, “[a] court cannot take judicial notice of the truth of hearsay statements just
8 because they are part of a court record or file.” (*Bach v. McNelis* (1989) 207 Cal.App.3d 852, 864-
9 865; *Kilroy v. State of Calif.* (2004) 119 Cal.App.4th 140, 146-147.) For this reason, the court should
10 not take judicial notice of **Exhibit 22F**, hearing transcript, **Exhibit 24B**, hearing transcript, **Exhibit**
11 **24A**, Declaration of Reina Benitez,² and **Exhibit 26A and 26B**, Miller’s deposition transcripts.³

12 With respect to the truth of facts in orders, findings and judgments, some older cases have
13 approved judicial notice of both the existence and truth of the facts asserted in court orders, findings
14 of fact and judgments. But more recent decisions disagree, holding that such matter is noticeable
15 only to establish the contents of the judicial orders, findings and judgments. (*Sosinsky v. Grant*,
16 *supra*, 6 Cal.App.4th at 1564-1569 [such matter is not noticeable for truth of matter asserted].) For
17 this reason, the court may not take judicial notice of **Exhibit 22G**, Judgment.

18 Finally, the matter to be judicially noticed is also subject to Evidence Code section 352,
19 which provides that evidence may be excluded if its probative value is substantially outweighed by
20 the probability that its admission will necessitate an undue consumption of time or create a
21 substantial danger of unfair prejudice. (See *Mitroff v. United Services Auto. Ass’n.* (1999) 72
22

23 _____
24 ²See *Guimei v. General Elec. Co.* (2009) 172 Cal.App.4th 689, as modified on denial of reh’g, (Mar.
25 24, 2009), modified on denial of rehearing [Court of Appeal refused to take judicial notice of facts
26 contained in filings in the trial court filed in support of and in opposition to a motion to lift a stay of
27 wrongful death proceedings that had been granted on the ground of forum non conveniens, when
28 there was no evidence that the factual declarations were free from dispute.]

³ Defendants argue that they should be allowed to read these deposition excerpts from Catharine
Miller’s deposition into the record at trial. (Def. Trial Motion for Judicial Notice, 2:10-11.) Only the
adverse party may use the deposition of a party or “party affiliated” deponent (officer, director,
managing agent or employee of party) for *any purpose*—i.e., either (1) as *impeachment*, or (2)
as *substantive evidence* against such party (i.e., as an admission). (Code. Civ. Proc., §2025.620(b).)
The statute allows only an “adverse party” to use another party’s deposition for “any purpose.”

1 Cal.App.4th 1230, 1243 (court refused to take judicial notice of matter that was irrelevant and that
2 would result in undue consumption of time); Evid. Code, §454(a)(2) (“Exclusionary rules of
3 evidence do not apply except for Section 352 and the rules of privilege.”).) Every request for judicial
4 notice here, which are merely routine litigation filings and legal briefing, in no way prove
5 defendants’ allegations of DFEH bias or non-neutrality.⁴ DFEH will be severely prejudiced if
6 defendants are permitted to argue that DFEH is biased by proceeding with civil rights litigation,
7 taking depositions, and briefing the legal issues with references to precedent. It would only deprive
8 DFEH, the plaintiff in this action, from making bona fide legal arguments based on case law. The
9 outcome would be to chill public interest advocacy. For these reasons, exclusion is also warranted
10 pursuant to Evidence Code section 352.

11 **IV. CONCLUSION**

12 Based on the foregoing, DFEH respectfully requests that the Court deny Defendants’ Trial
13 Motion for Judicial Notice.

14 Dated: July 23, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

15
16 By: Kendra Tanacea
17 Kendra Tanacea
18 Attorneys for the Department of Fair
19 Employment and Housing
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26 ⁴ In responses to defendants’ requests for admissions, DFEH admitted the sincerity of Miller’s
27 religious beliefs and, therefore, never had a need to inquire into those beliefs. Certainly, DFEH does
28 not challenge or disparage her beliefs. DFEH is merely making legal arguments under relevant case
law. With respect to the deposition testimony highlighted by defendants, the questions were proper
because Tastries’ Design Standards state it will not make a cake that “violates fundamental Christian
principles” and DFEH asked questions on these fundamental Christian principals as applied to the
Tastries’ Design Standards. Simply put, there is no evidence of animus or bias against defendants.

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APPENDIX A

1 **Summary of Defendants' Request for Judicial Notice of Certain Documents**

2 **RJN Exhibit 21:** DFEH's Notice of Filing a Discrimination

3 Complaint sent to Tastries Bakery, dated October 26, 2017. Defendants
4 highlighted the following language in this letter: "The DFEH serves as a
5 neutral fact finder and represents the state of California rather than the
6 complaining party."

7 **RJN Exhibit 22A:** DFEH's Ex Parte Application for TRO and OSC
8 Re Preliminary Injunction (legal brief).

9 **RJN Exhibit 22B:** The Civil Case Cover Sheet

10 **RJN Exhibit 22C:** DFEH MPA in support of Ex Parte Application for
11 TRO and OSC Re Preliminary Injunction filed December 13, 2017, with
12 legal argument highlighted by defendants:

13 Miller cannot credibly claim that the Unruh Act substantially burdens her
14 beliefs by requiring her to make wedding cakes. She could cease making
15 wedding cakes for anyone, remaining in compliance both the law and her
16 religious beliefs. (See *North Coast, supra*, 44 Cal.4th at p. 1159 ["To avoid
17 any conflict between their religious beliefs and the state Unruh Civil
18 Rights Act's anti-discrimination provisions, defendant physicians can
19 simply refuse to perform the IUI medical procedure at issue here for any
20 patient of North Coast, the physician's employer."] Alternatively, Miller
21 could ensure that gay and lesbian customers receive equal access to
22 wedding cakes through Tastries employees who do not share her religious
23 objections. (See *ibid.* ["[Defendant physicians can avoid such a conflict
24 [with the Unruh Act] by ensuring that every patient requiring IUI receives
25 'full and equal' access to that medical procedure through a North Coats
26 physician lacking defendants' religious objections."] [Underlined portion
27 added for context].

28 **RJN Exhibit 22D:** DFEH MPA In Support of Preliminary
Injunction filed January 10, 2018, legal argument highlighted by
defendants:

Indeed, the United States Supreme Court itself rejected a similar free
exercise defense over forty years ago in the case of *Newman v. Piggie
Park Enters., Inc.* (1968) 390 U.S. 400. *Piggie Park* concerned the
question whether Title II of the Civil Rights Act of 1964 could be applied
to prohibit racial discrimination even where the owner of a business
asserted a religious rationale for refusing to serve African-American

customers. (See *Newman v. Piggie Park Enters., Inc.* (D.S.C. 1966) 256 F.Supp. 941.) The owner of Piggie Park asserted that “his religious beliefs compel[led] him to oppose any integration of the races whatever.” (*Id.* at 944.) The district court held it was not “impressed by [the] defendant[’s] contention that the judicial enforcement of the public accommodations provisions of the Civil Rights Act of 1964 . . . violates the free exercise of his religious beliefs in contravention of the First Amendment to the Constitution.” (*Id.* at 945.) The court observed that while all persons are entitled to the free exercise of religion, that exercise “is subject to regulation when religious acts require accommodation to society.” (*Ibid.*) Likewise, the United States Supreme Court was not persuaded by defendant’s arguments, relegating them to a mere footnote in its decision affirming an award of attorneys’ fees against Piggie Park. (See *Piggie Park, supra*, 390 U.S. at p. 402, n.5.) The Court held it was “not even a borderline case,” and that defendants’ contention that the Civil Rights Act “was invalid because it ‘contravenes the will of God’ and constitutes an interference with the ‘free exercise of the Defendant’s religion,’” was “so patently frivolous that a denial of counsel fees to the petitioners would be manifestly inequitable.” (*Ibid.*) Similarly, in the even earlier case of *Katzenbach v. McClung* (1964) 379 U.S. 294, 298 fn. 1, the Supreme Court rejected a restaurant’s claims that its “personal convictions” and “choice of associates” permitted it to deny African-American customers equal service under the Fifth, Ninth, Tenth, or Thirteenth Amendments. (See *Katzenbach* Brief for Appellees, No. 543, 1964 WL 81100, at *32–33 (U.S. Oct. 2, 1964)].) Tastries arguments cannot be meaningfully differentiated from those presented in *Piggie Park* and *Katzenbach*, and they must similarly be rejected....

...cf. *Burwell v. Hobby Lobby Stores, Inc.* (2014) 134 S.Ct. 2751, 2783 [acknowledging that “prohibitions on racial discrimination [in employment] are precisely tailored” to further the compelling state interest in “providing an equal opportunity to participate in the workforce without regard to race....”].)

RJN Exhibit 22E: DFEH Reply Brief ISO of Motion for Preliminary Injunction filed January 26, 2018, with the following highlights by defendants:

What respondents request is a return to the days when certain individuals could be turned away from businesses based on their innate characteristics (i.e., sex or race) or religious beliefs....

.... Here, too, the DFEH seeks an injunction against more than mere “hypothetical harm[s].” (See *infra* Section B.) Tastries—a public accommodation licensed by the State—enforces a policy denying full and equal services to same-sex couples who want to purchase wedding cakes, in violation of the Unruh Act. This policy harms the dignity of all

1 Californians, and threatens specific ongoing harm to gay and lesbian
2 residents....

3 The notion that a disfavored class of residents should simply “go
4 elsewhere” is no more an acceptable policy for public accommodations in
5 2018 than it was when the Supreme Court decided *Heart of Atlanta* in
6 1964. (See *FEHC, supra*, 12 Cal.4th at p. 1170, citing *Heart of Atlanta*
7 *Motel, Inc. v. U.S.* (1964) 379 U.S. 241, 250.)

8 **RJN Exhibit 22F:** Certified Hearing Transcript re Preliminary

9 Injunction dated February 2, 2018, with the following highlights by
10 defendants:

11 MR. MANN: That's what they say. In *Piggie Park*, it wasn't a complete
12 exclusion of African-Americans. The restaurant was willing to serve
13 African-Americans. They just wouldn't serve them the entire menu, and
14 they said, "If you want to be served, you have to go around back." So
15 whether or not it's just wedding cakes or everything, there's a long history
16 of courts saying full and equal services means full and equal services.

17 **RJN Exhibit 22G:** Judgment Re Injunction filed May 1, 2018

18 with attached Order by Judge Lampe.

19 **RJN Exhibit 23:** October 10, 2018 letter from DFEH to Charles

20 LiMandri Re Notice of Cause Finding and Mandatory Dispute Resolution.

21 **RJN Exhibit 24A:** Declaration of Reina Benitez dated January 17,

22 2018.

23 **RJN Exhibit 24B:** June 5, 2020 discovery hearing reporter's

24 transcript, highlighted by defendants as follows:

25 MR. MANN: Right. And the first point, it's not -- I don't know that it's as
26 important. But plaintiffs have been -- I don't even want to go there. Let's
27 skip all of that. Plaintiffs have looked for cases to push the law forever.
28 Rosa Parks was not just happened to be taking the bus that day. So
whether or not there is knowledge going in there does not change the fact
that there was a violation. **But, again, there is no evidence of that here,
and it doesn't change anything.** (Emphasis added.)

RJN Exhibit 25A: DFEH's MPA ISO Motion for Summary

Judgment filed September 8, 2021, highlighted by defendant as follows:

1 Indeed, in 1968 in *Piggie Park*, the Supreme Court rejected arguments
2 identical to those Tastries asserts here as “patently frivolous” when a
3 restaurant owner asserted the same free exercise and free speech defenses
4 against application of the federal public accommodations law that
5 prohibited him from discriminating on the basis of race. (*Piggie Park*,
supra, at p. 402, fn. 5.) Defendants’ arguments here are no more
persuasive when asserted to excuse their discrimination based on sexual
orientation....

6**A. Summary Judgment Should Be Granted Because Tastries**
7 **Violated Unruh By Discriminating Against the Rodriguez-Del Rios**
8 **Based on Their Sexual Orientation.**

9 Unruh provides that “[a]ll persons within the jurisdiction of this state are
10 free and equal, and no matter what their ... sexual orientation ... are
11 entitled to the full and equal accommodations, advantages, facilities,
12 privileges, or services in all business establishments of every kind
13 whatsoever.” (Civ. Code, § 51.) Business establishments have a duty to
14 “serve all persons without arbitrary discrimination.” (*Angelucci v. Century*
Supper Club (2007) 41 Cal.4th 160, 167.) “The [Unruh] Act is to be given
a liberal construction with a view to effectuating its purposes.” (*Koire v.*
Metro Car Wash (1985) 40 Cal.3d 24, 28.) By refusing to take the order of
a same-sex couple for cakes it would have prepared for opposite-sex
couples, Tastries violated Unruh on the basis of sexual orientation.⁵

15 **1. The undisputed facts establish a prima facie case of defendants’**
16 **violation of Unruh.**

17 As found by this Court in denying defendants’ anti-SLAPP motions, there
18 is no factual dispute that Tastries’ refusal to take the Rodriguez-Del Rio’s
19 cake order establishes a prima facie Unruh violation. A plaintiff “must
20 plead and prove intentional discrimination in public accommodations” to
21 establish an Unruh violation. (*Harris v. Capital Growth Investors XIV*
(1991) 52 Cal.3d 1142, 1175 [superseded by statute on other grounds].)
DFEH establishes a prima facie Unruh violation here.

22 Tastries is a for-profit bakery and, therefore, a business establishment
23 under Unruh, which this Court may determine as a matter of law.⁶ (*Rotary*
Club of Duarte v. Bd. of Directors (1986) 178 Cal.App.3d 1035, 1050-

24 ⁵ Where, as here, the facts are undisputed, violations of Unruh are properly determined on
25 summary judgment/adjudication. (See *Wilson v. Haria and Gogri Corp.* (E.D.Cal. 2007)
26 479 F.Supp.2d 1127, 1141 [summary judgment granted on liability]; *Hubbard v Twin Oaks*
Health & Rehabilitation Center (E.D.Cal. 2004) 408 F.Supp.2d 923, 932 [same].)

27 ⁶ As the creator and enforcer of Tastries’ discriminatory policy to deny same-sex couples
28 pre-ordered cakes to celebrate their unions, Miller is also individually liable because
“liability under [Unruh] ... extends beyond the business establishment itself to the business
establishment’s employees responsible for the discriminatory conduct.” (*North Coast*,
supra, 44 Cal.4th at p. 1154.)

1055.) Tastries has a facially discriminatory policy to deny same-sex couples any and all pre-ordered cakes to celebrate their unions, and Miller admits that she “declined the opportunity to create the requested custom cakes.” (SSUMF Nos. 5, 21.) Based on this direct evidence of Tastries’ intentional discrimination under its facially discriminatory policy, DFEH establishes a prima facie Unruh violation here. (See *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736-37.)

Violations of Unruh are “per se injurious.” (*Koire, supra*, 40 Cal.3d at p. 33.) Violators of Unruh are “liable for each and every offense ... in no case less than four thousand dollars (\$4,000).” (Civ. Code, § 52, subd. (a).) DFEH seeks only statutory minimum damages here, which are properly awarded upon summary judgment.⁷

2. Tastries declined the Rodriguez-Del Rios’ order because of their sexual orientation.

Unable to create a factual dispute as to Tastries’ intentional discrimination, Tastries attempts to create a legal dispute, arguing that there is a relevant difference between discriminatory action aimed at *same-sex marriage* and discriminatory action aimed at the couples’ sexual orientations. She is mistaken: Discrimination is not excused because it is aimed at an individual’s *demonstration* of their protected status; such a narrow view of the law would offer little protection. And courts have uniformly rejected this argument, refusing to distinguish between people’s status (i.e., sexual orientation) and their conduct (i.e., entering into a same-sex marriage) when the conduct is “engaged in exclusively or predominately by a particular class of people, [since] an intent to disfavor that class can readily be presumed.” (*Bray v. Alexandria Women’s Health Clinic* (1993) 506 U.S. 263, 270 [“A tax on wearing yarmulkes is a tax on Jews.”].) Indeed, even the U.S. Supreme Court’s “decisions have declined to distinguish between status and conduct in [the] context” of discrimination on the basis of sexual orientation. (*Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings College of Law v. Martinez* (2010) 561 U.S. 661, 689 citing *Lawrence v. Texas* (2003) 539 U.S. 558, 575 [criminalizing conduct typically undertaken by gay people is discrimination against gay people].) The California Supreme Court also

⁷ It is reversible error to require proof of harm in an Unruh case where only statutory damages are sought. (*Rotary Club of Duarte, supra*, 178 Cal.App.3d at p. 1061 [*affd. sub nom. Bd. of Directors of Rotary Internat. v. Rotary Club of Duarte* (1987) 481 U.S. 537] [holding that upon proof of an Unruh violation, injunctive relief is available and “damages are presumed”].) If the court is inclined to resolve the statutory damages at this stage, as it may do, DFEH seeks minimum statutory penalties of \$4,000 for Tastries’ violation as to each of the Rodriguez-Del Rios. (See, e.g., *Wilson, supra*, 479 F.Supp.2d at p. 1141 [awarding \$52,000 on summary judgment based on 13 violations of Unruh]; *Feezor v. Del Taco* (S.D.Cal. 2005) 431 F.Supp.2d 1088, 1091 [awarding \$12,000 on summary judgment for 3 violations].)

1 recognized that this distinction is meaningless: California’s former laws
 2 prohibiting same-sex marriage “properly must be understood as
 3 classifying or discriminating on the basis of sexual orientation” (*In re*
 4 *Marriage Cases* (2008) 43 Cal.4th 757, 783-84, superseded by
 5 Constitutional amendment as stated in *Hollingsworth v. Perry* (2013) 570
 6 U.S. 693, 701.) There is no basis to construe Unruh differently, especially
 7 given its “liberal construction.” (*Koire, supra*, 40 Cal.3d at p. 28.)

8 Discrimination against individuals celebrating same-sex marriages violates
 9 Unruh’s prohibition against discrimination based on sexual orientation.
 10 (See *Romer v. Evans* (1996) 517 U.S. 620, 641 [Scalia, J. dissenting]
 11 [“After all, there can hardly be more palpable discrimination against a
 12 class than making the conduct that defines the class criminal.”]); see also
 13 *State v. Arlene’s Flowers* (2019) 193 Wash.2d 469, 503-05; see also *Elane*
 14 *Photography, LLC v. Willock* (2013) 309 P.3d 53, 68.) And there is no
 15 dispute that Miller discriminated against the Rodriguez-Del Rios’ based
 16 on their celebration of a same-sex marriage. (SSUMF Nos. 20, 21.) ...

17 Indeed, the Supreme Court rejected a similar free exercise defense
 18 over fifty years ago in *Newman v. Piggie Park Enters., Inc.*, which
 19 *Masterpiece* invokes in support of “the general rule” that the objections
 20 here “do not allow business owners ... to deny protected persons equal
 21 access to goods and services under a neutral and generally applicable
 22 law.” (*Id.* at p. 1727 citing *Piggie Park, supra*, 390 U.S. at p. 402, fn. 5.)
 23 *Piggie Park* concerned whether Title II of the Civil Rights Act of 1964
 24 prohibited racial discrimination where the owner of a restaurant asserted a
 25 free exercise defense. (*Piggie Park, supra*, 390 U.S. at p. 402, fn. 5.) The
 26 Court concluded it was “not even a borderline case,” and that defendant’s
 27 contention that the Civil Rights Act “was invalid because it ‘contravenes
 28 the will of God’ and constitutes an interference with the ‘free exercise of
 [his] religion,’” was “patently frivolous” (*Ibid.*) As *Masterpiece* makes
 clear, Tastries’ arguments cannot be meaningfully differentiated from
 those in *Piggie Park* and must similarly be rejected....

.... Three, Miller can step aside from participating in the preparation of
 any pre-ordered cakes sold to same-sex couples and allow her willing
 employees to manage the process. (See North Coast, supra, 44 Cal.4th at
 p. 1159.) [Underline added for context.]....

....fn. 6 The fact that Miller’s religious beliefs may motivate Tastries to
 stop selling pre-ordered wedding cakes altogether does not mean Unruh
 substantially burdens her beliefs, even if it led to Tastries restructuring its
 business. (*Smith v. Fair Empl. & Hous. Com.* (1996) 12 Cal.4th 1143,
1172–73 [Landlord’s option of “shifting her capital from rental units to
another investment” was a relevant factor in assessing FEHA’s burden on
her religious beliefs because “[a]n economic cost ... does not equate to a
substantial burden for purposes of the free exercise clause.”] [Underline
 added for context.]....

1 **RJN Exhibit 25B:** DFEH’s MPA in Opposition to Defendant’s
2 Motion for Summary Judgment filed October 6, 2021 [pages 1-4, 7-15,
3 17-19 omitted], highlighted by defendants as follows:

4 Fn. 4 *North Coast, supra*, 44 Cal.4th at p. 1159 suggests that by allowing
5 employees lacking Miller’s objections to same-sex marriage to prepare
6 cakes for same-sex couples, Tastries can harmonize Miller’s beliefs and its
7 obligations as a business—but Tastries has rejected this very reasonable
8 alternative. Tastries’ employees have prepared pre-ordered wedding cakes
9 for same-sex couples in the past without Miller’s involvement. (PAUMF
10 No. 53; PSSUMF Nos. 72-73.)....

11 Fourth, Miller can avoid the conflict between Unruh and her religious
12 beliefs by allowing Tastries’ employees lacking her religious objection to
13 prepare wedding cakes for same-sex couples (PAUMF Nos. 53-54,
14 PSSUMF No. 72). (See *North Coast, supra*, 44 Cal.4th at p. 1159.)....

15 allow Tastries employees lacking Miller’s religious objections to
16 prepare cakes for same-sex couples without Miller’s participation;...

17 **RJN Exhibit 25C:** DFEH’s Reply in Support of its Motion for
18 Summary Judgment filed October 20, 2021 [pages 2-5 and 7-10 omitted],
19 highlighted by defendants as follows:

20 Contrary to defendants’ assertion in their opposition, the Department of
21 Fair Employment and Housing (DFEH) does not want “defendants to
22 liquidate their business and go home.” (Opposition, 22:21.) DFEH is the
23 only party who has consistently sought common ground in this matter. It
24 has identified several options to harmonize Ms. Miller’s religious beliefs
25 with the requirement that Tastries complies with the Unruh Civil Rights
26 Act (Civ. Code, § 51 [Unruh]). (See *North Coast Women’s Care Medical*
27 *Group, Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1159.) [Underlined
28 added for context.]....

29 ...Fn. 3 Although defendants argue DFEH attempts to force them to
30 “cease offering pre-ordered wedding cakes for sale to anyone”
31 (Opposition 21:22-23; 22:21) to show the purported substantial burden
32 upon Miller’s religious exercise, DFEH has identified at least three
33 recognized options to comply with Unruh, two of which increase
34 revenues: (1) sale wedding cakes to all or (2) allow Tastries employees
35 with no religious objections to prepare wedding cakes for same-sex
36 couples (while this option seems to be the logical compromise given that
37 Tastries’ employees have done so in the past without Miller’s involvement
38 [SSUMF Nos. 69, 72], the choice is defendants’). (See *North Coast,*
39 *supra*, 44 Cal.4th at p. 1159.)

RJN Exhibit 26A: Excerpts from the deposition of defendant

Catharine Miller taken on September 26, 2018, highlighted by defendants as follows:

Q. So we asked about, you know, marriage that involved people where one of them had been divorced.

A. Uh-huh. Yes.

Q. Have there ever been circumstances where you would not create a cake because one of the people was divorced?

A. I am not privy to that information. And I don't ask my clients if they've been divorced. I take it the way I judge everything, whether it's a cake or anyone else; this is between you and God, not me. I'm not going to judge. You're getting married. And you're trying to make it -- in that kind of a situation, you know, where there's kids involved, they're trying to make it right before the Lord. They're bringing it before the Lord. That's between them. God is very specific: Marriage is between a man and woman. And that's all I know. So I will support that.

Q. Would that be the same answer for if one or both of them have a child out of wedlock?

A. They're trying to make it right with God. I will support anything that encourages them to be right with God. And I go over my wedding packet with them....

....Q. You've made wedding cakes for interracial couples before?

A. Uh-huh.

MR. LIMANDRI: Is that "yes"?

THE WITNESS: I'm sorry. Yes.

BY MR. MANN: Q. Any problem with making wedding cakes in that situation?

A. No. They're both people. God made them....

.... Q. What about a birthday cake for the child of a same-sex couple?

A. We already did one.

Q. And you'll do that in the future?

A. Uh-huh.

MR. LIMANDRI: You have to answer out loud.

THE WITNESS: Yes. I'm honoring them as a person.

RJN Exhibit 26B: Excerpts from the deposition of Catharine Miller taken on February 24, 2022: Although defendants' highlighted portions are too voluminous to quote here, the questions were generally whether Tastries would make a cake for a couple who didn't believe in God; does making a cake for the wedding of a couple that doesn't believe in God violate Tastries' Design Standards; if Miller would write a congratulatory message on a case cake for a same-sex couple; what Bible practices she follows; whether she follows both the old and new testament; questions about the "fundamental Christian principles" as defined in Tastries' Design Standards that prohibit making and

1 selling a cake; questions about her Facebook post of rainbow colors that says “I
2 was raised that thee colors were a promise from God, not pride of living in
3 sin.” In summary, Miller was testifying to the application of her “fundamental
4 Christian principles” a term that governs whether she will or will not make
5 cakes under the Design Standards. Her sincerely held religious belief were
6 never questioned or disparaged. The questions were related to the scope of
7 Tastries’ Design Standards.
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13 *Application forthcoming

14 *Attorneys for Defendants Cathy's*
Creations, Inc. and Catharine Miller
15

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

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Kern County Superior Court
By Maribel Villalon, Deputy

CASE NO.: BCV-18-102633

IMAGED FILE

**DECLARATION OF JEFFREY M.
TRISSELL, ESQ. (FOURTH) IN
SUPPORT OF DEFENDANTS'
TRIAL MOTION FOR JUDICIAL
NOTICE**

Date: July 25, 2022
Time: 9:00 a.m.
Dept: J
Judge: Hon. J. Eric Bradshaw

Action Filed: Oct. 17, 2018

DECLARATION OF JEFFREY M. TRISSELL, ESQ. (FOURTH) ISO
DEFENDANTS' TRIAL MOTION FOR JUDICIAL NOTICE

RA.1600

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

I, Jeffrey M. Trissell, Esq., declare and state as follows:

1. I am an attorney duly admitted to practice before all the courts of California, both State and Federal. I am one of the attorneys for Defendants Catharine Miller and Cathy's Creations, Inc. dba Tastries Bakery (collectively "Defendants"). As such, I have personal knowledge of the following facts and, if called upon to testify, I could and would competently testify to these facts.

2. Attached hereto as **MJN Exhibit 21** is a true and correct copy of the DFEH's Notice of Filing of Discrimination Complaint, sent to Tastries Bakery, and dated October 26, 2017.

3. Attached hereto as **MJN Exhibit 22A** is a true and correct copy of the Department of Fair Employment and Housing's Petition and Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction, filed December 13, 2017, in Case No. BCV-17-102855.

4. Attached hereto as **MJN Exhibit 22B** is a true and correct copy of the Civil Case Cover Sheet, in Case No. BCV-17-102855.

5. Attached hereto as **MJN Exhibit 22C** is a true and correct copy of the highlighted relevant portions of the Department of Fair Employment and Housing's Memorandum of Points and Authorities in Support of Petition and Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction, filed December 13, 2017, in Case No. BCV-17-102855.

6. Attached hereto as **MJN Exhibit 22D** is a true and correct copy of the highlighted relevant portions of Petitioner Department of Fair Employment and Housing's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, filed January 10, 2018, in Case No. BCV-17-102855.

7. Attached hereto as **MJN Exhibit 22E** is a true and correct copy of the highlighted relevant portions of Petitioner Department of Fair Employment and Housing's Reply in Support of Motion for Preliminary Injunction, filed January 26, 2018, in Case No. BCV-17-102855.

///

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1 8. Attached hereto as **MJN Exhibit 22F** is a true and correct copy of the highlighted
2 relevant portions of the Certified Transcript of February 2, 2018 Hearing re Preliminary Injunction,
3 in Case No. BCV-17-102855.

4 9. Attached hereto as **MJN Exhibit 22G** is a true and correct copy of the Judgment,
5 filed May 1, 2018, in Case No. BCV-17-102855

6 10. Attached hereto as **MJN Exhibit 23** is a true and correct copy of the Letter from
7 Department of Fair Employment and Housing to Charles LiMandri Re Notice of Cause Finding
8 and Mandatory Dispute Resolution, dated October 10, 2018.

9 11. Attached hereto as **MJN Exhibit 24A** is a true and correct copy of the Declaration
10 of Reina Benitez, dated January 17, 2018, in Case No. BCV-17-102855.

11 12. Attached hereto as **MJN Exhibit 24B** is a true and correct copy of the highlighted
12 relevant portions of the Certified Transcript of June 5, 2020 Hearing re attorney-client privilege
13 with respect to discovery motions, in this action.

14 13. Attached hereto as **MJN Exhibit 25A** is a true and correct copy of the highlighted
15 relevant portions of the Plaintiff Department of Fair Employment and Housing's Memorandum of
16 Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative
17 Summary Adjudication, filed September 8, 2021.

18 14. Attached hereto as **MJN Exhibit 25B** is a true and correct copy of the highlighted
19 relevant portions of the Plaintiff Department of Fair Employment and Housing's Memorandum of
20 Points and Authorities in Opposition to Defendants Catharine Miller and Tastries Bakery's Motion
21 for Summary Judgment or, in the Alternative, Summary Adjudication, filed October 6, 2021.

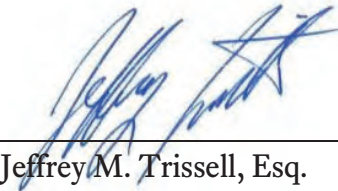
22 15. Attached hereto as **MJN Exhibit 25C** is a true and correct copy of the highlighted
23 relevant portions of the Plaintiff Department of Fair Employment and Housing's Reply in Support
24 of its Motion for Summary Judgment or, in the Alternative, Summary Adjudication, filed October
25 20, 2021.

26 16. Attached hereto as **MJN Exhibit 26A** is a true and correct copy of the highlighted
27 relevant portions of the Administrative Deposition of Defendant Catharine Miller, dated
28 September 26, 2018, taken in the DFEH's administrative investigation.

1 17. Attached hereto as **MJN Exhibit 26B** is a true and correct copy of the highlighted
2 relevant portions of the Deposition of Defendant Catharine Miller, dated February 24, 2022, taken
3 in this action.

4 I declare until penalty of perjury under the laws of the United States and the State of
5 California that the foregoing is true and correct. Executed on July 22, 2022.

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Jeffrey M. Trissell, Esq.

MJN EXHIBIT 21



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

October 26, 2017

Catharine M. Miller
Agent for Service for Cathy's Creations, Inc. dba Tastries
3665 Rosedale Highway
Bakersfield, CA 93308

Respondent:

Cathy Miller, Cathy's Creations, Inc. dba Tastries

RE: Notice of Filing of Discrimination Complaint - Response Requested

DFEH Number: 935123-315628

Rodriguez-Del Rio / Cathy's Creations, Inc. dba Tastries

To All Listed Respondent(s):

Enclosed is a copy of a complaint filed with the Department of Fair Employment and Housing (DFEH). The enclosed complaint, in which you have been named a Respondent or Co-Respondent, alleges unlawful discrimination pursuant to Civil Code section 51.

The DFEH serves as a neutral fact-finder and represents the state of California rather than the complaining party. The merits of this complaint have not been determined. It was, however, subjected to a screening process, and the allegations, if proven, could support a finding of discrimination.

You must submit a response to the questions below including the supplemental questions, within thirty (30) days of the date of this letter.

1. State the legal name of your business and any other name(s) under which you do or have done business in California.
2. State your business address. Please note that you are required to notify the DFEH in writing of any change of address and the effective date of such change while the complaint is under investigation and throughout any administrative adjudication. (California Code of Regulations, title 2, sections 7403 and 7411).
3. State type of legal business entity you are, i.e., corporation, partnership, limited partnership, sole proprietorship.
4. Does your company have a current contract(s) for the provisions of goods, services or public works with the State of California or receive federal funds? If so, name the awarding agency(ies).

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

October 26, 2017

Page 2

Your response and filing of your address can be submitted by mail. In all mailed correspondence, please include your matter number **935123-315628** and mail it to DFEH, 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758.

If you are interested in discussing a possible settlement of this complaint, please contact me immediately. This will avoid unnecessary delay and limit any potential liability. All settlement discussions are confidential, and not subject to disclosure. All discussions referring to evidence or information which has a bearing on determining the merits of this complaint will not be considered part of a settlement discussion unless confidentiality is acknowledged by the DFEH. If a settlement is reached which is mutually acceptable to the parties, submission of the requested information may not be necessary.

