

No. F085800

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

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

Plaintiff and Appellant,

v.

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

Defendants and Respondents;

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

Real Parties in Interest.

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

APPELLANT'S APPENDIX
File 9 of 13, Volume 9, pp. AA01506-AA01761

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October 20, 2023

Exhibit Y

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Kern County Superior Court
By Gina Sala, 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 Parties in Interest.

Case No. BCV-18-102633

**Vol. 4 of 4, Exhibits 13 to 22 of
DECLARATION OF GREGORY J.
MANN IN SUPPORT OF PLAINTIFF
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTIONS IN LIMINE AND EXHIBITS
THERE TO**

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

EXHIBIT 13

Ted G. Freitas

<https://www.facebook.com/ted.g.freitas>



Ted G. Freitas

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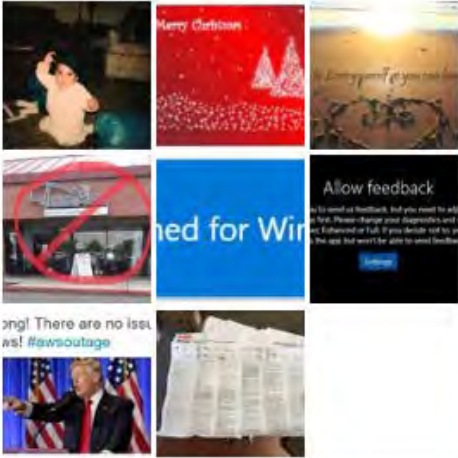
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Ted G. Freitas is with Adam Ramos.

August 26 at 12:37pm · 🌐

So the fiancé and I are out cake tasting in Bakersfield for OUR BIG DAY and the lady helping us (I have another name for her) ask's, "So this is for the bride and goom?" (turning to Adams's Mom) Uh, no it says Adam and Ted on your form! When we let her know, that it's for us, she quickly (without hesitation) replies "Well I'm going to transfer your order to Stephanie @ Gimme Some Sugar Cakes". She stands up, walks away, and calls Stephanie to "transfer" us (I think she meant to say REFUSE SERVICE to us) and refer us for an appointment. After she leaves a voicemail with Stephanie she comes back to update us and says "Ok, I've called her and left a message. We can do the design and Stephanie can do the filling. Your welcome to stay and enjoy MY cupcakes...." and walks off #discrimination is alive and well in this fed up world. #loveislove



Like

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👍👎🗨️ 123



Alexander Gregory Looks like gimme some sugar found their niche in the bakery market. I wonder how the conversation went between those two that she just automatically knows to refer you there.

Sorry you had to deal with that.

Like · Reply · 1 · August 26 at 1:29pm



Ted G. Freitas Idk but I'll let you know. I'm curious too.

Like · Reply · 1 · August 26 at 1:54pm



Joey Garcia On the flip side Gimme some sugar is very pro LGBT because the owner is in fact a part of our community. So it helps our little niche here in town as well. And their cakes are delicious!

Like · Reply · 7 · August 26 at 3:21pm



Gimme Some Sugar Cakes Thanks Joey!! I hope they give me the honor of making their day special 😊

Like · Reply · 1 · August 26 at 11:38am



Joey Garcia I'm getting married next year and I'm definitely gonna head your way! 😊

Like · Reply · 1 · August 26 at 11:46am

View more replies



Scott Sallee Typical Bakersfield. I used to live there. It might as well be Arkansas

Like · Reply · 3 · August 26 at 4:25pm



Johnny Esparza Actually no Scott.. Typically we don't treat people from the lgbtq community like that in any business here in town, I belong to the BBB here and I can say that Bakersfield as a whole does not and will not stand for this kind of behavior towards any community!

Like · Reply · 3 · August 27 at 4:09am



Write a reply...



Whitney Equality Weddell Ted, I sent you a PM. Let's follow up on this.

Like · Reply · 2 · August 26 at 4:46pm · Edited



Joseph Lorta That is foul Ms. Weddell. As a respected leader I thank you for standing up for those of us who are not as brave enough to speak out.

Like · Reply · 1 · August 27 at 7:19am · Edited



Write a reply...



Marshelle Fernandez Screw them Adam Ramos! You don't want to give people like that your patronage or hard earned cash anyway!!!! You need to talk to your past coworker Jessica Lara...she does beautiful cakes and I'm sure the price would be much less then what you would have paid at that Homophobic establishment!!!

Like · Reply · 2 · August 26 at 11:10pm



Ted G. Freitas Just so we are clear, the intent of my post was never meant to harm anyone. I was just venting my frustration as Adam and I have NEVER been refused service before because of our orientation. That said, Adam and I would like to clarify a few things regarding OUR experience and how WE feel.

We had gone into Tasteries bakery twice (over a period of 2 months) talking with the Tasteries staff asking them questions about what services they could offer us for our same sex wedding. We DID NOT at any time hide the fact that we were two engaged men looking to buy a wedding cake. Staff on all occasions were more than happy to help us and even offered for us to attend one of their cake tasting events which we signed up for. Tasteries even called Adam two days prior to the tasting event to confirm we would still be attending. We arrived early for our appointment, and were greeted warmly by a staff member who confirmed we were on this list and sat us at a table. While we were waiting for Adam's mom to arrive to join us in the tasting, Adam started filling out the order/design forms. Once Adam's mom arrived we helped ourselves to the tasting bar and took our samples back to our table. Cathy came over to our table, looked over the order forms and thanked us for filling everything out for her. Then, instead of acknowledging that Adam and I were the engaged couple as listed on the forms Adam had just filled out, she looked at Adam and his mom and asked if THEY were the ones getting married. Adam politely corrected Cathy and said that was his mother and that he and I were engaged and looking to order a cake. Without hesitation, Cathy said she was going to "transfer" us to another bakery. Since Adam had already filled out the order forms with our cake design, size, etc, she said she would take our design ideas and forward them to a competing bakery and they would handle our order. She quickly left to call the competing bakery to have her follow up with us. After making the call she came back to our table, took the clipboard and paperwork away from us saying "you wont be needing this", told us to enjoy her cupcakes, and walked away into back of the bakery. Confused as to what had just happened we quickly ate our samples we had already brought to our table and left. After leaving the bakery and attending other wedding related appointments we had scheduled, Adam decided to call Tasteries to talk to Cathy to ask why she could not do business with us. Unfortunately Adam was unable to talk to Cathy as she was "unavailable", but through conversation with staff it was confirmed that Cathy transferred us to another bakery due the fact that we are a same sex couple. (Staff did not agree with her decisions)

Our only frustration here is how the whole situation was handled. Had it been disclosed to us upfront during our initial visit that Tasteries does not cater to same sex couples, we would have gladly taken our business elsewhere. But having been strung along and going as far as scheduling/confirming a tasting/consult with Tasteries, then being told they will not fulfill our order is wrong. As it turns out another same sex couple was strung along through the same process, only to be refused service the same day as us. Our advice to Tasteries is that Cathy and her staff all get on the same page and disclose to same sex couples from the very beginning that they do not cater to same sex couples...if that is what this bakery chooses to do. As stated before, we meant no harm by our post and did not know it would go viral. We hold no ill will against Cathy personally, and we have no intent on taking any legal actions. We just wish she would have handled the situation in a better manner, and we will no longer be doing business or referring anyone to Tasteries.

Adam and I believe in treating everyone equally regardless of who they are or their beliefs. With that said we appreciate all the love and support we have received from everyone. We love you all.

Like · Reply · 26 · August 27 at 11:17am



John Wilson Thanks for posting this. I appreciate people that may be upset/angry with someone's beliefs but to bully them and try to put them out of business makes the people doing it far worse than the people that aren't servicing you.

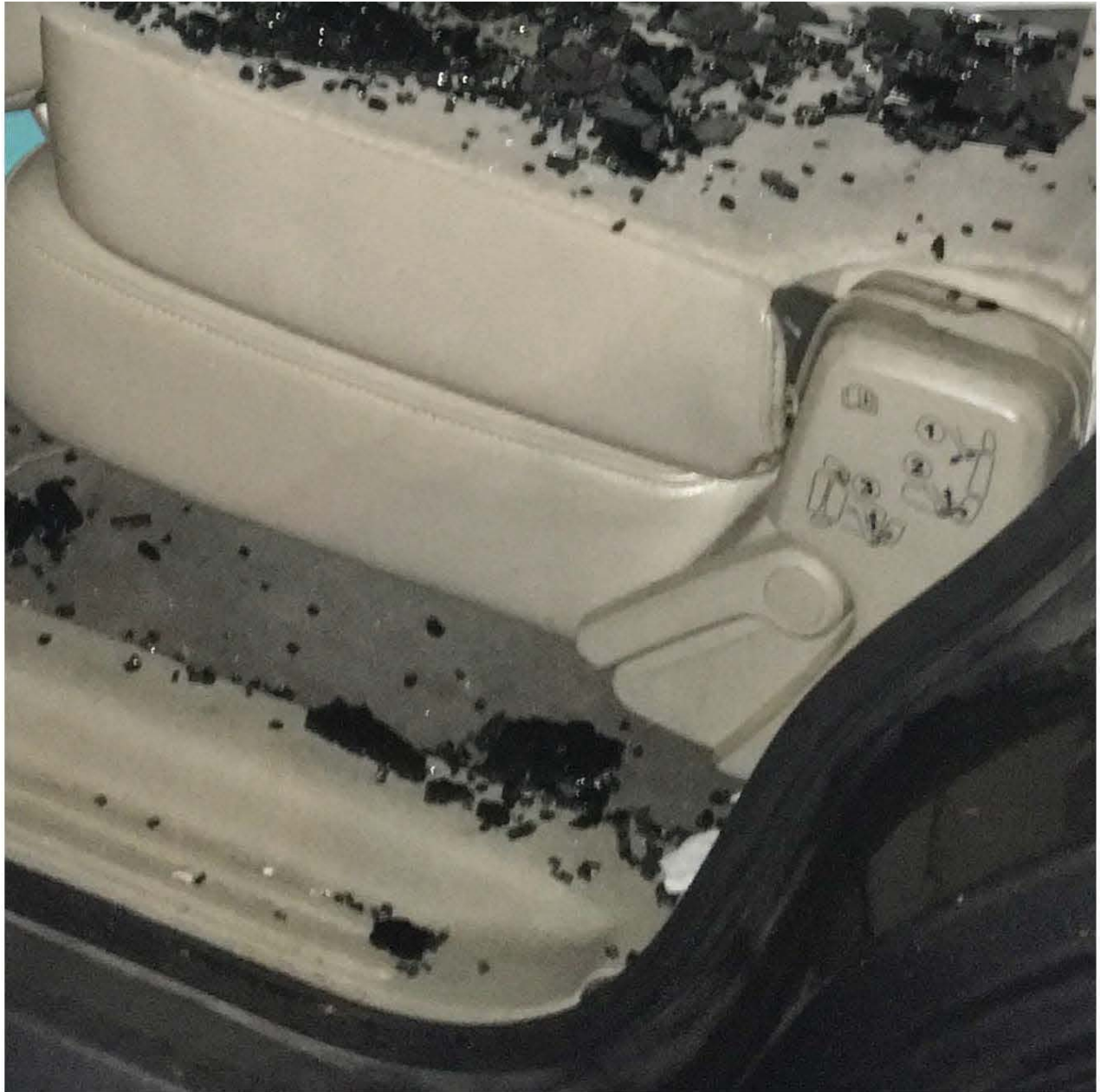
Like · Reply · 2 hrs

EXHIBIT 14



CM1392

AA01514



CM1393

AA01515



CM1394

AA01516

EXHIBIT 15

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN - METRO DIVISION**

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

**Case No.
BCV-18-102633**

Plaintiff,

CERTIFIED COPY

vs.

**CATHY'S CREATIONS, INC. dba
TASTRIES, a California
Corporation; and CATHARINE
MILLER, an individuals,**

Defendants.

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

Real Parties in Interest.

VIDEOTAPED DEPOSITION OF EILEEN RODRIGUEZ-DEL RIO

**Taken remotely via Zoom Videoconferencing
Keleher's Court Reporters
19237 Flightpath Way, Suite 100
Bakersfield, California
Thursday, July 29, 2021, at 9:08 a.m.**

Reported by:

Shelly A. Davis, CSR #8947, RPR

JOB No. 21-101796

10:19:59

10:20:24

10:20:50

10:21:06

10:21:32

10:21:55

1 Q. What -- what do you know about her LGBTQ
2 activism? Like, what does she do actually?
3 A. I know she's done rallies and -- but
4 mostly she tries to support the LGBTQ people in
5 Bakersfield and try to help. Like, when there's
6 things going on, she tries to support however she
7 can. For instance, a transgender that was beaten,
8 you know, she -- she tries to be there as a voice
9 for them and -- and support them through the things
10 that they're going through.
11 Q. When you met her when you were younger,
12 was she already an activist back then or was she --
13 what was her -- what was she doing back then?
14 A. I don't recall. Back then, I -- it was
15 just I'd meet her at gatherings, if I went to a
16 party or -- not a "party" party, but, like, a
17 gathering with -- it was older -- like, it was a
18 book gathering party, she would be there, and -- so,
19 I mean, it's just different gatherings, different
20 events. I went to a event at CSUB for one of the
21 older gals in the LGBTQ community that she was -- I
22 believe she was a CSUB instructor and she was
23 receiving an award. So, I mean, it's just different
24 events, it's not specific events.
25 Q. What did you -- tell me what you remember

10:21:56 1 about speaking to her after you left Tastries. What
2 did you tell her and what did she tell you?

3 A. She basically -- I don't recall the exact
4 conversation, but I asked her if there was anybody I
10:22:11 5 could talk to about being discriminated against, and
6 she was the first person that told me about the
7 Unruh Act and the laws and that I needed to talk to
8 someone from DFEH.

9 Q. What did she tell you about the Unruh Act?
10:22:31 10 What do you remember about that conversation?

11 A. That -- I don't remember word for word,
12 but the gist of the Unruh Act is no business can
13 discriminate against anyone for sex -- sexual
14 orientation, age, et cetera.

10:22:53 15 Q. Do you think that Cathy Miller
16 discriminated you based on your sexual orientation
17 or --

18 A. I do.

19 Q. Okay. Do you think that Cathy Miller
10:23:01 20 would have been willing to sell you a birthday cake,
21 for example?

22 A. I think she would have told me my wedding
23 cake if she -- if I had not pointed out that Mireya
24 was my wife.

10:23:13 25 Q. Even -- so my question is: Do you think

10:41:47 1 would send you to Gimme Some Sugar? Do you remember
2 that?

3 A. Yeah, that was after she walked away with
4 the paperwork. And I asked if the baker was there
10:41:58 5 at Tastries, and she said, "No, it was Gimme Some
6 Sugar."

7 And I said, "Why would I have my order
8 here if you're sending it elsewhere? You would be a
9 middleman. Why would I -- I would just go to Gimme
10:42:13 10 Some Sugar," which --

11 Q. Did you remember --

12 A. -- I had already been.

13 Q. Do you remember Cathy telling you that
14 making the cake would go against her conscience and
10:42:24 15 her religious beliefs?

16 A. No. She just said, "I don't condone same
17 sex marriages."

18 Q. Do you remember her saying it would offend
19 her Lord or Jesus? Do you remember her mentioning
10:42:34 20 any of that?

21 A. No.

22 Q. Do you -- do you remember ever visiting
23 another venue called Party Palace?

24 A. No.

10:42:51 25 Q. Okay. All right. I'm going to pull up

10:51:49 1 Q. Did she end up coming to the wedding?

2 A. No, she did not.

3 Q. Have you spoken to her since this time

4 period?

10:51:55 5 A. No, I have not.

6 (Whereupon, Exhibit 553A was marked

7 for referenced.)

8 BY MR. JONNA:

9 Q. Okay. I'm going to look at another

10 exhibit. This one is 553A. This is a post from

11 Facebook that you made, Eileen, and it's Bates stamp

12 DFEH235. I'll just ask you to look at it and tell

13 me if you recognize the post.

14 A. Yes.

10:52:43 15 Q. Is that your Facebook post on August 26,

16 2017?

17 A. Yes, it is.

18 Q. And then it -- it was around 1:13 p.m.

19 that it was posted that same day. Does that sound

10:52:54 20 about right to you?

21 A. Yes.

22 Q. And it says here that you tagged 42 others

23 in addition to Jessica, so 43 people. Do you see

24 that?

10:53:03 25 A. Yes.

10:53:03 1 Q. What was the reason why you tagged all
2 those people?

3 A. Just to let my friends and family know --
4 it's only my friends and family -- I did not tag
10:53:12 5 random people, it was just my friends and family --
6 to let them know that she discriminates.

7 Q. Why did you want to let them all know
8 right after you left the bakery?

9 A. Because, one, I was angry; and, two, my
10:53:33 10 family supports and -- supports my lifestyle and who
11 I am.

12 Q. Okay. And then here you wrote down,
13 "#mustbeadonaldtrumpsupporter" Do you see that?

14 A. Yes, I do.

10:53:51 15 Q. What do you mean by that?

16 A. Like I said, when we got married, most of
17 the Trump supporters are against the lesbian
18 community -- the gay and lesbian community, so it --
19 like, again, I -- when I wrote that, I was angry,
10:54:11 20 and there was a lot of Trump controversy, so I wrote
21 it.

22 Q. Do you know -- do you know if President
23 Donald Trump was actually against or in favor of
24 same sex marriage?

10:54:29 25 MR. MANN: Objection. Calls for speculation.

11:28:40 1 A. No, it was December 7th.

2 Q. Okay. December. I'm sorry.

3 Okay. So if you're planning the wedding

4 in August, why couldn't you plan the big celebration

11:28:47 5 in -- in August so that it takes place in December?

6 A. Again, financially, we needed to prepare

7 ourselves and get everything paid for. We did our

8 wedding ourselves. Nobody paid for our wedding.

9 Q. How much did the wedding cost you?

11:29:08 10 A. Honestly, I couldn't -- I -- I didn't --

11 we didn't total up what we paid for. Maybe 12,000

12 to 15, but that's -- that's not an accurate number.

13 I -- I'm just approximating.

14 Q. Do you know someone named Brandon Rose

11:29:59 15 from Moments Photography?

16 A. Yes, I do.

17 Q. Who's that?

18 A. He reached out on the news and offered his

19 services to take pictures for our wedding.

11:30:17 20 Q. Did he take pictures for your wedding?

21 A. Yes, he did.

22 Q. Did he charge you?

23 A. No, he did not.

24 Q. Okay. Are you aware of the hate mail and

11:30:41 25 the hate phone calls and the pornographic images and

11:30:46

1 all the things that were sent to Tastries in the --
2 in the hours and days and weeks following this
3 incident?

4 A. No, I am not.

11:31:05

5 Q. There was a lot of media attention
6 surrounding this incident shortly after it occurred,
7 though; you remember that, right?

8 A. Yes.

9 Q. Did you guys reach out to the media?

11:31:15

10 A. Initially, we did not. They kept calling
11 my phone.

12 Q. How did they get your phone number? Do
13 you know?

14 A. I do not know.

11:31:30

15 Q. Did Whitney Weddell help you guys with the
16 media outreach?

17 A. I reached out to her because they were all
18 calling me and asked her opinion on who she thought
19 I should talk to.

11:31:47

20 Q. Who's Andrea Del Rio?

21 A. My sister.

22 Q. Do you know that she tagged a photo of an
23 article about you guys to Ellen DeGeneres' timeline?
24 Did you know that?

11:32:02

25 A. No.

11:32:02

1 Q. Do you know -- do you remember if she
2 mentioned that she was going to do that?

3 A. I don't recall.

11:32:15

4 Q. Do you know -- well, let me -- let me back
5 up.

6 Do you -- did you discuss this incident
7 with your sister after it occurred?

8 A. I discussed it with my entire family after
9 it occurred.

11:32:24

10 Q. What was your -- what was your sister's
11 reaction?

12 A. They were upset. I'm their sister.

13 Q. And did she -- did you tell her to -- to
14 publicize the event further on Facebook?

11:32:38

15 A. No, I did not.

16 Q. Do you know if Ellen DeGeneres ever
17 reached out to you guys?

18 A. She did not.

11:32:50

19 Q. Earlier you said that you -- when you were
20 talking about playing pool, you said "our bar," and
21 I'm just wondering if Pat or Sam ever owned a bar.
22 Do you know?

23 A. No. "Our bar" means the gay community --
24 where the gay community goes. It's --

11:33:05

25 Q. Would --

11:33:05 1 A. We just refer to it as "our bars."

2 Q. Would Pat and Sam also be there -- at

3 those bars?

4 A. Yes, they frequent the bars.

11:33:19 5 Q. Did they also play pool with you back

6 then?

7 A. Again, I don't recall the people that I

8 play with. I played pool with a lot of people.

9 (Whereupon, Exhibit 564 was marked

11:33:27 10 for referenced.)

11 BY MR. JONNA:

12 Q. Okay. Take a look at Exhibit 564. This

13 is a Facebook -- or, actually, it's a -- it's a Yelp

14 post from Serenity H. Do you know this person?

11:34:05 15 A. No.

16 Q. She says, "You pretty much f'ed yourselves

17 by being nazi bigots." She's referring to -- to

18 Tastries Bakery because they -- and she's referring

19 to the incident. This -- this was posted August 26,

11:34:24 20 2017, 3:26 p.m. Do you agree with this statement?

21 A. It's her opinion.

22 Q. Would you use those words, too?

23 A. No.

24 Q. Do you know someone named Enkel Brintrup?

11:34:54 25 A. No.

11:34:58 1 Q. Okay. I'm going to scroll down a little
2 bit. Someone else posted something -- Kourtney.
3 "Hey Cathy Miller, hope you're -- hope you get your
4 ass beat for being a rude judgmental bitch." Do you
11:35:37 5 see that?

6 A. Uh-huh.

7 Q. Yes?

8 A. Yes, I see it.

9 Q. Do you think that that's a fair comment?
11:35:45 10 Do you agree with that?

11 A. No.

12 Q. Do you think that your prior comment
13 that -- declaring for the world that Cathy Miller
14 hates gays and lesbians contributed to this -- to
11:36:01 15 the violated reaction we're seeing here?

16 A. I think everybody has their opinion to
17 what they want to say, but I -- I can't respond to
18 how they felt at the time.

19 Q. Do you think that the comment that you --
11:36:18 20 that you posted that she's -- that she hates gays
21 and lesbians, do you think that contributes to
22 people who are reacting violently like this?

23 MR. MANN: Objection. Lacks foundation. Calls
24 for speculation.

11:36:35 25 THE WITNESS: I think that they just -- they

11:36:37 1 commented how they felt.
2 BY MR. JONNA:
3 Q. Did you see comments like this in the
4 ensuing days and weeks after the incident?
11:36:49 5 A. On Yelp?
6 Q. On -- anywhere online, did you see hateful
7 comments directed towards Tastries are?
8 A. I saw hateful comments towards Tastries as
9 well as myself.
11:37:01 10 Q. What kind of hateful comments did you get
11 directed towards yourself?
12 A. I don't recall exactly, but they were very
13 ugly and pretty hateful.
14 Q. You never received any death threats,
11:37:22 15 though, correct?
16 MR. MANN: Objection. Lack of foundation.
17 THE WITNESS: I don't -- I don't recall if I --
18 I received death threats because I stopped looking
19 at comments.
11:37:34 20 BY MR. JONNA:
21 Q. Right. So I'm only asking about what you
22 looked at. Did you ever see a comment that
23 threatened physical violence against you?
24 A. I don't recall.
11:37:51 25 Q. Do you know someone named Jim Blair?

11:37:54

1 A. No.

2 Q. He says, "There are places in hell for
3 people like the people that own this bakery." Do
4 you agree with that statement?

11:38:04

5 A. No.

6 Q. Do you have a religious affiliation
7 currently?

8 A. I'm Catholic.

9 Q. Are you practicing?

11:38:11

10 A. No.

11 Q. Do you go to church?

12 A. No.

13 Q. Did you receive all the sacraments when
14 you were younger?

11:38:20

15 A. I was -- I was baptized, and I made my
16 communion, yes.

17 Q. Did you receive confirmation?

18 A. No.

19 Q. Did you receive first reconciliation?

11:38:33

20 A. No.

21 Q. Do you still consider yourself Catholic?

22 A. Yes.

23 Q. Do you know what the Catholic church
24 officially teaches about homosexual?

11:38:46

25 A. Yes, I do.

12:05:04

1 Q. Do you have any reason to believe that
2 they weren't willing to make a wedding cake for a
3 same-sex wedding?

4 A. Not to my knowledge.

12:05:11

5 Q. And, in fact, after the Tastries incident,
6 you were approached by a few different people who
7 offered to make wedding cakes for you for free,
8 including Tiers of Joy; isn't that true?

9 A. This is true.

12:05:22

10 Q. And you did actually receive a wedding
11 cake from your wedding from Tears of Joy for free,
12 correct?

13 A. Correct.

12:05:31

14 Q. And are you aware that there are other
15 bakers in Bakersfield who have been more than
16 willing to make a wedding cake for your wedding with
17 Mireya?

18 MR. MANN: Objection. Lack of foundation.
19 Assumes facts not in evidence.

12:05:45

20 THE WITNESS: Yes.

21 BY MR. JONNA:

22 Q. I just want to keep on going through this
23 document that I've had up here. Sorry I haven't
24 taken it down yet. Just a couple more.

12:06:08

25 Do you know a guy named Cody Hatfield?

12:06:12 1 A. No.

2 Q. He wrote here, "Bigoted scum, you -- like

3 you do not deserve to feel safe. Bricks through the

4 window can serve as excellent reminders that you are

12:06:23 5 not welcome in our modern society." That's on Bates

6 stamp CM1527. Do you see that?

7 A. I see it.

8 Q. Have you seen that message before today?

9 A. No.

12:06:35 10 Q. Do you condone messages like that?

11 A. No.

12 Q. Do you think that people should be

13 throwing bricks through Tastries' windows?

14 A. No.

12:06:47 15 Q. Do you know a gentleman named Matt Bjork,

16 B-j-o-r-k?

17 A. No.

18 Q. He says here, "I bet you like stuff like

19 this up your a-s-s," and then on -- and that's on

12:07:03 20 1533. On 1536, he says, "Those look disgusting. I

21 hope you get raped in the a-s-s." Do you see that?

22 A. Yes.

23 Q. What's your reaction to seeing these kind

24 of hateful comments?

12:07:24 25 A. They're ugly.

12:07:25 1 Q. Do you think that this was fair for Cathy
2 to receive comments like this after your incident?

3 A. Again, I received the same.

12:07:36 4 Q. Did you get statements like this one from
5 him saying, "Hope you get raped by multiple men"?
6 Do you see that? Do you ever get statements like
7 that? He also said, "I hope someone violently rapes
8 you. God knows you deserve it."

9 A. No.

12:08:00 10 Q. Is this something that you see frequently
11 in the -- these kind of hateful comments? I mean,
12 when someone disagrees on the issue of same-sex
13 marriage, do people in the LGBT community react like
14 this or is this kind of unusual?

12:08:17 15 MR. MANN: Objection. Lack of foundation.
16 Vague. Calls for speculation.
17 BY MR. JONNA:

18 Q. I'm just asking for your experience being
19 part of the community. Is this something that you
12:08:33 20 see frequently?

21 MR. MANN: Same objections.

22 BY MR. JONNA:

23 Q. You can answer the question.

24 A. Oh, I was just reading the comments still.
12:08:59 25 Sorry.

12:08:59 1 On Facebook, honestly, in any comment that
2 anybody puts up there, you're going to get
3 comments -- whether it be about her or about me or
4 about this person or that person, you're going to
12:09:22 5 have people taking one side or the other. And
6 that's -- and it's not just in the gay community,
7 it's across the board with anything that's out
8 there, even with the news, there's people that have
9 something to say.

12:09:41 10 BY MR. JONNA:

11 Q. What about this comment here, "I pray you
12 go bankrupt"? Do you know this lady, Tracy
13 Kawasaki?

14 A. No, I do not.

12:09:48 15 Q. "I wish -- I sincerely wish you homeless
16 and broke. You should be outcast, removed from
17 modern society."

18 Do you -- knowing that people do overreact
19 on social media as you said, do you think that
12:10:01 20 should guide how comments and posts are written,
21 like the one that you wrote that said that they hate
22 lesbians and gays? Maybe in light of all these
23 vitriolic remarks, do you think maybe you should
24 have toned down your rhetoric as well?

12:10:18 25 MR. MANN: Objection.

12:10:18

1 THE WITNESS: Again --

2 MR. MANN: Vague.

3 THE WITNESS: -- I was -- go ahead, Greg.

4 Sorry.

12:10:22

5 MR. MANN: Objection. Vague.

6 Go ahead, Mireya. I'm sorry, go ahead,

7 Eileen.

8 THE WITNESS: Again, at the time I was angry

9 and upset and hurt, so I was not thinking of the

12:10:38

10 comments that were going to take place.

11 BY MR. JONNA:

12 Q. Right. And I'm not asking about at the

13 time, I'm asking about -- it's July 29th, 2021,

14 you're looking at all this with a fresh set of eyes

12:10:49

15 now. Looking back, do you -- do you regret the way

16 you phrased those early posts?

17 MR. MANN: Objection. Vague.

18 THE WITNESS: I don't regret posting it. I do

19 regret not being able to possibly turn off the

12:11:07

20 comments to not have the mass comments that took

21 place.

22 BY MR. JONNA:

23 Q. Do you regret "liking" some of those

24 comments that were, you know, saying they want to

12:11:21

25 whoop her ass and things like that? Do you -- do

12:11:23 1 you think that was something you would have done
2 differently now?

3 MR. MANN: Objection. Vague.

4 BY THE WITNESS:

12:11:33 5 Q. I don't mean to distract you while looking
6 at this. I'm sorry, I can stop the share. Go
7 ahead. I'm sorry.

8 A. I'm all just like --

9 Q. I know. I know. It's not --

12:11:44 10 A. Sorry.

11 Q. No, it's my fault. Go ahead.

12 A. So you're asking me today -- can you ask
13 the question again?

14 Q. Like, do you -- looking back, do you
12:11:53 15 regret liking some of those more hateful comments
16 that were, you know, kind of expressing some desire
17 to have violence occur? Do you think maybe, looking
18 back, you shouldn't have done that?

19 MR. MANN: Objection. Lack of foundation.

12:12:09 20 States prior testimony. Vague.

21 THE WITNESS: Honestly, today, still I -- I
22 still feel the hurt, and-- four years down the road,
23 I'm still affected by what she did. It --

24 BY MR. JONNA:

12:12:25 25 Q. So you --

12:12:26

1 A. It doesn't go away on how I feel, how she
2 made me feel.

12:12:35

3 Q. So you -- even looking back today, like,
4 you -- you don't regret "liking" the comment that
5 said I -- "She needs to get her ass whooped"? You
6 think that was fine to do?

12:12:46

7 MR. MANN: Objection. Hold on. Hold on.
8 Objection. Misstates prior testimony. Lack of
9 foundation. Vague.

10 Go ahead.

11 THE WITNESS: I don't regret "liking" it. Do I
12 want her to get her ass whooped? No.

13 BY MR. JONNA:

12:12:55

14 Q. What do you want to happen to her? Do you
15 want her to be -- do you want an order from a judge
16 saying you have to make same-sex wedding cakes or --
17 or don't make cakes? Is that what you want?

18 A. I want her --

19 MR. MANN: Objection.

12:13:03

20 THE WITNESS: -- to follow the law.

21 BY MR. JONNA:

12:13:12

22 Q. Right. Well, you're going to tell the
23 judge what you think the law is -- or your lawyer
24 will, but what do you want her to do? Do you have a
25 specific -- if you could write down the order

12:13:14

1 yourself, what would you say the judge should order
2 her to do?

3 MR. MANN: Objection. Asked and answered.
4 Calls for legal conclusion.

5 BY MR. JONNA:

6 Q. I mean, if you don't know, that's fair,
7 too. I'm not forcing you to say what you want the
8 judge to do here. I'm just asking, if you know,
9 what kind of order are you looking for?

12:13:37

10 A. Again, I just -- I want -- I want -- I
11 want justice by her -- her following the law. And
12 if the law states that she should not discriminate
13 to anyone that walks in her business, whether it's
14 age, religion, sexual orientation, et cetera, then
15 she should provide a service to everyone and not
16 pick and choose who she decides to make a cake for.

12:14:02

17 Q. Do you think there should be a compromise
18 where, you know, people who find certain cakes or
19 certain artistic expressions morally offensive, that
20 they should be able to refer those to other
21 bakeries? I mean, you don't think that's a fair
22 compromise?

12:14:20

23 MR. MANN: Objection. Calls for legal
24 conclusion. Lack of foundation. Incomplete
25 hypothetical. Asked and answered.

12:14:29

12:14:30

1 BY MR. JONNA:

2 Q. Like, for -- let me just rephrase that.
3 We're not talking about a situation where there's no
4 one available to make your cake. Obviously there's
5 many bakers in Bakersfield who would be very happy
6 to make a wedding cake for -- for a gay marriage.
7 But -- so we're not talking about that kind of
8 extreme scenario where there's no other
9 alternatives. But in this scenario where there's
10 plenty of other bakers willing to make your cake?
11 Why is it not a fair compromise, the one that she
12 came up with?

