

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 3 of 13, Volume 3, pp. AA00417-AA00686

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October 20, 2023

Exhibit V

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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. 1 of 4, Exhibits 1 to 11 of
DECLARATION OF GREGORY J.
MANN IN SUPPORT OF PLAINTIFF
DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING'S
MOTIONS IN LIMINE AND
EXHIBITS THERETO**

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

I, Gregory J. Mann, declare:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California. I am employed as Associate Chief Counsel with the Department of Fair Employment and Housing (DFEH), and in my official capacity I represent DFEH, plaintiff herein. I have personal knowledge of the facts stated in this declaration and based on my review of the evidence obtained in

DFEH's investigation and this litigation, if called as a witness, I could testify competently as to the truth of the matters asserted herein.

2. I submit this declaration in support of plaintiff DFEH's Motions in Limine filed concurrently herewith.

3. Defendants' Verified First Amended Answer, filed April 22, 2019, asserts the following affirmative defenses: (1) failure to state a claim; (2) defendants have not violated Unruh; (3) unclean hands, (4) abuse of process; (5) trespass: fraudulent intent to gain access; (6) justification; (7) estoppel; (8) no injury; (9) punitive damages; (10) attorneys' fees not available; (11) the Unruh Act as applied is unconstitutional under the state free exercise provision; (12) the Unruh Act as applied is unconstitutional under federal free exercise clause; (13) the Unruh Act as applied is unconstitutional under the federal free speech clause; (14) the Unruh Act as applied is unconstitutional under the federal due process clause; and (15) the Unruh Act as applied is unconstitutional under the federal equal protection clause. A true and correct copy of Defendants' Verified Answer is attached hereto as **Exhibit 1**.

4. DFEH served contention interrogatories upon defendants regarding each of their affirmative defenses. Attached hereto as **Exhibit 2** is a true and correct copy of Tastries' Second Amended Responses to Special Interrogatories.

5. During a discovery meet and confer, defendants admitted they had no evidence that DFEH treated any other business establishments differently than Tastries. A true and correct copy of an April 7, 2022, letter confirming counsels' meet and confer conversation is attached hereto as **Exhibit 3**.

6. Attached hereto as **Exhibit 4** is a true and correct copy of defendants' separate statement of undisputed facts filed in support of defendants' motion for summary judgment.

7. Attached hereto as **Exhibit 5** is a true and correct copy of defense attorney Jeffrey M. Trissell's declaration offered as evidence in support of DFEH's alleged bias and misconduct against defendants.

8. Attached hereto as **Exhibit 6** is a true and correct copy of the court's March 2, 2018 Order Denying DFEH's Order to Show Cause Re: Preliminary Injunction.

1 9. Attached hereto as **Exhibit 7** is a true and correct copy of an excerpt from the
2 February 2, 2018 Reporter's Transcript, p. 30:6-16: "there's no evidence before the Court that the
3 Department is going around singling out Christian providers."

4 10. The court previously concluded that the "nature of the proceedings and evidence
5 presented show that the Department, consistent with its mandate, has brought the instant complaint
6 to vindicate a legally cognizable right belonging to the real parties in interest rather than to obtain an
7 economic advantage over Defendants." A true and correct copy of the court's Order Denying
8 Defendants' Anti-SLAPP Motion to Strike the Complaint is attached hereto as **Exhibit 8**, p. 5:22-25.

9 11. Attached hereto as **Exhibit 9** is a true and correct copy of the declaration of Reina
10 Benitez.

11 12. Attached hereto as **Exhibit 10** is a true and correct copy of the declaration of
12 Catharine Miller.

13 13. As set forth in the declaration of Mireya Rodriguez Del Rio, Real Parties produced a
14 contract, signed August 17, 2016, with Metro Galleries that predated their alleged encounter with
15 Reina Benitez by a year. The contract set October 7, 2017, as the date for the wedding reception. A
16 true and correct copy of Mireya Rodriguez Del Rio's declaration and attached contract with Metro
17 Galleries is attached hereto as **Exhibit 11**.

18 14. Attached hereto as **Exhibit 12** is a true and correct copy of Catharine Miller's
19 Document Production bates numbers CM1079-1085, 1088-1115, 1118-1264, and 1268-1895.

20 15. Attached hereto as **Exhibit 13** is a true and correct copy of the Facebook post by Ted
21 G. Freitas regarding Catharine Miller's discrimination.

22 15. Attached hereto as **Exhibit 14** is a true and correct copy of Catharine Miller's
23 Document Production bates number CM1392-1393.

24 16. Attached hereto as **Exhibit 15** is a true and correct copy of an excerpt from the
25 deposition transcript of Eileen Rodriguez-Del Rio.

26 17. Attached hereto as **Exhibit 16** is a true and correct copy of an excerpt from the
27 deposition transcript of Mireya Rodriguez-Del Rio.
28

1 18. Attached hereto as **Exhibit 17** are true and correct copies of six news articles, which
2 include Catharine Miller interviews.

3 19. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the
4 investigative deposition transcript of Catharine Miller taken on September 26, 2018, and deposition
5 transcript of Catharine Miller taken on February 24, 2022 in this action.

6 20. Attached hereto as **Exhibit 19** is a true and correct copy of the Facebook posts by
7 Mireya and Eileen Rodriguez-Del Rio, and Sam Salazar regarding Catharine Miller's discrimination.

8 23. Attached hereto as **Exhibit 20** is a true and correct copy of Catharine Miller's
9 Document Production bates number CM01295.

10 23. A true and correct copy of the Court's Order Plaintiff's Motion for Summary
11 Judgment or, in the Alternative, Summary Adjudication; Defendants' Motion for Summary
12 Judgment or Summary Adjudication Re: Punitive Damages; and Defendants' Motion to Seal is
13 attached hereto as **Exhibit 21**.

14 23. DFEH served contention interrogatories upon defendants regarding each affirmative
15 defense. Attached hereto as **Exhibit 22** is a true and correct copy of Catharine Miller's Second
16 Amended Responses to Special Interrogatories.

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18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed on this 8th day of July, 2022, at Pasadena, California.

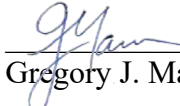
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21 
22 Gregory J. Mann
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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

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

Plaintiff;

v.

CATHY'S CREATIONS, INC. 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

IMAGED FILE

**DEFENDANTS' VERIFIED
FIRST AMENDED ANSWER
TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

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VERIFIED ANSWER

Defendants Cathy's Creations, Inc. dba Tastries ("Tastries") and Catharine Miller submit this Answer to Plaintiff Department of Fair Employment and Housing's ("DFEH") First Amended Complaint ("FAC"). The numbered paragraphs in this Answer correspond to the numbered paragraphs of the FAC. The first seven paragraphs of the FAC are not numbered; they are addressed here with letters. Any allegation that is not specifically admitted is denied.

NATURE OF PROCEEDINGS

A. Defendants lack sufficient knowledge or information to form a belief about the truth of the background allegations in this paragraph, and therefore they deny them.

B. Defendants lack sufficient knowledge or information to form a belief about the truth of the background allegations in this paragraph, and therefore they deny them.

C. Defendants lack sufficient knowledge or information to form a belief as to the truth of the background allegations in this paragraph, and therefore they deny them.

D. Defendants admit that Rosemary Perez is a Tastries associate, and believe it to be true that she greeted Eileen and Mireya Rodriguez-Del Rio when they visited Tastries bakery. Defendants lack sufficient knowledge or information to form a belief about the truth of whether Eileen and Mireya Rodriguez-Del Rio saw a wedding display cake they liked, whether it was simple, and whether they informed Ms. Perez they wanted a similar wedding cake; therefore, they deny these allegations. Defendants lack sufficient knowledge or information to form a belief about the truth of whether Eileen and Mireya Rodriguez-Del Rio were ready to order a wedding cake, and therefore they deny it. Defendants believe it to be true that Eileen and Mireya Rodriguez-Del Rio were invited to return for a cake tasting. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations and therefore deny them.

E. Defendants believe it to be true that Rosemary Perez greeted Eileen and Mireya Rodriguez-Del Rio when they visited Tastries bakery on August 26, 2017. Defendants admit that Cathy Miller took over the meeting with the Rodriguez-Del Rios from Perez, and they admit that Miller introduced herself and directed the Rodriguez-Del Rios to a location for the cake tasting. Defendants deny the characterization of the Rodriguez-Del Rios' explanation to Defendants about

1 why they were at the bakery. Defendants lack knowledge or information sufficient to admit or deny
2 the remaining allegations and therefore deny them.

3 F. Defendants admit they told Eileen and Mireya Rodriguez-Del Rio that they would
4 refer their order to a bakery that does not have moral and religious objections to engaging in speech
5 celebrating same-sex marriage. Defendants admit they informed Eileen and Mireya Rodriguez-Del
6 Rio that they would not create a custom wedding cake celebrating a same-sex wedding. Defendants
7 deny the DFEH's characterization of Defendants' explanation about why they would not create the
8 custom wedding cake. Defendants lack sufficient knowledge or information to form a belief about the
9 truth of whether Eileen and Mireya Rodriguez-Del Rio left Tastries stunned, offended, and hurt;
10 therefore, they deny these allegations. Defendants deny that Eileen and Mireya Rodriguez-Del Rio
11 were denied services solely because of their sexual orientation. Defendants deny that they would have
12 agreed to create a custom wedding cake for a same-sex wedding if an opposite-sex couple had placed
13 the order. Defendants lack knowledge or information sufficient to admit or deny the remaining
14 allegations and therefore deny them.

15 G. This paragraph contains conclusions of law and the DFEH's characterization of
16 various provisions of California law, not allegations of fact, and therefore no response is required.
17 Defendants deny that they refused to provide full and equal services to Eileen and Mireya Rodriguez-
18 Del Rio. Defendants deny that their conduct constituted discrimination on the basis of sexual
19 orientation or otherwise violated the Unruh Civil Rights Act. Defendants lack sufficient knowledge
20 or information to form a belief about the truth of whether the DFEH brings this action as an exercise
21 of its statutory mandate, or for other invidious purposes, and therefore denies it. Defendants lack
22 knowledge or information sufficient to admit or deny the remaining allegations and therefore deny
23 them.

24 PARTIES

25 1. This paragraph contains conclusions of law and the DFEH's characterizations of
26 various provisions of California law, not allegations of fact, and thus no response is required. To the
27 extent a response may be required, Defendants admit that the DFEH is authorized to bring civil
28 actions under applicable California law, and the referenced statutes speak for themselves.

2. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in this paragraph. To the extent a response may be required, Defendants admit that Eileen and Mireya Rodriguez- Del Rio are real parties in interest in this case.

3. Defendants admit the allegations in this paragraph.

4. Defendants admit the allegations in this paragraph.

PROCEDURAL HISTORY AND VENUE

5. Defendants restate and incorporate by reference their responses to each preceding paragraph. Except as otherwise admitted or denied, Defendants deny each and every allegation in this paragraph.

6. The allegations in this paragraph are legal conclusions to which no response is required.

7. This paragraph contains legal conclusions to which no response is required. Defendants deny any characterizations of the referenced practices. Defendants also deny any characterization of the statutory provision, which speaks for itself, and respectfully refer the Court to the cited provision for a complete and accurate statement of its contents. No response is required to the DFEH's allegation about jurisdiction and venue; to the extent a response may be required, Defendants admit that this Court has jurisdiction over Unruh Act civil complaints and that venue is proper.

8. For lack of knowledge, but believing it to be true, Defendants neither admit nor denies the allegations that Eileen and Mireya Rodriguez-Del Rio filed a verified written complaint with the DFEH. Defendants deny that the Rodriguez-Del Rios alleged facts sufficient to claim that Defendants violated the Unruh Act.

9. This paragraph contains a conclusion of law to which no response is required. To the extent a response may be required, Defendants admit that service of the DFEH's complaint was proper.

10. This paragraph contains a conclusion of law to which no response is required. To the extent a response may be required, Defendants admit that the DFEH convened a mandatory mediation pursuant to Government Code Section 12965(a).

1 11. This paragraph contains a conclusion of law to which no response is required. To the
2 extent a response may be required, Defendants deny that the Rodriguez-Del Rios alleged facts
3 sufficient to claim damages under the Unruh Act.

4 **FACTUAL ALLEGATIONS**

5 12. Defendants restate and incorporate by reference their responses to each preceding
6 paragraph. Except as otherwise admitted or denied, Defendants deny each and every allegation in this
7 paragraph.

8 13. This paragraph sets forth the DFEH's characterizations of Defendant Miller's beliefs
9 to which no response is required. To the extent a response may be required, Defendants admit that
10 Miller is sole owner of Cathy's Creations, Inc. dba Tastries, which operates as a bakery and boutique
11 gift shop in Bakersfield, California. Except as otherwise admitted or denied, Defendants deny each
12 and every allegation in this paragraph.

13 14. This paragraph sets forth the DFEH's characterizations of Defendants' business
14 operations, not factual allegations, and therefore no response is required. Defendants admit that they
15 sell cakes from their display case and that they will create custom commissioned cakes. Defendants
16 admit that they have display cakes throughout the store. Defendants admit that cakes made for their
17 display case are not made for any specific event. Defendants deny that the creation of all cakes for
18 their display case requires no artistry. Defendants deny that in all instances a Tastries baker or
19 decorator must be able to make a cake for the display cake without assistance. Defendants admit that
20 their cakes are kept refrigerated and that they will create reasonable written messages on cakes.
21 Defendants deny the remaining allegations in the corresponding paragraph.

22 15. This paragraph sets forth the DFEH's characterizations of Defendants' business
23 operations, not factual allegations, and therefore no response is required. The phrase "custom cakes"
24 as the DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore deny the
25 related allegations. Defendants admit that all custom orders for cakes are orders for custom products.
26 The phrase "original or unique" as the DFEH alleges is too vague for Defendants to admit or deny,
27 and Defendants therefore deny the corresponding allegations. This paragraph also contains
28 conclusions of law, to which no response is required. To the extent a response may be required,

1 Defendants deny that the DFEH's allegation that nothing about Tastries' wedding cakes' design or
2 ingredients is original or unique. Defendants deny any other interpretation of the paragraph.

3 16. This paragraph sets forth the DFEH's characterizations of Defendants' business
4 operations, not factual allegations, and therefore no response is required. The phrase "custom cake"
5 as the DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore deny the
6 corresponding allegation. To the extent a response may be required, Defendants admit that customers
7 work with Tastries staff, including Defendant Miller, to fashion the cake that they envision.
8 Defendants admit that customers fill out an order form to select options for their specially
9 commissioned cake, such as shape, flavor, frosting, and size. Defendants admit that after Tastries and
10 the customer agree on a project, Miller or a Tastries employee begins the design and creation process.
11 Defendants deny any other interpretation of the paragraph.

12 17. This paragraph sets forth the DFEH's characterizations of Defendants' business
13 operations, not factual allegations, and therefore no response is required. To the extent a response
14 may be required, Defendants admit that Tastries exhibits display cakes that are partially made of
15 Styrofoam. Defendants admit that customers may ask Tastries to create a cake based on a design from
16 another source. Defendants deny any other interpretation of the paragraph.

17 18. This paragraph sets forth the DFEH's characterizations of Defendants' business
18 operations, not factual allegations, and therefore no response is required. The phrase "custom cakes"
19 as the DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore deny.
20 To the extent a response may be required, Defendants admit that Tastries has a process through which
21 a customer orders a specially commissioned cake and that the process includes an order form.
22 Defendants deny any other interpretation of the paragraph.

23 19. This paragraph sets forth the DFEH's characterizations of Defendants' business
24 operations, not factual allegations, and therefore no response is required. The phrase "custom cake
25 order" as the DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore
26 deny the corresponding allegations. To the extent a response may be required, Defendants admit that
27 customers seeking to order a specially commissioned Tastries cake may consult with a Tastries
28 employee at the bakery or send Tastries a picture of their cake design inspiration. Defendants also

1 admit that the Tastries order form contains options, such as cake flavors, fillings, colors, that a
2 customer may select for their specially commissioned cake.

3 20. This paragraph sets forth the DFEH's characterizations of Defendants' business
4 operations, not factual allegations, and therefore no response is required. The phrase "custom cake
5 order" as the DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore
6 deny the corresponding allegations. To the extent a response may be required, Defendants admit that
7 Defendant Miller does not personally meet in her individual capacity with every customer seeking to
8 order a specially commissioned cake. Defendants also admit that in-store cake ordering appointments
9 vary in time, complexity, and the number of people involved. Defendants deny any other
10 interpretation of the paragraph.

11 21. This paragraph sets forth the DFEH's characterizations of Defendants' business
12 operations, not factual allegations, and therefore no response is required. The term "ordinary" as the
13 DFEH alleges is too vague for Defendants to admit or deny, and Defendants therefore deny the
14 corresponding allegations. The phrase "custom cake" as the DFEH alleges is too vague for
15 Defendants to admit or deny, and Defendants therefore deny the corresponding allegations. To the
16 extent a response may be required, Tastries may create specially commissioned cake inspired by
17 pictures of another cake or design, or from any other source that inspired the customer; but
18 Defendants cannot create cakes that express messages or celebrate events contrary to their religious
19 beliefs.

20 22. This paragraph sets forth the DFEH's characterizations of Defendants' business
21 operations, not factual allegations, and therefore no response is required. Defendants also lack
22 sufficient information and knowledge to form a basis about the truth of the DFEH's characterizations
23 and opinions and therefore deny them. The phrase "custom cake" as the DFEH alleges is too vague
24 for Defendants to admit or deny, and Defendants therefore deny the corresponding allegation. To the
25 extent a response may be required, Defendants admit that Miller does not in her individual capacity
26 meet every couple who specially commissions a wedding cake. Defendants also admit that Tastries
27 does not ask whether a couple requesting a specially commissioned wedding cake has been divorced
28 or had a child out of wedlock. Defendants further aver that neither Miller nor any Tastries staff

1 member asks customers about their protected characteristics, such as their race, faith, sexual
2 orientation, or gender identity, because those characteristics do not matter to Miller in deciding
3 whether to accept a custom-cake order.

4 23. This paragraph sets forth the DFEH's characterizations of Defendants' business
5 operations, not factual allegations, and therefore no response is required. Defendants also lack
6 sufficient information and knowledge to form a basis about the truth of the DFEH's characterizations
7 and opinions, and therefore they deny them. The phrase "custom cake" as the DFEH alleges is too
8 vague for Defendants to admit or deny, and therefore they deny the corresponding allegation. To the
9 extent a response may be required, Defendants admit that after Tastries and the customer agree on a
10 project, Miller or a Tastries employee begins the design and creation process. Defendants admit the
11 volume of orders or customers at a given time alters the Tastries baking operations. To the extent an
12 answer to the fifth sentence may be required, and despite the vagueness of the DFEH's term
13 "custom," Defendants admit that Miller has not been involved in her individual capacity in creating
14 every specially commissioned cake order, including custom wedding cakes.

15 24. This paragraph sets forth the DFEH's characterizations of Defendants' business
16 operations, not factual allegations, and therefore no response is required. The paragraph also contains
17 legal conclusions, not allegations of fact, and thus no response is required. The phrase "custom cake"
18 as the DFEH alleges is too vague for Defendants to admit or deny, and therefore they deny the
19 corresponding allegation. The phrase "made from scratch" as the DFEH alleges is too vague for
20 Defendants to admit or deny, and therefore they deny the corresponding allegation. To the extent a
21 response may be required, Defendants aver that every specially commissioned wedding cake is
22 custom made.

23 25. This paragraph sets forth the DFEH's characterizations and opinions about
24 Defendants' business operations, not factual allegations, and therefore no response is required. The
25 phrase "custom cake" as the DFEH alleges is too vague for Defendants to admit or deny, and
26 therefore they deny the corresponding allegation. To the extent a response may be required,
27 Defendants admit to the first sentence in the paragraph that customers may either pick up Tastries-
28 made cakes or have them delivered. Regarding the remaining sentences in the paragraph, Defendants

1 admit except to deny in the last sentence the DFEH's interpretation of the term "usually," which is
2 subject to interpretation and therefore denied.

3 26. Regarding the first sentence in this paragraph, Defendants admit only that Miller
4 opened Tastries in January 2013. The remainder of this sentence contains a legal conclusion, and thus
5 no response is required. To the extent a response may be required, Defendants deny that they have
6 denied services but rather aver that they have declined to create custom cakes for specific events. The
7 second sentence contains the DFEH's characterization of Miller's prior testimony. Defendants
8 respectfully refer the Court to that testimony as the best evidence of Miller's statement. The phrase
9 "requests for Tastries wedding cakes" is too vague for Defendants to admit or deny, and therefore
10 they deny the corresponding allegation.

11 27. This paragraph contains a legal conclusion, to which no response is required.
12 Regarding the first sentence, the phrase "to provide wedding cakes for same-sex couples celebrating
13 their marriages" is too vague for Defendants to admit or deny, and therefore they deny the
14 corresponding allegation. To the extent that a response is required, Defendants admit that celebrating
15 a marriage contrary to their sincerely held religious convictions that marriage is solely between one
16 man and one woman violates their religious beliefs. In response to the second sentence in the
17 paragraph, Defendants admit that Miller is a practicing Christian who seeks to honor God in how she
18 runs her business and further aver that her operation of Tastries is an exercise of her religion. The
19 remaining paragraphs set forth the DFEH's characterizations of Defendants' business operations,
20 not factual allegations, and therefore no response is required. To the extent a response may be
21 required, Defendants admit that creating custom cakes for specific events is engaging in speech
22 regarding that event. Defendants admit they are unwilling to engage in speech celebrating any view of
23 marriage except that which defines marriage as between one man and one woman.

24 28. This paragraph contains a legal conclusion, to which no response is required.
25 Regarding the first sentence, the phrase "refusing to fill an order for a same-sex couple's wedding
26 cake" is too vague for Defendants to admit or deny, and therefore they deny the corresponding
27 allegation. To the extent a response to the remaining allegations in the paragraph may be required,
28 Defendants lack sufficient information or knowledge about the truthfulness of those allegations, and

1 therefore they deny them. Defendants admit they previously had referred cake requests that would
2 violate Defendants' sincerely held religious beliefs to Gimme Some Sugar.

3 29. This paragraph contains a legal conclusion, to which no response is required. The
4 paragraph contains the DFEH's characterization of Miller's prior testimony. Defendants respectfully
5 refer the Court to that testimony as the best evidence of Miller's statement. The paragraph also sets
6 forth the DFEH's characterizations of Defendants' business operations, not factual allegations, and
7 therefore no response is required. To the extent a response may be required, Defendants have
8 declined requests to create custom cakes celebrating same-sex marriage and aver that they will not
9 create such cakes no matter who requests them. Defendants also aver that they will create countless
10 other custom cakes for same-sex couples and gay and lesbian individuals.

11 30. This paragraph contains a legal conclusion, to which no response is required. This
12 paragraph also sets forth the DFEH's characterizations and opinions about Defendants' business
13 operations, not factual allegations, and therefore no response is required. The paragraph contains the
14 DFEH's characterization of Miller's prior testimony. Defendants respectfully refer the Court to that
15 testimony as the best evidence of Miller's statement. To the extent a response may be required,
16 Defendants deny the allegations.

17 31. This paragraph also sets forth the DFEH's characterizations of Defendants' business
18 operations, not factual allegations, and therefore no response is required. The paragraph contains the
19 DFEH's characterization of Miller's prior testimony. Defendants respectfully refer the Court to that
20 testimony as the best evidence of Miller's statement. To the extent a response may be required,
21 Defendants deny the allegations.

22 32. The first sentence in this paragraph sets forth the DFEH's characterizations of
23 Defendants' business operations, not factual allegations, and therefore no response is required. To
24 the extent a response may be required, Defendants deny the allegations. Regarding the allegations in
25 the remaining sentences, Defendants lack sufficient information or knowledge to form a basis about
26 the truthfulness of those allegations.

27 33. Defendants lack sufficient information or knowledge to form a basis about the
28 truthfulness of the allegations, and therefore they deny them. To the extent a response may be

1 required, the sentences contain the DFEH's characterization of Miller's prior testimony, and
2 Defendants respectfully refer the Court to that testimony as the best evidence of Miller's statement.

3 34. Defendants lack sufficient knowledge or information to form a belief about the truth
4 of the allegations in this paragraph.

5 35. Defendants sufficient lack knowledge or information sufficient to form a belief about
6 the truth of the allegations in this paragraph.

7 36. The allegations contained in this paragraph characterize the Rodriguez-Del Rios'
8 alleged visit to Tastries on August 17, 2017, to which no response is required. To the extent a response
9 may be required, Defendants believe it to be true that the Rodriguez-Del Rios visited Tastries on
10 August 17, 2017, and that Rosemary Perez interacted with them. Defendants lack sufficient knowledge
11 or information to form a belief about the truth of the remaining allegations in this paragraph, and on
12 that basis, they are denied.

13 37. The allegations contained in this paragraph characterize the Rodriguez-Del Rios' visit
14 to Tastries on August 17, 2017, to which no response is required. To the extent a response may be
15 required, Defendants believe it to be true that the Rosemary Perez scheduled the Rodriguez-Del Rios
16 to attend a cake tasting on August 26, 2017. Defendants lack sufficient knowledge or information to
17 form a belief about the truth of the remaining allegations in this paragraph, and on that basis, they are
18 denied.

19 38. The allegations in this paragraph consist of the DFEH's characterization of the
20 Rodriguez-Del Rios' visit to Tastries on August 26, 2017, to which no response is required. To the
21 extent a response is required, Defendants lack sufficient knowledge and information to form a belief
22 about the truth of the allegations in this paragraph.

23 39. The allegations in this paragraph consist of the DFEH's characterization of the
24 Rodriguez-Del Rios' alleged visit to Tastries on August 26, 2017, to which no response is required.
25 To the extent a response may be required, Defendants admit that Miller personally met with the
26 Rodriguez-Del Rios during their cake tasting appointment.

27 40. The allegations in this paragraph consist of the DFEH's characterization of the
28 Rodriguez-Del Rios' visit to Tastries on August 26, 2017, to which no response is required. To the

1 extent a response may be required, Defendants admit that Miller personally met with the Rodriguez-
2 Del Rios during their cake tasting appointment.

3 41. The allegations in this paragraph consist of the DFEH's characterization of the
4 Rodriguez-Del Rios' visit to Tastries on August 26, 2017, to which no response is required. To the
5 extent a response may be required, Defendants admit that Miller sought to refer the Rodriguez-Del
6 Rios' specially commissioned cake request to Gimme Some Sugar because creating their cake would
7 both express a message and celebrate an event contrary to her First Amendment-protected, sincerely
8 held religious beliefs.

9 42. The allegations in this paragraph consist of the DFEH's characterization of
10 Rodriguez-Del Rios after their visit to Tastries on August 26, 2017, to which no response is required.
11 To the extent a response may be required, Defendants lack sufficient information to admit or deny
12 the allegations, and on that basis deny them.

13 43. The allegations in this paragraph consist of the DFEH's characterization of the
14 Rodriguez-Del Rios after their visit to Tastries on August 26, 2017, to which no response is required.
15 To the extent a response may be required, Defendants lack sufficient information to admit or deny
16 the allegations, and on that basis deny the allegations.

17 44. The allegations in this paragraph consist of the DFEH's characterization of
18 Rodriguez-Del Rios after their visit to Tastries on August 26, 2017, to which no response is required.
19 The paragraph also contains legal conclusions to which no response is required. To the extent a
20 response may be required, Defendants deny the allegations.

21 **FIRST CAUSE OF ACTION**

22 45. Defendants repeat and reallege the responses made in each preceding paragraph.

23 46. This paragraph contains conclusions of law to which no response is required.
24 Defendants deny any characterizations of the cited statutory provision, which speaks for itself, and
25 respectfully refer the Court to the cited provision for a complete and accurate statement of its
26 contents.

27 47. This paragraph contains conclusions of law to which no response is required.
28 Defendants deny any characterizations of the cited statutory provision, which speaks for itself, and

1 respectfully refer the Court to the cited provision for a complete and accurate statement of its
2 contents.

3 48. The allegations contained in this paragraph are conclusions of law to which no
4 response is required. To the extent a response may be required, the allegations are denied, because
5 Defendants' actions did not constitute unlawful discrimination under to the Unruh Act.

6 49. The allegations contained in this paragraph are conclusions of law to which no
7 response is required. To the extent a response may be required, the allegations are denied.

8 50. The allegations contained in this paragraph are conclusions of law to which no
9 response is required. To the extent a response may be required, the allegations are denied.

10 51. The allegations contained in this paragraph are conclusions of law to which no
11 response is required. To the extent a response may be required, the allegations are denied.

12 52. The allegations contained in this paragraph are conclusions of law to which no
13 response is required. To the extent a response may be required, the allegations are denied.

14 53. The allegations contained in this paragraph are conclusions of law to which no
15 response is required. To the extent a response may be required, the allegations are denied. Defendants
16 also deny any characterizations of the cited statutory provisions, which speak for themselves, and
17 respectfully refer the Court to the cited provision for a complete and accurate statement of its
18 contents.

19 54. The allegations contained in this paragraph are conclusions of law to which no
20 response is required. To the extent a response may be required, the allegations are denied.

21 **PRAYER FOR RELIEF**

22 The remaining paragraphs of the FAC contain the DFEH's requested relief, to which no
23 response is required. To the extent a response may be required, Defendants deny the allegations
24 contained in the FAC's remaining paragraphs and further aver that the DFEH is not entitled to any
25 relief. Any allegation not specifically addressed is denied.

26 **AFFIRMATIVE DEFENSES**

27 As separate and distinct affirmative defenses to the DFEH's first and only cause of action,
28 and while denying each and every allegation, Miller and Tastries allege the following:

1 **First Affirmative Defense**

2 **(Failure to State a Claim)**

3 The DFEH's complaint fails to state any claim upon which relief can be granted against Miller
4 and Tastries.

5 **Second Affirmative Defense**

6 **(Defendants Have Not Violated the Unruh Civil Rights Act)**

7 Miller and Tastries did not violate the Unruh Civil Rights Act ("Unruh Act") because they
8 never discriminated against Real Parties in Interest Eileen and Mireya Rodriguez-Del Rio (the
9 "Rodriguez-Del Rios") on the basis of sexual orientation. First, Tastries implemented, and at all
10 relevant times maintained, a bona fide policy against unlawful discrimination in accordance with the
11 Unruh Act. Second, as both a law-abiding citizen and a Christian called to love all persons, Miller
12 would not have discriminated against the Rodriguez-Del Rios.

13 **Third Affirmative Defense**

14 **(Unclean Hands)**

15 The DFEH's claims are barred based on the equitable doctrine of unclean hands. Specifically,
16 the Rodriguez-Del Rios conspired with one another and/or aided and abetted one another in bringing
17 what they know is a fraudulent and meritless complaint to, *inter alia*, collect a money judgment under
18 applicable state statutes; carry out a defamatory social media crusade against Miller and Tastries
19 Bakery; destroy Tastries Bakery's business; publicly humiliate and inflict severe emotional distress
20 on Miller; and further a political agenda by falsely alleging that Miller, and Christians in general, are
21 bigoted and homophobic.

22 **Fourth Affirmative Defense**

23 **(Abuse of Process)**

24 The DFEH is precluded from bringing this lawsuit because it is a blatant abuse of process.
25 Specifically, the Rodriguez-Del Rios conspired with one another and/or aided and abetted one
26 another in filing what they know is a fraudulent and meritless complaint against Miller and Tastries.
27 Through their abuse of legal process, the Rodriguez-Del Rios impermissibly seek, *inter alia*, to collect
28 a money judgment under the Unruh Act and punitive damages, to harm Tastries Bakery's business,

1 and to publicly humiliate and inflict severe emotional distress on Miller.

2 **Fifth Affirmative Defense**

3 **(Trespass: Fraudulent Intent to Gain Access)**

4 The DFEH's claims are barred because the Rodriguez-Del Rios gained access to Tastries
5 Bakery based on their fraudulent intent to trigger this meritless lawsuit. Motivated by ulterior
6 objectives, they knowingly and fraudulently presented themselves as potential Tastries customers
7 willing to abide by Miller and Tastries' policies and reasonable requests of the management.
8 Consequently, the Rodriguez-Del Rios were unlawful trespassers.