If you have any questions, please contact me.

Sincerely,



Clara Hernandez
Consultant III-Spec.
661.395.2973
clara.hernandez@dfeh.ca.gov

Enclosure
CERTIFIED MAIL: 70170660000107888650

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

SUPPLEMENTAL QUESTIONS

Complainant: Eileen Rodriguez-Del Rio

Co-Complainant: Mireya Rodriguez-Del Rio

Respondent: Cathy Miller, Cathy's Creations, Inc. dba Tastries

1. Provide a statement of your position with regard to the allegations contained in the complaint:

On 8/26/2017, Cathy Miller, owner of Tastries, stated she would not make our wedding cake because she did not condone same sex marriages. She refused to provide us service, and steered us to another bakery.

2. Why did you refuse to make a wedding cake for the complainants?
3. What are the specific religious bases for your refusal to make or sell wedding cakes for same-sex wedding celebrations?
4. Have you made or sold cakes for same-sex wedding celebrations? If so, for each cake please state when the cake was made or sold, list the names and contact information of the customers, and state why you did not refuse to make or sell the cake for the same reasons you refused to make a wedding cake for the complainants.
5. Have you refused, on religious grounds, to make or sell cakes for other types of occasions, celebrations or events? If yes, please describe the types of occasions, celebrations or events for which you have refused for religious reasons to make or sell cakes.
6. Have you made or sold cakes to be used in wedding celebrations between a couple, at least one of whom had been divorced? If yes, why?
7. Have you made or sold cakes to be used in wedding celebrations between a couple, at least one of whom had children out of wedlock? If yes, why?
8. Have you refused to make or sell a wedding cake for an opposite-sex couple based on religious reasons? If so, for each occasion please state when and why you refused, and list the names and contact information of the potential customers.
9. Since January 1, 2014, have you refused to make or sell cakes to a potential customer(s) for any reason? If yes, why? For each person denied service, state

the individual's name, the date of denied service, the individual's contact information, and the reason service was denied.

10. For the period of January 1, 2014 to the present, provide a list of all potential customers you have denied service to due to their sexual orientation. For each individual listed state their name, the date of denied service, and the individual's contact information.
11. Describe all communications between Catharine Miller and Gimme Some Sugar and/or Stephanie Caughell-Fisher regarding referral of potential Tastries customers to Gimme Some Sugar.
12. Describe any agreement between Catharine Miller and Gimme Some Sugar and/or Stephanie Caughell-Fisher regarding referral of potential Tastries customers to Gimme Some Sugar.
13. For each potential Tastries customer referred to Gimme Some Sugar, please list the name(s) and contact information.
14. How many wedding cakes has Tastries sold in the last two years? Please provide your best estimate.
15. How many wedding cakes has Tastries custom designed in the last two years? Please provide your best estimate.
16. How many pre-designed or non-custom wedding cakes has Tastries sold in the last two years? Please provide your best estimate.
17. What percentage of the total number of cakes produced by Tastries in the last two years were wedding cakes? Please provide your best estimate.
18. Do Tastries wedding cakes typically have writing on them? If yes, what is the typical written message?
19. Describe the design process for creating a Tastries wedding cake.
20. Describe Catharine Miller's role in the wedding cake design process. Does her role differ for cakes other than wedding cakes?
21. What percentage of Tastries cakes did Catharine Miller design in the last two years?
22. Describe Catharine Miller's role in baking, sculpting, decorating, frosting, or otherwise assembling cakes (i.e., Catharine Miller's role aside from the design process of the cakes).

23. What percentage of Tastries cakes did Catharine Miller bake, sculpt, decorate, frost, or otherwise assemble in the last three years? What is the percentage for wedding cakes?
24. Does Catharine Miller deliver cakes to wedding celebrations personally? If yes, what percentage of wedding cakes does Ms. Miller personally deliver to wedding celebrations? What is the decision-making process that leads to Ms. Miller personally delivering cakes to wedding celebrations?
25. Have Catharine Miller or other Tastries employees or independent contractors participated in wedding celebrations at which Tastries cakes are involved? If yes, please describe such participation.
26. Have Tastries employees or independent contractors been disciplined for their participation in wedding celebrations at which Tastries cakes were involved?
27. Have Tastries wedding cakes been delivered or displayed in such a manner that attendees at a wedding celebration knew the cake was a Tastries cake?
28. Describe all steps, if any, you take to ensure that a Tastries cake is used by the customer(s) to whom it is sold, rather than transferred to a third party.
29. How many employees do you employ? If this number has changed since January 1, 2014, please describe the changes, including when the changes occurred.
30. How many independent contractors work with you? If this number has changed since January 1, 2014, please describe the changes, including when the changes occurred.
31. Describe the job duties of each Tastries employee and independent contractor.
32. Describe the duties associated with each job title at Tastries. Please provide duty statements for each job title at Tastries.
33. Provide a list of all employees who have worked at Tastries for the period of January 1, 2014 to the present. For each individual listed state their name, date of hire, employment status, and last known contact information.
34. Provide a list of all independent contractors who have worked with Tastries for the period of January 1, 2014 to the present. For each individual listed state their name, date of hire, employment status, and last known contact information.
35. Provide a description of your policies on harassment. Provide a copy of each written policy, and explain what steps have been taken to implement it.

36. Provide a description of your policies on discrimination. Provide a copy of each written policy, and explain what steps have been taken to implement it.
37. Describe your policies and procedures for handling customer and employee or independent contractor complaints. Provide a copy of each written policy, and explain what steps have been taken to implement it.
38. Describe all complaints of harassment or discrimination made by an employee or independent contractor from January 1, 2014 to the present. Provide a copy of each written complaint of harassment or discrimination made by an employee or independent contractor since January 1, 2014.
39. Describe all complaints of harassment or discrimination made by a potential customer(s) against Ms. Miller since January 1, 2014. Provide any written complaints.
40. Describe all complaints of harassment or discrimination made by a potential customer(s) against any Tastries employee or independent contractor since January 1, 2014. Provide any written complaints.
41. Identify all owners of Cathy's Creations, Inc.

**COMPLAINT OF DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Unruh Civil Rights Act
(Civ. Code, § 51)**

Complaint of
Eileen Rodriguez-Del Rio, Complainant.
Mireya Rodriguez-Del Rio, Co-Complainant
6200 Lou Court
Bakersfield, California 93313

DFEH No. 935123-315628

vs.

Cathy Miller; Cathy's Creations, Inc. dba Tastries
dba Tastries Bakery, Respondents.
3665 Rosedale Highway
Bakersfield, California 93308

THE PARTICULARS ARE:

1. **Eileen Rodriguez-Del Rio** and **Mireya Rodriguez-Del Rio**, allege that respondents took the following adverse actions against complainants. Complainants were denied full or equal accommodations, advantages, facilities, privileges, or services by a business establishment, including both private and public entities because of one or more Fair Employment and Housing Act (which incorporates Civil Code section 51) protected basis: **Sexual Orientation**.
2. Our belief is based on the following: On 8/26/2017, Cathy Miller, owner of Tastries, stated she would not make our wedding cake because she did not condone same sex marriages. She refused to provide us service, and steered us to another bakery.
3. We initially visited Tastries on August 17, 2017, to inquire about ordering a wedding cake. A Tastries employee assisted us. She provided a quote for the simple wedding cake we chose, and suggested we return for a cake tasting on August 26, 2017. We were pleased with the service the employee provided us, and after looking at cakes at other bakeries, we expected to order our cake from Tastries assuming all went well at the tasting.

4. We did not taste cakes during our August 26, 2017, visit to Tastries. We arrived for our appointment, met Eileen's mother and our two friends, and were greeted by the employee, who helped us previously. She then informed us her boss would assist us. Her boss, Cathy Miller, introduced herself and told us she was taking over. Ms. Miller asked us what we were looking for, and we informed her we had already provided details about the wedding cake we wanted. She responded that the cake would cost \$230, and that she was sending the order to another bakery because she does not condone nor work on same-sex weddings. Ms. Miller said she always sends orders for same-sex wedding cakes to another bakery. We were shocked. Since Tastries refused to bake our wedding cake, we saw no point in tasting its cakes, so we left.

5. Complainants **Eileen Rodriguez-Del Rio** and **Mireya Rodriguez-Del Rio** reside in the City of **Bakersfield**, State of **California**.

VERIFICATION

I, Eileen Rodriguez-Del Rio, am a complainant in the above complaint. I have read the above complaint and know its contents. I declare under penalty of perjury under the laws of the State of California that the above is true and correct of my own knowledge, except as to those matters alleged on information and belief, which I also believe to be true.

Signature of Complainant or Complainant's Legal Representative: Date:

Eileen Rodriguez-Del Rio
Eileen Rodriguez-Del Rio (Oct 18, 2017)

Oct 18, 2017

VERIFICATION

I, Mireya Rodriguez-Del Rio, am a complainant in the above complaint. I have read the above complaint and know its contents. I declare under penalty of perjury under the laws of the State of California that the above is true and correct of my own knowledge, except as to those matters alleged on information and belief, which I also believe to be true.

Signature of Complainant or Complainant's Legal Representative: Date:

Mireya Rodriguez-Del Rio
Mireya Rodriguez-Del Rio (Oct 18, 2017)

Oct 18, 2017

MJN EXHIBIT 22A

1 PAULA PEARLMAN (#109038)
Assistant Chief Counsel
2 GREGORY J. MANN (#200578)
Senior Staff Counsel
3 TIMOTHY MARTIN (#300269)
Staff Counsel
4 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
5 320 4th Street, Suite 1000
Los Angeles, CA 90013
6 Telephone: (213) 439-6799
Facsimile: (888) 382-5293
7
8 Attorneys for Petitioner, DFEH
(Fee Exempt, Gov. Code, § 6103)
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF KERN**

12
13 DEPARTMENT OF FAIR EMPLOYMENT)
AND HOUSING, an agency of the State of)
14 California,)
15)
Petitioner,)
16)
vs.)
17)
CATHY'S CREATIONS, INC. d/b/a)
TASTRIES, a California corporation; and)
18 CATHY MILLER,)
19)
Respondents.)

20 EILEEN RODRIGUEZ-DEL RIO and MIREYA)
RODRIGUEZ-DEL RIO,)
21)
22)
Complainants.)
23)
24)
25)
26)
27)
28)

Case No.

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
PETITION AND EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

(Gov. Code, § 12974)

**Date: December 14, 2017
Time: 8:30 a.m.
Dept.: 11
Judge: Hon. David R. Lampe**



1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 14, 2017, at 8:30 a.m., in Department 11 of the
3 Kern County Superior Court, located at 1415 Truxtun Street, Bakersfield, California, 93301, the
4 California Department of Fair Employment and Housing (DFEH) will petition and apply, and hereby
5 does petition and apply, *ex parte*, for leave of the court to request temporary and preliminary relief
6 pursuant to Government Code section 12974 enjoining respondents Cathy's Creations, Inc. (d/b/a/
7 Tastries [Tastries]) and Cathy Miler from selling to anyone any item they are unwilling to sell, on
8 an equal basis, to members of any protected group under Civil Code section 51 during the
9 DFEH's investigation. The DFEH requests an order that Tastries and Miller show cause why the
10 preliminary injunction should not issue. (6 Witkin, Cal. Proc. 5th (2008) Ch. 7: Proceedings Without
11 Trial, § 60, p. 486.) ("[a]n order to show cause is an order, issued by a court on an *ex parte*
12 application and served on the party to whom it is directed.")

13 The application for temporary and preliminary relief is based on the following grounds:

14 1. Pursuant to Government Code section 12974, the DFEH has the right to seek
15 temporary or preliminary relief pending the disposition of its investigation of a complaint, including
16 to enjoin a business establishment and its employees from selling to anyone any item they are
17 unwilling to sell, on an equal basis, to members of any protected group under Civil Code section
18 51, provided it concludes that prompt judicial action is necessary to carry out the purposes of the
19 Unruh Civil Rights Act (Unruh Act) as incorporated into Fair Employment and Housing Act (FEHA)
20 and has probable cause to believe the allegations of the complaint filed with the DFEH constitute a
21 violation of the Unruh Act. The DFEH has initiated an investigation and found probable cause that
22 Tastries and Miller are in violation of the Unruh Act, as described in the DFEH's Memorandum of
23 Points and Authorities In Support of Petition and *Ex Parte* Application for Temporary Restraining
24 Order and Order to Show Cause Re Preliminary Injunction and its supporting pleadings. As a result,
25 the DFEH concludes that prompt judicial action is necessary to carry out the purposes of the Unruh
26 Act. These findings by the DFEH authorize this Court to enjoin respondents from selling to anyone
27 any item they are unwilling to sell, on an equal basis, to members of any protected group under
28 Civil Code section 51 until the DFEH has completed its investigation. (Gov. Code, § 12974.) Thus



1 the DFEH requests a temporary restraining order for twenty (20) days and a preliminary injunction
2 for sixty (60) days enjoining Tastries and Miller from selling to anyone any item they are unwilling
3 to sell, on an equal basis, to members of any protected group under Civil Code section 51. This
4 injunctive relief is necessary to prevent continued discrimination pending the DFEH's investigation.

5 2. This petition and application is made on the further ground that great and irreparable
6 injury will result to the public before the matter can be heard on notice. (*Department of Fair*
7 *Employment and Housing v. Law School Admission Council, Inc.* (N.D. Cal. 2013) 941 F.Supp.2d
8 1159, 1169, quoting *General Tel. Co. of the Northwest, Inc. v. Equal Employment Opportunity*
9 *Commission* (1980) 446 U.S. 318, 326 [internal brackets omitted] ["In bringing enforcement actions,
10 DFEH acts 'not merely as a proxy for the victims of discrimination,' but also 'to vindicate the public
11 interest in preventing certain forms of discrimination.'"].)

12 3. This petition is based upon the information provided herein, the Memorandum of
13 Points and Authorities In Support of Petition and *Ex Parte* Application for Temporary Restraining
14 Order and Order to Show Cause re Preliminary Injunction; the supporting declarations of Eileen
15 Rodriguez-Del Rio, Mireya Rodriguez-Del Rio, Justin Salinas, and Gregory J. Mann and
16 accompanying exhibits; the pleadings on file in this action; any matters of which this Court may take
17 judicial notice; and such other matters as may brought to the attention of this Court before or during
18 the consideration of this petition.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 4. Therefore, DFEH requests that this Court grant its Petition and *Ex Parte* Application.

2
3 Dated: December 13, 2017

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

4 PAULA PEARLMAN
5 Assistant Chief Counsel

6 GREGORY J. MANN
7 Senior Staff Counsel

8 TIMOTHY MARTIN
9 Staff Counsel

10 By: _____

11 
12 Gregory J. Mann
13 Attorneys for the Department



MJN EXHIBIT 22B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GREGORY J. MANN, (200578);TIMOTHY MARTIN, (300269) DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING 320 W. 4TH STREET, 10TH FLOOR, SUITE 1000 LOS ANGELES, CA 90013 TELEPHONE NO. 213-439-6799 FAX NO. 1-888-382-5293 ATTORNEY FOR (Name) Department of Fair Employment and Housing		FOR COURT USE ONLY CASE NUMBER: JUDGE David R. Lampe DEPT LI
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: CITY AND ZIP CODE Bakersfield 93301-4698 BRANCH NAME Metropolitan Division Justice Building		
CASE NAME: DEEH vs CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California corporation; and CATHY MILLER		
CIVIL CASE COVER SHEET ☐ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☐ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☒ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties	d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence	f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): N/A

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: _____

GREGORY J. MANN, (200578) _____

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

MJN EXHIBIT 22C

1 PAULA PEARLMAN (#109038)
Assistant Chief Counsel
2 GREGORY J. MANN (#200578)
Senior Staff Counsel
3 TIMOTHY MARTIN (#300269)
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7
8 Attorneys for Petitioner, DFEH
(Fee Exempt, Gov. Code, § 6103)
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF KERN**

12 DEPARTMENT OF FAIR EMPLOYMENT)
13 AND HOUSING, an agency of the State of)
California,)
14)
Petitioner,)
15)
vs.)
16)
CATHY'S CREATIONS, INC. d/b/a)
17 TASTRIES, a California corporation; and)
CATHY MILLER,)
18)

Respondents.)

19 _____)
EILEEN RODRIGUEZ-DEL RIO and MIREYA)
20 RODRIGUEZ-DEL RIO,)
21)
Complainants.)
22 _____)

Case No.

**DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION AND EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

(Gov. Code, § 12974)

**Date: December 14, 2017
Time: 8:30 a.m.
Dept.: 11
Judge: Hon. David R. Lampe**

23
24 The Department of Fair Employment and Housing (DFEH) respectfully submits the following
25 Memorandum of Points and Authorities in Support of its Petition and *Ex Parte* Application for
26 Temporary Restraining Order (TRO) and Order to Show Cause (OSC) re Preliminary Injunction.
27



1 burdens a religious belief or practice, and, if so, whether the law is the least restrictive means to
2 achieve a compelling government interest. (*Id.* at p. 1158.) Under both of those prongs, the Unruh
3 Act passes muster here.

4 Miller cannot credibly claim that the Unruh Act substantially burdens her beliefs by requiring
5 her to make wedding cakes. She could cease making wedding cakes for anyone, remaining in
6 compliance both with the law and her religious beliefs. (See *North Coast, supra*, 44 Cal.4th at p.
7 1159 [“To avoid any conflict between their religious beliefs and the state Unruh Civil Rights Act’s
8 anti-discrimination provisions, defendant physicians can simply refuse to perform the IUI medical
9 procedure at issue here for any patient of North Coast, the physicians’ employer.”] Alternatively,
10 Miller could ensure that gay and lesbian customers receive equal access to wedding cakes through
11 Tastries employees who do not share her religious objections. (See *ibid.* [“[D]efendant physicians
12 can avoid such a conflict [with the Unruh Act] by ensuring that every patient requiring IUI receives
13 ‘full and equal’ access to that medical procedure through a North Coast physician lacking defendant’s
14 religious objections.”] But even if compliance with the Unruh Act did burden a religious practice, it
15 would remain enforceable against Tastries as the least restrictive means to achieve California’s
16 compelling interest in eradicating discrimination. (See *Ibid.*; see also *Smith v. Fair Empl. & Hous.*
17 *Com.* (1996) 12 Cal.4th 1143, 1175 [prospective customers have a “dignity interest,” which is
18 impaired if referred to a different business].) The California Constitution, therefore, provides no
19 defense even if the court adopts a strict scrutiny standard.

20 **B. THERE IS A REBUTTABLE PRESUMPTION THAT THE POTENTIAL HARM TO**
21 **THE PUBLIC CAUSED BY DISCRIMINATION OUTWEIGHS ANY POTENTIAL**
22 **HARM TO TASTRIES SUCH THAT AN INJUNCTION SHOULD ISSUE**

23 As the California Supreme Court held, “[w]here a governmental entity seeking to enjoin the
24 alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is
25 reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential
26 harm to the public outweighs the potential harm to the defendant.” (*IT Corp. v. County of Imperial,*
27 *supra*, 35 Cal.3d at p. 72, fn. omitted.) “If the defendant shows that it would suffer grave or
28 irreparable harm from the issuance of the preliminary injunction, the court must then examine the
relative actual harms to the parties.” (*Ibid.*) As demonstrated above, the DFEH is likely to prevail on



1 the merits. Thus, this Court must presume “that the potential harm to the public outweighs the
2 potential harm to [Tastries].” (*Ibid.*)

3 Tastries cannot establish it would suffer “grave or irreparable harm from the issuance of the
4 preliminary injunction,” thus the court need not “examine the relative actual harms to the parties.”
5 (*Id.* at p. 72; accord *People ex rel. Brown v. Black Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th
6 1561, 1571; *Water Replenishment District of Southern California v. City of Cerritos* (2013) 220
7 Cal.App.4th 1450, 1461-64.) The Unruh Act compels no speech nor infringes on Tastries’ religious
8 beliefs. Thus, Tastries cannot demonstrate any harm flowing from the issuance of a preliminary
9 injunction enjoining its discrimination, and this Court need not balance the potential harms.

10 IV. CONCLUSION

11 Based on the record and Miller’s admission that she intends to continue discriminating
12 against same-sex couples, “prompt judicial action is necessary to carry out the purpose of [FEHA].”
13 (Gov. Code, § 12974.) As demonstrated above, the DFEH is likely to prevail on the merits, and
14 Tastries can show no irreparable harm from the issuance of the requested injunction. Thus, pursuant
15 to Section 12974, the DFEH respectfully requests that this Court enjoin Tastries from enforcing its
16 policy of refusing to sell wedding cakes to same-sex couples.

17 Dated: December 13, 2017

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

18 PAULA PEARLMAN
19 Assistant Chief Counsel

20 GREGORY J. MANN
Senior Staff Counsel

21 TIMOTHY MARTIN
22 Staff Counsel

23 By: _____

24 Gregory J. Mann
25 Attorneys for the Department



MJN EXHIBIT 22D

1 PAULA D. PEARLMAN¹ (#109038)
Assistant Chief Counsel
2 GREGORY J. MANN (#200578)
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3 TIMOTHY MARTIN (#300269)
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8 Attorneys for Petitioner, DFEH
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF KERN**

12 DEPARTMENT OF FAIR EMPLOYMENT)
13 AND HOUSING, an agency of the State of)
California,)
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vs.)
16)
CATHY'S CREATIONS, INC. d/b/a)
17 TASTRIES, a California corporation; and)
CATHY MILLER,)
18)

Respondents.)

19 EILEEN RODRIGUEZ-DEL RIO and MIREYA)
20 RODRIGUEZ-DEL RIO,)
21)
Complainants.)
22)
23

Case No. BCV-17-102855

**PETITIONER DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

(Gov. Code, § 12974)

Date: February 2, 2018
Time: 1:30 p.m.
Dept.: 11
Judge: Hon. David R. Lampe

24 The Department of Fair Employment and Housing (DFEH) respectfully submits the following
25 Memorandum of Points and Authorities in Support of its Motion for Preliminary Injunction.
26
27

28 ¹ The DFEH thanks Jenna Kingkade, DFEH Graduate Legal Assistant, for her invaluable assistance.



1 objector's religious beliefs." (*North Coast Women's Care Medical Group, Inc. v. San Diego County*
2 *Sup. Ct., supra*, (2008) 44 Cal.4th 1145, 1155, describing holding of *Employment Div. v. Smith*
3 (1990) 494 U.S. 872, 879.) The Unruh Act is a valid and neutral law of general applicability within
4 the meaning of the "Smith test." (*Id.* at p. 1156.) Accordingly, Tastries' and Miller's federal free
5 exercise rights cannot exempt them "from conforming their conduct to the Act's antidiscrimination
6 requirements even if compliance poses an incidental conflict with [their] religious beliefs." (*Ibid.*)

7 Indeed, the United States Supreme Court itself rejected a similar free exercise defense over
8 forty years ago in the case of *Newman v. Piggie Park Enters., Inc.* (1968) 390 U.S. 400. *Piggie Park*
9 concerned the question whether Title II of the Civil Rights Act of 1964 could be applied to prohibit
10 racial discrimination even where the owner of a business asserted a religious rationale for refusing to
11 serve African-American customers. (See *Newman v. Piggie Park Enters., Inc.* (D.S.C. 1966) 256
12 F.Supp. 941.) The owner of *Piggie Park* asserted that "his religious beliefs compel[led] him to
13 oppose any integration of the races whatever." (*Id.* at 944.) The district court held it was not
14 "impressed by [the] defendant[']s contention that the judicial enforcement of the public
15 accommodations provisions of the Civil Rights Act of 1964 . . . violates the free exercise of his
16 religious beliefs in contravention of the First Amendment to the Constitution." (*Id.* at 945.) The
17 court observed that while all persons are entitled to the free exercise of religion, that exercise "is
18 subject to regulation when religious acts require accommodation to society." (*Ibid.*) Likewise, the
19 United States Supreme Court was not persuaded by defendant's arguments, relegating them to a mere
20 footnote in its decision affirming an award of attorneys' fees against *Piggie Park*. (See *Piggie Park*,
21 *supra*, 390 U.S. at p. 402, n.5.) The Court held it was "not even a borderline case," and that
22 defendants' contention that the Civil Rights Act "was invalid because it 'contravenes the will of God
23 and constitutes an interference with the 'free exercise of the Defendant's religion,'" was "so patently
24 frivolous that a denial of counsel fees to the petitioners would be manifestly inequitable." (*Ibid.*)
25 Similarly, in the even earlier case of *Katzenbach v. McClung* (1964) 379 U.S. 294, 298 fn. 1, the
26 Supreme Court rejected a restaurant's claims that its "personal convictions" and "choice of
27 associates" permitted it to deny African-American customers equal service under the Fifth, Ninth,
28 Tenth, or Thirteenth Amendments. (See *Katzenbach* Brief for Appellees, No. 543, 1964 WL 81100,



at *32–33 (U.S. Oct. 2, 1964)].) Tastries arguments cannot be meaningfully differentiated from those presented in *Piggie Park* and *Katzenbach*, and they must similarly be rejected.

ii. California’s free exercise clause does not exempt Tastries from complying with the Unruh Act because the Act’s application satisfies strict scrutiny.

The California Supreme Court has not determined the standard applicable to free exercise challenges under the California Constitution. Strict scrutiny, however, is the most demanding standard the court has contemplated. (*North Coast, supra*, 44 Cal.4th at pp. 1159–60.) Moreover, there are reasons to expect that the court would adopt the federal *Smith* test in keeping with its historical practice of interpreting California’s free exercise clause in tandem with its federal counterpart. (See *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 561–62.)³ The Unruh Act survives either test.

“Under strict scrutiny, a law could not be applied in a manner that substantially burdens a religious belief or practice unless the state shows that the law represents the least restrictive means of achieving a compelling interest. [Citation].” (*North Coast, supra*, 44 Cal.4th at p. 1158 [internal quotation marks and brackets omitted].) The Unruh Act and other laws ensuring equal access to public accommodations, however, “plainly serve compelling state interests of the highest order. [Citation].” (*Bd. of Directors of Rotary Intern. v. Rotary Club of Duarte* (1987) 481 U.S. 537, 549 [internal brackets omitted] [Unruh Act serves California’s compelling interest in ensuring women equal access to “the acquisition of leadership skills and business contacts as well as tangible goods and services”]; *North Coast, supra*, 44 Cal.4th at p. 1158 [the Unruh Act “furthers California’s compelling interest in ensuring full and equal access to medical treatment irrespective of sexual orientation”].) Moreover, the Unruh Act and other antidiscrimination laws are the least restrictive means of achieving the compelling interests they serve. (See *North Coast, supra*, 44 Cal.4th at p. 1158 [Physicians seeking to deny fertility treatment to same-sex couples were not entitled to state-law free exercise exemption, even if strict scrutiny applied and despite a presumably substantial burden on the physicians’ religious beliefs, because the Unruh Act is the least restrictive means for the state to achieve its goal of “ensuring full and equal access to medical treatment irrespective of

³ Or the Court may adopt the *Smith* test because its own early free exercise cases used an approach “much like” the *Smith* test. (See *Smith v. Fair Employment & Housing Com. (FEHC)* (1996) 12 Cal.4th 1143, 1178–79.)



sexual orientation”]; *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 626, 628–29 [Minnesota “advanced [its] interests through the least restrictive means” by applying its public accommodations law to prohibit a civic organization from excluding women]; cf. *Burwell v. Hobby Lobby Stores, Inc.* (2014) 134 S.Ct. 2751, 2783 [acknowledging that “prohibitions on racial discrimination [in employment] are precisely tailored” to further the compelling state interest in “providing an equal opportunity to participate in the workforce without regard to race...”].)

Strict scrutiny is also satisfied because the DFEH is not asking this Court to apply the Unruh Act in a manner that substantially burdens a religious belief or practice. Selling wedding cakes to same-sex couples is not the only manner in which Tastries may comply with the Act. Tastries may choose to cease offering wedding cakes for sale to the general public. (See *North Coast, supra*, 44 Cal.4th at p. 1159 [Physicians could “avoid any conflict” between the Unruh Act and their religious beliefs by simply refusing to provide the fertility treatment at issue to any patients.]; *Smith v. Fair Empl. & Hous. Com. (FEHC)* (1996) 12 Cal.4th 1143, 1170 [Landlord whose religious beliefs motivated her to deny rental housing to non-married couples could avoid conflict between her beliefs and FEHA “by selling her units and redeploying the capital in other investments.”].) The fact that Miller’s religious beliefs may motivate Tastries to choose the latter method of compliance does not mean the Unruh Act substantially burdens her beliefs, even if the latter method of compliance would require Tastries to restructure its business or repurpose its assets to maintain the same level of profits. (*FEHC, supra*, 12 Cal.4th at p. 1172–73 [Landlord’s option of “shifting her capital from rental units to another investment” was a relevant factor in assessing FEHA’s burden on her religious beliefs because “[a]n economic cost ... does not equate to a substantial burden for purposes of the free exercise clause.”]; *Easebe Enterprises, Inc. v. Alcoholic Bev. etc. Appeals Bd.* (1983) 141 Cal.App.3d 981, 987 [“An entrepreneur’s discriminatory practice based upon ostensible rational economic self-interest still violates public policy as codified in Civil Code section 51.”].) Under the order proposed by the DFEH, the choice of how to comply with the Unruh Act is Tastries’ decision. Tastries can choose to provide full and equal services, including wedding cake services, to all customers. Or it could choose to stop selling wedding cakes altogether yet continue selling a full component of pastries, cupcakes, cookies, pies, and acai bowls as well as continue providing its event rental



1 *Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1571.) Here, Tastries cannot show grave or
2 irreparable harm. As demonstrated above, compliance with the Unruh Act will not infringe Tastries'
3 free speech or free exercise rights. Moreover, even an incidental infringement would not necessarily
4 constitute irreparable harm. (*Sundance Saloon, Inc. v. City of San Diego* (1989) 213 Cal.App.3d 807,
5 817–18 [enforcement of content-neutral law requiring venues to close during certain hours of the day
6 would not cause irreparable harm despite causing “slight deprivation” of First Amendment rights].)

7 Even if the court finds a possibility of grave or irreparable harm, it should issue the requested
8 injunction because any harm to Tastries is outweighed by the harm of continued discrimination. The
9 exemption to the Unruh Act Tastries seeks can be granted only by completely sacrificing the rights of
10 prospective customers to be granted equal access to public accommodations irrespective of sexual
11 orientation. (See *FEHC, supra*, 12 Cal.4th at p. 1175.) The denial of equal access harms dignitary
12 interests underlying the fundamental purposes of civil rights laws. (See *id.* at p. 1170, citing *Heart of*
13 *Atlanta Motel, Inc. v. U.S.* (1964) 379 U.S. 241, 250.) These interests are harmed by even a single
14 business’s denial of equal access, regardless of the availability of service elsewhere. (See *id.* at p.
15 1175) Moreover, Tastries’ continued discrimination inflicts emotional harm not only on prospective
16 customers, but also its own employees who want to serve customers equally. (See Salinas Decl., ¶ 3.)

17 IV. CONCLUSION

18 For the reasons stated above, this Court should issue a preliminary injunction, effective for
19 sixty (60) days, prohibiting Respondents from selling to anyone any item they are unwilling to sell,
20 on an equal basis, to members of any protected group under the Unruh Act.

21 Dated: January 10, 2018

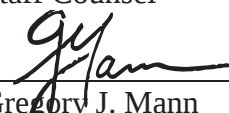
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10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF KERN**

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

14)
15)
16)
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28)

vs.

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

Respondents.

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

Complainants.

Case No. BCV-17-102855

**PETITIONER DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
REPLY IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

(Gov. Code, § 12974)

Date: February 2, 2018
Time: 1:30 p.m.
Dept.: 11
Judge: Hon. David R. Lampe

The Department of Fair Employment and Housing (DFEH) respectfully submits the following
Reply brief in support of its Motion for Preliminary Injunction

¹ The DFEH thanks Jenna Kingkade, DFEH Graduate Legal Assistant, for her invaluable assistance.



I. INTRODUCTION

The Department of Fair Employment and Housing (DFEH) seeks a preliminary injunction under Government Code section 12974 (Section 12974) prohibiting respondents Cathy's Creations, Inc. and Cathy Miller (collectively "Tastries") from selling to anyone any item they are unwilling to sell, on an equal basis, to members of any protected group under the Unruh Civil Rights Act (Unruh Act or Act), Civil Code section 51. The injunction is prohibitive, not mandatory—it does not force Tastries to sell wedding cakes to same-sex couples—and leaves the choice of how to comply with the Unruh Act to Miller. Neither does it restrict Miller's exercise of her religious beliefs nor compel her expression, for the Unruh Act regulates conduct, not speech.