12:14:37

12:14:51

13 MR. MANN: Same objections.

12:15:13

14 THE WITNESS: Because we were going there for
15 services, not another bakery. Again, we had no idea
16 of her religion. It had nothing to do with that.
17 We went in there to purchase and make a transaction
18 for a cake. So, I mean, it's not like going in and
19 getting a pair of shoes and going, "Oh, you need to
20 pick them up at the other Sketchers because we don't
21 have the size here."

12:15:45

22 BY MR. JONNA:

23 Q. What if -- let's just stop for a second.
24 What if she did actually say publicly on her
25 website, you know, "I'm a devote Christian. There

12:15:52

01:32:03

1 allowed to pick and choose what she wants to serve,
2 whether it be cupcakes or cake.

3 BY MR. JONNA:

01:32:15

4 Q. I want to finish the last exhibit we were
5 looking at, which was -- let's see. It's still 564,
6 so -- I'm almost done with these.

7 Do you know a gentleman named Jonathan
8 Kaplan?

9 A. No.

01:32:47

10 Q. I want to -- have you seen this -- this
11 post that he made before? It was on August 30th.
12 Let me know -- take a look at it, let me know if you
13 recognize it. The Bates stamp is CM1876.

14 Have you had a chance to read that?

01:34:06

15 A. Yeah.

16 Q. Do you -- do you recognize this -- this
17 comment?

18 A. No.

19 Q. What's your reaction to reading this?

01:34:14

20 A. Again, it's that person's opinion. I
21 can't control what people were saying.

22 Q. Do you think this is appropriate?

23 MR. MANN: Objection.

24 THE WITNESS: No.

01:34:26

25 MR. MANN: Vague.

01:34:26

1 BY MR. JONNA:

2 Q. What's that?

3 A. No.

4 Q. Do you think this is offensive?

01:34:37

5 A. Yes.

6 MR. MANN: Objection. Vague.

7 BY MR. JONNA:

8 Q. I'm sorry, I -- I don't know if you
9 answered or not.

01:34:50

10 A. Can you repeat the question?

11 Q. Do you think this is offensive?

12 A. It can be --

13 MR. MANN: Objection.

14 THE WITNESS: -- yeah.

01:11:09

15 BY MR. JONNA:

16 Q. Do you -- do you remember if you submitted
17 a second declaration in this case after the first
18 one we looked at?

19 A. I don't recall.

01:35:10

20 (Whereupon, Exhibit 565 was marked
21 for referenced.)

22 BY MR. JONNA:

23 Q. Okay. Let's take a look at Exhibit 565.
24 This is a picture of Cathy Miller's car broken into.
01:35:38 25 That's broken glass right there. This is CM1392.

01:35:44 1 Did you know that her car was broken into while this
2 case was in the news?

3 A. No. How would I know that?

01:36:11 4 Q. Do you know anyone named Adam Ramos and
5 Ted Freitas?

6 A. No.

7 Q. When did the -- when did the DFEH first
8 contact you?

01:36:38 9 MR. MANN: Objection. Assumes facts not in
10 evidence. Lack of foundation.

11 THE WITNESS: I don't recall.

12 (Whereupon, Exhibit 567 was marked
13 for referenced.)

14 BY MR. JONNA:

01:36:47 15 Q. Okay. So let me -- let me show you an
16 article, Exhibit 567. This is an article entitled,
17 "Lesbian couple rejected by Tastries Bakery says
18 they will pursue legal action." You recognize this?
19 This is an article that came out August 31, 2017.

01:37:23 20 A. Yes.

21 Q. Do you --

22 Second page of the article says -- sorry,
23 one second -- "Whitney Weddell, a leader in the
24 Bakersfield LGBTQ community, said the Department of
01:37:44 25 Fair Employment and Housing, which enforces the

01:44:13 1 world to know about what you experienced at
2 Tastries? You wanted that to become -- to become a
3 viral story, right?

4 A. I wanted --

01:44:21 5 MR. MANN: Objection.

6 THE WITNESS: -- the world --

7 MR. MANN: Misstates prior testimony. Lack of
8 foundation. Vague.

9 Go ahead, Eileen.

01:44:29 10 THE WITNESS: I was upset at the time. I
11 wasn't thinking about the world.

12 (Whereupon, Exhibit 568 was marked
13 for referenced.)

14 BY MR. JONNA:

01:44:33 15 Q. You know, let's take a look at
16 Exhibit 568. This is another post where you shared
17 that story, and then you tagged 87 people. Clearly
18 you wanted this story to go viral, I mean, you don't
19 deny that, right?

01:44:51 20 A. Again --

21 MR. MANN: Objection. Asked and answered.

22 THE WITNESS: Again, it was friends and family
23 that I texted to.

24 BY MR. JONNA:

01:44:59 25 Q. Right. So you wanted the story to gain

01:45:04

1 attention, you wanted your friends and family to
2 know about it. How many -- let me ask you this:
3 How many times have you posted something in your
4 life where you've tagged 87 people?

01:45:17

5 A. Several.

6 Q. How many?

7 A. Several.

01:45:25

8 Q. Okay. No, that's -- that's -- I mean,
9 it's a relevant question because I don't know. Is
10 that something that you do a lot, tagging lots of
11 people?

12 A. It depends on what it is.

01:45:39

13 Q. Have you -- like, give me another example
14 of a time where you tagged this many people on a --
15 on a post?

01:46:12

16 A. I tagged pretty much everybody in my
17 friends list on basically different ailments and --
18 that had to deal with mental illness, dealing with
19 RA, and -- and it was all one -- one post dealing
20 with the RA and the type of ailments that I have,
21 I've tagged everybody in my Facebook. It just --

22 Q. What's RA? I'm sorry.

23 A. Rheumatoid arthritis.

24 Q. Oh, okay. So you --

01:46:30

25 A. It -- it has RA, it has Graves' disease,

01:46:34

1 it has Lupus. It's more of, like, an awareness --
2 it was, like, an awareness thing. I don't recall
3 other posts, but, I mean, I'm sure there was others.

01:46:54

4 Q. Did you ever think about posting something
5 encouraging people to just tone down their rhetoric
6 maybe or calm down with the violent statements or
7 the hate mail? Did you ever consider doing
8 something like that?

9 MR. MANN: Objection. Vague.

01:47:06

10 THE WITNESS: Again, after the initial post, I
11 didn't look on my Facebook at most of the comments
12 that went down.

13 BY MR. JONNA:

01:47:25

14 Q. Right. How about now with the benefit of
15 hindsight, having seen those posts, do you think
16 maybe it would have been a smart idea to turn off
17 the, you know, comments, or post something saying,
18 "Hey, everybody, we're not happy with what happened,
19 but please don't react violently and negatively,
20 and, you know, let's be civil about this"? Do you
21 think that would have been appropriate now with the
22 benefit of hindsight?

01:47:43

23 MR. MANN: Objection. Asked and answered.
24 Calls for speculation.

01:47:55

25 THE WITNESS: Again, if I knew as much as I

01:47:57 1 know now about Facebook, I could have turned off the
2 comments.

3 BY MR. JONNA:

4 Q. Okay. Do you know that multiple Tastries
01:48:09 5 employees quit shortly after the incident because
6 they were bombarded with hateful phone calls and
7 e-mails and pornographic images? Are you aware of
8 that.

9 A. No.

01:48:18 10 MR. MANN: Objection.

11 THE WITNESS: How would I know?

12 MR. MANN: Lack of foundation. Assumes facts.

13 BY MR. JONNA:

14 Q. Are you aware that people were sending
01:48:30 15 pornographic images of -- of nude men engaging in
16 homosexual acts to Tastries Bakery shortly after
17 this became viral?

18 MR. MANN: Objection. Assumes facts. Lack of
19 foundation.

01:48:43 20 THE WITNESS: No.

21 BY MR. JONNA:

22 Q. Are you aware that they were sending
23 images of bestiality, pornographic images to Cathy
24 Miller and Tastries Bakery shortly after this story
01:48:53 25 became viral?

01:48:54

1 MR. MANN: Objection. Assumes fact. Lack of
2 foundation.

3 THE WITNESS: No.

4 BY MR. JONNA:

01:48:59

5 Q. You're -- you're aware now that she --
6 that Cathy Miller received threats of violent rape
7 and -- and other violent acts, but were you aware of
8 that before today?

9 A. No.

01:49:29

10 Q. Are you aware that Cathy had to hire a
11 security guard to protect herself and her family and
12 her employees and customers --

13 MR. MANN: Objection.

14 BY MR. JONNA:

01:49:37

15 Q. -- after this story became viral?

16 MR. MANN: Objection. Assumes facts.

17 THE WITNESS: No.

18 BY MR. JONNA:

19 Q. Do you know someone named Terry Nardiello?

01:50:12

20 A. No.

21 Q. How about Rose Leonard?

22 A. No.

23 Q. How about Dave Morris Hath?

24 A. No.

01:50:46

25 Q. How about Finney Gage?

01:50:49

1 A. No.

2 Q. How about Armando Garcia?

3 A. No, sir.

4 Q. How about Jordan Martin?

01:51:10

5 A. No.

6 Q. You know Lizette Aleman, though, right?

7 A. Who?

8 Q. Lizette Aleman?

9 A. Lizette?

01:51:58

10 Q. Yes.

11 A. That name doesn't ring a bell.

12 Q. From Tiers of Joy. She's partners with
13 Jessica Criollo.

14 A. I only really talked to Jessica. I know
01:52:14 15 she had two or three other girls that worked with
16 her.

17 Q. Were -- were either Jessica or any of the
18 girls who worked with her at your wedding?

19 A. She had one or two others with her, but,
01:52:26 20 again, I only talked to Jessica mostly. If I talked
21 to the other girls, I don't recall their names.

22 Q. What was Jessica doing at your wedding?

23 A. They set up the cake bar.

24 Q. What -- whose idea was it for you to have
01:52:51 25 a cake bar?

02:22:41 1 MR. MANN: Objection. Lack of foundation.
2 (Whereupon, Exhibit 672 was marked
3 for referenced.)
4 BY MR. JONNA:
02:22:46 5 Q. Take a look at Exhibit 672. This is a
6 declaration from a lady named Reina Benitez. Do you
7 know who Reyna Benitez is?
8 A. No.
9 Q. Have you ever heard the name Reina Benitez
02:23:14 10 before today?
11 A. The only time I've heard of her name was
12 Greg asking me.
13 Q. Have you ever heard of Party Palace?
14 A. No.
02:23:30 15 Q. I want you to please take a look at
16 paragraph 4 and read it to yourself and let me know
17 when you're done.
18 A. Part of it is missing, but...
19 Q. Paragraph 4?
02:23:50 20 A. Well, because of the -- the --
21 MR. MANN: It's covered by the video.
22 THE WITNESS: The screen, it's covered by the
23 video.
24 BY MR. JONNA:
02:23:58 25 Q. Oh, wait a minute. That's -- it's not

EXHIBIT 16

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN - METRO DIVISION

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

Plaintiff,

vs.

**CATHY'S CREATIONS, INC. dba
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

CERTIFIED COPY

**VIDEOTAPED DEPOSITION OF
MIREYA RODRIGUEZ-DEL RIO**

Taken Via Zoom Videoconference

Wednesday, July 28, 2021 at 9:55 a.m.

Reported by: Jennifer E. Hennagin, CSR #13559

JOB No. 21-101794

1 A. No.

2 Q. You just told her we want you to -- we are
3 expecting you to make our cake. I mean, you agreed to
4 make our cake. Isn't that -- you were -- let me strike
11:50:49 5 that question.

6 You had decided that Tastries was going to
7 make your wedding cake because you were happy with
8 Rosemary's recommendation and you were happy with the
9 price; correct?

11:50:58 10 A. Yes.

11 Q. And that was before you tasted the cakes;
12 correct?

13 A. Just the price sounded right for us.

14 Q. Right. And that was before you tasted the
11:51:10 15 cakes; correct?

16 A. Correct.

17 Q. Okay. Do you remember visiting Party Palace?

18 A. No. I haven't heard of it.

19 Q. Have you ever heard of it during this lawsuit?

11:51:25 20 A. After, yes. But before that, no.

21 Q. What did you hear about it during this
22 lawsuit?

23 A. That we went there to look at the venue and
24 that we were recording our something like that.

11:51:43 25 Q. Do you remember meeting someone named Reina

1 that owns Party Palace?

2 A. No. Not at all.

3 Q. So that's just -- as far as you're concerned,

4 that's all made up? That's not true?

11:51:56 5 A. That's not true.

6 Q. Okay. Do you have any idea why someone would
7 make that up?

8 A. I do not.

9 (Exhibit 526 previously marked.)

11:52:05 10 Q. (By MR. JONNA) Sorry. Just one second.
11 Let's take a look at -- one second. Hold on. Let's
12 take a look at Exhibit 526. All right. This is a
13 document produced by DFEH with the Bates stamp on the
14 bottom 26.

11:53:55 15 Have you seen this document before?

16 A. I don't recall seeing it.

17 Q. Well, I see -- okay. There's a bunch of times
18 on the left and there's names signed up and there's
19 phone numbers and confirmed. Here it says Patrick
11:54:19 20 and -- Patrick Grijalva and Sam Salazar 12:15.

21 Do you see that?

22 A. Yes.

23 Q. And then two columns below that, three, it
24 says Mireya Rodriguez-Del Rio. Do you see that? At
11:54:31 25 one o'clock.

1 MR. MANN: Objection. Objection. Vague.
2 Incomplete hypothetical.

3 A. As long as they're obeying the law and it's a
4 public service, public business.

01:26:23 5 (Exhibit 555A previously marked.)

6 Q. (By MR. JONNA) Okay. Let's take a look at
7 Exhibit 555A. This is Eileen's Facebook post. Sorry.
8 Review. Review of Tastries on Facebook. It's DF --
9 sorry -- CM1903 is the Bates number.

01:27:08 10 And it says, "Because the owner is a bigot and
11 hates lesbian and gays and refuses service to them.
12 Apparently gay and lesbian money looks different and
13 spends different. She must be a Trump supporter."

14 Do you see that?

01:27:19 15 A. I see it. Yes.

16 Q. Do you remember seeing this before, while
17 Eileen was drafting this?

18 A. No.

19 Q. Have you seen it before today?

01:27:30 20 A. Yes.

21 Q. Does this refresh your memory as to what it
22 means to be a bigot?

23 A. I don't use that word, so then I -- I don't
24 know.

01:27:46 25 Q. Is it your position that Cathy Miller hates

1 lesbians and gays?

2 A. I don't know if she hates them. I don't know
3 her personally.

4 Q. Do you think that not believing in same-sex
01:28:03 5 marriage means you hate lesbians and gays?

6 MR. MANN: Objection. Asked and answered.
7 Vague.

8 A. Not to me.

9 Q. (By MR. JONNA) Would you agree that this is
01:28:16 10 not really a fair statement?

11 MR. MANN: Objection. Argumentative.

12 A. That's what my wife thinks.

13 Q. (By MR. JONNA) Do you think it's fair?

14 MR. MANN: Same objection.

01:28:32 15 A. I really can't say.

16 Q. (By MR. JONNA) Do you think a statement like
17 this could incite violence? If someone is very, you
18 know, in favor of supporting the LGBT community and
19 they see that someone hates lesbians and gays, do you
01:28:55 20 think a statement like this could incite violence and
21 cause people to react in a violent way towards Tastries
22 Bakery?

23 MR. MANN: Objection. Calls for speculation.
24 Lack of foundation.

01:30:29 25 A. I don't know what they would think.

1 Q. (By MR. JONNA) What do you think? Do you
2 think that a statement like this could cause people to
3 react violently?

4 MR. MANN: Objection. Calls for speculation.

01:30:56 5 A. I don't know what I would say, what I think.

6 Q. (By MR. JONNA) But you agree that you
7 wouldn't have posted something like this because you
8 could never say whether they actually hate lesbians and
9 gays? You would not write this; is that right?

01:31:19 10 A. Yeah. I wouldn't -- I wouldn't use those
11 words.

12 Q. Okay. Are you aware that this review still
13 shows up on Facebook to this day?

14 A. I have not looked into it.

01:31:38 15 Q. Do you think it should --

16 A. I don't know.

17 Q. Do you think it should be taken down?

18 A. I don't know.

19 Q. Take a look at Exhibit -- well, actually, let
01:32:13 20 me ask you a question before we look at another
21 exhibit.

22 Do you remember who first contacted the media
23 after your visit to Tastries?

24 MR. MANN: Objection. Vague.

01:32:34 25 MR. JONNA: Okay. Let me just break it down.

1 Q. (By MR. JONNA) There was a lot of media
2 coverage surrounding your visit to Tastries. Is that a
3 fair statement?

4 A. I don't -- I don't remember too much media.

01:32:47 5 Q. Okay. Do you remember any media?

6 A. I remember some. Yes.

7 Q. Do you remember if they contacted you first or
8 did you guys contact them first?

9 A. We didn't make no contact with them. They
01:33:02 10 will contacted us.

11 (Exhibit 556 previously marked.)

12 Q. (By MR. JONNA) Okay. Let's take a look at
13 another exhibit. 556. Okay. This is a text message
14 string between Sam, Mireya, and Patrick. And it's
01:33:43 15 Bates stamped on the first page SAM6. So it was
16 produced by Sam. This is on August 26, 2017.

17 And you say -- Mireya says, "They should have
18 both your names."

19 And then Sam -- I believe Sam says, "I already
01:34:09 20 selected your cake. You don't need to come."

21 Do you know what this refers to?

22 A. I don't remember.

23 Q. So do you remember at one point giving Sam the
24 authority to just select the cake without your input?

01:34:31 25 MR. MANN: Objection. Lack of foundation.

1 sorry. Okay. I'm skipping some messages, skipping
2 some exhibits.

3 (Exhibit 560 previously marked.)

4 Q. (By MR. JONNA) I'll go to 560 now, though.

5 So this is another text message string. This one is
6 Bates stamped SAM57. So it was produced by Sam.

7 And Mireya -- this is August 26, 2017, at
8 6:41 p.m., and it says -- you say, "Wow. This is just
9 out of control."

10 Do you remember what you were referring to?

11 A. Probably just everything that was going on.

12 Q. Do you know what was going on at Tastries at
13 the time?

14 A. At that time that the text message says? No.

15 Q. Are you aware that right away, like around
16 1:45 p.m., their phone was ringing off the hook?

17 A. No.

18 Q. Are you aware that their Facebook, Yelp,
19 e-mails and phones were bombarded with hate speech?

20 MR. MANN: Objection. Lack of foundation.
21 Vague.

22 A. I wasn't there, so no. I don't know. I
23 didn't know at that time.

24 Q. (By MR. JONNA) Are you aware that around
25 three o'clock they had to start taking down all social

1 media, that they were getting calls from the news media
2 every 30 minutes with horrible phone calls, disgusting
3 e-mails? Did you ever hear about any of that?

01:51:08 4 A. I found out later, but not at that exact
5 moment when everything was happening there.

6 Q. How did you find that out later?

7 A. Just the text messages like with Sammy. They
8 mention about the news getting in contact with him.

9 Q. Were you -- did you -- okay.

01:51:29 10 So you are referencing the news getting in
11 contact with Sammy, but did you also -- were you made
12 aware of all the hate mail and hateful comments and
13 remarks that were directed towards Tastries?

01:51:45 14 A. I read some of it on the -- when going through
15 Facebook or things like that.

16 Q. Were you happy that that was happening?

17 A. No.

01:52:00 18 Q. How did you react when you saw all the hate
19 mail directed towards Cathy Miller and Tastries and
20 hateful comments?

21 A. I believe that's the reason why I said that
22 everything was out of control.

01:52:18 23 Q. Do you think that comments like those of
24 Eileen's, which said that they hate lesbians and gays,
25 do you think those contributed to the hate mail and the

1 nasty remarks that followed?

2 MR. MANN: Objection. Calls for speculation.
3 Lacks foundation.

4 A. I don't know if that was a reason. I don't
5 know. People do however they interpret things.

6 Everybody understands a little different.

7 (Exhibit 562 previously marked.)

8 Q. (By MR. JONNA) Okay. I'm going to pull up
9 Exhibit 562. This is a 23 ABC News article titled
10 "Tastries Bakery Under Fire After Reportedly Refusing
11 to Serve Gay Couple."

12 Do you remember seeing this article?

13 I'm sorry. Go ahead.

14 A. I don't know if it was that specific one, but
15 it was just things that would pop up on Facebook or on
16 television, if I had the television on.

17 Q. This is posted at 4:53 the same day.
18 4:53 p.m.

19 Did you guys contact 23 ABC News?

20 A. We did not.

21 Q. Were you guys looking for media attention?

22 A. No.

23 (Exhibit 563B previously marked.)

24 Q. (By MR. JONNA) Okay. Let's take a look at
25 Exhibit 563B, I guess.

1 This is a -- who is Andrea Del Rio, by the
2 way?

3 A. My sister-in-law.

4 Q. So that would be Eileen's sister?

01:54:23 5 A. Correct.

6 Q. She added a new photo to Ellen DeGeneres's
7 timeline.

8 Do you know who Ellen DeGeneres is?

9 A. Yeah. A TV host.

01:54:34 10 Q. And she's a lesbian; right?

11 A. Correct.

12 Q. And she added this news article about your
13 experience at Tastries to her Facebook timeline; is
14 that right? Do you see that?

01:54:56 15 A. I see that on the screen. Yes.

16 Q. Why -- do you have any idea why Andrea Del Rio
17 decided to post this photo on Ellen DeGeneres's
18 timeline?

19 A. No.

01:55:16 20 Q. Did you know she did this before today?

21 A. I don't recall.

22 Q. You guys weren't looking for media attention,
23 but other people were looking for media attention for
24 you?

01:55:35 25 MR. MANN: Objection. Calls for speculation.

1 Q. (By MR. JONNA) Is that your testimony?

2 A. Can you repeat it again?

3 Q. You guys -- you claim that you were not

4 looking for media attention, but clearly there were

5 people close to you that were looking for media

6 attention for you. Would you agree with that?

7 MR. MANN: Objection. Calls for speculation.

8 A. I mean, we weren't looking for it. What other

9 people do, it was their choice to do it, not that we

10 gave them the okay to do it.

11 (Exhibit 563C previously marked.)

12 Q. (By MR. JONNA) Okay. Let's take a look at

13 563C. This is a -- it was produced by -- Bates stamped

14 CM1111. There's a page called Whitney Equality Weddell

15 suggesting to people that they should review Tastries

16 on Yelp, Google, and Facebook. And here's their

17 Facebook page, avoid profanity, rate them.

18 Do you see that?

19 A. I see it. Yes.

20 Q. Have you seen this before today?

21 A. No.

22 Q. Okay. Do you know if Whitney Weddell did this

23 at your direction?

24 A. We didn't -- I didn't direct her to do

25 anything.

1 (Exhibit 564 previously marked.)

2 Q. (By MR. JONNA) Okay. I'm going to show you
3 Exhibit 564. This is Bates stamped CM1112. And it
4 says, "You pretty much F'd yourselves by being Nazi
5 bigots. Not in my town you don't. Turn away gay
6 couples who are ready and willing to give you their
7 hard-earned money. Then I see you take down your
8 Facebook page instead of handling it head on. Cowardly
9 and bigoted. Soon out of business."

10 Do you see that?

11 A. I see it. Yes.

12 Q. Do you think that Cathy Miller and Tastries
13 should be out of business?

14 A. No.

15 Q. Do you think they should be out of business if
16 they choose not to do things that they say violates
17 their sincere religious beliefs?

18 MR. MANN: Objection. Vague. Lack of
19 foundation.

20 A. It doesn't have to do anything with me. So
21 it's her choice, if that's what she wants to do.

22 Q. (By MR. JONNA) This was posted at 3:26 p.m.,
23 the same day that you guys were at Tastries; is that
24 right?

25 A. That's what it says on the post, on the paper.

1 Q. Do you agree with the first sentence here?
2 "You pretty much F'd yourselves by being Nazi bigots."

3 A. I don't agree or disagree.

4 Q. When you guys started seeing comments like
5 this, did you ever take any action to calm people down,
6 sort of lower the temperature a little bit?

7 MR. MANN: Objection. Assumes facts. Lack of
8 foundation.

9 A. I tried not to comment. I don't believe I
10 made any comments.

11 Q. (By MR. JONNA) Okay. If you go down a little
12 bit further, there's another comment by some guy
13 named -- oh, by the way, I should ask. Do you know who
14 around Arnaldo -- sorry.

15 Do you know who Serenity H is that wrote that
16 other comment?

17 A. Serenity. No. The name doesn't sound
18 familiar.

19 Q. Okay. How about do you know someone named
20 Matthew Sullivan?

21 A. No.

22 Q. He says here, "F them. They're about to feel
23 the wrath."

24 Do you see that?

25 A. I see it. Yes.

1 Q. And do you agree with that statement?

2 A. I don't agree or disagree with it. That's
3 what he thinks.

4 Q. Okay. Let's go down to the Bates stamp 1302.
5 Kourtney. She says here, "Hi, Cathy Miller. I hope
6 you get your ass beat for being a rude, judgmental
7 bitch."

8 Do you see that?

9 A. Yes.

10 Q. Do you know who this person is, Kourtney?

11 A. No.

12 Q. Do you agree with that statement?

13 A. I don't agree or disagree. That's her --
14 that's Kourtney saying that, not me.

15 Q. So you don't disagree that she should get her
16 ass beat?

17 MR. MANN: Objection. Misstates --

18 A. I don't agree or disagree.

19 MR. MANN: Misstates prior testimony.

20 Mischaracterizes prior testimony.

21 Go ahead, Mireya.

22 A. I don't agree or disagree. That's her
23 opinion.

24 Q. (By MR. JONNA) Okay. Do you know someone

25 named Jim Blair?

1 A. No.

2 Q. He says here, "What Christian values you have.
3 Not. You're hateful, deplorable, fake Christians.
4 There are places in hell for people like the people
5 that own this bakery."

6 Do you see that?

7 A. Yes.

8 Q. Do you think that -- do you agree with this
9 statement, too?

10 A. I don't agree or disagree with it.

11 Q. How about someone named Cody Hatfield? Do you
12 know who that is?

13 A. No.

14 Q. Cody said, "Burn this F-ing bakery to the
15 ground. Bigots don't deserve to feel safe. Here's
16 hoping you get run out of business and out of town soon
17 enough."

18 Do you agree with that statement?

19 A. I don't -- like I said, I don't agree or
20 disagree. That's what they want to say. I didn't tell
21 them to say that.

22 Q. But you did -- you and Eileen -- I should say
23 Eileen did tell them that they hate gays and lesbians.
24 Didn't she say that?

25 A. That's what she put on her Facebook.

1 Q. Right. You don't think that contributes to
2 this attitude of violence and hate?

3 MR. MANN: Objection. Calls for speculation.
4 Lack of foundation. Lack of evidence.

02:03:40 5 Q. (By MR. JONNA) Are you going to answer the
6 question?

7 A. Everyone can interpret things however they
8 want. That's all.

02:03:55 9 Q. You should be free to say whatever you want.
10 And if someone acts violently in response, that's their
11 own problem?

12 MR. MANN: Objection. Misstates prior
13 testimony. Lack of foundation.

02:04:06 14 Q. (By MR. JONNA) How about this statement from
15 Cody Hatfield? "Bigoted scum like you do not deserve
16 to feel safe. Bricks through the window can serve as
17 excellent reminders that you are not welcome in our
18 modern society."

19 Do you agree with that?

02:04:18 20 A. I don't agree that they should do any of that,
21 but I can't control what they say or do.

22 Q. Do you know a gentleman named Matt Bjork or
23 Jork? B-j-o-r-k.

24 A. No.

02:04:39 25 Q. He says, "You're going to get gang raped."

1 Do you see that?

2 A. Yes.

3 Q. Do you think that's an appropriate statement?

4 A. I don't think it's appropriate.

02:04:51 5 Q. Do you know that there's a Tastries employee

6 who actually claims she was raped after this incident?

7 A. No, I did not know.

8 Q. Is this the first you've heard of that?

9 A. Yes.

02:05:07 10 Q. What's your reaction to hearing that?

11 A. I have no clue if it was related or not

12 related. I don't know.

13 Q. What if I were to tell you that the person who

14 raped the employee made specific reference to this

02:05:25 15 case? Would that change your opinion?

16 MR. MANN: Objection. Lack of foundation.

17 Calls for speculation.

18 A. I can't help what happens and what people say.

19 Q. (By MR. JONNA) Do you feel bad to hear that,

02:05:44 20 though, or does that not bother you?

21 A. Oh, I'm a human being. Yes, it bothers me. I

22 live in this community.

23 Q. What about this one from Matt? "Those look

24 disgusting. I hope you get raped in the a-s-s."

02:05:58 25 Do you see that?

1 A. Yes.

2 Q. That's not appropriate, either. You would
3 agree, I'm sure.

4 And then another comment by the same
5 gentleman. "Hope you get raped by multiple men."

6 Do you see that?

7 A. Yes.

8 Q. It says, "I hope someone violently rapes you.
9 God knows you deserve it."

10 Do you see that?

11 A. Yes.

12 Q. There's a lot more, but I think you get the
13 point.

14 MR. MANN: I thought depositions were about asking
15 questions, not making points.

16 MR. JONNA: Well, questions make points.

17 MR. MANN: Ask your questions about something
18 she did, not what random internet trolls did.

19 MR. JONNA: Well, I'll ask my questions,
20 Gregory. Thank you, though.

21 Q. (By MR. JONNA) Do you know Jonathan Kaplan?

22 A. No.

23 Q. I don't want to read this because it's so
24 offensive, but I want you to read it and tell me when
25 you're done.

1 Have you had a chance to read it?

2 A. Still reading.

3 Finished reading.

4 Q. It's Bates stamped CM1876.

5 What's your reaction to reading that?

6 A. I -- it's disgusting to me. I mean, I don't
7 agree with what a lot of people have said or done or
8 anything. But like I said, I don't control them. So I
9 have -- you know, I feel bad about it, but I do also
10 feel bad that I was discriminated on. And that was
11 their choice to put all that info on there.

12 And, you know, for me, it was just me feeling
13 the way that I felt that day about not being able to
14 get a cake from -- or at least from a place that I
15 thought was more welcoming and warm and everything, and
16 to just being said no, just because you're a lesbian,
17 basically. Not -- those words not being used, but, you
18 know, it was discrimination. And I didn't like the
19 feeling that day, either, what I was reading now.

20 Q. Are you aware that Tastries Bakery serves
21 lesbians on a regular basis for all kinds of cakes and
22 products and gays and lesbians are regular customers
23 there, employees? Are you aware of that?

24 A. Then what was --

25 MR. MANN: Objection. Assumes facts not in

1 just going for a tasting that day. I could have went
2 to another place, but Rosemary made us feel warm and
3 welcome and the price just was right for us.

4 (Exhibit 565 previously marked.)

02:14:20 5 Q. (By MR. JONNA) Let's take a look really quick
6 at Exhibit 565. Have you seen -- this is a photo of
7 Cathy Miller's car that was broken into. That's
8 shattered glass right there. This was after -- this
9 was during one of the days that there was lots of news
02:14:49 10 coverage on this case.

11 Did you ever hear about Cathy Miller's car
12 getting broken into?

13 A. No.

14 Q. Did you know that she was the victim of crime
02:15:07 15 as a result of this media publicity in this case?

16 A. Can you say that again?

17 Q. Did you know that she was the victim of crime
18 as a result of the media publicity surrounding this
19 case?

02:15:27 20 A. I learned to know after.

21 Q. And how did you react when you learned that?

22 A. I wasn't happy about it. I'm not happy that
23 anybody could get broken into or have damaged goods.

24 (Exhibit 567 previously marked.)

02:16:20 25 Q. (By MR. JONNA) There's another article I want

02:16:48 1 to show you really quick. It's Exhibit 567. This is a
2 article entitled "Lesbian Couple" -- I'm sorry. One
3 second. Yeah. "Lesbian Couple Rejected by Tastris
4 Bakery Says They Will Pursue Legal Action." August 31,
5 2017.

6 Do you see that?

7 A. Yes.

02:17:03 8 Q. On the next page, it says, "Whitney Weddell, a
9 leader in the Bakersfield LGBTQ community, said the
10 Department of Fair Employment and Housing, which
11 enforces the Unruh Act, has already contacted the
12 couple."

13 Do you see that?

14 A. Yes.

02:17:11 15 Q. Is that -- tell me about that. Who from the
16 DFEH contacted you back in August of 2017?

17 A. I -- they didn't contact me. I believe they
18 contact my wife, Eileen. I don't recall a name.

02:17:39 19 Q. What do you remember about that initial
20 contact? What did they tell you?

21 A. I didn't talk to them, so I don't know.

22 Q. Do you remember if Eileen told you about the
23 call? What did she tell you about it?

24 A. I don't remember right now.

02:17:57 25 Q. Do you know Ted Freitas and Adam Ramos?

1 A. Can you repeat the first name, the person?

2 Q. Ted Freitas and Adam Ramos -- Ramos?

3 A. They don't sound familiar.

4 (Exhibit 568 previously marked.)

02:18:29 5 Q. (By MR. JONNA) Okay. I'm going to show you
6 Exhibit 568 now. This is a snapshot of a Facebook post
7 Eileen wrote in August of 2017 with the same story and
8 she tagged 87 people in this story on Facebook.

9 Does that refresh your memory as to whether
02:19:23 10 Eileen at least was looking for attention and press
11 coverage and publicity surrounding this incident?