9 **Sixth Affirmative Defense**

10 **(Justification)**

11 The DFEH's claims are meritless because Miller and Tastries were fully justified in lawfully
12 exercising their free speech and free exercise rights under the First Amendment to the United States
13 Constitution. Therefore, all actions taken by Miller and Tastries toward the Rodriguez-Del Rios were
14 for legitimate, good faith, justified, nondiscriminatory, and non-retaliatory reasons.

15 **Seventh Affirmative Defense**

16 **(Estoppel)**

17 The DFEH's claims are estopped because the Rodriguez-Del Rios' conduct in triggering this
18 lawsuit was fraudulent.

19 **Eighth Affirmative Defense**

20 **(No Injury)**

21 The DFEH's claims should be dismissed because, unlike Miller and Tastries, the Rodriguez-
22 Del Rios have suffered no actual injury.

23 **Ninth Affirmative Defense**

24 **(Punitive Damages Not Available)**

25 The DFEH's complaint fails to state facts sufficient to set forth a cause of action for punitive
26 damages.

27 ///

28 ///

1 **Tenth Affirmative Defense**

2 **(Attorney's Fees Not Available)**

3 The DFEH's claims for attorney's fees should be denied because there is no factual basis for
4 such an award.

5 **Eleventh Affirmative Defense**

6 **(The Unruh Act as Applied is Unconstitutional under the State Free Exercise Provision)**

7 The DFEH's interpretation and enforcement of the Unruh Act target and discriminate
8 against Miller and Tastries in violation of article 1, section 4 of the California Constitution. That
9 section provides that "[f]ree exercise and enjoyment of religion without discrimination or preference
10 are guaranteed." (Cal. Const., art. I, § 4.) The DFEH is putting the defendants in an impossible
11 dilemma: They must either violate their sincerely held religious beliefs or face crippling fines,
12 punishment, and public humiliation. Moreover, because the defendants do not discriminate on the
13 basis of sexual orientation, forcing them to express messages or celebrate events that violate their
14 religious beliefs does not further any compelling government interest under strict scrutiny.
15 Accordingly, Miller and Tastries suffer ongoing harm because of the DFEH's interpretation and
16 enforcement of the Unruh Act. Therefore, the DFEH's interpretation and enforcement of the Unruh
17 Act as applied violate Miller's and Tastries' free exercise rights under the California Constitution.
18 Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the
19 defendants' free exercise rights.

20 **Twelfth Affirmative Defense**

21 **(The Unruh Act as Applied is Unconstitutional under the Federal Free Exercise Clause)**

22 The DFEH's interpretation and enforcement of the Unruh Act target and discriminate
23 against Miller and Tastries in violation of the Free Exercise Clause of the First Amendment to the
24 United States Constitution. Specifically, the DFEH's interpretation and enforcement of the Unruh
25 Act prevent Miller and Tastries from operating consistently with their religious beliefs, from declining
26 to operate in violation of their religious beliefs, from speaking their religiously motivated messages,
27 from declining to speak messages that would violate their religious beliefs, and from adhering to key
28 aspects of their faith. The DFEH's interpretation and enforcement of the Unruh Act also impose

1 severe coercive pressure on Miller and Tastries to change or violate their religious beliefs or exercise.
2 The Unruh Act as applied is not narrowly tailored to further any compelling, or even legitimate,
3 government interest. Miller and Tastries suffer ongoing harm because of the DFEH's interpretation
4 and enforcement of the Unruh Act. Therefore, the DFEH's interpretation and enforcement of the
5 Unruh Act violate Miller's and Tastries' First Amendment rights to freely exercise their religion.
6 Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the
7 defendants' free exercise rights.

8 **Thirteenth Affirmative Defense**

9 **(The Unruh Act as Applied is Unconstitutional under the Federal Free Speech Clause)**

10 The DFEH's interpretation and enforcement of the Unruh Act as applied violate Miller's and
11 Tastries' free speech rights under the Free Speech Clause of the First Amendment to the United
12 States Constitution. Specifically, the DFEH's actions force the defendants to create custom cakes
13 that express messages that violate their sincerely held religious beliefs. The DFEH's actions also
14 pressure the defendants, to avoid violating their religious beliefs, to permanently stop creating custom
15 expressive cakes. The DFEH's interpretation and enforcement of the Unruh Act similarly violate
16 Miller's and Tastries' First Amendment freedom of expressive association because they force the
17 defendants to collaborate and associate with others to create and express messages that violate their
18 religious beliefs. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would
19 violate Miller's and Tastries' free speech rights.

20 **Fourteenth Affirmative Defense**

21 **(The Unruh Act as Applied is Unconstitutional under the Federal Due Process Clause)**

22 The DFEH's interpretation and enforcement of the Unruh Act infringe Miller's and Tastries'
23 rights under the Fourteenth Amendment's Due Process Clause. The DFEH has subjected and
24 continues subjecting the defendants to an unfair and biased administrative investigation and
25 enforcement process while giving favorable consideration to the Rodriguez-Del Rios' presentation of
26 the facts. By infringing on Miller's and Tastries' due process rights, the DFEH does not further any
27 compelling or even legitimate interest in a narrowly tailored way. Accordingly, the DFEH's
28 interpretation and enforcement of the Unruh Act against Miller and Tastries violate their due process

1 rights. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the
2 defendants' Fourteenth Amendment due process rights.

3 **Fifteenth Affirmative Defense**

4 **(The Unruh Act as Applied is Unconstitutional under the Federal Equal Protection Clause)**

5 The DFEH's interpretation and enforcement of the Unruh Act as applied treat Miller's and
6 Tastries' decisions to create speech and exercise their religious beliefs differently from those similarly
7 situated to them, thereby violating their equal protection rights under the Fourteenth Amendment.
8 Specifically, the DFEH's discriminatory interpretation and enforcement of the Unruh Act infringes
9 on Miller's and Tastries' fundamental rights, including their free exercise, free speech, and due
10 process rights. The DFEH's discriminatory interpretation and enforcement of the Unruh Act single
11 out orthodox Christians—a suspect class of marginalized and disfavored people of faith—for adverse
12 treatment. By infringing on Miller and Tastries' equal protection rights, the DFEH does not further
13 any compelling, or even legitimate, government interest in a narrowly tailored way. Accordingly, the
14 DFEH's interpretation and enforcement of the Unruh Act violate Miller's and Tastries' equal
15 protection rights. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would
16 violate the defendants' equal protection rights.

17 **Additional Affirmative Defenses**

18 As a separate and distinct affirmative defense, Miller and Tastries state that they do not know
19 all the facts concerning the DFEH's allegations sufficient to state all affirmative defenses at this time.
20 Should they later discover facts demonstrating the existence of additional affirmative defenses, the
21 defendants this Court's leave to amend this Answer.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Miller and Tastries pray for the following relief:

- 24 1. That the DFEH's complaint be dismissed and that the prayer for relief be denied in full;
- 25 2. That the DFEH and the Rodriguez-Del Rios be granted no relief in this matter;
- 26 3. For the defendants' reasonable attorney's fees;
- 27 4. For the defendants' incurred costs of suit; and
- 28 5. For additional relief the Court deems appropriate

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Respectfully submitted,

FREEDOM OF CONSCIENCE DEFENSE FUND



Dated: April 22, 2019

By: _____

Charles S. LiMandri

Paul M. Jonna

Jeffrey M. Trissell

B. Dean Wilson

Attorneys for Defendants

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I, Charles LiMandri, declare as follows:

I have read the foregoing Amended Answer, and I know its contents. I am one of the attorneys for Defendants Cathy's Creations, Inc. dba Tastries and Catherine Miller. Defendants are absent from the county where said attorneys have their offices, and for this reason I make this verification for and on behalf of Defendants. I am informed and believe, and on that ground allege, that the matters stated in the foregoing Amended Answer are true.

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

Executed on April 22, 2019.

By:

Charles S. McCardin

Charles S. LiMandri

Attorney for Defendants

COURT OF THE STATE OF CALIFORNIA KERN COUNTY SUPERIOR COURT - METROPOLITAN DIVISION		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) Dept. of Fair Employment & Housing v. Cathy's Creations, Inc. dba Tastries		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, SBN 110841 Paul M. Jonna, SBN 265389 FREEDOM OF CONSCIENCE DEFENSE FUND P.O. Box 9520 Rancho Santa Fe, California 92067 Tele: (858) 759-9948; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendants CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California Corporation; and CATHY MILLER, an individual	HEARING Dept. 11	CASE NO.: BCV-18-102633 JUDGE: Hon. David R. Lampe

CERTIFICATE OF SERVICE

I, Kathy Denworth, declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is P.O. Box 9120, Rancho Santa Fe, CA 92067, Telephone number (858) 759-9930; Facsimile number (858) 759-9938. I further declare that I served the following document(s) on the parties in this action:

- **DEFENDANTS' VERIFIED FIRST AMENDED ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT.**

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

Janette Wipper, Chief Counsel
Paula D. Pearlman, Asst. Chief Counsel
Gregory J. Mann - Sr. Staff Counsel
Timothy Martin, Staff Counsel
Department of Fair Employment and Housing
320 4th Street, Suite 1000
Los Angeles, CA 90013
Tel: (213) 439-6799; Fax: (888) 382-5293
E-Mail: Gregory.Mann@dfeh.ca.gov
Attorneys for Plaintiff Department of Fair Employment and Housing

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

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

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

Executed on April 22, 2019.



 Kathy Denworth

EXHIBIT 2

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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 Cathy's Creations, Inc.
dba Tastries Bakery's Second
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 CATHY’S CREATIONS, INC. dba TASTRIES
4 BAKERY
5 SET NO.: ONE-Second Amended [Nos. 1-42]
6

7 Pursuant to Section 2030.210 of the California Code of Civil Procedure, Defendant Cathy’s
8 Creations Inc. dba Tastries Bakery (“Tastries”) responds and objects to Plaintiff Department of Fair
9 Employment and Housing’s (“DFEH”) First Set of Special Interrogatories.
10

11 GENERAL OBJECTIONS

12 1. Tastries objects to each interrogatory insofar as it seeks information (1) not in
13 Tastries’ possession, custody, or control; (2) prepared for or in anticipation of litigation, protected
14 by the attorney-client privilege, contains work product, or is otherwise privileged; (3) publicly
15 available or otherwise equally available to the DFEH or equally available from third parties; (4) that
16 does not specifically refer to the events forming the subject matter of this litigation; (5) not relevant
17 to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible
18 evidence; and (6) that imposes any requirement or obligation beyond the scope of permissible
19 discovery.

20 2. These responses and objections are made on the basis of information now known to
21 Tastries and are made without waiving any further objections to, or admitting the relevancy or
22 materiality of, any of the information requested. Tastries’ investigation, discovery, and preparation
23 for proceedings are continuing and all answers are given without prejudice to its right to introduce or
24 object to any subsequently discovered documents, facts, or information. Tastries likewise does not
25 waive the right to object, on any and all grounds, to (1) the evidentiary use of the information
26 contained in these responses and objections and (2) discovery requests relating to these objections
27 and responses.

28 3. Tastries will provide its responses based on terms as they are commonly understood,

1 and consistent with the California Code of Civil Procedure. Tastries objects to and will refrain from
2 extending or modifying any words employed in the requests to comport with expanded definitions or
3 instructions.

4 4. Tastries objects to the requests to the extent that they seek trade secrets protected by
5 Section 1060 of the California Evidence Code. Tastries will only provide information protected by
6 Section 1060 under the terms of an adequate protective order binding on the parties or under
7 equivalent safeguards.

8 Subject to and without waiving the foregoing objections, Tastries responds as follows:
9

10 **OBJECTIONS & RESPONSES TO SPECIAL INTERROGATORIES**

11 **SPECIAL INTERROGATORY NO. 1:**

12 STATE ALL FACTS that support YOUR contention that YOU “never discriminated
13 against Real Parties in interest Eileen and Mireya Rodriguez-Del Rio (the “Rodriguez Del-Rios”) on
14 the basis of sexual orientation,” as alleged in YOUR ANSWER.

15 (For purposes of this entire set of Special Interrogatories, the term “STATE ALL FACTS”
16 shall include, without limitation, describing the factual basis for YOUR contentions, identifying
17 PERSONS with knowledge of said facts, and identifying any documents supporting your factual
18 contentions.)

19 (For purposes of this entire set of Interrogatories, the terms “YOU,” “YOUR,” and
20 “YOURS” shall mean and refer to Defendant Cathy’s Creations, Inc. dba Tastries, including all
21 agents, employees, contractors, and any PERSON acting or purporting to act on YOUR behalf.)

22 (For purposes of this entire set of Interrogatories, the terms “PERSON” and “PERSONS”
23 include, without limitation, any natural person, firm, entity, corporation, partnership, association,
24 cooperative, limited liability company, or any other person as defined in Evidence Code section 175.)

25 (For purposes of this entire set of Interrogatories, the term “ANSWER” shall mean
26 DEFENDANTS’ VERIFIED FIRST AMENDED ANSWER TO PLAINTIFF’S FIRST
27 AMENDED COMPLAINT dated April 22, 2019.)
28

1 **RESPONSE:**

2 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
3 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
4 including, but not limited to, court filings, the discovery during the DFEH's administrative
5 investigation, and other correspondence and other communications to the DFEH. Providing that
6 information again in answering this request would be oppressive and unduly burdensome. All of
7 Defendant's factual and legal contentions have already been made clear in the discovery and
8 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
9 briefing.

10 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
11 information protected under the First Amendment, the attorney-client privilege, the work-product
12 doctrine, privacy rights, or any other applicable privilege or immunity.

13 Further, Defendant objects to this interrogatory because it was never properly served on
14 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
15 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
16 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
17 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
18 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
19 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
20 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
21 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
22 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
23 the parties have agreed to accept electronic service of specific documents, but the parties never
24 agreed to use electronic service generally.¹ Thus, Defendants object to the interrogatories on the basis
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 that they were never properly served. Defendants also object to the purported service of written
2 discovery on Christmas Eve.

3 **Original Response.** Subject to and without waiving the above objections, Defendant
4 responds as follows: In light of the above objections, including specifically because the interrogatories
5 were never properly served on Defendant, Defendant does not respond.

6 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
7 responds as follows:

8 This interrogatory is aimed at Defendants' first and second affirmative defenses. Defendants'
9 first affirmative defense reads as follows: "The DFEH's complaint fails to state any claim upon which
10 relief can be granted against Miller." Defendants' second affirmative defense reads as follows:
11 "Miller and Tastries did not violate the Unruh Civil Rights Act ('Unruh Act') because they never
12 discriminated against Real Parties in Interest Eileen and Mireya Rodriguez-Del Rio (the 'Rodriguez-
13 Del Rios') on the basis of sexual orientation. First, Tastries implemented, and at all relevant times
14 maintained, a bona fide policy against unlawful discrimination in accordance with the Unruh Act.
15 Second, as both a law-abiding citizen and a Christian called to love all persons, Miller would not have
16 discriminated against the Rodriguez-Del Rios."

17 In support of these affirmative defenses, Defendants state as follows:

18 Cathy Miller is a creative designer who owns and operates Cathy's Creations, Inc., doing
19 business as Tastries Bakery—a small bakery in Bakersfield, California. Cathy is the 100% shareholder
20 of Tastries Bakery. Opened in January 2013, Tastries Bakery is primarily a custom bakery that will
21 collaborate with clients to design custom cakes, cookies and pastries for their event or occasion. Cathy
22 has used her creative talents in many ways over the years: through music, elementary education, floral
23 arrangements, interior design, and event planning. She has always had a unique ability to provide
24 inspiring and creative vision to every project and service. With Tastries Bakery, she directs a team of
25 culinary artists who, by creating a vast selection of artistic bakery designs, help enrich her clients' life
26 celebrations.

27 Cathy is a practicing Christian and woman of deep faith; she seeks to honor God in all aspects
28 of her life. Jesus taught his followers that the greatest commandments are to "Love the Lord your

1 God with all your heart and with all your soul and with all your mind and with all your strength. The
2 second is this: Love your neighbor as yourself.” (Mark 12:30–31.) How she treats people and how she
3 runs her business is very important to her. She believes God has called her to abide by His precepts
4 that He set forth in the Bible. In other words, she strives to honor God by making her life edifying to
5 Him. In that respect, she has to work in accordance with her faith, which teaches that, “Whatever
6 you do, work at it with all your heart, as working for the Lord, not for human masters” (Colossians
7 3:3), and “All whatsoever you do in word or in work, do all in the name of the Lord Jesus Christ.”
8 (Colossians 3:17; see also 1 Corinthians 10:31; 1 Peter 4:11.)

9 As a Christian, she desires her life to be one of grace, love, compassion, and truth. Cathy’s
10 faith teaches her to welcome and serve everyone. And she does. She welcomes people from all
11 lifestyles, including individuals of all races, creeds, marital situations, gender identities, and sexual
12 orientations. In other words, she offers her artistic vision to create specially designed custom cakes
13 and desserts for anyone. She eagerly seeks to serve all people, but she cannot design custom cakes
14 that express ideas or celebrate events that conflict with her core religious beliefs. It would violate the
15 first and greatest commandment if she were to create custom cakes that express messages or celebrate
16 events that conflict with her love for God. (See Ephesians 4:29; 1 Timothy 5:22; 1 Corinthians 10:1–
17 22; 2 Corinthians 6:14–18.)

18 Her decisions on whether to design a custom cake or coordinate an event never focus on the
19 client’s identity, and are applicable alike to all clients regardless of their identity. Rather, they focus
20 on what the custom cake or event will express or celebrate. These limitations on her custom work
21 have no bearing on her premade items, which were not tailored for any specific purpose or message
22 and are available to all customers for any use they may choose. Thus, a potential customer’s identity
23 or characteristic simply has no bearing on whether she accepts a custom cake order. Although she
24 does not ask, sometimes customers tell her or it is obvious that a customer is a member of the LGBT
25 community, and so she knows that she has created cakes that celebrate birthdays, graduations, and
26 adoptions for LGBT customers or for one of their family members or friends. She welcomes LGBT
27 customers and is honored to serve them as they celebrate important people in their lives.

28 There are many custom cakes that Cathy will not create. For example, she will not design cakes

1 that celebrate divorce, that display violence, that glorify drunkenness or drug use, that contain explicit
2 sexual content, that present gory or demonic images or satanic symbols. She also will not design cakes
3 that demean any person or group for any reason, or that promote racism, or any other message that
4 conflicts with fundamental Christian principles.

5 In the baking profession, Cathy's policy is not unusual: it is standard industry practice for
6 cake artists to decline to create custom cakes expressing messages or celebrating events that would
7 conflict with their beliefs or worldview. This has been Tastries Bakery policy from the beginning and
8 has been a written policy for many years.

9 Relevant in this context, like many Christians, Cathy believes that marriage is a sacred union
10 between one man and one woman. God's plan for marriage comes straight from His Word: "[F]rom
11 the beginning of creation, God made them male and female, for this reason, a man will leave his father
12 and mother and be united with his wife and the two will become one flesh. So they are no longer two,
13 but one." (Mark 10:6-9.) Weddings therefore signify that the "two [have] become one flesh." (*Id.*)
14 She also believes, in accordance with the Bible's teachings, that marriage represents the relationship
15 between Jesus Christ and His Church. These beliefs guide Tastries Bakery's marriage-related
16 products and services. Cathy understands that others may hold views that are different from her
17 (including customers and employees), but she does not require anyone to share her views on marriage
18 as a condition for service or employment. In fact, the bakery has served many LGBT customers and
19 she has hired multiple members of the LGBT community.

20 Tastries Bakery's written policies state that "All custom orders must follow Tastries Design
21 Standards." Those policies further elaborate that on custom orders that do not meet Tastries Design
22 Standards include "Designs that violate fundamental Christian principles; wedding cakes must not
23 contradict God's sacrament of marriage between a man and a woman." To "contradict" means "to
24 assert or speak the contrary or opposite of" some proposition. Tastries Bakery's policy is a neutral
25 policy concerning sending messages about marriage. It has nothing to do with any individual's sexual
26 orientation. Under this policy, Tastries Bakery will not custom design any cake that sends a message
27 "contradict[ing] God's sacrament of marriage between a man and a woman."

28 Once, a man requested a beautiful seven-tier cake that he planned to use at a vow-renewal

1 ceremony that he was planning for his wife. He intended to surprise her at the ceremony by announcing
2 his intention to obtain a divorce. Because using our cakes in this manner violates Cathy's policy about
3 demeaning and humiliating people and the "sacramental" nature of marriage, she declined the order.
4 Further, Tastries Bakery will not create any cake for a political event that sends a message contrary to
5 sacramental marriage between one man and one women, with no regard to the sexual orientation of the
6 prospective client since people of all sexual orientations can have different views on marriage.

7 One application of Cathy's neutral policy about marriage is that she also cannot make a wedding
8 cake for a same-sex marriage ceremony. In that respect, her custom wedding cakes announce a basic
9 message: this event is a wedding, and the couple's union is a marriage. They also declare an opinion:
10 the couple's marriage should be celebrated. These expressions have a lasting value through pictures
11 presenting the wedding cake as a centerpiece of their wedding celebration. This is because all pre-
12 ordered wedding cake made by Tastries Bakery are custom cakes. Custom cakes reflect the event they
13 are made for—the full meaning is clear to the intended audience. If Defendants cannot control the
14 events or purpose of a custom cake then Defendants cannot control their own messages.

15 Cathy participates in every part of the custom cake design and creation process. First, she
16 participates in the creation of all recipes used at Tastries Bakery. Some recipes were made by her over
17 many years. Others were developed after she started the bakery. The development of recipes is both an
18 art and a science that takes time to master. Most clients interested in a custom designed wedding cake
19 are pre-scheduled for a cake tasting where up to four people can sample cake and filling flavors. After
20 sampling flavors and reviewing the Tastries Bakery wedding packet, Cathy (or one of her designers)
21 will sit down with the client to develop specific features of the custom wedding cake. They talk about
22 the overall theme, color palette, venue (indoor or outdoor), and style of the wedding. Then they turn
23 to the details of the cake by learning of their preferences or any inspirational pictures, discuss cake and
24 filling flavors, dietary needs (i.e., free of gluten, sugar, nuts, eggs, dairy), expected outdoor temperature,
25 and how many people will be served. All these factors can dramatically alter the design options.

26 During this process, Cathy doesn't just let the client know about the 16 cake flavors, 20 filling
27 flavors, 5 types of frosting, 11 tier shapes, and other details—expecting the client to randomly pick what
28 they want. Rather, it is a collaborative process where Cathy offers the best design options for

1 appearance and integrity of the cake based on the client's preferences. Sometimes, she needs to
2 dissuade clients from poor choices, which usually is greatly appreciated. Also, during this process,
3 Cathy discusses the meaning and importance of marriage and how they need to spend as much time on
4 marriage preparation—preparing to be husband and wife—as they spend on wedding planning. For
5 Christian couples, Cathy will discuss how the Lord brought them together and how they could
6 incorporate Bible verses into their vows.

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

12 During one of the pre-scheduled cake tastings, Cathy welcomed Mireya and Eileen Rodriguez
13 Del-Rio to Tastries Bakery on August 26, 2017, just like she would any other prospective client. They
14 came into the shop with an older woman (Eileen's mother) and joined a couple of men who were
15 already there. This was not unusual; Cathy often meets with couples along with members of the
16 wedding party. She believed these five were the bride and groom along with the maid of honor, the
17 best man, and a mother. Strangely, however, no one began filling out the custom cake request form
18 or wished to sample the cupcakes that had been prepared for tasting. So, she asked for some details.
19 Mireya told her that she wanted a custom three-tiered wedding cake with decorative ribbon and two
20 sheet cakes with matching finish. Cathy then asked Mireya to fill out the custom cake request form.
21 Mireya said that Eileen would do it. As Cathy handed the clipboard with the form to Eileen, Cathy
22 asked, "Which one of you is the groom?" One of the men pointed to Eileen and said, "She is."

23 At this point, the design consultation had just begun—Cathy hadn't discussed with them
24 flavors or fillings or other details, or begun the collaborative design process. However, she knew that
25 she could not create custom cakes sending messages contradicting the sacramental nature of marriage
26 between one and one woman, and the type of cake Eileen and Mireya were discussing—a custom-
27 designed wedding cake—would do just that. So she told them that Tastries Bakery could not make
28 their wedding cake because doing so would violate her Christian beliefs. She offered to connect them

1 with Stephanie at Gimme Some Sugar. She also invited them to stay and sample the cake flavors.

2 Cathy later learned that Eileen and Mireya have taken the position in this litigation that they
3 only wanted to purchase a pre-ordered “blank, generic wedding cake.” That is not a service that
4 Tastries Bakery offers to any customer; all wedding cake orders consist of a collaborative, artistic
5 process between the cake designer and the potential customer. Thus, Tastries Bakery also would have
6 had to refer Eileen and Mireya to another store regardless of their sexual orientation for that service.

7
8 **SPECIAL INTERROGATORY NO. 2:**

9 STATE ALL FACTS that support YOUR contention that “Tastries implemented, and at all
10 relevant times maintained, a bona fide policy against unlawful discrimination in accordance with the
11 Unruh Act,” as alleged in YOUR ANSWER.

12
13 **RESPONSE:**

14 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
15 it 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.

Original 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.

Amended Response. Subject to and without waiving the above objections, Tastries Bakery responds as follows:

This interrogatory is aimed at Defendants’ first and second affirmative defenses. In support of those affirmative defenses, Defendants state as follows:

Defendants’ incorporate by reference their response to the duplicative administrative interrogatory nos. 35 & 36 propounded on and answered by Tastries Bakery in 2017. (See *Professional Career Colleges, Magna Institute, Inc. v. Superior Court* (1989) 207 Cal.App.3d 490.) Tastries Bakery also refers the DFEH to Ex. C to those responses, the written policy against discrimination. (See Code Civ. Proc., § 2030.230 [“If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained.”].) Since that time, Defendant has also updated its anti-

harassment and anti-discrimination policies to keep them current with California law, including by reflecting necessary training.

SPECIAL INTERROGATORY NO. 3:

STATE ALL FACTS that support YOUR contention that “DFEH’s claims are barred based on the equitable doctrine of unclean hands,” as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH’s own files, including, but not limited to, court filings, the discovery during the DFEH’s administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant’s factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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

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. 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 **Original Response.** Subject to and without waiving the above objections, Defendant
7 responds as follows: In light of the above objections, including specifically because the interrogatories
8 were never properly served on Defendant, Defendant does not respond.

9 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
10 responds as follows:

11 This interrogatory is aimed at Defendants' third affirmative defense. Defendants' third
12 affirmative defense reads as follows: "The DFEH's claims are barred based on the equitable doctrine
13 of unclean hands. Specifically, the Rodriguez-Del Rios conspired with one another and/or aided and
14 abetted one another in [1] bringing what they know is a fraudulent and meritless complaint to, inter
15 alia, collect a money judgment under applicable state statutes; [2] carry out a defamatory social media
16 crusade against Miller and Tastries Bakery; destroy Tastries Bakery's business; publicly humiliate
17 and inflict severe emotional distress on Miller; and further a political agenda by falsely alleging that
18 Miller, and Christians in general, are bigoted and homophobic." (Numbers added.)

19 In support of that affirmative defense, Defendants state as follows:

20 [1] This defense focuses on the theory that Eileen and Mireya were shopping for a lawsuit more
21 than a wedding cake. Under the Unruh Act, the complainant must "actually possess a *bona fide intent*
22 to sign up for or use [the business's] services" and not be merely shopping for a lawsuit. (*Thurston v.*
23 *Omni Hotels Management Corporation* (2021) 69 Cal.App.5th 299, 307, review denied (Dec. 22, 2021);
24 quoting *White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1032; see also *Arroyo v. Golbahar* (C.D. Cal. 2022)
25 2022 WL 19199, at *3.) Tastries Bakery submitted an un rebutted declaration from a disinterested
26 third-party, Reina Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was
27 clear to her when Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries
28 Bakery also submitted Cathy Miller's original declaration in the administrative investigation, dated

January 16, 2018, explaining that Eileen and Mireya’s odd behavior at the August 26, 2017 cake tasting made her believe that they may have been shopping for a lawsuit (paragraphs 14-19). (See Code Civ. Proc., § 2030.230.)

[2] Following the incident, both Eileen and Mireya posted accounts of it on social media, and so did their friend Sam Salazar. They tagged dozens of people, causing the incidents to quickly go viral, and obtain media attention. The viral nature of their posts also caused numerous bigoted activists to begin attacking Cathy and Tastries Bakery over their Christian beliefs. During the depositions of 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. For further information, Tastries Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc., § 2030.230.)

In the analogous EEOC context, “the charging party’s conduct may have the effect of limiting the relief that the EEOC may obtain in court. If, for example, he had failed to mitigate his damages, or had accepted a monetary settlement, any recovery by the EEOC would be limited accordingly.” (*Equal Employment Opportunity Commission v. Rexnord Industries, LLC* (E.D. Wis. 2013) 2013 WL 12181707, at *3 [cleaned up] [collecting cases]; quoting *Equal Employment Opportunity Commission v. Waffle House, Inc.* (2002) 534 U.S. 279, 296.)

However, Tastries Bakery does not believe that the Unclean Hands defense is limited to Eileen and Mireya’s conduct. Rather, the DFEH’s own hands are not clean because:

- (a) The DFEH’s decision to apply *ex parte* for a temporary restraining order, during the administrative investigation phase, before receiving Defendants’ interrogatory responses, and therefore before knowing the facts, and immediately after the oral argument in *Masterpiece Cakeshop*. (See *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com’n* (2018) 138 S.Ct. 1719, 1731 [“[T]he government ... cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs

and practices.”].)

(b) The DFEH’s repeated bigoted reference to Cathy Miller’s religious beliefs as akin to racism, and comparison of Eileen and Mireya to Rosa Parks. (See, e.g., *Masterpiece, supra*, 138 S.Ct. at 1729 [describing religious beliefs about traditional marriage as pretextual justification for discrimination, and akin to “slavery” and “the holocaust”]; *Trump v. Hawaii* (2018) 138 S.Ct. 2392, 2417 [statement that “Islam hates us” and that the U.S. is “having problems with Muslims coming into the country”]; *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 541 [describing religious practice as “an abomination”]; *Meriwether v. Hartop* (6th Cir. 2021) 992 F.3d 492, 512-513 [university official “remarked that religion ‘oppresses students,’” that “Christians ... were ‘primarily motivated out of fear,’” that “Christian doctrines ... should not be taught,” and that “Christian professors ‘should be banned’ from teaching courses on Christianity”]; *Buck v. Gordon* (W.D. Mich. 2019) 429 F.Supp.3d 447, 451 [describing people with traditional religious beliefs about placing children for adoption only with opposite-sex married couples as “‘hate-mongers’ who disliked gay people more than they cared about children.”].)

(c) The DFEHs’ failure to act neutrally. (*Roberts v. Neace* (6th Cir. 2020) 958 F.3d 409, 415 [“The constitutional benchmark is ‘government *neutrality*,’ not ‘governmental avoidance of bigotry.’”].) This is shown by:

- i. Its failure to investigate any of the businesses that boycotted Tastries Bakery for its religious practice in violation of the Unruh Act. (See *Zorach v. Clauser* (1952) 343 U.S. 306, 314 [the government cannot “prefer[] those who believe in no religion over those who do believe”]; *New Hope Family Services, Inc. v. Poole* (2d Cir. 2020) 966 F.3d 145, 168, fn.22 [where government conduct “endorse[s] the impermissible view ‘that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, implying that religious beliefs and persons are less than fully welcome” that is hostility to religion] [cleaned up]; *Kennedy v. Bremerton School District* (9th Cir. 2021) 4

1 F.4th 910, 953, fn.10 [dis. opn. of Nelson, J.] [same]; cert. granted (Jan. 14,
2 2022) 2022 WL 129501; see also *InterVarsity Christian Fellowship/USA v.*
3 *Board of Governors of Wayne State University* (E.D. Mich. 2021) 534 F.Supp.3d
4 785, 831 [noting how allowance of discrimination by certain groups, but not
5 religious groups, evidenced hostility], recons. den. (E.D. Mich. 2021) 2021
6 WL 2207370, *2 *& fn.1.)