Miller admits Tastries enforces a policy denying full and equal services to same-sex couples wishing to celebrate their weddings. Respondents ask this Court to deny the injunction, thereby authorizing Tastries—a business licensed by the State and open to the public—to ignore the Unruh Act, and continue denying full and equal services to same-sex couples. What respondents request is a return to the days when certain individuals could be turned away from businesses based on their innate characteristics (i.e., sex or race) or religious beliefs. In the alternative, respondents request that this action be stayed—permitting Tastries to continue denying equal services—for five months in hopes the United States Supreme Court determines the issues involved here in a decision on the merits in the *Masterpiece Cakeshop* case.

Because Tastries continues to deny full and equal services to members of the public, delaying a decision or denying the injunction condemns Californians to suffer the indignity of discrimination. This Court should reject respondents' requests, and grant the preliminary injunction, thereby upholding the Unruh Act and affirming the right of all Californians access to full and equal services in all California businesses.

II. LEGAL STANDARD

Immediately stopping ongoing violations of California civil rights statutes is essential to preserving the civil rights of Californians. This urgency is reflected by Section 12974, which empowers the DFEH to seek a preliminary injunction pending completion of an investigation. The DFEH requests a preliminary injunction to prevent Tastries from further discriminating against same



business interest in creating a family-friendly environment could not justify country club’s denial of spousal benefit to a member’s same-sex domestic partner under the Unruh Act]; *Easebe Enterprises, Inc. v. Alcoholic Bev. etc. Appeals Bd.* (1983) 141 Cal.App.3d 981, 987 [“rational economic self-interest” does not prevent discriminatory practice from violating public policy codified in the Act].)

2. Neither California nor Federal Free Speech or Free Exercise Assertions Provide Tastries a Defense Here.

a. The Federal Constitution’s Free Exercise Clause Does Not Exempt Tastries from Compliance with the Unruh Act.

Acknowledging the Unruh Act withstands First Amendment scrutiny as a valid and neutral law of general applicability, respondents do not attack it directly. Rather, they assert—without any evidence—the DFEH’s use of Section 12974 in this case is an “irregular procedure[]” revealing its “anti-religious animus.” (Opp. 7:23, 28.) Tastries’ assertion is both groundless and incorrect. The Legislature granted the DFEH Section 12974 authority, which the DFEH has utilized on multiple occasions to prevent harm to Californians.² Here, too, the DFEH seeks an injunction against more than mere “hypothetical harm[s].” (See *infra* Section B.) Tastries—a public accommodation licensed by the State—enforces a policy denying full and equal services to same-sex couples who want to purchase wedding cakes, in violation of the Unruh Act. This policy harms the dignity of all Californians, and threatens specific ongoing harm to gay and lesbian residents.

b. California’s Free Exercise Clause Does Not Exempt Tastries from Complying with the Unruh Act Because the Act’s Application Satisfies Strict Scrutiny.

Because the Unruh Act is the least restrictive means of achieving a compelling state interest, it satisfies strict scrutiny, the most demanding standard that *may* apply under California’s free exercise clause.³ (See *North Coast Women’s Care Med. Grp., Inc. v. San Diego Cnty.* (2008) 44 Cal.4th 1145, 1158 [the Unruh Act is the least restrictive means for the state to achieve its goal of

² The mission of the DFEH is to protect the people of California from unlawful discrimination in employment, housing, and public accommodations, and from hate violence and human trafficking.

³ Additionally, as argued in the DFEH’s opening brief, strict scrutiny is satisfied because the DFEH is not asking this Court to apply the Unruh Act in a manner that substantially burdens a religious belief or practice. Tastries asserts the cases cited by the DFEH on the “substantial burden” issue are necessarily invalid to the extent they are inconsistent with *Burwell v. Hobby Lobby Stores, Inc.* (2014) 134 S.Ct. 2751. (Opp. 10:37.) But *Hobby Lobby* was decided under the federal Religious Freedom Restoration Act (RFRA), which the Supreme Court acknowledged imposes a stricter standard than its pre-*Smith* free exercise cases. (*Hobby Lobby, supra*, 134 S.Ct. at pp. 2759, 2761 fn. 3.) Courts need not interpret the California Constitution as *Hobby Lobby* interpreted RFRA.



“ensuring full and equal access to medical treatment irrespective of sexual orientation”]; *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 626, 628–29 [Minnesota “advanced [its] interests through the least restrictive means” by applying its public accommodations law to prohibit a civic organization from excluding women]; cf. *Hobby Lobby, supra*, 134 S.Ct. at p. 2783 [acknowledging that employment discrimination laws are “precisely tailored” to further the compelling state interest in “providing an equal opportunity to participate in the workforce without regard to race....”].) When rejecting physicians’ California free exercise challenge to the Unruh Act in *North Coast*, the California Supreme Court held that the Act serves a compelling interest in “ensuring full and equal access.”⁴ (See *North Coast, supra*, 44 Cal.4th at p. 1158; cf. *Law School Admission Council, Inc. v. State* (2014) 222 Cal.App.4th 1265, 1294 [citing *North Coast* as support for California’s compelling interest in ensuring prospective law students equal opportunity to compete for admission regardless of disability].) And the United States Supreme Court has recognized that the Unruh Act serves the even broader compelling interest of ensuring women equal access to “the acquisition of leadership skills and business contacts as well as tangible goods and services.” (*Bd. of Directors of Rotary Intern. v. Rotary Club of Duarte* (1987) 481 U.S. 537, 549.) The requested injunction, too, would serve a compelling state interest in ensuring residents equal access to tangible goods and services irrespective of sexual orientation.

Tastries’ requested exemption allowing it to “refer” same-sex couples to another bakery would both impose burdens on same-sex couples and prevent the State from achieving these compelling interests. Even under RFRA, the “least restrictive means” analysis must be informed by adequate consideration of “the burdens a requested accommodation may impose on nonbeneficiaries.”⁵ (See *Hobby Lobby, supra*, 134 S.Ct. at 2781 fn. 37.) Here, Tastries’ use of its

⁴ Contrary to Tastries’ characterization of the compelling interest the DFEH must show, the *North Coast* court did not refer to an interest in “forcing [physicians] who otherwise serve homosexual [patients] to violate their consciences by [providing a particular fertility procedure to patients] that [want to conceive a child with a same-sex partner].” (Cf. Opp. 10:33-11:1.) Respondents further misrepresent *North Coast* by selectively quoting Justice Baxter’s self-identified “question” about a hypothetical sole practitioner to make it seem like a definitive statement, and by attributing these quotes to “*North Coast*” in the text, incorrectly implying that they are quotes from the majority opinion. (Opp. 11:14-17; *North Coast, supra*, 44 Cal.4th at p. 1158, 1163 [Baxter, J., concurring] [“These issues are not before us here, however, and the majority does not express any views on them.”].)

⁵ The Court’s narrow tailoring holding in *Hobby Lobby* relied on a pre-existing alternative with “precisely zero” effect on third parties. (*Hobby Lobby, supra*, 134 S.Ct. at 2760, 2781 fn. 37.)



1 requested exemption will burden same-sex couples with the need to seek service elsewhere or forego
2 it altogether.⁶ The notion that a disfavored class of residents should simply “go elsewhere” is no
3 more an acceptable policy for public accommodations in 2018 than it was when the Supreme Court
4 decided *Heart of Atlanta* in 1964. (See *FEHC, supra*, 12 Cal.4th at p. 1170, citing *Heart of Atlanta*
5 *Motel, Inc. v. U.S.* (1964) 379 U.S. 241, 250.)

6 **c. The Unruh Act Does Not Compel Speech nor Otherwise Violate**
7 **Respondents’ Free Speech Rights.**

8 Respondents’ muddling of various strands of free speech jurisprudence and attempts to
9 obfuscate the DFEH’s arguments provide no defense to Tastries’ unlawful discrimination.

10 **i. The Unruh Act does not impermissibly compel or prohibit**
11 **expressive conduct because granting or denying equal services to**
12 **same-sex couples is not expressive conduct.**

13 Respondents assert—without support—“[t]hird party perceptions are not necessary to
14 establish a compelled speech claim under the federal constitution.” (Opp. 9:30–31.) But where the
15 asserted speech is *conduct*, there can be no compelled speech unless the conduct in question is
16 inherently expressive. (*Rumsfeld v. Forum for Academic and Institutional Rights, Inc. (FAIR)* (2006)
17 547 U.S. 47, 64–66.) “An intent to convey a particularized message” must be present, and “the
18 likelihood [must be] great that the message would be understood by those who viewed it. [Citation].”
19 (*Texas v. Johnson* (1989) 491 U.S. 397, 404.) Reasonable observers can distinguish between
20 Tastries’ own views and the legal requirement that it provide equal services to protected classes. (See
21 *FAIR, supra*, 547 U.S. at pp. 64–65; *North Coast, supra*, 44 Cal.4th at p. 1157.)

22 **ii. The Unruh Act does not compel speech because it does not dictate**
23 **the design of a cake.**

24 Compelled speech occurs where the government requires a speaker to disseminate its or
25 another’s message. (See *FAIR, supra*, 547 U.S. at p. 63; *Wooley v. Maynard* (1977) 403 U.S. 705
26 [government’s message]; *Miami Herald Publ’g Co. v. Tornillo* (1974) 418 U.S. 241 [third-party
27 message].) Neither situation applies here: the Unruh Act does not require Tastries to disseminate any
28 message, it does not dictate the design of Tastries’ wedding cakes, and Tastries retains complete

⁶ Informing customers of Gimme Some Sugar’s services may do little or nothing to lighten this burden—for instance, the Rodriguez-Del Rios had already tasted Gimme Some Sugar’s cake and decided not to purchase their cake there.



1 **C. This Court Should Protect the Public from Tastries' Continuing Discrimination By**
2 **Immediately Issuing the Preliminary Injunction.**

3 This Court should not stay these proceedings pending the United States Supreme Court's
4 opinion in the *Masterpiece Cakeshop* case. Respondents' assertion the decision in *Masterpiece*
5 *Cakeshop* "will settle" the issues involved here and change "the entire landscape of this case" is
6 conjecture. Neither respondents nor the DFEH know what the Supreme Court will decide, or even
7 whether it will reach the merits of the defenses Tastries asserts here. There are other potential
8 grounds for resolution, including remand. While staying a case may be acceptable where the delay is
9 "not oppressive in its consequences" (*Landis v. North American Co.* (1936) 299 U.S. 248, 256),
10 subjecting an entire population to the continuing indignity of discrimination in a public
11 accommodation is oppressive in its consequences.

12 Respondents are not seeking to stay a case where the same individual is involved in two cases
13 in two different states (see *Thompson v. Continental Ins. Co.* (1967) 66 Cal.2d 738), or two
14 companies sue to enjoin the enforcement of a statute. (*Landis, supra*, 299 U.S. 248.) Rather, this is a
15 case seeking to enforce the right of all individuals, regardless of sexual orientation, to enjoy full and
16 equal services in a business open to the public. Staying the DFEH's request for an injunction for
17 some five months will permit Tastries to continue discriminating against members of the public. The
18 stay would have more than a "fair possibility ... [to] work damage to someone else." (*Ibid.*)

19 **IV. CONCLUSION**

20 For the reasons stated above, this Court should issue a preliminary injunction, effective for
21 sixty (60) days, prohibiting respondents from selling to anyone any item they are unwilling to sell,
22 on an equal basis, to members of any protected group under the Unruh Act.

23 Dated: January 26, 2018

DEPARTMENT OF FAIR EMPLOYMENT
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MJN EXHIBIT 22F

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

METROPOLITAN DIVISION

HON. DAVID R. LAMPE, JUDGE, DEPARTMENT 11

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**CERTIFIED
TRANSCRIPT**

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING,

Plaintiff(s),

vs.

CATHY MILLER, et al.,

Defendant(s).

Pages 1-51

Case No. BCV-17-102855

Bakersfield, California

FEBRUARY 2, 2018

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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and

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For the Defendant: Freedom of Conscience Defense Fund
By: MR. CHARLES LIMANDRI, ESQ.

P.O. Box 9520
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Reported By:

Melissa K. Gum, CSR No. 7438
Official Reporter, RDR, CRR, CRC

1 State of California. I mean, I'm a constitutional officer
2 of the State, so you're asking me for an order. You're
3 asking the State to compel the defendant to do something.
4 And isn't -- if the cake is expressive conduct, you're
5 asking this court to compel that that speech be co-opted
6 into the speech of the complaining parties in the interests
7 of the public accommodation law, the Unruh Act, are you not?

8 MR. MANN: I'm having trouble understanding.
9 Again, we're focused on conduct here, about who Tastries
10 serves, and we're not trying to compel them to do anything.
11 The choice is theirs. They can serve everybody or they can
12 serve nobody in terms of wedding cakes.

13 THE COURT: Well, not if I act, the choice isn't
14 theirs, unless they want to be in contempt of court.

15 MR. MANN: No. The preliminary injunction that
16 we're seeking would not force them to bake cakes for
17 same-sex couples.

18 THE COURT: It would just force them to go out of
19 business.

20 MR. MANN: It wouldn't force them to go out of
21 business either. It would leave them the choice to go out
22 of the wedding cake business, but that's 25 to 30 percent of
23 their business, not their entire business.

24 THE COURT: But you do also agree that they serve
25 the homosexual community or the same-sex community in the
26 sense that they sell their public wares to everyone who
27 walks in the door without discrimination. It's the design
28 of the wedding cake that's at issue here.

1 MR. MANN: That's what they say. In Piggie Park,
2 it wasn't a complete exclusion of African-Americans. The
3 restaurant was willing to serve African-Americans. They
4 just wouldn't serve them the entire menu, and they said, "If
5 you want to be served, you have to go around back." So
6 whether or not it's just wedding cakes or everything,
7 there's a long history of courts saying full and equal
8 services means full and equal services.

9 THE COURT: Well, it wasn't in the evidence that
10 Tastries actually gives knives and forks and plates to
11 people to actually eat their wares on the premises. The
12 service is at issue here. Once again, I come back to it's
13 not selling a cake. It's design. It's requiring the owner
14 to use her creative thought processes to design and create a
15 beautiful thing, a beautiful cake.

16 MR. MANN: But it's not telling her how to design
17 it. It's not telling her what to design. And it's content
18 neutral.

19 THE COURT: Again, I come back to the point -- and
20 I'm sorry to belabor this -- but if she chose to design it
21 with a sign on it that says, "Marriage shall only be between
22 a man and a woman," and said, "Here you go," would you still
23 be back here?

24 MR. MANN: Well, I mean, she's a business. If
25 she's going to serve somebody, she needs to work with them
26 on their design. She's not -- I don't think anybody would
27 go to her if she was just going to come up with her own
28 design and give it to them.

1 THE COURT: But that's the point I'm trying to make
2 or trying to, I guess, put you in, is that you are asking me
3 to compel a certain design, a certain content, because she's
4 not 100 percent free to put whatever she wants into the
5 design.

6 MR. MANN: She's not 100 percent free to put
7 whatever she wants into any design. That's just simple
8 contract. If I go into a business and I want something and
9 I'm working with you on it, I don't say, "Just give me
10 whatever you want." I mean, but you work with the customers
11 and you design it for them.

12 THE COURT: Well, I presume from your arguments she
13 would be free to do that. It's her choice whether it limits
14 her clientele or not.

15 MR. MANN: When you say "that" --

16 THE COURT: "That" being put messages on her cakes
17 that may severely limit the number of customers that she
18 receives.

19 MR. MANN: Any cake she's willing to make for
20 anybody, as long as she makes it for everybody, that's fine.

21 THE COURT: Okay. Any other -- I'll let you have
22 the last word, but any other issues that you want me to
23 focus on?

24 MR. MANN: I think it's just important to just
25 always keep the FAIR case in mind, because it's right on
26 point, and it deals with pure speech, expressive
27 association, and expressive conduct. And if you just
28 replace Tastries for the law schools, then it's right on

1 STATE OF CALIFORNIA)
2 COUNTY OF KERN) ss:
3
4
5

6 I, Melissa K. Gum, Official Certified Shorthand
7 Reporter of the State of California, County of Kern, do
8 hereby certify that the foregoing transcript, pages 1
9 through 51, inclusive, is a complete, true, and correct
10 transcription of the stenographic notes as taken by me in
11 the above-entitled matter.

12 Dated this 20th day of February, 2018.

13 *Melissa K. Gum*
14

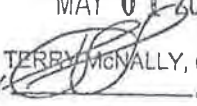
15 MELISSA K. GUM, CSR, RDR, CRR, CRC
16 Certificate No. 7438
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MJN EXHIBIT 22G

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

MAY 01 2018

BY:  TERRY McNALLY, CLERK
DEPUTY

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

Case No.: BCV-17-102855

JUDGMENT

VS.

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

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

Plaintiff the Department of Fair Employment and Housing, on behalf of the State of California, brought this civil action for an injunction under Government Code section 12974 against Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller, alleging a violation of the Unruh Civil Rights Act, Civil Code section 51, based on the administrative complaint of Real Parties in Interest Eileen Rodriguez-Del Rio and Mireya Rodriguez-Del Rio.

The Court's order dated March 2, 2018, and titled "Order Denying Department of Fair Employment and Housing's Order to Show Cause re: Preliminary Injunction and Orders on Evidentiary Objections" is attached hereto and incorporated by reference.

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

No Statement of Decision having been requested pursuant to Code of Civil Procedure section 632, and the matter having been tried in less than one day, therefore:

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Cathy's Creations, Inc. dba Tastries and Catharine Miller are deemed the prevailing party for purposes of the fight to recover litigation costs as permitted by law.
IT IS SO ORDERED.

DATED: May 1, 2018


DAVID R. LAMPE
JUDGE OF THE SUPERIOR COURT

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FEB 26 2018

FILED
SUPERIOR COURT of CA, COUNTY OF KERN

MAR 02 2018

TERRY McNALLY, CLERK
BY [Signature] DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

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

Petitioner,

vs.

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

Respondents.

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

Complainants.

Case No. BCV-17-102855


**[PROPOSED] ORDER DENYING
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION AND
ORDERS ON EVIDENTIARY
OBJECTIONS**

(Gov. Code, § 12974)

Hearing Date: February 2, 2018
Time: 1:30 p.m.
Dept.: 11
Judge: Hon. David R. Lampe



COURT PAPER
State of California

-1-

Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc., et al. (Rodriguez-Del Rio, et al.)
[Proposed] Order Denying Petition for Preliminary Injunction and Orders on Evidentiary Objections

FILED BY FAX

RA.1646

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

1 Petitioner Department of Fair Employment and Housing's Petition for Preliminary Injunction
2 pursuant to Government Code section 12974 in the above-entitled action came on for hearing on
3 February 2, 2018, at 1:30 p.m. in Department 11 of the Kern County Superior Court, Metropolitan
4 Division, the Honorable David R. Lampe presiding. Petitioner Department of Fair Housing and
5 Employment (DFEH) appeared through its counsel of record, Gregory J. Mann and Timothy Martin.
6 Respondents appeared through their counsel of record, Charles S. LiMandri.

7 Based on the evidence presented, submissions of the parties, the complete file in this matter,
8 the oral argument of the parties, and good cause appearing, it is the order of this Court that
9 Petitioner's Petition for Preliminary Injunction is DENIED. ~~The DFEH brought this civil action~~
10 ~~pursuant to Government Code section 12974, which authorizes "a civil action for appropriate~~
11 ~~temporary or preliminary relief pending final disposition of [a] complaint [filed with the DFEH]."~~
12 ~~Because this Order denies the DFEH temporary or preliminary relief pending the DFEH's final~~
13 ~~disposition of the underlying administrative complaint, no relief remains available to the DFEH in~~
14 ~~this Government Code section 12974 action.~~

15 This Court's reasoning appears in its Minute Order dated February 5, 2018, regarding Nature
16 of Proceedings: Ruling on Order to Show Cause In Re: Preliminary Injunction, and is attached hereto
17 and hereby incorporated by reference.

18 Further, based on the evidence presented, the submissions of the parties, the complete file in
19 this matter, the oral argument of the parties, and good cause appearing, it is the order of this Court
20 that the DFEH's Objections to Evidence Filed In Support of Respondents' Opposition to the OSC Re
21 Preliminary Injunction 8, 13, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36, 42, 43, and 44 are
22 sustained. Respondents' Objections to the Evidence Filed In Support of OSC Re Preliminary
23 Injunction 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, and 18 are sustained. All other objections by the DFEH
24 and Respondents are overruled.

25 IT IS SO ORDERED.

26 DATED: 3.2.18

27 
28 HON. DAVID R. LAMPE
JUDGE OF THE SUPERIOR COURT



COURT PAPER
State of California

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Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc., et al. (Rodríguez-Del Rio, et al.)
[Proposed] Order Denying Petition for Preliminary Injunction and Orders on Evidentiary Objections

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

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Superior Court of California
County of Kern
Bakersfield Department 11

Date: 02/05/2018

Time: 8:00 AM - 5:00 PM

BCV-17-102855

Courtroom Staff

Honorable: David R. Lampe

Clerk: Veronica D. Lancaster

Court reporter: None

Bailliff: . NONE

PARTIES:	CATHY MILLER, Defendant, not present CATHY'S CREATIONS, INC. DBA TASTRIES, A CALIFORNIA CORPORATION, Defendant, not present DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, AN AGENCY OF THE STATE OF CALIFORNIA, Plaintiff, not present EILEEN RODRIGUEZ-DEL RIO, Non-Party, not present MIREYA RODRIGUEZ-DEL RIO, Non-Party, not present	CHARLES LIMANDRI, Attorney, not present CHARLES LIMANDRI, Attorney, not present GREGORY MANN, Attorney, not present
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**NATURE OF PROCEEDINGS: RULING ON ORDER TO SHOW CAUSE IN RE: PRELIMINARY INJUNCTION;
FILED BY PLAINTIFF DEPARTMENT OF FAIR HOUSING; HERETOFORE SUBMITTED ON FEBRAURY 2, 2018**

Introduction

The State of California brings this action under the Unruh Civil Rights Act, Civil Code section 51, against defendants Cathy's Creations, Inc. and Cathy Miller. Miller refuses to design and create wedding cakes to be used in the celebration of same sex marriages. She believes that such marriages violate her deeply held religious convictions. The State seeks to enjoin this conduct as unlawfully discriminatory. The State brings the action upon the administrative complaint of a same-sex married couple, complainants Rodriguez-Del Rios.

The State cannot succeed on the facts presented as a matter of law. The right to freedom of speech under the First Amendment outweighs the State's interest in ensuring a freely accessible marketplace.

The right of freedom of thought guaranteed by the First Amendment includes the right to speak, and the right to refrain from speaking. Sometimes the most profound protest is silence.

No public commentator in the marketplace of ideas may be forced by law to publish any opinion with which he disagrees in the name of equal access. No person may be forced by the State to stand and recite the Pledge of Allegiance against her will. The law cannot compel anyone to stand for the National Anthem. No persons may be forced to advertise a state-sponsored slogan on license plates against their religious beliefs.

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

BCV-17-102855

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

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The State's purpose to ensure an accessible public marketplace free from discrimination is a laudable and necessary public goal. No vendor may refuse to sell their public goods, or services (not fundamentally founded upon speech) based upon their perception of the gender identification of their customer, even upon religious grounds. A retail tire shop may not refuse to sell a tire because the owner does not want to sell tires to same sex couples. There is nothing sacred or expressive about a tire.

No artist, having placed their work for public sale, may refuse to sell for an unlawful discriminatory purpose. No baker may place their wares in a public display case, open their shop, and then refuse to sell because of race, religion, gender, or gender identification.

The difference here is that the cake in question is not yet baked. The State is not petitioning the court to order defendants to sell a cake. The State asks this court to compel Miller to use her talents to design and create a cake she has not yet conceived with the knowledge that her work will be displayed in celebration of a marital union her religion forbids. For this court to force such compliance would do violence to the essentials of Free Speech guaranteed under the First Amendment.

The Unruh Act prohibits discrimination on the basis of religion, as well as sexual orientation. Would this court force a baker who strongly favored GLBT rights to create and design a wedding cake she had refused to a Catholic couple, in her protest of the Catholic Church's proscription against same-sex marriage? The answer is "No." This court has an obligation to protect Free Speech, regardless of whose foot the shoe is on. The court takes judicial notice, not of the content, but of the fact, that before the hearing on this matter there was a gathering in front of the courthouse where both sides of the debate voiced their views. Would this court order one side or the other to be quiet? Such an order would be the stuff of tyranny. Both sides advocate with strong and heartfelt beliefs, and this court has a duty to ensure that all are given the freedom to speak them. The government must remain neutral in the marketplace of ideas.¹

No matter how the court should rule, one side or the other may be visited with some degree of hurt, insult, and indignity. The court finds that any harm here is equal to either complainants or defendant Miller, one way or the other. If anything, the harm to Miller is the greater harm, because it carries significant economic consequences. When one feels injured, insulted, or angered by the words or expressive conduct of others, the harm is many times self-inflicted. The most effective Free Speech in the family of our nation is when we speak and listen with respect. In any case, the court cannot guarantee that no one will be harmed when the law is enforced. Quite the contrary, when the law is enforced, someone necessarily loses. Nevertheless, the court's duty is to the law. Whenever anyone exercises the right of Free Speech, someone else may be angered or hurt. This is the nature of a free society under our Constitution.

Facts

Complainants Eileen and Mireya Rodriguez-Del Rio met in the late 1990's at Bakersfield College, and

¹ *F.C.C. v. Pacifica Found.* (1978) 438 U.S. 726, 745-46, 98 S. Ct. 3026, 3038, 57 L. Ed. 2d 1073.

built a close and strong friendship before becoming a couple in 2015. They married in December 2016, in a ceremony before their immediate family, and set a date of October 7, 2017, for a vow exchange and traditional wedding reception with over 100 guests. They planned to order a wedding cake for their celebration. After tastings at other bakeries, Eileen and Mireya visited Tastries in August 17, 2017 to see sample wedding cakes. A Tastries employee named Rosemary met with the couple, showed them wedding cakes on display in the bakery, and recorded the details of the cake they wanted. Eileen and Mireya selected a design based on a display cake. The couple did not want or request any written words or messages on the cake. They booked a cake tasting at Tastries for August 26, 2017. On August 26, Mireya, Eileen, and others came to Tastries, where the owner, Cathy Miller, after apologizing, told them that she would provide their order to Gimme Some Sugar—a competitor bakery—because she does not condone same-sex marriage.

On October 18, 2017, Rodriguez-Del Rios filed an administrative complaint with the State, alleging that Defendants violated the Unruh Act by denying them full and equal services on the basis of sexual orientation. On the basis of its preliminary investigation, the State concluded that prompt judicial action was necessary, and this action ensued.

Cathy Miller is a creative designer who owns and operates Cathy's Creations, Inc., doing business as "Tastries," a small bakery in Bakersfield, California. As part of its business, Tastries creates specially designed custom cakes, including wedding cakes.

Miller is a practicing Christian and considers herself a woman of deep faith.

Miller is a creative artist and participates in every part of the custom cake design and creation process.

While Miller offers her services and products generally without discrimination, including her pre-made wares, she will not design or create any custom cake that expresses or celebrates matters that she finds offend her heartfelt religious principles. Thus, she refuses to create or design wedding cakes for same-sex marriage celebrations, because of her belief that such unions violate a Biblical command that marriage is only between a man and a woman.

Miller has entered into an agreement to refer same-sex couples to a competitor, Gimme Some Sugar, based upon her understanding that the owner of that bakery does not have any prohibitory policies.

Miller does not deny that she refused to design and create a custom wedding cake for Rodriguez-Del Rio.

Analysis

The right of freedom of thought protected by the First Amendment includes both the right to speak freely and the right to remain mute. (*Wooley v. Maynard* (1977) 430 U.S. 705, 714, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752.) The relevant principles are well presented in the Court's *Wooley* decision.

In ruling that no child may be compelled by the educational system to perform the flag salute under

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S
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BCV-17-102855

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

threat of state discipline, the Court held that such a ceremony so touched upon matters of opinion and political attitude that it could not be imposed under our Constitution, finding that “[t]o enforce those rights today is ... to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.” (*W. Virginia State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 636, 637, 63 S. Ct. 1178, 1184, 1185, 87 L. Ed. 1628.)

In the case of *Miami Herald Publishing Co. v. Tornillo* (1974) 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730, the Court held a Florida statute unconstitutional which placed an affirmative duty upon newspapers to publish the replies of political candidates whom they had criticized. The Court concluded that such a requirement deprived a newspaper of the fundamental right to decide what to print or omit. (See also *Pac. Gas & Elec. Co. v. Pub. Utilities Comm’n of California* (1986) 475 U.S. 1, 106 S. Ct. 903, 89 L. Ed. 2d 1.)

In *Wooley*, the Court held that the State of New Hampshire could not compel residents to display the state motto “Live Free or Die” upon their vehicle license plates against their religious principles.

This case falls well within the reach of the Supreme Court’s “compelled speech” doctrine. *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), establishes that generally applicable public-accommodation laws violate the Free Speech Clause when applied to compel speech. In *Hurley*, the Supreme Court, by Justice Souter, held that a state courts’ application of public accommodation law to essentially require defendants to alter the expressive content of their parade by permitting a group of participants to march behind a GLBT banner violated the First Amendment.

The State here makes two arguments against the application of the “compelled speech” doctrine. The State argues that Unruh Act enforcement here does not compel speech, but only conduct—the baking and selling of a cake, citing *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, (*FAIR*) (2006) 547 U.S. 47. The State also argues that this is not a compelled speech case because such case are limited to those occasions where government requires a speaker to disseminate another’s message and here the State is not compelling any particular design, also principally citing *FAIR*, *Wooley*, and *Tornillo*. The State takes a far too narrow view of both the case law and the circumstances to satisfy constitutional scrutiny. The State does ask the court to limit Miller’s design, because the State acknowledges that she cannot create any element of the design that would disparage same-sex marriage, because that design element would be unacceptable to Rodriguez-Del Rios. *FAIR* recognized, in considering *Wooley* and *Tornillo*, that when a speaker is engaged in expression, and the government allows or compels that another may co-opt it, it necessarily affects the speaker’s expression. (547 U.S. at 63-64.) *FAIR* is also distinguishable because the law schools in that case did not speak when they hosted interviews and held recruiting receptions. (*Id.* at 64.)

A wedding cake is not just a cake in a Free Speech analysis. It is an artistic expression by the person making it that is to be used traditionally as a centerpiece in the celebration of a marriage. There could not be a greater form of expressive conduct. Here, Rodriguez-Del Rios plan to engage in speech. They plan a celebration to declare the validity of their marital union and their enduring love for one another. The State asks this court to compel Miller against her will and religion to allow her artistic expression in celebration of marriage to be co-opted to promote the message desired by same-sex marital partners,

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY’S
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Document received by the CA 5th District Court of Appeal.

and with which Miller disagrees.

Identifying the interests here as implicating First Amendment protections does not end the inquiry. The court must also determine whether the State's countervailing interest is sufficiently compelling to justify the intrusion into a protected right.

The State principally cites *United States v. O'Brien* (1968) 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672, for the proposition that the State's interest in compelling a marketplace free from discrimination outweighs Miller's First Amendment Free Speech interests. In *O'Brien*, the Supreme Court, by Chief Justice Warren, held that because of the government's substantial interest in assuring the continuing availability of issued selective service certificates, because the statute punishing knowing destruction or mutilation of such certificates was an appropriately narrow means of protecting such interest, and condemned only the independent non-communicative impact of conduct within its reach, and because the non-communicative impact of defendant's act of burning his registration certificate frustrated the government's interest, a sufficient governmental interest was shown to justify defendant's conviction, as against defendant's claim that his act was protected "symbolic speech."

Here, Miller is not burning her business license or refusing to display it to protest government regulation of the small bakery industry. She is not refusing to post any government requirement to display the caloric content of her pastries. (See *Beeman v. Anthem Prescription Mgmt., LLC* (2013) 58 Cal. 4th 329, 356.) The application of the Unruh Act in these circumstances requires "strict scrutiny" by the court. Under strict scrutiny, a law cannot be applied in a manner that substantially burdens a constitutional right unless the State shows that the law represents the least restrictive means of achieving a compelling interest. (*N. Coast Women's Care Med. Grp. Inc. v. San Diego Cty. Superior Court* (2008) 44 Cal. 4th 1145, 1158.)