12 A. I don't know the reasons behind her post.

13 Q. Why do you -- do you have a Facebook account?

14 A. I do.

02:19:43 15 Q. Why do you normally tag people on Facebook?

16 What's the reason? What do you understand the reason
17 to be to tag like 87 people on a post?

18 MR. MANN: Objection. Assumes facts. Lack of
19 foundation.

02:20:18 20 A. The reason to tag people is to share the
21 information that we want them to know, but I don't know
22 specific if that was something that she -- that was the
23 reason why she posted.

24 Q. (By MR. JONNA) Would you think maybe she

02:20:36 25 wanted this story to go viral? It was posted publicly,

1 tagged 87 people. Do you think that was part of her
2 thinking?

3 MR. MANN: Objection. Calls for speculation.
4 Assumes facts not in evidence. Lacks foundation.

02:20:50 5 A. I don't know her reasons.

6 (Exhibit 569 previously marked.)

7 Q. (By MR. JONNA) Okay. Let's take a look at
8 569. This is a Facebook page from a gentleman named
9 Ted Freitas.

02:21:13 10 Do you recognize these faces here?

11 A. I can't see anything yet.

12 Q. Oh, I apologize. I forgot to press the
13 button. I'm sorry. Hold on.

14 All right. Ted Freitas. I don't know which
02:21:25 15 one is Ted, but do you recognize either of these
16 people?

17 A. I don't.

18 Q. Well, I guess the same -- on August 26th, they
19 write this long comment about Tastries. Yeah.

02:21:42 20 Tastries Bakery. Basically with a similar story where
21 she's going to transfer the order to Gimme Some Sugar
22 and they say this is discrimination. Love is love.

23 Did you ever see this post before?

24 A. I can't say right now if I did or not.

02:22:08 25 Q. Do you have a vague recollection of hearing

1 about this other similar incident at Tastries?

2 A. I probably did. At this moment, I just don't
3 remember.

02:22:32 4 Q. Well, then he has a long comment on page 3 of
5 this exhibit, which I'm not going to read the whole
6 thing. It's a very long comment.

7 But basically in the very beginning he says,
8 "The intent of my post was never meant to harm anyone."
9 And then he goes over what happened at Tastries. And
02:22:47 10 at the very end is basically he doesn't think Tastries
11 should be shut down and he kind of doesn't like the way
12 things are going out of proportion.

13 Did you ever see this comment at the time?

14 A. No. I think this is the first time I've seen
02:23:10 15 it. I don't remember seeing it before.

16 Q. Okay. I won't go through the whole thing.

17 But you guys never did anything like this?
18 You never tried to tone down the rhetoric or, you know,
19 calm people down after you saw some very, very negative
02:23:30 20 and violent reactions? You didn't do anything like
21 this to try to lower the temperature or anything like
22 that; is that right?

23 MR. MANN: Objection. Assumes facts not in
24 evidence. Lacks foundation. Misstates prior
02:23:42 25 testimony. Calls for speculation.

1 Q. (By MR. JONNA) Is that right?

2 A. I, myself, tried to stay out of the social
3 media and not read or inner -- inner -- what's that
4 word? Like add on or anything to what was going on.

02:24:27 5 Q. Are you aware that Tastries' assistant manager
6 quit shortly after this incident?

7 A. I heard something after. But at the moment,
8 no.

9 Q. How did you react when you heard that?

02:24:47 10 A. I was not happy or sad. I don't know.

11 Q. Did you hear that other important employees,
12 after they got all the phone calls and e-mails and
13 after Tastries hired armed security, did you hear that
14 they also resigned?

02:25:17 15 A. I don't recall hearing that part about
16 everyone resigned.

17 Q. No. Not everyone. But people who were
18 receiving lots of phone calls and hateful e-mails and
19 dealing with, you know, having to have armed security,
02:25:35 20 that they shortly after that resigned.

21 Did you ever hear that?

22 A. I just heard that one person, but I don't even
23 know like the name of the person.

24 Q. Did you ever know that people regularly and
02:25:54 25 routinely sent pornographic images of nude men engaging

1 in homosexual acts to Tastries?

2 A. No, I did not know that.

3 Q. Did you know that many people signed up

4 Tastries to receive e-mails from pornographic websites

5 on a regular basis; that young, minor girls even had to

6 open at Tastries when they were working there?

7 A. No, I did not know that.

8 Q. Do you know that there were pornographic

9 images of bestiality being sent to Tastries?

10 A. No, I did not know that.

11 Q. Do you know that Cathy received death threats

12 and that her employees received death threats?

13 A. No.

14 Q. What's your reaction to hearing all that?

15 A. Horrible.

16 Q. Do you know that people would call on a daily

17 basis and describe in great detail how they were going

18 to rape the employees and Cathy to show them how it's

19 done?

20 A. Can you repeat it again?

21 Q. Several self-identified LGBT people would call

22 daily and descriptively detail how they were going to

23 rape Cathy and her female employees to show them,

24 quote, how it is done.

25 Did you know that?

1 A. I didn't know that. I just heard later on.

2 Q. What did you hear?

3 A. Just about what you're saying, that people
4 were saying things to them, posting things on Facebook.
02:27:38 5 But like I said, I haven't -- I tried to stay away from
6 hearing and watching and looking on the social media --
7 Facebook, basically -- about what saw that.

8 Q. Do you remember who told you or how you
9 learned about these comments that were being made or
02:28:01 10 these --

11 A. Nobody specifically. It was just postings and
12 stuff.

13 Q. Did you talk about that with Eileen at any
14 point?

02:28:15 15 A. We did. We did talk about it because it made
16 both of us sick about just listening to that kind of
17 stuff or them calling us and telling us. Basically
18 there was a lot of messages also going to my wife cell
19 phone and messenger about rude comments, as well.

02:28:43 20 Q. Did you guys ever get any graphic death
21 threats or threats of rape or anything like that?

22 A. I, myself, did not. I don't know all that
23 went into my wife's cell phone.

02:29:28 24 Q. I'm trying to skip over some stuff, so bear
25 with me for a second.

1 Q. What lawyer from the DFEH said that?

2 A. I don't recall.

3 Q. Was it Greg Mann?

4 A. I don't remember.

03:23:32 5 Q. What do you remember him saying?

6 A. I don't remember.

7 (Exhibit 672 previously marked.)

8 Q. (By MR. JONNA) Let's take a look at

9 Exhibit 672. This is a declaration of Reina Benitez.

03:24:10 10 Have you ever seen this before?

11 A. I don't remember. Excuse me.

12 Q. Do you need to get some water? Are you okay?

13 A. I'm fine. It was just a tickle in my throat.

14 Thank you.

03:24:30 15 Q. Okay. Paragraph 4 says, "During the week

16 before that Saturday, the Rodriguez-Del Rios visited

17 Party Palace and met with me. One of them brought out

18 a cell phone to video or audio record our conversation.

19 I told them that Party Palace was already booked for

03:24:47 20 the date of their wedding reception.

21 "One of them then asked whether I had any

22 objection to renting out Party Palace for same-sex

23 weddings. I truthfully told them that I had no such

24 objection. They asked to see my calendar and I showed

03:25:01 25 it to them. My calendar showed that Party Palace was

1 indeed already booked for the date of their wedding
2 reception.

3 "Mireya and Eileen Rodriguez-Del Rio then
4 stopped recording our conversation and left. I found
03:25:11 5 the recording odd, but initially of no concern."

6 Do you see that?

7 A. Yes, I see it.

8 Q. And then she says, "Based on my experience
9 with the Rodriguez-Del Rios and their description of
03:25:26 10 their visit to Tastries Bakery, I believe that they
11 recorded my conversation with them and asked to see my
12 calendar because they were looking for a lawsuit."

13 Do you see that?

14 A. Yes, I see it.

03:25:36 15 Q. Does this refresh your memory as to a meeting
16 you had with Reina Benitez as the Party Palace?

17 A. We never met with her and we haven't gone
18 there.

19 Q. Okay. None of this rings a bell to you in any
03:25:48 20 way whatsoever?

21 A. That we met with her and that we went to that
22 venue? No. We never did.

23 Q. What about anything else in here sound vaguely
24 familiar?

03:26:04 25 A. We -- we never went there. So we didn't -- I

1 don't know the lady and the place.

2 Q. Have you ever heard of Party Palace?

3 A. No. Not until it was brought up in here.

4 Q. Did you go to any other wedding venue and have
5 a similar conversation about -- and asking specifically
6 if they'll rent their space for same-sex weddings?

7 A. No.

8 Q. Did you interview any other venues, besides
9 the place that you ended up doing it at?

10 A. No. It was the one stop at the Metro
11 Galleries.

12 Q. Why on earth would Reina Benitez sign
13 something like this under penalty of perjury, do you
14 think?

15 A. I have --

16 MR. MANN: Objection. Calls for speculation.

17 A. I have no idea.

18 Q. (By MR. JONNA) Okay. Do you have any
19 judgments that are outstanding against you?

20 A. Not that I'm aware of.

21 Q. Do you remember a judgment from a creditor --
22 from a couple of different creditors, TD Bank and CACH,
23 LLC, subsidiary of Square 2 Financial? One was in the
24 amount of \$4,184 and one was in the amount of \$2,060.

25 A. What does that have to do with this case?

EXHIBIT 17

https://www.bakersfield.com/news/tastries-bakery-owner-sits-down-to-tell-her-story/article_e8da35de-0def-11e8-83c4-275ec2be594a.html

Tastries Bakery owner sits down to tell her story

THE BAKERSFIELD CALIFORNIAN

Feb 10, 2018



During an interview with TBC Media reporter Steven Mayer, Cathy Miller owner of Tastries Bakery, speaks about the incident involving a gay couple who wanted to buy a wedding cake from her bakery and how she felt she could not make a cake because of her Christian convictions concerning marriage. Her San Diego-based attorney, Charles LiMandri, participates via speakerphone.

Henry A. Barrios/The Californian

Cathy Miller, owner of Tastries Bakery, says she never expected the level of attention she's received regarding her refusal to make a wedding cake for a same-sex couple last summer. During an exclusive interview with reporter Steven Mayer, Miller describes in her own words the day the controversy began, and what has happened since.

ANXIOUS

We sat down with Miller in her bakery. On speakerphone was her San Diego-based attorney Charles LiMandri, of the Freedom of Conscience Defense Fund, a team of pro bono lawyers providing legal services to Miller at no cost.

According to LiMandri's firm, state officials indicated in a phone conference Friday that they would likely appeal a Feb. 2 Kern County Superior Court ruling denying a request for an injunction that, if approved, would have compelled Miller to accommodate same-sex couples' requests for wedding cakes or stop making the cakes altogether.

In response to the state's indication, LiMandri filed an anti-SLAPP motion on Miller's behalf to dismiss the state's case. The motion argues that in light of the court's ruling, the state's legal action is an attempt to deny Miller her free speech rights.

Friday's interview lasted nearly an hour. It has been edited for space and clarity, with the online version being significantly longer than the print version.

TBC: Let's go back to that day in question that people have talked about and the courts are mulling over and people across the nation and, I guess, across the world are curious about. We want to hear in your own words, what happened that day?

Miller: I have what's called "cupcake date" for my brides and my grooms. In order to come to a complimentary cupcake date ... you need to tell one of my girls up front that you are a bride and groom and are interested in a wedding cake or a dessert bar or cupcakes. They sign them up as a couple to come and see me ... So on that day in question ... I went over and I was under the impression that I was visiting the bride, the groom and their best man, maid of honor and one of the girl's mothers, which is very common here. That is the norm for me, and I went to visit and one of the ladies asked the other lady to fill out the form again. Many of the maids of honor, they will group together and pay for the wedding cake. That's kind of a fun thing that several brides are blessed with. So she handed it to her and I started asking questions and they couldn't answer them. They didn't have the answers and they answered them in an interesting way that caused me to be a little bit concerned. Then I turned around and said, "so who is the lucky groom?" and they pointed to the other girl.

So I realized okay, this is something I cannot participate in but I would be happy to help find a bakery because I had an arrangement with Give Me Some Sugar — and things went wrong with that. They expressed they weren't happy with that decision and grabbed the paper

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take care of this and walked out, without tasting any of my cupcakes. And I offered for them to but I told them I'm sorry I just could not participate in their reception, their celebration. I told them I would be happy to refer them to another bakery but I could not participate in their celebration because of my conscience. And I needed to refer them to another bakery because I answer to my Lord and savior. I just could not do that.

LiMandri: And at that point they grabbed the papers and left. They chose to terminate the discussion in that way at that point. Tell them, Cathy, what happened after that.

Miller: Basically the same thing that happened last week. So I was teaching a cupcake class to five young adults. All teachers, for a birthday for an adult, and my bakery started going nuts. My girls started crying, so I went to the back and they said Kathy we don't know what to do. We are getting obscene phone calls — and the TV media kept calling and calling requesting my interview. So I had to terminate the class early. I went to the back and calmed the girls down. Within an hour of them leaving the bakery they (the opposition) started destroying all of my social media. Everything! Our 5-star ratings went to one star. Yelp was so bad that Yelp called me and said "We are suspending your account." Which they have done again this time (following the local court decision). We are now suspended on Yelp. Our Facebook page has taken a nosedive. Our Twitter, every part of social media.

Our emails were horrific, horrendous and vulgar. I have one girl who is, at the time she was 18, and there were the most obscene pictures and emails sent.

Miller: I had to call the girls and tell them I am so sorry that you are seeing this and Monday morning my manager for the front, came in, in tears and said she couldn't handle it and she was quitting, effective immediately. Within six weeks my second manager quit. Three weeks later a girl that basically was an assistant manager in the front, she was an amazing employee, she gave notice with no warning because she couldn't handle it. And she was the one that would answer the phone calls. We had customers in here saying "please let me take the phone, I'm going to handle this for you." We had police and the detectives get involved. It was so sad to see the viscousness and I ended up losing six employees that were amazing employees.

TBC: Six employees?



Miller: Well, when you only have 18 to begin with, that is a third of your staff ... so this has been devastating in that respect but the beauty is that Kern County has blessed us abundantly, shown their support and their love and their prayers. We had a prayer rally last Friday (Feb. 2) and there were — some people are saying 300 to 400 (participants).

But I can tell you I have over 300 texts or emails from people saying I wanted to be there but my kids were sick or I had to work, you know, so very supportive, very loving, very kind, amazing. And then we get emails and text messages and phone calls from all over the nation. Even over in the U.K., Australia, Bolivia, I mean it's just amazing the support.

TBC: Does the support you're receiving help negate the bad stuff?

Miller: It helps because we know we are standing for the Lord and we are standing on our Biblical faith. In Genesis and Leviticus and in other verses that state that marriage is between a man and a woman and that's our beliefs. I'm not pushing my beliefs on anyone and I don't think anyone should discriminate against me because of my Christian values.

TBC: You recommended the bakery, Gimme Some Sugar. Why that bakery?

Miller: Because I had visited with Stephanie at the Sugar Fest. There was a Sugar Fest here. I think she is an amazing decorator. Kind of jokingly, the second year I was here, I was in need of a decorator and I said Stephanie I would love to bring you over to Tastries and we laughed. I mean I would have loved to hire her. She is that kind of person, just a real sweetheart.

(Editor's note: Stephanie Fisher, the owner of Gimme Some Sugar for more than a decade, has a serious disagreement with Cathy Miller's recollection. See sidebar for more details.)

LiMandri: She is also gay and that shows that my client has no problem dealing with gay people, referring to gay people and that gay people walk in her shop and she sells any products that gay people want to buy off the shelves. The unique state of this case that we ask you to keep in mind is that it is only the design and creation of a custom wedding cake — and the judge focused on that. So its unique because of the process that goes into designing and creating a wedding cake. It's cooperation with the couple that makes her a full participant in that celebration. Which is different then selling any other product or what any other type of wedding vendor might have to offer. But I wanted to make that distinction and Cathy knew that the lady from Give Me Some relationship with another woman and that she was happy to serve the gay community like a reasonable accommodation.

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TBC: I think this is going to clear up some questions that people have had about this incident because I think there was a sense that there was something about the design of the cake that was being requested from this couple that you objected to. But really your decision came before any request of the design. It was really about that it was a same sex couple.

Miller: The difference is, it's about a person or a purpose. The birthday cake is about a person. The wedding cake is a purpose. Do you understand that?

LiMandri: The judge made it this way: As most people know you go to a wedding reception, the cake is kind of the centerpiece among the decorations. It's to make a statement and the opposition agreed in the two-hour court hearing Friday that a wedding celebration is a form of speech. So the wedding cake, the judge said, is as clear a form of expressive speech as you can get. Now the wedding couple gets to choose the size of the cake, the design of the cake, the shape of the cake, the taste, the color and they get to decide whether you're going to put on a topper. Is it going to be two men, or two women? Are you going to write on it? Do they get to?

That was asked by the U.S. Supreme Court on Dec. 5th in the Masterpiece cake case (in Colorado), do they get to write "God bless this union?" even if it's a same sex couple? This is a Christian baker who feels he cannot put those words on it. So a wedding cake is very unique in that it makes a statement, the way anything else in her shop does not.

The devout Christian holds marriage as unique because Scripture says that theirs is a relationship between Christ and his church. So it's a sacred kind of thing, and so asking Cathy as a devout Christian to design and create a cake and deliver the cake and be there oftentimes when the reception is getting off the ground is asking to be part of something that goes against her conscience. So I think that's the distinction that needs to be made.

... Its not just a cake. If they want any other cake they can have the cake, but a wedding cake is a special design and a created, custom cake, so it is unique in that regard. Weddings and marriages are very unique in that regard. The Supreme Court said when it issued the decision that same sex couples are allowed to marry that this was not intended to disparage the sincere beliefs of people like Cathy. People like Cathy should be able to continue to hold and honor those beliefs and what we are seeing, and the Supreme Court said this in the Masterpiece cake case, tolerance is a two-way street.



TBC: Since you're kind of talking about this Chuck, I'm going to jump ahead to a question: Where does this case go from here? And how might it interact with what is happening at the Supreme Court now?

LiMandri: Its a fair question, Steve, and unfortunately there is no clear cut answer. We had a phone call with attorneys for the DFEH (state Department of Fair Employment and Housing) today and they are very professional. And they are considering what the next step is going to be. They indicated they will probably seek an appeal of the judges decision denying their injunction. And we are researching what form that appeal would take.

In the meantime we decided to exercise our rights on behalf of Cathy to file what is called an anti-SLAPP motion which would bring a clear end to this case and also give Cathy the right to her attorneys' fees for having brought the motion, to bring the case to an end at this point. And then if they file an appeal we will have to see where that goes and how the anti-SLAPP motion will be impacted. I can't give you a clear cut answer except that the opposition made it clear that they certainly don't intend to pursue any injunctive relief against Cathy at this point, as part of their investigation process. The judge has obviously brought that to a stop. So no one is going to be forcing Cathy at this point to make wedding cakes for gay couples or to stop making wedding cakes at all ... Now how does it affect the Supreme Court case? Obviously, the U.S. Supreme Court has the last word on all of these issues. They will issue a decision in June ... We expect that it will have a very significant impact and probably will decide this issue for all similar cases.

TBC: What has been the hardest part of this? And has your business suffered?

Miller: Financially we took a real big hit until recently. It hit us really hard for the first four or five months. And emotionally, it's taken its toll. But God is good. God has seen us through and has given us strength. He gives you what you need when you need it... and I have amazing employees right now that are just so supportive and encouraging.

TBC: What kind of support have you received in the community?

Miller: I opened the (temporary) kiosk at the Plaza yesterday. They put us in the center of the food court, and we were setting up until 1:30 a.m. the night before. We came back at 7:30 a.m. and everyone that was walking by was stopping and saying congratulations on the court hearing. Everyone was standing firm with us. Not one person was negative. Not one. It was encouraging and uplifting.

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TBC: What are you hearing from people who disagree with you? And can you talk about your belief system and where it came from? You already talked about being raised in a Catholic church and later went to a Protestant or Baptist church. Because we are talking about your beliefs and your beliefs are at the center of this, was that change something that you came to later in life or is this a sense of what you have been expressing something that you have held all your life?

Miller: I have to blame my mom and dad because they taught me about Jesus from day 1, and I loved him with my heart my whole life. We have been involved in the Catholic Church since I can't even remember. I had my first communion, my first confession, my first confirmation. My dad was the high school leader. My mom was the church secretary. We would go on vacation and take the priest with us because we were friends. They would come over for dinner. We were very involved and I just loved my upbringing. Then when I was in high school there was a youth group that I really liked because they had a great choir called The Sunshine Company. My husband was the director of it. And I was in high school. But he waited until I graduated and he stepped down so that he could date me. So we dated and got married at First Pres. It was the music and the fellowship that drew me in, it was really nice. But early on we realized and we felt led to be there with Pastor Roger (Spradlin) at Valley Baptist and he was amazing and we raised our kids there.

TBC: How long have you been there?

Miller: 30 years, 30-plus years.

LiMandri: One thing that Cathy has said before that I think is responsive, is the wedding cake is unique. She won't make a divorce cake. People have come in and they think its funny to present their spouse with a divorce cake, which is hurtful and a kind of mean-spirited thing that goes against marriage being ideally the way God intended it to be, which is a permanent institution. And that's the vows people take, "Until death do us part." So she won't do a divorce cake, she doesn't do gory types of cakes.

So its not just wedding cakes for same sex couples. I think its important when Cathy and I have done these interviews before people want to know what your basing it on because so many people say well "What would Jesus do? Jesus would be loving. He wants everybody to be happy."

No! Jesus was very clear in Scripture and people believe its the holy word of God. He said "I am the Word." He is word made flesh. And he also said "I am the truth." So although you are loving and compassionate, to honor Jesus you have to speak the truth. And the Bible is

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made man and woman in His image. In the first book of Genesis and that we can only understand God in the concept of humanity, as man and woman together. And that is from the first book of the Gospel. Yes there is specific passages that deal with homosexuality. We are not focusing on those because the fact is we are all sinners, and we understand that. We are not singling out homosexuals saying "You're the bigger sinner." No. That's God's business to determine who is a sinner or not...

Marriage is a sacrament. It's sacred. It's different from almost anything else we could talk about. Marriage is unique and that is why this case is not a slippery slope to excuse anybody from providing service to anyone else. And people who made that argument are going against what the judge said. The judge was very clear. Bigots who are true bigots should still be treated as bigots. People who won't serve other people in restaurants or hardware stores or anyone else. The law will not protect them. And they will have to pay harsh penalties if they act that way towards anyone. This situation is truly unique. And the difference is Cathy made a reasonable accommodation so that these people could have their wedding cake, but they can't make her provide that wedding cake under any circumstances.

TBC: Is same-sex marriage more egregious than, say, someone who has committed adultery, or experienced divorce or multiple divorces?

Miller: We're not talking about those. We're talking about the Bible and I need to live by my conscience. I cannot do something that goes against my conscience. When someone walks in and I know that it's a same-sex marriage, it's explicit. There's seven different Bible verses talking explicitly about a man being with a man and a woman being with a woman. And that's something I cannot participate in... I know my Scripture and I know what I can and cannot do.

LiMandri: (Local radio host) Ralph Bailey asked the question, would you make a wedding cake for a felon. Well, of course. The Bible doesn't say everyone has to be perfect. But it does say, definitionally, what marriage is. So it's not about one person's sin being greater than another person's sin. That's God's doing.

TBC: Your attorneys have argued that this case is about your First Amendment rights. But my sense is that you believe this is about your right to practice your faith freely. Which way do you see it?

LiMandri: Well, legally, technically, the First Amendment has enumerated in it a number of rights. The first is the free exercise of religion. And the word "exercise" has meaning. It's worship, going into church and praying on Sundays. It's taking your faith into the

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into the public square. Beyond that, freedom of speech is part of the First Amendment... What makes this unique is the type of speech she's being asked to engage in is she views as religious, which is why it was kind of tough when the judge asked us last Friday, "Is this free exercise of religion or free speech?" Well, really it's both. It's both. But he chose to render his decision based on freedom of speech... Having a pre-designed cake for a wedding is a form of expressive speech, and the line is you can't make anyone express speech in favor of an idea or concept they don't agree with.

Miller: I can't do anything that would go against my Lord and savior. I love him with all my heart. And I won't violate my conscience or my religious convictions. I am happy to serve anyone who walks in the door anything out of the case, and bless them as a person, but I can't violate my conscience when it comes to the purpose of a cake, a custom-designed cake.

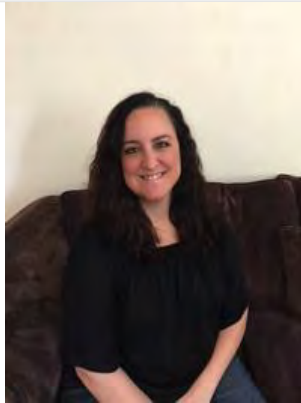
Miller: I don't want to be discriminated against, either. I think there needs to be respect on both sides.



TBC VIDEO: Tastries Bakery owner tells her story

Feb 10, 2018

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Bakery faces backlash for refusing to make wedding cake for same-sex couple

By MINYVONNE BURKE
NEW YORK DAILY NEWS | AUG 28, 2017



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A bakery in California is facing backlash after its owner refused to make a wedding cake for a same-sex couple.

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Eileen Del Rio [said in a Facebook post](#) that she and her fiancé went to Tastries Bakery in Bakersfield for a tasting and to pick out a design for their cake but were told to go somewhere else once the owner, Cathy Miller, realized that her fiancé was a woman.

"She don't condone same sex marriages so refused to make our wedding cake," the post read.

FEEDBACK

Del Rio said the owner wanted to send their cake order to another bakery.



The owner of Tastries Bakery said same-sex marriage is against her religious beliefs. (turnto23.com)

[According to KGET](#), people have now called for a boycott of the bakery.

Miller told the outlet that she's Christian and because of her religious beliefs she doesn't celebrate same-sex marriage.

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"The ceremony, when you're getting married is in the eyes of the Lord, okay, and that's a celebration of a union that God has brought together and that's a whole lot different than coming in and wanting a cookie," she said.

Miller said for the past five years whenever a same-sex couple comes in for a wedding cake she refers them to her competitor, Gimmee Some Sugar.

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Eileen Del Rio said the bakery she went to refused to make a wedding cake for her and her fiancé because they are a same-sex couple (Eileen Del Rio via Facebook)

"It has never been a problem," Miller told the outlet. "I'm really hurt by all this. I don't think we should be picked on because of our beliefs."

It's not clear if Del Rio and her fiancé picked a wedding cake with Gimmee Some Sugar, but a local photographer offered his services free of charge after learning what they went through.

"I'm looking forward to possibly doing their wedding and making them happy," Brandon Rose, the owner of Moment Portraits, [told KERO](#).

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'If you want to metoo me you have every right,' the former 'Saturday Night Live' star allegedly told his unidentified sex-assault accuser. He denies wrongdoing.

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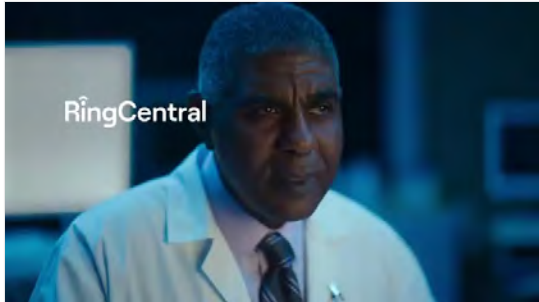
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CALIFORNIA

California baker can refuse to make same-sex wedding cakes, judge rules

BY ASSOCIATED PRESS

FEB. 7, 2018 8:25 AM PT



Reporting from Bakersfield, Calif. — A California bakery owner can continue to refuse to make wedding cakes for same-sex couples because it violates her Christian beliefs, a judge ruled.

The decision came after a lawyer for Tastries Bakery in Bakersfield argued that owner Cathy Miller's right to free speech and free expression of religion trumps the argument that she violated a state anti-discrimination law.

Kern County Superior Court Judge David Lampe agreed but said Monday his ruling was tied closely to the fact that Miller was being asked to make a cake for an event and that the act of creating it was protected artistic expression.

Lampe cautioned that freedom of religion does not give businesses a right to refuse service to groups protected by the Unruh Civil Rights Act in other circumstances, the [Bakersfield Californian](#) reported.

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“A retail tire shop may not refuse to sell a tire because the owner does not want to sell tires to same sex couples,” Lampe wrote. “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.”

Miller said it went against her Christian beliefs to make a cake for a same-sex couple. She told the newspaper she was overjoyed by the ruling and respected the distinction Lampe made between the sales of a cake and the creation of one.



Los Angeles Times

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that goes against my lord and savior.”

An attorney for Mireya and Eileen Rodriguez-Del Rio, who brought the case, was not available for comment.



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The decision comes as the U.S. Supreme Court prepares to rule in the high-profile case of a Colorado baker who refused to make a wedding cake for a same-sex couple.

That baker, Jack Phillips, claims his 1st Amendment claims of artistic freedom were being violated.

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Judge David Lampe rules for Tastries Bakery, owner Cathy Miller can continue to refuse to make same-sex wedding cakes

BY JAMES BURGER jburger@bakersfield.com

Feb 6, 2018



Judge David R. Lampe at a hearing in the case involving Tastries Bakery, which is now the subject of a lawsuit filed by the s
Henry A. Barrios / The Californian

Kern County Superior Court Judge David Lampe has ruled that owner Cathy Miller can continue to refuse to make wedding cakes for same sex couples.



But his ruling, on a motion for preliminary injunction, only leaves Miller alone until the full case comes to trial. The next hearing on the case is set for June. But Miller's attorney said he will move for dismissal of the case immediately because of the strength of Lampe's ruling.

Lampe's ruling relied heavily on the First Amendment to the Constitution.

"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," Lampe wrote in his ruling on Monday. "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."

The case, which has received national attention, began in August when Miller – a conservative Christian – refused to make a wedding cake for Mireya and Eileen Rodriguez-Del Rio.

Miller said it went against her Christian beliefs to make a cake for a same sex couple.

The Rodriguez-Del Rioses made a complaint to the California Department of Fair Employment and Housing that Miller had violated the Unruh Civil Rights Act.

The Act prohibits public businesses from denying service to anyone on the basis of a number of characteristics including race, gender, religion or sexual orientation.

Lawyers for DFEH filed suit against Tastries and Miller, who was defended pro-bono by the Freedom of Conscience Defense Fund.

Miller, at a prayer rally before the court hearing on Friday, said God gave her the ability to make beautiful cakes and she is committed to using it in the way she believes God wants her to.

"If we're not able to follow our conscience we're no longer able to be who God created us to be," Miller said. "I am incapable of doing something that would hurt my Lord and Savior."

In court her attorney, Charles LiMandri, made the argument that Miller's free speech rights and her right to free expression of religion trump the state's arguments that she violated a law against discrimination.



"It's a work of art as far as my client is concerned," LiMandri said. "In my client's mind this is a free exercise case."

Lampe, in essence, ruled that Miller's First Amendment rights trumped the state law she violated.

His argument, however, was closely tied to Miller's role as an artist in producing cakes which – he found – are protected artistic expression.

"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," Lampe wrote. "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, and with which Miller disagrees."

But Lampe wrote that his ruling was tied closely to the fact that Miller was being asked to create a cake for an event.

And he cautioned that religion does not give businesses a right to refuse service to groups protected by the Unruh Act in other circumstances.

"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," Lampe wrote.

His distinction, he said, is between the act of selling a product to a same-sex couple and creating a product for the same couple.

"The difference here is that the cake in question is not yet baked," Lampe wrote. "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 such compliance would do violence to the essentials of Free Speech guaranteed by the First Amendment."



LiMandri expressed his satisfaction with the outcome in a statement Monday evening.

"This is a significant victory for faith and freedom because the judge indicated in his ruling that the State cannot succeed in this case as a matter of law. No doubt the California officials will continue their persecution of Cathy, but it is clear that she has the Constitution on her side," he wrote.

Miller said Tuesday she was surprised and overjoyed by the ruling.

"We were so joyful. We weren't expecting it to be so soon. We started screaming and praising God because we felt we had been heard," she said.

She said she respected the distinction Lampe made between the sales of a cake and the creation of one.

"I am very happy to serve everything from my cases to anybody," she said. "But I cannot be a part of a celebration that goes against my lord and savior."

Miller thanked her lawyers who she called, "amazing men of god."

Patricia Ziegler-Lopez, the attorney for the Rodriquez-Del Rioses said their fight is not over.

"We are disappointed but not surprised by ruling against the preliminary injunction. Bakersfield and Kern County in general is very conservative and that unfortunately includes some of the judges. But it's not over. Our fight against bigotry and discrimination is only beginning," she wrote in an e-mail.

James Burger can be reached at 661-395-7415. Follow him on Twitter: @KernQuirks.