- 7 ii. Its failure to investigate whether Eileen and Mireya had a bona fide intent to
8 purchase a Tastries Bakery wedding cake, despite the evidence from Reina
9 Benitez and Cathy Miller, forgoing even a deposition of Reina Benitez.
- 10 iii. Its refusal to accept the undisputed facts, and instead mischaracterization of
11 them to fit its own narrative, including specifically, impugning Miller’s talent
12 and artistic ability as a means of establishing that her speech is therefore not
13 protected.
- 14 iv. Its characterization of traditional religious beliefs about marriage as *per se*
15 sexual orientation discrimination, irrespective of the desire to avoid sending
16 messages contrary to those beliefs. (See *Fulton v. City of Philadelphia,*
17 *Pennsylvania* (2021) 141 S.Ct. 1868, 1877 [“Government fails to act neutrally
18 when it proceeds in a manner intolerant of religious beliefs”]; *American Legion*
19 *v. American Humanist Association* (2019) 139 S.Ct. 2067, 2084-2085 [“[W]hen
20 time’s passage imbues a religiously expressive ... practice with this kind of
21 familiarity and historical significance, removing it ... will strike many as
22 aggressively hostile to religion.”].)
- 23 v. Its misrepresentations to Defendants that it was acting neutrally during its
24 administrative investigation, while it hid an intent to engage in a special
25 relationship with Eileen and Mireya, so that Defendants would disclose
26 information to it.

1 **SPECIAL INTERROGATORY NO. 4:**

2 STATE ALL FACTS that support YOUR contention that “the Rodriguez-Del Rios
3 conspired with one another and/or aided and abetted one another in bringing what they know is a
4 fraudulent and meritless complaint,” as alleged in YOUR ANSWER.

5
6 **RESPONSE:**

7 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
8 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
9 including, but not limited to, court filings, the discovery during the DFEH’s administrative
10 investigation, and other correspondence and other communications to the DFEH. Providing that
11 information again in answering this request would be oppressive and unduly burdensome. All of
12 Defendant’s factual and legal contentions have already been made clear in the discovery and
13 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
14 briefing.

15 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
16 information protected under the First Amendment, the attorney-client privilege, the work-product
17 doctrine, privacy rights, or any other applicable privilege or immunity.

18 Further, Defendant objects to this interrogatory because it was never properly served on
19 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
20 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
21 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
22 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
23 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
24 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
25 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
26 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
27 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
28 the parties have agreed to accept electronic service of specific documents, but the parties never

1 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
2 that they were never properly served. Defendants also object to the purported service of written
3 discovery on Christmas Eve.

4 **Original Response.** Subject to and without waiving the above objections, Defendant
5 responds as follows: In light of the above objections, including specifically because the interrogatories
6 were never properly served on Defendant, Defendant does not respond.

7 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
8 responds as follows:

9 This interrogatory is aimed at Defendants' third affirmative defense. In support of that
10 affirmative defense, Defendants state as follows:

11 Tastries Bakery submitted an un rebutted declaration from a disinterested third-party, Reina
12 Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was clear to her when
13 Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries Bakery also
14 submitted Cathy Miller's original declaration in the administrative investigation, dated January 16,
15 2018, explaining that Eileen and Mireya's odd behavior at the August 26, 2017 cake tasting made her
16 believe that they may have been shopping for a lawsuit (paragraphs 14-19). (See Code Civ. Proc.,
17 § 2030.230; see also generally, Response to Special Interrogatory No. 3.)

18
19 **SPECIAL INTERROGATORY NO. 5:**

20 STATE ALL FACTS that support YOUR contention that the REAL PARTIES sought to
21 "carry out a defamatory social media crusade against Miller and Tastries Bakery," as alleged in
22 YOUR ANSWER.

23 (For purposes of this entire set of Interrogatories, the term "REAL PARTIES" shall mean
24 and refer to Real Parties in Interest Eileen Rodriguez-Del Rio and Mireya Rodriguez Del-Rio.)

25
26 **RESPONSE:**

27 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
28 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,

1 including, but not limited to, court filings, the discovery during the DFEH's administrative
2 investigation, and other correspondence and other communications to the DFEH. Providing that
3 information again in answering this request would be oppressive and unduly burdensome. All of
4 Defendant's factual and legal contentions have already been made clear in the discovery and
5 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
6 briefing.

7 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
8 information protected under the First Amendment, the attorney-client privilege, the work-product
9 doctrine, privacy rights, or any other applicable privilege or immunity.

10 Further, Defendant objects to this interrogatory because it was never properly served on
11 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
12 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
13 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
14 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
15 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
16 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
17 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
18 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
19 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
20 the parties have agreed to accept electronic service of specific documents, but the parties never
21 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
22 that they were never properly served. Defendants also object to the purported service of written
23 discovery on Christmas Eve.

24 **Original Response.** Subject to and without waiving the above objections, Defendant
25 responds as follows: In light of the above objections, including specifically because the interrogatories
26 were never properly served on Defendant, Defendant does not respond.

27 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
28 responds as follows:

1 This interrogatory is aimed at Defendants' third affirmative defense. In support of that
2 affirmative defense, Defendants state as follows:

3 Following the incident, both Eileen and Mireya posted accounts of it on social media, and so
4 did their friend Sam Salazar. They tagged dozens of people, causing the incidents to quickly go viral,
5 and obtain media attention. The viral nature of their posts also caused numerous bigoted activists to
6 begin attacking Cathy and Tastries Bakery over their Christian beliefs. During the depositions of
7 Eileen, Mireya, Sam, and Patrick Grijalva, it was made clear that they had a vindictive desire to see
8 Tastries Bakery shut down and Cathy go bankrupt. Further, they made clear that they believed
9 Defendants were bigots, and that Christian beliefs had no legitimate place in the public sphere such
10 that Defendants had to choose between exercising their faith or making a living. In 2019, Eileen and
11 Mireya also appeared as guests of honor at a PFLAG political event. For further information, Tastries
12 Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc.,
13 § 2030.230; see also generally, Response to Special Interrogatories Nos. 3 & 6; Miller's Response to
14 Special Interrogatory No. 13.)

15
16 **SPECIAL INTERROGATORY NO. 6:**

17 STATE ALL FACTS that support YOUR contention that the REAL PARTIES sought to
18 "publicly humiliate and inflict severe emotional distress on Miller," as alleged in YOUR ANSWER.

19
20 **RESPONSE:**

21 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
22 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
23 including, but not limited to, court filings, the discovery during the DFEH's administrative
24 investigation, and other correspondence and other communications to the DFEH. Providing that
25 information again in answering this request would be oppressive and unduly burdensome. All of
26 Defendant's factual and legal contentions have already been made clear in the discovery and
27 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
28 briefing.

1 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
2 information protected under the First Amendment, the attorney-client privilege, the work-product
3 doctrine, privacy rights, or any other applicable privilege or immunity.

4 Further, Defendant objects to this interrogatory because it was never properly served on
5 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
6 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
7 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
8 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
9 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
10 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
11 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
12 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
13 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
14 the parties have agreed to accept electronic service of specific documents, but the parties never
15 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
16 that they were never properly served. Defendants also object to the purported service of written
17 discovery on Christmas Eve.

18 **Original Response.** Subject to and without waiving the above objections, Defendant
19 responds as follows: In light of the above objections, including specifically because the interrogatories
20 were never properly served on Defendant, Defendant does not respond.

21 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
22 responds as follows:

23 This interrogatory is aimed at Defendants’ third affirmative defense. In support of that
24 affirmative defense, Defendants state as follows:

25 Tastries Bakery submitted an unrebutted declaration from a disinterested third-party, Reina
26 Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was clear to her when
27 Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries Bakery also
28 submitted Cathy Miller’s original declaration in the administrative investigation, dated January 16,

2018, explaining that Eileen and Mireya’s odd behavior at the August 26, 2017 cake tasting made her believe that they may have been shopping for a lawsuit (paragraphs 14-19). (See Code Civ. Proc., § 2030.230.)

Following the incident, both Eileen and Mireya posted accounts of it on social media, and so did their friend Sam Salazar. They tagged dozens of people, causing the incidents to quickly go viral, and obtain media attention. The viral nature of their posts also caused numerous bigoted activists to begin attacking Cathy and Tastries Bakery over their Christian beliefs. During the depositions of 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. For further information, Tastries Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatory No. 3; Miller’s Response to Special Interrogatory No. 13.)

SPECIAL INTERROGATORY NO. 7:

STATE ALL FACTS that support YOUR contention that the REAL PARTIES sought to “further a political agenda by falsely alleging that Miller, and Christians in general, are bigoted and homophobic,” as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH’s own files, including, but not limited to, court filings, the discovery during the DFEH’s administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of 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 **Original Response.** Subject to and without waiving the above objections, Defendant
21 responds as follows: In light of the above objections, including specifically because the interrogatories
22 were never properly served on Defendant, Defendant does not respond.

23 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
24 responds as follows:

25 This interrogatory is aimed at Defendants’ third affirmative defense. In support of that
26 affirmative defense, Defendants state as follows:

27 Tastries Bakery submitted an unrebutted declaration from a disinterested third-party, Reina
28 Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was clear to her when

1 Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries Bakery also
2 submitted Cathy Miller's original declaration in the administrative investigation, dated January 16,
3 2018, explaining that Eileen and Mireya's odd behavior at the August 26, 2017 cake tasting made her
4 believe that they may have been shopping for a lawsuit (paragraphs 14-19). (See Code Civ. Proc., §
5 2030.230.)

6 Following the incident, both Eileen and Mireya posted accounts of it on social media, and so
7 did their friend Sam Salazar. They tagged dozens of people, causing the incidents to quickly go viral,
8 and obtain media attention. The viral nature of their posts also caused numerous bigoted activists to
9 begin attacking Cathy and Tastries Bakery over their Christian beliefs. During the depositions of
10 Eileen, Mireya, Sam, and Patrick Grijalva, it was made clear that they had a vindictive desire to see
11 Tastries Bakery shut down and Cathy go bankrupt. Further, they made clear that they believed
12 Defendants were bigots, and that Christian beliefs had no legitimate place in the public sphere such
13 that Defendants had to choose between exercising their faith or making a living. In 2019, Eileen and
14 Mireya also appeared as guests of honor at a PFLAG political event. For further information, Tastries
15 Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc.,
16 § 2030.230; see also generally, Response to Special Interrogatories Nos. 3 & 6; Miller's Response to
17 Special Interrogatory Nos. 13.)

18
19 **SPECIAL INTERROGATORY NO. 8:**

20 STATE ALL FACTS that support YOUR contention that the REAL PARTIES sought to
21 "destroy Tastries Bakery's business," as alleged in YOUR ANSWER.

22
23 **RESPONSE:**

24 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
25 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
22 responds as follows: In light of the above objections, including specifically because the interrogatories
23 were never properly served on Defendant, Defendant does not respond.

24 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
25 responds as follows:

26 This interrogatory is aimed at Defendants' third affirmative defense. In support of that
27 affirmative defense, Defendants state as follows:

28 Tastries Bakery submitted an unrebutted declaration from a disinterested third-party, Reina

1 Benitez the proprietor of Party Palace, dated January 17, 2018, stating that it was clear to her when
2 Eileen and Mireya visited her venue that they were shopping for a lawsuit. Tastries Bakery also
3 submitted Cathy Miller's original declaration in the administrative investigation, dated January 16,
4 2018, explaining that Eileen and Mireya's odd behavior at the August 26, 2017 cake tasting made her
5 believe that they may have been shopping for a lawsuit (paragraphs 14-19). (See Code Civ. Proc.,
6 § 2030.230.)

7 Following the incident, both Eileen and Mireya posted accounts of it on social media, and so
8 did their friend Sam Salazar. They tagged dozens of people, causing the incidents to quickly go viral,
9 and obtain media attention. The viral nature of their posts also caused numerous bigoted activists to
10 begin attacking Cathy and Tastries Bakery over their Christian beliefs. During the depositions of
11 Eileen, Mireya, Sam, and Patrick Grijalva, it was made clear that they had a vindictive desire to see
12 Tastries Bakery shut down and Cathy go bankrupt. Further, they made clear that they believed
13 Defendants were bigots, and that Christian beliefs had no legitimate place in the public sphere such
14 that Defendants had to choose between exercising their faith or making a living. In 2019, Eileen and
15 Mireya also appeared as guests of honor at a PFLAG political event. For further information, Tastries
16 Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc.,
17 § 2030.230; see also generally, Response to Special Interrogatories Nos. 3 & 6; Miller's Response to
18 Special Interrogatory No. 13.)

19
20 **SPECIAL INTERROGATORY NO. 9:**

21 STATE ALL FACTS that support YOUR contention that this action is "a blatant abuse of
22 process," as alleged in YOUR ANSWER.

23
24 **RESPONSE:**

25 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
26 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
23 responds as follows: In light of the above objections, including specifically because the interrogatories
24 were never properly served on Defendant, Defendant does not respond.

25 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
26 responds as follows:

27 This interrogatory is aimed at Defendants' fourth affirmative defense. Defendants' fourth
28 affirmative defense reads as follows: "The DFEH is precluded from bringing this lawsuit because it

1 is a blatant abuse of process. Specifically, the Rodriguez-Del Rios conspired with one another and/or
2 aided and abetted one another in [1] filing what they know is a fraudulent and meritless complaint
3 against Miller and Tastries. Through their abuse of legal process, the Rodriguez-Del Rios
4 impermissibly seek, inter alia, to collect a money judgment under the Unruh Act and punitive
5 damages, to harm Tastries Bakery's business, and to [2] publicly humiliate and inflict severe
6 emotional distress on Miller." (Numbers added.)

7 In support of that affirmative defense, Defendants state as follows:

8 Defendants incorporate by reference their response to Special Interrogatory No. 3.

9
10 **SPECIAL INTERROGATORY NO. 10:**

11 STATE ALL FACTS that support YOUR contention that the REAL PARTIES were
12 "unlawful trespassers," as alleged in YOUR ANSWER.

13
14 **RESPONSE:**

15 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
16 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
17 including, but not limited to, court filings, the discovery during the DFEH's administrative
18 investigation, and other correspondence and other communications to the DFEH. Providing that
19 information again in answering this request would be oppressive and unduly burdensome. All of
20 Defendant's factual and legal contentions have already been made clear in the discovery and
21 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
22 briefing.

23 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
24 information protected under the First Amendment, the attorney-client privilege, the work-product
25 doctrine, privacy rights, or any other applicable privilege or immunity.

26 Further, Defendant objects to this interrogatory because it was never properly served on
27 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
28 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),

1 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
2 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
3 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
4 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
5 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
6 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
7 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
8 the parties have agreed to accept electronic service of specific documents, but the parties never
9 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
10 that they were never properly served. Defendants also object to the purported service of written
11 discovery on Christmas Eve.

12 **Original Response.** Subject to and without waiving the above objections, Defendant
13 responds as follows: In light of the above objections, including specifically because the interrogatories
14 were never properly served on Defendant, Defendant does not respond.

15 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
16 responds as follows:

17 This interrogatory is aimed at Defendants’ fifth affirmative defense. Defendants’ fifth
18 affirmative defense reads as follows: “The DFEH’s claims are barred because the Rodriguez-Del Rios
19 gained access to Tastries Bakery based on their fraudulent intent to trigger this meritless lawsuit.
20 Motivated by ulterior objectives, they knowingly and fraudulently presented themselves as potential
21 Tastries customers willing to abide by Miller and Tastries’ policies and reasonable requests of the
22 management. Consequently, the Rodriguez-Del Rios were unlawful trespassers.”

23 In support of that affirmative defense, Defendants state as follows:

24 “Every unauthorized entry on another’s property is a trespass and any person who makes
25 such an entry is a trespasser.” (*Bauman v. Beaujean* (1966) 244 Cal.App.2d 384, 389.) Here, Tastries
26 Bakery consented to prospective custom-design clients or potential customers entering its premises.
27 Tastries Bakery did not consent to the entry of fraudsters seeking to trap them on the basis of Cathy
28

1 Miller's Christian faith. Defendants incorporates by reference their response to Special Interrogatory
2 No. 3.

3
4 **SPECIAL INTERROGATORY NO. 11:**

5 STATE ALL FACTS that support YOUR contention that the REAL PARTIES "knowingly
6 and fraudulently presented themselves as potential Tastries customers willing to abide by Miller and
7 Tastries' policies and reasonable requests of the management," as alleged in YOUR ANSWER.

8
9 **RESPONSE:**

10 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
11 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
12 including, but not limited to, court filings, the discovery during the DFEH's administrative
13 investigation, and other correspondence and other communications to the DFEH. Providing that
14 information again in answering this request would be oppressive and unduly burdensome. All of
15 Defendant's factual and legal contentions have already been made clear in the discovery and
16 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
17 briefing.

18 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
19 information protected under the First Amendment, the attorney-client privilege, the work-product
20 doctrine, privacy rights, or any other applicable privilege or immunity.

21 Further, Defendant objects to this interrogatory because it was never properly served on
22 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
23 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
24 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
25 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
26 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
27 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
28 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic

1 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
2 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
3 the parties have agreed to accept electronic service of specific documents, but the parties never
4 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
5 that they were never properly served. Defendants also object to the purported service of written
6 discovery on Christmas Eve.

7 **Original Response.** Subject to and without waiving the above objections, Defendant
8 responds as follows: In light of the above objections, including specifically because the interrogatories
9 were never properly served on Defendant, Defendant does not respond.

10 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
11 responds as follows:

12 This interrogatory is aimed at Defendants' fifth affirmative defense. In support of that
13 affirmative defense, Defendants state as follows:

14 Defendants incorporate by reference their response to Special Interrogatories Nos. 3 & 10.

15
16 **SPECIAL INTERROGATORY NO. 12:**

17 If YOU contend that REAL PARTIES were aware of YOUR policy regarding wedding cakes
18 for same-sex marriage celebrations prior to visiting YOUR bakery in August of 2017, STATE ALL
19 FACTS that support YOUR contention.

20
21 **RESPONSE:**

22 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
23 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
21 responds as follows: In light of the above objections, including specifically because the interrogatories
22 were never properly served on Defendant, Defendant does not respond.

23 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
24 responds as follows:

25 This interrogatory is aimed at Defendants’ fifth affirmative defense. In support of that
26 affirmative defense, Defendants state as follows:

27 Tastries Bakery has a consciously religious tenor that is woven throughout its décor and
28 products or services for sale. The Bakery always plays Christian music and sells home goods with

1 religious messages. One corner of the bakery contains a wall with dozens of different crosses for sale.
2 Oftentimes, baked goods also have religious messages written on them. In light of the preeminent
3 Christian decoration, it is unrealistic to suppose that after Real Parties in Interest first visited Tastries
4 Bakery, they did not know that the bakery had a distinctively Christian flavor, including with Christian
5 views on covenantal marriage between one man and one woman.

6 Further, as shown in the documents and at the depositions, prior to deciding to visit Tastries
7 Bakery, all wedding-cake related appointments had been made by Patrick Grijalva, and the only
8 wedding-cake appointment that the Real Parties scheduled themselves was at Tastries Bakery.

9 Defendants further incorporate by reference their response to Special Interrogatories Nos. 3
10 & 10.

11
12 **SPECIAL INTERROGATORY NO. 13:**

13 STATE ALL FACTS that support YOUR contention that “Miller and Tastries were fully
14 justified in lawfully exercising their free speech and free exercise rights under the First Amendment
15 to the United States Constitution,” as alleged in YOUR ANSWER.

16
17 **RESPONSE:**

18 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
19 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
20 including, but not limited to, court filings, the discovery during the DFEH’s administrative
21 investigation, and other correspondence and other communications to the DFEH. Providing that
22 information again in answering this request would be oppressive and unduly burdensome. All of
23 Defendant’s factual and legal contentions have already been made clear in the discovery and
24 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
25 briefing.

26 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
27 information protected under the First Amendment, the attorney-client privilege, the work-product
28 doctrine, privacy rights, or any other applicable privilege or immunity.

1 Further, Defendant objects to this interrogatory because it was never properly served on
2 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
3 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
4 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
5 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
6 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
7 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
8 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
9 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
10 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
11 the parties have agreed to accept electronic service of specific documents, but the parties never
12 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
13 that they were never properly served. Defendants also object to the purported service of written
14 discovery on Christmas Eve.

15 **Original Response.** Subject to and without waiving the above objections, Defendant
16 responds as follows: In light of the above objections, including specifically because the interrogatories
17 were never properly served on Defendant, Defendant does not respond.

18 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
19 responds as follows:

20 This interrogatory is aimed at Defendants’ sixth affirmative defense. Defendants’ sixth
21 affirmative defense reads as follows: “The DFEH’s claims are meritless because Miller and Tastries
22 were fully justified in lawfully exercising their free speech and free exercise rights under the First
23 Amendment to the United States Constitution. Therefore, all actions taken by Miller and Tastries
24 toward the Rodriguez-Del Rios were for legitimate, good faith, justified, nondiscriminatory, and non-
25 retaliatory reasons.”

26 In support of that affirmative defense, Defendants state as follows:

27 The Unruh Act does not take away “the right of a business establishment to adopt reasonable
28 restrictions . . . [that] are rationally related to the business being conducted or the facilities and services

1 being provided.” (*Wynn v. Monterey Club* (1980) 111 Cal.App.3d 789, 796 [discussing “legal justification
2 for refusing plaintiff’s wife access”].) Thus, declining service or referring a customer to another on the
3 basis of a legitimate “business justification” is not a violation of the Unruh Act. Referrals are used in
4 many legitimate situations: when supplies are low, when the calendar is full, or when key employees are
5 not available.

6 One such legitimate business justification is freedom of speech and religion. With respect to
7 freedom of speech, Plaintiff has admitted that it does not prosecute individuals for engaging in speech.
8 (See DFEH Resp. to Miller RFA’s No. 6, 22; DFEH Resp. to Miller FROGs No. 14.1.) Further, the
9 Unruh Act prohibits discrimination on the basis of religion, which “includes all aspects of religious
10 belief, observance, and practice.” (Civ. Code, § 51(e)(4).)

11 Here, Defendants have a neutral policy to decline custom orders that send messages contrary to
12 their sincerely held religious beliefs, and to instead connect clients seeking such custom orders with
13 others bakers who can provide the service. This policy applies to individuals of all sexual orientations
14 alike. In this respect, Defendants incorporate by reference their response to Special Interrogatory No. 1.

15 Even if Defendants’ policy were not neutral, but specifically triggered by a potential customer’s
16 sexual orientation, it would only violate the Unruh Act if the policy were a pretextual justification for
17 arbitrary discrimination. Even policies that explicitly discriminate on the basis of a protected
18 characteristic are allowed if there is a legitimate business justification that is not a pretext for
19 discrimination. (See *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 38 [discussing legitimate, and not
20 pretextual, justification for age discrimination in housing and legitimate justification for sex-segregated
21 restrooms].)

22 Here, there is no evidence that Defendants policy of respecting their own free speech and
23 religion rights regarding custom-designed products that violate fundamental Christian principles
24 (including, but not limited to, covenantal marriage between one man and one woman) is a pretext for
25 discrimination against individuals based on sexual orientation. The general policy applies to many
26 individuals of all sexual orientations—including individuals who seek gory Halloween cakes—and even
27 when applied to the context of marriage, the policy applies to opposite-sex couples seeking cakes that
28 demean or defame the institution of marriage. For example, Defendants’ religious beliefs would

1 preclude them from making cakes meant to announce a divorce in a manner demeaning or humiliating
2 to one spouse, or a wedding cake for individuals who openly announce that they recently divorced their
3 prior spouse for the purpose of entering into a new marriage.

4
5 **SPECIAL INTERROGATORY NO. 14:**

6 STATE ALL FACTS that support YOUR contention that “all actions taken by Miller and
7 Tastries toward the Rodriguez-Del Rios were for legitimate, good faith, justified, nondiscriminatory,
8 and non-retaliatory reasons,” as alleged in YOUR ANSWER.

9
10 **RESPONSE:**

11 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
12 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
13 including, but not limited to, court filings, the discovery during the DFEH’s administrative
14 investigation, and other correspondence and other communications to the DFEH. Providing that
15 information again in answering this request would be oppressive and unduly burdensome. All of
16 Defendant’s factual and legal contentions have already been made clear in the discovery and
17 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
18 briefing.

19 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
20 information protected under the First Amendment, the attorney-client privilege, the work-product
21 doctrine, privacy rights, or any other applicable privilege or immunity.

22 Further, Defendant objects to this interrogatory because it was never properly served on
23 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
24 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
25 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
26 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
27 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
28 In such case, electronic service cannot be effected on court holidays, but only becomes effective on

1 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
2 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
3 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
4 the parties have agreed to accept electronic service of specific documents, but the parties never
5 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
6 that they were never properly served. Defendants also object to the purported service of written
7 discovery on Christmas Eve.

8 **Original Response.** Subject to and without waiving the above objections, Defendant
9 responds as follows: In light of the above objections, including specifically because the interrogatories
10 were never properly served on Defendant, Defendant does not respond.

11 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
12 responds as follows:

13 This interrogatory is aimed at Defendants’ sixth affirmative defense. In support of that
14 affirmative defense, Defendants state as follows:

15 Defendants further incorporate by reference their response to Special Interrogatory No. 13.

16
17 **SPECIAL INTERROGATORY NO. 15:**

18 STATE ALL FACTS that support YOUR contention that “DFEH’s claims are estopped
19 because the Rodriguez-Del Rios’ conduct in triggering this lawsuit was fraudulent,” as alleged in
20 YOUR ANSWER.

21
22 **RESPONSE:**

23 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
24 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
21 responds as follows: In light of the above objections, including specifically because the interrogatories
22 were never properly served on Defendant, Defendant does not respond.

23 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
24 responds as follows:

25 This interrogatory is aimed at Defendants’ seventh affirmative defense. Defendants’ seventh
26 affirmative defense reads as follows: “The DFEH’s claims are estopped because the Rodriguez-Del
27 Rios’ conduct in triggering this lawsuit was fraudulent.”

28 In support of that affirmative defense, Defendants state as follows:

Defendants incorporate by reference their response to Special Interrogatory No. 3.

SPECIAL INTERROGATORY NO. 16:

STATE ALL FACTS that support YOUR contention that “the Rodriguez-Del Rios have suffered no actual injury,” as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH’s own files, including, but not limited to, court filings, the discovery during the DFEH’s administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant’s factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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,

1 the parties have agreed to accept electronic service of specific documents, but the parties never
2 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
3 that they were never properly served. Defendants also object to the purported service of written
4 discovery on Christmas Eve.

5 **Original Response.** Subject to and without waiving the above objections, Defendant
6 responds as follows: In light of the above objections, including specifically because the interrogatories
7 were never properly served on Defendant, Defendant does not respond.

8 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
9 responds as follows:

10 This interrogatory is aimed at Defendants' eighth affirmative defense. Defendants' eighth
11 affirmative defense reads as follows: "The DFEH's claims should be dismissed because, unlike Miller
12 and Tastries, the Rodriguez-Del Rios have suffered no actual injury."

13 In support of that affirmative defense, Defendants state as follows:

14 Real Parties used the opportunity of the Incident to publicly defame Defendants, falsely
15 accusing them of engaging in sexual orientation discrimination, in order to magnify their own public
16 profile and then used that public profile to obtain free services from wedding professionals in the area.
17 On August 26, 2017—the day of the Incident—Eileen reached out via Facebook to a wedding
18 photography company named Brandon Rose Photography asking them to provide free wedding
19 photography services. That was not the only photography company that offered free wedding
20 services, so did Abby's Photography. In addition to providing free wedding photography, Brandon
21 Rose Photography offered a free Engagement shoot.

22 Also on August 26, 2017, same day, at 5:16 p.m., Lizet Aleman, a former Tastries employee
23 and principal with Tiers of Joy, reached out to Eileen offering to provide a free wedding cake. Another
24 Tiers of Joy employee, Jessica Criollo, also reached out to offer a free wedding cake on August 26,
25 2017. Finally, a makeup artist also offered to provide free wedding services for the wedding party.

26 The only actual harm that the Real Parties have ever alleged in this action is emotional distress.
27 However, the DFEH has chosen not to seek any actual damages in this action, only statutory damages.
28 And the Real Parties' emotional distress is not credible; despite alleging that they felt humiliated, Real

Parties' immediately blasted the incident over social media. For that same reason, even if the Real Parties suffered any emotional distress, it was proximately caused by their own actions, not Defendants' speech or exercise of their religious beliefs. For further information, Tastries Bakery refers the DFEH to the depositions of Eileen, Mireya, Sam, and Patrick. (See Code Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatories Nos. 3 & 6; Miller's Response to Special Interrogatory Nos. 13.) This emotional distress is also not legally cognizable harm. The Real Parties emotional distress at encountering religious minorities, whom they would prefer be sidelined from the public sphere, is not harm that is legally redressable.

SPECIAL INTERROGATORY NO. 17:

STATE ALL FACTS that support YOUR contention that "there is no factual basis for" an award of attorney's fees, as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH's own files, including, but not limited to, court filings, the discovery during the DFEH's administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant's factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),

1 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
2 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
3 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
4 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
5 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
6 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
7 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
8 the parties have agreed to accept electronic service of specific documents, but the parties never
9 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
10 that they were never properly served. Defendants also object to the purported service of written
11 discovery on Christmas Eve.

12 **Original Response.** Subject to and without waiving the above objections, Defendant
13 responds as follows: In light of the above objections, including specifically because the interrogatories
14 were never properly served on Defendant, Defendant does not respond.

15 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
16 responds as follows:

17 This interrogatory is aimed at Defendants’ tenth affirmative defense. Defendants’ tenth
18 affirmative defense reads as follows: “The DFEH’s claims for attorney’s fees should be denied
19 because there is no factual basis for such an award.”

20 In support of that affirmative defense, Defendants state as follows:

21 When the DFEH brings a prosecution, “the court, *in its discretion, may* award to the prevailing
22 party, including the department, reasonable attorney’s fees and costs.” (Gov. Code, § 12965(b) [italics
23 added].) Under this section, a fee award is discretionary, and can be denied based on the equities. (See
24 *Bustos v. Global P.E.T., Inc.* (2017) 19 Cal.App.5th 558, 564; *Behne v. Microtouch Systems, Inc.* (N.D. Cal.
25 1999) 58 F.Supp.2d 1096, 1100, aff’d (9th Cir. 2001) 11 Fed.Appx. 856.) This interrogatory is premature
26 because the various bases by which the DFEH’s fees may be limited or denied in this action, should it
27 eventually prevail, are highly dependent on future actions that are necessarily unknown. However, at
28 this time, Defendants know that they will argue that fees should be denied at least on the bases that:

(1) the Real Parties suffered no actual harm, having instead being given many free wedding services (including a free wedding cake) due to the publicity surrounding this action; (2) the DFEH's own bad faith and unclean hands warrant a denial of fees; and (3) the substantive frivolousness of the DFEH's legal theories warrant the grant of fees to Defendants. (See Response to Special Interrogatories Nos. 3, 6, and 16.)

SPECIAL INTERROGATORY NO. 18:

If YOU contend that all custom cakes sold by YOU express a message from YOU, STATE ALL FACTS that support YOUR contention.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH's own files, including, but not limited to, court filings, the discovery during the DFEH's administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant's factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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).)

1 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
2 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
3 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
4 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
5 the parties have agreed to accept electronic service of specific documents, but the parties never
6 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
7 that they were never properly served. Defendants also object to the purported service of written
8 discovery on Christmas Eve.

9 **Original Response.** Subject to and without waiving the above objections, Defendant
10 responds as follows: In light of the above objections, including specifically because the interrogatories
11 were never properly served on Defendant, Defendant does not respond.

12 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
13 responds as follows:

14 Defendants incorporate by reference their response to Special Interrogatory No. 1. As
15 explained therein, Defendants' custom wedding cakes announce a basic message: this event is a
16 wedding, and the couple's union is a marriage. They also declare an opinion: the couple's marriage
17 should be celebrated. These expressions have a lasting value through pictures presenting the wedding
18 cake as a centerpiece of their wedding celebration. This is because all pre-ordered wedding cake made
19 by Tastries Bakery are custom cakes. Custom cakes reflect the event they are made for—the full
20 meaning is clear to the intended audience. If Defendants cannot control the events or purpose of a
21 custom cake then Defendants cannot control their own messages.

22 Further, Defendants legal theories related to Free Speech were extensively briefed in the
23 parties' cross-motions for summary judgment, which are incorporated here by reference. (See Code
24 Civ. Proc., § 2030.230.)