The State cannot meet the test that its interest outweighs the Free Speech right at issue in this particular case, or that the law is being applied by the least restrictive means. The court cannot retreat from protecting the Free Speech right implicated in this case based upon the specter of factual scenarios not before it. Small-minded bigots will find no recourse in committing discriminatory acts, expecting to be sheltered from Unruh Act prohibitions by a false cry of Free Speech. No court evaluates Free Speech rights against the interest of the State in enforcing public access laws in a vacuum, without regard to circumstances, history, culture, social norms, and the application of common sense. Here, Miller's desire to express through her wedding cakes that marriage is a sacramental commitment between a man and a woman that should be celebrated, while she will not express the same sentiment toward same-sex unions, is not trivial, arbitrary, nonsensical, or outrageous. Miller is expressing a belief that is part of the orthodox doctrines of all three world Abrahamic religions, if not also part of the orthodox beliefs of Hinduism and major sects of Buddhism. That Miller's expression of her beliefs is entitled to protection is affirmed in the opinion of Justice Kennedy in *Obergefell v. Hodges* (2015) 135 S. Ct. 2584, 192 L. Ed. 2d 609 wherein the Court established that same-sex marriages are entitled to Equal Protection. Therein, the Court noted: "[f]inally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family

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structure they have long revered." (*Id* at 2607.)

Furthermore, here the State minimizes the fact that Miller has provided for an alternative means for potential customers to receive the product they desire through the services of another talented baker who does not share Miller's belief. Miller is not the only wedding cake creator in Bakersfield.

The fact that Rodriguez-Del Rios feel they will suffer indignity from Miller's choice is not sufficient to deny constitutional protection. *Hurley* established that the State's interest in eliminating dignitary harms is not compelling where, as here, the cause of the harm is another person's decision not to engage in expression. The Court there recognized that "the point of all speech protection . . . is to shield just those choices of content that in someone's eyes are . . . hurtful." (*Hurley, supra*, 515 U.S. at 574.) An interest in preventing dignitary harms thus is not a compelling basis for infringing free speech. (See *Texas v. Johnson* (1989) 491 U.S. 397, 409; see also *Hustler Magazine, Inc. v. Falwell* (1988) 485 U.S. 46, 56.)

The defendants' argument that the case implicates the Free Exercise of Religion Clause is less clear. In light of the court's discussion above, the court does not reach the question of Free Exercise. In addressing the constitutional protection for free exercise of religion, a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. To determine the object of a law, the court begins with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. The Free Exercise Clause extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality." Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt. (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 533- 534, 113 S. Ct. 2217, 2227, 124 L. Ed. 2d 472.)

It is difficult to say what standard of scrutiny the court should use to evaluate the application of the Free Exercise clause to the circumstances of this case after *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), which largely repudiated the method of analyzing free-exercise claims that had been used in cases like *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) and which resulted in Congress passing the Religious Freedom Restoration Act of 1993. (See *Burwell v. Hobby Lobby Stores, Inc.* (2014) 134 S. Ct. 2751, 2760, 189 L. Ed. 2d 675.)

The Unruh Act is neutral on its face and does not per se constitute a direct restraint upon religion. In fact, by its terms, the Unruh Act itself protects religious discrimination in the marketplace. By its term it does not constitute an indirect restraint. There is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement under these circumstances. Designing and creating a cake, even a wedding cake, may not in and of itself constitute a religious practice under the Free Exercise clause. It is the use that Miller's design effort will be put to that causes her to object. Whether the application of the Unruh Act in these circumstances violates the Free Exercise clause is an open question, and the court does not address it because the case is sufficiently resolved upon Free Speech grounds.

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S
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BCV-17-102855

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

RA.1653

Conclusion

For the reasons stated above, the application for preliminary injunction is denied. The State cannot succeed upon the merits, and the balance of hardships does not favor the State.

Ruling Upon Objections

The court rules as follows upon the evidentiary objections presented.

Defendant's Objections:

The court sustains objections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, and 18. The court overrules all other objections.

State's Objections:

The court sustains objections 8, 13, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36, 42, 43, and 44. The court overrules all other objections.

Moving party shall prepare and order after hearing consistent with this ruling and pursuant to California Rules of Court, Rule 3.1312.

Copy of minute order mailed to all parties as stated on the attached certificate of mailing.

MINUTE ORDER FINALIZED BY: VERÓNICA LANCASTER

ON: FEBRUARY 05, 2018

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

BCV-17-102855

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

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DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING VS CATHY'S CREATIONS, INC.
BCV-17-102855

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minute Order dated February 05, 2018* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: February 05, 2018

Place of Mailing: Bakersfield, CA

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

Terry McNally
CLERK OF THE SUPERIOR COURT

Date: February 05, 2018

By:

Verónica Lancaster, Deputy Clerk

MAILING LIST

GREGORY J MANN
CA DEPT OF FAIR EMPLOYMENT AND HOUSING
320 WEST 4TH STREET 10TH FLOOR
LOS ANGELES CA 90013

CHARLES S LIMANDRI
LAW OFC
PO BOX 9120
RANCHO SANTA FE CA 92067

Certificate of Mailing

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

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MJN EXHIBIT 23



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

320 West 4th Street, Suite 1000 | Los Angeles | CA | 90013
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Via U.S. Mail and E-mail

October 10, 2018

Charles LiMandri
Freedom of Conscience Defense Fund
P.O. Box 9520
Rancho Santa Fe, CA 92067

Re: Notice of Cause Finding and Mandatory Dispute Resolution

DFEH Case No. 935123-315628

Rodriguez-Del Rio, et al. / Cathy's Creations, Inc., et al.

Dear Mr. LiMandri:

The Department of Fair Employment and Housing (DFEH or Department) has completed its investigation of the referenced complaint. Based on the evidence adduced, the DFEH intends to file a civil complaint in superior court.

Before the Department files a civil action, Government Code sections 12965 and 12981 require all parties to participate in cost-free mandatory dispute resolution conducted by the DFEH's Dispute Resolution Division. The Department provides a neutral and confidential dispute resolution process, insures that settlement discussions are conducted behind a firewall, and achieves a consistently high settlement rate by its experienced in-house mediators.

As a result, this matter is directed to mandatory dispute resolution. We hope that you will timely take advantage of the opportunity to resolve this dispute without litigation. A mediator will be contacting you shortly to schedule mandatory dispute resolution.

Please feel free to contact me should you have any questions.

Sincerely,

Gregory J. Mann
Senior Staff Counsel

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

RA.1657

MJN EXHIBIT 24A

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

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

V.

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

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

Real Parties in Interest.

Action Filed: December 13, 2017

RA.1659

1 I, REINA BENITEZ, declare as follows:

2 1. I am not a party to this lawsuit. I have personal knowledge of the facts set forth in
3 this declaration and, if called upon as a witness, I could and would testify competently to them.

4 2. I am the owner of Party Palace, an event venue rental hall in Bakersfield, California.
5 Party Palace regularly hosts wedding receptions, as well as other events, such as Quinceañeras,
6 Sweet Sixteens, Baptisms, and Bridal and Baby Showers.

7 3. I have read several news reports regarding Mireya and Eileen Rodriguez-Del Rio's
8 visit to Tastries Bakery on Saturday, August 26, 2017, and Cathy Miller's decision not to design
9 and create a wedding cake for their same-sex wedding celebration. I have also read the description
10 of that encounter in their declarations filed in support of the Department of Fair Employment and
11 Housing's petition for a preliminary injunction.

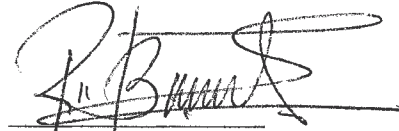
12 4. During the week before that Saturday, the Rodriguez-Del Rios visited Party Palace
13 and met with me. One of them brought out a cell phone to video- or audio-record our conversation.
14 I told them that Party Palace was already booked for the date of their wedding reception. One of
15 them then asked whether I had any objection to renting out Party Palace for same-sex weddings. I
16 truthfully told them that I had no such objection. They asked to see my calendar, and I showed it to
17 them. My calendar showed that Party Palace was indeed already booked for the date of their
18 wedding reception. Mireya and Eileen Rodriguez-Del Rio then stopped recording our conversation
19 and left. I found the recording odd, but initially of no concern.

20 5. After I read online news reports regarding the Rodriguez-Del Rios and Tastries
21 Bakery, however, I became concerned. In those online news reports, the Rodriguez-Del Rios
22 describe how shocked they were that a wedding professional might have a religious objection to
23 facilitating a same-sex wedding. This statement that they were shocked also appears in their
24 declarations filed in support of the Department of Fair Employment and Housing's petition for a
25 preliminary injunction.

26 6. It does not, however, make sense to me that the Rodriguez-Del Rios would be
27 shocked and suffer emotional distress after their visit to Tastries because the Rodriguez-Del Rios
28 specifically asked me whether I had any objection to renting Party Palace for a same-sex wedding.

1 7. Based on my experience with the Rodriguez-Del Rios, and their descriptions of their
2 visit to Tastries Bakery, I believe that they recorded my conversation with them and asked to see
3 my calendar because they were looking for a lawsuit.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct. Executed this 17 day of January, 2018, at Bakersfield, California.

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Reina Benitez

MJN EXHIBIT 24B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN
METROPOLITAN DIVISION
HON. DAVID LAMPE, JUDGE, DEPARTMENT 13

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**CERTIFIED
TRANSCRIPT**

DEPARTMENT OF FAIR	)	
EMPLOYMENT AND HOUSING,	)	Pages 1 - 31
	)	Case No. BCV-18-102633
Plaintiff,	)	
	)	Bakersfield, California
vs.	)	June 5, 2020
	)	
CATHY'S CREATIONS, INC.,	)	
DBA TASTRIES, A	)	
CALIFORNIA CORPORATION;	)	
CATHY MILLER,	)	
	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff	Department of Fair Employment & Housing
DEPARTMENT OF FAIR	By: Gregory Mann, Esq.
EMPLOYMENT AND	Nelson Chan, Esq.
HOUSING:	320 4th Street, Suite 1000
	Los Angeles, California 90013
For the Defendant	Freedom of Conscience Defense Fund
CATHY'S CREATIONS,	By: Jeffrey Trissell, Esq.
INC., DBA	P.O. Box 9520
TASTRIES, A	Rancho Santa Fe, California 92067
CALIFORNIA	
CORPORATION; CATHY	
MILLER:	
Reported By:	Virginia A. Greene, CSR 12270
	Official Court Reporter

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SESSIONS

PAGE

**FRIDAY, JUNE 5, 2020
AFTERNOON SESSION**

3

Motion

3

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1 BAKERSFIELD, CA; FRIDAY, JUNE 5, 2020

2 AFTERNOON SESSION

3 DEPARTMENT 13 HON. DAVID LAMPE, JUDGE

4 --o0o--

5 THE COURT: We're in session. We're on the
6 record. This is Judge David Lampe, Department 11 of the
7 Kern County Superior Court. We're physically present in
8 Department 13, but this is still officially Department
9 11 for the record.

10 And I'll call the case of Department of Fair
11 Employment and Housing versus Cathy's Creations. I have
12 on-the-line appearances. I have Mr. Mann.

13 MR. MANN: Good afternoon, Your Honor, good to
14 hear from you.

15 THE COURT: I believe I have Ms. Miller, party
16 although represented is also on the line.

17 MS. MILLER: Yes, Your Honor, I'm on the line.

18 THE COURT: I have Mr. Trissell.

19 MR. TRISSELL: Yes, Your Honor.

20 THE COURT: And I have Mr. Chan or Attorney
21 Chan.

22 MR. CHAN: Good afternoon, Your Honor, Nelson
23 Chan also for the Department of Fair Employment and
24 Housing with my colleague Mr. Gregory Mann who will be
25 presenting our argument.

26 THE COURT: Very good. In this case I
27 reopened this matter. I made a tentative ruling on the
28 discovery motions that the defendants had made. I had

1 the Evidence code and we look at the privilege for
2 attorney-client privilege purposes only.

3 We're not looking at it to see if there is
4 traditional representation, if there is a contract, you
5 know, retainer agreement, if there are fiduciary duties
6 between the attorneys and the clients. That's separate.
7 We're just looking under the Evidence Code for
8 attorney-client purposes only.

9 So if you find that the attorney-client
10 privilege here exists, you know, that covers our
11 communications with third parties in interest through
12 912(d) and 952. It does not mean that we represent them
13 or that we have a retainer agreement or that they speak
14 on behalf of the DFEH.

15 So your concern about real parties, actions,
16 you know, they're not agents of the DFEH. So what they
17 do or what they say does not reflect on the DFEH in the
18 way that you mentioned.

19 And I think that's -- that would be the same
20 as Ms. Miller was making statements, that's not going to
21 necessarily reflect on Mr. Limandri or his firm or vice
22 versa. And I don't think -- well, and whatever real
23 parties do does not reflect on the DFEH here. Again,
24 because we're looking at the attorney-client privilege
25 just for attorney-client privilege purposes only.

26 THE COURT: Okay. I understand that.

27 MR. MANN: Okay.

28 THE COURT: I mean, I understand your

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1 argument.

2 MR. MANN: Right. And the first point, it's
3 not -- I don't know that it's as important. But
4 plaintiffs have been -- I don't even want to go there.
5 Let's skip all of that.

6 Plaintiffs have looked for cases to push the
7 law forever. Rosa Parks was not just happened to be
8 taking the bus that day. So whether or not there is
9 knowledge going in there does not change the fact that
10 there was a violation. But, again, there is no evidence
11 of that here, and it doesn't change anything.

12 And just, you know, one -- well, I think I've
13 hit it. The People v. Gionis case which we've cited
14 talks about the attorney-client privilege not requiring
15 that the attorney actually be retained. So, again, we
16 just look at the attorney-client privilege for --
17 through the Evidence Code for those purposes.

18 I think that's what I have on the DFEH
19 attorney-client privilege extending to cover our
20 communications with real parties in interest through
21 912(d) and 952.

22 The common interest argument is very similar.
23 And it's -- a lot of the cases refer back to those same
24 two Evidence Code sections.

25 But let me -- I did forget. This is what I
26 wanted to address. You questioned whether the DFEH and
27 real parties have a common interest. And I think it's
28 very clear they do. Even though DFEH is the plaintiff,

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1 the real parties in interest are the real parties.
2 They're the ones that own the substantive claim. If
3 this case results in us getting an award, the money goes
4 to the real parties in interest. You know, real parties
5 under the FEHA, they have the right to intervene in the
6 case.

7 And so it's to me very clear that there is a
8 common interest here between DFEH and real parties.
9 We're both seeking the same outcome, which is that there
10 be a -- that the Court or jury find the violation of the
11 Unruh Act. So I don't know how we could not have a
12 common interest because we wouldn't be here if it were
13 not for the real parties being discriminated against.

14 THE COURT: All right.

15 MR. MANN: And as you know, if there is a
16 common interest shared and there are privileges and
17 there are privileges here, the DFEH has its work product
18 and attorney-client. Our PI's have their
19 attorney-client and their attorney has their work
20 product. So because the privilege is protecting all the
21 information exchanged through the common interest
22 agreement or common interest doctrine, none of those
23 privileges are waived.

24 Given your clarification on the order, I don't
25 know that I need to say much about work product. And
26 what -- most of what defendants are requesting is
27 absolute work product. We haven't talked about the
28 official information privilege. I'd simply like to

1 THE COURT: Who just spoke?

2 MR. MANN: I'm sorry, Mr. Mann from DFEH.

3 THE COURT: Yeah, put that in your brief. Put
4 that request in your brief and then the defendant can
5 respond to it in their brief. Even though it's a
6 simultaneous submission, you know it's going to be in
7 their brief, and you can respond to that request.

8 Okay. Very good. Thank you.

9 MR. MANN: Thank you, Your Honor.

10 MR. TRISSELL: Thank you Your Honor.

11 MR. CHAN: Thank you, Your Honor.

12 (Whereupon no further proceedings were heard
13 in this matter on this date.)

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1 STATE OF CALIFORNIA)
) SS.
2 COUNTY OF KERN)

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6 I, Virginia A. Greene, CSR No. 12270, Official
7 Certified Shorthand Reporter of the State of California,
8 Kern County Superior Court, do hereby certify that the
9 foregoing transcript in the matter of DFEH vs. CATHY'S
10 CREATIONS, INC., DBA TASTRIES, A CALIFORNIA CORPORATION;
11 CATHY MILLER, Case No. BCV-18-102633, June 5, 2020,
12 consisting of pages numbered 1 through 31, inclusive, is
13 a complete, true, and correct transcription of the
14 stenographic notes as taken by me in the above-entitled
15 matter.

16 Dated this 15th day of June, 2020.

17
18
19 *Virginia A. Greene*
20
21

22 _____
23 Virginia A. Greene, CSR
24 Certified Shorthand Reporter No. 12270
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MJN EXHIBIT 25A

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(No Fee Pursuant to Gov. Code, § 6103)

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Kern County Superior Court
By Gracie Goodson, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

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

Plaintiff,

vs.

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

Defendants.

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

Real Party in Interest.

Case No.: BCV-18-102633-DRL

PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION

Date: November 4, 2021
Time: 8:30 a.m.
Dept.: 11
Judge: David R. Lampe

Action Filed: October 17, 2018
Trial Date: December 13, 2021

[Concurrently filed with DFEH's Notice of
Motion and Motion for Summary Judgment/
Adjudication; Separate Statement; Request
for Judicial Notice; Declaration of Gregory J.
Mann; and Declaration of Mireya Rodriguez-
Del Rio]

1 fails because Unruh prohibits discriminatory conduct, i.e., the refusal to sell goods and services based
2 on sexual orientation, without targeting religion. In fact, religion is a protected characteristic under
3 Unruh. As a neutral, generally applicable law of public accommodation, application of Unruh here
4 satisfies free exercise review under the First Amendment and California Constitution. (See *Employment*
5 *Div. Dept. of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879.)

6 Unruh likewise satisfies free speech review under the First Amendment. The refusal to sell the
7 plain cakes the Rodriguez-Del Rios wanted to order was discriminatory conduct, not speech. (Cf. *FAIR*,
8 *supra*, 547 U.S. at p. 66.) A business selling generic cakes with no written messages in the commercial
9 marketplace sends no message by doing so, nor does such a commercial transaction endorse any
10 message of the purchaser. Precedent makes clear that the act of selling cakes is not inherently
11 expressive: the ultimate observers of plain cakes receive no message about the cakes, regardless of
12 whether a baker intends to send a message. (See *ibid.*) But even if defendants are correct in their
13 alternative assertions, they cannot prevail; application of Unruh here satisfies even strict scrutiny, much
14 less intermediate scrutiny.

15 At base, while the religious views at issue here merit respect and careful consideration, the
16 policy defendants chose to implement those views and their reading of the First Amendment are simply
17 too broad. Application of their overbroad approach to the First Amendment impermissibly threatens to
18 both re-entrench the “community-wide stigma” against same-sex couples, (*Masterpiece, supra*, 138
19 S.Ct. at p. 1727), and vitiate the “general rule” that a business’s objections to same-sex marriage “do
20 not allow business owners ... to deny protected persons equal access to goods and services under a
21 neutral and generally applicable public accommodations law.” (*Ibid.*, citing *Newman v. Piggie Park*
22 *Enters., Inc.* (1968) 390 U.S. 400, 402, fn. 5.). Indeed, in 1968 in *Piggie Park*, the Supreme Court
23 rejected arguments identical to those Tastries asserts here as “patently frivolous” when a restaurant
24 owner asserted the same free exercise and free speech defenses against application of the federal public
25 accommodations law that prohibited him from discriminating on the basis of race. (*Piggie Park, supra*,
26 at p. 402, fn. 5.) Defendants’ arguments here are no more persuasive when asserted to excuse their
27 discrimination based on sexual orientation.
28

1 Because DFEH establishes Tastries' prima facie violation of Unruh and defendants cannot meet
2 their burden to prove their affirmative defenses, DFEH's motion for summary judgment/adjudication
3 should be granted.

4 **A. Summary Judgment Should Be Granted Because Tastries Violated Unruh By
5 Discriminating Against the Rodriguez-Del Rios Based on Their Sexual Orientation.**

6 Unruh provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no
7 matter what their ... sexual orientation ... are entitled to the full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."
9 (Civ. Code, § 51.) Business establishments have a duty to "serve all persons without arbitrary
10 discrimination." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167.) "The [Unruh] Act is
11 to be given a liberal construction with a view to effectuating its purposes." (*Koire v. Metro Car Wash*
12 (1985) 40 Cal.3d 24, 28.) By refusing to take the order of a same-sex couple for cakes it would have
13 prepared for opposite-sex couples, Tastries violated Unruh on the basis of sexual orientation.²

14 **1. The undisputed facts establish a prima facie case of defendants' violation of Unruh.**

15 As found by this Court in denying defendants' anti-SLAPP motions, there is no factual dispute
16 that Tastries' refusal to take the Rodriguez-Del Rio's cake order establishes a prima facie Unruh
17 violation. A plaintiff "must plead and prove intentional discrimination in public accommodations" to
18 establish an Unruh violation. (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1175
19 [superseded by statute on other grounds].) DFEH establishes a prima facie Unruh violation here.

20 Tastries is a for-profit bakery and, therefore, a business establishment under Unruh, which this
21 Court may determine as a matter of law.³ (*Rotary Club of Duarte v. Bd. of Directors* (1986) 178
22 Cal.App.3d 1035, 1050-1055.) Tastries has a facially discriminatory policy to deny same-sex couples
23 any and all pre-ordered cakes to celebrate their unions, and Miller admits that she "declined the
24 opportunity to create the requested custom cakes." (SSUMF Nos. 5, 21.) Based on this direct evidence

25 ² Where, as here, the facts are undisputed, violations of Unruh are properly determined on summary
26 judgment/adjudication. (See *Wilson v. Haria and Gogri Corp.* (E.D.Cal. 2007) 479 F.Supp.2d 1127,
27 1141 [summary judgment granted on liability]; *Hubbard v Twin Oaks Health & Rehabilitation Center*
28 (E.D.Cal. 2004) 408 F.Supp.2d 923, 932 [same].)

³ As the creator and enforcer of Tastries' discriminatory policy to deny same-sex couples pre-ordered
cakes to celebrate their unions, Miller is also individually liable because "liability under [Unruh] ...
extends beyond the business establishment itself to the business establishment's employees responsible
for the discriminatory conduct." (*North Coast, supra*, 44 Cal.4th at p. 1154.)

1 of Tastries' intentional discrimination under its facially discriminatory policy, DFEH establishes a
2 prima facie Unruh violation here. (See *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736-37.)

3 Violations of Unruh are "*per se* injurious." (*Koire, supra*, 40 Cal.3d at p. 33.) Violators of
4 Unruh are "liable for each and every offense ... in no case less than four thousand dollars (\$4,000)."
5 (Civ. Code, § 52, subd. (a).) DFEH seeks only statutory minimum damages here, which are properly
6 awarded upon summary judgment.⁴

7 **2. Tastries declined the Rodriguez-Del Rios' order because of their sexual orientation.**

8 Unable to create a factual dispute as to Tastries' intentional discrimination, Tastries attempts to
9 create a legal dispute, arguing that there is a relevant difference between discriminatory action aimed at
10 *same-sex marriage* and discriminatory action aimed at the couples' sexual orientations. She is
11 mistaken: Discrimination is not excused because it is aimed at an individual's *demonstration* of their
12 protected status; such a narrow view of the law would offer little protection. And courts have uniformly
13 rejected this argument, refusing to distinguish between people's status (i.e., sexual orientation) and
14 their conduct (i.e., entering into a same-sex marriage) when the conduct is "engaged in exclusively or
15 predominately by a particular class of people, [since] an intent to disfavor that class can readily be
16 presumed." (*Bray v. Alexandria Women's Health Clinic* (1993) 506 U.S. 263, 270 ["A tax on wearing
17 yarmulkes is a tax on Jews."].) Indeed, even the U.S. Supreme Court's "decisions have declined to
18 distinguish between status and conduct in [the] context" of discrimination on the basis of sexual
19 orientation. (*Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings College of Law v. Martinez*
20 (2010) 561 U.S. 661, 689 citing *Lawrence v. Texas* (2003) 539 U.S. 558, 575 [criminalizing conduct
21 typically undertaken by gay people is discrimination against gay people].) The California Supreme
22 Court also recognized that this distinction is meaningless: California's former laws prohibiting same-
23 sex marriage "properly must be understood as classifying or discriminating on the basis of sexual

24 ⁴ It is reversible error to require proof of harm in an Unruh case where only statutory damages are
25 sought. (*Rotary Club of Duarte, supra*, 178 Cal.App.3d at p. 1061 [affd. *sub nom. Bd. of Directors of*
26 *Rotary Internat. v. Rotary Club of Duarte* (1987) 481 U.S. 537] [holding that upon proof of an Unruh
27 violation, injunctive relief is available and "damages are presumed"].) If the court is inclined to resolve
28 the statutory damages at this stage, as it may do, DFEH seeks minimum statutory penalties of \$4,000 for
Tastries' violation as to each of the Rodriguez-Del Rios. (See, e.g., *Wilson, supra*, 479 F.Supp.2d at p.
1141 [awarding \$52,000 on summary judgment based on 13 violations of Unruh]; *Feezor v. Del Taco*
(S.D.Cal. 2005) 431 F.Supp.2d 1088, 1091 [awarding \$12,000 on summary judgment for 3 violations].)

orientation” (*In re Marriage Cases* (2008) 43 Cal.4th 757, 783-84, superseded by Constitutional amendment as stated in *Hollingsworth v. Perry* (2013) 570 U.S. 693, 701.) There is no basis to construe Unruh differently, especially given its “liberal construction.” (*Koire, supra*, 40 Cal.3d at p. 28.)

Discrimination against individuals celebrating same-sex marriages violates Unruh’s prohibition against discrimination based on sexual orientation. (See *Romer v. Evans* (1996) 517 U.S. 620, 641 [Scalia, J. dissenting] [“‘After all, there can hardly be more palpable discrimination against a class than making the conduct that defines the class criminal.’”]; see also *State v. Arlene’s Flowers* (2019) 193 Wash.2d 469, 503-05; see also *Elane Photography, LLC v. Willock* (2013) 309 P.3d 53, 68.) And there is no dispute that Miller discriminated against the Rodriguez-Del Rios’ based on their celebration of a same-sex marriage. (SSUMF Nos. 20, 21.)

B. Neither Free Exercise nor Free Speech Rights Provide Tastries a Defense.⁵

The only real dispute regarding defendants’ affirmative defenses centers on whether application of Tastries’ discriminatory policy is protected by federal and state free exercise or free speech law. The First Amendment and the California Constitution both recognize and protect the dignity and importance of sincere religious beliefs. But neither empowers a bakery operating in the commercial marketplace to deny generic products, requiring only the application of routine skill and no special artistry or message, to same-sex couples.

1. The free exercise clauses of the federal and state constitutions do not permit the discrimination here.

United States Supreme Court “decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’” (*Employment Div. Dept. of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879 [“*Smith*”] [quoting *United States v. Lee* (1982) 455 U.S. 252, 263, fn. 3 (Stevens, J., concurring)].) The Supreme Court recently reaffirmed the *Smith* rule in *Masterpiece*, acknowledging that while individuals are free to object to same-sex marriage under the First Amendment’s free exercise clause, “it is a general rule that such objections do not allow business owners and other actors

⁵ Although defendants assert 15 affirmative defenses, the real dispute here concerns their free exercise and free speech defenses. DFEH addresses the remaining defenses, below.

Defendants attempt to rely on *Masterpiece*, but *Masterpiece* dooms their free exercise claim. While *Masterpiece* left open the possibility that a “special cake,” for example with “religious words or symbols,” might implicate free exercise interests, the cakes here had no such unique characteristics. (*Masterpiece*, *supra*, 138 S.Ct. at p. 1723; SSUMF Nos. 12, 76, 77.) Instead, Tastries has a blanket policy against providing *any* pre-ordered cake, no matter how basic or generic, for same-sex marriage celebrations. (SSUMF Nos. 5 - 8). In other words, the Rodriguez-Del Rios faced a policy akin to an unprotected “refusal to sell any cake at all”; the refusal was based on a blanket policy targeting the identity of the couple, not the nature of the product. (*Ibid.*) *Masterpiece* makes clear that such a policy is unprotected “and is subject to a neutrally applied and generally applicable public accommodations law.” (*Id.* at p. 1728.)

Indeed, the Supreme Court rejected a similar free exercise defense over fifty years ago in *Newman v. Piggie Park Enters., Inc.*, which *Masterpiece* invokes in support of “the general rule” that the objections here “do not allow business owners ... to deny protected persons equal access to goods and services under a neutral and generally applicable law.” (*Id.* at p. 1727 citing *Piggie Park*, *supra*, 390 U.S. at p. 402, fn. 5.) *Piggie Park* concerned whether Title II of the Civil Rights Act of 1964 prohibited racial discrimination where the owner of a restaurant asserted a free exercise defense. (*Piggie Park*, *supra*, 390 U.S. at p. 402, fn. 5.) The Court concluded it was “not even a borderline case,” and that defendant’s contention that the Civil Rights Act “was invalid because it ‘contravenes the will of God’ and constitutes an interference with the ‘free exercise of [his] religion,’” was “patently frivolous” (*Ibid.*) As *Masterpiece* makes clear, Tastries’ arguments cannot be meaningfully differentiated from those in *Piggie Park* and must similarly be rejected.

b. Application of Unruh here likewise satisfies review under the California Constitution’s free exercise clause.

Despite California courts’ historical practice of interpreting California’s free exercise clause in tandem with its federal counterpart (*Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 561-62), Tastries contends California should ignore *Smith* and instead apply strict scrutiny review to application of Unruh here. However, as far back as 1946, well before *Smith*, the State’s high court concluded “that ‘a person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are

1 applicable to all persons and are designed to accomplish a permissible objective.’” (*Catholic Charities*,
2 *supra*, 32 Cal.4th at p. 561 [quoting *Rescue Army v. Municipal Ct.* (1946) 28 Cal.2d 460, 470].)

3 **i. California courts should remain consistent with federal law and apply *Smith*.**

4 Although *Smith* does not automatically apply here “[b]ecause construing a state constitution is a
5 matter left exclusively to the states,” (*North Coast, supra*, 44 Cal.4th at p. 1158), this Court should
6 apply the *Smith* test. This is especially true here where Unruh’s application only incidentally burdens
7 Miller’s religious practices.

8 Miller’s exercise of religion is not substantially burdened by Unruh because DFEH does not
9 seek an order forcing Tastries to sell pre-ordered wedding cakes in the retail marketplace to all
10 customers, including same-sex couples. Rather, as in *North Coast* (see *id.* at pp. 1158-59), Tastries has
11 at least three options to comply with Unruh. One, Tastries can follow Unruh’s explicit language and
12 sell all its goods and services to all customers. Two, rather than provide all services to all customers
13 irrespective of sexual orientation, Tastries may choose to cease offering pre-ordered wedding cakes for
14 sale to anyone.⁶ (See *North Coast, supra*, 44 Cal.4th at p. 1159 [Physicians could “avoid any conflict
15 between their religious beliefs and [Unruh]” by “simply refus[ing] to perform” the fertility treatment at
16 issue to any patients]; see *Smith v. Fair Empl. & Hous. Com. (FEHC)* (1996) 12 Cal.4th 1143, 1170
17 [Landlord whose religious beliefs motivated her to deny rental housing to non-married couples could
18 avoid conflict between her beliefs and FEHA “by selling her units and redeploying the capital in other
19 investments.”].) Three, Miller can step aside from participating in the preparation of any pre-ordered
20 cakes sold to same-sex couples and allow her willing employees to manage the process. (See *North*
21 *Coast, supra*, 44 Cal.4th at p. 1159.) Tastries employees have prepared and delivered cakes to same-sex
22 couples without Miller’s involvement in the past. (SSUMF No. 72.) Unruh does not substantially
23 burden Miller’s religious beliefs, and its application here satisfies review under the *Smith* test.

24 ⁶ The fact that Miller’s religious beliefs may motivate Tastries to stop selling pre-ordered wedding cakes
25 altogether does not mean Unruh substantially burdens her beliefs, even if it led to Tastries restructuring
26 its business. (*Smith v. Fair Empl. & Hous. Com. (FEHC)* (1996) 12 Cal.4th 1143, 1172–73 [Landlord’s option of
27 “shifting her capital from rental units to another investment” was a relevant factor in assessing FEHA’s
28 burden on her religious beliefs because “[a]n economic cost ... does not equate to a substantial burden
for purposes of the free exercise clause.”]; *Easebe Enterprises, Inc. v. Alcoholic Bev. etc. Appeals Bd.*
(1983) 141 Cal.App.3d 981, 987 [“An entrepreneur’s discriminatory practice based upon ostensible
rational economic self-interest still violates public policy as codified in Civil Code section 51.”].)

1 have taken great pains to explain that the standard is a demanding one.” (*Id.* at p. 463.) Defendants do
2 not meet it.

3 As a public prosecutor pursuing litigation under Unruh, as incorporated into the Fair
4 Employment and Housing Act (Gov. Code, § 12948; *State Personnel Bd. v. Fair Empl. & Hous. Com’n*
5 (1985) 39 Cal.3d 422, 444), DFEH is presumed to have properly exercised its authority and courts
6 accord it broad discretion to do so. (*Armstrong, supra*, 517 U.S. at p. 464.) Such presumption is
7 overcome only by “‘clear evidence to the contrary.’ [Citation.]” (*Id.* at p. 465.)