Tastries injunction ruling.pdf
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Feb 6, 2018

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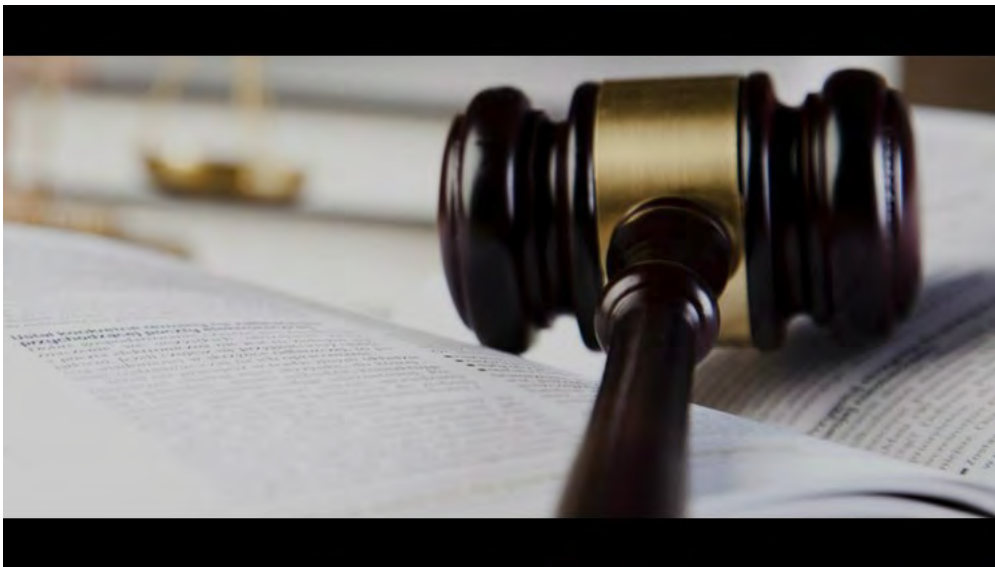
Trial planned in case against Tastries Bakery for second time



NATION WORLD

Judge rules bakery can refuse to make wedding cake for same-sex couples

The decision came after a lawyer for Tastries Bakery in Bakersfield argued that owner Cathy Miller's right to free speech and free expression of religion trumps the argument that she violated a state anti-discrimination law.



File Photo (verkeorg/Flickr/CC BY-SA 2.0)

Author: CBS News

Published: 9:37 PM EST February 7, 2018

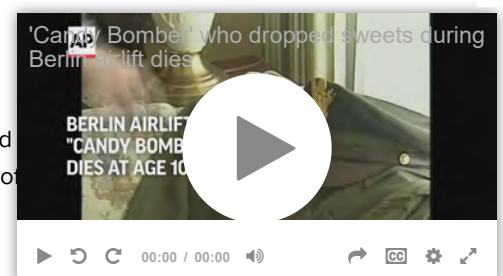
Updated: 9:37 PM EST February 7, 2018



A California bakery owner can continue to refuse to make wedding cakes for same-sex couples because it violates her Christian beliefs, a judge ruled.

The decision came after a lawyer for Tastries Bakery in Bakersfield argued that owner Cathy Miller's right to free speech and free expression of religion trumps the argument that she violated a state anti-discrimination law.

Kern County Superior Court Judge David Lampe agreed but said Monday his ruling was tied closely to the fact that Miller was being asked to make a cake for an event and that the act of creating it was protected artistic expression.



Lampe cautioned that freedom of religion does not give businesses a right to refuse service to groups protected by the Unruh Civil Rights Act in other circumstances, the Bakersfield Californian reported.

"A retail tire shop may not refuse to sell a tire because the owner does not want to sell tires to same sex couples," Lampe wrote. "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."

Miller said it went against her Christian beliefs to make a cake for a same sex couple. She told the newspaper she was overjoyed by the ruling and respected the distinction Lampe made between the sales of a cake and the creation of one.

"I am very happy to serve everything from my cases to anybody," she said. "But I cannot be a part of a celebration that goes against my lord and savior."

An attorney for Mireya and Eileen Rodriguez-Del Rio, who brought the case, was not available for comment.

The decision comes as the U.S. Supreme Court prepares to rule in the [high-profile case of a Colorado baker](#) who refused to make a wedding cake for a same-sex couple.

That baker, Jack Phillips, who grew up drawing and painting, said his cakes are personal artistic expressions.

"I serve everybody who comes into my shop...So in this case I would gladly sell you anything in my shop but this is just an event that I can't create a cake for," Phillips said.

But to the couple involved, it was discrimination. They filed a complaint against Phillips and won.



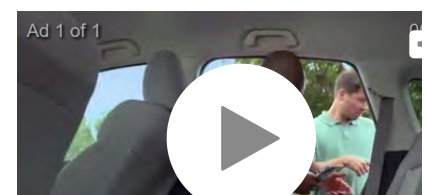
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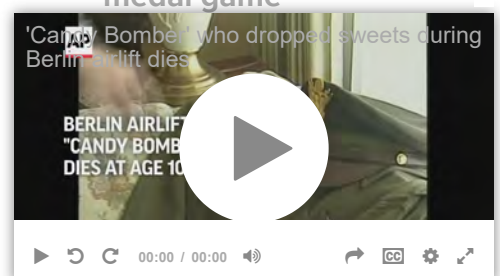
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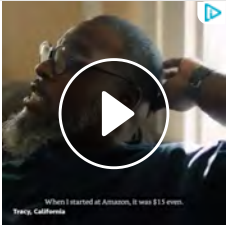
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'Candy Bomber' who dropped sweets during Berlin airlift dies

"I know he's up there, handing out candy behind the pearly gates somewhere," Utah's governor said, in tribute to U.S. military pilot Gail S. Halvorsen.



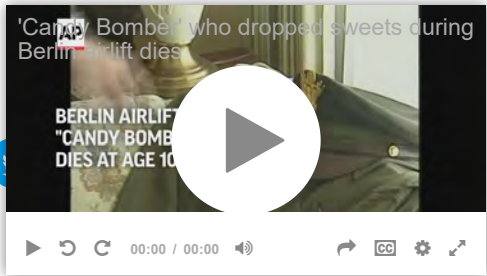
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Author: COLLEEN SLEVIN and KIRSTEN GRIESHABER (Associated Press)
Published: 7:06 PM EST February 17, 2022
Updated: 7:06 PM EST February 17, 2022



DENVER — U.S. military pilot Gail S. Halvorsen — known as the “Candy Bomber” for his candy airdrops during the Berlin airlift after World War II ended — has died at age 101.

Halvorsen died Wednesday following a brief illness in his home state of Utah, surrounded by most of his children, James Stewart, the director of the Gail S. Halvorsen Aviation Education Foundation, said Thursday.

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Halvorsen was beloved and venerated in Berlin, which he last visited in 2019 [when the city celebrated the 70th anniversary of the day the Soviets lifted their post-World War II blockade](#) cutting off supplies to West Berlin with a big party at the former Tempelhof airport in the German capital.

“Halvorsen’s deeply human act has never been forgotten,” Berlin Mayor Franziska Giffey said in a statement.

Utah Gov. Spencer Cox also praised Halvorsen, who was born in Salt Lake City but grew up on farms before getting his pilot’s license.

“I know he’s up there, handing out candy behind the pearly gates somewhere,” he said.

After the United States entered World War II following the attack on Pearl Harbor, Halvorsen trained as a fighter pilot and served as a transport pilot in the south Atlantic during World War II before flying food and other supplies to West Berlin as part of the airlift.

According to his account on the foundation's website, Halvorsen had mixed feelings about the mission to help the United States' former enemy after losing friends during the war.

But his attitude changed, and his new mission was launched, after meeting a group of children behind a fence at Templehof airport.

He offered them the two pieces of gum that he had, broken in half, and was touched to see those who got the gum sharing pieces of the wrapper with the other children, who smelled the paper. He promised to drop enough for all of them the following day as he flew, wiggling the wings of his plane as he flew over the airport, Halvorsen recalled.





Credit: AP

Gail Halvorsen, also known as the "Candy Bomber", poses for a portrait at his son's home in Midway, Utah, on Oct. 7, 2020. (Isaac Hale/The Daily Herald via AP)

He started doing so regularly, using his own candy ration, with handkerchiefs as parachutes to carry them to the ground. Soon other pilots and crews joined in what would be dubbed "Operation Little Vittles."

After an Associated Press story appeared under the headline "Lollipop Bomber Flies Over Berlin," a wave of candy and handkerchief donations, followed.

The airlift began on June 26, 1948, in an ambitious plan to feed and supply West Berlin after the Soviets — one of the four occupying powers of a divided Berlin after World War II — blockaded the city in an attempt to squeeze the U.S., Britain and France out of the enclave within Soviet-occupied eastern Germany.

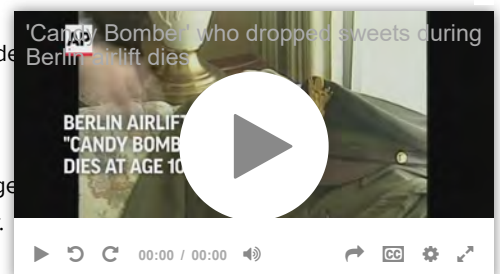
Credit: AP

"Candy Bomber" pilot Gail Halvorsen gives thumbs up in front of an old US military aircraft with the name "The Berlin Train" in Frankfurt, Germany, on Nov. 21, 2016. (AP Photo/Michael Probst, File)

Allied pilots flew 278,000 flights to Berlin, carrying about 2.3 million tons of food, coal, medicine and other supplies.

Finally, on May 12, 1949, the Soviets realized the blockade was futile and lifted their barricade. The airlift continued for several more months, however, as a precaution in case the Soviets changed their minds.

Memories in Germany of American soldiers handing out candy, chewing gum or fresh oranges are still omnipresent — especially for the older generation born during or right after the war.



Many fondly remember eating their first candy and fresh fruit during an era when people in bombed-out cities were starving or selling their family heirlooms on the black market for small amounts of flour, butter or oil just so they could get by.

Halvorsen's efforts to reach out to the people of Berlin helped send a message that they were not forgotten and would not be abandoned, Stewart said.

Despite his initial ambivalence about the airlift, Halvorsen, who grew up poor during the Great Depression, recognized a bit of himself in the children behind the fence and made a connection with them, he said.

“A simple person to person act of kindness can really change the world,” Stewart said.



Grieshaber reported from Berlin. Sam Metz contributed to this report from Salt Lake City.

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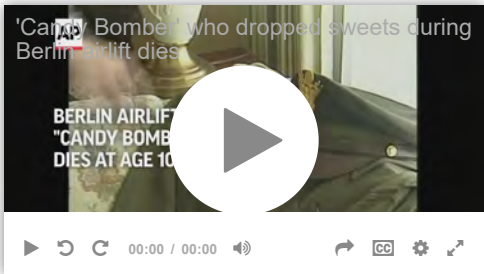
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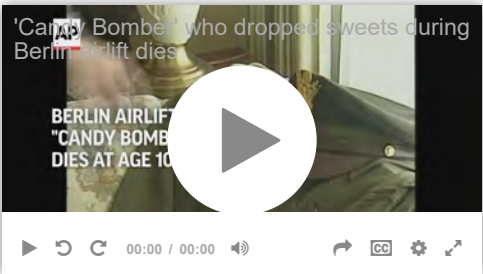
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by: Jose Franco



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One of the factors in the case, the judge ruled, was that the cake had not been baked for the couple and was not on sale.

If Miller had refused to sell the couple a cake on display then the act would be discriminatory.

The judge stated an order from the state to compel someone to directly go against their beliefs would be “the stuff of tyranny.”

Judge David Lampe also stated in the eight-page ruling: “For this court to force such compliance would do violence to the essentials of Free Speech guaranteed under the First Amendment.”

The couple suing Miller, Eileen and Mireya Rodriguez-Del Rio, said Monday night they would release a statement at a later time.

In a statement to 17 News, an attorney for the couple said the judge’s ruling was “not a total surprise.”

“This is only the beginning. It is just one battle in the war against discrimination,” the attorney said.

Tastries owner, Cathy Miller, was surprised at how quickly the ruling came following arguments presented in court on Friday.

“When our attorney called this evening we were shocked. Of course we had hope that it would come in our favor, but we knew the Lord was in control of this and we did what we were called to do,” Miller told 17’s Mary Kate Paquette Monday night.

“Cathy Miller, owner of Tastries, was surprised at how quickly the ruling came following arguments presented in court on Friday.” X

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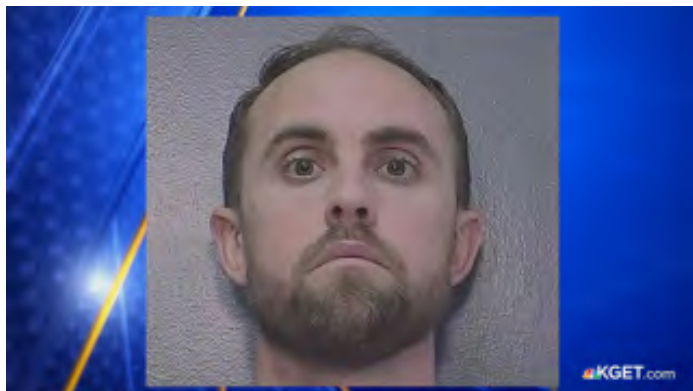
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Owner defends decision to refuse wedding cake for same-sex couple: "This is God's bakery"

by Jeff Platt, Eyewitness News
Monday, August 28th 2017



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Tastries bakery in Bakersfield, Calif., is seen Monday, Aug. 28, 2017. A same-sex couple says the owner refused to take their business for a wedding cake. The owner defended her decision to refer the business elsewhere on the grounds of her religious beliefs. (KBAK/KBFX photo)

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While she wouldn't turn
ferred the couple at
could fill the order.

Miller runs the bakery with her family and her faith.

"My bakery, from Day 1, my employees have known that this is God's bakery," Miller said.

While Miller said her faith prevented her from being party to a same-sex marriage, she does respect the LGBTQ community.

"As a Christian, I love everyone that God has created," Miller said. "We are all his children."

Since the couple was referred to another bakery, there have been two rather distinct reactions.

The first is from those who disagree with Miller's decision.

"They take it out on my employees, instead of me," said Miller.

Many of those people have taken matters into their own hands, giving Tastries negative reviews on Facebook and Yelp, calling the bakery to swear at whoever picks up the phone, and even threatening Tastries employees.

The threats escalated so much one employee quit their job.

The other reaction has come from the portion of the community that supports Miller. Many of those people made their way down to Tastries to purchase baked good and to let Miller know she's not alone.

"It was just a real blessing to see that support in this really difficult time," Miller said.

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EXHIBIT 18

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.)

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Case No. :
935123-315628

DEPOSITION OF
CATHARINE MILLER
LOS ANGELES, CALIFORNIA
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REPORTED BY: DIANA WHITESEL, CSR No. 6287

FILE NO.: AC09F34

1 reasons as a specific reason?

2 A. My exact words to them were, "I'm sorry. I
3 cannot do your cake. I can't be a part of a same-sex
4 wedding. It would go against my Lord and Savior, and I
5 can't do that."

6 Q. When they left, was there any yelling or
7 screaming profanity from them at all?

8 A. I know that the boys were saying things and the
9 girls said things, but I was very stunned at the
10 reaction. And I don't know what they were saying.

11 I know I said I'd -- I'd love for you to taste
12 the cupcakes if you'd like.

13 And one of the girls, I'm guessing Eileen but I
14 don't know, said "We don't want to taste any of your
15 cakes."

16 And the boys said, "We're going to take care of
17 this." And just grabbed the papers and left. There was
18 other things said, but I couldn't tell you what they
19 were.

20 Q. Was there anything said in a loud voice that
21 you recall? Not specifically about what specifically
22 was said but was it loud and angry, or was it just kind
23 of we're talking in normal tones?

24 A. I don't know.

25 Q. And then what happened after they left?

1 A. I went back to my -- I went to the back, and I
2 was shook up by it. I know that.

3 But I had to teach the class, and I thought,
4 okay, I'm going to have to deal with this tonight. I
5 then went and taught the class and chaos broke out, and
6 the media showed up.

7 And Whitney Weddell, and several other LGBTQ
8 members, crucified us on social media.

9 Q. Did any of your employees ask you about the
10 interaction with the Rodriguez-Del Rios?

11 A. Oh, everybody.

12 Q. What did you tell them?

13 A. Exactly what happened.

14 Q. In your declaration it seems pretty clear that
15 you question the sincerity of their request for a
16 wedding cake. Why is that?

17 A. It started with my interaction with them. It
18 was not at all similar to any cake tasting I had ever
19 had. And I do probably 400 a year or more -- more than
20 that. Somewhere around there.

21 And I had never had that kind of a reaction.
22 When I was asking them about the venue, when I was
23 asking them about the wedding, when I was asking --
24 because I talked about the wedding and they never once
25 said they were getting remarried. They never once said

1 it was just a celebration that they had been married
2 before. Because I asked several questions during that
3 time.

4 And it was just off.

5 So that was the first clue.

6 The second clue was that it was utter chaos
7 within an hour of them leaving the bakery. And I don't
8 know how somebody couldn't have that already planned
9 out. It was across the nation by 6 o'clock. I had news
10 media in front of the bakery by 4:30, 4:00. I was still
11 teaching the class when news media were calling me.

12 How did they get the information? That just
13 does not make sense to me.

14 Everything happened so quickly and so mean and
15 vindictive. I don't see how that couldn't have been
16 orchestrated. Because I think the LGBT community as a
17 whole isn't like that. I would hope not. So it had to
18 have been orchestrated or something.

19 The media refused to leave my bakery. They
20 were interviewing customers before they would even walk
21 into the bakery. They were interviewing customers
22 coming out. And their questions were just -- I mean,
23 the customers were getting mad at them, and they said,
24 "Just leave." And they were defending me and they
25 hadn't even walked into my bakery yet.

1 So that was another clue to me. Then sometime
2 the next week, Reina -- you have her deposition--
3 called -- saw Mike at Costco and said they were the same
4 couple in my venue, and they were video recording the
5 whole conversation.

6 So that was another clue that I am thinking,
7 what has gone on here? Have they set me up for this?
8 Of course, everybody else was saying that, but I try to
9 give people the benefit of the doubt.

10 So then there was that.

11 Then there's been other things that have
12 happened since then that I'm just, like, why would
13 somebody set me up like this? What is the purpose?

14 I don't understand.

15 Q. You still think that it was a set-up?

16 A. I don't know what to think. I feel sorry for
17 them. They got their wedding. I think they got a bunch
18 of stuff free from what I've been told. And people --
19 look on the social media, I'm sure you guys have that.
20 The majority of the people said they were shopping for,
21 you know, a lawsuit.

22 I don't know. I'm not going to judge. They
23 have to stand before the Lord. Let Him handle it.

24 You guys are supposed to be fair and balanced.
25 You're supposed to be investigating both sides. You're

1 supposed to be looking at the truth, the facts. I
2 expect you to do that.

3 Q. That's right.

4 Was there any part of the chaos, as you
5 referred to it, that you didn't tell us about or what
6 you said was a good description of what was going on?

7 A. I referred to some of it earlier. There's
8 employees that were -- you know, you've interviewed
9 Justin Salinas, and, apparently, there was an
10 underground thing going on. But it couldn't have been
11 that many cakes. It just -- I think that there was a
12 lot of hurt people and you feel bad for that.

13 And I don't think they -- people who
14 orchestrated this have any idea of the ramifications
15 this had, but it will all be up to the Lord when they
16 see him.

17 Q. Earlier you touched on some of the things,
18 unfortunate events and the hate mail. And it sounded
19 like you were -- I can't think of the word I want to
20 use -- for lack of a better word, blaming the LGBT
21 community.

22 Do you blame them for the hate mail and
23 different things that have happened?

24 A. I will defer to anyone going on our social
25 media and just looking at it, or I can provide it for

1 you if you want paper copies. It's very sad what the
2 LGBT community has done.

3 Q. Why are you so sure it's the LGBT community?

4 A. Because they say it. They say who they are.
5 They identify themselves in loud terms. And any of the
6 businesses that tried to support me during this time,
7 then they started in on them. But it's identifiable.

8 Q. Was there anything that the media did or said
9 that specifically made you think that they, you know,
10 were prepared for this to happen ahead of time?

11 A. That the media was prepared?

12 I don't know. I can't answer that. I'm not --
13 I'm not involved with media. But it was very
14 interesting to me that I got my first phone call
15 starting at 3 o'clock from all the media. All of them.
16 Not just one, all of them. The "Californian," 17, 23,
17 58, 29 --

18 MR. LIMANDRI: Hold on. Slow down. Go ahead.

19 THE WITNESS: I'm sorry.

20 MR. LIMANDRI: For the court reporter.

21 THE WITNESS: All of our local news networks
22 were bombarding me.

23 BY MR. MANN:

24 Q. And the interaction with the
25 Rodriguez-Del Rios, it was around 1:05, 1:10, something

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 answer the phone, what the LGBTQ were saying and
2 threatening to employees, me personally, and the
3 business. They would not come to work.

4 I had just hired an employee as a baker. She
5 worked for me for three days. This happened, and her
6 parents said, "You cannot work there."

7 Q. Did they say why?

8 A. Because of the situation and the threats, and
9 they said, "They won't be in business because the LGBT
10 will close them down."

11 Q. Did anybody resign because of the policy to not
12 serve same-sex couples?

13 A. Absolutely not.

14 Q. And what led you to believe that the calls and
15 derogatory emails that you received were from the LGBTQ
16 community?

17 A. I have a binder, which you have a lot of those
18 already. I have all of them. And they were horrible,
19 Greg. Horrible.

20 Q. Did people --

21 A. And they sign. They sign with that. They say
22 they're gay. They say they're lesbians. They say
23 they're part of LGBTQ. They have their rainbow, and
24 they're very proud of it.

25 Q. Okay.

1 A. It is very obvious, with the pornography that
2 was sent, that it is LGBTQ.

3 Q. And what's your understanding of that term,
4 LGBTQ?

5 A. They're acronyms. Lesbian, gay, trans.

6 Q. All right. I just wanted to make sure that
7 we're talking about the same thing. I'm pretty sure,
8 but let's get it on the record.

9 When you interview new employees, do you
10 specifically ask about religion as one of the interview
11 questions?

12 A. No.

13 Q. Does it often come up during interviews?

14 A. Define "often."

15 Q. Well, let's start has it ever come up at all
16 during interviews?

17 A. Yes.

18 Q. Can you estimate how many times it's come up?

19 A. Often.

20 Q. Have you ever made an employment decision based
21 on discussion with an interviewee about religion?

22 MR. JONNA: Objection. Vague and ambiguous.
23 Overbroad.

24 A. No. And my hiring record will show that.

25 Q. And what do you mean by that?

1 A. Okay.

2 Q. So when I say "entering into," that just means
3 getting married.

4 A. Okay.

5 Q. Okay. But I don't know a phrase that says
6 "getting same-sex married," so I'm just saying "entering
7 into a same-sex marriage."

8 A. Okay.

9 Q. What I mean is getting married. Does that make
10 sense?

11 A. Yes.

12 Q. So have you ever heard of a non-gay person
13 entering into a same-sex marriage?

14 MR. JONNA: Objection. Vague and ambiguous.

15 A. A gay person -- a non-gay person getting into a
16 gay relationship and getting married? Then he must be
17 gay. What am I not getting here? I'm so confused.

18 Q. Let me say it this way. Is it fair to say that
19 the only people entering into same-sex marriages are
20 gay?

21 MR. JONNA: Objection. Calls for speculation.

22 A. Yes.

23 Q. Okay. That's all I'm trying to say.

24 A. Okay. Yes.

25 Q. Straight people are not entering into same-sex

1 marriages?

2 MR. JONNA: Objection. Calls for speculation.

3 A. Well, they wouldn't be straight if they were
4 getting into a gay marriage.

5 Q. Okay. So we're on the same page, then --

6 A. Oh, my gosh.

7 Q. -- of your understanding?

8 A. Yes.

9 Q. So is it fair to say that when somebody's
10 talking about same-sex marriage, they're talking about
11 gay people?

12 A. Yes. Clarifying, "gay" meaning LGBTQ, the
13 whole group.

14 Q. Exactly.

15 A. Okay.

16 Q. So is it fair to say that when we're talking
17 about same-sex marriage, we're talking about sexual
18 orientation?

19 A. Yes.

20 Q. Have you had employees discuss the design
21 standards with you?

22 A. Yes.

23 Q. Where they brought it up to you, not
24 necessarily in a meeting, but came to you one-on-one to
25 discuss them?

1 MS. MESINAS: Hey, Greg, I found the post if
2 you want me to share the screen.

3 MR. MANN: Yeah. Thank you, Soyeon. Let's do
4 that.

5 THE WITNESS: Oh, good.

6 (Exhibit 7 is marked for identification and
7 attached hereto.)

8 Q. (BY MR. MANN:) Before we look at that one,
9 Cathy -- keep going, Soyeon -- but have you had
10 conversations with Reyna Benitez, or was it just Mike?

11 A. Just Mike.

12 Q. All right. Can we -- so here do you see the
13 highlighted part?

14 A. Yes.

15 Q. And see 12:37 p.m.?

16 A. Yes.

17 Q. So that was before the Rodriguez-Del Rios
18 posted, right?

19 A. I think maybe so. Maybe. I don't remember
20 seeing this one, though. I don't remember seeing this
21 posting. I saw a different post that they did.

22 Q. Also from these guys?

23 A. It was just really -- it was just really short,
24 like two lines.

25 Q. Okay.

1 A. Okay?

2 MR. MANN: Let's zoom --

3 THE WITNESS: Go ahead.

4 MR. MANN: Let's zoom out a little bit, Soyeon,
5 just so we can get the full picture. Can we see the
6 top?

7 Q. So does this look like it's from Ted Freitas,
8 and that's in response to somebody else's?

9 A. Greg, I don't know, hon. I don't know. I
10 think it is, right? Because his picture's on the top.

11 Q. It looks like that to me.

12 So seeing that this one actually -- and let's
13 blow it back up again, Soyeon, so we can read it and
14 then go down. There we go.

15 So seeing that it was at 12:37, which -- is it
16 safe to assume the Rodriguez-Del Rios were still at
17 Tastries at 12:37, right?

18 A. Right.

19 Q. Does this change your opinion that --

20 A. This -- I'm sorry. Go ahead. I'm sorry.

21 Q. Does this change your opinion that perhaps, you
22 know, that this was maybe what kicked off the media?

23 MR. JONNA: Objection. Calls for speculation.

24 A. I don't know. I don't believe so, because as I
25 recall, and I can look into it more, or you can, the

1 hate phone calls and the hate things started when, to my
2 understanding -- and, Greg, this has been what, four
3 years, five years -- started when the girls and Sam and
4 Patrick and Whitney Weddell started their postings. But
5 I don't know, and I will look into it, because I hadn't
6 seen this, this posting.

7 Q. Okay.

8 A. Now go down. Go down on this. You know what?
9 Go down all the way to the bottom, and you'll be able to
10 see how many likes and comments. And see, now we go to
11 6:31 at night, 8:00 p.m., 8:25. So okay. Now go up.

12 I don't know. Whoever's -- Soyeon, you're
13 probably more familiar with all this, but you can go on
14 there. Somewhere it will show you how many likes, how
15 many comments, and how many shares, and that will give
16 you the information that Greg is looking for.

17 MS. MESINAS: So, unfortunately, I don't think
18 this one is showing us the likes and comments.

19 THE WITNESS: Okay. I can go back on my -- our
20 social media person copied all of everything, and I can
21 go back and look.

22 But, Greg, that would be your answer, something
23 to back and look at the likes and shares, particularly,
24 because when they share it, then they're sending it to a
25 multitude of people. And that's what happened, and you

1 can look at the time stamp on all of those.

2 Q. (BY MR. MANN:) Right. All right. Interesting
3 that you hadn't seen this one yet.

4 A. My family forbid me to look at most of this
5 because it was so derogatory and hateful, and I had -- I
6 was bombarded by the newspapers, the news media, and the
7 hateful phone calls, and my employees quitting and
8 crying.

9 Q. Let's talk about that a little bit.

10 A. Greg --

11 Q. You testified a lot about -- did you have a
12 question first?

13 A. I did. I need just 60 seconds to run to the
14 bathroom and come right back.

15 Q. Take 180 seconds. How about that?

16 A. I'll be real quick, I promise.

17 MR. JONNA: It's all right. Take your time.
18 We'll take a couple minutes.

19 MR. MANN: We can go off the record, Lisa.

20 (Recess, 4:47 p.m. to 4:52 p.m.)

21 MR. MANN: All right. We can go back on, Lisa.

22 Q. You testified last time a lot about a lot of
23 the hateful calls you got, and emails, social media
24 posts after the incident. Do you recall that?

25 A. Yes.

1 Q. We've talked about it today as well. It sounds
2 like mostly you've talked about calls and emails to
3 Tastries from people. Did you also see, like, comments
4 on websites and social media as well, or was it mostly
5 the calls and emails directed at Tastries?

6 A. We had hundreds of emails. We had hundreds of
7 phone calls, to the point where the police had to stay
8 in the bakery for two days because they were so bad, and
9 one of them was the same guy calling.

10 We had hundreds -- and it may be thousands; we
11 quit copying them, and we quit keeping track of them --
12 of Google responses to the point where Google shut us
13 down and put a banner up for months. We had hundreds,
14 probably closer to thousands of postings on Yelp. They
15 closed us down and put a banner up. Twitter got
16 hijacked, and we still don't have -- we can't get on our
17 Twitter to this day. Our Instagram got creamed. We had
18 to close that whole thing down for nine months.

19 I tried to do a GoFundMe because so many people
20 were coming in and saying, "You need to start a
21 GoFundMe. You need something because you're going to
22 have court. This is awful." And we tried to do a
23 GoFundMe, and within 12 hours, the LGBT copied my logo,
24 set up their own GoFundMe, and all the money went to
25 them. So we had to close that down.

1 We have not recovered. We had a five-star
2 rating, and we have not recovered. Yelp and Google call
3 me constantly because, they said, "You're an amazing
4 bakery," and I said, "I can't -- I can't do anything
5 with it till this court case is over."

6 Now, you tell me. I'm sure you're more active
7 in the social media area than I am.

8 Q. (Indicating.)

9 A. Well, that's the way businesses are run now,
10 especially with COVID, and we are at an extreme
11 disadvantage right now.

12 Now, we've built it back up, but we still -- we
13 get back up to our four-, almost five-star rating, and
14 then I'm in the news media again, and the LGBT hits me
15 from all over the world.

16 Q. Do you have any evidence or knowledge that the
17 Rodriguez-Del Rios participated in sending any of those
18 emails or calls or instructed people to do so?

19 MR. JONNA: Objection. Compound. Overbroad.

20 A. Well, I'm sure, Greg, that you have read the
21 news articles about them contacting Whitney Weddell and
22 contacting you, or DFEH, and yes, they did several
23 postings.

24 Q. I didn't mention postings. I was talking about
25 if they -- if you have any evidence or knowledge that

1 they called and did any hateful messages or emailed any
2 of those hateful messages or instructed anybody to do
3 any of the above.

4 MR. JONNA: Same objections. And asked and
5 answered.

6 A. You are talking about phone calls and emails
7 only? I don't have any knowledge if they instructed
8 anyone.

9 Q. How about if they personally did phone calls or
10 emails to Tastries?

11 A. That's what I just answered. No, I don't have
12 any knowledge of that.

13 Q. Okay. I thought you'd said you don't have any
14 knowledge that they instructed, and then I followed up
15 with if they participated personally.

16 A. Oh, I am so sorry. No, I don't believe so. I
17 have no knowledge.

18 Q. Any knowledge or evidence that they instructed
19 anybody to do any social media posts?

20 A. I don't know if they instructed, but they were
21 a party to the people that were doing the postings. And
22 the information in the newspaper articles and in the
23 social media postings that I do have printed out shows
24 that -- or text messages shows that they had contacted
25 Whitney Weddell, which she's the ringleader for LGBT

1 here in Kern County. She's, like, very well-known I
2 think even in the entire state, or I think she was going
3 to run for governor, actually.

4 Q. Do you have a recollection of how many posts
5 you saw that were from either Eileen or Mireya
6 themselves?

7 A. No, but I can get that for you.

8 Q. Do you think it was more than five?

9 A. I don't recall right now in this moment.

10 Q. Okay. And did Tastries receive any calls or
11 emails or social media posts supporting its decision and
12 its religious beliefs?

13 A. Yes.

14 MR. JONNA: Objection. Compound. Overbroad.

15 Q. And how would you compare the number of
16 supportive calls, emails, social media posts, compared
17 to the more negative or hateful posts, calls, and
18 emails?

19 MR. JONNA: Same objections.

20 A. So the supporters, I'll start with that,
21 because you asked both. Okay? So the supporters
22 actually came into the bakery. They also called from
23 all over the nation. We received mail from all over the
24 world. And people drove even from Texas just to come
25 visit us. That was a really cool thing.

1 A lady flew from Denmark -- I'm sorry --
2 Holland to come see us. So there were a lot of
3 supporters that actually came into the bakery and
4 actually -- and some that wrote reviews, but their
5 reviews got taken down by Google and Yelp. And so there
6 was that group that was supportive.

7 On the flip side, the negatives --

8 Q. Well, hold. Can you tell me, with the
9 supportive, what was your experience? Was it 50/50,
10 mostly negative, mostly supportive? Give me --

11 A. It was different. The in-person was by far
12 more supportive. The phone calls were by far more mean
13 and vulgar and hateful and threatening. The mail was
14 about 50/50. The emails, I'm just going to guess,
15 probably 50/50. The postings, though, were by far
16 horrible, by far.