25 **Second Amended Response.** Subject to and without waiving the above objections, Tastries
26 Bakery responds as follows:

27 Defendants incorporate by reference their response to Special Interrogatory No. 1. As
28 explained therein, Defendants' custom wedding cakes announce a basic message: this event is a

1 wedding, and the couple's union is a marriage. They also declare an opinion: the couple's marriage
2 should be celebrated. These expressions have a lasting value through pictures presenting the wedding
3 cake as a centerpiece of their wedding celebration. This is because all pre-ordered wedding cake made
4 by Tastries Bakery are custom cakes. Custom cakes reflect the event they are made for—the full
5 meaning is clear to the intended audience. If Defendants cannot control the events or purpose of a
6 custom cake then Defendants cannot control their own messages.

7 Further, Defendants legal theories related to Free Speech were extensively briefed in the
8 parties' cross-motions for summary judgment, which are incorporated here by reference. (See Code
9 Civ. Proc., § 2030.230.)

10 Further, Tastries Bakery is primarily a custom bakery that will collaborate with clients to
11 design custom cakes, cookies and pastries for many occasions. Custom orders are often made for
12 special events and are tailored to reflect a specific purpose or message. When a custom cake is
13 displayed at the event, all in attendance—whether a small gathering of even one person to large
14 celebrations of hundreds or even thousands—know why the cake is there: to celebrate that particular
15 person or purpose. Thus custom cakes at least send a message of celebration. Many custom cakes
16 make declarations or become integral to the traditions of the event and most custom cakes stand as a
17 centerpiece of the event to be viewed by guests and captured in photographs to create a lasting
18 memory. Many of these elements in custom cakes are present in birthdays, anniversaries, graduations
19 and many other events. Wedding cakes embody all these elements by standing as a centerpiece to
20 declare that a “marriage” has taken place, to be featured in pictures by guests and family, and
21 highlighted by the couple in celebration of their union through the traditions of the wedding cake.
22 Many cakes are recognizable by their design, such as the traditional all white wedding-design. It is
23 also common to add toppers to many custom cakes, which like other design elements inherent in a
24 cake, add emphasis to the message of the cake. Some cake designs will use writing to portray a more
25 specific message; this is common with birthdays and graduations. Quince cakes typically just display
26 a number 15. It is less common to use writing on a wedding cake where the message and meaning is
27 understood without words, but wedding cakes will often have a topper the customer has chosen to
28 represent their sacred union on this special day. Custom cakes can also be adorned with signs,

1 pictures and mementos that bring added meaning. Sometimes the topper, signs and pictures
2 presented with the cake are added at the event, so understanding the intended purpose of the event
3 is important for Tastries to know the message that will be expressed when the cake is displayed. But
4 whether or not writing is included, Tastries custom cakes are designed to express a message.

5
6 **SPECIAL INTERROGATORY NO. 19:**

7 If YOU contend that all wedding cakes sold by YOU express a message from YOU, STATE
8 ALL FACTS that support YOUR contention.

9
10 **RESPONSE:**

11 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
12 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
13 including, but not limited to, court filings, the discovery during the DFEH's administrative
14 investigation, and other correspondence and other communications to the DFEH. Providing that
15 information again in answering this request would be oppressive and unduly burdensome. All of
16 Defendant's factual and legal contentions have already been made clear in the discovery and
17 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
18 briefing.

19 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
20 information protected under the First Amendment, the attorney-client privilege, the work-product
21 doctrine, privacy rights, or any other applicable privilege or immunity.

22 Further, Defendant objects to this interrogatory because it was never properly served on
23 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
24 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
25 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
26 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
27 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
28 In such case, electronic service cannot be effected on court holidays, but only becomes effective on

1 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
2 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
3 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
4 the parties have agreed to accept electronic service of specific documents, but the parties never
5 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
6 that they were never properly served. Defendants also object to the purported service of written
7 discovery on Christmas Eve.

8 **Original Response.** Subject to and without waiving the above objections, Defendant
9 responds as follows: In light of the above objections, including specifically because the interrogatories
10 were never properly served on Defendant, Defendant does not respond.

11 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
12 responds as follows:

13 Defendants incorporate by reference their response to Special Interrogatory Nos. 1 & 18.

14
15 **SPECIAL INTERROGATORY NO. 20:**

16 If YOU contend that the wedding cakes the REAL PARTIES sought to order from YOU
17 would have expressed a message from YOU if YOU prepared them, STATE ALL FACTS that
18 support YOUR contention.

19
20 **RESPONSE:**

21 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
22 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
23 including, but not limited to, court filings, the discovery during the DFEH's administrative
24 investigation, and other correspondence and other communications to the DFEH. Providing that
25 information again in answering this request would be oppressive and unduly burdensome. All of
26 Defendant's factual and legal contentions have already been made clear in the discovery and
27 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
28 briefing.

1 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
2 information protected under the First Amendment, the attorney-client privilege, the work-product
3 doctrine, privacy rights, or any other applicable privilege or immunity.

4 Further, Defendant objects to this interrogatory because it was never properly served on
5 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
6 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
7 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
8 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
9 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
10 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
11 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
12 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
13 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
14 the parties have agreed to accept electronic service of specific documents, but the parties never
15 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
16 that they were never properly served. Defendants also object to the purported service of written
17 discovery on Christmas Eve.

18 **Original Response.** Subject to and without waiving the above objections, Defendant
19 responds as follows: In light of the above objections, including specifically because the interrogatories
20 were never properly served on Defendant, Defendant does not respond.

21 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
22 responds as follows:

23 Defendants incorporate by reference their response to Special Interrogatory Nos. 1 & 18.

24
25 **SPECIAL INTERROGATORY NO. 21:**

26 If YOU contend that any PERSON who attended the wedding of a couple who obtained their
27 wedding cake from YOUR bakery understood the cake to be sending a message from YOU, STATE
28 ALL FACTS that support YOUR contention.

1 **RESPONSE:**

2 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
3 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
4 including, but not limited to, court filings, the discovery during the DFEH's administrative
5 investigation, and other correspondence and other communications to the DFEH. Providing that
6 information again in answering this request would be oppressive and unduly burdensome. All of
7 Defendant's factual and legal contentions have already been made clear in the discovery and
8 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
9 briefing.

10 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
11 information protected under the First Amendment, the attorney-client privilege, the work-product
12 doctrine, privacy rights, or any other applicable privilege or immunity.

13 Further, Defendant objects to this interrogatory because it was never properly served on
14 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
15 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
16 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
17 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
18 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
19 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
20 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
21 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
22 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
23 the parties have agreed to accept electronic service of specific documents, but the parties never
24 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
25 that they were never properly served. Defendants also object to the purported service of written
26 discovery on Christmas Eve.

27 **Original Response.** Subject to and without waiving the above objections, Defendant
28 responds as follows: In light of the above objections, including specifically because the interrogatories

1 were never properly served on Defendant, Defendant does not respond.

2 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
3 responds as follows:

4 Defendants incorporate by reference their response to Special Interrogatory Nos. 1 & 18.
5 Beyond that, Defendants refuse to respond to this interrogatory on the basis that they are not aware
6 of any legal test relevant to this action which has an element where the hearer of a message must be
7 able to identify the speaker (i.e., “sending a message *from YOU*”). For example, in the case of a
8 speech writer for Democrat politicians, the argument that he could simply be compelled to ghost write
9 speeches for Republican politicians, entirely misunderstands the relevant legal tests. However,
10 Defendants are willing to meet and confer with Plaintiff and amend this interrogatory response if
11 appropriate.

12
13 **SPECIAL INTERROGATORY NO. 22:**

14 If YOU contend that any PERSON who attended the wedding of a same-sex couple who
15 obtained their wedding cake from YOU understood the cake to be sending a message from YOU
16 endorsing same-sex marriage, STATE ALL FACTS that support YOUR contention.

17
18 **RESPONSE:**

19 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
20 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
21 including, but not limited to, court filings, the discovery during the DFEH’s administrative
22 investigation, and other correspondence and other communications to the DFEH. Providing that
23 information again in answering this request would be oppressive and unduly burdensome. All of
24 Defendant’s factual and legal contentions have already been made clear in the discovery and
25 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
26 briefing.

27 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
28 information protected under the First Amendment, the attorney-client privilege, the work-product

1 doctrine, privacy rights, or any other applicable privilege or immunity.

2 Further, Defendant objects to this interrogatory because it was never properly served on
3 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
4 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
5 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
6 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
7 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
8 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
9 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
10 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
11 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
12 the parties have agreed to accept electronic service of specific documents, but the parties never
13 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
14 that they were never properly served. Defendants also object to the purported service of written
15 discovery on Christmas Eve.

16 **Original Response.** Subject to and without waiving the above objections, Defendant
17 responds as follows: In light of the above objections, including specifically because the interrogatories
18 were never properly served on Defendant, Defendant does not respond.

19 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
20 responds as follows:

21 Defendants incorporate by reference their response to Special Interrogatory Nos. 1, 18 & 21.

22
23 **SPECIAL INTERROGATORY NO. 23:**

24 If YOU contend that all custom cakes sold by YOU express a religious message from YOU,
25 STATE ALL FACTS that support YOUR contention.

26
27 **RESPONSE:**

28 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because

1 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
2 including, but not limited to, court filings, the discovery during the DFEH's administrative
3 investigation, and other correspondence and other communications to the DFEH. Providing that
4 information again in answering this request would be oppressive and unduly burdensome. All of
5 Defendant's factual and legal contentions have already been made clear in the discovery and
6 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
7 briefing.

8 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
9 information protected under the First Amendment, the attorney-client privilege, the work-product
10 doctrine, privacy rights, or any other applicable privilege or immunity.

11 Further, Defendant objects to this interrogatory because it was never properly served on
12 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
13 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
14 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
15 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
16 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
17 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
18 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
19 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
20 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
21 the parties have agreed to accept electronic service of specific documents, but the parties never
22 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
23 that they were never properly served. Defendants also object to the purported service of written
24 discovery on Christmas Eve.

25 **Original Response.** Subject to and without waiving the above objections, Defendant
26 responds as follows: In light of the above objections, including specifically because the interrogatories
27 were never properly served on Defendant, Defendant does not respond.

28 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery

1 responds as follows:

2 Defendants incorporate by reference their response to Special Interrogatory Nos. 1, 18, & 21.
3 However, not all cakes that carry messages have religious implications.

4
5 **SPECIAL INTERROGATORY NO. 24:**

6 If YOU contend that all wedding cakes sold by YOU express a religious message from YOU,
7 STATE ALL FACTS that support YOUR contention.

8
9 **RESPONSE:**

10 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
11 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
12 including, but not limited to, court filings, the discovery during the DFEH's administrative
13 investigation, and other correspondence and other communications to the DFEH. Providing that
14 information again in answering this request would be oppressive and unduly burdensome. All of
15 Defendant's factual and legal contentions have already been made clear in the discovery and
16 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
17 briefing.

18 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
19 information protected under the First Amendment, the attorney-client privilege, the work-product
20 doctrine, privacy rights, or any other applicable privilege or immunity.

21 Further, Defendant objects to this interrogatory because it was never properly served on
22 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
23 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
24 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
25 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
26 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
27 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
28 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic

1 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
2 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
3 the parties have agreed to accept electronic service of specific documents, but the parties never
4 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
5 that they were never properly served. Defendants also object to the purported service of written
6 discovery on Christmas Eve.

7 **Original Response.** Subject to and without waiving the above objections, Defendant
8 responds as follows: In light of the above objections, including specifically because the interrogatories
9 were never properly served on Defendant, Defendant does not respond.

10 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
11 responds as follows:

12 Defendants incorporate by reference their response to Special Interrogatory Nos. 1, 18, 21,
13 & 23.

14
15 **SPECIAL INTERROGATORY NO. 25:**

16 If YOU contend that the wedding cakes the REAL PARTIES sought to order from YOU
17 would have expressed a religious message had YOU prepared them, STATE ALL FACTS that
18 support YOUR contention.

19
20 **RESPONSE:**

21 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
22 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
23 including, but not limited to, court filings, the discovery during the DFEH's administrative
24 investigation, and other correspondence and other communications to the DFEH. Providing that
25 information again in answering this request would be oppressive and unduly burdensome. All of
26 Defendant's factual and legal contentions have already been made clear in the discovery and
27 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
28 briefing.

1 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
2 information protected under the First Amendment, the attorney-client privilege, the work-product
3 doctrine, privacy rights, or any other applicable privilege or immunity.

4 Further, Defendant objects to this interrogatory because it was never properly served on
5 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
6 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
7 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
8 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
9 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
10 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
11 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
12 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
13 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
14 the parties have agreed to accept electronic service of specific documents, but the parties never
15 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
16 that they were never properly served. Defendants also object to the purported service of written
17 discovery on Christmas Eve.

18 **Original Response.** Subject to and without waiving the above objections, Defendant
19 responds as follows: In light of the above objections, including specifically because the interrogatories
20 were never properly served on Defendant, Defendant does not respond.

21 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
22 responds as follows:

23 Defendants incorporate by reference their response to Special Interrogatory Nos. 1, 18, 21, &
24 23. Further, Defendants note that Real Parties wanted to host a traditional wedding ceremony, with
25 traditional ceremonial rituals, and sought a traditional wedding cake to express that their marriage
26 was traditional.

1 **SPECIAL INTERROGATORY NO. 26:**

2 STATE ALL FACTS that support YOUR contention that “Miller and Tastries suffer
3 ongoing harm because of the DFEH’s interpretation and enforcement of the Unruh Act,” as alleged
4 in YOUR ANSWER.

5
6 **RESPONSE:**

7 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
8 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
9 including, but not limited to, court filings, the discovery during the DFEH’s administrative
10 investigation, and other correspondence and other communications to the DFEH. Providing that
11 information again in answering this request would be oppressive and unduly burdensome. All of
12 Defendant’s factual and legal contentions have already been made clear in the discovery and
13 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
14 briefing.

15 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
16 information protected under the First Amendment, the attorney-client privilege, the work-product
17 doctrine, privacy rights, or any other applicable privilege or immunity.

18 Further, Defendant objects to this interrogatory because it was never properly served on
19 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
20 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
21 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
22 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
23 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
24 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
25 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
26 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
27 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
28 the parties have agreed to accept electronic service of specific documents, but the parties never

1 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
2 that they were never properly served. Defendants also object to the purported service of written
3 discovery on Christmas Eve.

4 **Original Response.** Subject to and without waiving the above objections, Defendant
5 responds as follows: In light of the above objections, including specifically because the interrogatories
6 were never properly served on Defendant, Defendant does not respond.

7 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
8 responds as follows:

9 This interrogatory is aimed at Defendants' eleventh and twelfth affirmative defenses.
10 Defendants' eleventh affirmative defense reads as follows: "The DFEH's interpretation and
11 enforcement of the Unruh Act target and discriminate against Miller and Tastries in violation of
12 article 1, section 4 of the California Constitution. That section provides that "[f]ree exercise and
13 enjoyment of religion without discrimination or preference are guaranteed." (Cal. Const., art. I, § 4.)
14 The DFEH is putting the defendants in an impossible dilemma: They must either violate their
15 sincerely held religious beliefs or face crippling fines, punishment, and public humiliation. Moreover,
16 because the defendants do not discriminate on the basis of sexual orientation, forcing them to express
17 messages or celebrate events that violate their religious beliefs does not further any compelling
18 government interest under strict scrutiny. Accordingly, Miller and Tastries suffer ongoing harm
19 because of the DFEH's interpretation and enforcement of the Unruh Act. Therefore, the DFEH's
20 interpretation and enforcement of the Unruh Act as applied violate Miller's and Tastries' free
21 exercise rights under the California Constitution. Likewise, any judgment in favor of the DFEH and
22 the Rodriguez-Del Rios would violate the defendants' free exercise rights."

23 Defendants' twelfth affirmative defense reads as follows: "The DFEH's interpretation and
24 enforcement of the Unruh Act target and discriminate against Miller and Tastries in violation of the
25 Free Exercise Clause of the First Amendment to the United States Constitution. Specifically, the
26 DFEH's interpretation and enforcement of the Unruh Act prevent Miller and Tastries from operating
27 consistently with their religious beliefs, from declining to operate in violation of their religious beliefs,
28 from speaking their religiously motivated messages, from declining to speak messages that would

1 violate their religious beliefs, and from adhering to key aspects of their faith. The DFEH's
2 interpretation and enforcement of the Unruh Act also impose severe coercive pressure on Miller and
3 Tastries to change or violate their religious beliefs or exercise. The Unruh Act as applied is not
4 narrowly tailored to further any compelling, or even legitimate, government interest. Miller and
5 Tastries suffer ongoing harm because of the DFEH's interpretation and enforcement of the Unruh
6 Act. Therefore, the DFEH's interpretation and enforcement of the Unruh Act violate Miller's and
7 Tastries' First Amendment rights to freely exercise their religion. Likewise, any judgment in favor of
8 the DFEH and the Rodriguez-Del Rios would violate the defendants' free exercise rights.

9 In support of these two affirmative defenses, Defendants state as follows: Defendants legal
10 theories related to the Free Exercise of Religion were extensively briefed in the parties' cross-motions
11 for summary judgment, which are incorporated here by reference. The financial burden of ceasing to
12 engage in wedding services has been discussed repeatedly in Ms. Miller's declarations and
13 depositions, which are also incorporated here by reference. (See Code Civ. Proc., § 2030.230; see
14 also generally, Response to Special Interrogatory No. 1.) Wedding services account for approximately
15 25–30% of Tastries' sales revenue with many customer relationships that follow-on from the initial
16 wedding order (baby showers, birthdays, anniversaries, etc.). Should Tastries stop selling wedding
17 cakes, it would likely become insolvent and be forced to close. Further, the DFEH's and Real Parties'
18 defaming of Tastries by falsely accusing it of engaging in discrimination on the basis of sexual
19 orientation has likely caused the amount of Tastries' wedding services to decline.

20
21 **SPECIAL INTERROGATORY NO. 27:**

22 STATE ALL FACTS that support YOUR contention that “[t]he DFEH's interpretation and
23 enforcement of the Unruh Act” imposes “severe coercive pressure on Miller and Tastries to change
24 or violate their religious belief or exercise,” as alleged in YOUR ANSWER.

25
26 **RESPONSE:**

27 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
28 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,

1 including, but not limited to, court filings, the discovery during the DFEH's administrative
2 investigation, and other correspondence and other communications to the DFEH. Providing that
3 information again in answering this request would be oppressive and unduly burdensome. All of
4 Defendant's factual and legal contentions have already been made clear in the discovery and
5 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
6 briefing.

7 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
8 information protected under the First Amendment, the attorney-client privilege, the work-product
9 doctrine, privacy rights, or any other applicable privilege or immunity.

10 Further, Defendant objects to this interrogatory because it was never properly served on
11 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
12 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
13 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
14 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
15 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
16 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
17 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
18 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
19 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
20 the parties have agreed to accept electronic service of specific documents, but the parties never
21 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
22 that they were never properly served. Defendants also object to the purported service of written
23 discovery on Christmas Eve.

24 **Original Response.** Subject to and without waiving the above objections, Defendant
25 responds as follows: In light of the above objections, including specifically because the interrogatories
26 were never properly served on Defendant, Defendant does not respond.

27 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
28 responds as follows:

1 Defendants incorporate by reference their response to Special Interrogatory No. 26.

2
3 **SPECIAL INTERROGATORY NO. 28:**

4 If YOU contend that preventing discrimination on the basis of sexual orientation is not a
5 compelling government interest, STATE ALL FACTS that support YOUR contention.

6
7 **RESPONSE:**

8 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
9 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
10 including, but not limited to, court filings, the discovery during the DFEH's administrative
11 investigation, and other correspondence and other communications to the DFEH. Providing that
12 information again in answering this request would be oppressive and unduly burdensome. All of
13 Defendant's factual and legal contentions have already been made clear in the discovery and
14 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
15 briefing.

16 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
17 information protected under the First Amendment, the attorney-client privilege, the work-product
18 doctrine, privacy rights, or any other applicable privilege or immunity.

19 Further, Defendant objects to this interrogatory because it was never properly served on
20 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
21 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
22 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
23 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
24 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
25 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
26 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
27 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
28 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,

1 the parties have agreed to accept electronic service of specific documents, but the parties never
2 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
3 that they were never properly served. Defendants also object to the purported service of written
4 discovery on Christmas Eve.

5 **Original Response.** Subject to and without waiving the above objections, Defendant
6 responds as follows: In light of the above objections, including specifically because the interrogatories
7 were never properly served on Defendant, Defendant does not respond.

8 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
9 responds as follows:

10 Plaintiff's interrogatory is vague and incomprehensible as phrased, and indicates a
11 misunderstanding of the concept of "a compelling government interest." The government must go
12 beyond "broadly formulated interests" to meet its evidentiary burden, and instead prove that specific
13 harm will result to its interests if it "grant[s] specific exemptions to particular religious claimants"
14 (*Fulton v. City of Philadelphia* (2021) 141 S. Ct. 1868, 1877, quoting *Gonzales v. O Centro Espirita*
15 *Beneficente Uniao do Vegetal* (2006) 546 U.S. 418, 431), and that its denial of an exemption is "actually
16 necessary" to prevent that harm. (*Brown v. Entertainment Merchants Association* (2011) 564 U.S. 786,
17 799.) In other words, "the government must prove the 'compellingness' of its interest in the context
18 of 'the burden on *that person*'[.]" (*Yellowbear v. Lampert* (10th Cir. 2014) 741 F.3d 48, 57 [Gorsuch, J].).

19 Here, there is no compelling or legitimate government interest in forcing Defendants to leave
20 the marketplace over their traditional religious beliefs on marriage because (1) Defendants offered to
21 connect the Real Parties with other wedding cake bakeries to provide the service that Defendants
22 could not; (2) the Real Parties actually obtained a wedding cake free of charge; and (3) the only
23 "harm" that the Real Parties suffered is emotional distress at encountering religious minorities,
24 whom they would prefer be sidelined from the public sphere. (See Response to Special Interrogatories
25 Nos. 3, 6, and 16.)

26
27 **SPECIAL INTERROGATORY NO. 29:**

28 If YOU contend that preventing discrimination on the basis of sexual orientation is not a

legitimate government interest, STATE ALL FACTS that support YOUR contention.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH's own files, including, but not limited to, court filings, the discovery during the DFEH's administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant's factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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.

1 **Original Response.** Subject to and without waiving the above objections, Defendant
2 responds as follows: In light of the above objections, including specifically because the interrogatories
3 were never properly served on Defendant, Defendant does not respond.

4 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
5 responds as follows:

6 Defendants incorporate by reference their response to Special Interrogatory No. 28.

7
8 **SPECIAL INTERROGATORY NO. 30:**

9 STATE ALL FACTS that support YOUR contention that “any judgment in favor of the
10 DFEH and the Rodriguez-Del Rios would violate the defendants’ free exercise rights,” as alleged in
11 YOUR ANSWER.

12
13 **RESPONSE:**

14 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
15 it 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.

Original 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.

Amended Response. Subject to and without waiving the above objections, Tastries Bakery responds as follows:

This interrogatory is aimed at Defendants’ eleventh and twelfth affirmative defenses. Defendants’ eleventh affirmative defense reads as follows: “The DFEH’s interpretation and enforcement of the Unruh Act target and discriminate against Miller and Tastries in violation of article 1, section 4 of the California Constitution. That section provides that “[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed.” (Cal. Const., art. I, § 4.) The DFEH is putting the defendants in an impossible dilemma: They must either violate their sincerely held religious beliefs or face crippling fines, punishment, and public humiliation. Moreover, because the defendants do not discriminate on the basis of sexual orientation, forcing them to express messages or celebrate events that violate their religious beliefs does not further any compelling government interest under strict scrutiny. Accordingly, Miller and Tastries suffer ongoing harm because of the DFEH’s interpretation and enforcement of the Unruh Act. Therefore, the DFEH’s interpretation and enforcement of the Unruh Act as applied violate Miller’s and Tastries’ free exercise rights under the California Constitution. Likewise, any judgment in favor of the DFEH and

1 the Rodriguez-Del Rios would violate the defendants' free exercise rights."

2 Defendants' twelfth affirmative defense reads as follows: "The DFEH's interpretation and
3 enforcement of the Unruh Act target and discriminate against Miller and Tastries in violation of the
4 Free Exercise Clause of the First Amendment to the United States Constitution. Specifically, the
5 DFEH's interpretation and enforcement of the Unruh Act prevent Miller and Tastries from operating
6 consistently with their religious beliefs, from declining to operate in violation of their religious beliefs,
7 from speaking their religiously motivated messages, from declining to speak messages that would
8 violate their religious beliefs, and from adhering to key aspects of their faith. The DFEH's
9 interpretation and enforcement of the Unruh Act also impose severe coercive pressure on Miller and
10 Tastries to change or violate their religious beliefs or exercise. The Unruh Act as applied is not
11 narrowly tailored to further any compelling, or even legitimate, government interest. Miller and
12 Tastries suffer ongoing harm because of the DFEH's interpretation and enforcement of the Unruh
13 Act. Therefore, the DFEH's interpretation and enforcement of the Unruh Act violate Miller's and
14 Tastries' First Amendment rights to freely exercise their religion. Likewise, any judgment in favor of
15 the DFEH and the Rodriguez-Del Rios would violate the defendants' free exercise rights.

16 In support of these two affirmative defenses, Defendants state as follows: Defendants legal
17 theories related to the Free Exercise of Religion were extensively briefed in the parties' cross-motions
18 for summary judgment, which are incorporated here by reference. (See Code Civ. Proc., § 2030.230;
19 see also generally, Response to Special Interrogatory No. 1.)

20
21 **SPECIAL INTERROGATORY NO. 31:**

22 STATE ALL FACTS that support YOUR contention that "any judgment in favor of the
23 DFEH and the Rodriguez-Del Rios would violate Miller's and Tastries' free speech rights," as
24 alleged in YOUR ANSWER.

25
26 **RESPONSE:**

27 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
28 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,

1 including, but not limited to, court filings, the discovery during the DFEH's administrative
2 investigation, and other correspondence and other communications to the DFEH. Providing that
3 information again in answering this request would be oppressive and unduly burdensome. All of
4 Defendant's factual and legal contentions have already been made clear in the discovery and
5 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
6 briefing.

7 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
8 information protected under the First Amendment, the attorney-client privilege, the work-product
9 doctrine, privacy rights, or any other applicable privilege or immunity.

10 Further, Defendant objects to this interrogatory because it was never properly served on
11 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
12 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
13 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
14 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
15 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
16 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
17 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
18 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
19 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
20 the parties have agreed to accept electronic service of specific documents, but the parties never
21 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
22 that they were never properly served. Defendants also object to the purported service of written
23 discovery on Christmas Eve.

24 **Original Response.** Subject to and without waiving the above objections, Defendant
25 responds as follows: In light of the above objections, including specifically because the interrogatories
26 were never properly served on Defendant, Defendant does not respond.

27 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
28 responds as follows:

1 This interrogatory is aimed at Defendants' thirteenth affirmative defense. Defendants'
2 thirteenth affirmative defense reads as follows: "The DFEH's interpretation and enforcement of the
3 Unruh Act as applied violate Miller's and Tastries' free speech rights under the Free Speech Clause
4 of the First Amendment to the United States Constitution. Specifically, the DFEH's actions force
5 the defendants to create custom cakes that express messages that violate their sincerely held religious
6 beliefs. The DFEH's actions also pressure the defendants, to avoid violating their religious beliefs, to
7 permanently stop creating custom expressive cakes. The DFEH's interpretation and enforcement of
8 the Unruh Act similarly violate Miller's and Tastries' First Amendment freedom of expressive
9 association because they force the defendants to collaborate and associate with others to create and
10 express messages that violate their religious beliefs. Likewise, any judgment in favor of the DFEH and
11 the Rodriguez-Del Rios would violate Miller's and Tastries' free speech rights."

12 In support of this affirmative defense, Defendants state as follows: Defendants legal theories
13 related to Free Speech were extensively briefed in the parties' cross-motions for summary judgment,
14 which are incorporated here by reference. (See Code Civ. Proc., § 2030.230; see also generally,
15 Response to Special Interrogatory No. 1.) Defendants further direct Plaintiff to the new grant of
16 certiorari in *303 Creative LLC v. Elenis* (2022) __ S.Ct. __, 2022 WL 515867.

17
18 **SPECIAL INTERROGATORY NO. 32:**

19 STATE ALL FACTS that support YOUR contention that "[t]he DFEH has subjected and
20 continues subjecting the defendants to an unfair and biased administrative investigation and
21 enforcement process while giving favorable consideration to the Rodriguez-Del Rios' presentation of
22 the facts," as alleged in YOUR ANSWER.

23
24 **RESPONSE:**

25 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
26 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
23 responds as follows: In light of the above objections, including specifically because the interrogatories
24 were never properly served on Defendant, Defendant does not respond.

25 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
26 responds as follows:

27 This interrogatory is aimed at Defendants' fourteenth affirmative defense. Defendants'
28 fourteenth affirmative defense reads as follows: "The DFEH's interpretation and enforcement of the

Unruh Act infringe Miller's and Tastries' rights under the Fourteenth Amendment's Due Process Clause. The DFEH has subjected and continues subjecting the defendants to an unfair and biased administrative investigation and enforcement process while giving favorable consideration to the Rodriguez-Del Rios' presentation of the facts. By infringing on Miller's and Tastries' due process rights, the DFEH does not further any compelling or even legitimate interest in a narrowly tailored way. Accordingly, the DFEH's interpretation and enforcement of the Unruh Act against Miller and Tastries violate their due process rights. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the defendants' Fourteenth Amendment due process rights."

In support of this affirmative defense, Defendants state as follows:

Defendants incorporate by reference their response to Special Interrogatory No. 3.

SPECIAL INTERROGATORY NO. 33:

STATE ALL FACTS that support YOUR contention that "any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the defendants' Fourteenth Amendment due process rights," as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH's own files, including, but not limited to, court filings, the discovery during the DFEH's administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant's factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

1 Further, Defendant objects to this interrogatory because it was never properly served on
2 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
3 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
4 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
5 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
6 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
7 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
8 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
9 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
10 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
11 the parties have agreed to accept electronic service of specific documents, but the parties never
12 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
13 that they were never properly served. Defendants also object to the purported service of written
14 discovery on Christmas Eve.

15 **Original Response.** Subject to and without waiving the above objections, Defendant
16 responds as follows: In light of the above objections, including specifically because the interrogatories
17 were never properly served on Defendant, Defendant does not respond.

18 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
19 responds as follows:

20 This interrogatory is aimed at Defendants’ fourteenth affirmative defense.

21 In support of this affirmative defense, Defendants state as follows:

22 Defendants incorporate by reference their response to Special Interrogatory No. 32.

23
24 **SPECIAL INTERROGATORY NO. 34:**

25 STATE ALL FACTS that support YOUR contention that DFEH has treated YOU
26 differently from those similarly situated to YOU, as alleged in YOUR ANSWER.

27
28 **RESPONSE:**

1 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
2 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
3 including, but not limited to, court filings, the discovery during the DFEH's administrative
4 investigation, and other correspondence and other communications to the DFEH. Providing that
5 information again in answering this request would be oppressive and unduly burdensome. All of
6 Defendant's factual and legal contentions have already been made clear in the discovery and
7 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
8 briefing.

9 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
10 information protected under the First Amendment, the attorney-client privilege, the work-product
11 doctrine, privacy rights, or any other applicable privilege or immunity.

12 Further, Defendant objects to this interrogatory because it was never properly served on
13 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
14 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
15 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
16 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
17 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
18 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
19 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
20 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
21 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
22 the parties have agreed to accept electronic service of specific documents, but the parties never
23 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
24 that they were never properly served. Defendants also object to the purported service of written
25 discovery on Christmas Eve.

26 **Original Response.** Subject to and without waiving the above objections, Defendant
27 responds as follows: In light of the above objections, including specifically because the interrogatories
28 were never properly served on Defendant, Defendant does not respond.