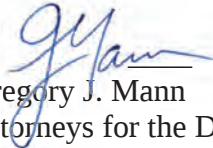
8 Defendants can present no evidence, much less clear evidence, of selective enforcement here.
9 They cannot prove discriminatory effect because they lack evidence that they have been treated
10 differently from others similarly situated. Nor can they establish discriminatory purpose because they
11 lack evidence that DFEH pursues this action based on Miller’s religious beliefs. This Court has
12 repeatedly rejected Tastries’ baseless assertions: “there’s no evidence before the Court that the
13 Department is going around singling out Christian providers.” (Mann Decl., Ex. 2 [2/2/18 Reporter’s
14 Transcript of Proceedings on OSC re preliminary injunction, 30:6-16]; *id.* Ex. 3 [3/2/18 Order Denying
15 DFEH’s Order to Show Cause Re: Preliminary Injunction, attachment, p. 6 of 8 “[t]here is also no
16 evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement”].)

17 V. CONCLUSION

18 California and U.S. Supreme Court precedent compel the conclusion that Tastries’ refusal to sell
19 generic cakes to the Rodriguez-Del Rios for use in the celebration of their same-sex wedding violates
20 Unruh. Because Tastries cannot carry its burden to establish any affirmative defense, DFEH’s Motion
21 for Summary Judgment or, in the Alternative, Adjudication should be granted and an order indicating
22 its entitlement to injunctive and monetary relief should be entered.

23
24 Dated: September 8, 2021

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

25
26
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MJN EXHIBIT 25B

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

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

Plaintiff,

vs.

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

Defendants.

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

Real Parties in Interest.

Case No.: BCV-18-102633-DRL

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANTS CATHARINE MILLER
AND TASTRIES BAKERY'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Department 11

Judge: David R. Lampe

Action Filed: October 17, 2018

Trial Date: December 13, 2021

1 In *Minton*, a transgender patient brought an Unruh claim based on gender identity against a tax-
2 exempt nonprofit corporation that owned and operated a large network of hospitals after the defendant
3 cancelled a hysterectomy prescribed to treat the patient's diagnosed gender dysphoria. (*Id.* at p. 1158-
4 59.) Plaintiff's doctor scheduled the procedure to take place at a Catholic hospital at which she had
5 privileges. (*Id.* at 1159.) Defendant canceled the procedure because, due to the hospital's Catholic
6 religious affiliation, it did not allow hysterectomies to treat gender dysphoria, but did permit
7 hysterectomies to address other diagnoses. (*Ibid.*) After canceling the procedure, defendant rescheduled
8 it for three days later than originally scheduled and changed the location to another of its hospitals—
9 one that was not affiliated with the Catholic Church. (*Ibid.*) The court of appeal held that plaintiff
10 alleged sufficient facts to support a violation of Unruh based on defendant's cancelation of the
11 procedure at the Catholic hospital. (*Id.* at p. 1165.)

12 The similarities of this case to *Minton* reveal that defendants' refusal to provide the Rodriguez-
13 Del Rios service while attempting to send them to an unaffiliated bakery constituted an Unruh
14 violation. Indeed, similar to defendants here, the defendants in *Minton* arranged for the plaintiff to
15 obtain services elsewhere. The plaintiff ultimately underwent the procedure, which was performed by
16 his own doctor in a comparable hospital owned and operated by defendant. (*Id.* at p. 1164.) Yet the
17 court of appeal still held that defendant failed to provide full and equal services. (*Id.* at p. 1165-66.)

18 Here, defendants offered far less and did nothing in comparison to defendant in *Minton*. After
19 refusing to take the Rodriguez-Del Rios' order, defendants attempted to send them to an unaffiliated
20 bakery with different designers, bakers, and decorators that was owned and operated by another baker.
21 Moreover, the Rodriguez-Del Rios had already rejected the bakery to which Miller offered to send their
22 order. (PAUMF No. 51; PSSUMF No. 22.) And unlike defendant in *Minton*, a tax-exempt non-profit
23 corporation operating the subject Catholic Church affiliated hospital, Tastries is a for-profit business
24 selling its goods and services in the commercial marketplace with no official church affiliation.

25 In short, after Tastries' refusal to take the Rodriguez-Del Rios' cake order, Miller's offer to send
26 them elsewhere did not satisfy Unruh's requirement that businesses provide full and equal services. The
27 *Minton* court relied on the California Supreme Court's *North Coast* decision, which suggested defendant
28 medical group in that case could avoid violating Unruh by having *one of its doctors* that lacked a

1 religious objection perform the subject procedure.⁴ But no California court has suggested that sending
2 gay customers to an unaffiliated business worked by unassociated staff satisfies Unruh’s requirement
3 that businesses provide full and equal services irrespective of sexual orientation. Not only does *Minton*
4 not support defendants’ argument, but their reading of it is fundamentally inconsistent with California
5 Supreme Court precedent. (*Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1175
6 [rejecting landlord’s request for an exemption from Unruh to deny rental to unmarried couples, court
7 ruled that “[t]o say [prospective tenants] may rent elsewhere is also to deny them the right to be treated
8 equally by commercial enterprises.”].) *Minton* confirms that defendants’ refusal to accept the Rodriguez-
9 Del Rios’ cake order constituted a failure to provide full and equal services in violation of Unruh.

10 **2. Under Unruh, Defendants’ Denial of Full and Equal Services was Motivated Solely
11 by the Rodriguez-Del Rios’ Sexual Orientation.**

12 As a matter of law, the United States and California Supreme Courts have flatly rejected
13 defendants’ argument that Miller was not motivated by the Rodriguez-Del Rios’ sexual orientation
14 when she declined to take their cake order. Miller refused to take their order once she learned they were
15 a gay couple. (PAUMF Nos. 48-49; PSSUMF No. 21.) Ignoring this fact, defendants argue that Miller
16 based her refusal on the Rodriguez-Del Rios’ *conduct*—celebrating their same-sex marriage—not their
17 *status* as gay people. (Defendants’ Memo, 15:16-18.) But the conduct of being in and celebrating a
18 same-sex marriage is inseparable from the sexual orientation of the people in that marriage.

19 The U.S. and California Supreme Courts have explicitly rejected the artificial distinction
20 between conduct and status defendants assert here. In *Martinez*, a student religious group applying for
21 official recognition, Christian Legal Society (“CLS”), challenged a Hastings College of Law
22 requirement that officially recognized student groups must comply with the school’s nondiscrimination
23 policy by accepting all members. (*Christian Legal Soc. Chapter of the Univ. of California, Hastings*
24 *Coll. of the L. v. Martinez* (2010) 561 U.S. 661, 668 [“*Martinez*”].) CLS’s bylaws stated “that sexual
25 activity should not occur outside of marriage between a man and a woman,” and in violation of
26 Hasting’s policy, CLS excluded members who engaged in “unrepentant homosexual conduct.” (*Ibid.*)

27 ⁴ *North Coast, supra*, 44 Cal.4th at p. 1159 suggests that by allowing employees lacking Miller’s
28 objections to same-sex marriage to prepare cakes for same-sex couples, Tastries can harmonize Miller’s
beliefs and its obligations as a business—but Tastries has rejected this very reasonable alternative.
Tastries’ employees have prepared pre-ordered wedding cakes for same-sex couples in the past without
Miller’s involvement. (PAUMF No. 53; PSSUMF Nos. 72-73.)

1 Unruh does not substantially burden Miller's religious practice for several reasons. First, Tastries
2 is a for-profit public accommodation selling goods and services in the commercial marketplace, not a
3 religious entity. (PAUMF No. 52, PSSUMF No. 1.) Second, Miller's religion does not require her to
4 operate a bakery or sell wedding cakes. (See *Id.* at pp. 1171-72, 1175.) Third, selling wedding cakes is
5 not Tastries only source of income (PAUMF No. 56). (*Ibid.*) Fourth, Miller can avoid the conflict
6 between Unruh and her religious beliefs by allowing Tastries' employees lacking her religious objection
7 to prepare wedding cakes for same-sex couples (PAUMF Nos. 53-54, PSSUMF No. 72). (See *North*
8 *Coast, supra*, 44 Cal.4th at p. 1159.) Fifth, even if Miller chooses to comply with Unruh by ceasing to
9 sell wedding cakes to any customers (*ibid.*), "[i]t is well established that there is no substantial burden
10 placed on an individual's free exercise of religion where a law or policy regulating secular conduct
11 merely operates so as to make the practice of the individual's religious beliefs more expensive.
12 [Citations.]" (*FEHC, supra*, 12 Cal.4th at p. 1172 [internal brackets and quotation marks removed].)

13 "One last factor that is relevant here ... also properly informs the inquiry into whether an
14 asserted burden on religion is substantial.... whether the granting of an [exemption] would detrimentally
15 affect the rights of third parties." (*Id.* at p. 1174.) Like the landlord in *FEHC*, who refused to rent to
16 unmarried couples based on religion, "[b]ecause [Miller] is involved in a commercial enterprise, ... to
17 permit [her] to discriminate would sacrifice the rights of [the Rodriguez-Del Rios and] her prospective
18 [customers] to have equal access to public accommodations and their legal and dignity interests in
19 freedom from discrimination based on personal characteristics." (*FEHC, supra*, 12 Cal.4th at p. 1170.)

20 The California Supreme Court acknowledged the significance that neither of the exemptions
21 granted by the Supreme Court in *Sherbert v. Verner* (1963) 374 U.S. 398 or *Wisconsin v. Yoder* (1972)
22 406 U.S. 205 involved a "comparable impairment of the rights of third parties" (*FEHC, supra*, 12
23 Cal.4th at p. 1171.) Indeed, the "exemption" from Unruh that Miller "seeks can be granted only by
24 completely sacrificing the rights of the [Rodriguez-Del Rios] not to be discriminated against by her in
25 [public] accommodations on account of [sexual orientation]." (*Ibid.*) To attempt to send the Rodriguez-
26 Del Rios "elsewhere is to deny them the full choice of available [public] accommodations enjoyed by
27 others in the [] market." (*Ibid.*) "To say they may [shop] elsewhere is also to deny them the right to be
28 treated equally by commercial enterprises." (*Ibid.*) The Rodriguez-Del Rios' "dignity interest is

1 Supreme Court has repeatedly upheld public accommodations laws in particular as “‘well within the
2 State’s usual power to enact when a legislature has reason to believe that a given group is the target of
3 discrimination.’” (*Masterpiece, supra*, 138 S.Ct. at p. 1287, citing *Hurley v. Irish-American Gay,
4 Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557, 572.)

5 The California Supreme Court has unequivocally held that Unruh “furthers California’s
6 compelling interest in ensuring full and equal access to medical treatment irrespective of sexual
7 orientation” (*North Coast, supra*, 44 Cal.4th at p. 1158) and that eradicating discrimination by business
8 establishments serves the state’s compelling interest. (See *Catholic Charities, supra*, 32 Cal.4th at p.
9 564 [gender discrimination].) The California Legislature has codified the State’s compelling interest in
10 protecting its citizens from sexual orientation discrimination: “California’s robust nondiscrimination
11 laws include protections on the basis of sexual orientation” (Gov. Code, § 11139.8, subd. (a).) And
12 while “[r]eligious freedom is a cornerstone of law and public policy in the United States, and the
13 Legislature strongly supports and affirms this important freedom ..., [t]he exercise of religious freedom
14 should not be a justification for discrimination.” (*Id.* [italics added].)

15 In upholding Unruh against free exercise and free speech challenges, the California Supreme
16 Court held “there are no less restrictive means” for California to accomplish its compelling interest in
17 eradicating invidious discrimination. (*North Coast, supra*, 44 Cal.4th at p. 1158.) Likewise, the U.S.
18 Supreme Court has held that public accommodations laws like Unruh “advance[] [state] interests
19 through the least restrictive means of achieving [their] ends.” (*Roberts, supra*, 468 U.S. at p. 626, 628-
20 29.) Exemptions to Unruh, such as defendants seek, would increase the number of gay persons affected
21 by discrimination in the provision of goods and services. (See *Catholic Charities, supra*, 32 Cal.4th at
22 p. 565.) “Our society has come to the recognition that gay persons and gay couples cannot be treated as
23 social outcasts or as inferior in dignity and worth.” (*Masterpiece, supra*, 138 S.Ct. at p. 1727.)
24 Additionally, Unruh provides Tastries at least three options to comply with its discrimination
25 prohibitions—i.e., allow Tastries employees lacking Miller’s religious objections to prepare cakes for
26 same-sex couples without Miller’s participation; sell wedding cakes to all couples; or sell no wedding
27 cakes at all (see *North Coast, supra*, 44 Cal.4th at pp. 1158-59)—further demonstrating it is the least
28 restrictive means of achieving California’s compelling interest to eradicate discrimination.

Defendants rely on *Fulton* to argue that the U.S. Supreme Court has rejected the California Supreme Court's expression of its compelling interest to eradicate invidious discrimination. (Defendants' Memo, 23:28-24:3.) But the strict scrutiny applied in *Fulton* does not apply here because, unlike the contractual nondiscrimination clause there, Unruh contains no explicit, discretionary exemption provision. Moreover, even "scrutiniz[ing] the asserted harm of granting specific exemptions to [a] particular religious claimant[]" like Miller demonstrates that California's interest is compelling. (*Id.* at p. 1881.) As discussed above, granting Tastries an exemption to Unruh here "would not affect [Miller] alone, but would necessarily impair the rights and interests of third parties" like the Rodriguez-Del Rios and other same-sex couples. (See *FEHC, supra*, 12 Cal.4th at p. 1176.) That was not the case in *Fulton*, where the "City offer[ed] no compelling reason why it ha[d] a particular interest in denying an exception to CSS while making them available to others." (*Fulton, supra*, 141 S.Ct. at p. 1882.)

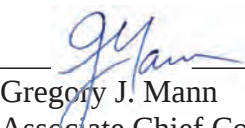
Here, California has a compelling interest in denying an exception to Miller: granting an exception would empower Tastries—and no doubt numerous other businesses soon to seek such exceptions to Unruh—to discriminate in the commercial marketplace on the basis of sexual orientation in direct opposition to California's compelling interest in eradicating invidious discrimination. Unruh provides defendants options to comply with no conflict between Unruh and Miller's religious beliefs, while exempting Tastries from complying with Unruh would deprive the Rodriguez-Del Rios and numerous others of their rights to equal access to public accommodations and their dignity interests in being free from discrimination. As the least restrictive means to accomplish California's compelling interest in eradicating invidious discrimination, application of Unruh here satisfies strict scrutiny.

III. CONCLUSION

For the foregoing reasons, DFEH respectfully requests that the court deny defendants' motion for summary judgment or, in the alternative, summary adjudication.

Dated: October 6, 2021

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AND HOUSING



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

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

Plaintiff,

vs.

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

Defendants.

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

Real Parties in Interest.

Case No.: BCV-18-102633-DRL

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Nov. 4, 2021
Time: 8:30 a.m.
Department 11
Judge: David R. Lampe

Action Filed: October 17, 2018
Trial Date: February 28, 2022

1 I. INTRODUCTION

2 Contrary to defendants' assertion in their opposition, the Department of Fair Employment and
3 Housing (DFEH) does not want "defendants to liquidate their business and go home." (Opposition,
4 22:21.) DFEH is the only party who has consistently sought common ground in this matter. It has
5 identified several options to harmonize Ms. Miller's religious beliefs with the requirement that Tastries
6 complies with the Unruh Civil Rights Act (Civ. Code, § 51 [Unruh]). (See *North Coast Women's Care*
7 *Medical Group, Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1159.) Defendants are free to choose from
8 those options or suggest others, so long as they provide full and equal services to same-sex couples. But
9 defendants have declined to do so, choosing instead to press meritless arguments about the scope of
10 Unruh, the First Amendment, and the California Constitution.

11 DFEH's motion for summary judgment/adjudication meets its burden. Undisputed material
12 facts support DFEH's prima facie case that defendants denied full and equal services to the Rodriguez-
13 Del Rios because of their sexual orientation. Defendants' opposition attempts to distract from this with
14 baseless accusations of bias and targeting rather than making the required showings in support of their
15 affirmative defenses. (Code Civ. Proc., § 437c, subd. (p)(1).) Defendants' quibbles with DFEH's
16 undisputed material facts—e.g., "Defendants dispute the characterization" of certain facts, but not the
17 underlying facts themselves (see Defendants' Separate Statement in Opposition, Nos. 9, 12, 15, 16,
18 17)—are not genuine disputes. Their brief is rife with mischaracterizations of DFEH's arguments. It is
19 also chock full of misleading citations to inapposite precedent in support of defendants' unsupported
20 legal arguments. And throughout their opposition, defendants attempt to distract from the merits by
21 discussing general cake design and hypothetical cakes rather than the plain, blank cakes at issue here.

22 One thing defendants get right is that the parties "generally agree on the material facts"
23 (Opposition, 8:4), and that "the only question that remains is how these facts relate to the law." (*Id.* at
24 8:9.) As a matter of law, defendants' purported referral of the Rodriguez-Del Rios to an unaffiliated
25 bakery did not satisfy their obligation to provide full and equal services. Similarly, discrimination based
26 on conduct (i.e., entering and celebrating same-sex marriage) closely associated with the couple's
27 protected status (i.e., sexual orientation) constitutes discrimination motivated by sexual orientation as a
28 matter of law.

1 exemptions” based on a commissioner’s “sole discretion.” (*Id.* at p. 1881.) Unruh has no such
2 discretionary exemption clause nor does DFEH have discretion to exempt certain violators from Unruh.
3 (Civ. Code, § 51.) Therefore, *Smith* applies, and Unruh’s application here satisfies rational basis review.

4 **b. California courts should review Unruh’s application here under *Smith*’s rational
5 basis review, which Unruh satisfies.**

6 California courts are not “foreclosed by binding appellate authority” from applying *Smith*’s
7 rational basis review to Unruh’s application here. (Opposition, 21:17-20 [citing *Vavlov v. Department of*
8 *Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1126, fn. 7].) The court in *Vavlov* simply followed the
9 California Supreme Court’s guidance from *Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004)
10 32 Cal.4th 527, 561-62, “assume[d] that the conflict between” plaintiff’s religion and the subject
11 Vehicle Code “requirement substantially burdened Vavlov’s religious beliefs,” applied strict scrutiny,
12 and determined that the neutral, generally applicable Vehicle code provision “serves a compelling state
13 interest and is narrowly tailored to achieve that interest.” (*Vavlov, supra*, 132 Cal.App.4th at p. 1126-27
14 [italics added].) The court in *Vavlov* did not find, but merely *assumed* for analytical purposes, that
15 plaintiff’s religious exercise was substantially burdened. *Vavlov* changed nothing.³

16 The California Supreme Court has yet to articulate that *Smith* states the applicable review
17 standard for neutral, generally applicable laws like Unruh on religious grounds because all the
18 challenges thus far failed even under strict scrutiny review. (*Catholic Charities, supra*, 32 Cal.4th at p.
19 562.) Defendants’ challenge here fails under strict scrutiny as well. (See DFEH’s Opposition to
20 Defendants’ Motion for Summary Judgment, §§ II.B.1. and II.B.4, incorporated herein by reference.)
21 But if this Court were to hold application of Unruh here does not survive strict scrutiny, it must first
22 determine what level of review is appropriate. Because California has a history of “declining to exempt
23 religiously motivated conduct from neutral, generally applicable laws” and review under the State’s free

24
25 ³ Although defendants argue DFEH attempts to force them to “cease offering pre-ordered wedding cakes
26 for sale to anyone” (Opposition 21:22-23; 22:21) to show the purported substantial burden upon Miller’s
27 religious exercise, DFEH has identified *at least three recognized options* to comply with Unruh, two of
28 which increase revenues: (1) sale wedding cakes to all or (2) allow Tastries employees with no religious
objections to prepare wedding cakes for same-sex couples (while this option seems to be the logical
compromise given that Tastries’ employees have done so in the past without Miller’s involvement
[SSUMF Nos. 69, 72], the choice is defendants’). (See *North Coast, supra*, 44 Cal.4th at p. 1159.)

1 Dated: October 20, 2021

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

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4 _____
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7 Attorneys for the DFEH
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MJN EXHIBIT 26A

BEFORE THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE COMPLAINT OF)
EILEEN RODRIGUEZ-DEL RIO,)
MIREYA RODRIGUEZ-DEL RIO,)

Complainants,)

vs.)

CATHY'S CREATIONS, INC. DBA)
TASTRIES DBA TASTRIES BAKERY;)
AND CATHY MILLER,)

Respondents.)

ORIGINAL

Case No.:
935123-315628

DEPOSITION OF
CATHARINE MILLER
LOS ANGELES, CALIFORNIA
SEPTEMBER 26, 2018

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: DIANA WHITESEL, CSR No. 6287
FILE NO.: AC09F34

1 my Lord. I really don't care what the denomination is
2 so long as it is Bible based and you love the Lord with
3 all your heart and put him first in your life. And he's
4 been first in my life, my entire life.

5 BY MR. MANN:

6 Q. Do you believe the Bible is the literal word of
7 God?

8 A. It's the inherent word of God, yes, and it does
9 not change ever.

10 Q. Would you consider yourself evangelical?

11 A. You bet.

12 Q. And if the Bible has a rule like the Ten
13 Commandments, do you follow it, or at least attempt to
14 follow it?

15 A. We are all sinners. We will all fail, but God
16 is a gracious God. Our job is to love him first and
17 love each other and come as close to obeying his word as
18 possible. And that's a heart issue, not a head issue.

19 Q. Then you talk about some of the core religious
20 beliefs that you have. And then we asked some questions
21 about marriages between -- in different situations,

22 A. Sure.

23 Q. So we asked about, you know, marriage that
24 involved people where one of them had been divorced.

25 A. Uh-huh. Yes.

1 Q. Have there ever been circumstances where you
2 would not create a cake because one of the people was
3 divorced?

4 A. I am not privy to that information. And I
5 don't ask my clients if they've been divorced. I take
6 it the way I judge everything, whether it's a cake or
7 anyone else; this is between you and God, not me. I'm
8 not going to judge.

9 You're getting married. And you're trying to
10 make it -- in that kind of a situation, you know, where
11 there's kids involved, they're trying to make it right
12 before the Lord. They're bringing it before the Lord.
13 That's between them.

14 God is very specific: Marriage is between a
15 man and woman. And that's all I know. So I will
16 support that.

17 Q. Would that be the same answer for if one or
18 both of them have a child out of wedlock?

19 A. They're trying to make it right with God. I
20 will support anything that encourages them to be right
21 with God.

22 And I go over my wedding packet with them.

23 Q. You ever have a situation where you met with a
24 couple, or you met with just one of them, and you had a
25 sense that the marriage was happening because one of

1 them felt coerced into it?

2 A. I don't think so.

3 Q. Like, maybe their family was pressuring them:
4 You have a child together --

5 A. No.

6 Q. -- or you're pregnant, you have to get married?

7 A. No.

8 Q. Never had that situation?

9 A. I have had situations where the bride or groom
10 will call the week of the wedding and say "We can no
11 longer get married." And that is the only instance
12 where I refund everything to them. Because I think
13 they're really seeking the Lord, you know.

14 Q. Do you ever have a situation where you felt
15 that the couple was getting married not because they
16 were in love but more for some legal reasons or
17 something aside from love?

18 A. No. And when I talk to them at my cake
19 tastings, it's all about God's love and their love for
20 each other with God as a trinity. Not God's trinity but
21 God, the bride, and the groom.

22 Q. If you ever had that situation, would you want
23 to bake a cake?

24 A. I can't really answer that. I haven't been
25 faced with that. People who come in to order a cake are

1 usually very happy and excited to be there.

2 Q. You've made wedding cakes for interracial
3 couples before?

4 A. Uh-huh.

5 MR. LIMANDRI: Is that "yes"?

6 THE WITNESS: I'm sorry. Yes.

7 BY MR. MANN:

8 Q. Any problem with making wedding cakes in that
9 situation?

10 A. No. They're both people. God made them.

11 Q. All right. Well, let's talk about the policy,
12 and then maybe break for lunch after this.

13 So tell me about your policy of not making a
14 wedding cake for couples celebrating a same-sex wedding?

15 A. I can't do it.

16 Q. The policy is you can't bake it; right?

17 A. I can't. I can't. I will not offend my Lord
18 and Savior and His precepts in the Bible have said -- I
19 mean, I've got them all marked here if you want me --
20 this, this right here is my policy. Okay.

21 And I'm opening my Bible up, and I have --
22 what? -- maybe a dozen verses marked.

23 If you want, I'll be happy to read them to you
24 because that is my policy. And it goes for all of this.

25 Q. Has that been your policy the entire time

1 Tastries has been open?

2 A. January 1st, 2013, and will continue as long as
3 I own the business.

4 Q. I can't remember if I asked you if that policy
5 also applies to the coordination event planning as well?

6 A. Yes, sir.

7 I'll be honest with you --

8 MR. LIMANDRI: Well, you're being honest about
9 everything.

10 THE WITNESS: I'm being honest with everything.
11 You're right. I'm sorry.

12 One of the reasons I've stopped doing weddings
13 is because of too much going on. But the other reason I
14 backed way off is there was too much drunkenness going
15 on. And I would only do weddings where there was not an
16 open bar, and there was only champagne for toasts, or
17 wine. That's how serious I am about this.

18 I could have made a lot of money doing events,
19 and I have chosen not to because I cannot partake and be
20 a part of the way the wedding celebrations have
21 progressed.

22 That's an example of how serious I am about my
23 design standard Number 6, and how important the Bible is
24 to the core of my life. And I'm not just an evangelical
25 Christian. I'm not just here to make crazy statements.

1 This is who I am.

2 BY MR. MANN:

3 Q. Thank you.

4 MR. LIMANDRI: She was referring to the Bible.
5 I'm sorry, counsel.

6 For the record, she was tapping the Bible when
7 she said "this is who I am."

8 BY MR. MANN:

9 Q. Is there a policy to refuse any other services
10 to same-sex couples, or is it just wedding cakes?

11 A. It's just wedding cakes and anniversary cakes.
12 Anything that celebrates their union. So that would be,
13 maybe, if they had bridal shower. I've never been
14 asked. Anything that has to do with the marriage, no.
15 The union of a same-sex couple.

16 Q. Okay.

17 A. But not them as a person.

18 Q. What about a birthday cake for the child of a
19 same-sex couple?

20 A. We already did one.

21 Q. And you'll do that in the future?

22 A. Uh-huh.

23 MR. LIMANDRI: You have to answer out loud.

24 THE WITNESS: Yes. I'm honoring them as a
25 person.

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STATE OF California)
COUNTY OF Kern) ss.

I, the undersigned, declare under penalty of perjury:

That I have read the foregoing transcript;
That I have made any corrections, additions,
or deletions that I was desirous of making;
That is a true and correct transcript of my
testimony contained herein.

EXECUTED this 12 day of October
2018, at Bakersfield California
[City] [State]

Catharine Miller
CATHARINE MILLER

REPORTER'S CERTIFICATE

I, Diana Whitesel, CSR No. 6287, Certified Shorthand
Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me at the time and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney of the parties, nor financially
interested in the action.

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

Dated this 2nd day of October, 2018.


Diana Whitesel, CSR No. 6287

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

MJN EXHIBIT 26B

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT)
AND HOUSING, an agency of the)
State of California,)
Plaintiff,)
vs.) Case No.)
BCV-18-102633-JEB)
CATHY'S CREATIONS, INC. d/b/a)
TASTRIES, a California)
corporation; and CATHY MILLER,)
Defendants.)

EILEEN RODRIGUEZ-DEL RIO and)
MIREYA RODRIGUEZ-DEL RIO,)
Real Parties in Interest.)

_____)

REMOTE DEPOSITION OF CATHY'S CREATIONS, INC.,
BY AND THROUGH ITS DESIGNATED REPRESENTATIVE
CATHARINE MILLER
AND IN HER INDIVIDUAL CAPACITY
February 24, 2022

Witness Location: Rancho Santa Fe, California

Atkinson-Baker,
a Veritext Company
(800) 288-3376

Reported by: Lisa O'Sullivan, CA CSR No. 7822,
AZ CR No. 50952, RMR, CRR
File No: 5085432

1 A. No, it is not.

2 Q. Is religion or your Christian beliefs mentioned
3 in Cathy's Creations, Inc.'s organizational documents?

4 A. I don't know.

5 Q. Last time, I asked is the Bible the literal
6 word of God, and you answered that it was the inherent
7 word of God. Can you tell me -- well, first let me ask
8 again.

9 Do you believe that the Bible is the literal
10 word of God?

11 MR. JONNA: Objection. Vague and ambiguous.

12 A. Yes.

13 Q. Did you mean to say anything differently by
14 saying "inherent word of God"?

15 A. No.

16 Q. I assume you've read the Bible?

17 A. Yes.

18 Q. Have you ever read it in Hebrew?

19 A. No. I don't know Hebrew.

20 Q. How about Aramaic?

21 A. No.

22 Q. I'm assuming also not Greek?

23 A. No.

24 Q. What version of the Bible have you read?

25 A. Are you talking -- the language is English.

1 A. Yes.

2 Q. And we -- I think we used words like "take
3 part," "participate," "endorse," as all kind of meaning
4 the same thing. There's also been references to
5 "support." Would you see that as the same as
6 "participate," "take part," or is that something
7 different?

8 MR. JONNA: Objection. Vague and ambiguous.
9 Overbroad.

10 A. Just generally speaking, I would say they're
11 the same.

12 Q. Okay. Do you know whether Tastries has ever
13 made custom product for the wedding of a couple where
14 neither of them believe in God?

15 A. I don't know that. I don't ask those
16 questions.

17 Q. Would Tastries have a problem making a cake for
18 a couple that didn't believe in God for their wedding?

19 A. No, I would not.

20 Q. Would doing so send a message that Tastries
21 supports not believing in God?

22 MR. JONNA: Objection. Incomplete
23 hypothetical. Vague and ambiguous.

24 A. My only standard for rejecting a wedding cake
25 is when it goes against my detailed Christian beliefs,

1 which are stated in the Bible. And I have my Bible here
2 if you want me to read the verses that I'm referring to.
3 Would that help?

4 Q. I don't think for this question.

5 A. Okay.

6 Q. I don't think that answer was responsive.

7 Let me ask it this way. Does making a cake for
8 the wedding of a couple that doesn't believe in God
9 violate Tastries' design standards?

10 A. No, because it does not violate God's words.

11 Q. And that's -- is that, your reference to that,
12 marriage is between one man and one woman?

13 A. Yes, and several other references.

14 Q. Okay. Has Tastries ever provided a custom
15 product for an event and then later regretted doing so?

16 MR. JONNA: Objection. Vague and ambiguous.
17 Overbroad.

18 A. And you've already asked me that question. To
19 my knowledge, we have not been a part of an event except
20 that I was not -- to my knowledge, we have not been a
21 part of an event, as you stated, except for that one
22 same-sex marriage with the orange flowers. That's when
23 you asked me that question already.

24 Q. Okay. Has Tastries ever provided a wedding
25 cake for any wedding for which you did not believe the

1 marriage should be celebrated aside from the same-sex
2 marriage example?

3 A. I don't have any knowledge to base that
4 decision on.

5 Q. Has Tastries ever turned or declined to take an
6 order for a wedding cake that did not conflict with the
7 design standards, but there was still reason for
8 Tastries to decline to take that order?

9 A. Not that I can recall, no.

10 Q. Has Tastries ever provided a wedding cake for a
11 couple when you weren't quite sure that that wedding
12 should be celebrated?

13 MR. JONNA: Objection. Vague and ambiguous.

14 A. No. I would have no information to base that
15 on, and I'm -- no. The wedding -- the Bible's very
16 clear about homosexuality and about marriage, and that's
17 what my decisions are based on regarding wedding cakes.

18 Q. Is that the only design standard that applies
19 to wedding cakes?

20 A. No, because I've had --

21 Q. I know you told me before about people wanting
22 like a Jack Skellington or whatever.

23 A. Right. Same answer.

24 Q. So, I mean, my understanding is that you get
25 comfort to make a cake and celebrate a wedding from the

1 design process and getting to know the couple, maybe
2 their parents, whoever's doing the order. Is that a
3 fair statement?

4 A. What are you talking about when you say
5 "comfort"? Can you give me what you are talking about?

6 Q. Oh, just that you -- you feel comfortable to
7 send that message that this relationship, this marriage
8 should be celebrated.

9 A. Yes.

10 Q. And so my question was if you ever went through
11 that process, and you were hesitant, didn't really have
12 the comfort, but you went ahead and provided the cake
13 anyway.