17 Q. And when you say "postings," like the social
18 media postings?

19 A. Right.

20 Q. And comments?

21 A. Right. Correct.

22 Q. All right. We're coming down to the end, so
23 I'm going to speed up a little bit and just keep you
24 focused. So I apologize in advance. I don't want to
25 cut you off, but I want to get Paul out of here, so I

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23 I'm going to speed up a little bit and just keep you
24 focused. So I apologize in advance. I don't want to
25 cut you off, but I want to get Paul out of here, so I

1 Q. Very limited understanding. Did you ever have
2 a discussion with Katie or anybody about trying to
3 delete some of those negative comments if they were
4 possible?

5 A. Not on the Instagram. I know that we focused
6 on the Facebook, the Yelp, and the Google. We
7 weren't -- we had just begun the Instagram, so yeah.

8 Q. Do you remember anybody telling you that they
9 were able to delete some of the negative comments from
10 any of Tastries' social media sites?

11 A. I know that we flagged them, and at that point
12 you have to allow Yelp and Google to make that decision,
13 and then they closed our entire site down for months.

14 Excuse me. I do know that Yelp did reach out
15 to me, and they did take down a few because of -- the
16 Yelp reviews because they used vulgar language.

17 Q. Okay. Earlier you talked about the
18 Rodriguez-Del Rios making media appearances. Have you
19 made media appearances to discuss the incident with the
20 Rodriguez-Del Rios?

21 A. Yes.

22 Q. And how about to discuss the case?

23 A. Yes, with Chuck LiMandri and with Paul.

24 Q. And have you been interviewed via video about
25 the incident or the case?

1 A. Yes.

2 Q. And also interviewed in print media?

3 A. Yes.

4 Q. Can you estimate how many times you've been
5 interviewed about the incident or the case?

6 A. When I spoke, I was -- a couple of times, I was
7 just there with my attorneys. I didn't speak.

8 The ones where I spoke, there was once when
9 somebody from the Bakersfield Californian came in, and
10 they took pictures or maybe a video, and we just
11 visited. I remember the microphone there.

12 And there were two -- the day of the incident,
13 there were reporters all over the place, and I know I
14 said things that day. And then I recall another time
15 that they twisted my words. So when we were in court,
16 they wanted to come back again, and I know that I let
17 them come in, and we did a very short, short interview.
18 Those are the only ones I recall.

19 Q. So it sounds like you --

20 A. I might -- I might have spoke to one young man
21 at the Bakersfield Californian when they posted a big,
22 big article about Eileen and Mireya, and he wanted my
23 comments on that. I think I just told them to call
24 Chuck and Paul, though. That's all I can recall, Greg.

25 Q. It sounds like maybe around a handful or so

1 that you can recall?

2 A. I think so, at most.

3 Q. Okay. And do you -- did you ever reach out to
4 media to -- you know, seeking that they would interview
5 you?

6 A. No. No.

7 Q. Do you know if your attorneys ever sought out
8 to be interviewed by the media?

9 A. You would have to ask them.

10 Q. And do you know that your attorneys have
11 released several press releases about the incident and
12 the case?

13 A. Yes.

14 Q. I think you said earlier that when the
15 information about the case hits the media, that that's
16 when some of the negative posts and calls and emails
17 happen again. Is that true?

18 A. Yes, but it's really geared towards when we are
19 in court. Do you remember -- you remember. The TRO,
20 and then they came out with the judgment, they came out
21 with the ruling, and then we were in court again. Those
22 are the times I'm talking about.

23 Q. Okay.

24 A. Because that's when the Bakersfield Californian
25 or the Channel 23 or 17, they'll show up at the

EXHIBIT 19

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



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!



Tastries Bakery, Bakersfield

Bakery

7,875 Likes

381 talking about this



8

1 Comment

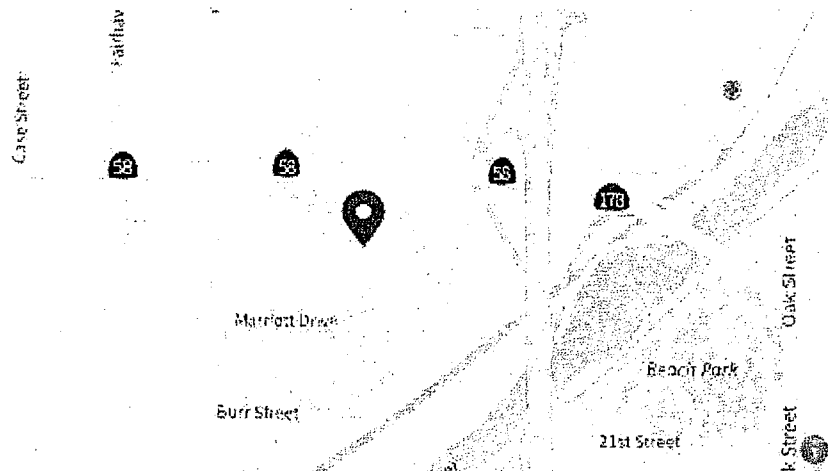


Eileen Rodriguez-Del Rio is with Jessica Camacho and 42 others
at Tastries Bakery, Bakersfield.

August 26, 2017 · Bakersfield, CA · 🌐

So we go to this bakery a week ago to sign up for tasting and choose our wedding cake. The owner met with us today to set up the process. Well this rude ass person says I will make your order but I don't condone same sex marriages and will have no part in this process. Oh but you want to take my order and give it another bakery so that bakery can do it. The rude person is also the owner of the place. She don't condone same sex marriages so refused to make our wedding cake and set up our order. She wanted all our information to send to another bakery so they could make it.

#discrimination#mustbeadonaldtrumpsupporter#rude!



Tastries Bakery, Bakersfield

Bakery · Bakersfield, CA

2,776 people checked in here

Save



66

53 Comments 8 Shares

Sam Salazar

<https://www.facebook.com/sammy.salazar.9/about?lst=139400603%3A1823011951%3A1504132436§ion=year-overviews&pnref=about>



Sam Salazar

[Add Friend](#) [Message](#) [...](#)

[Timeline](#) [About](#) [Friends](#) 1 Mutual [Photos](#) [More](#) ▾

DO YOU KNOW SAM?

To see what he shares with friends, send him a friend request.

 1 Mutual Friend

[Add Friend](#)

 **About**

To see what he shares with friends, send him a friend request.

 You and Sam have 1 mutual friend

[Add Friend](#)

Overview

Work and Education

Places He's Lived

Contact and Basic Info

Family and Relationships

Details About Sam

Life Events

LIFE EVENTS

2012  Started Working at County of Kern

2000  First Met Patrick Grijalva



Sam Salazar

August 26 at 1:04pm · Bakersfield · 🌐

Tastries Bakery... so we just went with some friends to do a cake tasting for a wedding cake and we were referred to another bakery. Apparently they don't "believe" in same sex marriage, so they refused to make the cake. I'm not even sure how to react or feel right now. So just be aware if you choose to spend your money there.

👍 Like 💬 Comment ➦ Share



151

108 shares

[View previous comments](#)

4 of 99



Justin Lucas The real story here isn't this woman and her antiquated ideologies, her backwards bigotry and hatred disguised with scripture and faith. It's the overwhelming response of those who refuse to stand on the sidelines and let hate overshadow love. This sto... [See More](#)

Like · Reply · 🌐 2 · August 28 at 12:03pm · Edited



Loretta Hayes Go somewhere else. Because someone doesn't support same sex marriage does not make them a bigot or a hater.

Like · Reply · 🌐 2 · August 28 at 2:58pm

👤 Emjay Hooper replied · 5 Replies · 11 hrs



Nina Huddle Wow, this is just ridiculous... it's 2017. Wish you the best on your wedding. I see a lot of people/business reaching out to offer their services... this is like a blessing in disguise. But, so sorry you were refused a wedding cake. I'm sure since your experience/story is being shared, their business is going to drop. Karma.

Like · Reply · Yesterday at 6:20am

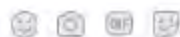


Linda Johnson Brooks So sorry this happened to you. Best wishes for the perfect wedding.

Like · Reply · 18 hrs



Write a comment...





Melissa Lee Sam Salazar



Like · Reply · 2 · August 26 at 3:35pm



Sam Salazar Awe that is so sweet! We are not the couple getting married, we were there to support very close friends. They are still looking for a baker to do their cake though. Mind if I share this with them?

Like · Reply · August 26 at 4:36pm · Edited



Melissa Lee Sam Salazar be my guest!!! She makes amazing cakes!!!!
Michelle Coleman

Like · Reply · 1 · August 26 at 3:38pm



Jessica Perez



Like · Reply · 5 · August 26 at 4:05pm

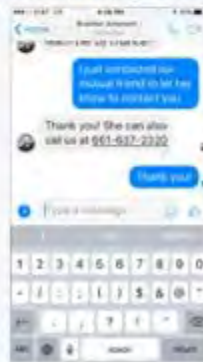


Sam Salazar Eileen Del Rio

Like · Reply · 1 · August 26 at 4:15pm



Jessica Perez Sam Salazar



Like · Reply · August 26 at 4:26pm



Raen Payne Also, are you getting married???

Like · Reply · August 26 at 4:31pm



Sam Salazar No. We were helping two of our closest friends pick their wedding cake.

Like · Reply · August 26 at 4:32pm



Raen Payne Sam Salazar ohhhhh that's cute! And also, free cake! 😊 except there, they can shut down now..

Like · Reply · August 26 at 4:33pm



Danny Hill If you need a DJ... let me know:)

Like · Reply · 8 · August 27 at 8:06am



Candie Cruz Hello, I would like to offer my services at no cost. I'm a makeup artist and hair stylist. I can be reached at [661 439-1188](tel:661439-1188) please call or text me for the date and time of event. If I'm available I'll do makeup and hair at no cost for up to 3 people.

Like · Reply · 5 · August 27 at 8:43am · Edited



Carla Phillips Hi Candie! I'd love to help as well!

Like · Reply · 2 · August 27 at 9:52am



Candie Cruz That's awesome, thanks a bunch doll. I should be hearing from them sometime today. I'll definitely keep you updated.

Like · Reply · 1 · August 27 at 9:53am



Cindy Arp Veiner If you don't have a photographer, Abbys Photography would love to help you out!

We are very sorry to hear that this has happen to you!
Give us a call ... [See More](#)

Like · Reply · 3 · August 27 at 9:13am · Edited



Martin Bojorquez Cathy Miller is hating her choice right now her fb page is open and soon people will stop derating the restaurant and attacking her personally it's too bad!! They will be deeply sued n forced out of business damn I liked it too but ohhwell buh bye!!

Like · Reply · August 27 at 8:31pm



Michelle Robertson Hi Sam, I'm a producer with the San Francisco Chronicle's news site, SFGATE, and I'd like to interview you for a story. Please send me an email at mrobertson@sfgate.com

Like · Reply · 1 · August 28 at 11:42am

EXHIBIT 20

Suspects

Mark Abernathy / Cathy Abernathy

Kevin Reed

Matthew Martin

Cynthia Gonzales Munoz

Problem: There is reason to believe Tastries was SET UP.

Goal: Find a connection between the couples and the suspects.

Couple 1

Ted G. Freitas

&

Adam Ramos

Couple 2

Sam Salazar

&

Patrick Grijalva

Couple 3

Eileen Del Rio

&

Mireya Rodriguez

Collaborators

Javier JR Reyes

Jessica Rene Monds - Coldiron

LaDonna Dodge

Nathan Royce Banks



EXHIBIT 21



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

AA01675

(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.

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

EXHIBIT 22

Charles S. LiMandri, SBN 110841
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*Application forthcoming

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

**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. dba
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

**Defendant Catharine Miller's First
Amended Responses to Special
Interrogatories**

[Set One]

Action Filed: October 17, 2018
Trial Call: July 25, 2022

1 PROPOUNDING PARTIES: Plaintiff DEPARTMENT OF FAIR EMPLOYMENT
2 AND HOUSING
3 RESPONDING PARTIES: Defendant CATHARINE MILLER
4 SET NO.: ONE-Amended [Nos. 1-16]
5

6 Pursuant to Section 2030.210 of the California Code of Civil Procedure, Defendant Catharine
7 Miller responds and objects to Plaintiff Department of Fair Employment and Housing's ("DFEH")
8 First Set of Special Interrogatories.

9
10 **GENERAL OBJECTIONS**

11 1. Miller objects to each interrogatory insofar as it seeks information (1) not in Miller's
12 possession, custody, or control; (2) prepared for or in anticipation of litigation, protected by the
13 attorney-client privilege, contains work product, or is otherwise privileged; (3) publicly available or
14 otherwise equally available to the DFEH or equally available from third parties; (4) that does not
15 specifically refer to the events forming the subject matter of this litigation; (5) not relevant to the
16 subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible
17 evidence; and (6) that imposes any requirement or obligation beyond the scope of permissible
18 discovery.

19 2. These responses and objections are made on the basis of information now known to
20 Miller and are made without waiving any further objections to, or admitting the relevancy or
21 materiality of, any of the information requested. Miller's investigation, discovery, and preparation
22 for proceedings are continuing and all answers are given without prejudice to its right to introduce or
23 object to any subsequently discovered documents, facts, or information. Miller likewise does not
24 waive the right to object, on any and all grounds, to (1) the evidentiary use of the information
25 contained in these responses and objections and (2) discovery requests relating to these objections
26 and responses.

27 3. Miller will provide its responses based on terms as they are commonly understood,
28 and consistent with the California Code of Civil Procedure. Miller objects to and will refrain from

1 extending or modifying any words employed in the requests to comport with expanded definitions or
2 instructions.

3 4. Miller objects to the requests to the extent that they seek trade secrets protected by
4 Section 1060 of the California Evidence Code. Miller will only provide information protected by
5 Section 1060 under the terms of an adequate protective order binding on the parties or under
6 equivalent safeguards.

7 Subject to and without waiving the foregoing objections, Miller responds as follows:

8
9 **OBJECTIONS & RESPONSES TO SPECIAL INTERROGATORIES**

10 **SPECIAL INTERROGATORY NO. 1:**

11 STATE ALL FACTS that support YOUR contention that YOU “never discriminated
12 against Real Parties in interest Eileen and Mireya Rodriguez-Del Rio (the “Rodriguez Del-Rios”) on
13 the basis of sexual orientation,” as alleged in YOUR ANSWER.

14 (For purposes of this entire set of Special Interrogatories, the term “STATE ALL FACTS”
15 shall include, without limitation, describing the factual basis for YOUR contentions, identifying
16 PERSONS with knowledge of said facts, and identifying any documents supporting your factual
17 contentions.)

18 (For purposes of this entire set of Interrogatories, the terms “YOU,” “YOUR,” and
19 “YOURS” shall mean and refer to Defendant Catharine Miller including all agents, employees,
20 contractors, and any PERSON acting or purporting to act on YOUR behalf.)

21 (For purposes of this entire set of Interrogatories, the terms “PERSON” and “PERSONS”
22 include, without limitation, any natural person, firm, entity, corporation, partnership, association,
23 cooperative, limited liability company, or any other person as defined in Evidence Code section 175.)

24 (For purposes of this entire set of Interrogatories, the term “ANSWER” shall mean
25 DEFENDANTS’ VERIFIED FIRST AMENDED ANSWER TO PLAINTIFF’S FIRST
26 AMENDED COMPLAINT dated April 22, 2019.)

27 ///

28 ///

1 **RESPONSE:**

2 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
3 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
4 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
5 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
6 or duplicative and therefore doubles the burden on Miller to respond to these requests.
7 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
8 standards of proper discovery.

9 Defendant objects to this request as duplicative and unduly burdensome because it
10 encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
11 including, but not limited to, court filings, the discovery during the DFEH’s administrative
12 investigation, and other correspondence and other communications to the DFEH. Providing that
13 information again in answering this request would be oppressive and unduly burdensome. All of
14 Defendant’s factual and legal contentions have already been made clear in the discovery and
15 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
16 briefing.

17 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
18 information protected under the First Amendment, the attorney-client privilege, the work-product
19 doctrine, privacy rights, or any other applicable privilege or immunity.

20 Further, Defendant objects to this interrogatory because it was never properly served on
21 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
22 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
23 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
24 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
25 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
26 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
27 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
28 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But

1 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
2 the parties have agreed to accept electronic service of specific documents, but the parties never
3 agreed to use electronic service generally.¹ Thus, Defendants object to the interrogatories on the basis
4 that they were never properly served. Defendants also object to the purported service of written
5 discovery on Christmas Eve.

6 **Response.** Subject to and without waiving the above objections, Defendant responds as
7 follows: In light of the above objections, including specifically because the interrogatories were never
8 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
9 would have merely incorporated by reference the response to the identical special interrogatory
10 propounded on Tastries Bakery.

11 **Amended Response.** Subject to and without waiving the above objections, Miller responds
12 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 1
13 propounded on Tastries Bakery.

14
15 **SPECIAL INTERROGATORY NO. 2:**

16 If YOU contend that all custom cakes sold by TASTRIES express a message from YOU,
17 STATE ALL FACTS that support YOUR contention.

18 (For purposes of this entire set of Interrogatories, the term “TASTRIES” shall mean and
19 refer to the bakery operated by YOU and/or Defendant Cathy’s Creations, Inc. located at 3665
20 Rosedale Highway, Bakersfield, California.)

21
22 **RESPONSE:**

23 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
24 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
25

26 ¹ (See, e.g., Email from Greg Mann to Jeffrey Trissell (Sep. 8, 2021, 6:49 p.m.) [requesting whether
27 e-service of summary judgment motion was sufficient]; Emails between Greg Mann and Jeffrey
28 Trissell (Nov. 17, 2020 8:43 a.m. & 9:43 a.m.) [requesting and agreeing to e-service of writ petition
reply brief]; Emails between Greg Mann and Jeffrey Trissell (Sep. 10, 2020 4:28 p.m. & 4:31 p.m.)
[requesting and agreeing to e-service of writ petition].)

1 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
2 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
3 or duplicative and therefore doubles the burden on Miller to respond to these requests.
4 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
5 standards of proper discovery.

6 Defendant objects to this request as duplicative and unduly burdensome because it
7 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
8 including, but not limited to, court filings, the discovery during the DFEH's administrative
9 investigation, and other correspondence and other communications to the DFEH. Providing that
10 information again in answering this request would be oppressive and unduly burdensome. All of
11 Defendant's factual and legal contentions have already been made clear in the discovery and
12 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
13 briefing.

14 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
15 information protected under the First Amendment, the attorney-client privilege, the work-product
16 doctrine, privacy rights, or any other applicable privilege or immunity.

17 Further, Defendant objects to this interrogatory because it was never properly served on
18 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
19 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
20 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
21 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
22 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
23 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
24 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
25 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
26 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
27 the parties have agreed to accept electronic service of specific documents, but the parties never
28 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis

1 that they were never properly served. Defendants also object to the purported service of written
2 discovery on Christmas Eve.

3 **Response.** Subject to and without waiving the above objections, Defendant responds as
4 follows: In light of the above objections, including specifically because the interrogatories were never
5 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
6 would have merely incorporated by reference the response to the identical special interrogatory
7 propounded on Tastries Bakery.

8 **Amended Response.** Subject to and without waiving the above objections, Miller responds
9 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 18
10 propounded on Tastries Bakery.

11
12 **SPECIAL INTERROGATORY NO. 3:**

13 If YOU contend that all wedding cakes sold by TASTRIES express a message from YOU,
14 STATE ALL FACTS that support YOUR contention.

15
16 **RESPONSE:**

17 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
18 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
19 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
20 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
21 or duplicative and therefore doubles the burden on Miller to respond to these requests.
22 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
23 standards of proper discovery.

24 Defendant objects to this request as duplicative and unduly burdensome because it
25 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
26 including, but not limited to, court filings, the discovery during the DFEH's administrative
27 investigation, and other correspondence and other communications to the DFEH. Providing that
28 information again in answering this request would be oppressive and unduly burdensome. All of

1 Defendant's factual and legal contentions have already been made clear in the discovery and
2 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
3 briefing.

4 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
5 information protected under the First Amendment, the attorney-client privilege, the work-product
6 doctrine, privacy rights, or any other applicable privilege or immunity.

7 Further, Defendant objects to this interrogatory because it was never properly served on
8 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
9 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
10 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
11 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
12 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
13 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
14 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
15 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
16 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
17 the parties have agreed to accept electronic service of specific documents, but the parties never
18 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
19 that they were never properly served. Defendants also object to the purported service of written
20 discovery on Christmas Eve.

21 **Response.** Subject to and without waiving the above objections, Defendant responds as
22 follows: In light of the above objections, including specifically because the interrogatories were never
23 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
24 would have merely incorporated by reference the response to the identical special interrogatory
25 propounded on Tastries Bakery.

26 **Amended Response.** Subject to and without waiving the above objections, Miller responds
27 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 19
28 propounded on Tastries Bakery.

1 **SPECIAL INTERROGATORY NO. 4:**

2 If YOU contend that the wedding cakes the REAL PARTIES sought to order from
3 TASTRIES would have expressed a message from YOU had TASTRIES prepared them, STATE
4 ALL FACTS that support YOUR contention.

5
6 **RESPONSE:**

7 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
8 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
9 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
10 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
11 or duplicative and therefore doubles the burden on Miller to respond to these requests.
12 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
13 standards of proper discovery.

14 Defendant objects to this request as duplicative and unduly burdensome because it
15 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
16 including, but not limited to, court filings, the discovery during the DFEH's administrative
17 investigation, and other correspondence and other communications to the DFEH. Providing that
18 information again in answering this request would be oppressive and unduly burdensome. All of
19 Defendant's factual and legal contentions have already been made clear in the discovery and
20 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
21 briefing.

22 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
23 information protected under the First Amendment, the attorney-client privilege, the work-product
24 doctrine, privacy rights, or any other applicable privilege or immunity.

25 Further, Defendant objects to this interrogatory because it was never properly served on
26 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
27 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
28 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.

(c.) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).) In such case, electronic service cannot be effected on court holidays, but only becomes effective on the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But the parties have never entered into an agreement to use electronic service. On a case-by-case basis, the parties have agreed to accept electronic service of specific documents, but the parties never agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis that they were never properly served. Defendants also object to the purported service of written discovery on Christmas Eve.

Response. Subject to and without waiving the above objections, Defendant responds as follows: In light of the above objections, including specifically because the interrogatories were never properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she would have merely incorporated by reference the response to the identical special interrogatory propounded on Tastries Bakery.

Amended Response. Subject to and without waiving the above objections, Miller responds as follows: Miller incorporates by reference her response to the identical special interrogatory no. 20 propounded on Tastries Bakery.

SPECIAL INTERROGATORY NO. 5:

If YOU contend that any PERSON who attended the wedding of a couple who obtained their wedding cake from TASTRIES understood the cake to be sending a message from YOU, STATE ALL FACTS that support YOUR contention.

RESPONSE:

Objections. Defendant objects to this request as duplicative of the DFEH’s First Set of Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any

1 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
2 or duplicative and therefore doubles the burden on Miller to respond to these requests.
3 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
4 standards of proper discovery.

5 Defendant objects to this request as duplicative and unduly burdensome because it
6 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
7 including, but not limited to, court filings, the discovery during the DFEH's administrative
8 investigation, and other correspondence and other communications to the DFEH. Providing that
9 information again in answering this request would be oppressive and unduly burdensome. All of
10 Defendant's factual and legal contentions have already been made clear in the discovery and
11 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
12 briefing.

13 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
14 information protected under the First Amendment, the attorney-client privilege, the work-product
15 doctrine, privacy rights, or any other applicable privilege or immunity.

16 Further, Defendant objects to this interrogatory because it was never properly served on
17 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
18 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
19 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
20 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
21 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
22 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
23 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
24 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
25 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
26 the parties have agreed to accept electronic service of specific documents, but the parties never
27 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
28 that they were never properly served. Defendants also object to the purported service of written

1 discovery on Christmas Eve.

2 **Response.** Subject to and without waiving the above objections, Defendant responds as
3 follows: In light of the above objections, including specifically because the interrogatories were never
4 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
5 would have merely incorporated by reference the response to the identical special interrogatory
6 propounded on Tastries Bakery.

7 **Amended Response.** Subject to and without waiving the above objections, Miller responds
8 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 21
9 propounded on Tastries Bakery.

10
11 **SPECIAL INTERROGATORY NO. 6:**

12 If YOU contend that any PERSON who attended the wedding of a same-sex couple who
13 obtained their wedding cake from TASTRIES understood the cake to be sending a message from
14 YOU endorsing same-sex marriage, STATE ALL FACTS that support YOUR contention.

15
16 **RESPONSE:**

17 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
18 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
19 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
20 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
21 or duplicative and therefore doubles the burden on Miller to respond to these requests.
22 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
23 standards of proper discovery.

24 Defendant objects to this request as duplicative and unduly burdensome because it
25 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
26 including, but not limited to, court filings, the discovery during the DFEH's administrative
27 investigation, and other correspondence and other communications to the DFEH. Providing that
28 information again in answering this request would be oppressive and unduly burdensome. All of

1 Defendant's factual and legal contentions have already been made clear in the discovery and
2 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
3 briefing.

4 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
5 information protected under the First Amendment, the attorney-client privilege, the work-product
6 doctrine, privacy rights, or any other applicable privilege or immunity.

7 Further, Defendant objects to this interrogatory because it was never properly served on
8 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
9 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
10 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
11 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
12 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
13 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
14 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
15 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
16 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
17 the parties have agreed to accept electronic service of specific documents, but the parties never
18 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
19 that they were never properly served. Defendants also object to the purported service of written
20 discovery on Christmas Eve.

21 **Response.** Subject to and without waiving the above objections, Defendant responds as
22 follows: In light of the above objections, including specifically because the interrogatories were never
23 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
24 would have merely incorporated by reference the response to the identical special interrogatory
25 propounded on Tastries Bakery.

26 **Amended Response.** Subject to and without waiving the above objections, Miller responds
27 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 22
28 propounded on Tastries Bakery.

1 **SPECIAL INTERROGATORY NO. 7:**

2 If YOU contend that all custom cakes sold by TASTRIES express a religious message from
3 YOU, STATE ALL FACTS that support YOUR contention.

4
5 **RESPONSE:**

6 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
7 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
8 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
9 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
10 or duplicative and therefore doubles the burden on Miller to respond to these requests.
11 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
12 standards of proper discovery.

13 Defendant objects to this request as duplicative and unduly burdensome because it
14 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
15 including, but not limited to, court filings, the discovery during the DFEH's administrative
16 investigation, and other correspondence and other communications to the DFEH. Providing that
17 information again in answering this request would be oppressive and unduly burdensome. All of
18 Defendant's factual and legal contentions have already been made clear in the discovery and
19 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
20 briefing.

21 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
22 information protected under the First Amendment, the attorney-client privilege, the work-product
23 doctrine, privacy rights, or any other applicable privilege or immunity.

24 Further, Defendant objects to this interrogatory because it was never properly served on
25 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
26 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
27 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
28 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit

1 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
2 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
3 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
4 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
5 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
6 the parties have agreed to accept electronic service of specific documents, but the parties never
7 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
8 that they were never properly served. Defendants also object to the purported service of written
9 discovery on Christmas Eve.

10 **Response.** Subject to and without waiving the above objections, Defendant responds as
11 follows: In light of the above objections, including specifically because the interrogatories were never
12 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
13 would have merely incorporated by reference the response to the identical special interrogatory
14 propounded on Tastries Bakery.

15 **Amended Response.** Subject to and without waiving the above objections, Miller responds
16 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 23
17 propounded on Tastries Bakery.

18
19 **SPECIAL INTERROGATORY NO. 8:**

20 If YOU contend that all wedding cakes sold by TASTRIES express a religious message from
21 YOU, STATE ALL FACTS that support YOUR contention.

22
23 **RESPONSE:**

24 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
25 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
26 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
27 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
28 or duplicative and therefore doubles the burden on Miller to respond to these requests.

1 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
2 standards of proper discovery.

3 Defendant objects to this request as duplicative and unduly burdensome because it
4 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
5 including, but not limited to, court filings, the discovery during the DFEH's administrative
6 investigation, and other correspondence and other communications to the DFEH. Providing that
7 information again in answering this request would be oppressive and unduly burdensome. All of
8 Defendant's factual and legal contentions have already been made clear in the discovery and
9 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
10 briefing.

11 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
12 information protected under the First Amendment, the attorney-client privilege, the work-product
13 doctrine, privacy rights, or any other applicable privilege or immunity.

14 Further, Defendant objects to this interrogatory because it was never properly served on
15 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
16 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
17 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
18 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
19 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
20 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
21 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
22 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
23 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
24 the parties have agreed to accept electronic service of specific documents, but the parties never
25 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
26 that they were never properly served. Defendants also object to the purported service of written
27 discovery on Christmas Eve.

28 ///

1 **Response.** Subject to and without waiving the above objections, Defendant responds as
2 follows: In light of the above objections, including specifically because the interrogatories were never
3 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
4 would have merely incorporated by reference the response to the identical special interrogatory
5 propounded on Tastries Bakery.

6 **Amended Response.** Subject to and without waiving the above objections, Miller responds
7 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 24
8 propounded on Tastries Bakery.

9
10 **SPECIAL INTERROGATORY NO. 9:**

11 If YOU contend that the wedding cakes the REAL PARTIES sought to order from
12 TASTRIES would have expressed a religious message from YOU had TASTRIES prepared them,
13 STATE ALL FACTS that support YOUR contention.

14
15 **RESPONSE:**

16 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
17 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
18 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
19 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
20 or duplicative and therefore doubles the burden on Miller to respond to these requests.
21 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
22 standards of proper discovery.

23 Defendant objects to this request as duplicative and unduly burdensome because it
24 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
25 including, but not limited to, court filings, the discovery during the DFEH's administrative
26 investigation, and other correspondence and other communications to the DFEH. Providing that
27 information again in answering this request would be oppressive and unduly burdensome. All of
28 Defendant's factual and legal contentions have already been made clear in the discovery and

1 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
2 briefing.

3 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
4 information protected under the First Amendment, the attorney-client privilege, the work-product
5 doctrine, privacy rights, or any other applicable privilege or immunity.

6 Further, Defendant objects to this interrogatory because it was never properly served on
7 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
8 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
9 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
10 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
11 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
12 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
13 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
14 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
15 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
16 the parties have agreed to accept electronic service of specific documents, but the parties never
17 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
18 that they were never properly served. Defendants also object to the purported service of written
19 discovery on Christmas Eve.

20 **Response.** Subject to and without waiving the above objections, Defendant responds as
21 follows: In light of the above objections, including specifically because the interrogatories were never
22 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
23 would have merely incorporated by reference the response to the identical special interrogatory
24 propounded on Tastries Bakery.

25 **Amended Response.** Subject to and without waiving the above objections, Miller responds
26 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 25
27 propounded on Tastries Bakery.

28 ///

1 **SPECIAL INTERROGATORY NO. 10:**

2 STATE ALL FACTS that support YOUR contention that DFEH has treated YOU
3 differently from those similarly situated to YOU, as alleged in YOUR ANSWER.

4
5 **RESPONSE:**

6 **Objections.** Defendant objects to this request as duplicative of the DFEH's First Set of
7 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
8 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
9 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
10 or duplicative and therefore doubles the burden on Miller to respond to these requests.
11 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
12 standards of proper discovery.

13 Defendant objects to this request as duplicative and unduly burdensome because it
14 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
15 including, but not limited to, court filings, the discovery during the DFEH's administrative
16 investigation, and other correspondence and other communications to the DFEH. Providing that
17 information again in answering this request would be oppressive and unduly burdensome. All of
18 Defendant's factual and legal contentions have already been made clear in the discovery and
19 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
20 briefing.

21 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
22 information protected under the First Amendment, the attorney-client privilege, the work-product
23 doctrine, privacy rights, or any other applicable privilege or immunity.

24 Further, Defendant objects to this interrogatory because it was never properly served on
25 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
26 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
27 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
28 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit

1 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
2 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
3 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
4 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
5 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
6 the parties have agreed to accept electronic service of specific documents, but the parties never
7 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
8 that they were never properly served. Defendants also object to the purported service of written
9 discovery on Christmas Eve.

10 **Response.** Subject to and without waiving the above objections, Defendant responds as
11 follows: In light of the above objections, including specifically because the interrogatories were never
12 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
13 would have merely incorporated by reference the response to the identical special interrogatory
14 propounded on Tastries Bakery.

15 **Amended Response.** Subject to and without waiving the above objections, Miller responds
16 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 34
17 propounded on Tastries Bakery.

18
19 **SPECIAL INTERROGATORY NO. 11:**

20 If YOU contend that a custom cake sold by TASTRIES containing no writing or written
21 message expresses a message from YOU, STATE ALL FACTS that support YOUR contention.

22
23 **RESPONSE:**

24 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
25 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
26 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
27 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
28 or duplicative and therefore doubles the burden on Miller to respond to these requests.

1 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
2 standards of proper discovery.

3 Defendant objects to this request as duplicative and unduly burdensome because it
4 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
5 including, but not limited to, court filings, the discovery during the DFEH's administrative
6 investigation, and other correspondence and other communications to the DFEH. Providing that
7 information again in answering this request would be oppressive and unduly burdensome. All of
8 Defendant's factual and legal contentions have already been made clear in the discovery and
9 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
10 briefing.

11 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
12 information protected under the First Amendment, the attorney-client privilege, the work-product
13 doctrine, privacy rights, or any other applicable privilege or immunity.