1 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
2 responds as follows:

3 This interrogatory is aimed at Defendants’ fifteenth affirmative defense. Defendants’
4 fifteenth affirmative defense reads as follows: “The DFEH’s interpretation and enforcement of the
5 Unruh Act as applied treat Miller’s and Tastries’ decisions to create speech and exercise their
6 religious beliefs differently from those similarly situated to them, thereby violating their equal
7 protection rights under the Fourteenth Amendment. Specifically, the DFEH’s discriminatory
8 interpretation and enforcement of the Unruh Act infringes on Miller’s and Tastries’ fundamental
9 rights, including their free exercise, free speech, and due process rights. The DFEH’s discriminatory
10 interpretation and enforcement of the Unruh Act single out orthodox Christians—a suspect class of
11 marginalized and disfavored people of faith—for adverse treatment. By infringing on Miller and
12 Tastries’ equal protection rights, the DFEH does not further any compelling, or even legitimate,
13 government interest in a narrowly tailored way. Accordingly, the DFEH’s interpretation and
14 enforcement of the Unruh Act violate Miller’s and Tastries’ equal protection rights. Likewise, any
15 judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the defendants’ equal
16 protection rights.”

17 In support of this affirmative defense, Defendants state as follows:

18 The Unruh Act states, “[t]his section shall not be construed to confer any right or privilege on
19 a person that . . . is applicable alike to persons [regardless of protected characteristic].” (Civ. Code, §
20 51(c).) Plaintiff DFEH understands this, thus, it *generally* “does not use its enforcement authority under
21 the Unruh Civil Rights Act to compel speech,” and Plaintiff DFEH denies that “cake artists violate the
22 Unruh Act by declining to create custom cakes that express messages they would not communicate for
23 anyone.” (See DFEH Resp. to Miller RFA’s Nos. 6, 7, 22; DFEH Resp. to Miller FROGs No. 14.1.)
24 But this provides an avenue for an unwritten gerrymander—one that the DFEH has exploited.

25 Further, Plaintiff DFEH has stated that Defendants do not have a “truly message-based
26 justification” for referring out services relating to marriages other than between one man and one woman,
27 and so Plaintiff DFEH may reject it. (DFEH MSJ Opp., pp.11:15–12:15.) Apparently, according to Plaintiff
28 DFEH, if a “message-based justification” for declining services has the *effect* of “exclud[ing] only gay

1 people,” then the message-based justification is irrelevant. (DFEH MSJ Opp., p.12:1-4.) Thus, a policy
2 that wedding cakes must not contradict God’s sacrament of marriage between a man and a woman, is
3 illegal for allegedly “exclud[ing] a protected class of people” (DFEH MSJ Opp., p.12:10), even though
4 other speech-based justifications do qualify as excuses to the DFEH.

5 Here, Defendants have established standards for the services they will provide and a policy to
6 offer a referral or assistance in contacting another bakery when Defendants are unable to provide the
7 requested service. Among the standards followed by Defendants is a requirement that wedding services
8 must not contradict God’s sacrament of marriage between one man and one woman in order to avoid a
9 conflict with their sincerely held religious beliefs regarding marriage. This policy is applied consistently
10 to all customers regardless of any protected characteristic. Yet, the DFEH has determined that other
11 cake artists, in a similar situation, do not violate the Unruh Act. At the end of the day, this appears to
12 be simply an individualized prosecution targeting Defendants for their disfavored religious beliefs.
13 Defendants also incorporate their response to Special Interrogatory No. 3.

14
15 **SPECIAL INTERROGATORY NO. 35:**

16 STATE ALL FACTS that support YOUR contention that DFEH has enforced the Unruh
17 Act in a discriminatory way, as alleged in YOUR ANSWER.

18
19 **RESPONSE:**

20 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
21 it encompasses information readily or more accessible to the DFEH from the DFEH’s own files,
22 including, but not limited to, court filings, the discovery during the DFEH’s administrative
23 investigation, and other correspondence and other communications to the DFEH. Providing that
24 information again in answering this request would be oppressive and unduly burdensome. All of
25 Defendant’s factual and legal contentions have already been made clear in the discovery and
26 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
27 briefing.

28 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of

1 information protected under the First Amendment, the attorney-client privilege, the work-product
2 doctrine, privacy rights, or any other applicable privilege or immunity.

3 Further, Defendant objects to this interrogatory because it was never properly served on
4 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
5 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
6 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
7 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
8 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
9 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
10 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
11 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
12 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
13 the parties have agreed to accept electronic service of specific documents, but the parties never
14 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
15 that they were never properly served. Defendants also object to the purported service of written
16 discovery on Christmas Eve.

17 **Original Response.** Subject to and without waiving the above objections, Defendant
18 responds as follows: In light of the above objections, including specifically because the interrogatories
19 were never properly served on Defendant, Defendant does not respond.

20 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
21 responds as follows:

22 This interrogatory is aimed at Defendants’ fifteenth affirmative defense.

23 In support of this affirmative defense, Defendants state as follows:

24 Defendants incorporate by reference their response to Special Interrogatory No. 34.

25
26 **SPECIAL INTERROGATORY NO. 36:**

27 STATE ALL FACTS that support YOUR contention that DFEH has “single[d] out
28 orthodox Christians—a suspect class of marginalized and disfavored people of faith—for adverse

1 treatment,” as alleged in YOUR ANSWER.

2
3 **RESPONSE:**

4 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
5 it 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 **Original Response.** Subject to and without waiving the above objections, Defendant
2 responds as follows: In light of the above objections, including specifically because the interrogatories
3 were never properly served on Defendant, Defendant does not respond.

4 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
5 responds as follows:

6 This interrogatory is aimed at Defendants' fifteenth affirmative defense.

7 In support of this affirmative defense, Defendants state as follows:

8 Defendants incorporate by reference their response to Special Interrogatory No. 34.

9
10 **SPECIAL INTERROGATORY NO. 37:**

11 STATE ALL FACTS that support YOUR contention that "any judgment in favor of the
12 DFEH and the Rodriguez-Del Rios would violate the defendants' equal protection rights," as alleged
13 in YOUR ANSWER.

14
15 **RESPONSE:**

16 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
17 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
18 including, but not limited to, court filings, the discovery during the DFEH's administrative
19 investigation, and other correspondence and other communications to the DFEH. Providing that
20 information again in answering this request would be oppressive and unduly burdensome. All of
21 Defendant's factual and legal contentions have already been made clear in the discovery and
22 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
23 briefing.

24 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
25 information protected under the First Amendment, the attorney-client privilege, the work-product
26 doctrine, privacy rights, or any other applicable privilege or immunity.

27 Further, Defendant objects to this interrogatory because it was never properly served on
28 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,

§ 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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.

Original 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.

Amended Response. Subject to and without waiving the above objections, Tastries Bakery responds as follows:

This interrogatory is aimed at Defendants’ fifteenth affirmative defense.

In support of this affirmative defense, Defendants state as follows:

Defendants incorporate by reference their response to Special Interrogatory No. 34.

SPECIAL INTERROGATORY NO. 38:

If YOU contend that referring any customer to obtain goods or services from a business other than YOURS constitutes providing full and equal services as defined by the Unruh Act, STATE ALL FACTS that support YOUR contention.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because

1 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
2 including, but not limited to, court filings, the discovery during the DFEH's administrative
3 investigation, and other correspondence and other communications to the DFEH. Providing that
4 information again in answering this request would be oppressive and unduly burdensome. All of
5 Defendant's factual and legal contentions have already been made clear in the discovery and
6 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
7 briefing.

8 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
9 information protected under the First Amendment, the attorney-client privilege, the work-product
10 doctrine, privacy rights, or any other applicable privilege or immunity.

11 Further, Defendant objects to this interrogatory because it was never properly served on
12 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
13 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
14 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
15 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
16 agreement "to accept electronic service in that specific action." (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
17 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
18 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
19 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
20 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
21 the parties have agreed to accept electronic service of specific documents, but the parties never
22 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
23 that they were never properly served. Defendants also object to the purported service of written
24 discovery on Christmas Eve.

25 **Original Response.** Subject to and without waiving the above objections, Defendant
26 responds as follows: In light of the above objections, including specifically because the interrogatories
27 were never properly served on Defendant, Defendant does not respond.

28 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery

1 responds as follows:

2 This interrogatory is aimed at the first element of an Unruh Act violation, namely that
3 Defendants discriminated or made a distinction that denied full and equal services to the Real Parties.
4 (See CACI No. 3060.)

5 In support of Defendants' argument as to this element, Defendants state as follows:
6 Defendants legal theories related to the first element of an Unruh Act claim were extensively briefed
7 in the parties' cross-motions for summary judgment, which are incorporated here by reference. (See
8 Code Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatory No. 1.)

9 **Second Amended Response.** Subject to and without waiving the above objections, Tastries
10 Bakery responds as follows:

11 This interrogatory is aimed at the first element of an Unruh Act violation, namely that
12 Defendants discriminated or made a distinction that denied full and equal services to the Real Parties.
13 (See CACI No. 3060.)

14 In support of Defendants' argument as to this element, Defendants state as follows:
15 Defendants legal theories related to the first element of an Unruh Act claim were extensively briefed
16 in the parties' cross-motions for summary judgment, which are incorporated here by reference. (See
17 Code Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatory No. 1.)

18 In sum, in *Minton v. Dignity Health*, a California court was tasked with adjudicating whether a
19 Catholic hospital violated the Unruh Act when it declined to perform a hysterectomy on a female-to-
20 male transgender patient. (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155.) The patient had
21 obtained a diagnosis of gender dysphoria, along with a professional medical opinion that a hysterectomy
22 was necessary to treat the gender dysphoria. As a result, the patient's doctor scheduled a hysterectomy
23 at the Catholic hospital for August 30, 2016. (*Id.* at 1159.) Due to its religious beliefs, the Catholic
24 hospital performs hysterectomies for diagnoses such as "chronic pelvic pain and uterine fibroids," but
25 not gender dysphoria. As a result, the hospital cancelled the operation. (*Id.*)

26 According to the patient, in response to the cancellation, there was a "flurry of advocacy on
27 Minton's behalf," which led the hospital's President to suggest that the patient could have the
28 operation done at a nearby Methodist hospital. (*Id.* at 1159–1160.) Following this suggestion, three days

1 later on September 2 at the nearby hospital, the patient had the hysterectomy. (*Id.* at 1159.) The patient
2 then sued under the Unruh Act, contending a denial of “full and equal access to medical care.” (*Id.* at
3 1158.) The trial court sustained the hospital’s demurrer without leave to amend, holding that the patient
4 cannot contend that “receiving the procedure he desired from the physician he selected to perform that
5 procedure three days later than he had planned and at a different hospital than he desired deprived him
6 of full and equal access to the procedure.” (*Id.* at 1161 [quoting trial court].) The court of appeal reversed
7 on slightly different grounds, stating:

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

24 (*Id.* at 1164–1165 [quoting *North Coast Women’s Care Medical Group, Inc. v. Superior Court* (2008) 44
25 Cal.4th 1145, 1159] [*“North Coast”*] [cleaned up; italics added].) The rule might be different if referring
26 a customer to someone else is pretextual, instead of having a legitimate justification. (*Koire v. Metro Car*
27 *Wash* (1985) 40 Cal.3d 24, 38 [discussing legitimate justification for “sex-segregated . . . restrooms”].)
28 But *Minton* stands for the proposition that one such legitimate justification is freedom of religion. Indeed,
Defendants’ conduct is protected by the Unruh Act. (Civ. Code, §§ 51(e)(4), 51.5(a).) Where there is a
legitimate justification, referral of a customer to a third party is a common business practice when a
business is not able to provide a requested service.

 In other words, as applied here, so long as the wedding bakery does not have a “subsequent
reactive offer” to provide “full and equal” services, but has a policy of “ensuring that every [client]
requiring a [custom wedding cake] receives ‘full and equal’ access to that [cake] through a [cake artist]

1 lacking defendants' religious objections" (*id.*), there is no violation of the Unruh Act. That is precisely
2 the case here because: (1) on August 26, 2017, at the same time that Defendants declined to make
3 Real Parties' wedding cake, Defendants offered to connect Real Parties with another bakery that
4 could make their cake; (2) if Real Parties had informed Defendants that they rejected the bakery to
5 which they were referred, Defendants would have offered to connect Real Parties with another bakery
6 that could have made their cake; and (3) Real Parties actually obtained a wedding cake for their
7 wedding ceremony. This is supported by the Court's earlier pronouncement: "the State minimizes
8 the fact that Miller has provided for an alternative means for potential customers to receive the product
9 they desire through the services of another talented baker who does not share Miller's belief. Miller is
10 not the only wedding cake creator in Bakersfield." (*Dept. of Fair Employment and Housing v. Miller* (Cal.
11 Super. 2018) 2018 WL 747835, at *5.)

12 Where there is a clash under the Unruh Act of the rights of two protected groups, an
13 accommodation that protects both their rights is needed. This is precisely what Defendants provided.
14 There is no Unruh Act violation here. (*Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1164–1165,
15 *North Coast Women's Care Medical Group, Inc. v. Superior Court* (2008) 44 Cal.4th 1145, 1159.)

16
17 **SPECIAL INTERROGATORY NO. 39:**

18 If YOU contend that a custom cake sold by YOU containing no writing or written message
19 expresses a message from YOU, STATE ALL FACTS that support YOUR contention.

20
21 **RESPONSE:**

22 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
23 it 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 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment

1 briefing.

2 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
3 information protected under the First Amendment, the attorney-client privilege, the work-product
4 doctrine, privacy rights, or any other applicable privilege or immunity.

5 Further, Defendant objects to this interrogatory because it was never properly served on
6 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
7 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
8 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
9 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
10 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
11 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
12 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
13 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
14 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
15 the parties have agreed to accept electronic service of specific documents, but the parties never
16 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
17 that they were never properly served. Defendants also object to the purported service of written
18 discovery on Christmas Eve.

19 **Original Response.** Subject to and without waiving the above objections, Defendant
20 responds as follows: In light of the above objections, including specifically because the interrogatories
21 were never properly served on Defendant, Defendant does not respond.

22 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
23 responds as follows:

24 Defendants incorporate by reference their response to Special Interrogatory No. 1. As
25 explained therein, Defendants’ custom wedding cakes announce a basic message: this event is a
26 wedding, and the couple’s union is a marriage. They also declare an opinion: the couple’s marriage
27 should be celebrated. These expressions have a lasting value through pictures presenting the wedding
28 cake as a centerpiece of their wedding celebration. This is because all pre-ordered wedding cake made

1 by Tastries Bakery are custom cakes. Custom cakes reflect the event they are made for—the full
2 meaning is clear to the intended audience. If Defendants cannot control the events or purpose of a
3 custom cake then Defendants cannot control their own messages.

4 Further, Defendants legal theories related to Free Speech were extensively briefed in the
5 parties' cross-motions for summary judgment, which are incorporated here by reference. (See Code
6 Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatory No. 1.) Defendants
7 further direct Plaintiff to *Anderson v. City of Hermosa Beach*, where the Ninth Circuit noted that “[t]he
8 fact that both the tattooist and the person receiving the tattoo contribute to the creative process . . . does
9 not make the tattooing process any less expressive activity, because there is no dispute that the tattooist
10 applies his creative talents as well.” (*Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051,
11 1062.)

12 **Second Amended Response.** Subject to and without waiving the above objections, Tastries
13 Bakery responds as follows:

14 Defendants incorporate by reference their response to Special Interrogatory Nos. 1 & 18. As
15 explained therein, Defendants' custom wedding cakes announce a basic message: this event is a
16 wedding, and the couple's union is a marriage. They also declare an opinion: the couple's marriage
17 should be celebrated. These expressions have a lasting value through pictures presenting the wedding
18 cake as a centerpiece of their wedding celebration. This is because all pre-ordered wedding cake made
19 by Tastries Bakery are custom cakes. Custom cakes reflect the event they are made for—the full
20 meaning is clear to the intended audience. If Defendants cannot control the events or purpose of a
21 custom cake then Defendants cannot control their own messages.

22 Further, Defendants legal theories related to Free Speech were extensively briefed in the parties'
23 cross-motions for summary judgment, which are incorporated here by reference. (See Code Civ. Proc.,
24 § 2030.230; see also generally, Response to Special Interrogatory No. 1.) Defendants further direct
25 Plaintiff to *Anderson v. City of Hermosa Beach*, where the Ninth Circuit noted that “[t]he fact that both
26 the tattooist and the person receiving the tattoo contribute to the creative process . . . does not make the
27 tattooing process any less expressive activity, because there is no dispute that the tattooist applies his
28 creative talents as well.” (*Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1062.)

1 **SPECIAL INTERROGATORY NO. 40:**

2 If YOU contend that refusing to sell wedding cakes to same-sex couples while continuing to
3 sell wedding cakes to opposite-sex couples does not constitute discrimination based on SEXUAL
4 ORIENTATION, STATE ALL FACTS that support YOUR contention.

5 (For purposes of this entire set of Interrogatories, the term “SEXUAL ORIENTATION”
6 shall have the meaning set forth in Government Code section 12926, subdivision (s).)

7
8 **RESPONSE:**

9 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
10 it 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. 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 **Original Response.** Subject to and without waiving the above objections, Defendant
7 responds as follows: In light of the above objections, including specifically because the interrogatories
8 were never properly served on Defendant, Defendant does not respond.

9 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
10 responds as follows:

11 Defendants incorporate by reference their response to Special Interrogatory No. 1.

12
13 **SPECIAL INTERROGATORY NO. 41:**

14 If YOU contend that YOUR decision to decline to make wedding cakes for the REAL
15 PARTIES was based on reason(s) that did not include their SEXUAL ORIENTATION, STATE
16 ALL FACTS that support YOUR contention.

17
18 **RESPONSE:**

19 **Objections.** Defendant objects to this request as duplicative and unduly burdensome because
20 it encompasses information readily or more accessible to the DFEH from the DFEH's own files,
21 including, but not limited to, court filings, the discovery during the DFEH's administrative
22 investigation, and other correspondence and other communications to the DFEH. Providing that
23 information again in answering this request would be oppressive and unduly burdensome. All of
24 Defendant's factual and legal contentions have already been made clear in the discovery and
25 voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment
26 briefing.

27 Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of
28 information protected under the First Amendment, the attorney-client privilege, the work-product

1 doctrine, privacy rights, or any other applicable privilege or immunity.

2 Further, Defendant objects to this interrogatory because it was never properly served on
3 Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc.,
4 § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)),
5 by U.S. mail (*id.* at §§ 1012, 1013, subd. (a)), or by overnight mail (i.e., FedEx). (*Id.* at § 1013, subd.
6 (c).) For cases filed on or before December 31, 2018, electronic service is only permitted upon explicit
7 agreement “to accept electronic service in that specific action.” (*Id.* at § 1010.6, subd. (a)(2)(A)(i).)
8 In such case, electronic service cannot be effected on court holidays, but only becomes effective on
9 the next court day. (*Id.* at § 1010.6, subd. (a)(5).) In this action, Plaintiff purported to effect electronic
10 service of these interrogatories via email, at 3:34 p.m., on December 24, 2021—a court holiday. But
11 the parties have never entered into an agreement to use electronic service. On a case-by-case basis,
12 the parties have agreed to accept electronic service of specific documents, but the parties never
13 agreed to use electronic service generally. Thus, Defendants object to the interrogatories on the basis
14 that they were never properly served. Defendants also object to the purported service of written
15 discovery on Christmas Eve.

16 **Response.** Subject to and without waiving the above objections, Defendant responds as
17 follows: In light of the above objections, including specifically because the interrogatories were never
18 properly served on Defendant, Defendant does not respond.

19 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
20 responds as follows:

21 Defendants incorporate by reference their response to Special Interrogatory No. 1. As
22 explained therein Defendants policies and the Incident in this case were based on Defendants’
23 religious beliefs about marriage, not about sexual orientation generally or Real Parties’ actual or
24 perceived sexual orientation.

25
26 **SPECIAL INTERROGATORY NO. 42:**

27 STATE ALL FACTS that support YOUR contention that “[t]he DFEH’s interpretation and
28 enforcement of the Unruh Act” violates “Miller’s and Tastries’ First Amendment freedom of

expressive association,” as alleged in YOUR ANSWER.

RESPONSE:

Objections. Defendant objects to this request as duplicative and unduly burdensome because it encompasses information readily or more accessible to the DFEH from the DFEH’s own files, including, but not limited to, court filings, the discovery during the DFEH’s administrative investigation, and other correspondence and other communications to the DFEH. Providing that information again in answering this request would be oppressive and unduly burdensome. All of Defendant’s factual and legal contentions have already been made clear in the discovery and voluminous briefing in this case so far, including the multiple appeals and cross-summary judgment briefing.

Further, Defendant objects to this interrogatory on the basis that it seeks disclosure of information protected under the First Amendment, the attorney-client privilege, the work-product doctrine, privacy rights, or any other applicable privilege or immunity.

Further, Defendant objects to this interrogatory because it was never properly served on Defendant. Interrogatories must be served on the party to whom they are directed. (Code Civ. Proc., § 2030.080, subd. (a).) Service can be effected by either personal delivery (*id.* at § 1011, subd. (a)), 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.

1 **Original Response.** Subject to and without waiving the above objections, Defendant
2 responds as follows: In light of the above objections, including specifically because the interrogatories
3 were never properly served on Defendant, Defendant does not respond.

4 **Amended Response.** Subject to and without waiving the above objections, Tastries Bakery
5 responds as follows:

6 This interrogatory is aimed at Defendants' thirteenth affirmative defense. Defendants'
7 thirteenth affirmative defense reads as follows: "The DFEH's interpretation and enforcement of the
8 Unruh Act as applied violate Miller's and Tastries' free speech rights under the Free Speech Clause
9 of the First Amendment to the United States Constitution. Specifically, the DFEH's actions force
10 the defendants to create custom cakes that express messages that violate their sincerely held religious
11 beliefs. The DFEH's actions also pressure the defendants, to avoid violating their religious beliefs, to
12 permanently stop creating custom expressive cakes. The DFEH's interpretation and enforcement of
13 the Unruh Act similarly violate Miller's and Tastries' First Amendment freedom of expressive
14 association because they force the defendants to collaborate and associate with others to create and
15 express messages that violate their religious beliefs. Likewise, any judgment in favor of the DFEH and
16 the Rodriguez-Del Rios would violate Miller's and Tastries' free speech rights."

17 In support of this affirmative defense, Defendants state as follows: Defendants legal theories
18 related to Free Speech were extensively briefed in the parties' cross-motions for summary judgment,
19 which are incorporated here by reference. (See Code Civ. Proc., § 2030.230; see also generally,
20 Response to Special Interrogatory No. 1.) Defendants further direct Plaintiff to *Anderson v. City of*
21 *Hermosa Beach*, where the Ninth Circuit noted that "[t]he fact that both the tattooist and the person
22 receiving the tattoo contribute to the creative process . . . does not make the tattooing process any less
23 expressive activity, because there is no dispute that the tattooist applies his creative talents as well."
24 (*Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1062.)

25 **Second Amended Response.** Subject to and without waiving the above objections, Tastries
26 Bakery responds as follows:

27 Subject to and without waiving the above objections, Tastries Bakery responds as follows:

28 This interrogatory is aimed at Defendants' thirteenth affirmative defense. Defendants'

thirteenth affirmative defense reads as follows: “The DFEH’s interpretation and enforcement of the Unruh Act as applied violate Miller’s and Tastries’ free speech rights under the Free Speech Clause of the First Amendment to the United States Constitution. Specifically, the DFEH’s actions force the defendants to create custom cakes that express messages that violate their sincerely held religious beliefs. The DFEH’s actions also pressure the defendants, to avoid violating their religious beliefs, to permanently stop creating custom expressive cakes. The DFEH’s interpretation and enforcement of the Unruh Act similarly violate Miller’s and Tastries’ First Amendment freedom of expressive association because they force the defendants to collaborate and associate with others to create and express messages that violate their religious beliefs. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate Miller’s and Tastries’ free speech rights.”

In support of this affirmative defense, Defendants state as follows: Defendants legal theories related to Free Speech were extensively briefed in the parties’ cross-motions for summary judgment, which are incorporated here by reference. (See Code Civ. Proc., § 2030.230; see also generally, Response to Special Interrogatory No. 1.) Defendants further direct Plaintiff to *Anderson v. City of Hermosa Beach*, where the Ninth Circuit noted that “[t]he fact that both the tattooist and the person receiving the tattoo contribute to the creative process . . . does not make the tattooing process any less expressive activity, because there is no dispute that the tattooist applies his creative talents as well.” (*Anderson v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1062.)

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

A compelled-speech defense has three elements: (1) speech, (2) the government compels, (3) and the speaker objects to. (See *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* (1995) 515 U.S. 557, 572–573 [applying elements]; *Cressman v. Thompson* (10th Cir. 2015) 798 F.3d 938, 951 [identifying elements].) If the three elements are satisfied, strict scrutiny is triggered. (See *Pacific Gas and Elec. Co. v. Public Utilities Com’n of California* (1986) 475 U.S. 1, 19–20 [“PG&E”]; *Taking*

1 *Offense v. State* (2021) 66 Cal.App.5th 696.) Elements two and three are conceded: Defendants object
2 to celebrating any form of marriage other than a marriage between one man and one woman, and the
3 DFEH seeks to compel Defendants to provide wedding cakes for same-sex weddings if they do so for
4 traditional, opposite-sex weddings.

5 The only question is whether Defendants' wedding cakes are speech. The Free Speech clause
6 of the First Amendment protects both "pure speech" and "expressive conduct." Under both theories,
7 Defendants' designing and creation of custom cakes for certain events is protected.

8 **Pure Speech.** Pure speech includes such matters as "pictures, films, paintings, drawings, and
9 engravings." (*Kaplan v. California* (1973) 413 U.S. 115, 119), "photographs, videos, or sound
10 recordings" (*U.S. v. Stevens* (2010) 559 U.S. 460, 468), and "video games" (*Brown, supra*, 564 U.S. at
11 790.) Pure speech is not limited to written or spoken words, but rather, "[a]rt is speech." (*Chelsey Nelson*
12 *Photography LLC v. Louisville/Jefferson County Metro Government* (W.D. Ky. 2020) 479 F.Supp.3d 543,
13 548; see *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 246; *National Endowment for the Arts v.*
14 *Finley* (1998) 524 U.S. 569, 580.) Thus, pure speech includes wordless music (*Ward v. Rock Against*
15 *Racism* (1989) 491 U.S. 781, 790), dance (*Schad v. Borough of Mount Ephraim* (1981) 452 U.S. 61, 65),
16 and nonsense poetry. (*Hurley, supra*, 515 U.S. at 569.) It also includes silent protest through a sit-in
17 (*Brown v. State of La.* (1966) 383 U.S. 131, 141-142), and parades. (*Hurley, supra*, 515 U.S. at 569.)

18 As stated by the Supreme Court:

19 [T]he Constitution looks beyond written or spoken words as mediums
20 of expression. Noting that symbolism is a primitive but effective way of
21 communicating ideas, our cases have recognized that the First
22 Amendment shields such acts as saluting a flag (and refusing to do so),
23 wearing an armband to protest a war, displaying a red flag, and even
24 marching, walking or parading in uniforms displaying the swastika. As
25 some of these examples show, a narrow, succinctly articulable message
is not a condition of constitutional protection, which if confined to
expressions conveying a particularized message, would never reach the
unquestionably shielded painting of Jackson Pollock, music of Arnold
Schönberg, or Jabberwocky verse of Lewis Carroll.

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

27 As applied here, "[a] wedding cake is not just a cake in a Free Speech analysis. It is an artistic
28 expression by the person making it that is to be used traditionally as a centerpiece in the celebration of a

1 marriage.” (*Miller, supra*, 2018 WL 747835, at *3.) Thus, because “art is speech” (*Chelsey, supra*, 479
2 F.Supp.3d at 548), compelling Defendants to create wedding art necessarily triggers strict scrutiny.

3 The two cases perhaps most supportive of this principle are cases which held that the creation
4 of both wedding invitations and tattoos are pure speech. (*Brush & Nib, supra*, 247 Ariz. at 287; *Anderson*
5 *v. City of Hermosa Beach* (9th Cir. 2010) 621 F.3d 1051, 1061.) Custom wedding invitations constitute
6 “pure speech” because each invitation “contains [] hand-drawn words, images, and calligraphy, as well
7 as [] hand-painted images and original artwork.” (*Brush & Nib, supra*, 247 Ariz. at 287.) Similarly,
8 “[t]attoos are generally composed of words, realistic or abstract images, symbols, or a combination of
9 these, all of which are forms of pure expression that are entitled to full First Amendment protection.”
10 (*Anderson, supra*, 621 F.3d at 1061.) Moreover, “[t]he fact that both the tattooist and the person receiving
11 the tattoo contribute to the creative process . . . does not make the tattooing process any less expressive
12 activity, because there is no dispute that the tattooist applies his creative talents as well.” (*Id.* at 1062.)

13 Anonymity is irrelevant. As in *Anderson*, the tattooist is unlikely to sign his name to any tattoo
14 that he inks, and so any viewer is unlikely to know the author. And in *Brush & Nib*, the court
15 explained: “the essence of free speech protection is a person’s autonomy over what to say and when
16 to say it.... We fail to see how Plaintiffs’ autonomy over their speech is protected by requiring them
17 to conceal their identity as artists and to disclaim any responsibility for creating artwork that
18 contradicts their religious beliefs.” (*Brush & Nib, supra*, 247 Ariz. at 291.)

19 Here, when Defendants create a custom wedding cake, they are engaged in artistic expression.
20 Cake designs can range from simple to elaborate, but all styles require skill and each design portrays an
21 image and message intended by the customer:

- 22 • All preordered wedding cakes made by Defendants are custom cakes;
- 23 • Ordering a custom wedding cake from Defendants involves a collaborative process
24 between Defendants and the client in selecting the number of tiers, the size, the shape,
25 the cake flavors, the filling flavors, the types of frosting, and other options;
- 26 • The baking aspect of making a wedding cake is artistic;
- 27 • The decorating aspect of making a wedding cake is artistic; and
- 28 • Even simple, white, three-tiered wedding cakes such as Real Parties had at their

wedding are artistic and beautiful.

In this case, the Real Parties wanted to communicate this was a traditional wedding, so the traditional all white three tier cake was chosen because this would create the image and statement the Real Parties intended. This is art entitled to full First Amendment protection.

Expressive Conduct. Separate from pure speech, the First Amendment protects “conduct” that is “sufficiently imbued with elements of communication.” (*Texas v. Johnson* (1989) 491 U.S. 397, 404.) Such conduct is only protected if (1) there is “an intent to convey a particularized message;” and (2) “the likelihood is great that the message will be understood by those who view it.” (*Anderson, supra*, 621 F.3d at 1058 [cleaned up].) This test only applies to expressive conduct, not pure speech. (*Id.* at 1060.) Examples include burning a flag (*Johnson, supra*, 491 U.S. at 411), burning a draft card (*U.S. v. O’Brien* (1968) 391 U.S. 367, 370), and wearing a black armband. (*Tinker v. Des Moines Independent Community School Dist.* (1969) 393 U.S. 503, 505–506.)

As applied here, “[a] wedding cake . . . is to be used traditionally as a centerpiece in the celebration of a marriage.” (*Miller, supra*, 2018 WL 747835, at *3.) Most simply, therefore, the cake expresses the message that this union is a “marriage” and that it should be celebrated. (*Masterpiece I, supra*, 138 S.Ct. at 1740–1745 [Thomas, J., concurring] [expounding upon wedding cakes as expressive conduct]; *Kaahumanu v. Hawaii* (9th Cir. 2012) 682 F.3d 789, 799 [wedding ceremony itself is expressive conduct].) When Defendants design and create custom wedding cakes, they intend to express a message that is celebratory and that identifies the union of two individuals as a marriage. Further, as a matter of law, the reasonable observer of Defendants’ custom wedding cakes would identify them as expressing a message that is celebratory and that identifies the union of two individuals as a marriage. (See *Criollo Dep.*, 85:5–86:6; DFEH Resp. to Tastries SROGs No. 14.) Thus, Defendants’ wedding cakes are also entitled to First Amendment protection as expressive conduct. Applying the Unruh Act here must satisfy strict scrutiny.