14 A. No, because I have my wedding packet, and I
15 visit with them about the marriage and the wedding and
16 the Bible verses that are there. And no one ever has
17 just taken the packet, set it aside, and said, "We're
18 not interested in that." They've always entered into a
19 discussion with me. I've never had anyone put that
20 aside.

21 Q. Last time, I asked you a question, and you gave
22 an answer, but I think there's some confusion about it.
23 So I'd like to ask you again so that you can clear up
24 the confusion for me.

25 And it was if a same-sex couple purchased a

1 case cake from Tastries and wanted a written message of
2 "Congratulations" for their wedding, would Tastries
3 write that on the case cake?

4 MR. JONNA: Objection. Incomplete
5 hypothetical. Vague and ambiguous.

6 A. No one has ever asked me to do that. It would
7 totally go against my heart and my standards, and that's
8 the best answer I can give you.

9 Q. What about same situation, same-sex couple
10 wants a case cake for celebrating their anniversary, and
11 they want "Happy Anniversary," both of their names. Has
12 that ever happened?

13 A. No, it has never happened.

14 Q. Would you also feel that that went against your
15 standards, the language that you just used?

16 MR. JONNA: Same objections.

17 A. Yes.

18 Q. But would Tastries sell it to them with that
19 written message?

20 MR. JONNA: Same objections.

21 A. I don't want to answer that. I don't know what
22 to tell you.

23 Q. You need to, though. There's no privilege, so
24 you need to answer.

25 A. Actually, there is.

1 MR. JONNA: Well, you need to answer if you
2 understand the question and if you can answer it.

3 I'm not going to -- you're asking her a
4 hypothetical question, Greg, so there's some limits to
5 what -- you know, if it's an unrealistic hypothetical,
6 then it might be difficult for her to answer that.

7 A. I'll answer your question. You are putting me
8 in a box, and you know it. You asked the question at my
9 last deposition, and you know how upset I got over it,
10 and you're trying to put me in a box with my case items.
11 If I answer yes, then you're going to say I won't sell
12 everything in my case to anyone. If I answer no, then
13 I'm in trouble too, right? So and I can't ask you a
14 question.

15 So my answer is I understand your question. It
16 has never happened before, so I'm going to have to think
17 about it further.

18 Q. All right. Well, I'll need an answer before
19 the end of the deposition. And just to let you know,
20 I'm not trying to put you in a box. I'm just trying to
21 figure out the limits of the policies.

22 A. I'm trying to figure out what -- how I can be
23 even more accommodating than I have been with the Unruh
24 Act, because it says "or to accommodate." And you have
25 hundreds of places in Bakersfield that somebody can go

1 buy a cake and have that written on a cake, except for
2 my bakery, and I will refer them to all of those places,
3 which is accommodating them.

4 Q. When Black people in the south, before the
5 civil rights laws in the '60s, went to a restaurant, and
6 they were denied, there were lots of other restaurants
7 they could go to, right?

8 MR. JONNA: Objection. Calls for speculation.
9 Argumentative. Incomplete hypothetical.

10 A. God never said not to serve a Black man, a
11 Hispanic man, a Jewish man. God says in his word, and
12 I'm pointing to my Bible right now, not to be involved
13 with homosexuality. I will not be involved with a
14 homosexual relationship at all.

15 God loves Black people. He loves White people.
16 He loves Jews. He loves gentiles. He loves the Greek.
17 He loves everyone. But certain individuals have made a
18 lifestyle choice that directly goes against God's word.
19 And I love my Lord and savior, and I'm going to obey
20 him. So being Black or White or Hispanic has absolutely
21 nothing to do with this case.

22 Q. Do you think that God loves gay people?

23 A. I think he loves them, yes. He's hurting for
24 them because they've made a decision that is not -- does
25 not have a good outcome, and I can give you Bible

1 references if you want me to read them, or you can look
2 them up yourself.

3 Q. I'd love to put them in the discovery
4 responses. If we have time at the end of this, we can
5 do that, but in the discovery responses, I'd love to be
6 able to see what the verses are.

7 A. Okay.

8 Q. Are you aware that the business owner --
9 certain business owners in the south did say that their
10 beliefs were that God did not want Black people and
11 White people associating together?

12 A. They should have read their Bible.

13 MR. JONNA: Objection. Argumentative.
14 Incomplete hypothetical.

15 Q. So you just disagree and don't believe that
16 their beliefs were legitimate Christian beliefs?

17 MR. JONNA: Objection. Argumentative. Vague
18 and ambiguous.

19 A. They just need to read their Bible. There's
20 nowhere in the Bible that says that.

21 Q. So that's a distinction you'll make between
22 other forms of discrimination? They're not supported by
23 the Bible?

24 MR. JONNA: Objection. Misstates the witness's
25 testimony. Argumentative.

1 A. My whole case or whatever you call this is
2 based on my love for my Lord, and my guidelines -- my
3 life centers around the scriptures of the Bible, which
4 our country was founded on. So I'm sorry if there were
5 people back in the '60s or '50s that were discriminatory
6 towards Black people. They should not have been at all.
7 But they should have done their research then and shown,
8 "Hey, where in the Bible does it say that?"

9 Q. So just to be clear, the distinction between
10 your actions are based on the Bible, their actions were
11 not based on the Bible?

12 A. My actions --

13 MR. JONNA: Objection. Overbroad.

14 A. My actions are based on the Bible and the
15 constitution of the United States of America and what
16 they were founded on. As far as what you are proposing
17 back in the '50s or 60s, I don't know. I wasn't there.
18 I wasn't born yet.

19 Q. Do you try to follow everything that the Bible
20 says?

21 A. I do my best, but I'm a sinner, but I do my
22 best.

23 Q. Do you follow some of the eating practices from
24 the Old Testament --

25 MR. JONNA: Objection.

1 Q. -- in terms of not eating pigs, not eating
2 shellfish, et cetera?

3 MR. JONNA: Objection. Harassing and
4 argumentative. And I'm not really sure where you're
5 going at with this, Greg. I'm not going to let you
6 cross the line here and start harassing Mrs. Miller.

7 MR. MANN: I don't know how that's harassing.
8 She just said she tries to follow the Bible, and I'm
9 getting --

10 MR. JONNA: You cannot question the sincerity
11 of her faith or question the sincerity of her. That's
12 not something that any court will allow you to do, so
13 I'm not sure what you're doing right now. Are you going
14 to try to prove whether she's a Christian? Is that what
15 you're doing?

16 MR. MANN: I'm just asking her a question about
17 her statement that she tries to follow the Bible.

18 MR. JONNA: That's a harassing and
19 argumentative line of questioning that, you know, if
20 Cathy wants to answer them, I'll let her answer them.

21 But I'm just going to advise you that you don't
22 have to answer harassing questions about your religious
23 beliefs.

24 Q. (BY MR. MANN:) Do you think that's harassing,
25 Cathy?

1 MR. JONNA: I think it's harassing.

2 A. I think you're trying to poke holes in
3 something that you shouldn't go there. Yeah.

4 Q. I don't understand --

5 A. So I don't eat shellfish, and I don't eat pork,
6 but it's because I'm allergic to them. Okay? You want
7 to trust an honest answer, that's my honest answer. We
8 are all sinners. We are all sinners. There are things
9 that I fail at, but my heart, my life -- my entire life
10 has been focused on living for the Lord and loving my
11 Jesus.

12 Now, you need to study -- if you're going to
13 start poking holes at my faith and my Christian walk,
14 then you better be prepared, and you better read that
15 Bible and know the Bible, because you would not have
16 asked that question. The cross changes a lot of things.

17 Q. Okay. Does that mean you make a distinction
18 between the Old Testament and the New Testament?

19 A. Well, the Old Testament was before Jesus was
20 born, and the New Testament's after he was born. Yes,
21 there's a distinction between the two.

22 Q. And what's the distinct -- does that
23 distinction play any role in your statement that you try
24 to follow the Bible?

25 A. No.

1 Q. So you try to follow the New Testament, and you
2 try to follow the Old Testament?

3 A. Of course.

4 MR. JONNA: Objection. It's argumentative and
5 harassing.

6 Q. Is there anything in the Bible that you can
7 think of that you do not follow?

8 MR. JONNA: Objection. Argumentative and
9 harassing.

10 And again, I don't think this is a fair line of
11 questioning, but go ahead and answer if you want to.

12 A. God says not to get upset and angry, and I do
13 get angry sometimes.

14 Q. I'm thinking more where -- not something where
15 you make a mistake, but you decided, "I'm not going to
16 follow that rule from the Bible," for some reason, but
17 it's --

18 A. Of course not.

19 Q. -- a conscious decision.

20 A. Of course not.

21 Q. Okay. Do you have any -- or the design
22 standards, we're going to look at them here in a second,
23 but is the phrase "fundamental Christian" -- what's the
24 last word in the design standards?

25 A. "Principles."

1 Q. "Principles." Thank you. Do you have any
2 fundamental Christian principles about couples living
3 together before they're married?

4 A. It goes against my beliefs. That's my feeling.
5 That's based on God's word. He says --

6 Q. So would you consider -- I'm sorry. I didn't
7 mean to cut you off.

8 A. No, go ahead. What were you saying?

9 Q. So do you consider it, from your perspective,
10 as a fundamental Christian principle that couples should
11 not be living together before marriage?

12 MR. JONNA: Objection. Vague and ambiguous.

13 A. There are many, many principles in the Bible,
14 and there's rules that we should live by for our own
15 self and for our relationship with the Lord. It's a
16 relationship, as you and your wife have a relationship,
17 and we are called to abide by those.

18 Now, as far as if someone decides -- make
19 decisions outside of those guidelines, I have no say in
20 that. But there's very definite, definite guidelines,
21 and I think it's best if I read them to you, it's your
22 choice, about homosexuality and even participating in
23 the union of homosexuality. I will not cross that line.

24 Q. Okay. I didn't ask about that. I'm trying to
25 figure out -- I want to -- that part of the design

1 standards would you agree is kind of vague, "fundamental
2 Christian principles"?

3 A. Explain that. What?

4 Q. Like, it could mean lots of different things to
5 lots of different people.

6 A. The phrase? Okay. Yes, it could possibly.

7 Q. So what I'm saying is I'm just trying to
8 understand that phrase the same way that you understand
9 it. Or I'm trying to get your understanding of it,
10 because it is a written design standard.

11 A. Okay.

12 Q. So that's all I'm trying to do, so I'll ask it
13 again.

14 In terms of couples living together before
15 marriage, it sounded to me like you said it is a
16 fundamental Christian principle that couples should not
17 live together before marriage. Is that a fair
18 statement?

19 A. That is correct, but I wouldn't know if they're
20 living together.

21 Q. Have you -- you've never had a situation where,
22 during the design consultation for a wedding cake, you
23 learned that the couple was living together?

24 A. No. We don't discuss things like that, Greg.

25 Q. Do the couple -- or does each individual put

1 their address on the form?

2 A. No. I just have their phone number and their
3 name. Sometimes an email. I have the venue address.

4 Q. All right. When we look at the Rodriguez-Del
5 Rios' form, I'm pretty sure their addresses were on
6 there separately.

7 A. I don't believe so. I don't -- I can look at
8 it again. I have it. But I don't usually ask for their
9 address. It's the address of the venue. Now, if they
10 filled it out, maybe they put their address, but it was
11 supposed to be the address of the venue. I have no
12 reason to have an address unless they want me to deliver
13 a cake to their house. That's the only time I have the
14 need for an address.

15 Q. Making -- or not making cakes that violate
16 fundamental Christian principles is important to you,
17 right?

18 MR. JONNA: Objection. Vague and ambiguous.

19 A. Yes.

20 Q. So do you, during the design consultations, ask
21 questions to make sure that you're not making a cake
22 that would violate fundamental Christian principles for
23 a couple?

24 A. You're trying to put me in a box again. I
25 don't know everybody's life, and I'm not going to try to

1 know their life. They have come to me for a cake. If
2 it's a wedding cake, I have my packet. I get to share
3 the Lord with them. I get to share the Bible verses
4 with them. And we talk about their marriage and wedding
5 and the wedding celebration and the rituals at the
6 celebration, which also fits around a man and a woman.
7 Nobody has ever, ever walked out, thrown the paper at
8 me, and said, "I don't need this; I just want a cake,"
9 nobody, except for Mireya and Eileen.

10 So if somebody is living together or what, I
11 don't know that, and I think it would be discriminatory
12 if I would ask them. I do know if it's a same-sex
13 wedding because I have two brides or two grooms, and I
14 know what my Bible says.

15 Q. And your Bible says a lot about other
16 situations that are fundamental Christian principles,
17 right?

18 MR. JONNA: Objection. Overbroad. Vague and
19 ambiguous.

20 Q. I mean, let me just say it this way. There are
21 many more fundamental Christian principles than not
22 participating in same-sex marriage, right?

23 A. Yes. I will not do a decapitated-head cake. I
24 will not do a marijuana or drug or anything to do with a
25 drug kind of a thing. I will not do a drunken-Barbie

1 cake. I will not do a penis cake, which I'm asked at
2 least once or twice a month to do for a bachelor party,
3 bachelorette, or the boobs, or I could go -- Greg, I
4 turn a lot of cakes away because I will not do them, and
5 God is honoring our business.

6 Q. So all those other design standards that you
7 just mentioned, you consider those also fundamental
8 Christian principles?

9 A. Yes. And just as you keep bringing up all
10 these scenarios that don't even happen, I put that at
11 the bottom because I am not going to -- I had no idea
12 what some of this stuff I'm being asked about to make
13 is. People are -- have some crazy ideas, and I'm not
14 going to make them.

15 Most of the time, I re -- the ones I
16 understand, I redesign the cake, and we -- they're
17 happy, we're happy, everybody's fine. And that's 99
18 percent of the time.

19 Q. What I'm trying to figure out is if you have
20 other fundamental Christian principles that are
21 important to you, why you don't ask about them to make
22 sure that Tastries does not violate them?

23 A. Because I cannot -- it is not my place to be
24 judgmental on those types of issues. I cannot do that,
25 but I do know what the Bible says about homosexuality.

1 Now, when somebody's coming to me to get
2 married -- now, scenario. I don't know, but okay, fine,
3 like your example. They're living together. Well,
4 they're making it right before God. They're coming and
5 wanting to be married. That's a good action. We are
6 all sinful. We all need to repent. We all need to ask
7 forgiveness and move in the right direction with our
8 Lord and savior, right?

9 So if they're living together, and they want to
10 get a wedding cake, just like a pastor would say, "Okay.
11 You should be married. I will marry you," because
12 that's the right thing to do before God, I'm doing the
13 wedding cake. If that's the situation, we're making it
14 right before God. If I'm participating in a same-sex
15 wedding, I'm participating in something that's an
16 abomination to our Lord and savior.

17 Do you see the difference? I can't ask a
18 question. I hope you see the difference.

19 Q. Thank you for that explanation. That's very
20 helpful. I mean, what I'm trying to do here is, like I
21 say, is figure out your beliefs, since that's what the
22 design standards are based on, right?

23 A. Right.

24 Q. So that's all I'm trying to figure out. I'm
25 not 100 percent sure what you mean by "boxed in," but

1 I'm just trying to figure out what the limits of the
2 policy are and what your beliefs are and try to figure
3 out if there's a reason that you know somebody's in a
4 same-sex marriage, so you're not going to make that cake
5 because it violates fundamental Christian principles,
6 but there are these other fundamental Christian
7 principles you don't know about and don't ask about. So
8 I'm trying to figure out why that is.

9 MR. JONNA: Greg.

10 MR. MANN: And you just helped me with that
11 explanation, so I appreciate it.

12 MR. JONNA: I'm just going to say this because
13 you've said this a few times now. And I'm not arguing
14 with you, Greg, But this case is going to trial. I
15 mean, if she feels like she's being trapped or put in a
16 box, it's because you are trying to get information from
17 her in a deposition naturally to use against her at
18 trial. So there's no need to, like, sugar-coat what's
19 happening here. I mean, you're not just fishing for
20 information. You're -- this isn't just a --

21 MR. MANN: Okay, Paul.

22 MR. JONNA: I'm not saying you're crossing any
23 lines right now. I'm just saying --

24 MR. MANN: No, I understand.

25 MR. JONNA: -- I don't want you to deceive

1 Cathy either, you know. This is a deposition. It's an
2 adversarial process, and this isn't some happy, you
3 know, event. So let's continue with the deposition, but
4 there's no need to sugar-coat things.

5 MR. MANN: All right. No more sugar-coating.

6 Q. Do you have any -- well, or does it violate
7 your fundamental Christian principles for a Christian to
8 marry an atheist?

9 A. Personally, they should probably get some
10 counseling, but that's not my place as their cake
11 decorator.

12 Q. Is that a violation of your core -- I'm
13 sorry -- fundamental Christian principles, though?

14 A. That's not my place to make that judgment, and
15 I wouldn't have that information, so I don't know how I
16 can give you an answer. Personally, yes. But as
17 providing their cake, I wouldn't know whether they're an
18 atheist or a Christian. There's a lot of people that...

19 Q. In all the design consultations that you've
20 done and all these times you've spent with people, it's
21 never come up that one of them is an atheist?

22 A. They've never said, "Hey, I'm an atheist; I
23 don't want to see that paper," no. They -- I told you
24 already, Greg. I have that packet. You have that
25 packet.

1 Q. Okay. I got it. I'm just -- if it hasn't come
2 up, it hasn't come up. We'll go to the next one.

3 I mean, what's your estimation of the amount of
4 wedding cakes Tastries has made since it's been in
5 existence?

6 A. Oh, goodness. I could give you that number.
7 It would take me some time to figure out.

8 Q. Over a thousand easily, right?

9 A. If you say an average of -- let's just take an
10 average of five a week for 10 years. Sometimes it's
11 more, sometimes -- this week it's only two. So whatever
12 that is.

13 Q. 2,500?

14 A. Really.

15 Q. As a conservative. 52 weeks, 52 weeks in a
16 year, times five a week, 260 times 10.

17 A. Okay. Somewhere in there. Wow, I didn't know
18 that.

19 Q. And you've done most of those design
20 consultations for wedding cakes, right?

21 A. Yes.

22 Q. Okay. So, I mean, that's why I'm asking you.
23 We're not talking about a small sample size, you know.
24 There's thousands of people that you're talking to, so I
25 just want to know if these things have ever come up.

1 All right. Let's go ahead and take a look at
2 the design standards, Soyeon.

3 I can't remember where we're at, Lisa, in terms
4 of the exhibits.

5 THE REPORTER: This one should be 2.

6 (Exhibit 2 is marked for identification and
7 attached hereto.)

8 Q. (BY MR. MANN:) Okay. We're going to look at
9 three different ones, Cathy. So this is Exhibit 2,
10 "Tastries' Design Standards," Bates numbers CM-0026,
11 CM-0646, and CM-0662. Do you recognize these, Cathy?

12 A. Yes.

13 Q. Can you tell if either of these are the
14 standards that were in place in August 2017?

15 A. Nope. I change --

16 Q. Is there -- is there any substantial difference
17 between any of them throughout the years?

18 A. Not substantial. Whenever something popular
19 comes into being that I can't participate in -- like, my
20 best example is when marijuana became legalized.
21 Everybody wanted me to make marijuana cakes, marijuana
22 brownies, marijuana cookies, and I had to say, "Nope, I
23 can't." So I changed it. There was a show that came
24 out that was PG-13. So I used to say that I'd do G or
25 between G and PG-13, but I had to go back to PG because

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1 it just got bad.

2 So I have this posted at each of my cash
3 registers, POS systems, and I have them in my binders.
4 And whenever they get kind of messed up on the counter
5 and I have to redo them, I look it over and say, "Hmm,
6 is there anything I need to switch or add? No, we're
7 okay." But they all, all have stayed pretty much just
8 like this, and you yourself can compare all three.
9 They're all right along the same lines.

10 Q. Let me back up and just clean up a little bit
11 of the questions from our last line of questioning.

12 MR. JONNA: Hey, Greg.

13 MR. MANN: Yeah.

14 MR. JONNA: I'm sorry. Can we just take two
15 minutes? I apologize. Can we take a two-minute break?

16 MR. MANN: If you tell me what you were
17 laughing about.

18 MR. JONNA: No, someone walked in.

19 MR. MANN: We can go off the record, Lisa.

20 (Recess, 2:18 p.m. to 2:25 p.m.)

21 MR. MANN: Okay. Let's turn back, Lisa.

22 Q. I just wanted to clean up the line of
23 questioning before.

24 So my understanding was that your personal
25 belief is that couples living together before their

1 marriage violates fundamental Christian principles. Is
2 that fair?

3 A. That is fair.

4 Q. But you said you don't ask them about whether
5 they're married -- or I'm sorry -- whether they're
6 living together during the design consultation, right?

7 A. The fundamental principle of marriage is in the
8 first chapter of Genesis, and it says that God created
9 man in his own image, and then he created woman as a
10 helpmate so that they could be man and wife and have
11 babies. That's a fundamental Christian principal, and
12 that's what I'm talking about as the Bible speaks.

13 Now, living together is not ordained by God,
14 but when you're coming to get married and make the
15 situation right and you're moving forward in the right
16 direction, then that is in ordinance with Jesus dying on
17 the cross for your sins, right? So that is -- because
18 we're all sinners. Okay? And he does love all of us.

19 But in the Bible it says that homosexuality is
20 an abomination before the Lord and that I cannot
21 participate in that because that would be celebrating
22 something that totally goes against the Bible, where
23 when somebody's living together and wanting to get
24 married, that's asking for forgiveness or restoration of
25 the Lord so that they can move forward in the right

1 direction. They're two distinctions here.

2 Q. I think that helps me to understand.

3 A. Okay.

4 Q. And you said you don't ask about whether
5 they're living together, right?

6 A. No.

7 MR. JONNA: No, you don't ask that?

8 A. No, I do not ask them if they're living
9 together.

10 Q. And then you said -- I think you said if you
11 did ask them, you thought that that would be
12 discriminating against them?

13 A. I haven't really thought about it, but I
14 don't -- I believe that's what I would think if I
15 thought about it.

16 Q. Is that something that you do in design
17 consultations, is balance your fundamental Christian
18 beliefs against your obligation not to discriminate?

19 A. Okay. You can say it the same way, but just
20 say it one more time.

21 MR. MANN: Can you read it back, Lisa?

22 (Record read as follows:

23 "Q. Is that something that you do
24 in design consultations, is balance your
25 fundamental Christian beliefs against

1 shower?

2 A. They can't have a baby, so I wouldn't be asked
3 that.

4 Q. Why can't same-sex couples have babies?

5 A. Because a guy and a guy together can't make a
6 baby, and a girl and a girl together can't make a baby.

7 Q. Do you know about in vitro fertilization?

8 A. Yes. My daughter-in-law had to have that.

9 Q. And do you know lots of lesbian couples have
10 children through in vitro fertilization?

11 A. No, because they took the sperm from my son,
12 and he's the egg for my daughter, and a man and a man
13 and a woman and a woman can't do that.

14 Q. Right. But just like your daughter got the
15 sperm from a man, a lesbian --

16 A. From her husband. From her husband, though.

17 Q. Okay. I mean, you've heard of people getting
18 sperm donors that aren't married, right?

19 A. I'm not sure what you're asking. Say that?

20 Q. Well, let's just go back to the specific
21 question.

22 A. Okay.

23 Q. You'll just have to take my word for it --

24 A. Okay.

25 Q. -- that lots of same-sex couples that are women

1 have children. So would Tastries make a baby shower
2 cake for a same-sex couple having a child?

3 A. I don't think so. I don't know, Greg.

4 Q. Do people ever order a custom product to
5 celebrate an adoption?

6 A. No. We'll do their birthdays, but I haven't
7 had an adoption yet.

8 Q. If a same-sex couple wanted a custom product to
9 celebrate an adoption of a child, would Tastries make
10 that custom product?

11 MR. JONNA: Objection. Incomplete
12 hypothetical.

13 A. I don't know how to answer that. I have not
14 thought about that. I would at first glance say no
15 because that's not what God -- you need a man and a
16 woman for a baby. And for an adoption, it should be a
17 husband and a wife, a mother and a father. So I'd have
18 to think that through. I would celebrate the child.

19 Q. I'm assuming -- or I'll just ask it so we can
20 get rid of my assumptions. Would Tastries make a cake
21 for a same-sex couple that was not celebrating marriage,
22 but they were celebrating a civil union?

23 A. No.

24 Q. Would Tastries make a cake for a same-sex
25 couple that's not married, not in a civil union, but

1 they wanted to celebrate that they'd been dating for a
2 year?

3 A. No, we wouldn't.

4 Q. Would Tastries make a cake for a same-sex
5 couple that was having a housewarming because they were
6 moving in together?

7 MR. JONNA: Objection. Incomplete
8 hypothetical.

9 A. I have never had anybody ask any of these
10 questions.

11 Q. Can I get a yes or no for that last one, a
12 housewarming cake for a same-sex couple?

13 A. No. No.

14 Q. Have you gotten orders for housewarming cakes
15 before?

16 A. No.

17 Q. Or house -- or housewarming custom products?

18 A. No.

19 Q. Huh.

20 A. That's why I don't know how to answer this.

21 Q. Do you understand the term "sexual
22 orientation"?

23 A. Yes.

24 Q. And what's your understanding?

25 A. It's the sex that God made you to be.

1 We talked about you refer folks to other
2 bakeries. Was there any other means of complying with
3 the Unruh Act that you considered other than referring?

4 A. No.

5 Q. Have you ever tried to think about any other
6 possibilities?

7 A. My husband and I discussed many possibilities,
8 but that's the only one we could come up with.

9 Q. Can you tell me about some of the other ones
10 you considered or talked to Mike about?

11 A. We just talked about the situation and how we
12 would deal with it. And the other one was, "Just say
13 no," and I didn't feel good about that either. I don't
14 want to hurt anybody, so.

15 Q. The California Supreme Court in a case
16 suggested that a business owner or an employee -- one
17 way that the business could comply with Unruh was by
18 allowing any of the employees who did not want to
19 participate because of their religious beliefs -- that
20 that employee could stay out of the process, but the
21 business could still provide the service.

22 Have you heard about that case?

23 A. I've heard about a scenario like that, yeah.
24 Yes.

25 Q. Was that an option that you considered at all

1 for complying with Unruh and yet being able to follow
2 your religious beliefs?

3 A. I'm not an employee. I'm the owner.

4 Q. I thought you were an employee now too.

5 A. I'm both.

6 Q. Well, either way, the idea would be that you
7 did not have to participate in the process, but Tastries
8 could provide the product or service. Is that an option
9 that you considered with Unruh and balancing your
10 religious beliefs?

11 A. No.

12 Q. Do you see that as a way that would balance
13 your religious beliefs under Unruh?

14 A. No. I think you need to refer back to the
15 question earlier this morning when you said that -- we
16 talked about how Tastries and I are kind of one and one,
17 especially now. And Tastries is my bakery and a part of
18 me, and we will not be able to participate in same-sex
19 weddings or events surrounding same-sex weddings.

20 Q. We also talked about Cathy's Creations, Inc.
21 being an entity separate from you, right?

22 A. That's the corporate, yes. That's -- yes.

23 Q. But that's not a distinction that you make in
24 terms of the situation we're talking about? Let me
25 strike the question. I'm sorry.

1 Even though Cathy's Creations, Inc., which does
2 business as Tastries, is a separate entity, you believe
3 that you are so closely tied with it that this option we
4 discussed with you not participating in the process
5 would not work for you?

6 A. Correct, yes.

7 Q. When you talked with Stephanie from Gimme Some
8 Sugar, did you talk about the Unruh Act at all?

9 A. No, I don't believe we did. It was more about
10 trying to help each other out, and she was very happy to
11 help me at the same time. It was an emotional
12 conversation that we had, more about her mother felt the
13 same way I did, and she totally understood, and this
14 would be a good way to help each other.

15 Q. Was there any conversation around the fact that
16 you wanted to refer people to her in order to comply
17 with Unruh and because you felt you wanted to help
18 people by referring them?

19 A. I just answered that.

20 Q. I'm talking about was there any conversation
21 with Stephanie about that.

22 A. Oh, I got that's what you just asked. That's
23 what I'm talking about. The conversation she and I had
24 was about helping each other and that her mother felt
25 the same way that I feel, and she said she's a Christian

1 MR. JONNA: No, that's not true?

2 Q. So that's a true statement?

3 A. I do not hold any negative feelings regarding
4 individual people, no.

5 Q. So aside from the same-sex marriage issue, you
6 have no negative -- or you're fine with LGBT folks and
7 approach them with love, I think you've said in the
8 past?

9 MR. JONNA: Objection. Vague and ambiguous.
10 Misstates testimony.

11 A. I have no problem, no issue with anybody from
12 any LGBT group, racial group, anything, and I'm happy to
13 serve them birthday cakes, cupcakes. Okay?

14 Q. That said, how do you feel about folks that are
15 living an LGBT lifestyle, given your religious beliefs?

16 MR. JONNA: Objection. Vague and ambiguous.

17 A. I stand by what the Bible says. It's not
18 honoring to God, and they're going to have to talk to
19 God about that, not me.

20 Q. Do you think that they're living in sin?

21 A. Yes. Do I think all people sin? Yes.

22 Q. And have you ever made statements about LGBT
23 people are living in sin?

24 A. Scripturally basic, probably have, just as I've
25 made comments to other people about other ways of life

1 are sinful.)

2 MR. MANN: Okay. Let's take a look at the
3 Facebook post, Soyeon.

4 Where are we at now, Lisa?

5 (Discussion off the record.)

6 (Exhibit 8 is marked for identification and
7 attached hereto.)

8 Q. (BY MR. MANN:) Okay. Do you recognize this,
9 Cathy?

10 A. I sure do.

11 Q. And can you describe what Exhibit 8 is for the
12 record?

13 A. It's some beautiful rainbow colors, and it
14 says, "I was raised that these colors were a promise
15 from God, not pride of living in sin." And that's true.

16 Q. And what did you mean by that?

17 A. The rainbow was very first created by God at
18 the end of Noah's flood, and it was a promise that he
19 would never, ever flood the Earth again. And the reason
20 he flooded it was because of the abominations that were
21 going on on Earth at that time, and he cleansed the
22 world and started new families. I'm putting this as
23 simply as I can because I know you're in a hurry. And
24 the rainbow was his covenant with us, and that's what
25 the rainbow stands for.

1 And so the LGBT community kind of hijacked the
2 rainbow. And if you look in the Bible, homosexuality is
3 a sin. So that is authentic and real and true.

4 Q. You talked about same-sex marriage as an
5 abomination to God.

6 A. Yes.

7 Q. Would you use that same language around people
8 not -- that are not in a same-sex marriage, but LGBT
9 people living their lives?

10 A. I don't know how to answer that. I know that
11 living the life as a homosexual -- a homosexual
12 relationship, you can look in Leviticus, and you can
13 look in Matthew and in Corinthians and in the Book of
14 Revelation, and all of those -- and I'll send these to
15 you as soon as we're done, or tomorrow probably. But
16 anyway, it talks about it being an abomination to the
17 Lord.

18 Sorry. I forgot you over there.

19 Q. That was -- that's relationships, right?

20 A. That's lifestyle. And I don't -- I'm not going
21 to ask if you are a homosexual and you're sleeping with
22 someone. That's not my place. But if you're
23 identifying as a homosexual, then the Bible speaks about
24 homosexuality. Okay? So I'm not going to be your
25 expert witness on that. You can call my pastor.

1 Q. No. Your pastor is not involved here. So it's
2 just -- I'm just curious. You've said that, pretty
3 clear, that living an LGBT lifestyle is living in sin,
4 but I'm curious if you believe that it's -- would you go
5 so far as to say living that lifestyle, again not being
6 in a same-sex relationship, just living the lifestyle,
7 is an abomination to God?

8 A. I need you to clarify the lifestyle, then.
9 What would be a lifestyle? I don't understand, then.

10 Q. Somebody who identifies as gay or lesbian,
11 sometimes they might date people of their same sex, but,
12 you know, sometimes they're single, and they're not
13 dating anybody.

14 A. I don't think I'm in a place to answer that,
15 but it is -- I know that homosexuality lifestyle is a
16 sin. Okay? So I don't know. I'll have to think on
17 that, I guess, but I would say homosexuality is an
18 abomination to the Lord.

19 Q. Okay. We talked about your conversation with
20 Stephanie at Gimme Some Sugar a little bit earlier.

21 A. Yes.

22 Q. Did you ever see any articles where she was
23 interviewed and gave her opinion of your interactions
24 with her?

25 A. Yes. That was very disappointing.

REPORTER'S CERTIFICATE

I, the undersigned Certified Court Reporter licensed
in the States of California and Arizona, do hereby
certify:

That the foregoing deposition of Catharine Miller
was taken remotely before me at the date and time
therein set forth, at which time the witness was put
under oath or affirmation by me;

That the testimony of the witness, the questions
propounded, and all objections and statements on the
record made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken.