14 Further, Defendant objects to this interrogatory because it was never properly served on
15 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
16 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
17 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
18 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
19 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
20 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
21 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
22 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
23 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
24 the parties have agreed to accept electronic service of specific documents, but the parties never
25 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
26 that they were never properly served. Defendants also object to the purported service of written
27 discovery on Christmas Eve.

28 ///

1 **Response.** Subject to and without waiving the above objections, Defendant responds as
2 follows: In light of the above objections, including specifically because the interrogatories were never
3 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
4 would have merely incorporated by reference the response to the identical special interrogatory
5 propounded on Tastries Bakery.

6 **Amended Response.** Subject to and without waiving the above objections, Miller responds
7 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 39
8 propounded on Tastries Bakery.

9
10 **SPECIAL INTERROGATORY NO. 12:**

11 If YOU contend that YOUR decision to decline to make wedding cakes for the REAL
12 PARTIES was based on reason(s) that did not include their SEXUAL ORIENTATION, STATE
13 ALL FACTS that support YOUR contention.

14 (For purposes of this entire set of Interrogatories, the term “SEXUAL ORIENTATION”
15 shall have the meaning set forth in Government Code section 12926, subdivision (s).)

16
17 **RESPONSE:**

18 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
19 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
20 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
21 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
22 or duplicative and therefore doubles the burden on Miller to respond to these requests.
23 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
24 standards of proper discovery.

25 Defendant objects to this request as duplicative and unduly burdensome because it
26 encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
27 including, but not limited to, court filings, the discovery during the DFEH’s administrative
28 investigation, and other correspondence and other communications to the DFEH. Providing that

1 information again in answering this request would be oppressive and unduly burdensome. All of
2 Defendant's factual and legal contentions have already been made clear in the discovery and
3 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
4 briefing.

5 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
6 information protected under the First Amendment, the attorney-client privilege, the work-product
7 doctrine, privacy rights, or any other applicable privilege or immunity.

8 Further, Defendant objects to this interrogatory because it was never properly served on
9 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
10 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
11 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
12 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
13 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
14 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
15 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
16 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
17 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
18 the parties have agreed to accept electronic service of specific documents, but the parties never
19 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
20 that they were never properly served. Defendants also object to the purported service of written
21 discovery on Christmas Eve.

22 **Response.** Subject to and without waiving the above objections, Defendant responds as
23 follows: In light of the above objections, including specifically because the interrogatories were never
24 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
25 would have merely incorporated by reference the response to the identical special interrogatory
26 propounded on Tastries Bakery.

27 ///

28 ///

1 **Amended Response.** Subject to and without waiving the above objections, Miller responds
2 as follows: Miller incorporates by reference her response to the identical special interrogatory no. 41
3 propounded on Tastries Bakery.

4
5 **SPECIAL INTERROGATORY NO. 13:**

6 If YOU contend that YOU have been “publicly humiliate[d],” as alleged in YOUR
7 ANSWER, as a result of actions by DFEH, STATE ALL FACTS that support YOUR contention.

8
9 **RESPONSE:**

10 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
11 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
12 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
13 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
14 or duplicative and therefore doubles the burden on Miller to respond to these requests.
15 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
16 standards of proper discovery.

17 Defendant objects to this request as duplicative and unduly burdensome because it
18 encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
19 including, but not limited to, court filings, the discovery during the DFEH’s administrative
20 investigation, and other correspondence and other communications to the DFEH. Providing that
21 information again in answering this request would be oppressive and unduly burdensome. All of
22 Defendant’s factual and legal contentions have already been made clear in the discovery and
23 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
24 briefing.

25 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
26 information protected under the First Amendment, the attorney-client privilege, the work-product
27 doctrine, privacy rights, or any other applicable privilege or immunity.

28 Further, Defendant objects to this interrogatory because it was never properly served on

1 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
2 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
3 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
4 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
5 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
6 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
7 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
8 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
9 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
10 the parties have agreed to accept electronic service of specific documents, but the parties never
11 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
12 that they were never properly served. Defendants also object to the purported service of written
13 discovery on Christmas Eve.

14 **Response.** Subject to and without waiving the above objections, Defendant responds as
15 follows: In light of the above objections, including specifically because the interrogatories were never
16 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
17 would have merely incorporated by reference the response to the identical special interrogatory
18 propounded on Tastries Bakery.

19 **Amended Response.** Subject to and without waiving the above objections, Miller responds
20 as follows:

21 The cake tasting with Eileen and Mireya Rodriguez-Del Rio began shortly after 1:00 p.m. on
22 Saturday, August 26, 2017, and lasted five to seven minutes. Shortly after leaving Tastries Bakery,
23 Eileen posted on Facebook, falsely claiming that Tastries and Miller had engaged in “discrimination”
24 without mentioning that Miller’s faith precluded them from making their wedding cake. This began
25 a social media storm that went viral. Tastries Bakery was engulfed in negative Facebook and Yelp
26 reviews along with a call to action by local LGBT advocate Whitney Weddell. Tastries social media
27 pages were under siege by vicious written attacks on Miller’s character and about the bakery. The
28 bakery was also inundated with malicious emails and phone calls that included pornographic images

1 and threats of violence. All of the hate mail Tastries received was produced in this action already. A
2 large portion of the hate mail also falsely asserted that Tastries had engaged in discrimination on the
3 basis of sexual orientation, without knowing the true fact that Miller's Christian faith precluded her
4 from sending any message in support of any concept of marriage other than a covenantal union
5 between one man and one woman.

6 Within a few hours of the Eileen's Facebook posting, Tastries Bakery also began receiving
7 calls from numerous media outlets, demanding statements and interviews. Reporters swarmed the
8 Tastries parking lot and began interviewing customers. The chronic phone, email and social media
9 harassment lasted for three months. They start up again every time Tastries Bakery is mentioned in
10 the news. After these events, Tastries lost many employees due to the threats and hateful comments.
11 The threats of harassment led to actual violence. Miller's car was broken into and an employee was
12 assaulted in back of the bakery by an individual who mentioned this case during the attack. The large
13 amount of publicity following this incident also caused many businesses to boycott Tastries Bakery,
14 and caused the bakery to lose major clients.

15 Following this, in October 2017, the DFEH began an investigation into the above incident.
16 The DFEH is tasked with enforcing the Unruh Civil Rights Act which prohibits discrimination by
17 businesses against customers or other businesses on the basis of "religion" and "sexual orientation."
18 (Civ. Code, §§ 51(b); 51.5(a).) However, it does not prohibit regulations that are "applicable alike" to
19 people of all religions and sexual orientations. (Civ. Code, § 51(c).) In the Unruh Act, "religion" is
20 defined so that it "includes all aspects of religious belief, observance, and practice." (Civ. Code,
21 § 51(e)(4).) "Sexual orientation" is defined to "mean[] heterosexuality, homosexuality, and
22 bisexuality." (Civ. Code, § 51(e)(7); citing Gov. Code, § 12926(s).)

23 The DFEH, however, never investigated the businesses who boycotted Tastries Bakery on the
24 basis of its and Miller's religious practice and observance, but instead solely investigated Tastries
25 Bakery for discriminating against Eileen and Mireya. Since the incident was publicized by the media,
26 Miller has been clear that Tastries Bakery did not decline to make Eileen and Mireya's wedding cake
27 because of their "heterosexuality, homosexuality, [or] bisexuality," but because her Christian beliefs
28 preclude her from creating and sending any message supporting any concept of marriage except as a

1 covenantal union between one man and one woman. Ignoring the facts of this case, however, the
2 DFEH claimed that Tastries Bakery discriminated on the basis of sexual orientation and began an
3 administrative investigation and later filed a civil action. These actions—by which the DFEH
4 continually falsely accuses Miller and Tastries of conduct that is nowhere supported by the actual
5 facts—continually publicly humiliates them and causes severe emotional distress. They are also
6 publicly humiliated and suffer emotional distress in understanding that they are second class citizens,
7 who will not be protected when others discriminate against them on the basis of religion in violation
8 of the Unruh Act

9
10 **SPECIAL INTERROGATORY NO. 14:**

11 If YOU contend that YOU have suffered “severe emotional distress,” as alleged in YOUR
12 ANSWER, as a result of actions by DFEH, STATE ALL FACTS that support YOUR contention.

13
14 **RESPONSE:**

15 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
16 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
17 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
18 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
19 or duplicative and therefore doubles the burden on Miller to respond to these requests.
20 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
21 standards of proper discovery.

22 Defendant objects to this request as duplicative and unduly burdensome because it
23 encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
24 including, but not limited to, court filings, the discovery during the DFEH’s administrative
25 investigation, and other correspondence and other communications to the DFEH. Providing that
26 information again in answering this request would be oppressive and unduly burdensome. All of
27 Defendant’s factual and legal contentions have already been made clear in the discovery and
28

1 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
2 briefing.

3 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
4 information protected under the First Amendment, the attorney-client privilege, the work-product
5 doctrine, privacy rights, or any other applicable privilege or immunity.

6 Further, Defendant objects to this interrogatory because it was never properly served on
7 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
8 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
9 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
10 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
11 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
12 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
13 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
14 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
15 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
16 the parties have agreed to accept electronic service of specific documents, but the parties never
17 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
18 that they were never properly served. Defendants also object to the purported service of written
19 discovery on Christmas Eve.

20 **Response.** Subject to and without waiving the above objections, Defendant responds as
21 follows: In light of the above objections, including specifically because the interrogatories were never
22 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
23 would have merely incorporated by reference the response to the identical special interrogatory
24 propounded on Tastries Bakery.

25 **Amended Response.** Subject to and without waiving the above objections, Miller responds
26 as follows: Miller incorporates by reference her response to the similar special interrogatory no. 13
27 immediately above.

28 ///

1 **SPECIAL INTERROGATORY NO. 15:**

2 If YOU contend that YOU have been “publicly humiliate[d],” as alleged in YOUR
3 ANSWER, as a result of actions by the REAL PARTIES, STATE ALL FACTS that support YOUR
4 contention.

5
6 **RESPONSE:**

7 **Objections.** Defendant objects to this request as duplicative of the DFEH’s First Set of
8 Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is
9 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any
10 same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative
11 or duplicative and therefore doubles the burden on Miller to respond to these requests.
12 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
13 standards of proper discovery.

14 Defendant objects to this request as duplicative and unduly burdensome because it
15 encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
16 including, but not limited to, court filings, the discovery during the DFEH’s administrative
17 investigation, and other correspondence and other communications to the DFEH. Providing that
18 information again in answering this request would be oppressive and unduly burdensome. All of
19 Defendant’s factual and legal contentions have already been made clear in the discovery and
20 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
21 briefing.

22 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
23 information protected under the First Amendment, the attorney-client privilege, the work-product
24 doctrine, privacy rights, or any other applicable privilege or immunity.

25 Further, Defendant objects to this interrogatory because it was never properly served on
26 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
27 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
28 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.

(c.) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).) In such case, electronic service cannot be effected on court holidays, but only becomes effective on the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But the parties have never entered into an agreement to use electronic service. On a case-by-case basis, the parties have agreed to accept electronic service of specific documents, but the parties never agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis that they were never properly served. Defendants also object to the purported service of written discovery on Christmas Eve.

Response. Subject to and without waiving the above objections, Defendant responds as follows: In light of the above objections, including specifically because the interrogatories were never properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she would have merely incorporated by reference the response to the identical special interrogatory propounded on Tastries Bakery.

Amended Response. Subject to and without waiving the above objections, Miller responds as follows: Miller incorporates by reference her response to the similar special interrogatory no. 6 propounded on Tastries Bakery.

SPECIAL INTERROGATORY NO. 16:

If YOU contend that YOU have suffered “severe emotional distress,” as alleged in YOUR ANSWER, as a result of actions by the REAL PARTIES, STATE ALL FACTS that support YOUR

RESPONSE:

Objections. Defendant objects to this request as duplicative of the DFEH’s First Set of Special Interrogatories to Tastries Bakery. As made clear since the beginning of this case, Miller is 100% shareholder of Tastries Bakery and solely responsible for its existence and operation. Thus, any same or similar discovery demands on both Tastries Bakery and Miller are oppressively cumulative

1 or duplicative and therefore doubles the burden on Miller to respond to these requests.
2 Consequently, Miller objects to this request because it is unduly burdensome and contrary to the
3 standards of proper discovery.

4 Defendant objects to this request as duplicative and unduly burdensome because it
5 encompasses information readily or more accessible to the DFEH from the DFEH's own files,
6 including, but not limited to, court filings, the discovery during the DFEH's administrative
7 investigation, and other correspondence and other communications to the DFEH. Providing that
8 information again in answering this request would be oppressive and unduly burdensome. All of
9 Defendant's factual and legal contentions have already been made clear in the discovery and
10 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
11 briefing.

12 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
13 information protected under the First Amendment, the attorney-client privilege, the work-product
14 doctrine, privacy rights, or any other applicable privilege or immunity.

15 Further, Defendant objects to this interrogatory because it was never properly served on
16 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
17 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
18 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
19 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
20 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
21 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
22 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
23 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
24 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
25 the parties have agreed to accept electronic service of specific documents, but the parties never
26 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
27 that they were never properly served. Defendants also object to the purported service of written
28 discovery on Christmas Eve.

1 **Response.** Subject to and without waiving the above objections, Defendant responds as
2 follows: In light of the above objections, including specifically because the interrogatories were never
3 properly served on Defendant, Defendant does not respond. Further, had Defendant responded, she
4 would have merely incorporated by reference the response to the identical special interrogatory
5 propounded on Tastries Bakery.

6 **Amended Response.** Subject to and without waiving the above objections, Miller responds
7 as follows: Miller incorporates by reference her response to the similar special interrogatory no. 6
8 propounded on Tastries Bakery.

9
10
11
12 Dated: February 24, 2022

LiMANDRI & JONNA LLP

By: 

Charles S. LiMandri

Paul M. Jonna

Jeffrey M. Trissell

Milan L. Brandon II

Attorneys for Defendants

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VERIFICATION

I, Catharine Miller, am a defendant in this action. I have read the document, **Defendant Catharine Miller's First Amended Responses to Special Interrogatories [Set One]** and know its contents. The information supplied in the foregoing document is based on my own personal knowledge or has been supplied by my attorneys or other agents or compiled from available documents and is provided as required by law. The information in the foregoing document is true to the extent of my personal knowledge. As to the information provided by my attorneys or other agents or compiled from available documents, including all contentions and opinions, I do not have personal knowledge but made a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party. Thus, I am informed and believe that the matters stated in the foregoing document are true and on that ground certify or declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 24th day of February 2022, at San Diego, California.

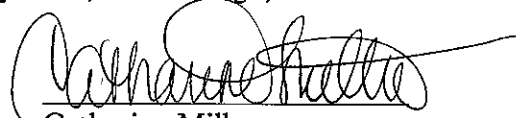

Catharine Miller

Exhibit Z

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Fee Exempt (Gov. Code, § 6103)

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Kern County Superior Court
By Gina Sala, 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 Parties in Interest.

Case No. BCV-18-102633-JEB

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION IN LIMINE NO. 1 TO
EXCLUDE ANY EVIDENCE OR
ARGUMENT THAT, UNDER THE
UNRUH ACT, "STATUS" IS
SEPARATE FROM "CONDUCT";
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

(Plaintiff's Motion in Limine No. 1)

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON July 25, 2022, at 9:00 a.m., or as soon as thereafter as the
matter can be heard, in Department J of the above-entitled court, located at 1215 Truxtun Ave,
Bakersfield, CA 93301, Plaintiff Department of Fair Employment and Housing (DFEH) will, and

1 hereby does, move in limine for an Order precluding defendants from presenting any evidence or
2 argument at trial that Tastries did not decline to take the Rodriguez-Del Rios' wedding cakes order
3 based on their "homosexual" *status* (see Civ. Code, § 51, subd. (e)(7); Gov. Code, § 12926, subd.
4 (s)), but, rather, declined to take their order based on their *conduct* of celebrating their marriage as a
5 gay couple.

6 Based on the governing law, such argument and evidence is irrelevant as it contradicts the
7 holdings of controlling United States Supreme Court and California Supreme Court precedent. This
8 Motion is made pursuant to Evidence Code sections 350 and 351 on the grounds that only relevant
9 evidence is admissible, and defendants may not offer purported evidence or legal arguments that
10 contradict the law. This motion is also made under Evidence Code section 352 on the grounds that
11 such evidence and argument must be excluded as there is no probative value and its admission will
12 create substantial danger of unfair prejudice.

13 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

14
15 By:



Gregory J. Mann
Attorneys for the Department of Fair
Employment and Housing

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 United States Supreme Court and California Supreme Court decisions make clear that the
4 *status* of a protected person under antidiscrimination laws is inextricably entwined with their
5 *conduct*, and the two cannot be considered separately. By this motion in limine, plaintiff Department
6 of Fair Employment and Housing (DFEH) requests an order prohibiting defendants Cathy's
7 Creations, Inc. dba Tastries Bakery and Catharine Miller (Miller) (collectively, Tastries) and their
8 attorneys from introducing evidence and making arguments that they did not "ma[k]e a distinction
9 that denied full and equal ... services" (CACI 3060) to real parties in interest Eileen and Mireya
10 Rodriguez-Del Rio on the basis of their homosexual *status* (i.e., their sexual orientation), a protected
11 characteristic under the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51; Civ. Code, § 51,
12 subd. (e)(7) citing Gov. Code, § 12926, subd. (s) "'Sexual orientation' means heterosexuality,
13 homosexuality, and bisexuality."), but rather declined to take their wedding cakes order because
14 defendant Miller is religiously opposed only to their *conduct* of being in a same-sex marriage as a
15 gay couple. This Court should not permit such irreconcilable parsing. Indeed, making a distinction
16 based on an objection to same-sex marriage (i.e., marriage between gay people) *is* making a
17 distinction based on sexual orientation. As Miller agreed, "when we're talking about same-sex
18 marriage, we're talking about sexual orientation." (Mann Declaration in Support of Motions In
19 Limine ["Mann Decl."], **Exhibit 18**, Depo. Trans. of Catharine Miller, 150:16-19.) This Court
20 should follow U.S and California Supreme Court precedent and, as a matter of law, exclude the
21 introduction of argument and evidence based on the rejected and false distinction between Eileen
22 and Mireya Rodriguez-Del Rio's *status* as gay people and their *conduct* of being married as a gay
23 couple.

24 **II. LEGAL ARGUMENT**

25 **A. Anti-Discrimination Law Does Not Recognize a Distinction Between Protected**
26 **Individuals' Status and Conduct Inextricably Entwined with Their Status**

27 Tastries argues there is a material difference between distinctions made based on same-sex
28 marriage and distinctions made based on gay couples' sexual orientation. Tastries insists that

1 denying gay couples wedding-related goods and services—goods and services it would provide to
2 straight couples—is not a distinction based on gay couple’s sexual orientation (*status*), rather the
3 refusal is a rejection of gay couple’s *conduct*—the act of gay couples marrying. Therefore, Tastries
4 argues, its policy to decline advance orders for any baked good to be used in any celebration related
5 to a gay couple’s marriage is not *status*-based sexual orientation discrimination violative of the
6 Unruh Act.

7 Tastries is wrong. Discrimination—making a distinction that denies a member of a protected
8 class full and equal services (CACI 3060)—is not excused because it is aimed at an individual’s
9 *demonstration* of their protected status. Such a narrow view of the law would offer little protection.
10 And courts have uniformly rejected this argument, refusing to distinguish between gay people’s
11 *status* (i.e., sexual orientation) and their *conduct* (i.e., entering into gay marriage) when the conduct
12 is “engaged in exclusively or predominately by a particular class of people, [since] an intent to
13 disfavor that class can readily be presumed.” (*Bray v. Alexandria Women’s Health Clinic* (1993) 506
14 U.S. 263, 270 [“A tax on wearing yarmulkes is a tax on Jews.”].) Courts uniformly reject the status-
15 conduct distinction when analyzing discrimination claims based on sexual orientation. Indeed, the
16 United States Supreme Court’s “decisions have declined to distinguish between status and conduct
17 in [the] context” of discrimination on the basis of sexual orientation. (*Christian Legal Soc. Chapter*
18 *of the Univ. of Cal., Hastings College of the Law v. Martinez* (2010) 561 U.S. 661, 668 [“*Martinez*”]
19 citing *Lawrence v. Texas* (2003) 539 U.S. 558, 575 [criminalizing conduct typically undertaken by
20 gay people is discrimination against gay people].)

21 In *Martinez*, a student religious group applying for official recognition, Christian Legal
22 Society (“CLS”), challenged a Hastings College of Law requirement that officially recognized
23 student groups must comply with the school’s nondiscrimination policy by accepting all members.
24 (*Martinez, supra*, 561 U.S. at p. 668.) CLS’s bylaws stated “that sexual activity should not occur
25 outside of marriage between a man and a woman,” and in violation of Hastings’s policy, CLS
26 excluded members who engaged in “unrepentant homosexual conduct.” (*Id.* at 672.) As a result,
27 Hastings rejected CLS’s application. (*Ibid.*) CLS sued, alleging the denial of its application violated
28 its free exercise, expressive association, and free speech rights. (*Id.* at p. 673.) CLS argued that it

1 barred gay students based on their *conduct* and beliefs, not their *status* as gay people. (*Id.* at p. 689.)

2 The U.S. Supreme Court disagreed, stating that “[t]his case itself is instructive in this regard
3 [because] CLS contends that it does not exclude individuals because of sexual orientation, but rather
4 ‘on the basis of a conjunction of conduct and the belief that the conduct is not wrong.’ [Citation.]”
5 (*Id.* at p. 689.) The Court continued, “[o]ur decisions have declined to distinguish between status and
6 conduct in this context.” (*Ibid.* citing *Lawrence v. Texas* (2003) 539 U.S. 558, 575 [“When
7 homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an
8 invitation to subject homosexual persons to discrimination.”] [*italics original*]; *id.* at p. 583
9 [O’Connor, J., concurring in judgment] [“While it is true that the law applies only to conduct, the
10 conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such
11 circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons
12 as a class.”].)

13 The California Supreme Court also holds that this status-conduct distinction is meaningless:
14 California’s former laws prohibiting same-sex marriage “properly must be understood as classifying
15 or discriminating on the basis of sexual orientation....” (*In re Marriage Cases* (2008) 43 Cal.4th
16 757, 783-84, superseded by Constitutional amendment as stated in *Hollingsworth v. Perry* (2013)
17 570 U.S. 693, 701.) “In arguing that the marriage statutes do not discriminate on the basis of sexual
18 orientation, defendants rely upon the circumstance that these statutes, on their face, do not refer
19 explicitly to sexual orientation and do not prohibit gay individuals from marrying a person of the
20 opposite sex.” (*Id.* at pp. 839–40.) The court continued: “[i]n our view, the statutory provisions
21 restricting marriage to a man and a woman cannot be understood as having merely a disparate
22 impact on gay persons, but instead properly must be viewed as directly classifying and prescribing
23 distinct treatment on the basis of sexual orientation.” (*Ibid.*) Indeed, “[b]y limiting marriage to
24 opposite-sex couples, the marriage statutes, realistically viewed, operate clearly and directly to
25 impose different treatment on gay individuals because of their sexual orientation.” (*Ibid.*; cf.
26 *Johnson Controls, Inc. v. Fair Emp. & Hous. Com.* (1990) 218 Cal.App.3d 517, 533-35 [purported
27 facially neutral safety policy banning conduct—“childbearing capacity”—was discrimination based
28 on gender status; a “‘possibility of pregnancy’ as a basis for refusal to hire should not be treated

1 different than a ‘gender based discrimination.’”].) “This is true even if the denial was pursuant to a
2 facially neutral policy.” (*In re Marriage Cases*, *supra*, 43 Cal.4th at pp. 839–40 citing *Koebke v.*
3 *Bernardo Heights Country Club* (2005) 36 Cal.4th 824, 854 [“Evidence of disparate impact [can] be
4 admitted in Unruh Civil Rights Act cases because ‘such evidence may be probative of intentional
5 discrimination in some cases.’ [Citation.]”].)

6 There is no basis to construe the Unruh Act differently, especially given its “liberal
7 construction.” (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 28.) Making a distinction between
8 gay individuals celebrating their marriages and straight individuals celebrating their marriages
9 violates the Unruh Act’s prohibition against discrimination based on sexual orientation. (See *Romer*
10 *v. Evans* (1996) 517 U.S. 620, 641 (dis. opn. of Scalia, J.) [“‘After all, there can hardly be more
11 palpable discrimination against a class than making the conduct that defines the class criminal.’”];
12 see also *State v. Arlene’s Flowers* (2019) 193 Wash.2d 469, 503-05; see also *Elane Photography,*
13 *LLC v. Willock* (2013) 309 P.3d 53, 68.) Given the Unruh Act’s liberal construction, it does not
14 permit defendants’ incongruous distinction between the Rodriguez-Del Rios’ sexual orientation and
15 their conduct of being in a same-sex marriage.

16 Thus, as a matter of law, the United States and California Supreme Courts have flatly
17 rejected defendants’ argument that Miller was not motivated by the Rodriguez-Del Rios’ sexual
18 orientation when she declined to take their order for cakes for their wedding reception. Miller
19 refused to take their order once she learned the Rodriguez-Del Rios were a gay couple. Ignoring this
20 fact, defendants argue that Miller based her refusal on the Rodriguez-Del Rios’ conduct—
21 celebrating their marriage as a gay couple—not their status as gay people.

22 But, as set forth above, the conduct of being in and celebrating a same-sex marriage as a gay
23 couple is inseparable from the sexual orientation of the gay couple in that marriage. The U.S. and
24 California Supreme Courts have explicitly rejected the artificial distinction between conduct and
25 status defendants assert here. Defendants’ policy excludes only those entering or in same-sex
26 marriages, and by doing so targets their sexual orientation, a protected class under the Unruh Act.
27 (*Martinez, supra*, 561 U.S. at p. 689.) Moreover, Tastries’ policy is not facially neutral. Tastries’
28 policy excludes providing baked goods for *any event* that celebrates a gay or lesbian union. Because

1 Tastries' policy refuses services based on conduct closely associated with sexual orientation, it
2 discriminates based on sexual orientation in violation of Unruh. Any defense argument to the
3 contrary must be excluded.

4 **B. Intent to Discriminate Under the Unruh Act May Not Be Negated By**
5 **Defendants' Attempt to Distinguish Real Parties' Conduct from Their Status**

6 The Unruh Act provides that "[w]hoever denies, aids or incites a denial, or makes any
7 discrimination or *distinction* contrary to Section 51 ... is liable for each and every offense...." (Civ.
8 Code, § 52(a), emphasis added.) Defendant Miller will testify that she bears no animus against gays
9 and lesbians and that Tastries will sell gay and lesbian individuals baked goods in their display cases
10 or for non-marriage related events, but that Tastries cannot bake and sell pre-ordered cakes and other
11 baked goods (e.g., cupcakes, cookies, brownies, etc.) to be served at a gay couple's wedding
12 reception or *any event* hosted by a gay couple in celebration of their union or cohabitation.

13 This Court, in its order denying plaintiff DFEH's motion for summary adjudication, stated:
14 "Plaintiff failed to meet its initial burden as the moving party to demonstrate that there are no triable
15 issues of material fact as to its cause of action for discrimination and violation of the Unruh Act. The
16 plaintiff has not demonstrated the *requisite intent*." And, in denying defendants' motion for
17 summary judgment, the Court stated: "[t]hese *issues of intent and the nuances involved in this*, how
18 things should be characterized, these are all things that need to get sorted out, and they're not sorted
19 out in these motions as a matter of law." (**Exhibit 21**, Court's December 21, 2021 Minute Order re
20 summary judgment motions, p. 2). Based on the record and precedent, defendants' intent to
21 discriminate or make a distinction based upon sexual orientation is admitted here.

22 Defendants' intent to *make a distinction* (CACI 3060¹) based on sexual orientation is
23 evidenced by their admitted failure to treat gay and lesbian couples the same as any straight couple
24 purchasing pre-ordered baked goods to celebrate their marriage. Tastries' refusal, in the face of
25

26 ¹ 1. That [*name of defendant*] [... discriminated or made a distinction that denied] full and equal [...
27 services] to [*name of plaintiff*];
28 2. [That a substantial motivating reason for [*name of defendant*'s conduct was [its perception of]
[*name of plaintiff*]'s [... sexual orientation....];]

1 antidiscrimination laws, makes a distinction between gay couples and straight couples, which
2 constitutes intentional discrimination under the Unruh Act. Tastries’ attempt to counter this direct
3 evidence of its intent to discriminate by advancing an argument that relies on the false distinction
4 between *status* and *conduct* fails.

5 The Unruh Act requires a showing of intentional discrimination unless the claim is also a
6 violation of the Americans with Disabilities Act (ADA). (*Harris v. Capital Growth Investors XIV*
7 (1991) 52 Cal.3d 1142, 1149.) To prove intentional discrimination, a plaintiff must put forth
8 evidence of “willful, affirmative misconduct on the part of those who violate the [Unruh] Act.”
9 (*Koebke v. Bernardo Heights County Club* (2005) 36 Cal.4th 824, 853.)

10 Here, Tastries’ refusal to bake and sell wedding cakes and other pre-ordered baked goods to
11 gay couples is “willful, affirmative misconduct” because Tastries admits it will not provide goods
12 and services to gay individuals in a relationship but will bake and sell these same products to straight
13 couples. Tastries counters that it has no discriminatory intent because it does not make distinctions
14 between gay individuals and straight individuals in other situations, and only refuses to bake and sell
15 pre-ordered baked goods to celebrate events hosted by gay couples celebrating their relationship.
16 Under the law, Tastries cannot parse discriminatory action aimed at gay marriage from
17 discriminatory action aimed at the gay couple’s sexual orientation. Discrimination is not excused
18 because it is aimed at an individual’s demonstration of their protected status.

19 More recent U.S. Supreme Court cases, including *United States v. Windsor* (2013) 133 S.Ct.
20 2675 [*“Windsor”*] and *Obergefell v. Hodges* (2015) 135 S.Ct. 2584 [*“Obergefell”*] also reject
21 defendants’ status versus conduct distinction. *Windsor* held that the Defense of Marriage Act’s
22 (DOMA, 1 U.S.C., § 7) exclusion of state same-sex marriages from federal recognition imposed a
23 “disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made
24 lawful by ... The States” and had “the purpose and effect of disapproval of that class,” thereby
25 recognizing that LGBTQ *status* (sexual orientation) is fundamentally connected with *conduct*—such
26 as same-sex marriage—that *relates to that status*. (*Id.* at p. 2693.) Citing to *Lawrence*, *Windsor* held
27 that “DOMA undermines both the public and private significance of state-sanctioned same-sex
28 marriages” because it “tells couples, and all the world, that their otherwise valid marriages are

1 unworthy of federal recognition” and “places same-sex couples in an unstable position of being in a
2 second-tier marriage.” (*Id.* at p. 2694). *Windsor* explicitly united gay *status* to the *conduct* of same-
3 sex marriage: “The class to which DOMA directs its restrictions and restraints are those persons who
4 are joined in same-sex marriages made lawful by the State. DOMA singles out *a class of persons*
5 deemed by a State entitled to recognition and protection to enhance their own liberty.” (*Id.* at p.
6 2695, emphasis added.)

7 *Obergefell* made clear that LGBTQ *status* and *conduct* are so interconnected that the essence
8 of LGBTQ identity encompasses *conduct*. The Court noted that for many years LGBTQ persons
9 could not embrace the entirety of their identity (status) because sodomy was criminalized.
10 (*Obergefell, supra*, 135 S.Ct. at p. 2596.) Quoting *Lawrence*, *Obergefell* stated “[w]hen sexuality
11 finds overt expression in intimate conduct with another person, the conduct can be but one element
12 in a personal bond that is more enduring” and went on to explain that “while *Lawrence* confirmed a
13 dimension of freedom that allows individuals to engage in intimate association without criminal
14 liability, it does not follow that freedom stops there. Outlaw to outcast may be a step forward, but it
15 does not achieve the full promise of liberty.” (*Id.* at p. 2600.) Rejecting the status-conduct
16 distinction, *Obergefell* held: “Under the Constitution, same-sex couples seek in marriage [i.e.,
17 *conduct*] the same legal treatment as opposite-sex couples, and it would disparage their choices and
18 diminish their personhood [i.e., *status*] to deny them this right.” (*Id.* at p. 2602.)

19 Businesses and business owners have regularly asserted the status-conduct distinction
20 argument in defending against sexual orientation discrimination prosecutions.² As demonstrated

21 _____
22 ² See, *Elane Photography, LLC v. Willock* (N.M. 2013) 309 P.3d 53 (stating views of a Christian
23 photographer that led to the refusal of photographing a same-sex wedding was not sexual orientation
24 discrimination but rather a declination to send a message about the act of same-sex marriage);
25 *Washington v. Arlene’s Flowers, Inc.* (2017) 187 Wash.2d 804 (stating that a Christian florist refused
26 to sell flowers for a same-sex wedding because of religious beliefs about marriage, rather than sexual
27 orientation); *Brush & Nib Studio, LC v. City of Phoenix*, CV 2016-052251 (Ariz. Super. Ct. May 12,
28 2016), Complaint at p. 8 (arguments by Christian businesswoman that refusal of services for same-
sex weddings is not sexual orientation discrimination but rather a declination to support the act of
marriage); Brief for Petitioner, *Klein v. Oregon Bureau Of Labor and Industries*, Nos. 44-14, 45-14
(Or. Ct. App Jul. 17, 2017), 2016 WL 8465675 (detailing a baker’s argument that refusal to make a
cake for a same-sex wedding was not based on sexual orientation but on the baker’s religious beliefs
about same-sex weddings); Brief for Legal Scholars in Support of Equality and Religious and
Expressive Freedom as Amici Curiae Supporting Appellants at 6, *Washington v. Arlene’s Flowers*
(2017) 187 Wash.2d 804 (No. 91615-2) (“She is happy to serve gay and lesbian customers.... She is

1 above, courts consistently reject the argument. Although it had the opportunity to do so, the U.S.
2 Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018) 138
3 S.Ct. 1719 [*“Masterpiece”*] did not embrace the status versus conduct distinction advanced by the
4 baker. Instead, *Masterpiece* ruled on narrow grounds that the Colorado Civil Rights Commission—
5 an adjudicatory body—did not employ religious neutrality, thereby violating Phillips’ rights to free
6 exercise, and reversed the Commission’s decision. *Masterpiece* did not rule on the intersection of
7 anti-discrimination laws and free exercise of religion and freedom of speech nor on the status versus
8 conduct issue.