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

1 Unruh Act compels speech based on content and viewpoint in three ways.

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

5 Second, Plaintiff's interpretation of the Unruh Act would require Defendants to create cakes
6 celebrating same-sex weddings *because* they create cakes celebrating opposite-sex weddings. If
7 Defendants only created cakes celebrating quinceañeras (even a quinceañera cake very similar to a
8 wedding cake), they'd be safe. It is only because Defendants create cakes celebrating traditional
9 marriage that Plaintiff seeks to compel Defendants to also create cakes celebrating same-sex marriage.
10 In this way, the Unruh Act is triggered by the content of Defendants' prior speech. That makes its
11 application content-based. (See *Miami Herald Publishing Co. v. Tornillo* (1974) 418 U.S. 241, 256 [statute
12 "exacts a penalty on the basis of the content" by requiring newspapers to print editorial only if they
13 printed editorial with particular content earlier]; see also *PG&E, supra*, 475 U.S. at 13–14 [law regulates
14 based on content if it "condition[s] [access] on any particular expression" conveyed]; *TMG, supra*, 936
15 F.3d at 753 [law regulated based on content by treating filmmakers "choice to talk about one topic—
16 opposite-sex marriages—as a trigger for compelling them to talk about a topic they would rather avoid—
17 same-sex marriages"].)

18 Third, applying the Unruh Act here would confer access to the marketplace based on viewpoint.
19 (See *Rosenberger v. Rector and Visitors of University of Virginia* (1995) 515 U.S. 819, 829 ["Viewpoint
20 discrimination is ... an egregious form of content discrimination."].) According to Plaintiff, if
21 Defendants make cakes celebrating weddings, the law does not require them to make cakes on every
22 subject requested of them; rather, according to Plaintiff, the law only requires them to create cakes
23 promoting one specific view—cakes celebrating same-sex weddings. That is a viewpoint-based access
24 requirement that requires Defendants to speak views with which they disagree. (See *PG&E, supra*, 475
25 U.S. at 13 [law discriminates based on viewpoint when it awards access "only to those who disagreed
26 with the [speaker's] views"]; see also *Turner Broadcasting System, Inc. v. F.C.C.* (1994) 512 U.S. 622,
27 654 [law in *PG&E* viewpoint-based because it "conferred benefits to speakers based on viewpoint,
28 giving access only to a consumer group opposing the utility's practices"]; *Arizona Free Enterprise Club's*

1 *Freedom Club PAC v. Bennett* (2011) 564 U.S. 721, 742, fn.8 [campaign finance law problematic because
2 a candidate's speech triggered funds given "to his opponent" to speak hostile views].)

3 ***Strict Scrutiny.*** As noted above, compelling individuals or businesses to engage in unwanted
4 speech requires satisfaction of strict scrutiny. Further, as explained above, the Real Parties actually got
5 their wedding cake. Thus, the only interest they have is in compelling Defendants to violate their
6 religious beliefs and endorse the Real Parties' definition of "marriage." This is not a compelling
7 interest. (*Miller, supra*, 2018 WL 747835, at *5.) "[T]he point of all speech protection . . . is to shield
8 just those choices of content that in someone's eyes are . . . hurtful." (*Hurley, supra*, 515 U.S. at 574.)
9 Thus, "regulating speech because it is discriminatory or offensive is not a compelling state interest,
10 however hurtful the speech may be." (*TMG, supra*, 936 F.3d at 755 [statute could not compel
11 videographers to participate in same-sex weddings].)

12
13 LiMANDRI & JONNA LLP

14
15 Dated: April 14, 2022

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 the owner of Defendant Cathy's Creations, Inc. dba Tastries, a defendant in this action. I have read the document, **Defendant Cathy's Creations, Inc. dba Tastries Bakery's Second Amended Responses to Special Interrogatories [Set One]** and know its contents. I make this verification on behalf of Tastries Bakery. 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 14th day of April 2022, at Bakersfield, California.

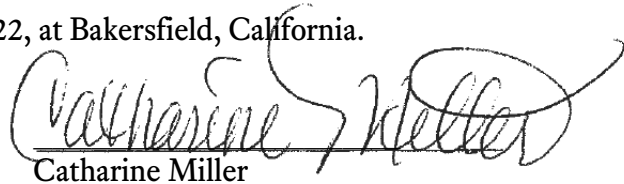

Catharine Miller

EXHIBIT 3



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR KEVIN KISH

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Via E-mail

April 7, 2022

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Re: *DFEH v. Cathy's Creations, Inc., et al.* (Rodriguez-Del Rio, et al.)
Superior Court of California, County of Kern, Case No. BCV-18-102633

Dear Mr. Jonna and Mr. Trissell:

Thank you for a productive meet and confer conference last week. Please regard this letter as a summary of our efforts and proposals to resolve any outstanding discovery disputes.

On March 30, 2022, counsel for the DFEH and counsel for defendants met and conferred telephonically regarding discovery responses served by defendant Cathy's Creations, Inc. dba Tastries ("Tastries") and Catharine Miller ("Miller") on February 24, 2022, as well as the DFEH's responses to Request for Admission No. 26 and Form Interrogatory 17.1. This letter is in furtherance of DFEH's March 11, 2022 meet and confer letter, defendants' March 22, 2022 meet and confer letter, and our telephonic meet and confer conference.

Initially, thank you for clarifying that Ms. Miller's verified responses to discovery incorporating Tastries' responses by reference, are, in fact, adopting the same response as Tastries and that she would have nothing additional or different to say at trial.

Contention Special Interrogatories

We discussed defendants' discovery responses that referred to the parties' cross motions for summary judgment instead of stating facts in support of the legal contention. Specifically, DFEH noted that the responses did not specify which part or parts of the referenced papers contained the information from which the answers to interrogatories could be ascertained, as required under Code of Civil Procedure section 2030.230. Defense counsel stated that defendants' legal contentions and supporting facts are fully represented in the summary judgment briefing and supporting documents, but they would consider amending the response to Special Interrogatory No. 38 (facts supporting contention that sending customers elsewhere constitutes full and equal services).¹

¹ Interrogatory No. 38 asks Tastries if it contends that "referring any customer to obtain goods or services from a business other than" Tastries "constitutes providing full and equal services as defined by the Unruh Act" and asks it to state the facts supporting such a contention.

With respect to Special Interrogatories No. 18² (Miller No. 2), 39³ (Miller No. 11), 21⁴ (Miller No. 5), 22⁵, 23⁶, 24⁷ and 25⁸, DFEH agreed to follow up after receiving additional case law from defense counsel on this issue. In addition, you agreed to discuss further responses to Interrogatories 23 and 24 with your client and get back to us regarding cakes that carry messages with religious implications and cakes that carry messages without religious implications.

With respect to Special Interrogatory Nos. 28 and 29 (facts supporting contention that preventing sexual orientation discrimination is not a compelling and/or legitimate government interest), after considering your position, we will not move to compel further response.

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 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.

Requests for Production of Documents

With respect to RFP No. 9, you confirmed that defendants did not place any limitation or narrow the scope of the document response, save and except for limiting the production to images of wedding cakes. Thank you for explaining that the documents produced in response to RFP No. 9 are post-2019 cake photos. You stated that you would confirm with your clients that the images were limited to wedding cakes. With respect to RFP No. 50, you stated that you did not believe that defendants were withholding any responsive documents, but had produced such documents in response to RFP No. 9, which you interpreted as encompassing the same material. You stated that you would confer with your clients and confirm that this is the case.

After our discussion, DFEH agrees to attempt to refine the requests for documents related to defendants’ views on LGBTQ issues (RFP Nos. 40 (Tastries) and 32 (Miller) and defendants’ views on same-sex marriage (RFP Nos. 44 (Tastries) and 30 (Miller)). DFEH explained that this request was narrowly targeted at defendants’ views and could include, for example, emails discussing stances and opinions on gay rights (excluding views on transgender people or issues). As these requests are designed to elicit evidence of “intent” as identified by the Court on summary judgment, the requests relevant and proper, but DFEH will attempt to narrow their scope.

Also, with respect to RFP Nos. 41 (Tastries) and 34 (Miller) (donations to fund litigation), you stated that it is defendants’ intention to argue that should the DFEH prevail at trial, defendants would not be able to pay DFEH’s attorneys fees and such a judgment would force defendants out of business. You confirmed that defendants do not intend to claim at trial that their business was affected by the payment

2 “If YOU contend that all custom cakes sold by you express a message from YOU, STATE ALL FACTS that support YOUR contention.”

3 “If YOU contend that a custom cake sold by YOU containing no writing or written message expresses a message from YOU, STATE ALL FACTS that support YOUR contention.”

4 “If YOU contend that any PERSON who attended the wedding of a couple who obtained their wedding cake from YOUR bakery understood the cake to be sending a message from YOU, STATE ALL FACTS that support YOUR contention.”

5 “If YOU contend that any PERSON who attended the wedding of a same-sex couple who obtained their wedding cake from YOU understood the cake to be sending a message from YOU endorsing same-sex marriage, STATE ALL FACTS that support YOUR contention.”

6 “If YOU contend that all custom cakes sold by YOU express a religious message from YOU, STATE ALL FACTS that support YOUR contention.”

7 “If YOU contend that all wedding cakes sold by YOU express a religious message from YOU, STATE ALL FACTS that support YOUR contention.”

8 “If YOU contend that the wedding cakes the REAL PARTIES sought to order from YOU would have expressed a religious message had YOU prepared them, STATE ALL FACTS that support YOUR contention.”

of their attorneys' fees in defense of this case. Based on this representation, we will not pursue a motion to compel on these requests.

And, with respect to RFP No. 59 (Miller No. 44) (requesting production of all documents defendants seek to utilize at trial), you confirmed that you have produced all such documents and there are no other documents responsive to this request. Based upon this representation, we will not pursue a motion to compel on these requests.

Finally, with respect to licenses, certificates, health code inspections, incorporation documents, or other legal documents related to the operation of Tastries (Tastries RFP Nos. 45, 46; Miller RFP Nos. 35, 36), you represented that you produced some documentation provided by the client in response, but would determine if there were additional, responsive documents.

Form Interrogatory 15.1

Although we did not discuss this in our conference, DFEH invites defendants to respond, especially with respect to defendants' fifteen affirmative defenses. DFEH requests that defendants identify which affirmative defenses defendants intend to rely upon at trial and, for those only, identify all facts, documents, and witnesses in support of those affirmative defenses.

DFEH's Amended Responses to Form Interrogatory 17.1

DFEH explained that the amendments made to DFEH's responses to RFA No. 26 were based upon evidence introduced by defendants on summary judgment and deposition testimony. DFEH will serve amended responses to 17.1, if defendants agree to do the same.

DFEH looks forward to our continued meet and confer on the issues raised herein. I trust this accurately represents our telephonic conference.

Sincerely,

Kendra Tanacea

Kendra Tanacea
Associate Chief Counsel
Department of Fair Employment and Housing

EXHIBIT 4

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

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

20 Plaintiff,

21 v.

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

23 Defendants.

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

25 Real Parties in Interest.

CASE NO.: BCV-18-102633

IMAGED FILE

**DEFENDANTS CATHARINE
MILLER AND TASTRIES
BAKERY'S SEPARATE
STATEMENT IN OPPOSITION
TO PLAINTIFF DFEH'S
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

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PRELIMINARY STATEMENT & OBJECTIONS

Pursuant to Cal. Rules of Court, rule 3.1350(f)(2), Defendants Catharine Miller and Tastries Bakery hereby submit their response to Plaintiff Department of Fair Employment and Housing's (DFEH) separate statement of undisputed material facts in support of summary judgment or adjudication, together with references to supporting evidence. Further, pursuant to Cal. Rules of Court, rule 3.1350(f)(3), Defendants are submitting additional disputed and undisputed material facts. Defendants' additional facts are interspersed with Plaintiff's facts, with facts that related to each other grouped together. To distinguish them, Defendants' additional facts are lettered. (See SSUMF No. 21 [Plaintiff's Fact]; SSUMF Nos. 21a–21c [Defendants' Additional Facts].)

A separate statement of undisputed material facts should “set forth ‘*plainly and concisely* all *material facts* which the moving party contends are undisputed.’ ” (*Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 105 [original emphasis] [quoting Code Civ. Proc., § 437c(b)(1)]; see also Cal. Rules of Court, rule 3.1350(d)(2) [“The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.”].) “ ‘Material facts’ are facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.” (Cal. Rules of Court, rule 3.1350(a)(2).)

“The separate statement is not designed to pervert the truth, but merely to expedite and clarify the germane facts.” (See *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 438.) Thus, a party's separate statement of undisputed material facts is defective if “[i]nstead of stating clearly those material facts which actually are without substantial controversy, defendant offers a number of obliquely stated ‘facts’ that are material only to the extent they are controverted, and uncontroverted only to the extent they are immaterial.” (*Reeves, supra*, 121 Cal.App.4th at 105; see also *Weiss v. People ex rel. Department of Transportation* (2020) 9 Cal.5th 840, 864 [“These separate statements [are intended to] help the court isolate and identify the facts that are in dispute, which facilitates the court's determination whether trial is necessary.”].)

Further, material facts must be couched “in terms [] of relevant *events*,” not “what a witness has *said* about events.” What a witness “might have said *in deposition* is not, as such, a

1 ‘material fact.’ It is of interest only as *evidence* of a material fact[.]” (*Reeves, supra*, 121 Cal.App.4th
2 at 105–106 [original emphasis].) Similarly, “material facts” are *facts*, not legal conclusions. The
3 contents of pleadings and how a court has previously ruled—even this Court—are legal
4 conclusions, not facts. (See *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1271, fn.16
5 [“[T]he determination as to what claim was pleaded by the initial complaint is not a statement of
6 material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion
7 properly reached based on an examination of the four corners of the pleading”]; *Andrews Farms v.*
8 *Calcot, Ltd.* (E.D. Cal. 2010) 693 F.Supp.2d 1154, 1167 [“Plaintiffs supporting evidence cites to this
9 Court’s MTD Order. . . . Plaintiffs’ statement of ‘fact’ is a legal conclusion that is unsupported by
10 legal authority or analysis”].)

11 “[T]rial courts have the inherent power to strike proposed ‘undisputed facts’ that fail to
12 comply with the statutory requirements and that are formulated so as to impede rather than aid an
13 orderly determination whether the case presents triable material issues of fact. If such an order
14 leaves the required separate statement insufficient to support the motion, the court is justified in
15 denying the motion on that basis.” (*Reeves, supra*, 121 Cal.App.4th at 105–106; see also
16 *Overstock.Com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 499 [reaffirming
17 power to strike separate statement].) Striking a defective separate statements is appropriate when
18 by failing to comply with the requirements, the “defendant has made [the plaintiff’s] task—and
19 that of the trial court—considerably more burdensome by its failure to comply.” (*Reeves, supra*, 121
20 Cal.App.4th at 105.)

21 Here, numerous of the alleged facts in Plaintiff DFEH’s separate statement of “undisputed
22 material facts” are defective and in violation of the requirements of the Code of Civil Procedure
23 and California Rules of Court. Defendants hereby request that the Court strike each of the “facts”
24 which they identify below as objectionable. All facts objected to are disputed because identifying the
25 substance as undisputed, even if “material fact is objectionable, waives any objection to it. (See
26 *Hurley Construction Co. v. State Farm Fire & Casualty Co.* (1992) 10 Cal.App.4th 533, 540–541; see
27 also *Rio Linda Unified School Dist. v. Superior Court* (1997) 52 Cal.App.4th 732, 741 [“[A]n
28 opponent would not admit to that which cannot be proven by the moving party.”].)

**RESPONSE TO UNDISPUTED MATERIAL FACTS
IN SUPPORT OF SUMMARY JUDGMENT**

**DFEH Is Entitled to Summary Judgment on its Only Cause of Action for Violation of
the Unruh Civil Rights Act (Civ. Code, § 51) Because Each Element of That Cause of
Action Has Been Met and There Is No Defense to the Action**

Moving Party's Undisputed Material Facts & Supporting Evidence	Opposing Party's Response & Supporting Evidence
1. <u>Fact:</u> Cathy's Creations, Inc. dba Tastries ("Tastries") operates a for-profit bakery in Bakersfield, California. <u>Evidence:</u> Declaration of Gregory J. Mann In Support of DFEH's Motion for Summary Judgment or, in the Alternative, Summary Adjudication ("Mann Decl."), ¶ 9, Ex. 7 [Articles of Incorporation of Cathy's Creations, Inc. and Bylaws of Cathy's Creations, Inc.]; Mann Decl., ¶ 10, Ex. 8 [Declaration of Catharine Miller In Support of Opposition to OSC Re Preliminary Injunction ("Miller Decl."), 1:10-12].	<u>Undisputed.</u>
2. <u>Fact:</u> During the relevant time period, Catharine Miller ("Miller") was—and continues to be—the sole owner of Cathy's Creations, Inc. and Tastries. <u>Evidence:</u> Mann Decl., ¶ 10, Ex. 8, p. 1 [Miller Decl., 1:10-12; Ex. A, pp. 1, 16].	<u>Undisputed.</u>
3. <u>Fact:</u> Tastries sells a variety of baked goods, including generic pre-made cakes kept	<u>Disputed.</u> The term "generic" is ambiguous. Defendants dispute that any of their cakes are

1		in refrigerated cases offered for immediate sale to anyone for any purpose.	“generic.” Tastries’ pre-made cakes are called “case cakes” because they are made for sale out of the case using a proprietary design and proprietary flavors determined by Tastries. Case cakes are single tier cakes. (Declaration of Catharine Miller in Opposition to Plaintiff’s Motion for Summary Judgment or Adjudication [3d Miller Decl.], ¶¶ 10–11.)
2		<u>Evidence:</u>	<u>Objection.</u>
3		Mann Decl., ¶ 10, Ex. 8 [Miller Decl. 1:14-16, 2:4-6];	Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) This case is not about Defendants’ “case cakes” generally, and more specifically, the artistry or genericness of those cakes is not an issue in this case.
4		Mann Decl. ¶ 11, Ex. 9 [Deposition of Catharine Miller (“Miller Depo.”), 38:8-10; 38:22-39:2; 43:19-44:5; 44:13-22; 45:1-7; 53:21-54:2].	
5	4.	<u>Fact:</u>	<u>Objection/Disputed.</u>
6		Tastries also sells pre-ordered cakes, referring to any cake that is ordered in advance as “custom.”	Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) The evidence cited shows that all pre-ordered cakes <i>are</i> custom cakes, not that Defendants “refer” to them as custom. (See <i>Reeves, supra</i> , 121 Cal.App.4th at 105 [fact should state what the evidence is, not what a party testified the evidence is].)
7		<u>Evidence:</u>	
8		Mann Decl., ¶ 11, Ex. 9 [Miller Depo. 38:1-7; 38:22-39:8; 43:4-18];	
9		Mann Decl., ¶ 12, Ex. 10 [Deposition of Rosemary Perez (“Perez Depo.”), 16:22-25].	
10	4a.	<u>Defendants’ Additional Undisputed Material Fact</u>	
11		Tastries only has three types of cakes: pre-made case cakes, Styrofoam display cakes, and custom orders.	
12		Pre-ordered cakes are called “custom” because they are made to the customers specifications for size, shape, number of tiers, cake flavors, filling flavors, colors,	

1	design work, delivery and setup.	
2	<u>Evidence:</u>	
3	• Plt. Ex. 9, Miller Depo., 38:1–39:8; 43:4–18.	
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5	• Declaration of Catharine Miller in Support of Defendants’ Motion for Summary Judgment or, in the alternative, Summary Adjudication [“2d Miller Decl.”], ¶¶ 12, 25–32.	
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9	5.	<u>Disputed.</u>
10	<u>Fact:</u>	The evidence cited shows that Tastries has neutral design standards that identify the content and events served by Tastries. Those standards are neutral as to sexual orientation. One of the many design standards is that Tastries will not create “Designs that violate fundamental Christian principals [sic]; wedding cakes must not contradict God’s sacrament of marriage between a man and a woman.” (Plt. Ex. 8, 1st Miller Decl., Ex. A, p.18; see also Plt. Ex. 8, 1st Miller Decl., 2:26–27 [“I cannot provide custom wedding products and services that celebrate any form of marriage other than the Biblical model of a husband and wife.”]; Plt. Ex. 8, 1st Miller Decl., Ex. A, pp. 2, 5 [focusing on Miller’s religious beliefs, not anybody’s sexual orientation]; 2d Miller Decl., ¶ 12 [“My decisions on whether to design a custom cake or coordinate an event never focus on the client’s identity.”].)
11	Since opening Tastries in 2013, Miller has enforced a policy to deny any and all pre-ordered cakes to same-sex couples celebrating “[a]nything that has to do with the marriage [or] ... [t]he union of a same-sex couple” — whether that be a wedding, anniversary, or bridal shower.	
12	<u>Evidence:</u>	
13	Mann Decl., ¶ 10, Ex. 8 [Miller Decl. 2:26–27; 6:1–2; Ex. A, pp. 2, 5; Ex. A, Ex. A, p. 18 (“Design Standards”)];	
14	Mann Decl., ¶ 11, Ex. 9 [Miller Depo. 99:13–100:3; 101:9–15, 102:7–9]	
15	Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 21:16–20].	
16		One <i>application</i> of this neutral policy is that Defendants cannot provide custom services celebrating a same-sex marriage, including the wedding cake, a bridal shower cake, or a wedding anniversary cake. (Plt. Ex. 8, 1st Miller Decl., 6:1–2; Plt. Ex. 9, Miller Depo., 101:9–15.)
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28		Further, there were no same-sex wedding

		cake requests until 2016. (2d Miller Decl., ¶ 34.) Further, Tastries Bakery does not “deny” services, Defendants’ policy is to provide a referral to another professional bakery for any cake it cannot make. Tastries has screened several bakeries to confirm their skill and willingness to accept referrals. Tastries will provide additional referrals if requested. (2d Miller Decl., ¶¶ 12–19, 33–38.)
6.	<u>Fact:</u> Tastries has enforced the policy to deny pre-ordered wedding cakes to same-sex couples on multiple occasions and continues to enforce this policy. <u>Evidence:</u> Mann Decl., ¶ 10, Ex. 8 [Miller Decl. 4:11-18, 5:1, 6:1-2; Ex. A, pp. 2, 4, 5]; Mann Decl., ¶ 11, Ex. 9 [Miller Depo. 99:25-100:3, 109:6-21].	<u>Disputed.</u> Defendants dispute that they “deny” services. (See Resp. to #5.) Other than Real Parties, Defendants are aware of approximately 4 times that Miller has talked with same-sex couples that wanted to order a wedding cake. Other than the Real Parties, other same-sex couples have been understanding and accepting of the policy on Defendants’ traditional religious understanding of marriage. (2d Miller Decl., ¶ 38.)
7.	<u>Fact:</u> Tastries documents its policy in its Design Standards sheet, which is available to customers. <u>Evidence:</u> Mann Decl., ¶ 10, Ex. 8 [Miller Decl. Ex. A, Ex. A, p. 18 (“Design Standards”).	<u>Undisputed.</u> Defendants’ neutral design standards are documented on Page 18 of Exhibit A to the Miller Declaration. Later editions of the same design standards are attached as Exhibit A to the 2d Miller Declaration.
8.	<u>Fact:</u> Miller confirmed there are no circumstances under which Tastries would knowingly provide a pre-ordered cake for use in the celebration of a same-sex union, even if the pre-ordered cake was identical to a case cake.	<u>Disputed.</u> All of Defendants’ pre-ordered products are custom products. Pre-ordered cakes are called “custom” because they are made to the customers specifications for size, shape, number of tiers, cake flavors, filling flavors, colors, design work, delivery and setup. (2d

1		<u>Evidence:</u>	Miller Decl., ¶¶ 12, 25–32.)
2		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	<u>Objection.</u>
3		43:4-11; 53:21-54:2; 99:13-100:3; 101:9-	Defendants object to this “fact” as this
4		15, 102:7-9].	statement is defective and in violation of the
5			requirements of California law. (See Cal.
6			Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
7			Cal.App.4th at 105.) What Defendants
8			“confirmed” in deposition testimony is not a
9			fact itself, merely evidence of a fact. Further,
10			the evidence cited provides no support for the
11			clause “even if the pre-ordered cake was
12			identical to a case cake.” (See <i>King, supra</i> ,
13			152 Cal.App.4th at 438 [“The separate
14			statement is not designed to pervert the truth,
15			but merely to expedite and clarify the
16			germane facts.”].) All pre-ordered cakes are
17			“tailored for a[] specific purpose.” (2d Miller
18			Decl., ¶ 12.)
19	9.	<u>Fact:</u>	<u>Disputed.</u>
20		In August 2017, after months of	Defendants dispute the characterization of
21		planning an exchange of vows and	the Real Parties second wedding ceremony as
22		reception to celebrate their December	“an exchange of vows and reception.” The
23		2016 wedding with their extended	Real Parties planned and held a traditional
24		family and friends, the Rodriguez-Del	wedding ceremony. (Defs. Ex. 1, Compl., 2:6,
25		Rios prepared to order a cake.	10:8 [“vow exchange and traditional wedding
26		<u>Evidence:</u>	reception”]; Defs. Ex. 3, SROG Resp. No.
27		Mann Decl., ¶ 14, Ex. 12, [Deposition	27, 29:5–7 [“Real Parties had what they
28		of Mireya Rodriguez-Del Rio (“Mireya	considered a traditional wedding ceremony
		Depo.”), 28:17-19; 30:5-7; 32:18-33:1;	and reception.”]; Defs. Ex. 13, Eileen Dep.,
		39:24-40:4; 41:15-42:7];	171:6–173:9 & Defs. Exs. 627A, 627B [photos
		Mann Decl., ¶ 15, Ex. 13 [Deposition of	of wedding]; Defs. Ex. 14, Mireya Depo.,
		Eileen Rodriguez-Del Rio (“Eileen	99:9–100:16 [confirming SROG Resp.]; Defs.
		Depo.”), 34:19-22; 35:20-36:5; 59:7-17];	Ex. 14, Mireya Depo., 147:1–148:17 & Defs.
		Declaration of Mireya Rodriguez-Del	Exs. 627A, 627B [photos of wedding].)
		Rio in support of DFEH’s Motion for	<u>Objection.</u>
		Summary Judgment/Adjudication	Defendants object to this “fact” as this
		(“Mireya Decl.”), ¶¶ 2-3.	statement is defective and in violation of the
			requirements of California law. (See Cal.
			Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
			Cal.App.4th at 105.) There is nothing
			<i>material</i> about this fact. (See <i>Weiss, supra</i> , 9

1		Cal.5th at 864 [“These separate statements
2		[are intended to] help the court isolate and
3		identify the facts that are in dispute, which
4		facilitates the court’s determination whether
5		trial is necessary.”].)
6	10.	<u>Fact:</u>
7		Eileen and Mireya visited Tastries on
8		August 17, 2017 and were assisted by
9		front-end associate Rosemary Perez.
10		<u>Evidence:</u>
11		Mann Decl., ¶ 14, Ex. 12, [Mireya
12		Depo., 26:13-27:23];
13		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,
14		43:6-45:6];
15		Mann Decl., ¶ 12, Ex. 10 [Perez Depo.,
16		30:4-19].
17	11.	<u>Fact:</u>
18		There were dozens of “display”
19		cakes—decorated cakes made of
20		Styrofoam to provide customers with
21		ideas—exhibited throughout the
22		bakery.
23		<u>Evidence:</u>
24		Mann Decl., ¶ 14, Ex. 12, [Mireya
25		Depo., 27:4-12];
26		Mann Decl., ¶ 15, Ex. 13, [Eileen
27		Depo., 43:14-44:1; 48:6-14];
28		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,
		39:5-7; 41:17-20];
		Mann Decl., ¶ 12, Ex. 10 [Perez Depo.,
		17:21-24];
		Mireya Decl., ¶ 3.
		<u>Undisputed.</u>

1	12.	<u>Fact:</u>	<u>Disputed.</u>
2		Because the couple wanted a simple	Defendants dispute the characterization of
3		cake design, for their main cake they	the cake that Real Parties wanted as “simple”
4		settled on a design just like one of the	to the extent that implies that the design did
5		pre-existing sample display cakes—a	not require skill or artistry and did not express
6		cake with three round tiers, frosted with	a message. (See Defs. Ex. 14, Mireya Dep.,
7		scaly white buttercream frosting,	153:5–17; Defs. Ex. 16, Patrick Dep., 99:7–13;
8		decorated only with a few frosting	Defs. Ex. 17, Criollo Dep., 47:16–49:7, 49:22–
9		flowers/rosettes on the sides, and	50:22, 77:4–78:2, 112:1–18; Errata 49:6–7,
10		unadorned by any written message.	77:8–9, 78:2; Defs. Ex. 18, Johnson Dep.,
11			64:1–9; Defs. Ex. 631.)
12		<u>Evidence:</u>	
13		Mann Decl., ¶ 14, Ex. 12 [Mireya	Defendants dispute the characterization that
14		Depo., 27:4-14; 45:5-11; 83:24-84:10;	the Real Parties “settled on a design.”
15		84:15-21; 150:19-151:12; 152:14-16;	Ordering a custom wedding cake from
16		153:9-22];	Defendants involves a collaborative process
17		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	between Defendants and the client in
18		43:20-44:1; 89:15-90:6];	selecting the number of tiers, the size, the
19		Mann Decl., ¶ 12, Ex. 10, [Perez Depo.	shape, the cake flavors, the filling flavors, the
20		Mann Decl., ¶ 16, Ex. 14 [Declaration	types of frosting, and other options. No
21		of Mary Johnson, ¶ 9].	customer can simply “settle” on a design on
22			their own. (2d Miller Decl., ¶¶ 25–27, 29 &
23			Ex. B; Defs. Ex. 1, Compl., 5:23–26, 6:20–21.)
24			Further, the cake the Real Parties wanted
25			from Tastries Bakery was a 3-tiered square
26			cake with a smooth buttercream finish and
27			teal ribbon around the bottom. (3d Miller
28			Decl., ¶ 21; Plt. Ex. 8, 1st Miller Decl., 5:18–
			19; Plt. Ex. 9, Miller Depo., 131:2–9; Defs. Ex.
			14, Mireya Dep., 150:19–151:12; 2d Miller
			Decl., 10:25–27.) The design the Real Parties
			chose from Tiers of Joy was a round, messy
			rustic design with flowers. (Defs. Ex. 14,
			Mireya Dep., 150:19–152:16 & Defs. Ex. 631.)
			Whether a cake is simple or elaborate (even
			without words or toppers incorporated) the
			cake is designed and created by Tastries
			Bakery to present the image or sentiment
			intended by the customer. That message can
			be enhanced by other items added to the cake
			display at the event, such as pictures,
			mementos, signs and a topper. While the
			customer is the one adding these items, their
			presence amplifies the message of the cake that

1		was created by Tastries Bakery. (2d Miller Decl., ¶ 12; 3d Miller Decl., ¶¶ 12–15.)
2		<u>Objection.</u>
3		Defendants object to this “fact” as this
4		statement is defective and in violation of the
5		requirements of California law. (See Cal.
6		Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
7		Cal.App.4th at 105.) There is nothing
8		<i>material</i> about this fact. The design
9		differences as to what the Real Parties
10		intended to order from Tastries is not a
11		material fact for this motion. Further, what is
12		material is that the cake would transmit a
13		message, not how it would, i.e., through
14		symbols and art or through writing.
15	13.	<u>Fact:</u>
16		During their discussion with Perez, the
17		Rodriguez-Del Rios selected the details
18		of their main cake—round, three tiers,
19		white buttercream frosting, decorated
20		with frosting rosettes—along with a
21		matching sheet cake.
22		<u>Evidence:</u>
23		Mireya Decl., ¶ 4;
24		Mann Decl., ¶ 14, Ex. 12 [Mireya
25		Depo., 27:4-14; 26:20-27:14; 45:5-11;
26		83:24-84:10; 84:15-21; 150:19-151:12;
27		152:14-16; 153:9-22];
28		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,
		43:20-44:1; 50:22-51:3; 89:15-90:6];
		Mann Decl., ¶ 12, Ex. 10 [Perez Depo.,
		31:5-21; 32:4-33:3; 35:7-11; 48:25-49:6];
		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,
		127:17-20].
		<u>Disputed.</u>
		The meeting between Real Parties and Ms.
		Perez resulted in the Real Parties identifying
		basic elements of the order such as number of
		guests and date of their wedding. They did
		not finish the wedding design consultation
		and collaboration process because Ms. Perez
		was not qualified to complete it. (See Plt. Ex.
		10, Perez Depo., 30:4–31:11, 33:9–16, 35:7–15,
		45:25–49:6; Plt. Ex. 12, Mireya Depo., 26:20–
		25, 27:17–20; Plt. Ex. 13, Eileen Depo., 43:19–
		44:1.)
		Further, the cake the Real Parties wanted
		from Tastries Bakery was a 3-tiered square
		cake with a smooth buttercream finish and
		teal ribbon around the bottom. (3d Miller
		Decl., ¶ 21; Plt. Ex. 8, 1st Miller Decl., 5:18–
		19; Plt. Ex. 9, Miller Depo., 131:2–9; Defs. Ex.
		14, Mireya Depo., 150:19–151:12; 2d Miller
		Decl., 10:25–27.)
	14.	<u>Fact:</u>
		None of the cakes would have any
		<u>Objection/Disputed.</u>
		Defendants object to this “fact” as this