I further certify that I am not related to nor
employed by any of the parties hereto and have no
interest in the outcome of the action.

In witness whereof, I have subscribed my name this
date: March 14, 2022.



Lisa O'Sullivan

CA Certified Shorthand Reporter No. 7822

AZ Certified Reporter No. 50952

Registered Merit Reporter

Certified Realtime Reporter

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

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

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: J

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

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

JCA

Verified: 

Exhibit Clerk

Received: _____

Date

Received: _____

Death Penalty Rm: 1 or 2

Vault Area Space#: _____

Shelf#: _____

Box#: _____

Safe#: _____

Poster Sections: 1, 2, 3, 4: _____

Top: _____ / Bottom: _____

Additional Info: _____

RETURNED/RELEASED

Exhibit numbers released: _____

Attorney: _____

(Signature)

Name: _____

Date: _____

Released by Clerk

Initials: _____

Attorney: _____

(Signature)

Name: _____

Date: _____

Released by Clerk

Initials: _____

Agency: _____

(BPD, KCSO, etc.)

Name: _____

Date: _____

Released by Clerk

Initials: _____

RA.1741

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

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

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

Exhibit #	Date I/D	Date Evidence	Description	Previous Ex. #
			*****Joint Exhibits*****	
103	07/27/2022	07/27/2022	Tastries Cake Tasting Sign-in Sheet (08/26/2017) [DFEH00026-00027]	
104	07/26/2022	07/27/2022	Elena Davis Cake Order Form (06/22/2017) [DFEH00028-00031]	
108	07/27/2022	07/27/2022	Receipt from the Rodriguez-Del Rios' First Trip to Tastries (08/17/2017) [DFEH00179]	
110	07/27/2022	07/27/2022	Photo of Marriage Certificate	
111	07/27/2022	07/27/2022	Metro Special Events of Rental Agreement and House Rules dated 08/17/2016	
113	07/26/2022	07/27/2022	Email Chain Between Mireya Rodriguez-Del Rio and Natalie Bostwright aka Natalie Martens re Cake Tasting 08/23/2017 [DFEH 00184-00185]	
114	07/26/2022	07/27/2022	Text Exchange between Mireya Rodriguez-Del Rio	
115	07/27/2022	07/27/2022	Articles of Incorporation of Cathy's Creations, Inc. and Bylaws 12/20/2012 [CM00001-00023]	
117	07/27/2022	07/27/2022	Cathy's Creations, Inc. dba Tastries	
118	07/27/2022	07/27/2022	Cathy's Creations Inc, Registration with State of California, Secretary of State 08/28/2017; 01/31/2013 [DFEH00100103]	
123	07/26/2022	07/27/2022	Photos of Tastries Cakes Exh #3 from 02/24/2022 Deposition of Def. Catharine Miller and Others	
125	07/26/2022	07/27/2022	Photograph of Tastries Display Cake [DFEH00166]	
126	07/27/2022	07/27/2022	Photo of Tastries Four Tier Cake [CM00978]	
127	07/27/2022	07/27/2022	Photo of Tastries Slot Machine Cake [DFEH00999]	
128	07/27/2022	07/27/2022	Photo of Tastries 3 tier Baby Shower Cake [DFEH00984]	
129	07/27/2022	07/27/2022	Photo of Tastries 3 tier cake [DFEH00981]	
138	07/27/2022	07/27/2022	Adam Ramos and Ted Freitas Cake Order and Pymnt Transfer to Gimme Some Sugar 09/27/2017 [DFEH00036-00039]	
139	07/27/2022	07/27/2022	Ted G. Freitas Facebook Post regarding Tastries Discrimination 08/26/2017 [CM1900-1902]	
140	07/27/2022	07/27/2022	Patrick Grijalva Salazar email exchange with DeCoeur Bake Shop re Wedding Tasting and Attachments [DFEH00222-00234]	
144	07/27/2022	07/27/2022	Facebook messages between Jessica Criollo and Eileen Rodriguez Del-Rio re Wedding Cake [DFEH00246-257]	
150	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text Exchange re wedding planning [dep exh 503]	
151	07/26/2022	07/27/2022	Eileen and Mireya Rodriguez-Del Rio, Sam Salazar and Patrick Grijalva Salazar Text exchange re wedding dresses/tux [dep exh 504]	
152	07/27/2022	07/27/2022	Eileen and Mireya Rodriguez-Del Rio, Sam Salazar and Patrick Grijalva Salazar Text exchange re bouquet, shoes, cake [dep exh 505]	
153	07/27/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re flower and dress colors [dep exh 506]	
154	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting and bouquet [dep exh 507]	
155	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting [dep exh 509]	
156	07/27/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re cake tasting availability [dep exh 511]	
157	07/26/2022	07/27/2022	Mireya Rodriguez-Del Rio and Patrick Grijalva Salazar Text exchange re Tastries cake lasting confirmation [dep exh 515]	
498	07/26/2022	07/27/2022	Email between Eileen Del Rio and Don Martin with Metro Galleries dated 08/14/2016 - 08/15/2016 bates # DFEH00307-DFEH00310	

JCA

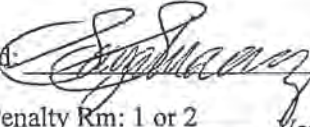
Verified: 

Exhibit Clerk

Received: _____

Date

Received: _____

Death Penalty Rm: 1 or 2

Vault Area Space#: _____

Shelf#: _____

Box#: _____

Safe#: _____

Poster Sections: 1, 2, 3, 4: _____

Top: _____ / Bottom: _____

Additional Info: _____

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Exhibit numbers released: _____

Attorney: _____ Name: _____

(Signature)

Date: _____

Released by Clerk

Initials: _____

Attorney: _____ Name: _____

(Signature)

Date: _____

Released by Clerk

Initials: _____

Agency: _____ Name: _____

(BPD, KCSO, etc.)

Date: _____

Released by Clerk

Initials: _____

RA.1742

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

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

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

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: J

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

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

JCA

Verified: 

Exhibit Clerk

Received: _____

Date

Received: _____

Death Penalty Rm: 1 or 2

Vault Area Space#: _____

Shelf#: _____

Box#: _____

Safe#: _____

Poster Sections: 1, 2, 3, 4: _____

Top: _____ / Bottom: _____

Additional Info: _____

RETURNED/RELEASED

Exhibit numbers released: _____

Attorney: _____ Name: _____

(Signature)

Date: _____

Released by Clerk

Initials: _____

Attorney: _____ Name: _____

(Signature)

Date: _____

Released by Clerk

Initials: _____

Agency: _____ Name: _____

(BPD, KCSO, etc.)

Date: _____

Released by Clerk

Initials: _____

RA.1743

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

EXHIBIT LISTPage 4 of 5Case #: **BCV-18-102633**

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

Judge: Bradshaw

JCA: Suzanne Sayabuaovong

Dept: _____

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

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

JCA

Verified: _____

Exhibit Clerk

Received: _____

Date

Received: _____

Death Penalty Rm: 1 or 2 Vault Area Space#: _____ Shelf#: _____ Box#: _____ Safe#: _____

Poster Sections: 1, 2, 3, 4: _____

Top: _____ / Bottom: _____ Additional Info: _____

RETURNED/RELEASED

Exhibit numbers released: _____

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

RA.1744

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Page 5 of 5

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

[illegible]

JCA _____ Exhibit Clerk _____ Date _____
Verified: *[Signature]* Received: _____ Received: _____

Death Penalty Rm: 1 or 2 Vault Area Space#: _____ Shelf#: _____ Box#: _____ Safe#: _____

Poster Sections: 1, 2, 3, 4: _____

Top: _____ / Bottom: _____ Additional Info: _____

RETURNED/RELEASED *Exhibit numbers released:* _____

Attorney: _____ Name: _____ Date: _____
(Signature) Released by Clerk Initials: _____
Released by Clerk

Attorney: _____ Name: _____ Date: _____ Initials: _____
(Signature) Released by Clerk

Agency: _____ Name: _____ Date: _____ Initials: _____
(BPD, KCSO, etc.)

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

RA.1745



Dept.: J
Case #
BCV-18-102633
Exhibit 1

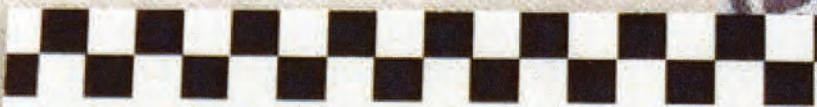
exhibitsticker.com

Document received by The 5th District Court of Appeal.



RA.1747

Document received by the CA 5th District Court of Appeal



Lastris

Bakery Boutique & Cafe

Wedding & Celebration Cakes

Wedding Cake Tastings

Cupcakes and Muffins

Event Coordinating

Decorated Cookies

Gourmet Cookies

Creative Touch

Linen Rentals

Dessert Bars

Party Room



"I know the plans that I have for
you" ...Says the Lord, "To give you hope
and a good future". . Jer. 29:11



Clasries

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

CM-0939

RA.1749

007B-003



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

CM-0947

RA.1750

007B-011



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

CM-0961

RA.1751

007B-025

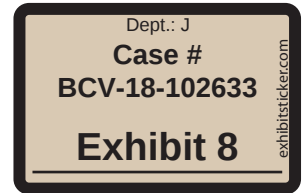


Document received by the CA 5th District Court of Appeal.

CM-0995

RA.1752

007B-059



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*

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

CM-0026



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*

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.



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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*

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CM-0663

Decorator

C 00 CC TR

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Tastries Bakery

2665 Rosedale Hwy
Bakersfield
CA 93308

1-53235

13 29 56 6/22/2017

Customer Elena Davis
Bakersfield, CA
US
Shipping Bakersfield, CA
US
Contact [REDACTED]

1	Wedding Cake	\$533.00
1	Delivery	\$50.00
	Subtotal	\$583.00
	Total	\$583.00
	Payment	\$583.00
	Balance	\$0.00

Cash 6/22/2017	\$500.00
Tendered	\$500.00
Change	\$83.00
VISA 6/22/2017	

Ref: 748327304
Approved Auth: 043216
Last 4: ****9975

Stanley J. Perez
Bakersfield, CA

661 322 1110
tastriesbakery@gmail.com
www.tastriesbakery.com

Signature



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

DFEH00029

Cake Order Form

Special instructions:

Customer: _____

#10

Delivery Date: _____ P/U or Delivery: _____

Layer	Flavors	Size	Shape	BC or Fond
1	Cake: Red Velvet ☐	6"	Round	F
	Filling: Cr cheese ☐			
2	Cake: Strawberry ☐	8"	Round	F
	Filling: Straw BC ☐			
3	Cake: Choco ☐	10"	Round	F
	Filling: Straw BC ☐			
4	Cake: White ☐	12"	Round	F
	Filling: BC ☐			
5	Cake: ☐			
	Filling: ☐			
6	Cake: ☐			
	Filling: ☐			
7	Cake: ☐			
	Filling: ☐			
8	Cake: ☐			
	Filling: ☐			

Special Instructions:

Base Cake Price		41.20
*Flavors 4" - 7"	\$ 5 each	
8" - 10"	\$10 each	
12" - 14"	\$15 each	
16" - 18"	\$20 each	
Fondant Figurines	\$20 basic	
Red/Black Fondant	\$10 each	
Edible Image	\$20 each	
Total		533.00

DFEH00030

Document received by the 5th District Court of Appeal.

1.) Iced-White ? F or BC

2.) Customer will bring in flowers also



dots-gold

Ribbon

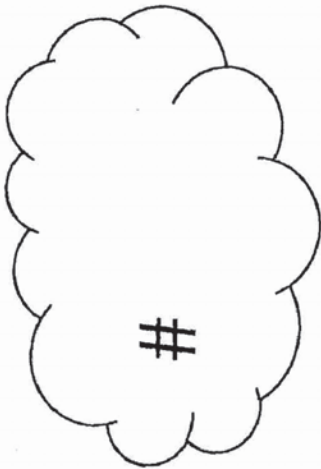
Gold

Customer will
bring in R

flowers & topper
on site

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

DFEH00031



Decorator

Tastries

Dept.: J

Case #

BCV-18-102633

Exhibit 11

Name: Eileen Rodriguez-De Rio

Phone #

Name: Mirya Rodriguez De Rio

Phone #

Email:

How did you hear about us? WALK IN

of Guests: 125 Event: Wedding Location: Metro Galleries

Event Time: 4:00

☐

Emailed picture

☐

Picture Attached

☐

Special Attention

Notes:

General Terms and Conditions:

Payment Terms: 25% non-refundable deposit with full payment required two weeks prior to delivery date. Tastries Bakery may cancel the order if full payment is past due. Order deposit is non-refundable, but may be applied toward future purchase if order is cancelled more than one week prior to delivery date.

Design Specification: Tastries Bakery provides custom designs to complement event theme and décor. We use customer information (such as color swatches, descriptions and pictures) along with other resources as inspiration for a design based on each customer's request that is suited to the product size and order budget. By placing this order, the customer acknowledges that a specific design has not been guaranteed and Tastries Bakery can make variations to the design as it may determine are appropriate.

Transportation: Bakery orders should be transported on a flat surface at cool temperatures (do not place on a lap or seat). Customer is responsible for the order after pick-up or delivery. Tastries Bakery recommends delivery service for cakes greater than two tiers.

Rentals: Rented items must be returned within two business days after the event. Items returned late are subject to additional rental charges up to 50% of rental rate per day. Rental deposit may be used to cover any late fees, damage or extraordinary maintenance.

Tastries Tips:

Fondant: Should be kept cool but not refrigerated.

BC: Should be kept cool; we recommend refrigeration.

Colored Fondant or Buttercream may fade in sunlight, we recommend keeping your decorated treats away from light exposure until your event is ready to begin.

Customer Signature: Eileen Rodriguez

Order Taken by: _____

Date: _____

Decorator	#	Items	Total
		Cakes	
		Cupcakes	
		Cookies	
		Treats	
		Rental	
		Rental Deposit	
		Services	
		Delivery	
		Total	
		Deposit	
		Paid	

DFEH00180

Dept.: J
Case #
BCV-18-102633
Exhibit 2

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



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



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



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Decorator: _____



Name: _____ Phone #: _____

Name: _____ Phone #: _____

of Servings: _____ Event Time: _____

Location: _____

Email Address: _____

☐ Emailed Pic ☐ Special Needs

Notes:

Day: _____

Date: _____

P/U or Delivery: _____

Order #:

Dept.: J

Case #

BCV-18-102633

Exhibit 3

Cake Stand:

Topper/Toys/Flowers:

Brought in ☐

On Site ☐

Decorator			Amount
	A	Cakes	
	B	Cookies	
	C	Cupcakes	
	D	Treats	
	E		
	F		
\$100 Deposit		Rentals	
Arranging Flowers Toys or Toppers \$10 + Dessert Bar Set Up 20% of Dessert Bar Price		Services	
		Delivery	
		Total	
		Order Deposit	
		Balance	
		Paid	

General Terms and Conditions:

Payment Terms: 25% non-refundable deposit with full payment required two weeks prior to delivery date. Tastries Bakery may cancel the order if full payment is past due. Order deposit is non-refundable, but may be applied toward future purchase if order is cancelled more than one week prior to delivery date.

Design Specification: Tastries Bakery provides custom designs to complement event theme and décor. We use customer information (such as color swatches, descriptions and pictures) along with other resources as inspiration for a design based on each customer's request that is suited to the product size and order budget. By placing this order, the customer acknowledges that a specific design has not been guaranteed and Tastries Bakery can make variations to the design as it may determine are appropriate.

Transportation: Bakery orders should be transported on a flat surface at cool temperatures (do not place on a lap or seat). Customer is responsible for the order after pick-up or delivery. Tastries Bakery recommends delivery service for cakes greater than two tiers.

Rentals: Rented items must be returned within two business days after the event. Items returned late are subject to additional rental charges up to 50% of rental rate per day. Rental deposit may be used to cover any late fees, damage or extraordinary maintenance.

Tastries Tips:

Fondant: Should be kept cool but not refrigerated.

BC: Should be kept cool; we recommend refrigeration.

Colored Fondant or Buttercream may fade in sunlight, we recommend keeping your decorated treats away from light exposure until your event is ready to begin.

Customer: _____ Order Taken By: _____ Date: _____

DFEH00041

Cake Order Form

Event Date: _____ Day _____

Order # _____

Customer: _____ P/U or Delivery: _____

Topper/Toys: _____ Brought in ☐ On Site ☐

Layer	Flavors	Size	Shape	BC or Fond
1	Cake: ☐			BC Fond
	Filling: ☐			
2	Cake: ☐			BC Fond
	Filling: ☐			
3	Cake: ☐			BC Fond
	Filling: ☐			
4	Cake: ☐			BC Fond
	Filling: ☐			
5	Cake: ☐			BC Fond
	Filling: ☐			
6	Cake: ☐			BC Fond
	Filling: ☐			
7	Cake: ☐			BC Fond
	Filling: ☐			
8	Cake: ☐			BC Fond
	Filling: ☐			

Fondant Figurines

1.	☐	X	\$	\$
2.	☐	X	\$	\$
3.	☐	X	\$	\$
4.	☐	X	\$	\$
Total			\$	

Special Instructions: _____

Signature _____

Base Cake Price		
*Flavors	\$10 each	
*Fillings	\$10 each	
Flowers	Sm \$5 Med \$10 Large \$15	
Edible Image	\$14	
Gold/Silver/Bronze		
Fondant Figurines		
Cake Stand	\$25	
Total		DFEH00042

Cookie Order Form

Order Number:

Customer: _____

Phone #: _____

Delivery Date: _____ P/U or Delivery: _____

Theme/Colors _____

C OO CC TR

Match to: _____ Cake _____ Treats _____ Picture _____ Color Swatch

Packaging:	Boxed	Wrapped +\$.25 Bag & tie	Gift Wrapped			Bouquet
			sm.\$2.50	med.\$4.00	Lg.\$5.00	

Cookie price includes 1 glaze color and one other color = \$3.00
Additional colors + \$.25 per color per cookie Extra Detail \$.25

[illegible]

Special instructions:

Total _____

DFEH00043

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

Pies Order Form

Order #

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

One of _____

C OO CC TR

Packaging: _____ Boxed _____ Gift Wrap

Treat	Size	#	Design			Price	Total
			\$4/\$13 Mini/9"	\$5/\$14 Mini/9"	\$6/\$16 Mini/9"		
Apple Pie	Mini 9"		Crumb	Plain top With design	Lattice		
Cherry Pie	Mini 9"		Crumb	Plain top With design	Lattice		
Mixed Berry Pie	Mini 9"		Crumb	Plain top With design	Lattice		
Peach Pie	Mini 9"		Crumb	Plain top With design	Lattice		
Strawberry Pie	Mini 9"		Crumb	Plain top With design	Lattice		
Sheet Pie	9x13		\$25	\$30	\$35		
Apple , Cherry, Peach	18x26		\$45	\$50	\$55		
Sheet Pie	9x13		\$25	\$30	\$35		
Apple , Cherry, Peach	18x26		\$45	\$50	\$55		
Cobbler	9x13		\$25	\$30	\$35		
Peach, Apple, Cherry	18x26		\$45	\$50	\$55		
Cobbler	9x13		\$25	\$30	\$35		
Peach, Apple, Cherry	18x26		\$45	\$50	\$55		
Chocolate Mousse	Mini 9"		Mini = \$4 9" = \$13				
Coconut Cream Pie	Mini 9"		Mini = \$4 9" = \$13				
Lemon Meringue Pie	Mini 9"		Mini = \$4 9" = \$13				
Banana Cream Pie	Mini 9"		Mini = \$4 9" = \$13				
Pumpkin with Whip	Mini 9"		Mini = \$4 9" = \$13				
Pumpkin Cream Cheese	Mini 9"		Mini = \$5 9" = \$15				
Pecan	Mini 9"		Mini = \$5 9" = \$15				

Total _____

DFEH00044

Macs and Meringues Order Form

Order # _____

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

One of _____

C OO CC TR

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Match to: _____ Cake _____ Treats _____ Picture _____ Color Swatch

Treat	Size	#	Design	Price	Total
Macaron	Mini Reg		Color: Flavor: Deco:	Mini \$1.25 Regular \$2.75 Air Brushed \$3.00 Hand Decorated \$3.50+	
Macaron	Mini Reg		Color: Flavor: Deco:	Mini \$1.25 Regular \$2.75 Air Brushed \$3.00 Hand Decorated \$3.50+	
Macaron	Mini Reg		Color: Flavor: Deco:	Mini \$1.25 Regular \$2.75 Air Brushed \$3.00 Hand Decorated \$3.50+	
Macaron	Mini Reg		Color: Flavor: Deco:	Mini \$1.25 Regular \$2.75 Air Brushed \$3.00 Hand Decorated \$3.50+	
Macaron	Mini Reg		Color: Flavor: Deco:	Mini \$1.25 Regular \$2.75 Air Brushed \$3.00 Hand Decorated \$3.50+	
Meringues	Mini Reg Large		Color: Shape: Stick add \$.25	\$.75 \$1.50 \$3.00	
Meringues	Mini Reg Large		Color: Shape: Stick add \$.25	\$.75 \$1.50 \$3.00	
Meringues	Mini Reg Large		Color: Shape: Stick add \$.25	\$.75 \$1.50 \$3.00	
Meringues	Mini Reg Large		Color: Shape: Stick add \$.25	\$.75 \$1.50 \$3.00	

Total: _____

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

DFEH00045

Cheesecake, Cake Roll & Cold Pastries

Order #

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

One of _____

C OO CC TR

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Match to: _____ Cake _____ Treats _____ Picture _____ Color Swatch

Treat	Size	#	Design	Price	Total
Cheesecake: ♥	4"		Flavor:	\$10	
NY Butterfinger	6"		Deco:	\$12	
Oreo Party	8"		Berries +\$3	\$20	
Raspberry Pumpkin	10"		Writing:	\$30	
Salted Caramel Turtle					
Cheesecake: ♥	4"		Flavor:	\$10	
NY Butterfinger	6"		Deco:	\$12	
Oreo Party	8"		Berries +\$3	\$20	
Raspberry Pumpkin	10"		Writing:	\$30	
Salted Caramel Turtle					
Cheesecake: ♥	4"		Flavor:	\$10	
NY Butterfinger	6"		Deco:	\$12	
Oreo Party	8"		Berries +\$3	\$20	
Raspberry Pumpkin	10"		Writing:	\$30	
Salted Caramel Turtle					
Cake Roll	Slices		Flavor:	\$3 Slice	
Pumpkin Cream Cheese	Plain Roll		Deco:	\$12 Reg	
Chocolate Raspberry	Decorated		Berries +\$3	\$20 Deco	
Red Velvet Vanilla Bean			Writing:	\$ ____ Custom	
Vanilla Strawberry					
Cake Roll	Slices		Flavor:	\$3 Slice	
Pumpkin Cream Cheese	Plain Roll		Deco:	\$12 Reg	
Chocolate Raspberry	Decorated		Berries +\$3	\$20 Deco	
Red Velvet Vanilla Bean			Writing:	\$ ____ Custom	
Vanilla Strawberry					
Eclair	Mini			\$2.00	
	Reg			\$4.00	
Cream Puff	Mini			\$2.00	
	Reg			\$4.00	
Cannolli	Mini			\$2.00	
	Reg			\$3.00	
Tarts:	Mini		Color:	\$2.00	
	4"		Flavor:	\$5.00	
	8"		Deco: Berries +\$3	\$20.00	

Total: _____

DFEH00046

RA.1774

003-006

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

Dipped Treats Order Form

Order # _____

Customer: _____ Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

One of _____

C OO CC TR

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Match to: _____ Cake _____ Treats _____ Picture _____ Color Swatch

Treat	Size	#	Design	Price	Total
Dipped Strawberries or 2 Cherries	Reg		Color:	Dipped \$2.75	
	Mini		Deco:	Decorated \$3.00	
				\$1.50	
Fruit: ½, Pineapple or Mango Spear, 1/3 Banana on a stick	Reg		Fruit:	Dipped \$2.75	
			Color Choc:	Decorated \$3.00	
Marshmallows Dipped in Chocolate on a Stick	Reg		Color:	\$1.50	
			Chocolate and Caramel	\$1.75	
			Drizzle Nuts Mini Chips	\$2.00	
Crispy Rice Treat On a Stick	Reg		Color Chocolate:	\$2.00	
			Deco:		
Cookies	Size	#	Design	Price	
Sugar/Shortbread Cookie	Med		Shape:	Sprinkle \$1.50	
			Deco:	Dipped \$1.75	
Haystack Macaroon	Reg		Plain:	\$2.00	
	Mini		Dipped:	\$1.00	
Oreo	Reg		Drizzle:	\$1.50	
			Sprinkle:		
Pretzel Rod	Reg		Color:	\$1.25	
Pretzel Twist			Deco:	\$1.25	
Brownie Bites	Reg		Flavor:	\$2.00	
			Deco:		
Candy	Size	#	Design	Price	
Pecan Salted Caramel Turtles	Reg			\$2.50	
Almond Cranberry Turtles	Lg			\$3.50	
Chocolate Pecan					
Truffles	Mini		Shape:	Solid \$1.50	
	Reg		Choc color:	Filled \$2.00	
Chocolate Caramel Salty Bark	Mini		Choc color:	\$1.50	
	Reg		Sprinkles:		

Total _____

Dfeh00047

Pastries and Breads Order Form

Order # _____

One of _____

C OO CC TR

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Treat	Size	#	Price	Total
Apple Turnover	Reg Mini		\$3.25 \$2.25	
Cherry Turnover	Reg Mini		\$3.25 \$2.00	
Muffins	Mini = \$.75 Muffin = \$1.50 Loaf = \$6.00			
Almond Zucchini Muffin	Mini Reg Loaf			
Banana Cream Cheese	Mini Reg Loaf			
Blueberry Muffin	Mini Reg Loaf			
Bran Muffin	Mini Reg Loaf			
Carrot Muffin	Mini Reg Loaf			
Chocolate Chip Oatmeal	Mini Reg Loaf			
Cinnamon Streusel Muffin2q	Mini Reg Loaf			
Cranberry Lemon Muffin	Mini Reg Loaf			
Lemon Blueberry Muffin	Mini Reg Loaf			
Lemon Raspberry Muffin	Mini Reg Loaf			
Pumpkin Spice	Mini Reg Loaf			
	Mini Reg Loaf			
Cinnamon Rolls	Mini Reg Pan (12) \$1.50 \$3 \$32			
Whole Wheat Cinnamon Rolls	Mini Reg Pan \$1.50 \$3 \$32			
Chocolate Chip Almond Cinnamon Rolls	Mini Reg Pan (12) \$1.65 \$3.25 \$36			
Cream Cheese Pillows			\$2.00	
Scones Flavor: Blueberry, Cranberry, Oatmeal Chocolate Chip	Mini Reg		\$1.50	
Cream Cheese Danish	Mini Reg		\$3.25	
Fruit Danish	Mini Reg		\$3.25	
Donuts Baked Cake			\$1.25	
Donut bars			\$1.50	

Total: _____

DFEH00048

RA.1776

003-008

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

Cupcake, Cake Pops & Cake Bites Order Form

Order #

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Theme: _____

Colors: _____

One of _____

C OO CC TR

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Match to: _____ Cake _____ Treats _____ Picture _____ Color Swatch

Size	Flavor	Frosting	Design	Color Topping	#	Mini \$1 Reg \$3.25 *1.25 *3.50	Total
Mini Reg			#	Color Topping		Mini \$1 *1.25 Reg \$3.25 *3.50	
Mini Reg			#	Color Topping		Mini \$1 *1.25 Reg \$3.25 *3.50	
Mini Reg			#	Color Topping		Mini \$1 *1.25 Reg \$3.25 *3.50	
Mini Reg			#	Color Topping		Mini \$1 *1.25 Reg \$3.25 *3.50	
Mini Reg			#	Color Topping		Mini \$1 *1.25 Reg \$3.25 *3.50	
Cake Pops		Stick Down O Stick Up O	#	Dip Drizzle Deco		\$2.75 Drizzle \$.25 per topping \$3.25+ Deco +\$.25 Gourmet	
Cake Pops		Stick Down O Stick Up O	#	Dip Drizzle Deco		\$2.75 Drizzle \$.25 per topping \$3.25+ Deco +\$.25 Gourmet	
Cake Bites		X	#	Dip Drizzle Deco		\$2.50 Plain \$.25 per topping \$3.25+ Deco +\$.25 Gourmet	
Cake Bites		X	#	Dip Drizzle Deco		\$2.50 Plain \$.25 per topping \$3.25+ Deco +\$.25 Gourmet	

Total \$ _____

DFEH00049

RA.1777

003-009

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Brownies and Bars Order Form

Customer: _____

Phone #: _____

Event Date: _____ P/U or Delivery: _____

Packaging: _____ Platters _____ Boxed _____ Gift Wrap _____ Baking Tray

Order # _____

One of _____

C OO CC TR

Treat	Size	#	Price	Total
Fudge Brownie	Reg		\$3.00	
	Mini		\$1.00	
Turtle Brownie	Reg		\$3.00	
	Mini		\$1.00	
Buckeye Brownie	Reg		\$3.00	
	Mini		\$1.00	
Walnut Fudge Brownie	Reg		\$3.00	
	Mini		\$1.00	
Cheesecake Brownie	Reg		\$3.00	
	Mini		\$1.00	
Blondie Brownie	Reg		\$3.00	
	Mini		\$1.00	
German Chocolate Brownie	Reg		\$3.00	
	Mini		\$1.00	
Oreo Brownie	Reg		\$3.00	
	Mini		\$1.00	
Brookie	Reg		\$3.00	
	Mini		\$1.00	
Toffee Bar	Reg		\$3.00	
	Mini		\$1.00	
Chocolate Chip Caramel Bar	Reg		\$3.00	
	Mini		\$1.00	
PB Oatmeal Chocolate Bar	Reg		\$3.00	
	Mini		\$1.00	
Lemon Bar	Reg		\$3.00	
	Mini		\$1.10	
Cherry Cream Cheese Bar	Reg		\$3.00	
	Mini		\$1.10	
Blueberry Cream Cheese Bar	Reg		\$3.00	
	Mini		\$1.10	

Total: _____

DFEH00050

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

\$227.50

Total

Sep 1, 2016

Post date

1855

Check #

Dept.: J

Case #
BCV-18-102633

Exhibit 10

exhibitsticker.com

CATHY'S CREATIONS, INC.
3665 ROSEDALE HWY.
BAKERSFIELD, CA 93308-6230

9-01-16
Date

Pay to the order of Glenn S. Sugar \$ 227.50
Two Hundred Twenty - Seven & 50/100

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com

[Signature]

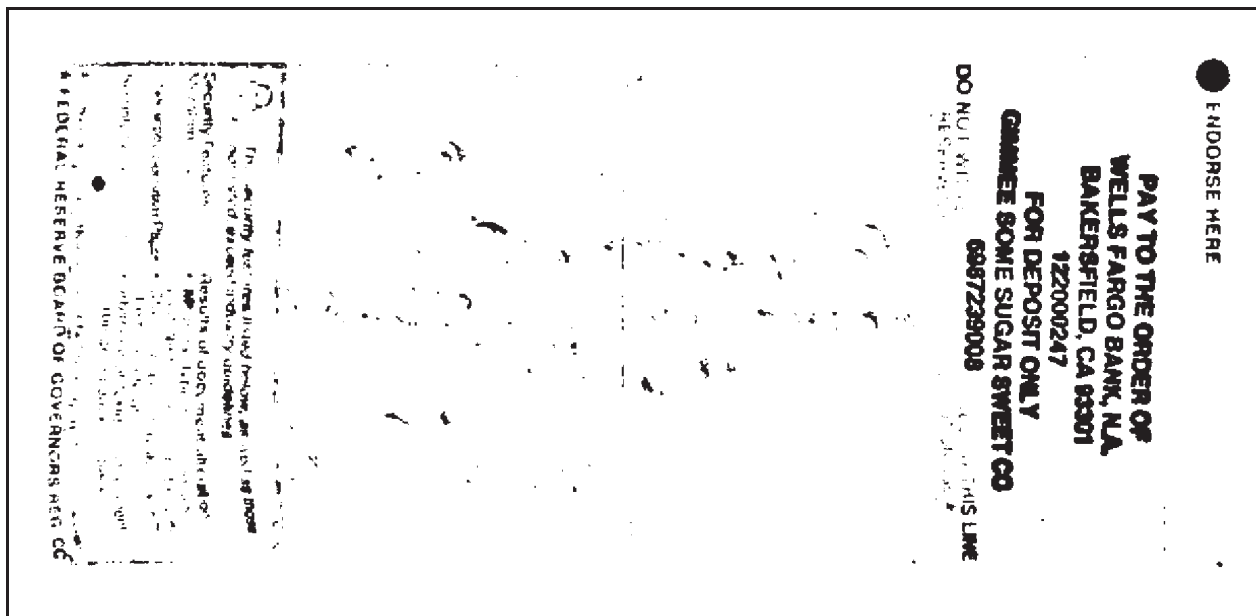
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Document received by the CA 5th District Court of Appeal.