9 The majority of lower courts that have considered the antidiscrimination question at issue in
10 this case have agreed that the U.S. Supreme Court’s decisions direct that homosexuality as a status
11 and the conduct of same-sex marriage cannot be separated from each other.³ Separate and apart from
12 legal authority, sexual orientation is relational and grounded in conduct. Engaging in a same-sex
13 relationship (*conduct*) is a characteristic of one’s sexual orientation (*status*). They are inseparable.
14 Thus, the status versus conduct distinction advanced by defendants collapses under the law and
15 reason.

16 In summary, here there is no legal distinction between the Rodriguez-Del Rio’s gay status
17 and their conduct of being in a same-sex marriage. And there is no dispute that Tastries intentionally
18 made a distinction between the Rodriguez-Del Rios and a straight couple by refusing to bake and
19 sell cakes to them when it would have done so for a straight couple. Tastries made an intentional
20 distinction based on the Rodriguez-Del Rios’ sexual orientation. The court should not permit
21 Tastries’ attempt to negate the requisite intent to discriminate or make a distinction by advancing a
22 legally improper status versus conduct argument.

23 _____
24 simply religiously opposed to participating in a same-sex marriage by providing one particular kind
25 of service namely, designing and creating flower arrangements to celebrate a same-sex wedding.”).
26 ³ See *Elane Photography, LLC v. Willock* (N.M. 2013) 309 P.3d 53, 61, cert. denied, (2014) 134 S.Ct.
27 1787 (holding it is impossible and inappropriate “to distinguish between an individual’s status of
28 being homosexual and his or her conduct in openly committing to a person of the same sex”); *State v.*
Arlene’s Flowers (2019) 193 Wash.2d 469, 505 (rejecting proposed distinction between status and
conduct fundamentally linked to that status); *Craig v. Masterpiece Cakeshop, Inc.* (Colo. App. 2015)
370 P.3d 272, 281 (“when the conduct is so closely correlated with the status that it is engaged in
exclusively or predominately by persons who have that particular status,” the status-conduct
distinction becomes “one without a difference.”)

1 **III. CONCLUSION**

2 Based on the foregoing, plaintiff DFEH respectfully requests that this Court grant this
3 motion in limine and exclude any evidence and argument that Tastries does not discriminate of the
4 basis of sexual orientation.

5 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

7
8 By:



Gregory J. Mann
Attorneys for the Department of Fair
Employment and Housing

Exhibit AA

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ELECTRONICALLY FILED
7/12/2022 11:42 AM
Kern County Superior Court
By Gina Sala, 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 Parties in Interest.

Case No. BCV-18-102633

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION IN LIMINE NO. 2 TO
EXCLUDE ANY EVIDENCE OR
ARGUMENT IN SUPPORT OF
CERTAIN AFFIRMATIVE DEFENSES;
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

(Plaintiff's Motion in Limine No. 2)

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON July 25, 2022, at 9:00 a.m., or as soon thereafter as the
matter can be heard, in Department J of the above-entitled court, located at 1215 Truxtun Ave,
Bakersfield, CA 93301, plaintiff Department of Fair Employment and Housing (DFEH) will, and
hereby does, move in limine for an Order precluding defendants from presenting any evidence or

1 argument at trial, including by way of oral testimony or documentary evidence or argument, that
2 Tastries is entitled to relief on their 1st (failure to state a claim), 3rd (unclean hands), 4th (abuse of
3 process), 5th (trespass), 7th (estoppel), 8th (no injury), 10th (no attorneys fees), 14th (federal due
4 process/DFEH is “unfair” and “unbiased”), and 15th (federal equal protection clause/DFEH
5 “single[d] out orthodox Christians ... for adverse treatment) affirmative defenses.

6 This Motion is made pursuant to Evidence Code section 403 that these arguments are
7 speculative, conclusory and lack foundation and pursuant to Evidence Code sections 350 and 352 on
8 the grounds that only relevant evidence is admissible. Evidence regarding these affirmative defenses
9 is not relevant because these affirmative defenses do not apply to the facts of this case and/or are
10 barred as a matter of law as set forth more fully below.

11 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

12
13 By:



Gregory J. Mann
Attorneys for the Department of Fair
Employment and Housing

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants' Verified First Amended Answer, filed April 22, 2019, asserts fifteen affirmative
4 defenses, most of which are inapplicable and unsupported by the facts or law. (Mann Declaration in
5 Support of DFEH's Motions in Limine [Mann Decl.], **Exhibit 1**, Defendants' Verified First
6 Amended Answer.) The Department of Fair Employment and Housing (DFEH) moves, in limine, to
7 exclude all argument and evidence related to the following affirmative defenses: first (failure to state
8 a claim), third (unclean hands), fourth (abuse of process), fifth (trespass), seventh (estoppel), eighth
9 (no injury), tenth (no attorneys fees), fourteenth (federal due process/DFEH is "unfair" and
10 "unbiased"), and fifteenth (federal equal protection clause/DFEH "single out orthodox
11 Christians...for adverse treatment").¹ In response to DFEH's contention interrogatories regarding the
12 affirmative defenses, defendants Cathy's Creations, Inc. dba Tastries Bakery and Catharine Miller
13 (collectively, Tastries) provided no bases in fact or law to maintain the majority of their defenses.
14 Indeed, most of the defenses do not apply to DFEH, plaintiff in this matter. Moreover, defendants
15 have made no evidentiary showing that there are facts that support their asserted defenses.

16 **II. LEGAL ARGUMENT**

17 **A. The Majority of Tastries' Affirmative Defenses Are Unsupported in Fact and**
18 **Law; thus, Conclusory Evidence and Argument in Support of these Affirmative**
19 **Defenses Should be Excluded**

20 DFEH served contention interrogatories seeking the factual bases supporting each of
21 Tastries' affirmative defenses. Tastries failed to support their defenses with facts, relying instead on
22 conjecture and speculation. Tastries' interrogatory responses establish that most of their affirmative
23 defenses are inapplicable as a matter of law and devoid of factual support. (Mann Decl., **Exhibit 2**,
24 Tastries' Second Amended Responses to Special Interrogatories.) Thus, defendants should abandon
25 their first, third, fourth, fifth, seventh, eighth, tenth, fourteenth and fifteen affirmative defenses as
26
27

28 ¹ The Court granted summary adjudication on Tastries' ninth affirmative defense regarding the
punitive damage claim, mooting this defense.

1 moot. Should defendants persist in asserting these affirmative defenses, however, this Court should
2 strike them and refuse to hear any evidence or argument regarding these affirmative defenses.

3 **1. First Affirmative Defense: Failure to State a Claim**

4 Tastries alleges that DFEH’s complaint and each cause of action contained therein fails “to
5 state any claim upon which relief can be granted against Miller and Tastries.” (Mann Decl., **Exhibit**
6 **1**, 13:1-4.) This is not an affirmative defense. An affirmative defense is a “new matter,” which is not
7 placed at issue by virtue of plaintiff’s own allegations, and which operates independently as a
8 defense even if plaintiff’s allegations are ultimately proven. (See e.g., Code of Civ. Proc., § 431.30,
9 subd. (b)(2).) The first affirmative defense is, in reality, an improper demurrer. In addition, Tastries
10 has no evidence to support this purported affirmative defense or defendants’ motion for summary
11 judgment would have been granted. This affirmative defense should be stricken as a matter of law.

12 **2. Third and Seventh Affirmative Defenses: Unclean Hands and Estoppel**

13 Defendants’ third (unclean hands) and seventh affirmative defenses (estoppel) are not
14 applicable to this case and should be stricken. (*Westly v. California Pub. Employees’ Ret. Sys. Bd. of*
15 *Admin* (2003) 105 Cal.App.4th 1095, 1118, as modified on denial of reh’g (Feb. 25, 2003).) In
16 *Westly*, the California Supreme Court held that “neither the doctrine of estoppel nor any other
17 equitable principle may be invoked against a governmental body where it would operate to defeat
18 the effective operation of a policy adopted to protect the public.” (*Ibid.*, citing *Mack v. State Bar of*
19 *California* (2001) 92 Cal.App.4th 957, 961.) A court “will not recognize equitable defenses where
20 the plaintiff in an official capacity seeks equitable relief on behalf of the citizens of this state.”
21 (*Ibid.*)

22 Likewise, in *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, the California Supreme
23 Court ruled that the lower court erred in treating the doctrine of unclean hands as a complete defense
24 to the plaintiff’s Fair Employment and Housing Act claims because “[e]quitable defenses such as
25 unclean hands may not be used to wholly defeat a claim based on public policy expressed by the
26 Legislature in a statute.” (*Id.* at p. 432.) Because this case is founded upon public policies
27 established by the state legislature in the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51, et
28 seq.), the equitable doctrines of unclean hands and estoppel do not apply to the causes of action

1 alleged in DFEH's complaint. (See *Armendariz v. Foundation Health Psychcare Services, Inc.*
2 (2000) 24 Cal.4th 83, 100; Gov. Code, §§ 12920, 12921, subd. (a), 12923.) These affirmative
3 defenses should be stricken and any purported evidence and argument² in their support should be
4 excluded.

5 **3. Fourth Affirmative Defense: Abuse of Process**

6 Tastries alleges that DFEH is precluded from bringing this lawsuit because "it is a blatant
7 abuse of process [because] the Rodriguez-Del Rios conspired with one another and/or aided and
8 abetted one another in filing what they know is a fraudulent and meritless complaint against Miller
9 and Tastries" with the intention "to harm Tastries Bakery's business, and to publicly humiliate and
10 inflict severe emotional distress on Miller." (Mann Decl., **Exhibit 1**, 13:22-14:1; see also, Mann
11 Decl., **Exhibit 2**, 27:27-28:6.) In support of this claim, Tastries relies upon the same speculative
12 testimony of Reina Benitez and Miller, cited above, which is legally insufficient to support this
13 affirmative defense. There is simply no competent evidence that the Rodriguez-Del Rios went to
14 Tastries for any other purpose but to order cakes for their wedding reception. All the evidence
15 supports that they were genuinely shopping for wedding cakes: they shopped at other bakeries
16 looking for cakes, and after Tastries' denial they ordered a similar cake that they used at their
17 wedding reception on October 7, 2017. They even purchased a tote bag at Tastries on their first visit.

18 In any event, simply filing or maintaining a lawsuit, even for an improper purpose, does not
19 itself give rise to the abuse of process tort or affirmative defense. (*Oren Royal Oaks Venture v.*
20 *Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1169; *Loomis v. Murphy* (1990)
21 217 Cal.App.3d 589, 595; *Warren v. Wasserman, Comden & Casselman* (1990) 220 Cal.App.3d
22 1297, 1301.) Further, any ulterior purpose must manifest itself in some "'willful act' in the use of
23 the process not proper in the regular conduct of the proceeding." (*Oren Royal Oaks Venture v.*
24

25 ² Tastries argues—without evidence—that "[t]his defense focuses on the theory that Eileen and
26 Mireya were shopping for a lawsuit more than a wedding cake." (Mann Decl., **Exhibit 2**, 13:19-21).
27 The purported evidence is based on Reina Benitez's conclusory and speculative conclusion that
28 Eileen and Mireya were "shopping for a lawsuit" and Catharine Miller's speculative conclusion that
Eileen and Mireya exhibited "odd behavior" and "made her believe that they may have been
shopping for a lawsuit." (Mann Decl., **Exhibit 2**, 14:27-15:2). For further support of DFEH's
argument, see MIL No. 4 to exclude speculative testimony and improper lay opinion.

1 *Greenberg, Bernhard, Weiss & Karma, Inc., supra*, 42 Cal.3d at p. 1168-1169.) Therefore, an abuse
2 of process action or affirmative defense may not be based solely on allegations that a lawsuit was
3 filed or maintained for an improper purpose, which Tastries alleges here. (*Id.* at p. 1169; CACI
4 1520, Abuse of Process). For these reasons, this affirmative defense fails as a matter of law and this
5 Court should exclude all evidence and/or arguments made in support of the abuse of process
6 affirmative defense.

7 **4. Fifth Affirmative Defense: Trespass- Fraudulent Intent to Gain Access**

8 With its fifth affirmative defense, Tastries alleges that the Rodriguez-Del Rios “gained
9 access to Tastries Bakery based on their fraudulent intent to trigger this meritless lawsuit [and] they
10 knowingly and fraudulently presented themselves as potential Tastries customers willing to abide by
11 Miller and Tastries’ policies and reasonable requests of the management. Consequently, the
12 Rodriguez-Del Rios were unlawful trespassers.” (Mann Decl., **Exhibit 1**, 14:2-8). When asked for
13 evidence supporting this defense, Tastries responded that: “Tastries Bakery did not consent to the
14 entry of fraudsters seeking to trap them on the basis of Cathy Miller’s Christian faith.” (Mann Decl.,
15 **Exhibit 2**, 29:15-30:1.) This is speculation, conjecture, and an unsupported argument, not evidence
16 in support of a trespass claim or affirmative defense. (Evid. Code, §403.)

17 The undisputed facts demonstrate that the Rodriguez-Del Rios were welcome customers, not
18 trespassers. Indeed, the undisputed facts are that the Rodriguez-Del Rios began their cake order with
19 Rosemary Perez on August 17, 2017, and were nearly ready to purchase the cakes then and there,
20 before they even met Miller. On that date, they made a purchase at Tastries. And Rosemary Perez
21 invited the Rodriguez-Del Rios back to Tastries for a cake tasting on August 26, 2017, making them
22 invitees, not trespassers.

23 The essence of trespass is an unauthorized entry onto another’s land that disrupts the right to
24 exclusive possession. (*Civic Western Corp. v. Zila Indus., Inc.* (1977) 66 Cal.App.3d 1, 17-18.)
25 “Where there is a consensual entry, there is no tort, because lack of consent is an element of the
26 wrong.” (*Id.* at p. 16-17; see also, CACI 2000, Trespass.) There was no trespass here as a matter of
27 law, and there is no evidence to support this affirmative defense. Without citing to evidence, Tastries
28 simply asserts: “Here, Tastries Bakery consented to prospective custom-design clients or potential

1 customers entering its premises. Tastries Bakery did not consent to the entry of fraudsters seeking to
2 trap them on the basis of Cathy Miller’s Christian faith....” (Mann Decl., **Exhibit 2**, 29:17-30:3.)
3 There is no competent evidence to support this prejudicial argument. It must be excluded. (Evidence
4 Code, §§ 350 and 352; see also, DFEH MIL No. 4.)

5 **5. Eighth Affirmative Defense: No Injury**

6 Tastries alleges DFEH’s claims should be dismissed because the Rodriguez-Del Rios have
7 suffered no actual injury.” (Mann Decl., **Exhibit 1**, 14:19-22; **Exhibit 2**, 40:10-41:8.) Defendants’
8 argument ignores the First Amended Complaint’s allegations and the Rodriguez-Del Rios’
9 deposition testimony about their emotional distress. Moreover, this defense fails as a matter of law.

10 The Unruh Act, when violated, provides for “actual damages.” (Civ. Code, § 52, subd. (a).) It
11 also carries a minimum penalty of \$4,000 per violation per person, which does not depend on an
12 actual injury. (*Ibid.*) Civil Code section 52 is the enforcement mechanism for the Unruh Act and
13 provides remedies for its violations. (*Ibid.*; see *Harris v. Capital Growth Investors XIV* (1991) 52
14 Cal.3d 1142, 1153.) Section 52(a) provides that “[w]hoever denies, aids or incites a denial, or makes
15 any discrimination or distinction contrary to Section 51 ... is liable for each and every offense for
16 the actual damages, and any amount that may be determined by a jury, or a court sitting without a
17 jury, up to a maximum of three times the amount of actual damage but in no case less than four
18 thousand dollars (\$4,000), and any attorney’s fees that may be determined by the court in addition
19 thereto, suffered by any person denied the rights provided in Section 51...” The Rodriguez-Del Rios
20 have testified about the emotional distress they suffered after being turned away from Tastries
21 because of their sexual orientation, and they will testify about their emotional distress at trial.
22 Moreover, proof of actual damages is not a prerequisite to recovery of statutory minimum damages
23 under the Unruh Act. Therefore, Tastries’ eighth affirmative defense fails as a matter of law.

24 **6. Tenth Affirmative Defense: Attorney’s Fees Not Available**

25 Tastries alleges that “DFEH’s claims for attorney’s fees should be denied because there is no
26 factual basis for such an award.” (Mann Decl., **Exhibit 1**, 15:1-4; **Exhibit 2**, 42:15-43:5.) As set
27 forth above, the Unruh Act provides that attorney’s fees may be determined by the court if it finds a
28 violation of the Unruh Act. The plaintiff can recover attorney’s fees if it prevails. (Civ. Code, § 52,

1 subd. (a).) Thus, if this Court finds a violation of the Unruh Act, it can award actual or statutory
2 damages and attorneys' fees.

3 7. **Fourteenth Affirmative Defense: The Unruh Act as Applied Is Unconstitutional**
4 **Under the Federal Due Process Clause**

5 In support of this affirmative defense Tastries alleges that "DFEH's interpretation and
6 enforcement of the Unruh Act infringe Miller's and Tastries' rights under the Fourteenth
7 Amendment's Due Process Clause. The DFEH has subjected and continues subjecting the
8 defendants to an unfair and biased administrative investigation and enforcement process while
9 giving favorable consideration to the Rodriguez-Del Rios' presentation of the facts...." (Mann Decl.,
10 **Exhibit 1**, 16:20-26.) Defendants have accused DFEH of bias throughout the investigation and
11 litigation but have proffered no competent evidence to support this accusation. (Mann Decl., **Exhibit**
12 **2**, 14:21-16:26; 68:25-69:10.) DFEH has never disputed or questioned Miller's sincerely held
13 religious beliefs. It has simply pursued its statutory mandate as California's civil rights agency based
14 on Tastries' clear and admitted denial of full and equal services to the Rodriguez-Del Rios in
15 violation of the Unruh Act. Tastries has presented no evidence of animus by DFEH against Tastries
16 or Miller. The court should exclude argument and evidence offered to support Tastries' fourteenth
17 affirmative defense, which lacks foundation (Evid. Code, §403) and is devoid of evidentiary support.
18 (Evid. Code, §§ 350 and 352.)

19 8. **Fifteenth Affirmative Defense: The Unruh Act as Applied Is Unconstitutional**
20 **Under the Federal Equal Protection Clause**

21 Tastries alleges that "DFEH's interpretation and enforcement of the Unruh Act as applied
22 treat Miller's and Tastries' decisions to create speech and exercise their religious beliefs differently
23 from those similarly situated to them, thereby violating their equal protection rights under the
24 Fourteenth Amendment...." (Mann Decl., **Exhibit 1**, 17:3-7; **Exhibit 2**, 10-12.) During a discovery
25 meet and confer, Tastries admitted it had no evidence that DFEH treated any other business
26 differently from Tastries. (Mann Decl., **Exhibit 3**, 4/7/2022 confirming letter³; **Exhibit 2**, 72:1-

27
28 ³ "Finally, regarding Special Interrogatory Nos. 32 and 34 (facts supporting contention that DFEH
has been unfair/biased and/or that DFEH has treated other defendants differently), DFEH requested

73:13.) The Court should exclude argument and evidence offered to support Tastries' fourteenth affirmative defense, which lacks foundation (Evid. Code, §403) and is devoid of evidentiary support. (Evid. Code, §§ 350 and 352.)

III. CONCLUSION

Based on the foregoing, DFEH respectfully requests that the Court grant this motion in limine and exclude all evidence and argument related to the foregoing affirmative defenses.

Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

By: _____


Gregory J. Mann
Attorneys for the Department of Fair
Employment and Housing

more specifics (i.e., whether defendant intends to offer evidence that other 'cake artists, in a similar situation' were treated differently by DFEH). You stated that defendants had no such evidence and, therefore, DFEH requests that defendants amend this response accordingly."

-9-

Exhibit BB

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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

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION IN LIMINE NO. 3 TO
EXCLUDE ARGUMENT THAT
PLAINTIFF DFEH IS BIASED
AGAINST DEFENDANTS OR FAILED
TO ACT NEUTRALLY**

(Plaintiff's Motion in Limine No. 3)

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON July 25, 2022, at 9:00 a.m., or as soon as thereafter as the
matter can be heard, in Department J of the above-entitled court, located at 1215 Truxtun Ave,
Bakersfield, CA 93301, plaintiff Department of Fair Employment and Housing (DFEH) will, and
hereby does, move in limine for an Order precluding defendants from presenting any evidence or
argument at trial, including by way of oral testimony or documentary evidence or argument, that

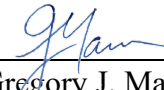
1 DFEH was not neutral in its investigation and enforcement of the Unruh Civil Rights Act (Unruh
2 Act) (Civ. Code, § 51, et seq.) and that DFEH singled “out orthodox Christians ... for adverse
3 treatment.”

4 Based on the governing law and the lack of evidence to support these allegations, defendants
5 have no foundation to argue that DFEH has unclean hands, has animus towards defendants based on
6 Catharine Miller’s Christian religion, or that DFEH discriminated against defendants in some
7 fashion. Defendants’ opinions, speculation, and unsupported conclusions regarding DFEH bias are
8 not evidence and must be excluded. (Evid. Code, §§ 702(a), 800, 400, 403, 410, 803.) This Motion is
9 also made pursuant to Evidence Code sections 350 and 351 on the grounds that only relevant
10 evidence is admissible and Evidence Code section 352, that such conclusory statements are
11 prejudicial.

12 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

14 By: _____


15 Gregory J. Mann
16 Attorneys for the Department of Fair
17 Employment and Housing
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As Judge Lampe found, “there’s no evidence before the Court that the Department [of Fair
4 Employment and Housing] is going around singling out Christian providers.” (Declaration of
5 Gregory Mann in support of DFEH’s Motions in Limine [Mann Decl.], **Exhibit 6**, 2/2/18 Reporter’s
6 Transcript of Proceedings on OSC re preliminary injunction, 30:6-16.) After four-and-a-half years of
7 litigation, defendants Cathy’s Creations, Inc. dba Tastries Bakery and Catharine Miller (collectively,
8 Tastries) still present no actual evidence of the Department of Fair Employment and Housing’s
9 (DFEH) purported bias against them or Miller’s religious beliefs. Despite no evidentiary support,
10 defendants persist in accusing DFEH of being biased and discriminating against them throughout the
11 investigation and enforcement of this action. Tastries has advanced these unsupported arguments in
12 Defendants’ Verified First Amended Answer (Mann Decl., **Exhibit 1**), responses to special
13 interrogatories (Mann Decl., **Exhibit 2**), and in their motion for summary judgment and its separate
14 statement of undisputed facts (Mann Decl., **Exhibit 3**). But all references to the alleged wrongdoing
15 of DFEH are wholly unsupported argument and opinions devoid of factual and evidentiary support
16 and, therefore, inadmissible. (Evid. Code, §§ 702(a), 800, 400, 403, 410, 803.) Indeed, the court has
17 stated on multiple occasions and in multiple orders that it found no evidence of bias or improper
18 motives by DFEH in this matter.

19 Because Tastries proffers no evidence to support its baseless accusations, this Court should
20 decline Tastries’ overtures to put the DFEH on trial in this case. Defendants’ unsupported and
21 baseless accusations lack foundation (Evid. Code, § 403), are not relevant to any issue to be tried
22 (Evid. Code, § 350), and are highly prejudicial (Evid. Code § 352). This Court should exclude any
23 and all arguments and purported “evidence” that DFEH acted improperly during the investigation
24 and enforcement of this case.

25 **II. DEFENDANTS’ BASELESS ACCUSATIONS**

26 With no evidentiary support, defendants have accused DFEH of bias against them and
27 Miller’s religious beliefs in briefs and oral arguments for over four years. The following baseless
28

conclusions, accusations, and opinions comprise defendants’ arguments regarding DFEH’s purported bias against them.

A. Defendants’ Offered No Evidence in Support of their DFEH Bias Accusations on Summary Judgment

On summary judgment, Tastries’ separate statement of undisputed facts included the “facts” supporting their DFEH bias accusations. (Mann Decl., **Exhibit 4**, Facts 65b through 65k.) Most of these purported “facts” are supported only by the declaration of defense counsel Jeffrey M. Trissell as purported evidence of DFEH’s alleged bias and misconduct. (Mann Decl., **Exhibit 5**, Trissell Decl. ISO Def. SJM.) Mr. Trissell stated, as follows:

- “Defendants’ responses to the DFEH’s administrative interrogatories were due on December 15, 2017. Nevertheless, without waiting to hear from Defendants, on December 13, 2017, the DFEH initiated a petition for preliminary injunctive relief with Case No. BCV-17-102855. The next day, the DFEH sought a temporary restraining order and an order to show cause re: preliminary injunction.” (Mann Decl., **Exhibit 5**, Trissell Decl., ¶¶ 2-6.)
- “The DFEH brought the prior action with Case No. BCV-17-102855 two days before defendants planned to respond to interrogatories and less than 10 days after oral argument in the Supreme Court case *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com’n* (2018) 138 S.Ct. 1719.” (Mann Decl., **Exhibit 5**, Trissell Decl., ¶ 7.)
- “When the court in the prior action set an OSC re: preliminary injunction for February 2, 2018, as part of its aggressive litigation tactics, on January 10, 2018, the DFEH filed a renewed motion in support of their motion for a preliminary injunction.” (Mann Decl., **Exhibit 5**, Trissell Decl., ¶ 8.)
- “During a discovery hearing in this case, in response to Defendants’ argument that the Real Parties in Interest may have been primarily looking for a lawsuit, counsel for the DFEH responded with the following statement. [‘]Plaintiffs have looked for cases to push the law forever. Rosa Parks [did] not just happen[] to be taking the bus that day. [sic] So

whether or not there is knowledge going in there does not change the fact that there was a violation.[']”¹ (Mann Decl., **Exhibit 5**, Trissell Decl., ¶13 & Ex. A.)

None of these facts proffered on summary judgment regarding the timing of filings and other litigation of the matter show DFEH bias or animus against defendants.

B. Verified First Amended Answer and Responses to Special Interrogatories

In Defendants’ Verified First Amended Answer, they conclude that “DFEH’s interpretation and enforcement of the Unruh Act target and discriminate against Miller and Tastries.” The answer continues, “DFEH is putting defendants in an impossible dilemma: They must either violate their sincerely held religious beliefs or face crippling fines, punishment, and public humiliation.” (Mann Decl., **Exhibit 1**, 15:7-12.) Tastries further concludes that “DFEH has subjected and continues subjecting defendants to an unfair and biased administrative investigation and enforcement process while giving favorable consideration to the Rodriguez-Del Rios’ presentation of the facts.” (**Exhibit 1**, 16:23-26.)

In response to special interrogatories, defendants provided more conclusions—not evidence—regarding DFEH’s purported bias. They averred that “DFEH’s own hands are not clean because” (1) DFEH applied *ex parte* for a temporary restraining order during the administrative investigation phase, before receiving defendants’ interrogatory responses and soon after the *Masterpiece Cakeshop* oral argument; (2) DFEH made “repeated bigoted reference to Cathy Miller’s religious beliefs as akin to racism, and comparison of Eileen and Mireya to Rosa Parks”; (3) “DFEH’s failure to act neutrally” as shown by (a) “its failure to investigate any of the businesses that boycotted Tastries Bakery for its religious practice in violation of the Unruh Act,” (b) DFEH’s “failure to investigate” whether Real Parties in Interest had a bona fide intent to purchase a Tastries Bakery wedding cake, foregoing a deposition of Reina Benitez; (c) DFEH’s “refusal to accept the undisputed facts” and mischaracterizing “them to fit its own narrative” (i.e. “impugning Miller’s talent and artistic ability” to establish her speech is not protected); (d) DFEH’s “characterization of traditional religious beliefs about marriage as per se sexual orientation discrimination, irrespective of

¹ DFEH Counsel’s quote continues: “But, again, there is no evidence of that here [(that the Rodriguez-Del Rios were looking for a lawsuit)], and it doesn’t change anything.” (Mann Decl., **Exhibit 5**, Trissell Decl., ¶13 & Ex. A, 20:10-11)

1 the desire to avoid sending messages contrary to those beliefs;” and (e) DFEH’s “misrepresentations
2 to Defendants that it was acting neutrally during its administrative investigation, while it hid an
3 intent to engage in a special relationship with Eileen and Mireya, so that Defendants would disclose
4 information to it.” (Mann Decl., **Exhibit 2**, Defendants’ supplemental responses to special
5 interrogatories, 14:21-16:27; and 57:7-58:19 [“DFEH’s and Real Parties’ defaming of Tastries by
6 falsely accusing it of engaging in discrimination on the basis of sexual orientation has likely caused
7 the amount of Tastries wedding services to decline.”].) In addition, Tastries states that the “DFEH
8 has determined that other cake artists, in a similar situation, do not violate the Unruh Act [and] this
9 appears to be simply an individualized prosecution targeting Defendants for their disfavored
10 religious beliefs.” (Mann Decl., **Exhibit 2**, 72:18-73:12.)

11 Despite all these mischaracterizations of the facts and unfounded accusations, during a meet
12 and confer, defendants admitted they had no evidence in support of their DFEH bias assertion.
13 (Mann Decl., **Exhibit 3**, DFEH 4/7/2022 letter, p. 2 [“Finally, regarding Special Interrogatory Nos.
14 32 and 34 (facts supporting contention that DFEH has been unfair/biased and/or that DFEH has
15 treated other defendants differently), DFEH requested more specifics (i.e., whether defendant
16 intends to offer evidence that other “cake artists, in a similar situation” were treated differently by
17 DFEH). You stated that defendants had no such evidence and, therefore, DFEH requests that
18 defendants amend this response accordingly.”])

19 **III. LEGAL ARGUMENT**

20 **A. The Court Has Found No Evidence of DFEH Bias Against Defendants Despite** 21 **Their Persistent Accusations**

22 Despite Tastries’ determined efforts to cast DFEH as biased against them and Miller’s
23 religious beliefs, the court has consistently found that DFEH is simply pursuing its statutory
24 mandate in bringing this case and that no evidence of DFEH bias exists. In fact, the court concluded
25 that the “nature of the proceedings and evidence presented show that the Department, consistent
26 with its mandate, has brought the instant complaint to vindicate a legally cognizable right belonging
27 to the real parties in interest rather than to obtain an economic advantage over Defendants.” (Mann
28 Decl., **Exhibit 8**, 3/27/2019 Order Denying Defendants Catharine Miller’s and Tastries’ Anti-

1 SLAPP Motion to Strike the Complaint, 5:22-25.) From the outset, the court has found that “there’s
2 no evidence before the Court that the Department is going around singling out Christian providers.”
3 (Mann Decl., **Exhibit 7**, 2/2/18 Reporter’s Transcript, 30:6-16.) Similarly, “[t]here is also no
4 evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement....”
5 (Mann Decl., **Exhibit 6**, 3/2/18 Order Denying DFEH’s Order to Show Cause Re: Preliminary
6 Injunction, attachment, p. 6 of 8.) In short, despite defendants’ persistent accusations, the court has
7 found on numerous occasions that the record is completely devoid of any evidence of DFEH bias
8 against defendants.

9 As the court has found, DFEH has not singled out Tastries for Unruh Act enforcement.
10 Indeed, DFEH routinely investigates allegations of Unruh Act violations and files civil complaints
11 when it determines a violation has occurred. In fact, as part of DFEH’s summary adjudication
12 motion, this Court took judicial notice of several civil actions filed by DFEH alleging Unruh Act
13 violations. The conspicuous difference between this case and most DFEH investigations and
14 litigation involving allegations of Unruh Act violations is that most respondents and defendants do
15 not admit in the media that they denied full and equal services to protected classes as Miller did
16 here. DFEH’s investigation and litigation in this matter is consistent with its statutory mandate and
17 history of prosecuting Unruh Act violation cases. As the court has found on several occasions, the
18 record contains no evidence of DFEH bias against Tastries or Miller’s religious beliefs.