1		written message.	statement is defective and in violation of the
2		<u>Evidence:</u>	requirements of California law. (See Cal.
3		Mireya Decl., ¶ 4.	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
4			Cal.App.4th at 105.) There is nothing
5			<i>material</i> about this fact. What is material is
6			that the cake would transmit a message, not
7			how it would, i.e., through symbols and art or
8			through writing.
9	15.	<u>Fact:</u>	<u>Disputed.</u>
10		After discussing the details of the cakes	Defendants dispute the characterization that
11		with Perez, the Rodriguez-Del Rios	Real Parties “considered” ordering a
12		considered ordering their cakes from	wedding cake during their first visit. The
13		Tastries on the spot.	evidence indicates that Real Parties were
14		<u>Evidence:</u>	overall happy with Tastries and wanted to
15		Mann Decl., ¶ 14, Ex. 12 [Mireya	order a cake from them. (Defs. Ex. 12, Mireya
16		Depo., 27:13-14; 71:6-10];	Depo., 71:6-10; Defs. Ex. 13, Eileen Depo.,
17		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	44:2-45:6.)
18		43:14-44:9; 44:18-45:6; 65:21-24];	But Ordering a custom wedding cake from
19		Mann Decl., ¶ 12, Ex. 10 [Perez Depo.,	Defendants involves a collaborative process
20		31:22-24];	between Defendants and the client in
21		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	selecting the number of tiers, the size, the
22		136:21-137:2].	shape, the cake flavors, the filling flavors, the
23	16.	<u>Fact:</u>	types of frosting, and other options. (2d
24		The Rodriguez-Del Rios agreed to	Miller Decl., ¶¶ 25-27, 29 & Ex. B; Defs. Ex.
25		return to Tastries on August 26, 2017,	1, Compl., 5:23-26, 6:20-21.) That process
26		for a cake tasting.	was not completed. (See Plt. Ex. 10, Perez
27		<u>Evidence:</u>	Depo., 35:7-11, 45:25-49:6; Plt. Ex. 12,
28		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	Mireya Depo., 26:20-25, 27:17-20; Plt. Ex.
		44:10-17; 46:6-17];	13, Eileen Depo., 43:19-44:1.) It could not
			have been completed on the first visit because
			Ms. Perez was not qualified to complete it.
			(Plt. Ex. 10, Perez Depo., 30:4-31:11, 33:9-16,
			35:7-15.)
	16.	<u>Fact:</u>	<u>Disputed.</u>
		The Rodriguez-Del Rios agreed to	Defendants dispute the characterization that
		return to Tastries on August 26, 2017,	the Real Parties returned solely for “a cake
		for a cake tasting.	tasting.” During their first visit, Real Parties
		<u>Evidence:</u>	met with a junior, front-end sales associate
		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	who could not meaningfully discuss their
		44:10-17; 46:6-17];	desired wedding cake with them. They
			returned to finalize the collaborative process,
			including by tasting flavors. (Plt. Ex. 10, Perez

1		Mann Decl., ¶ 14, Ex. 12 [Mireya Depo., 27:13-20];	Depo., 30:4–31:11, 33:9–16, 35:7–15.)
2		Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 30:21-23; 31:3-9; 36:20-22].	
3	17.	<u>Fact:</u>	<u>Disputed.</u>
4		The couple and members of their wedding party returned to Tastries for a cake tasting on August 26, 2017.	Defendants dispute the characterization that the Real Parties returned solely for “a cake tasting.” During their first visit, Real Parties met with a junior, front-end sales associate who could not meaningfully discuss their desired wedding cake with them. They returned to finalize the collaborative process, including by tasting flavors. (Plt. Ex. 10, Perez Depo., 30:4–31:11, 33:9–16, 35:7–15.)
5		<u>Evidence:</u>	
6		Mann Decl., ¶ 14, Ex. 12 [Mireya Depo., 73:9-11; 74:21-24];	
7		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo., 48:20-24].	
8	18.	<u>Fact:</u>	<u>Undisputed.</u>
9		Miller greeted the Rodriguez-Del Rio party and asked for some details about their order.	
10		<u>Evidence:</u>	
11		Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 41:20-24];	
12		Mann Decl., ¶ 10, Ex. 8 [Miller Decl., 5:11-18];	
13		Mann Decl., ¶ 11, Ex. 9 [Miller Depo., 127:9-22].	
14	19.	<u>Fact:</u>	<u>Disputed.</u>
15		Mireya explained she wanted a three-tiered wedding cake and a sheet cake with matching finish.	Real Parties wanted two sheet cakes. (Plt. Ex. 8, 1st Miller Decl., 5:18–19; Plt. Ex. 9, Miller Depo., 131:2–22; 2d Miller Del., 10:25–27.)
16		<u>Evidence:</u>	<u>Objection.</u>
17		Mann Decl., ¶ 14, Ex. 12 [Mireya Depo., 83:24-84:10];	Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
18		Mann Decl., ¶ 10, Ex. 8 [Miller Decl.,	

1		5:18-19];	Cal.App.4th at 105.) There is nothing
2		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	<i>material</i> about this fact. The design
3		127:17-20; 131:2-9; 131:16-19].	differences as to what the Real Parties
4			intended to order from Tastries is not a
5	20.	<u>Fact:</u>	material fact for this motion.
6		In the course of their conversation,	
7		Miller discovered Eileen and Mireya	
8		wanted the cakes to celebrate their	
9		same-sex wedding.	
10		<u>Evidence:</u>	
11		Mann Decl., ¶ 10, Ex. 8 [Miller Decl.,	
12		5:20-23; 6:1-3];	
13		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	
14		128:11-13; 128:22-24; 129:18-21].	
15	21.	<u>Fact:</u>	<u>Undisputed.</u>
16		After she discovered the Rodriguez-Del	
17		Rios wanted cakes to celebrate their	
18		same-sex wedding, Miller declined to	
19		take their order.	
20		<u>Evidence:</u>	
21		Mann Decl., ¶ 10, Ex. 8 [Miller Decl.,	
22		5:20-23; 6:1-3];	
23		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	
24		129:18-21];	
25		Mann Decl., ¶ 14, Ex. 12 [Mireya	
26		Depo., 64:12-65:6].	
27	21a	<u>Defendants' Additional Undisputed</u>	
28		<u>Material Fact</u>	
		Defendants have a religious objection to	
		celebrating any form of marriage other	
		than a marriage between one man and	
		one woman.	

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	<u>Evidence:</u> • 2d Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A • Defs. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15 • Defs. Ex. 4, DFEH Resp. to Tastries’ RFA’s No. 9 • Defs. Ex. 9, DFEH Resp. to Millers’ RFA’s Nos. 8, 9, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26 • Defs. Ex. 13, Eileen Dep., 72:5–21, 77:4–78:12, 142:5–13 • Defs. Ex. 14, Mireya Dep., 52:18–53:22 & Ex. 231, 93:8–13, 109:25–110:8, 166:1–7 • Defs. Ex. 15, Samuel Dep., 47:19–49:15, 98:2–12 • Defs. Ex. 16, Patrick Dep., 55:14–18, 60:14–62:2, 63:3–12 & Ex. 231 • Defs. Ex. 17, Criollo Dep., 79:6–80:9 • Defs. Ex. 18, Johnson Dep., 23:20–24:2, 27:11–28:8, 32:18–33:7	
21b.	<u>Defendants’ Additional Undisputed Material Fact</u> Defendants’ objection to celebrating any form of marriage other than a marriage between one man and one woman was the basis of the denial of service to Real Parties on August 26, 2017.	

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	<u>Evidence:</u> • 2d Miller Decl., ¶¶ 10–11, 19–21, 24, 43 & Ex. A • Defs. Ex. 1, Compl., 2:27–3:4, 8:8–18, 11:10–11, 11:13–15 • Defs. Ex. 3, DFEH Resp. to Tastries SROGs Nos. 17, 22, 24 • Defs. Ex. 7, DFEH Resp. to Miller SROGs No. 16 • Defs. Ex. 9, DFEH Resp. to Miller RFAs No. 27 • Defs. Ex. 13, Eileen Dep., 115:12–24 • Defs. Ex. 15, Samuel Dep., 57:7–10 • Defs. Ex. 16, Patrick Dep., 65:1–5 • Defs. Ex. 17, Criollo Dep., 88:11–89:7; Errata 89:2 • Defs. Ex. 18, Johnson Dep., 19:18–20:10, 29:6–30:3, 30:21–31:2, 32:18–34:1, 92:20–93:6, 94:7–16	
21c.	<u>Defendants’ Additional Undisputed Material Fact</u> Approximately 20% people who are sexually attracted to the same-sex object to defining marriage as between people of the same sex. <u>Evidence:</u> • Ex. 19, Gary J. Gates, <i>LGB Families and Relationships: Analysis of the 2013 National Health Interview Survey</i> (Oct.	

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	2014) THE WILLIAMS INSTITUTE at 6 [“Among bisexual adults with children, 51% were married with a different-sex spouse, 11% had a different-sex unmarried partner, and 4% had a same-sex spouse or partner. Among adults who identified as gay or lesbian and were raising children, 18% had a different-sex married spouse and 4% had a different-sex unmarried partner.”] • Ex. 20, Gregory M. Herek, et al., <i>Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample</i> (2010) 7 SEXUALITY RES. & SOC. POL’Y 176, 194 [noting that even though 89.1% of homosexual respondents supported civil unions, only between 74.4% and 77.9% supported same-sex marriage] • Ex. 21, Tom Geoghegan, <i>The gay people against gay marriage</i> (Jun. 11, 2013) BBC NEWS • Ex. 22, Beth Daley, <i>Gay rebels: why some older homosexual men don’t support same-sex marriage</i> (Nov. 5, 2017) THE CONVERSATION	
22.	<u>Fact:</u> Miller referred the couple to another bakery, but Eileen had already visited it and decided against ordering from there. <u>Evidence:</u> Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	<u>Disputed.</u> As presented, the fact implies that Real Parties rejected Defendants’ effort to connect them with another bakery because they knew that they bakery was one they did not like. This is not the case. (Plt. Ex. 13, Eileen Depo., 51:22–52:5.) It was only later that Real Parties realized that the first bakery to whom Defendants would have referred them was a

1		38:16-40:4; 51:12-52:2; 120:2-4];	bakery they did not like. (Defs. Ex .1, Compl.,
2		Mann Decl., ¶ 14, Ex. 12 [Mireya	11:18–20.)
3		Depo., 42:25-44:11];	
4		Mann Decl., ¶ 10, Ex. 8 [Miller Decl.,	
5		6:2-4].	
6	22a.	<u>Defendants’ Additional Undisputed</u>	
7		<u>Material Fact</u>	
8		If Real Parties had informed	
9		Defendants that they rejected the	
10		bakery to which they were referred,	
11		Defendants would have offered to	
12		connect Real Parties with another	
13		bakery that could have made their cake.	
14		<u>Evidence:</u>	
15		• 2d Miller Decl., ¶ 18	
16		• Defs. Ex. 13, Eileen Dep.,	
17		121:14–20	
18		• Defs. Ex. 18, Johnson Dep.,	
19		101:10–13	
20	23.	<u>Fact:</u>	<u>Disputed.</u>
21		Overwhelmed, upset, and frustrated by	Whether Real Parties were “overwhelmed,
22		Ms. Miller’s refusal to serve them	upset, and frustrated” is unknown because
23		because they wanted to use the Tastries	Plaintiff has argued that it is irrelevant in this
24		cakes in the celebration of their same-	action and so refused to provide discovery
25		sex wedding, the Rodriguez-Del Rios	regarding it. (Defs. Ex. 5, DFEH Resp. to
26		and their party left.	Tastries RPDs Nos. 3, 4, 5, 6; Defs. Ex. 2,
27		<u>Evidence:</u>	DFEH Resp. to Tastries FROGs, No. 10.2;
28		Mann Decl., ¶ 14, Ex. 12 [Mireya	see also Evid. Obj. No. 1 to Mireya Depo.,
		Depo., 21:22-22:5; 76:10-12]	21:22–22:5; Evid. Obj. No. 2 to Eileen Depo.,
		Mann Decl., ¶ 15, Ex. 13 [Eileen Depo.,	52:6–53:3.)
		52:6-53:3]	
		Mann Decl., ¶ 10, Ex. 8 [Miller Decl.,	
		6:6];	
		Mann Decl., ¶ 12, Ex. 10 [Perez Depo.,	

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	46:6-11].	
24.	<u>Fact:</u> On October 7, 2017, the Rodriguez-Del Rios exchanged vows and celebrated their wedding at a reception with approximately 100 of their family and friends. <u>Evidence:</u> Mireya Decl., ¶ 5; Mann Decl., ¶ 14, Ex. 12 [Mireya Depo., 98:16-25].	<u>Undisputed.</u>
24a.	<u>Defendants’ Additional Undisputed Material Fact</u> Real Parties actually obtained a wedding cake for their wedding ceremony. <u>Evidence:</u> • Defs. Ex. 3, DFEH Resp. to Tastries SROGs No. 12 • Defs. Ex. 4, DFEH Resp. to Tastries RFAs No. 19 • Defs. Ex. 13, Eileen Dep., 121:5-13, 175:13-176:2 & Ex. 631	

**RESPONSE TO UNDISPUTED MATERIAL FACTS
IN SUPPORT OF SUMMARY ADJUDICATION**

Issue One—DFEH Is Entitled to Adjudication that it States a *Prima Facie* Case on its Only Cause of Action for Violation of the Unruh Civil Rights Act (Civ. Code, § 51) Because Each Element of that Cause of Action has been Met

Moving Party's Undisputed Material Facts & Supporting Evidence	Opposing Party's Response & Supporting Evidence
25. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
25a. Defendants incorporate Undisputed Material Facts Nos. 21a, 21b, 22a, & 24a	
26. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH's civil Complaint, filed on October 17, 2018. <u>Evidence:</u> Mann Decl., ¶ 3, Ex. 1 [DFEH's Civil Complaint]	<u>Objection/Disputed.</u> Defendants object to this "fact" as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 ["the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading"].)
27. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH's First Amended Complaint, filed on November 29, 2018. <u>Evidence:</u> Mann Decl., ¶ 4, Ex. 2 [DFEH's First	<u>Objection/Disputed.</u> Defendants object to this "fact" as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 ["the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication,

1		Amended Complaint].	or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
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4	28.	<u>Fact:</u>	<u>Disputed.</u>
5		In denying Defendants Catharine	As framed, Plaintiff implies that the Court
6		Miller’s and Tastries’ Anti-SLAPP	found <i>prima facie</i> evidence of the elements of
7		Motion to Strike the Complaint, this	an Unruh Act violation. The section cited and
8		Court concluded that the “Department	quoted, however, deals with <i>prima facie</i>
9		has supplied sufficient admissible	evidence to overcome a Free Speech
10		evidence in this respect to substantiate	affirmative defense. (Plt. Ex. 4, § II.B.3,
11		a <i>prima facie</i> case if accepted as true	p.12:23–24.)
12		”	
13		<u>Evidence:</u>	<u>Objection.</u>
14		Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	Defendants object to this “fact” as this
15		Order Denying Defendants Catharine	statement is defective and in violation of the
16		Miller’s and Tastries’ Anti-SLAPP	requirements of California law. (See Cal.
17		Motion to Strike the Complaint, 12:23-	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
18		24].	Cal.App.4th at 105.) This is not a fact but a
19			legal conclusion and a description of the
20			procedural history of this case. (See <i>Andrews</i>
21			<i>Farms v. Calcot, Ltd.</i> (E.D. Cal. 2010) 693
22			F.Supp.2d 1154, 1167 [“Plaintiffs supporting
23			evidence cites to this Court’s MTD
24			Order. . . . Plaintiffs’ statement of ‘fact’ is a
25			legal conclusion that is unsupported by legal
26			authority or analysis”].)
27	29.	<u>Fact:</u>	<u>Objection/Disputed.</u>
28		In denying Defendants Catharine	Defendants object to this “fact” as this
		Miller’s and Tastries’ Anti-SLAPP	statement is defective and in violation of the
		Motion to Strike the Complaint, this	requirements of California law. (See Cal.
		Court concluded that regarding the	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
		Free Exercise context, “the	Cal.App.4th at 105.) There is nothing
		Department’s evidence in this regard is	<i>material</i> about this fact. This section—Issue
		sufficient to substantiate a <i>prima facie</i>	One—concerns a <i>prima facie</i> case for violation
		case to the same extent as discussed	of the Unruh Act. The order cited concerns a
		above in the Free Speech context.”	<i>prima facie</i> case for overcoming a Free
		<u>Evidence:</u>	Exercise affirmative defense. Further, this is
		Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	not a fact but a legal conclusion and a
		Order Denying Defendants Catharine	description of the procedural history of this
		Miller’s and Tastries’ Anti-SLAPP	case. (See <i>Andrews Farms v. Calcot, Ltd.</i> (E.D.
			Cal. 2010) 693 F.Supp.2d 1154, 1167

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	Motion to Strike the Complaint, 14:1-3].	[“Plaintiffs supporting evidence cites to this Court’s MTD Order. . . . Plaintiffs’ statement of ‘fact’ is a legal conclusion that is unsupported by legal authority or analysis”].)
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Issue Two—Defendants’ First Affirmative Defense (Failure to State a Claim) fails because it is without merit since DFEH states a prima facie case for violation of the Unruh Civil Rights Act

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
30. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
30a. Defendants incorporate Undisputed Material Facts Nos. 21a, 21b, 22a, & 24a	
31. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH’s civil Complaint, filed on October 17, 2018. <u>Evidence:</u> Mann Decl., ¶ 3, Ex. 1 [DFEH’s Civil Complaint].	See Response to # 26.
32. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH’s First Amended Complaint, filed on November 29, 2018. <u>Evidence:</u> Mann Decl., ¶ 4, Ex. 2 [DFEH’s First Amended Civil Complaint].	See Response to # 27.
33. <u>Fact:</u> In denying Defendants Catharine Miller’s and Tastries’ Anti-SLAPP Motion to Strike the Complaint, this Court concluded that the “Department	See Response to # 28.

1	has supplied sufficient admissible	
2	evidence in this respect to substantiate	
3	a <i>prima facie</i> case if accepted as true	
4	”	
5	<u>Evidence:</u>	
6	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
7	Order Denying Defendants Catharine	
8	Miller’s and Tastries’ Anti-SLAPP	
9	Motion to Strike the Complaint, 12:23-	
10	24].	
11	34. <u>Fact:</u>	See Response to # 29.
12	In denying Defendants Catharine	
13	Miller’s and Tastries’ Anti-SLAPP	
14	Motion to Strike the Complaint, this	
15	Court concluded that regarding the	
16	Free Exercise context, “the	
17	Department’s evidence in this regard is	
18	sufficient to substantiate a <i>prima facie</i>	
19	case to the same extent as discussed	
20	above in the Free Speech context.”	
21	<u>Evidence:</u>	
22	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
23	Order Denying Defendants Catharine	
24	Miller’s and Tastries’ Anti-SLAPP	
25	Motion to Strike the Complaint, 14:1-	
26	3].	
27	35. <u>Fact:</u>	<u>Objection/Disputed.</u>
28	This Court previously concluded that	Defendants object to this “fact” as this
	the “nature of the proceedings and	statement is defective and in violation of the
	evidence presented show that the	requirements of California law. (See Cal.
	Department, consistent with its	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
	mandate, has brought the instant	Cal.App.4th at 105.) There is nothing
	complaint to vindicate a legally	<i>material</i> about this fact. This section—Issue
	cognizable right belonging to the real	Two—concerns a <i>prima facie</i> case for
	parties in interest rather than to obtain	violation of the Unruh Act. The order cited
	an economic advantage over	concerns whether the policy justifications of
	Defendants.”	the anti-SLAPP statute apply in this case.
	<u>Evidence:</u>	Further, this is not a fact but a legal
		conclusion and a description of the
		procedural history of this case. (See <i>Andrews</i>

1	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	<i>Farms v. Calcot, Ltd.</i> (E.D. Cal. 2010) 693
2	Order Denying Defendants Catharine	F.Supp.2d 1154, 1167 [“Plaintiffs supporting
3	Miller’s and Tastries’ Anti-SLAPP	evidence cites to this Court’s MTD
4	Motion to Strike the Complaint, 5:22-	Order. . . . Plaintiffs’ statement of ‘fact’ is a
5	25].	legal conclusion that is unsupported by legal
6		authority or analysis”].)
7	36. <u>Fact:</u>	<u>Objection/Disputed.</u>
8	Defendants allege that “DFEH’s	Defendants object to this “fact” as this
9	complaint fails to state any claim upon	statement is defective and in violation of the
10	which relief can be granted against	requirements of California law. (See Cal.
11	Miller and Tastries.”	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
12	<u>Evidence:</u>	Cal.App.4th at 105.) This is not a fact but a
13	Mann Decl., ¶ 5, Ex. 3 [Defendants’	legal conclusion and a description of the
14	Verified First Amended Answer to	procedural history of this case. (See <i>Quiroz,</i>
15	Plaintiff’s First Amended Complaint,	<i>supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the
16	13:1-4].	determination as to what claim was pleaded
17		by the initial complaint is not a statement of
18		material fact on which summary adjudication,
19		or anything else, turned. It is rather a legal
20		conclusion properly reached based on an
21		examination of the four corners of the
22		pleading”].)

Issue Three—Defendants’ Second Affirmative Defense (Defendants Have Not Violated the Unruh Civil Rights Act) fails because it is without merit since DFEH states a prima facie case for violation of the Unruh Civil Rights Act

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
37. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
37a. Defendants incorporate Undisputed Material Facts Nos. 21a, 21b, 22a, & 24a	
38. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH’s civil Complaint, filed on October 17, 2018. <u>Evidence:</u> Mann Decl., ¶ 3, Ex. 1 [DFEH’s Civil Complaint].	See Response to # 26.
39. <u>Fact:</u> DFEH set forth factual allegations supporting a cause of action against defendants under the Unruh Civil Rights Act (Civ. Code, § 51) in DFEH’s First Amended Complaint, filed on November 29, 2018. <u>Evidence:</u> Mann Decl., ¶ 4, Ex. 2 [DFEH’s First Amended Civil Complaint].	See Response to # 27.
40. <u>Fact:</u> In denying Defendants Catharine Miller’s and Tastries’ Anti-SLAPP Motion to Strike the Complaint, this Court concluded that the “Department	See Response to # 28.

1	has supplied sufficient admissible	
2	evidence in this respect to substantiate	
3	a <i>prima facie</i> case if accepted as true	
4	”	
5	<u>Evidence:</u>	
6	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
7	Order Denying Defendants Catharine	
8	Miller’s and Tastries’ Anti-SLAPP	
9	Motion to Strike the Complaint, 12:23-	
10	24].	
11	41. <u>Fact:</u>	See Response to # 29.
12	In denying Defendants Catharine	
13	Miller’s and Tastries’ Anti-SLAPP	
14	Motion to Strike the Complaint, this	
15	Court concluded that regarding the	
16	Free Exercise context, “the	
17	Department’s evidence in this regard is	
18	sufficient to substantiate a <i>prima facie</i>	
19	case to the same extent as discussed	
20	above in the Free Speech context.”	
21	<u>Evidence:</u>	
22	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
23	Order Denying Defendants Catharine	
24	Miller’s and Tastries’ Anti-SLAPP	
25	Motion to Strike the Complaint, 14:1-	
26	3].	
27	42. <u>Fact:</u>	<u>Objection/Disputed.</u>
28	Defendants allege that they “did not	Defendants object to this “fact” as this
	violate the Unruh Civil Rights Act	statement is defective and in violation of the
	(“Unruh Act”) because they never	requirements of California law. (See Cal.
	discriminated against Real Parties in	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
	Interest Eileen and Mireya Rodriguez-	Cal.App.4th at 105.) This is not a fact but a
	Del Rio (the “Rodriguez-Del Rios”) on	legal conclusion and a description of the
	the bases of sexual orientation.”	procedural history of this case. (See <i>Quiroz,</i>
	<u>Evidence:</u>	<i>supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the
	Mann Decl., ¶ 5, Ex. 3 [Defendants’	determination as to what claim was pleaded
	Verified First Amended Answer to	by the initial complaint is not a statement of
	Plaintiff’s First Amended Complaint,	material fact on which summary adjudication,
		or anything else, turned. It is rather a legal
		conclusion properly reached based on an

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	13:5-12].	examination of the four corners of the pleading”].)
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Issue Four—Defendants’ Third Affirmative Defense (Unclean Hands) fails because it is without merit as applied to DFEH

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
43. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
44. <u>Fact:</u> Defendants allege that “DFEH’s claims are barred based on the equitable doctrine of unclean hands.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 13:13-21].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
44a. <u>Defendants’ Additional Disputed Material Fact</u> Real Parties came to this Tastries Bakery on August 26, 2017 primarily in search of a lawsuit. <u>Evidence:</u> • Defs. Ex. 23, Benitez Decl., ¶¶ 2-7 • Plt. Ex. 8, 1st Miller Decl., ¶¶ 16-18	

Issue Five—Defendants’ Fourth Affirmative Defense (Abuse of Process) fails as without merit because defendants do not provide sufficient clear evidence to support the defense

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
45. Plaintiff incorporates Undisputed Material Fact Nos. 1-22 and 82.	See Response to ## 1-22 & 82
45a. Defendants incorporate Disputed Material Fact No. 44a	
46. <u>Fact:</u> This Court previously concluded that “there’s no evidence before the Court that the Department is going around singling out Christian providers.” <u>Evidence:</u> Mann Decl., ¶ 7, Ex. 5 [2/2/18 Reporter’s Transcript of Proceedings, 30:6-16].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Andrews Farms v. Calcot, Ltd.</i> (E.D. Cal. 2010) 693 F.Supp.2d 1154, 1167 [“Plaintiffs supporting evidence cites to this Court’s MTD Order. . . . Plaintiffs’ statement of ‘fact’ is a legal conclusion that is unsupported by legal authority or analysis”].)
47. <u>Fact:</u> This Court previously concluded that “[t]here is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement” <u>Evidence:</u> Mann Decl., ¶ 8, Ex. 6, p. 6 of 8 [3/2/18 Order Denying DFEH’s Order to Show Cause Re: Preliminary Injunction, attachment].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Andrews Farms v. Calcot, Ltd.</i> (E.D. Cal. 2010) 693 F.Supp.2d 1154, 1167 [“Plaintiffs supporting evidence cites to this Court’s MTD Order. . . . Plaintiffs’ statement of ‘fact’ is a legal conclusion that is unsupported by legal authority or analysis”].)

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48.	<u>Fact:</u> Defendants allege that “The DFEH is precluded from bringing this lawsuit because it is a blatant abuse of process.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 13:22-28].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
48a.	<u>Defendants’ Additional Undisputed Material Fact</u> 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 was not just happened 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.” <u>Evidence:</u> Trissell Decl., ¶ 13 & Ex. A	

Issue Six—Defendants’ Fifth Affirmative Defense (Trespass: Fraudulent Intent to Gain Access) fails because it is without merit as applied to DFEH

Moving Party’s Undisputed Material Facts & Supporting Evidence		Opposing Party’s Response & Supporting Evidence
49.	Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
49a.	Defendants incorporate Disputed Material Fact No. 44a	
50.	<u>Fact:</u> Defendants allege that “The DFEH’s claims are barred because the Rodriguez-Del Rios gained access to Tastries Bakery based on their fraudulent intent to trigger this meritless lawsuit.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 14:2-8].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)

Issue Seven—Defendants’ Sixth Affirmative Defense (Justification) is without merit and fails because it is not applicable to civil cases or as applied to DFEH

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
51. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
52. <u>Fact:</u> Defendants allege that “DFEH’s claims are meritless because Miller and Tastries were fully justified in lawfully exercising their free speech and free exercise rights under the First Amendment to the United States Constitution.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 14:9-14].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
52a. <u>Defendants’ Additional Disputed Material Fact</u> Defendants’ policy of refusing to make cakes that celebrate messages offensive to them, but instead connecting customers who request such cakes with other bakers, is both rational, and good social practice, to make sure all customers are served. <u>Evidence:</u> • 2d Miller Decl., ¶¶ 14-19 • 3d Miller Decl., ¶ 9	

Issue Eight—Defendants’ Seventh Affirmative Defense (Estoppel) is without merit as applied to DFEH

Moving Party’s Undisputed Material Facts & Supporting Evidence		Opposing Party’s Response & Supporting Evidence
53.	Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
53a.	Defendants incorporate Disputed Material Fact No. 44a	
54.	<u>Fact:</u> Defendants allege that “The DFEH’s claims are estopped because the Rodriguez-Del Rios’ conduct in triggering this lawsuit was fraudulent.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 14:15-18].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)

Issue Nine—Defendants’ Eighth Affirmative Defense (No Injury) is without merit and fails because the Rodriguez-Del Rios suffered injury and because DFEH seeks only statutory minimum damages

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
55. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
56. <u>Fact:</u> Defendants allege that “The DFEH’s claims should be dismissed because, unlike Miller and Tastries, the Rodriguez-Del Rios have suffered no actual injury.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 14:19-22].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
56a <u>Defendants’ Additional Undisputed Material Fact</u> The DFEH is only seeking statutory damages, not actual or punitive damages, in this action. <u>Evidence</u> • Defs. Ex. 2, DFEH Resp. to Tastries FROGs, Nos. 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 9.1, 10.2, 10.3, • Defs. Ex. 5, DFEH Resp. to Tastries RPDs Nos. 3, 4, 5, 6	

Issue Ten—Defendants’ Ninth Affirmative Defense (Punitive Damages Not Available) is without merit and fails because defendants’ actions were deliberate, willful, and taken in conscious disregard of the rights of the Rodriguez Del Rios

Moving Party’s Undisputed Material Facts & Supporting Evidence		Opposing Party’s Response & Supporting Evidence
57.	Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
57a.	Defendants incorporate Undisputed Material Fact No. 56a	
58.	<u>Fact:</u> Defendants allege that “The DFEH’s complaint fails to state facts sufficient to set forth a cause of action for punitive damages.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 14:23-26].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)

Issue Eleven—Defendants’ Tenth Affirmative Defense (Attorney’s Fees Not Available) is without merit and fails because attorney’s fees are available to the prevailing party under Government Code section 12965, subdivision (b)

Moving Party’s Undisputed Material Facts & Supporting Evidence		Opposing Party’s Response & Supporting Evidence
59.	Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
59a	Defendants incorporate Undisputed Material Fact No. 56a	
60.	<u>Fact:</u> Defendants allege that “The DFEH’s claims for attorney’s fees should be denied because there is no factual basis for such an award..” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 15:1-4].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)

Issue Twelve—Defendants’ eleventh affirmative defense (State Free Exercise Provision) fails as without merit because the Unruh Civil Rights Act is a neutral and generally applicable public accommodations law

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
61. Plaintiff incorporates Undisputed Material Fact Nos. 1-24 and 69-75.	See Response to ## 1-24 & 69-75.
61a Defendants incorporate Undisputed Material Facts Nos. 21a & 21b	
62. <u>Fact:</u> Miller states that “25-30% of Tastries’ sales revenue comes from designing custom wedding cakes.” <u>Evidence:</u> Mann Decl., ¶ 10, Ex. 8 [Miller Decl., 7:7].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) The undisputed evidence is that approximately 30% of Defendants’ revenue comes from custom wedding cakes, without which the bakery is not financially viable (Plt. Ex. 8, 1st Miller Decl., 7:7; 2d Miller Decl., ¶ 52), not merely that Defendants have “state[d]” as much. (See <i>Reeves, supra</i>, 121 Cal.App.4th at 105 [fact should state what the evidence is, not what a party testified the evidence is].)
62a. <u>Defendants’ Additional Undisputed Material Fact</u> The revenue from creating wedding cakes is a substantial portion of Defendants’ bakery business. <u>Evidence:</u> 2d Miller Decl., ¶ 52	
62b. <u>Defendants’ Additional Undisputed Material Fact</u> Without the revenue from making wedding cakes, Defendants’ bakery	