Total

Post date

Check #



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



Check #1855

1 online banking matches

Payee

Gimme Some Sugar

Bank Account

10500 Chase Checking

Balance - \$69,022.01

Mailing address

Gimme Some Sugar

Payment date

09/01/2016

Check no.

1855

☐ Print later

Tags ?

Start typing to add a tag

Manage tags

	#	CATEGORY	DESCRIPTION	AMOUNT
⋮	1	10200 Funds Awaiting Deposit	Sale transferred to Gimme Some Sugar	227.50
⋮	2			

Add lines

Clear all lines

Memo

Attachments

Maximum size: 20MB

Drag/Drop files here or click the icon



Help



AMOUNT

\$227.50

RA.1781

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

010-003

EXHIBIT

554

Dept.: J

Case #

BCV-18-102633

EXHIBIT 554

AT&T

10:42 PM

80%



Wen Rod

August 26, 2017 · 2



I just don't know how to feel right now. It's like a mixture of all kinds of emotions. Discriminated against, angry, hurt, sad, whatever else that's on that spectrum. All we were doing was to taste some cake and making the decision of what we were doing for our wedding cake. I have never experienced being discriminated for loving a person of the same sex. On to a different place that will take the same money that straight, gay, white, Mexican, male or female, human being would have spent. No business for Tastries Bakery



Like



Comment



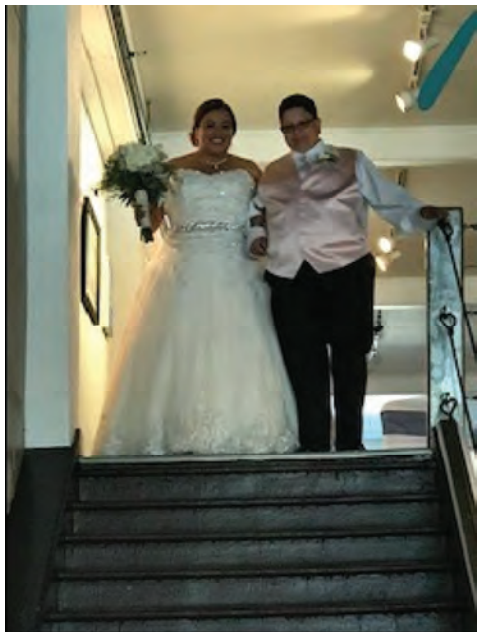
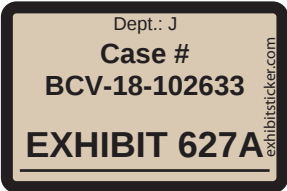
Share



Eileen Rodriguez-Del Rio and 21 others

DFEH00236

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DFEH00296



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

Dept.: J

Case #

BCV-18-102633

EXHIBIT 630

The Big Day

8:00 Wake up/shower/get semi dressed

8:45 Be on our way to Metro to drop off
assorted things/help and situate things

Grab something to eat

10:45 Be on our way back home to get hair done at 11:00

11:00 Get hair done/hopefully make-up too
along with all the girls

1:30 Get dressed

2:30 Photos with family and wedding party

3:30 Touch up/refresh yourself

4:00 Be ready to come in for Ceremony

4:15 Ceremony

4:45 Cocktails and Photos

5:00-6:00 Dinner

5:45 Toast

6:00-9:45 Spotlight Dances/Dance floor opens

7:30 Cut Cake

8:00 Garter/Bouquet toss

9:45 Last Dance

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DFEH00237

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Case #
BCV-18-102633
EXHIBIT 631



EXHIBIT
631

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DFEH00175

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RA.1789

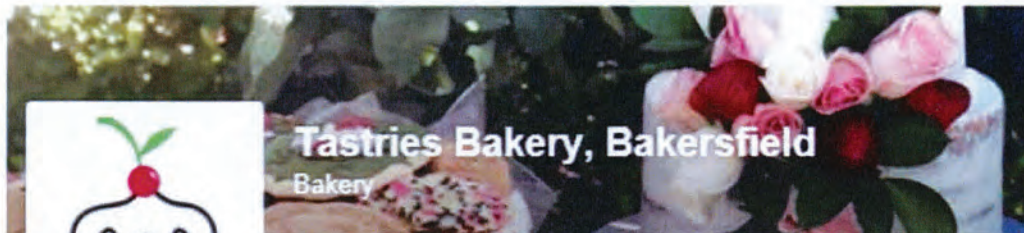
631-001



Eileen Del Rio reviewed Tastries Bakery, Bakersfield — 1★

August 26, 2017

Because the owner is a bigot and hates lesbian and gays and refuses service to them. Apparently gay and lesbian money looks different and spends different. She must be a Trump supporter!



7,875 Likes

381 talking about this



8

1 Comment

CM1903

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CM-0978

RA.1791

007B-042



Pastries

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CM-0990

RA.1792

007B-054



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CM-0937

RA.1793

007B-001



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CM-0949

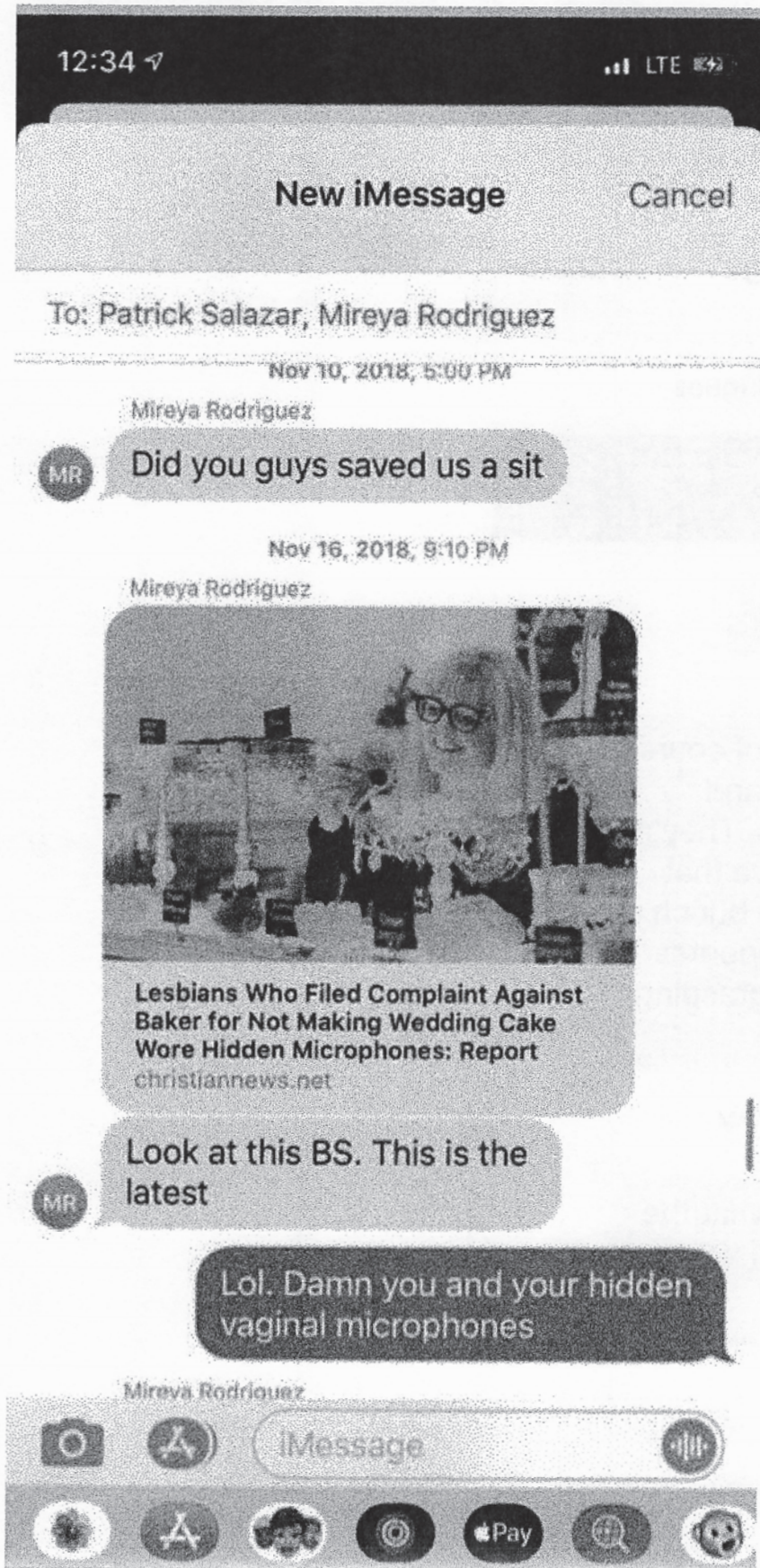
RA.1794

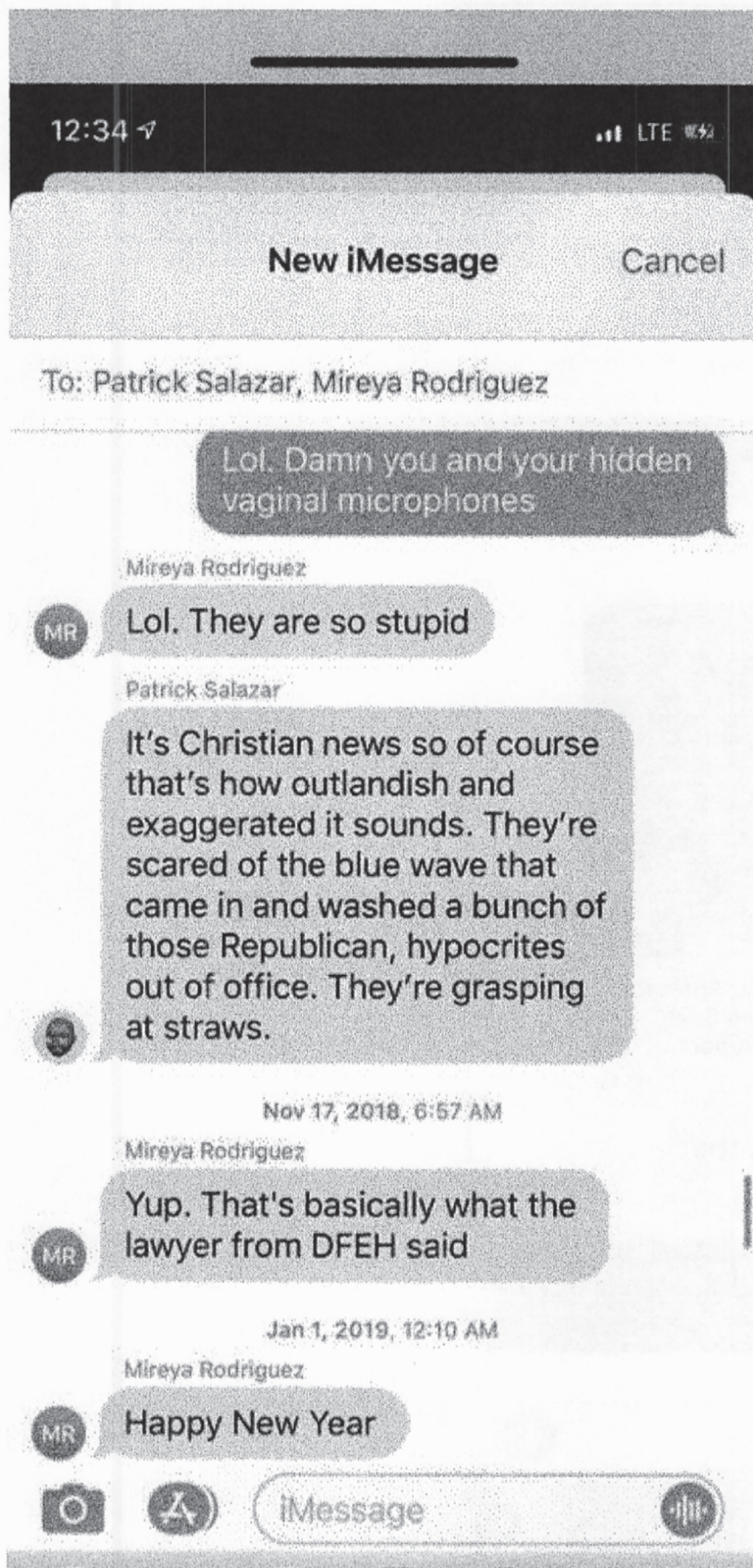
007B-013



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CM-1028





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SAM0041

Dept.: J

Case #
BCV-18-102633

EXHIBIT 568

EXHIBIT

568

Eileen Rodriguez-Del Rio is with Isabella Galindo and
86 others

August 31, 2017 · 🌐

Here's the story: Here's our side of the story.



BAKERSFIELD.COM

Lesbian couple rejected by Tastries Bak
pursue legal action

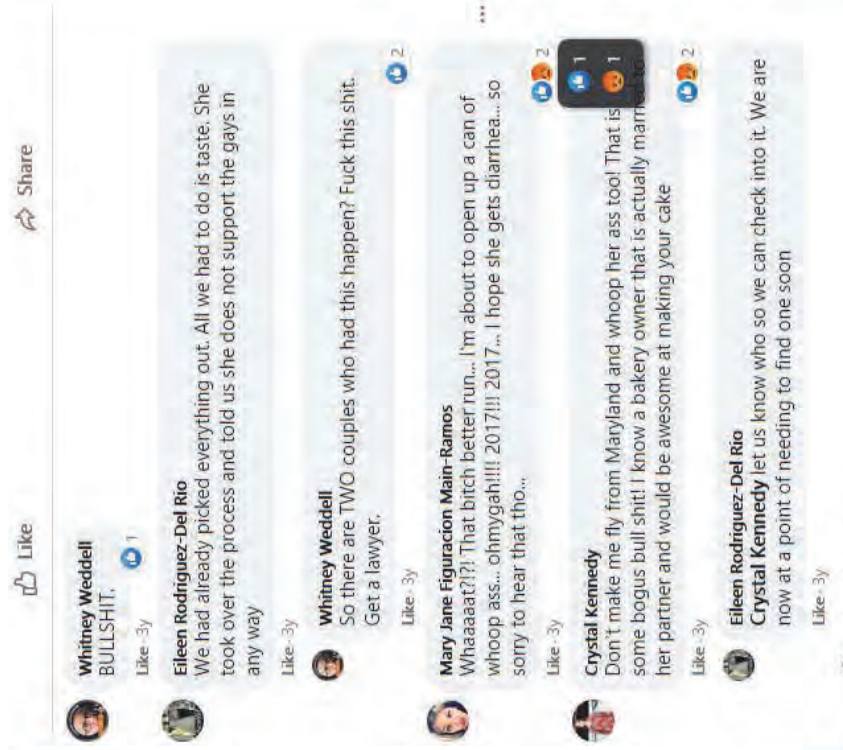
👍❤️👎 117

👍 Like

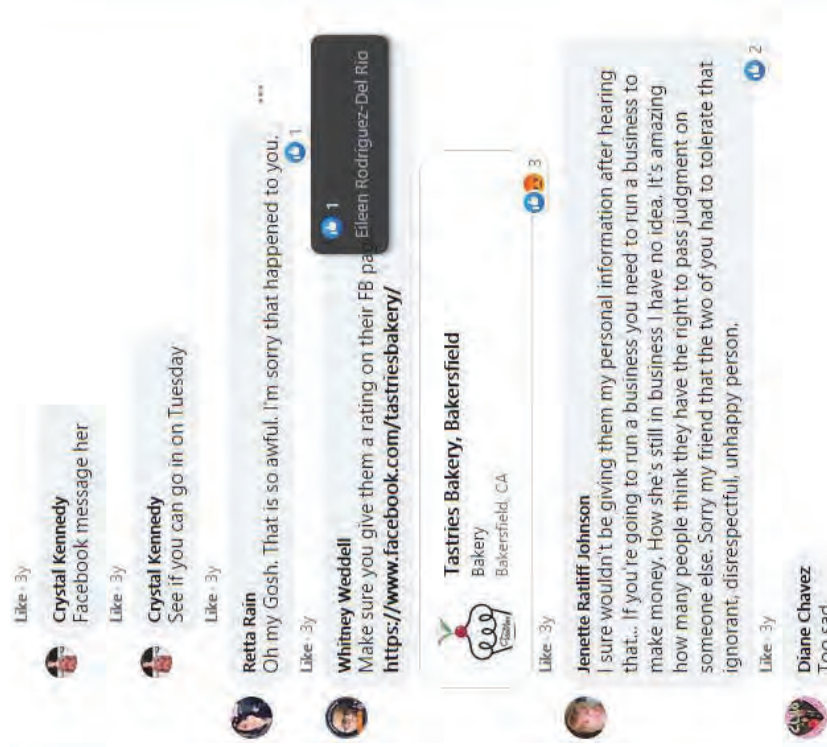
Susan Brimmage
 Laura Contreras-Ortiz
 Erica Lostaunau
 Nick Aragon
 Carolynn Chavez
 Elizabeth Hacker
 Wen Rod
 Athena Gonzalez-Cardona
 Esther Hernandez
 Allan DaCosta
 Jenette Ratliff Johnson
 Michelle Valverde
 Sam Salazar
 Patrick Grijalva Salazar
 Stephanie Salazar Vega
 Nora Alonso
 Gina Garcia
 Lydia DelaCorte
 Mary Jane Figuracion Main-Ramos
 Renee Quiroz Ledwell
 Chaz Flores
 Andrea Del Rio
 Michelle Aguilar
 Mendy Reese
 Sabrina Sherrill
 Trish Albitre
 Whitney Weddell
 Sandy Lueth
 Cindy Marie Mcdonald
 Roschel Anderson-Wynn
 Deanna Ray
 Maggie M Worthington
 Kathy Brookshire
 Carla Espinoza
 Enedina Ramos Padilla
 Chris Zamora
 Vcsic Z
 Julie Herrera
 Ken Willoughby
 Susie Susie
 DeBi Alcala
 Martha Romero Tarin
 Susan Ollison
 Margaret Delatorre
 Crystal Kennedy
 Sandy Estrada-Flores
 Diane Chavez
 Magda Worthington
 Retta Rain
 Michelle Tarin
 Anita Gomez-Larroque
 Angelica Corona
 David Ray Jr
 Victor M Carrillo Rodriguez
 Maggie Valdenegro
 Decor Embellished
 Ann Marie Briones
 Joe Chavez
 Alyssa Salazar
 Roy Chavez
 Juanies Trevino
 Jaime Delatorre
 Jessica Camacho
 Katelyn Curtis
 Nick Valverde
 Valerie ValVerde
 Stephanie M Rodriguez

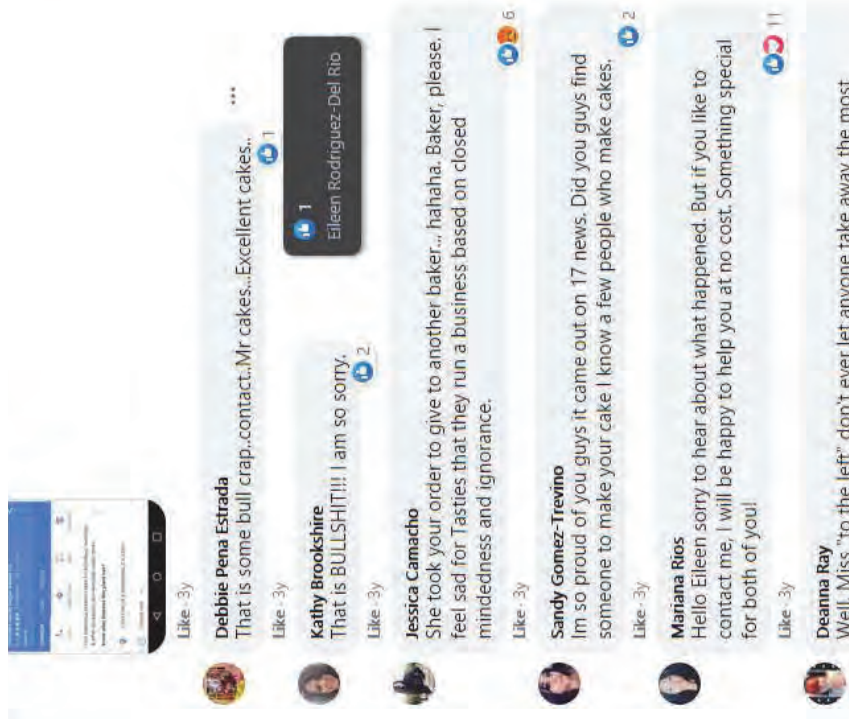
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Christina Lewis
Paula Herrera
Lydia Gomez
Monique Garcia
Elena Herrera Perez
Lisa Marie Cortez
Michele Leal
Gloria Willoughby
Arthur Art
Destiny Flores
Ana L Zamora
Linda Garcia
Cristina Rene
Sandy Gomez-Trevino
Lydia Trobaugh
Margaret Estrada
Amanda Kae there
Bobby Valverde Jr.
Maria Saldaña the









Time	Name	Phone	Confirmed
10:00	Gloria Arevalo ^{1st Birthday & Baptism}	[REDACTED]	YES (2)
10:15	Kelsey Garcia (email)	[REDACTED]	yes (4)
10:30	Megan Cegielski	[REDACTED]	LM 8/24 (5)
10:45			
11:00	Adam Ramos	[REDACTED]	yes (3)
11:15			
11:30			
11:45			
12:00			
12:15	Patrick Grijalva & Sam Salazar	[REDACTED]	yes
12:30	Setup for CC class 17 people		*
12:45	CLASS 1:00-2:00 (Cathy teach)		
1:00	Mireya Rodriguez Del Rio	[REDACTED]	yes (4)
1:15			
1:30	Miyessa Perez	[REDACTED]	yes (2)
1:45			
2:00	Amel Khalid	[REDACTED]	LM 8/24 (5)
2:15	Harmeet Kaur	[REDACTED]	yes (6)
2:30			
2:45			

Dept.: J
Case #
BCV-18-102633
Exhibit 103
exhibitsticker.com

Saturday
August 26th

RA.1804

DFEH00026

103-001

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

3:00			
3:15			
3:30			
3:45			
4:00	micah webber		yes (2)

November call CT

Vanessa Socorro



Nov 2, 2019

Saturday

August 25th

RA.1805

DFEH00027

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

103-002



Tastries Bakery

3665 Rosedale Hwy.
Bakersfield
CA 93308

1-555-48

16.21.29 8/17/2017

1	Miscellaneous	\$20.00
	Subtotal	\$20.00
	Total	\$20.00
	Payment	\$20.00
	Balance	\$0.00

Mastercard 8/17/2017 \$20.00

Ref: 804155202
Approved Auth. 04240Z
Last 4 digits [REDACTED]

Station: Tastries1
Rosemary Perez

661-322-1110
tastriesbakery@gmail.com
www.tastriesbakery.com

Signature



1-555-48

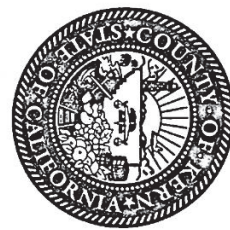
RA.1806

DFEH00179

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

Marriage Certificate

State of California



County of Kern

I hereby certify that on Dec 7 2016 in Kern County under the authority of a license issued by the County Clerk of the County of Kern, I, the undersigned, as a Reverend, joined in marriage Ileen Del Rio and Mirya Rodriguez in the presence of Margaret Del Rio residing in Bakersfield CA and Maria Rodriguez residing in Bakersfield CA.

Reverend [Signature]
Signature of person solemnizing marriage

Metro 10/7/17

METRO SPECIAL EVENTS

1604 19TH St. Bakersfield, Ca 93301 . info@theMetroGalleries.com
www.MetroSpecialEvents.com

Dept.: J
Case #
BCV-18-102633
Exhibit 111

exhibitsticker.com

Name: X Mireya Rodriguez / Eileen Del Rio
Address: [REDACTED]
Phone: [REDACTED]
Email: [REDACTED]

RENTAL AGREEMENT AND HOUSE RULES

This agreement is between Metro Special Events

and X Mireya Rodriguez & Eileen Del Rio
for a Ceremony & Reception
on Saturday, October 7th 2017 2017

EVENT TIME: Start- 6pm Stop- 12pm (Music must be lowered in volume by 10pm, House closing is Midnight)

RENTAL FEES: 50% of total is required to book and reserve date. If under \$1000, payment in full is required to book and reserve date . NO REFUNDS

Basic: \$ \$1700 Small: \$ _____ Shower: \$ _____ Custom: \$ _____

Extras: _____

Deposit: \$ \$850 paid Balance: \$ \$850 due 9/16/17
Due 3 weeks in advance of event. A \$150 late fee will be incurred unless payment is made or arranged for a later date.

Damage/Cleaning Deposit: \$500 (refundable if no damages have occurred or extra clean up is not needed) Due the day of the event and is required for event to start. Is returned within 7 days or less from your event.

* Check [REDACTED] \$850 paid 8/17/16
\$850 Balance due 9/16/17

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artwork. This will be taken out of the security/damage deposit. If damage exceeds \$500 the rentee will be charged and the fee is due immediately.

Metro food and beverage equipment such as ice tubs, chaffing dishes must be signed out to the rentee. These items cannot leave the premises. If any of the signed out items are missing after the event, the rentee will be charged accordingly per item. The fee will be deducted from the damage/security deposit. All items must be cleaned after use.

Beer kegs are not permitted unless behind the designated bar.

No rice, glitter or confetti allowed. (clean up charge of \$300 will be assessed) X M.R.

Metro Special Events reserves the right to shut down event at anytime for violation of one or more of the above stated rules and policies. NO REFUNDS will be given.

I have read the above and agree to abide by all the house rules and regulations.

Rentee: X Mireya Rodriguez Date: X 8/17/16

For Metro Special
Events:

Title: Director of Events
Date: 8/17/16

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From: Tastries Bakery tastriesbakery@gmail.com
Subject: Re: Cake Tasting on 8/26/17
Date: Aug 23, 2017, 8:37:16 AM
To: Mireya Rodriguez [REDACTED]

Dept.: J
Case #
BCV-18-102633
Exhibit 113
exhibitsticker.com

Hi Mireya!

We can definitely put you down for 12:15. How many people are going to be coming with you to the tasting?

Natalie
Tastries Bakery
[REDACTED]

On Tue, Aug 22, 2017 at 11:18 PM, Mireya Rodriguez

[REDACTED] wrote:

Hi.

I wanted to sign up for the cake tasting on Saturday the 26.

I'm hoping to do it at 12:15 if you still have room. Patrick

Grijalva [REDACTED]

And Sam Salazar.

Mireya

Sent from my iPhone

--
Tastries Bakery
3665 Rosedale Highway
Bakersfield, CA 93308
Phone: 661-322-1110

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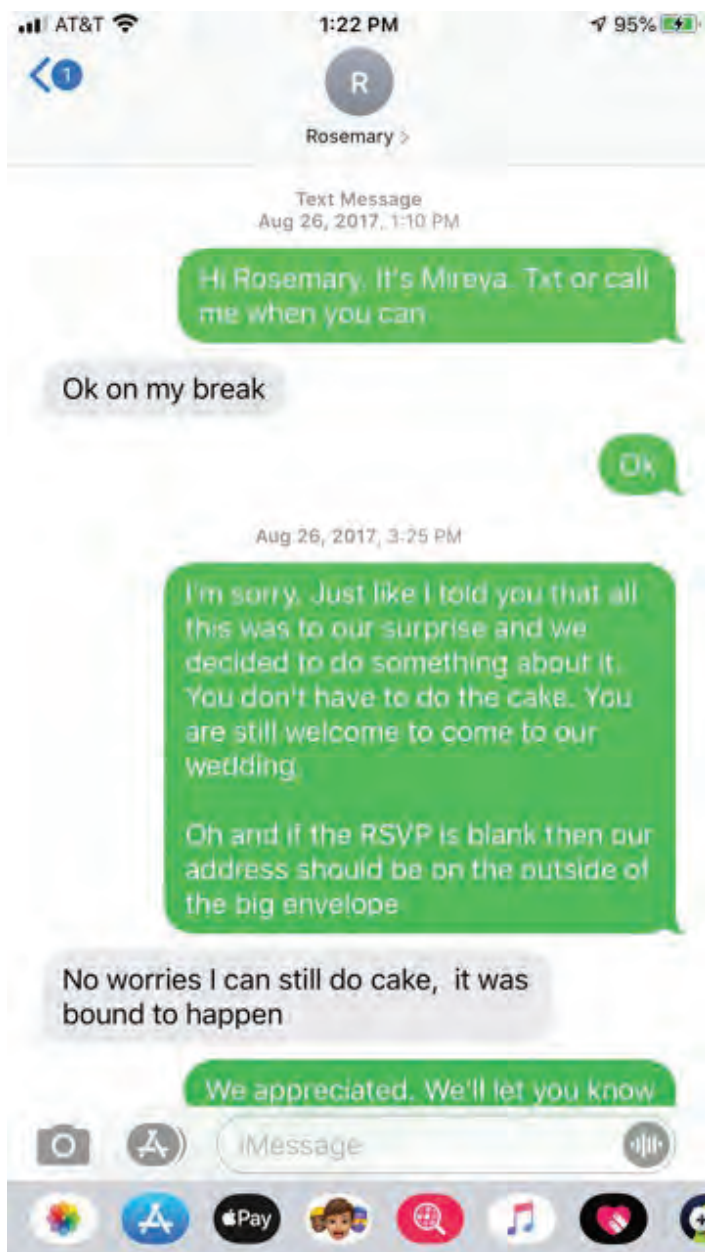
DFEH00184

Email: TastriesBakery@gmail.com

Web: TastriesBakery.com

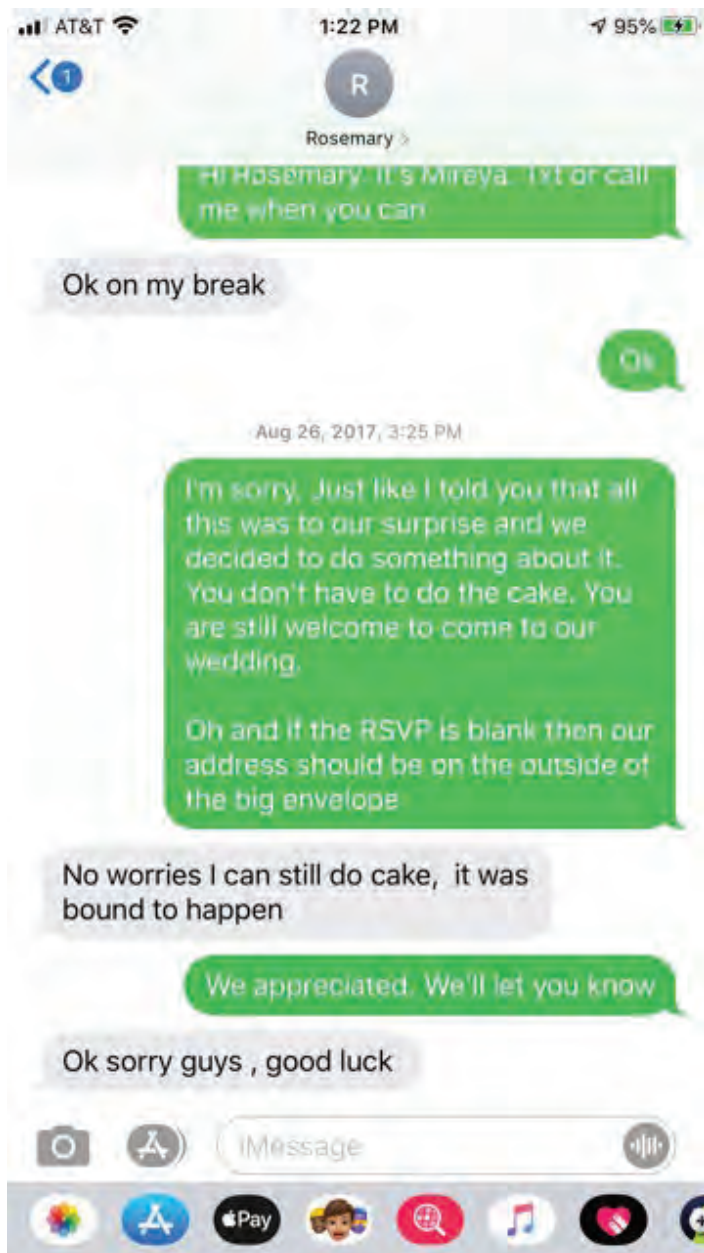
Document received by the CA 5th District Court of Appeal.

DFEH00185



RFP 2

DFEH00283



Mireya
Sent from my iPhone