19 **B. Defendants Present No Actual Evidence to Support Their Baseless Accusations**
20 **and Opinions of Alleged DFEH Bias**

21 It is clear, upon review of their unsupported accusations and opinions, defendants have
22 proffered no actual evidence of DFEH bias. Tastries’ purported “evidence” of DFEH bias is
23 comprised of DFEH’s routine litigation decisions, the timing of its court filings, and its legal
24 arguments and analogies. Defendants’ purported evidence reveals more about their unfounded
25 suspicions and litigation tactics than any alleged DFEH bias. There simply is no evidence that
26 DFEH has engaged in wrongful bias or acts against defendants. To the contrary, DFEH has never
27 questioned, much less disputed, the sincerity of Miller’s religious beliefs. This constitutes actual
28 evidence that DFEH holds no bias against defendants or Miller’s religious beliefs.

Defendants' arguments of DFEH bias are not only unsupported and unfounded, but also objectionable because they lack foundation and are not based on Mr. Trissell's personal knowledge. (See Evid. Code, § 702(a), 800.) Moreover, defendants' accusations are inadmissible speculation and conclusions. (Evid. Code, §§ 400, 403, 410 ("direct evidence" . . . directly proves a fact, without an inference or presumption"), 803²; *Los Angeles County Off. of the Dist. Atty. v. Civil Serv. Comm'n of County of Los Angeles* (1997) 55 Cal.App.4th 187, 201-202 ("Rather than offer evidence showing [the fact sought to be proved, the party] merely insinuated [motives for the fact.] Such testimony is mere speculation not supported by any evidence."); *Trujillo v. First Am. Registry, Inc.* (2008) 157 Cal.App.4th 628, 635 ("opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation.").)

For these reasons, the court should exclude any defense arguments that DFEH has been biased or discriminated against defendants. Defendants must be prohibited from arguing or insinuating that DFEH has been biased during its investigation and enforcement of this action.

C. Tastries' Unsupported Allegations of DFEH's Alleged Bias are Irrelevant

Under Evidence Code Section 350, "(n)o evidence is admissible except relevant evidence." Relevant evidence is defined by Evidence Code Section 210 as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (See *People v. Kelly* (1992) 1 Cal.4th 495, 523 [only relevant evidence is admissible].) Evidence may be properly excluded where not relevant to matters at issue. (See *Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580, 592 [exclusion of expert testimony as irrelevant where prior discovery responses and actions of counsel led counsel to believe certain issues would not be litigated]; see also *People v. Coleman* (1979) 89 Cal.App.3d 312, 321 [evidence on undisputed issue is irrelevant and therefore inadmissible].)

It is anticipated that defendants will argue that, under *In Masterpiece Cakeshop Ltd., v. Colorado Civil Rights Commission* (2018) 138 S.Ct. 1719 (*Masterpiece*), their arguments of bias must be allowed. In *Masterpiece*, the Court ruled on narrow grounds that the Commission, an

² "The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion...."

1 adjudicatory body, did not employ religious neutrality, thereby violating Masterpiece Cakeshop
2 owner Jack Phillips’s rights to free exercise of religion, and, on that basis, reversed the
3 Commission’s decision. The finding of the Commission’s lack of religious neutrality was based on
4 statements—actual evidence—made by a commissioner:

5 I would also like to reiterate what we said in the hearing or the last
6 meeting. Freedom of religion and religion has been used to justify all kinds
7 of discrimination throughout history, whether it be slavery, whether it be
8 the holocaust, whether it be—I mean, we—we can list hundreds of
9 situations where freedom of religion has been used to justify
10 discrimination. And to me it is one of the most despicable pieces of rhetoric
11 that people can use to—to use their religion to hurt others. (Tr. 11–12.)

12 (*Id.* at 1729). Justice Kennedy found such comparisons and several other statements revealing bias
13 from commissioners “inappropriate” for a neutral adjudicatory body. (*Id.*)

14 In *Masterpiece*, the actual evidence—transcripts of commissioners’ statements—showed a
15 neutral adjudicatory body making biased statements explicitly against defendant’s religion. Here,
16 DFEH is a civil rights prosecutor enforcing the State’s antidiscrimination laws and has never
17 challenged Miller’s sincerely held religious beliefs, much less made any biased statements about her
18 or her faith. DFEH has simply pursued its statutory mandate as California’s civil rights agency based
19 on Tastries’ clear and admitted denial of full and equal services to the Rodriguez-Del Rios in
20 violation of the Unruh Act. Tastries has no evidence of animus by DFEH against Tastries or Miller.

21 Since defendants have proffered no actual evidence of alleged bias against them by DFEH,
22 the court should not permit unsupported argument of this kind.

23 **D. Admission of Unsupported Arguments Against DFEH Would Be Prejudicial**

24 Under Evidence Code section 352, the court may exclude evidence when its probative value
25 is substantially outweighed by the probability that its admission will create a substantial danger of
26 undue prejudice. (See *People v. Cardenas* (1982) 31 Cal.3d 897, 904 [if the prejudicial effect of the
27 disputed evidence outweighs the probative value, the trial court should exclude the evidence].)
28 Defendants’ unfounded and unsupported accusations of DFEH’s religious bias present a danger of
undue prejudice here. Evidence Code section 352 justifies the exclusion of defendants’ arguments,
opinions, and accusations of DFEH’s alleged bias.

1 **IV. CONCLUSION**

2 Based on the foregoing, DFEH respectfully requests that this Court grant this motion in
3 limine and exclude all arguments related to the DFEH's alleged bias against defendants and Miller's
4 religious beliefs.

5 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

7 By: 

8 Gregory J. Mann
9 Attorneys for the Department of Fair
Employment and Housing

Exhibit CC

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Attorneys for the Department
Fee Exempt (Gov. Code, § 6103)

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Kern County Superior Court
By Gina Sala, 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 Parties in Interest.

Case No. BCV-18-102633

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION IN LIMINE NO. 4 TO
EXCLUDE ANY EVIDENCE OR
ARGUMENT THAT REAL PARTIES
IN INTEREST WERE "SHOPPING
FOR A LAWSUIT," "HAD A
VINDICTIVE DESIRE TO SEE
TASTRIES BAKERY SHUT DOWN
AND SEE CATHY GO BANKRUPT,"
AND SUFFERED NO SHOCK OR
EMOTIONAL DISTRESS**

(Plaintiff's Motion in Limine No. 4)

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON July 25, 2022, at 9:00 a.m., or as soon as thereafter as the
matter can be heard, in Department J of the above-entitled court, located at 1215 Truxtun Ave,
Bakersfield, CA 93301, plaintiff Department of Fair Employment and Housing (DFEH) will, and

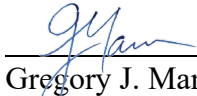
1 hereby does, move in limine for an Order precluding defendants from presenting any evidence or
2 argument at trial, including by way of oral testimony or documentary evidence or argument, that
3 Real Parties in Interest, Eileen and Mireya Rodriguez-Del Rio, were “shopping for a lawsuit”
4 instead of wedding cakes, “had a vindictive desire to see Tastries Bakery shut down and see Cathy
5 go bankrupt,” sought media attention thereby causing activists to harass defendants over their
6 beliefs, and suffered no shock or emotional distress after defendants refused to take their wedding
7 cakes order.

8 Based on the governing law and the lack of evidence to support these allegations, any such
9 evidence or argument must be excluded. (Evid. Code, §§ 702(a), 800, 400, 403, 410, 803.) This
10 Motion is also made pursuant to Evidence Code sections 350 and 351 on the grounds that only
11 relevant evidence is admissible and Evidence Code section 352 that the admission of this
12 speculation is prejudicial.

13 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

14
15 By:



Gregory J. Mann
Attorneys for the Department of Fair
Employment and Housing

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants' unsupported and inflammatory accusations that the Rodriguez-Del Rios were
4 shopping for a lawsuit instead of wedding cakes and other baseless accusations about the Rodriguez-
5 Del Rio must be excluded. Any such argument is not relevant to any issue to be tried. (Evid. Code,
6 §§ 350 and 352.) By this motion, Department of Fair Employment and Housing (DFEH) seeks to
7 exclude any and all testimony or argument at trial that the Real Parties were shopping for a lawsuit,
8 "had a vindictive desire to see Tastries Bakery shut down and see Cathy go bankrupt," sought media
9 attention thereby causing activists to harass defendants over their beliefs, and suffered no shock or
10 emotional distress after defendants refused to take their wedding cakes order.

11 **II. DEFENDANTS' UNFOUNDED ACCUSATIONS**

12 Based on pure speculation, defendants Cathy's Creations, Inc. dba Tastries Bakery and
13 Catharine Miller (collectively, Tastries) have alleged that Real Parties in Interest Eileen and Mireya
14 Rodriguez-Del Rio were "shopping for a lawsuit" instead of wedding cakes and had a "vindictive
15 desire to see Tastries Bakery shut down and Cathy go bankrupt." (Mann Declaration in Support of
16 Motions in Limine [Mann Decl.], **Exhibit 2**, Responses to Second Amended Responses to Special
17 Interrogatories, 12:4-14:3.) Tastries asserts:

18 Following the incident, both Eileen and Mireya posted accounts of it on social
19 media, and so did their friend Sam Salazar. They tagged dozens of people,
20 causing the incidents to quickly go viral, and obtain media attention. The viral
21 nature of their posts also caused numerous bigoted activists to begin attacking
22 Cathy and Tastries Bakery over their Christian beliefs. During the depositions of
23 Eileen, Mireya, Sam, and Patrick Grijalva, it was made clear that they had a
vindictive desire to see Tastries Bakery shut down and Cathy go bankrupt.
Further, they made clear that they believed Defendants were bigots, and that
Christian beliefs had no legitimate place in the public sphere such that Defendants
had to choose between exercising their faith or making a living. In 2019, Eileen
and Mireya also appeared as guests of honor at a PFLAG political event.

24 (Mann Decl., **Exhibit 2**, Responses to Second Amended Responses to Special Interrogatories, 14:4-
25 14.)

26 Tastries further asserts that it "submitted an un rebutted declaration from a disinterested third-
27 party, Reina Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was clear
28 to her when Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries

1 Bakery also submitted Miller’s original declaration in the administrative investigation, dated January
2 16, 2018, explaining that Eileen and Mireya’s odd behavior at the August 26, 2017 cake tasting
3 made her believe that they may have been shopping for a lawsuit (paragraphs 14-19).” (Mann Decl.,
4 **Exhibit 2**, Responses to Second Amended Responses to Special Interrogatories, 18:7-17.)

5 In her declaration, Reina Benitez stated that Eileen and Mireya visited Party Palace a week
6 before the August 26, 2017 cake-tasting appointment at Tastries Bakery. (Mann Decl., **Exhibit 9**,
7 Decl. of Reina Benitez, ¶ 3-4.) Ms. Benitez further stated that Eileen and Mireya recorded the
8 conversation wherein Benitez said Party Palace was booked for the date of their wedding reception
9 and, when asked, she said she had no objection to renting out Party Palace for same-sex weddings.
10 (Mann Decl., **Exhibit 9**, Decl. of Reina Benitez, ¶ 4.) Ms. Benitez goes on to speculate that “[i]t
11 does not, however, make sense to me that the Rodriguez-Del Rios would be shocked and suffer
12 emotional distress after their visit to Tastries” (Mann Decl., **Exhibit 9**, Decl. of Reina Benitez, ¶ 6)
13 and that “[b]ased on my experience with the Rodriguez-Del Rios, and their descriptions of their visit
14 to Tastries Bakery, I believe that they recorded my conversation with them and asked to see my
15 calendar because they were looking for a lawsuit.” (Mann Decl., **Exhibit 9**, Decl. of Reina Benitez,
16 ¶ 7.)

17 The Rodriguez-Del Rios testified under oath that they did not visit Party Palace nor speak
18 with Ms. Benitez. (Mann Decl., **Exhibit 15**, Eileen Rodriguez-Del Rio, 68:22-24; 185:13-14;
19 **Exhibit 16**, Mireya Rodriguez-Del Rio, 71:17-72:5; 170:8-172:17.) Moreover, on August 17, 2016,
20 more than a year before their alleged encounter with Ms. Benitez at Party Palace, Eileen and Mireya
21 signed a contract with local venue Metro Galleries to hold their October 8, 2017 wedding and
22 reception. (Mann Decl., **Exhibit 11**, ¶6 and Ex. A, contract for venue). Eileen and Mireya were not
23 visiting venues in mid-August 2017, less than two months before their wedding and reception, when
24 they had their venue booked since August 17, 2016.

25 It is also anticipated that Miller will attempt to testify consistently with her declaration that,
26 during her conversation with Eileen and Mireya on August 26, 2017, they seemed to have “difficulty
27 answering these questions [general questions about the wedding]. It appeared that they were
28 thinking about these details for the first time. (Mann Decl., **Exhibit 10**, Decl. of Catharine Miller,

¶15.) “Because of this, I questioned the sincerity of this custom cake request.” (Mann Decl., **Exhibit 10**, Decl. of Catharine Miller, ¶16.) “As a result, I came to the conclusion that Mireya and Eileen had not come to Tastries shopping for a wedding cake, but instead, shopping for a lawsuit.” (Mann Decl., **Exhibit 10**, Decl. of Catharine Miller, ¶19.)

II. LEGAL ARGUMENT

A. Defendants’ Speculative Arguments and Opinions Lack Foundation and are Beyond Defendants’ Personal Knowledge

Defendants’ speculative arguments and opinions about the Rodriguez-Del Rio’s motivations and emotional distress are based on Benitez and Miller’s declarations that lack foundation and are not based on personal knowledge. (Evid. Code, §§ 702(a), 800.) Moreover, these statements are inadmissible speculation and conclusions. (Evid. Code, §§ 400, 403, 410 (“‘direct evidence’ ... directly proves a fact, without an inference or presumption.”), 803¹; *Los Angeles County Office of the Dist. Attorney v. Civil Serv. Comm’n of County of Los Angeles* (1997) 55 Cal.App.4th 187, 201-202 (“Rather than offer evidence showing [the fact sought to be proved, the party] merely insinuated [motives for the fact.] Such testimony is mere speculation not supported by any evidence.”); *Trujillo v. First Am. Registry, Inc.* (2008) 157 Cal. App. 4th 628, 635 (“opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation.”).)

For these reasons, the court should sustain DFEH’s objections to any speculative testimony and arguments regarding the motives of Real Parties. Defendants must be prohibited from insinuating or stating that Real Parties were “shopping for a lawsuit,” wanted to see Tastries Bakery shut down and Cathy go bankrupt, sought to obtain media attention thereby causing numerous bigoted activists to begin attacking Cathy and Tastries Bakery over their Christian beliefs, and suffered no shock or emotional distress when defendants refused them service.

B. Defendants’ Speculative Testimony is Irrelevant

Defendants’ opinions and speculative testimony regarding the Rodriguez-Del Rio’s motives is also irrelevant and should be excluded. “No evidence is admissible except relevant evidence.”

¹ “The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion...”

(Evid. Code, § 350.) Relevant evidence is defined as “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210; see *People v. Kelly* (1992) 1 Cal.4th 495, 523 [only relevant evidence is admissible].) Evidence is properly excluded where not relevant to matters at issue. (See *Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580, 592 [exclusion of expert testimony as irrelevant where prior discovery responses and actions of counsel led counsel to believe certain issues would not be litigated]; see also *People v. Coleman* (1979) 89 Cal.App.3d 312, 321 [evidence on undisputed issue is irrelevant and therefore inadmissible].)

Despite defendants’ attempt to ignore and obscure their failure to meet their Unruh Act obligations as a business establishment to provide full and equal services regardless of their customers’ sexual orientation, the Rodriguez-Del Rios are not on trial here. Defendants do not dispute that the Rodriguez-Del Rios (1) were seeking wedding cakes on their two visits to Tastries Bakery; (2) had their wedding cakes order denied by defendants after being invited to return and taste cakes at Tastries; (3) got married and hosted a reception at the Metro Galleries on October 7, 2017; and (4) had a three-tiered, round, white buttercream frosting cake for their main wedding cake. Despite these uncontradicted facts, defendants persist in making unfounded accusations to smear the Rodriguez-Del Rios and deflect from their undisputed refusal to take Rodriguez-Del Rios’ wedding cakes order, an order they would have accepted had Eileen and Mireya been a straight couple. Defendants’ speculative and conclusory testimony about the Rodriguez-Del Rio’s motives and alleged lack of emotional distress is not relevant to the Unruh Act claim or defendants’ freedom of speech or free exercise of religion affirmative defenses and should be excluded.

C. Defendants’ Accusations and Opinions Are Highly Prejudicial and Would Necessitate Undue Consumption of Time.

In addition to its lack of foundation and irrelevance, testimony of defendants’ accusations and opinions about the Rodriguez-Del Rio’s motivations and lack of emotional distress is highly prejudicial and would require an undue consumption of time. The court may exclude evidence if its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice. (Evid. Code, § 352; see *People v. Cardenas* (1982) 31 Cal.3d

1 897, 904 [if the prejudicial effect of the disputed evidence outweighs the probative value, the trial
2 court should exclude the evidence].)

3 Evidence Code section 352 justifies the exclusion of defendants' accusations and opinions
4 regarding Eileen and Mireya's motivations and lack of emotional distress here. Given its speculative
5 and conclusory nature, admitting such testimony and argument will only serve to prejudice DFEH,
6 providing no probative value of any relevant issue. In addition, the admission of the proposed
7 testimony from Reina Benitez will require DFEH to submit additional testimony on these highly
8 prejudicial side-issues that are not relevant to the claims and defenses at issue.

9 **III. CONCLUSION**

10 Based on the foregoing, DFEH respectfully requests that the court grant this motion in limine
11 and exclude all testimony and arguments that Real Parties in Interest were "shopping for a lawsuit,"
12 wanted to see Tastries Bakery shut down and Cathy go bankrupt, sought to obtain media attention
13 thereby causing numerous bigoted activists to begin attacking Cathy and Tastries Bakery over their
14 Christian beliefs, and suffered no shock or emotional distress when defendants refused them service.

15 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

17 By: _____

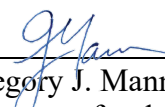
18 
Gregory J. Mann
19 Attorneys for the Department of Fair
Employment and Housing
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Exhibit DD

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Kern County Superior Court
By Gina Sala, 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 Parties in Interest.

Case No. BCV-18-102633

**PLAINTIFF DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTION IN LIMINE NO. 5 TO
EXCLUDE ANY EVIDENCE OR
ARGUMENT OF SOCIAL MEDIA
POSTS AND CRIMES THAT
OCCURRED AFTER DEFENDANTS
DENIED FULL AND EQUAL
SERVICES THAT DEFENDANTS
ATTRIBUTE TO REAL PARTIES**

(Plaintiff's Motion in Limine No. 5)

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON July 25, 2022, at 9:00 a.m., or as soon as thereafter as the
matter can be heard, in Department J of the above-entitled court, located at 1215 Truxtun Ave,
Bakersfield, CA 93301, plaintiff Department of Fair Employment and Housing ("DFEH") will, and
hereby does, move in limine for an Order precluding defendants from presenting any evidence or

1 argument at trial, including by way of oral testimony or documentary evidence or argument
2 regarding the alleged defamatory social media crusade and criminal acts committed against
3 defendants after they refused to take the wedding cakes order of Real Parties in Interest Eileen and
4 Mireya Rodriguez-Del Rio based on their sexual orientation.

5 Based on the governing law and the lack of evidence to support defendants' conclusory
6 allegations, any such evidence or argument must be excluded as lacking foundation and speculative.
7 (Evid. Code, §§ 702(a), 800, 400, 403, 410, 803.) Such evidence is also excludable under Evidence
8 Code sections 350 and 351 on the grounds that only relevant evidence is admissible and Evidence
9 Code section 352 that the court may exclude prejudicial evidence.

10
11 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

12
13 By: 

14 Gregory J. Mann
15 Attorneys for the Department of Fair
16 Employment and Housing
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Department of Fair Employment and Housing (DFEH) brings this Motion in Limine No.
4 5 pursuant to Evidence Code sections 350 and 352 to preclude defendants Cathy's Creations Inc.
5 dba Tastries Bakery and Catharine Miller (collectively, Tastries or defendants) from introducing
6 argument, testimony, and evidence regarding the alleged defamatory social media crusade and
7 criminal acts committed against defendants after they refused to take the wedding cakes order of
8 Real Parties in Interest Eileen and Mireya Rodriguez-Del Rio based on their sexual orientation. Such
9 evidence of post-denial acts committed by others should be precluded for three reasons. First, there
10 is no evidence that the Rodriguez-Del Rios caused or directed multitudes of strangers on the internet
11 to attack defendants via social media or in person. (Evid. Code, §§ 702, subd. (a), 800, 400-403.)
12 Second, such information is not relevant to plaintiff's Unruh Civil Rights Act (Unruh Act) claim or
13 defendants' First Amendment defenses. (Evid. Code, § 350.) Lastly, such unfounded accusations
14 against the Rodriguez-Del Rios are highly prejudicial and have no probative value. (Evid. Code, §
15 352.) Thus, the court should preclude defendants from presenting such evidence at trial, whether by
16 oral testimony, documentary evidence, or argument.

17 **II. DEFENDANTS' UNFOUNDED ACCUSATIONS**

18 DFEH filed this lawsuit against defendants alleging defendants violated the Unruh Act when
19 they made a distinction based on sexual orientation in refusing to take the Rodriguez-Del Rio's
20 wedding cakes order, an order they would have accepted had the Real Parties been a straight couple.
21 In order to deflect from their Unruh Act violation, DFEH expects that defendants will attempt to
22 introduce evidence of the Rodriguez-Del Rio's social media posts, social media messages *posted by*
23 *others*, and crimes *committed by others* that arose *after* defendants denied the Rodriguez-Del Rios
24 full and equal services.

25 Based on pure speculation, defendants have accused Eileen and Mireya of "carry[ing] out a
26 defamatory social media crusade against [Catharine] Miller and Tastries Bakery" when they posted
27 on Facebook about defendants' refusal to take their wedding cakes order. (Mann Declaration in
28 Support of Motions in Limine [Mann Decl.], **Exhibit 2**, Responses to Second Amended Responses

1 to Special Interrogatories, 18:19-20:14.) Defendants assert: “Following the incident, both Eileen and
2 Mireya posted accounts of it on social media, and so did their friend Sam Salazar. They tagged
3 dozens of people, causing the incidents to quickly go viral, and obtain media attention. The viral
4 nature of their posts also caused numerous bigoted activists to begin attacking Cathy and Tastries
5 Bakery over the Christian beliefs.” (Mann Decl., **Exhibit 2**, 20:3-14; **Exhibit 12**, Social Media Posts
6 Produced by Defendants, bates numbers CM1079-1085, 1088-1115, 1118-1264, 1268-1895.)
7 However, defendants overlook the fact that they refused to take the wedding cake order of another
8 gay couple *earlier that day* and that the couple posted on Facebook about Tastries’ failure to provide
9 full and equal services because of their sexual orientation *before* the Rodriguez-Del Rios made their
10 social media posts. (Mann Decl., **Exhibit 13**, Ted G. Freitas Facebook Post (August 26, 2016, at
11 12:37 p.m.).)

12 In an attempt to support their allegations that the Rodriguez-Del Rios orchestrated a social
13 media campaign against Tastries, defendants produced over 800 pages of social media posts and
14 reviews of Tastries by *members of the public*, including former Tastries employees. These posts
15 included neutral, positive, and negative reviews on Tastries Bakery’s Yelp and Facebook pages, the
16 vast majority of which were made by strangers on the internet. (Mann Decl., **Exhibit 12**, Social
17 Media Posts Produced by Defendants.) In addition, without any evidence, defendants attribute
18 criminal acts *committed by others* against Tastries and an employee that allegedly arose from the
19 publicity caused by Tastries’ refusal to take the Rodriguez-Del Rio’s wedding cakes order. (Mann
20 Decl., **Exhibit 14**, Miller’s Document Production bates numbers CM1392-1393.)

21 Neither Eileen nor Mireya intended that their posts would “go viral,” and they were unaware
22 of the reviews, emails, phone calls, and images sent to Tastries by strangers on the internet. (Mann
23 Decl., **Exhibit 15**, Depo. Trans. of Eileen Rodriguez-Del Rio, 94:24-95:4; **Exhibit 16**, Depo. Trans.
24 of Mireya Rodriguez-Del Rio, 94:24-95:4.) Defendants offer no evidence in support of their
25 accusations that Real Parties sought to and directed strangers on the internet to attack Tastries.
26 Neither do they attempt to identify or distinguish social media posters who saw the Facebook post of
27 the other gay couple to whom Tastries denied service earlier that day. Defendants further contend
28 that Real Parties sought “to obtain media attention,” when in fact, the Real Parties did not contact

1 the media; the media contacted them. (Mann Decl., **Exhibit 2**, p. 20:5; **Exhibit 16**, Depo. Trans. of
2 Mireya Rodriguez-Del Rio, 112:7-10.) Defendants fail to mention that Miller has made many more
3 media appearances than the Real Parties where she discussed Tastries' policy to deny gay couples
4 wedding related goods and services. (Mann Decl., **Exhibit 17**, Interviews of Catharine Miller by Six
5 News Outlets.) Not only did Miller make media appearances, but Miller's counsel also made several
6 press releases with regards to this case. (Mann Decl., **Exhibit 18**, Depo. Trans. of Catharine Miller,
7 221:10-13.) However, defendants continue to accuse Real Parties of seeking media attention.

8 **III. ARGUMENT**

9 **A. Defendants' Accusations that Real Parties Orchestrated a Defamatory Social** 10 **Media Crusade and Criminal Acts Against Defendants Lack Foundation and** 11 **Are Not Supported by Any Evidence**

12 Tastries' unfounded accusations against the Rodriguez-Del Rios lack foundation and are not
13 based on Miller's personal knowledge. (Evid. Code, §§ 702(a), 800.) Specifically, Miller conceded
14 in her deposition that she has no evidence or personal knowledge that Real Parties instructed anyone
15 to make phone calls or send messages or emails to Tastries or participated in doing those acts
16 themselves. (Mann Decl., **Exhibit 18**, Depo. Trans. of Catharine Miller, 214:24-215:25.) Rather, she
17 assumes the Rodriguez-Del Rios directed an alleged campaign against Tastries because "the hate
18 phone calls started when ... the girls and Sam and Patrick and Whitney Weddell started their
19 [Facebook] postings." (Mann Decl., **Exhibit 18**, Depo. Trans. of Catharine Miller, 210:24-211:6;
20 **Exhibit 19**, Facebook Posts by Eileen and Mireya Rodriguez-Del Rio, and Sam Salazar.) Miller
21 ignores the fact that another gay couple to whom Tastries denied service earlier the same day also
22 posted about their experience being denied full and equal services by Tastries. (Mann Decl., **Exhibit**
23 **13**, Ted G. Freitas Facebook Post (August 26, 2016 at 12:37 p.m.).)

24 Moreover, there is no evidence that Real Parties recruited Whitney Weddell or anyone else to
25 coordinate a campaign against Tastries. Rather, Ms. Weddell informed Eileen about the Unruh Act
26 and DFEH when Eileen asked for advice on how to handle Tastries' denial of full and equal
27 services. (Mann Decl., **Exhibit 15**, Depo. Trans. of Eileen Rodriguez-Del Rio, 54:25-55:8.) Lastly,
28 defendants dismiss the Rodriguez-Del Rio's true intentions behind their Facebook posts following
Tastries' discriminatory denial of services: they were hurt and angry because they were refused a

wedding cake because of their sexual orientation. (Mann Decl., **Exhibit 15**, Depo. Trans. of Eileen Rodriguez-Del Rio, 76:1-11.)

Without any evidence, Miller concludes and asserts that Real Parties were associated with criminal acts committed at Tastries. (**Exhibit 22**, Miller's Responses to Second Amended Responses to Special Interrogatories, 26:11-12.) Real Parties and DFEH find such criminal acts detestable and have expressed sympathy for Miller and Tastries' employees. However, there is no evidence to support that such acts were directed or condoned by Real Parties, and there is no foundation to attribute these acts to them.

Defendants' accusations against Real Parties are based on a conspiracy theory without any supporting evidence. (Mann Decl., **Exhibit 20**, Miller's Document Production Bates No. CM01295.) Such statements are inadmissible speculation, opinion, and conclusions. (Evid. Code, §§ 702, subd. (a), 400, 403, 410 ("direct evidence" ... directly proves a fact, without an inference or presumption"), 803 (opinion testimony may be excluded if no basis for such testimony); *Los Angeles County Office of the Dist. Attorney v. Civil Serv. Comm'n of County of Los Angeles* (1997) 55 Cal.App.4th 187, 201-202 ("Rather than offer evidence showing [the fact sought to be proved, the party] merely insinuated [motives for the fact.] Such testimony is mere speculation not supported by any evidence"); *Trujillo v. First Am. Registry, Inc.* (2008) 157 Cal.App.4th 628, 635 ("opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation."))

Because Miller has no personal knowledge and defendants have proffered no facts to support their accusations that the Rodriguez-Del Rios orchestrated a social media campaign against Tastries after Tastries refused to accept their wedding cakes order, defendants' testimony and argument regarding these accusations should be excluded at trial. Defendants must be prohibited from insinuating or stating that Real Parties led the alleged social media attack and crimes against defendants.

B. Defendants' Baseless Accusations that Real Parties Led a Defamatory Social Media Crusade and Criminal Acts Against Defendants Is Irrelevant

The court may exclude irrelevant evidence; "[n]o evidence is admissible except relevant evidence." (Evid. Code, § 350.) The test of relevance is whether the evidence tends, logically,

1 naturally, and by reasonable inference to establish material facts. (*Coffey v. Shiimoto* (2015) 60
2 Cal.4th 1198, 1213; see also *People v. Kelly* (1992) 1 Cal.4th 495, 523 [only relevant evidence is
3 admissible].) Furthermore, evidence is properly excluded where not relevant to matters at issue. (See
4 *Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580, 592 [exclusion of expert testimony as
5 irrelevant where prior discovery responses and actions of counsel led counsel to believe certain
6 issues would not be litigated]; see also *People v. Coleman* (1979) 89 Cal.App.3d 312, 321 [evidence
7 on undisputed issue is irrelevant and therefore inadmissible].)

8 This Court should exercise its power to exclude argument and testimony regarding
9 defendants' unsupported accusations against the Rodrigue-Del Rios because they are not relevant to
10 any material issue to be decided at trial. To prove defendants violated the Unruh Act, DFEH will
11 establish that defendants denied full and equal services and goods to the Rodriguez-Del Rios on the
12 basis of their sexual orientation. Defendants' affirmative defenses concern Miller's religious
13 practices and whether pre-ordered baked goods constitute speech under the First Amendment.
14 Argument, testimony, and information of speculative and conclusory accusations against the
15 Rodriguez-Del Rios based on actions that occurred *after* defendants refused to take their cakes order
16 shed no light on any issue material to the claims or defenses here. Unsupported testimony regarding
17 the actions of strangers on the internet or criminal acts occurring at Tastries with no link to the
18 Rodriguez-Del Rios are not relevant to DFEH's Unruh Act claim or defendants' freedom of speech
19 and free exercise of religion affirmative defenses. The court should exclude any such evidence at
20 trial.

21 **C. Defendants' Speculative Argument Is Highly Prejudicial and Would Necessitate**
22 **Undue Consumption of Time**

23 The court may exclude evidence if its probative value is substantially outweighed by the
24 probability that its admission will create a substantial danger of undue prejudice. (Evid. Code, § 352;
25 *People v. Yu* (1983) 143 Cal.App.3d 358, 377 ("undue prejudice" under Section 352 means
26 "evidence which uniquely tends to evoke an emotional bias against [a party] ... and which has very
27 little effect on the issues" in the case); *People v. Cardenas* (1982) 31 Cal.3d 897, 904 [the trial court
28 should exclude the evidence if the prejudicial effect of the disputed evidence outweighs the
probative value].) Evidence Code section 352 justifies the preclusion of defendants' accusations that

1 the Rodriguez-Del Rios directed a social media campaign against Tastries. All the social media
2 posts, emails, and testimony about calls and messages should also be excluded because defendants
3 have not shown that the Rodriguez-Del Rios coordinated or participated in any such campaign. In
4 fact, the Rodriguez-Del Rios deny it. As Real Parties have testified, they cannot control the behavior
5 of others. (Mann Decl., **Exhibit 15**, Depo. Trans. of Eileen Rodriguez-Del Rio, 81:12-17; 153:1-21;
6 **Exhibit 16**, Depo. Trans. of Mireya Rodriguez-Del Rio, 131:14-21;134:4-11.) Nor should they be
7 held responsible for the behavior of others.

8 Given the speculative and unsupported nature of defendants' accusations against the
9 Rodriguez-Del Rios, admitting such testimony and argument will only serve to prejudice DFEH. In
10 addition, if this evidence of social media posts and actions by random strangers on the internet is
11 admitted, DFEH will have to spend considerable time asking whether Real Parties know the
12 individuals who sent the defendants a message, email, or posted on social media in response to
13 defendants' denial of full and equal services. Because defendants' accusations possess no probative
14 value, are irrelevant, and will consume undue time, such argument, evidence, and testimony should
15 be excluded pursuant to Evidence Code section 352.

16 **IV. CONCLUSION**

17 Based on the foregoing, DFEH respectfully requests that the court grant this motion in limine
18 and exclude all testimony and arguments that Real Parties in Interest "carr[ied] out a defamatory
19 social media crusade" and criminal attacks "against Miller and Tastries Bakery."
20

21 Dated: July 8, 2022

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

23 By: _____

24 Gregory J. Mann
25 Attorneys for the Department of Fair
26 Employment and Housing
27
28