1		business is not financially viable.	
2		<u>Evidence</u>	
3		2d Miller Decl., ¶ 52	
4	62c.	<u>Defendants’ Additional Undisputed Material Fact</u>	
5		On August 26, 2017, at the same time	
6		that Defendants declined to make Real	
7		Parties’ wedding cake, Defendants	
8		offered to connect Real Parties with	
9		another bakery that could make their	
10		cake.	
11		<u>Evidence:</u>	
12		• 2d Miller Decl., ¶¶ 18, 33–38,	
13		43	
14		• Defs. Ex. 1, Compl., 2:27–3:4,	
15		8:19–21, 11:10–11, 11:13–15	
16		• Defs. Ex. 3, DFEH Resp. to	
17		Tastries SROGs No. 24	
18		• Defs. Ex. 14, Mireya Dep.,	
19		64:25–65:12	
20		• Defs. Ex. 15, Samuel Dep.,	
21		47:19–49:15, 54:17–55:3	
22		Defs. Ex. 16, Patrick Dep., 60:14–62:2	
23	62d.	Defendants incorporate Undisputed	
24		Material Facts Nos. 22a & 24a	
25	63.	<u>Fact:</u>	<u>Objection/Disputed.</u>
26		Defendants allege that “DFEH’s	Defendants object to this “fact” as this
27		interpretation and enforcement of the	statement is defective and in violation of the
28		Unruh Act target and discriminate	requirements of California law. (See Cal.
		against Miller and Tastries in violation	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
		of article 1, section 4 of the California	Cal.App.4th at 105.) This is not a fact but a
		Constitution.”	legal conclusion and a description of the
		<u>Evidence:</u>	procedural history of this case. (See <i>Quiroz</i> ,
			<i>supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the

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	Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 15:5-19].	determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
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Issue Thirteen—Defendants’ twelfth affirmative defense (Federal Free Exercise Clause) fails as without merit because the Unruh Civil Rights Act as applied here is a neutral and generally applicable public accommodations law

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
64. Plaintiff incorporates Undisputed Material Fact Nos. 1-24 and 69-75.	See Response to ## 1-24 & 69-75.
64a. Defendants incorporate Undisputed Material Facts Nos. 21a, 21b, 22a, 24a, 62a, 62b, 62c, & 62d.	
65. <u>Fact:</u> Defendants allege that “DFEH’s interpretation and enforcement of the Unruh Act target and discriminate against Miller and Tastries in violation of the Free Exercise Clause of the First Amendment to the United States Constitution.” <u>Evidence:</u> Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 15:20-16:7].	<u>Objection/Disputed.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i>, 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
65a <u>Defendants’ Additional Undisputed Material Fact</u> If Defendants ceased making all wedding cakes, that would cause a material decrease in the bakery’s revenue. <u>Evidence:</u> • 2d Miller Decl., ¶ 52	

1	65b	<u>Defendants' Additional Undisputed Material Fact</u>	
2			
3		During the DFEH's administrative investigation, and presently,	
4		Defendants contended that they objected to sending any message that celebrated any form of marriage except between one man and one woman.	
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6			
7		<u>Evidence:</u>	
8		• Declaration of Jeffrey M. Trissell, Esq. in Support of Defendants' Motion for Summary Judgment or, in the alternative, Summary Adjudication [1st Trissell Decl.], ¶ 9	
9			
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13		• 2d Miller Decl., ¶¶ 10–11, 19–21, 24 & Ex. A	
14			
15	65c	<u>Defendants' Additional Undisputed Material Fact</u>	
16		The DFEH does not believe that expressive business owners violate the Unruh Act if they decline to create a custom item expressing homophobic or anti-LGBT messages, but still contends that Defendants violated the Unruh Act.	
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21		<u>Evidence:</u>	
22		• Defs. Ex. 9, DFEH Resp. to Miller RFA's No. 4, 22	
23			
24		• Defs. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
25			
26	65d	<u>Defendants' Additional Undisputed Material Fact</u>	
27		The DFEH does not believe that the Unruh Act requires cake artists create custom cakes that they consider	
28			

1		offensive, but still contends that Defendants violated the Unruh Act.	
2			
3		<u>Evidence:</u>	
4		• Defs. Ex. 9, DFEH Resp. to Miller RFA's No. 5, 22	
5			
6		• Defs. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
7			
8	65e	<u>Defendants' Additional Undisputed Material Fact</u>	
9		The DFEH purports to not use its enforcement authority under the Unruh Act to compel speech, but still contends that Defendants violated the Unruh Act.	
10			
11		<u>Evidence:</u>	
12			
13		• Defs. Ex. 9, DFEH Resp. to Miller RFA's No. 6, 22	
14			
15		• Defs. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
16			
17	65f	<u>Defendants' Additional Undisputed Material Fact</u>	
18		The DFEH believes that the Unruh Act does not require businesses to create custom cakes that express messages they would not communicate for anyone, but still contends that Defendants violated the Unruh Act.	
19			
20		<u>Evidence:</u>	
21			
22		• Defs. Ex. 9, DFEH Resp. to Miller RFA's No. 7, 22	
23			
24		• Defs. Ex. 6, DFEH Resp. to Miller FROGs No. 14.1	
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1	65g	<u>Defendants' Additional Undisputed Material Fact</u>	
2			
3		Defendants responses to the DFEH's	
4		administrative interrogatories were due	
5		on December 15, 2017. Nevertheless,	
6		without waiting to hear from	
7		Defendants, on December 13, 2021, the	
8		DFEH initiated a petition for	
9		preliminary injunctive relief with Case	
10		No. BCV-17-102855. The next day, the	
11		DFEH sought a temporary restraining	
12		order and an order to show cause re:	
13		preliminary injunction.	
14		<u>Evidence:</u>	
15		• 1st Trissell Decl., ¶¶ 2–6	
16	65h	<u>Defendants' Additional Undisputed Material Fact</u>	
17			
18		The DFEH brought the prior action	
19		with Case No. BCV-17-102855 less than	
20		10 days after oral argument in the	
21		Supreme Court case <i>Masterpiece</i>	
22		<i>Cakeshop, Ltd. v. Colorado Civil Rights</i>	
23		<i>Com'n</i> (2018) 138 S.Ct. 1719	
24		<u>Evidence:</u>	
25		• 1st Trissell Decl., ¶ 7	
26	65i	<u>Defendants' Additional Undisputed Material Fact</u>	
27			
28		When the court in the prior action set	
		an OSC re: preliminary injunction for	
		February 2, 2021, as part of its	
		aggressive litigation tactics, on January	
		10, 2018, the DFEH filed a revised	
		memorandum in support of their	
		motion for a preliminary injunction	
		motion.	

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	<u>Evidence:</u> • 1st Trissell Decl., ¶ 8	
65j	<u>Defendants’ Additional Undisputed Material Fact</u> 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 was not just happened 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.” <u>Evidence:</u> • 1st Trissell Decl., ¶ 13 & Ex. A	
65k.	<u>Defendants’ Additional Undisputed Material Fact</u> The DFEH seeks to compel Defendants to provide wedding cakes for same-sex weddings if they do so for traditional, opposite-sex weddings. <u>Evidence:</u> • Defs. Ex. 1, Compl., Prayer ¶ 2 • Defs. Ex. 3, DFEH Resp. to Tastries SROGs No. 23	

Issue Fourteen—Defendants’ thirteenth affirmative defense (Federal Free Speech Clause) fails as without merit because application of the Unruh Civil Rights Act here was content neutral and did not compel defendants’ speech

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
66. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
67. <u>Fact:</u> For pre-ordered Tastries cakes, customers decide the details, often with help from a Tastries employee, filling out a form to select the characteristics of their cake: size, shape, number of tiers, colors, frosting, filling, and decorations. <u>Evidence:</u> Mann Decl., ¶ 11, Ex. 9 [Miller Depo., 61:5-12; 61:19-21; 58:11-25, Ex. 3].	<u>Disputed.</u> Ordering a custom wedding cake from Defendants involves a <i>collaborative</i> process between Defendants and the client in selecting the number of tiers, the size, the shape, the cake flavors, the filling flavors, the types of frosting, and other options. (2d Miller Decl., ¶¶ 25-27, 29 & Ex. B; Defs. Ex. 1, Compl., 5:23-26, 6:20-21.)
68. <u>Fact:</u> Customers regularly reference a pre-existing case cake, display cake, or photo of an existing cake, when describing to Tastries the cake design they want. <u>Evidence:</u> Mann Decl., ¶ 11, Ex. 9 [Miller Depo., 41:11-16; 43:4-11; 59:12-22; 61:5-12]; Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 16:6-21; 17:25-18:5].	<u>Undisputed.</u>
68a. <u>Defendants’ Additional Undisputed Material Fact</u> When customers reference a pre-existing case cake, display cake, or photo of an existing cake, these are for inspiration only, to help communicate ideas more quickly than words, and oftentimes to identify different characteristics from different	

1		cakes, since a picture is worth a thousand words. Then, based on the pictures	
2		provided, in collaboration with the	
3		customers, Defendants often combine the	
4		characteristics the customer wants into a	
5		hand drawn sketch.	
6		Tastries Bakery's custom products are	
7		designed to meet customer specifications.	
8		The team of designers (led by Defendant	
9		Miller) start with the customer's vision and	
10		present options to create a final design that	
11		fits the theme and budget for each occasion.	
12		Cake designs can range from simple to	
13		elaborate but, all styles require a skilled	
14		decorator, and each design portrays the	
15		image or expresses the sentiment intended	
16		by the customer.	
17		<u>Evidence:</u>	
18		• 2d Miller Decl., ¶ 29.	
19		• 3d Miller Decl., ¶¶ 12-15	
20	69.	<u>Fact:</u>	<u>Disputed.</u>
21		Miller does not participate in the design or	Miller is the owner and manager of
22		preparation of each and every pre-ordered	Tastries. Through her role, she is involved
23		cake.	with all orders. The bakery is open up to
24		<u>Evidence:</u>	12 hours a day. There is a staff of designers
25		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	who work together to design the custom
26		65:7-10; 71:2-5; 71:18-20; 81:15-18];	cakes on a daily basis. Miller directs all
27		Mann Decl., ¶ 12, Ex. 10, [Perez Depo.,	aspects of the business and makes all
28		11:1-4].	decisions related to products, services and
			daily operations. While Defendant Miller
			does not necessarily physically participate
			in every custom cake order, they are all
			based on her recipes, she oversees the
			design process, is directly involved in the
			vast majority of wedding orders, and
			reviews every order to make weekly
			assignments for baking, decorating and
			deliveries. As the sole owner and manager,
			all activities of the bakery are a direct
			reflection on Defendant Miller. Her time is
			divided between custom design work,

		marketing, working the back, recipe development and management of the entire operations. (2d Miller Decl., ¶¶ 2, 25–27.; 3d Miller Decl., ¶¶ 3–5.)
69a.	<u>Defendants’ Additional Undisputed Material Fact</u> Defendant Tastries Bakery, as a corporation, itself participates in the design or preparation of a wedding cake, and objects (including on religious grounds) to its speech being used in a manner that violates its own policies. <u>Evidence:</u> • 2d Miller Decl., ¶¶ 2, 10, 15, 19, 24 • 3d Miller Decl., ¶ 5	
70.	<u>Fact:</u> Tastries can deliver, and has delivered, cakes to venues without becoming involved in weddings or other events by dropping off cakes before guests or participants arrive. <u>Evidence:</u> Mann Decl., ¶ 13, Ex. 11 [Deposition of Mike Miller [“Mike Miller Depo.”], 30:8-10; 20:15-22]; Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 18:19-24; 19:24-20:3].	<u>Disputed.</u> The vast majority of all deliveries are made with family and/or guests present. It is unusual to deliver with no one present. With outdoor events, it is common to deliver near the start of the event (to get maximum shade or avoid damage to the cake). Tastries is occasionally asked to deliver after the start of the event. “Thank you” business cards are left with the cake. It is common for our customers to share at the event who made the cake and desserts and for the cake to be shown in social media posts of the event. If the cake were delivered without guests or participants present, that would be a random happenstance with no means of predicting it. (2d Miller Decl., ¶¶ 30–31; 3d Miller Decl., ¶¶ 16–18.)
71.	<u>Fact:</u> Miller testified that Tastries would sell <i>pre-made</i> case cakes to same-sex couples	<u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of

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	celebrating their union and would even add a written congratulatory message to the couple. <u>Evidence:</u> Mann Decl., ¶ 11, Ex. 9 [Miller Depo., 45:17-47:7].	the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105 [fact should state what the evidence is, not what a party testified the evidence is].) <u>Disputed.</u> The evidence cited is objectionable and is objected to. (See Evid. Obj. No. 3 to Miller Depo., 45:17-47:7.) Further the evidence cited shows that the line of questioning concerned how Defendants would react if a same-sex couple attempted to set them up for a lawsuit by engaging in an unrealistic hypothetical of purchasing a random pre-made cake from the case, and asking Miller to write congratulatory words on it concerning their same-sex marriage. In response, Miller stated that she would simply give them the cake for free. The DFEH attorney repeatedly asked whether she would write the message, and in one instance, she failed to correct him otherwise. She would not write the message. (See Plt. Ex. 9, Miller Depo., 46:3-47:7; 3d Miller Decl., ¶¶ 23-26.)
72.	<u>Fact:</u> Tastries employees have provided pre-ordered wedding cakes to same-sex couples without Miller’s knowledge on multiple occasions. <u>Evidence:</u> Mann Decl., ¶ 11, Ex. 9 [Miller Depo., 74:11-75:12]; Mann Decl., ¶ 12, Ex. 10 [Perez Depo., 22:24-26:6]; Mann Decl., ¶ 13, Ex. 11, [Mike Miller Depo., 41:4-15; 42:10-17].	<u>Undisputed.</u>

1	72a	<u>Defendants' Additional Undisputed Material Fact</u>	
2		Defendants object to celebrating any form	
3		of marriage other than a marriage between	
4		one man and one woman.	
5		<u>Evidence</u>	
6		• 2d Miller Decl., ¶¶ 10–11, 19–21,	
7		24 & Ex. A	
8		• Defs. Ex. 1, Compl., 2:27–3:4, 8:8–	
9		18, 11:10–11, 11:13–15	
10		• Defs. Ex. 3, DFEH Resp. to	
11		Tastries SROGs Nos. 17, 22, 24	
12	72b	<u>Defendants' Additional Undisputed Material Fact</u>	
13		When Defendants found out that certain	
14		employees were violating Defendants'	
15		policies and engaging in speech and	
16		conduct that violated Defendants'	
17		philosophical and religious beliefs,	
18		Defendants put a stop to that practice.	
19		<u>Evidence:</u>	
20		• 3d Miller Decl., ¶ 9	
21	73.	<u>Fact:</u>	<u>Disputed.</u>
22		On one occasion, Miller saw a cake	Defendant Miller did not see the wedding
23		ordered for a same-sex wedding reception	cake, she saw an order form that did not
24		and did not recognize it as a wedding cake.	itself indicate that the cake was for a same-
25		<u>Evidence:</u>	sex wedding. (Plt. Ex. 9, Miller Depo.,
26		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	77:3–18 & Errata to 77:8 [changing "I
27		77:3–18].	said" to "It said" referring to the order
28			form]; 3d Miller Decl., ¶¶ 7–8.)
	74.	<u>Fact:</u>	<u>Undisputed.</u>
		Thinking the wedding cake was a birthday	
		cake or for a Quinceañera, Miller approved	
		the order for delivery.	

1		<u>Evidence:</u>	
2		Mann Decl., ¶ 11, Ex. 9 [Miller Depo.,	
3		77:3-18].	
4	75.	<u>Fact:</u>	<u>Undisputed.</u>
5		The Rodriguez-Del Rios did not plan to	
6		order a cake topper from Tastries.	
7		<u>Evidence:</u>	
8		Mireya Decl., ¶ 4.	
9	75a	<u>Defendants' Additional Undisputed</u>	
10		<u>Material Fact</u>	
11		Real Parties did order a cake topper with	
12		two women that a Tastries employee	
13		would have been expected to place on their	
14		cake had they chosen to use it.	
15		<u>Evidence:</u>	
16		• Defs. Ex. 13, Eileen Depo., 88:21–	
17		89:2	
18		• Defs. Ex. 14, Mireya Depo.,	
19		153:23–154:1	
20		• Plt. Ex. 9, Miller Depo., 77:3–18	
21		[noting that Tastries employee	
22		placed topper on another	
23		customer's cake]	
24	76.	<u>Fact:</u>	<u>Disputed.</u>
25		The three-tiered cake the Rodriguez-Del	The two cake orders were in no way
26		Rios eventually ordered from another	similar in size, shape, décor or flavors.
27		baker, pictured in Figure 1 of the	
28		Memorandum of Points and Authorities,	The design the Real Parties chose from
		looked just like the cake they tried to order	Tiers of Joy was a messy rustic design with
		from Tastries.	flowers. The top tier was real cake and the
		<u>Evidence:</u>	bottom tiers were fake styrofoam.
		Mireya Decl., ¶ 7, Ex. B.	Additional cakes were made in the shape
			of bread loafs that were sliced and a scoop
			of frosting was added to the slice of cake.
			This was done not merely to supplement

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		the amount of cake, but to supplement the amount of cake flavors and frosting flavors, and the amount of combinations, in a manner not available from Tastries. The cake the Real Parties wanted from Tastries Bakery was a 3-tiered square cake with a smooth buttercream finish and teal ribbon around the bottom. They also wanted two sheet cakes with no design to slice in the back kitchen of their reception. (3d Miller Decl., ¶¶ 19–22; Defs. Ex. 13, Eileen Depo., 175:13–176:22 & Defs. Ex. 631; Defs. Ex. 14, Mireya Depo., 150:19–152:13 & Defs. Ex. 631; Defs. Ex. 15, Samuel Depo., 85:22–86:5; see also Evid. Obj. No. 4 to Mireya Decl., ¶ 7.) <u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The design differences as to what the Real Parties intended to order from Tastries is not a material fact for this motion.
77.	<u>Fact:</u> The main cake the Rodriguez-Del Rios had at their wedding reception—that looked just like the cake they wanted to order from Tastries—had no written message. <u>Evidence:</u> Mireya Decl., ¶ 7.	<u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The fact that the cake would transmit a message through symbols or art, and not writing, is immaterial. <u>Disputed.</u> The two cake orders were in no way similar in size, shape, décor or flavors.

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	The design the Real Parties chose from Tiers of Joy was a messy rustic design with flowers. The top tier was real cake and the bottom tiers were fake styrofoam. Additional cakes were made in the shape of bread loafs that were sliced and a scoop of frosting was added to the slice of cake. This was done not merely to supplement the amount of cake, but to supplement the amount of cake flavors and frosting flavors, and the amount of combinations, in a manner not available from Tastries. The cake the Real Parties wanted from Tastries Bakery was a 3-tiered square cake with a smooth buttercream finish and teal ribbon around the bottom. They also wanted two sheet cakes with no design to slice in the back kitchen of their reception. (3d Miller Decl., ¶¶19–22; Defs. Ex. 13, Eileen Depo., 175:13–176:22 & Defs. Ex. 631; Defs. Ex. 14, Mireya Depo., 150:19–152:13 & Defs. Ex. 631; Defs. Ex. 15, Samuel Depo., 85:22–86:5; see also Evid. Obj. No. 4 to Mireya Decl., ¶ 7.) Whether a cake is simple or elaborate (even without words or toppers incorporated) the cake is designed and created by Tastries Bakery to present the image or sentiment intended by the customer. That message can be enhanced by other items added to the cake display at the event, such as pictures, mementos, signs and a topper. While the customer is the one adding these items, their presence amplifies the message of the cake that was created by Tastries Bakery. (2d Miller Decl., ¶ 12; 3d Miller Decl., ¶¶ 12–15.) <u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves</i>,
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		<i>supra</i> , 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The design differences as to what the Real Parties intended to order from Tastries is not a material fact for this motion. Further, what is material is that the cake would transmit a message, not how it would, i.e., through symbols and art or through writing.
78.	<u>Fact:</u> The only difference between the main cake the Rodriguez-Del Rios had at their October 2017 wedding reception and the main cake they wanted to order from Tastries was that the main cake they had at their reception was decorated with real flowers, while the cake they wanted to order from Tastries cake would have had frosting-rosettes, and the frosting was more wavy than scaly. <u>Evidence:</u> Mireya Decl., ¶ 7.	<u>Disputed.</u> The two cake orders were in no way similar in size, shape, décor or flavors. The design the Real Parties chose from Tiers of Joy was a messy rustic design with flowers. The top tier was real cake and the bottom tiers were fake styrofoam. Additional cakes were made in the shape of bread loafs that were sliced and a scoop of frosting was added to the slice of cake. This was done not merely to supplement the amount of cake, but to supplement the amount of cake flavors and frosting flavors, and the amount of combinations, in a manner not available from Tastries. The cake the Real Parties wanted from Tastries Bakery was a 3-tiered square cake with a smooth buttercream finish and teal ribbon around the bottom. They also wanted two sheet cakes with no design to slice in the back kitchen of their reception. (3d Miller Decl., ¶¶ 19–22; Defs. Ex. 13, Eileen Depo., 175:13–176:22 & Defs. Ex. 631; Defs. Ex. 14, Mireya Depo., 150:19–152:13 & Defs. Ex. 631; Defs. Ex. 15, Samuel Depo., 85:22–86:5; see also Evid. Obj. No. 4 to Mireya Decl., ¶ 7.) <u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See

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		Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The design differences as to what the Real Parties intended to order from Tastries is not a material fact for this motion.
79.	<u>Fact:</u> Instead of the sheet cake the couple tried to order from Tastries, they had loaf cakes at their wedding reception. <u>Evidence:</u> Mireya Decl., ¶ 7.	<u>Disputed.</u> The two cake orders were in no way similar in size, shape, décor or flavors. The design the Real Parties chose from Tiers of Joy was a messy rustic design with flowers. The top tier was real cake and the bottom tiers were fake styrofoam. Additional cakes were made in the shape of bread loafs that were sliced and a scoop of frosting was added to the slice of cake. This was done not merely to supplement the amount of cake, but to supplement the amount of cake flavors and frosting flavors, and the amount of combinations, in a manner not available from Tastries. The cake the Real Parties wanted from Tastries Bakery was a 3-tiered square cake with a smooth buttercream finish and teal ribbon around the bottom. They also wanted two sheet cakes with no design to slice in the back kitchen of their reception. (3d Miller Decl., ¶¶ 19–22; Defs. Ex. 13, Eileen Depo., 175:13–176:22 & Defs. Ex. 631; Defs. Ex. 14, Mireya Depo., 150:19–152:13 & Defs. Ex. 631; Defs. Ex. 15, Samuel Depo., 85:22–86:5; see also Evid. Obj. No. 4 to Mireya Decl., ¶ 7.) <u>Objection.</u> Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i>, 121 Cal.App.4th at 105.) There is nothing <i>material</i> about this fact. The

1		design differences as to what the Real Parties intended to order from Tastries is not a material fact for this motion.
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3	80.	<u>Fact:</u>
4		Defendants allege that “DFEH’s interpretation and enforcement of the Unruh Act as applied violate Miller’s and Tastries’ free speech rights under the Free Speech Clause of the First Amendment to the United States Constitution.”
5		<u>Evidence:</u>
6		Mann Decl., ¶ 5, Ex. 3 [Defendants’ Verified First Amended Answer to Plaintiff’s First Amended Complaint, 16:8-19].
7		<u>Objection/Disputed.</u>
8		Defendants object to this “fact” as this statement is defective and in violation of the requirements of California law. (See Cal. Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121 Cal.App.4th at 105.) This is not a fact but a legal conclusion and a description of the procedural history of this case. (See <i>Quiroz, supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the determination as to what claim was pleaded by the initial complaint is not a statement of material fact on which summary adjudication, or anything else, turned. It is rather a legal conclusion properly reached based on an examination of the four corners of the pleading”].)
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10	80a.	<u>Defendants’ Additional Undisputed Material Fact</u>
11		All preordered wedding cakes made by Defendants are custom cakes.
12		<u>Evidence</u>
13		• 2d Miller Decl., ¶ 25 • Defs. Ex. 1, Compl., 5:17-18 • Defs. Ex. 17, Criollo Dep., 64:21-65:6
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15	80b.	<u>Defendants’ Additional Undisputed Material Fact</u>
16		Ordering a custom wedding cake from Defendants involves a collaborative process between Defendants and the client in selecting the number of tiers, the size, the shape, the cake flavors, the filling flavors, the types of frosting, and other
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1	options.	
2	<u>Evidence</u>	
3	• 2d Miller Decl., ¶¶ 25–27, 29 & Ex. B	
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5	• Defs. Ex. 1, Compl., 5:23–26, 6:20–21	
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7	80c. <u>Defendants’ Additional Undisputed Material Fact</u>	
8	The baking aspect of making a wedding cake is artistic.	
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10	<u>Evidence</u>	
11	• Defs. Ex. 18, Johnson Dep., 85:16–86:3	
12		
13	80d. <u>Defendants’ Additional Undisputed Material Fact</u>	
14	The decorating aspect of making a wedding cake is artistic.	
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16	<u>Evidence</u>	
17	• 2d Miller Decl., ¶ 25 & Ex. D	
18	• Defs. Ex. 14, Mireya Dep., 175:14–177:24 & Ex. 230	
19	• Defs. Ex. 18, Johnson Dep., 64:1–9	
20	• Defs. Ex. 17, Criollo Dep., 47:16–49:7, 49:22–50:22, 77:4–78:2, 112:1–18; Errata 49:6–7, 77:8–9, 78:2	
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24	80e. <u>Defendants’ Additional Undisputed Material Fact</u>	
25	Even simple, white, three-tiered wedding cakes such as Real Parties had at their wedding are artistic and beautiful.	
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1		<u>Evidence</u>	
2		• Defs. Ex. 14, Mireya Dep., 153:5-17	
3		• Defs. Ex. 16, Patrick Dep., 99:7-13	
4		• Defs. Ex. 17, Criollo Dep., 47:16-	
5		49:7, 49:22-50:22, 77:4-78:2,	
6		112:1-18; Errata 49:6-7, 77:8-9,	
7		78:2	
8		• Defs. Ex. 18, Johnson Dep., 64:1-9	
9		• Defs. Ex. 631	
10	80f.	<u>Defendants' Additional Undisputed Material Fact</u>	
11		When Defendants design and create	
12		custom wedding cakes, they intend to	
13		express a message that is celebratory and	
14		that identifies the union of two individuals	
15		as a marriage.	
16		<u>Evidence</u>	
17		• 2d Miller Decl., ¶ 19	
18		• Defs. Ex. 1, Compl., 2:27-3:4, 8:8-	
19	80g.	<u>Defendants' Additional Undisputed Material Fact</u>	
20		The reasonable observer of Defendants'	
21		custom wedding cakes would identify them	
22		as expressing a message that is celebratory	
23		and that identifies the union of two	
24		individuals as a marriage.	
25		<u>Evidence</u>	
26		• 2d Miller Decl., ¶¶ 20-23, 28 &	
27		Ex. C	
28		• Defs. Ex. 1, Compl., 2:27-3:4, 8:8-	
		18, 11:10-11, 11:13-15	
		• Defs. Ex. 3, DFEH Resp. to	

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	Tastries SROGs No. 14 • Defs. Ex. 13, Eileen Dep., 90:18–91:7, 171:6–173:9 & Exs. 627A, 627B • Defs. Ex. 14, Mireya Dep., 78:2–7:12 & Ex. 527, 99:9–100:16, 147:1–148:17 & Exs. 627A, 627B • Defs. Ex. 17, Criollo Dep., 85:5–86:6	
80h.	Defendants incorporate Undisputed Material Facts Nos. 21a, 21b, 22a, & 24a & 62c.	

Issue Fifteen—Defendants’ fourteenth affirmative defense (Federal Due Process Clause) fails as without merit because defendants do not provide sufficient clear evidence to support the defense

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
81. Plaintiff incorporates Undisputed Material Fact Nos. 1-24.	See Response to ## 1-24.
82. <u>Fact:</u> DFEH routinely investigates administrative complaints filed by complainants alleging violations of the Unruh Civil Rights Act (Civ. Code, § 51) (“Unruh”), and routinely files civil litigation based on alleged violations of Unruh. <u>Evidence:</u> Mann Decl., ¶ 2; Request for Judicial Notice.	<u>Objection/Disputed.</u> See Evid. Obj. No. 5 to Gregory Mann declaration.
83. <u>Fact:</u> This Court previously concluded that “there’s no evidence before the Court that the Department is going around singling out Christian providers.” <u>Evidence:</u> Mann Decl., ¶ 7, Ex. 5 [2/2/18 Reporter’s Transcript of Proceedings, 30:6-16].	See Response to # 46.
84. <u>Fact:</u> This Court previously concluded that “[t]here is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement”	See Response to # 47.

1		<u>Evidence:</u>	
2		Mann Decl., ¶ 8, Ex. 6 [3/2/18 Order	
3		Denying DFEH's Order to Show Cause	
4		Re: Preliminary Injunction, attachment,	
		p. 6 of 8].	
5	85.	<u>Fact:</u>	See Response to # 35.
6		This Court previously concluded that	
7		the "nature of the proceedings and	
8		evidence presented show that the	
9		Department, consistent with its	
10		mandate, has brought the instant	
11		complaint to vindicate a legally	
12		cognizable right belonging to the real	
13		parties in interest rather than to obtain	
14		an economic advantage over	
15		Defendants."	
16		<u>Evidence:</u>	
17		Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
18		Order Denying Defendants Catharine	
19		Miller's and Tastries' Anti-SLAPP	
20		Motion to Strike the Complaint, 5:22-	
21		25].	
22	86.	<u>Fact:</u>	<u>Objection/Disputed.</u>
23		Defendants allege that "DFEH's	Defendants object to this "fact" as this
24		interpretation and enforcement of the	statement is defective and in violation of the
25		Unruh Act infringe Miller's and	requirements of California law. (See Cal.
26		Tastries' rights under the Fourteenth	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
27		Amendment's Due Process Clause."	Cal.App.4th at 105.) This is not a fact but a
28		<u>Evidence:</u>	legal conclusion and a description of the
		Mann Decl., ¶ 5, Ex. 3 [Defendants'	procedural history of this case. (See <i>Quiroz,</i>
		Verified First Amended Answer to	<i>supra</i> , 140 Cal.App.4th at 1271, fn.16 ["the
		Plaintiff's First Amended Complaint,	determination as to what claim was pleaded
		16:20-17:2].	by the initial complaint is not a statement of
			material fact on which summary adjudication,
			or anything else, turned. It is rather a legal
			conclusion properly reached based on an
			examination of the four corners of the
			pleading"].)
	86a.	Defendants incorporate Undisputed	
		Material Facts Nos. 21a, 21b, 22a, 63c,	

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	65b, 65c, 64d, 65g, & 69a	
86b.	<u>Defendants’ Additional Undisputed Material Fact</u> Dfeh never visited Tastries store or observed its business process, even though they were invited by Miller. <u>Evidence:</u> • 3d Miller Decl., ¶ 6	

Issue Sixteen—Defendants’ fifteenth affirmative defense (Federal Equal Protection Clause) fails as without merit because defendants do not provide sufficient clear evidence to support the defense

Moving Party’s Undisputed Material Facts & Supporting Evidence	Opposing Party’s Response & Supporting Evidence
87. Plaintiff incorporates Undisputed Material Fact Nos. 1-24 and 82.	See Response to ## 1-24 & 82
88. <u>Fact:</u> This Court previously concluded that “there’s no evidence before the Court that the Department is going around singling out Christian providers.” <u>Evidence:</u> Mann Decl., ¶ 7, Ex. 5 [2/2/18 Reporter’s Transcript of Proceedings, 30:6-16].	See Response to # 46.
89. <u>Fact:</u> This Court previously concluded that “[t]here is also no evidence before the court that the State is targeting Christian bakers for Unruh Act enforcement” <u>Evidence:</u> Mann Decl., ¶ 8, Ex. 6 [3/2/18 Order Denying DFEH’s Order to Show Cause Re: Preliminary Injunction, attachment, p. 6 of 8].	See Response to # 47.
90. <u>Fact:</u> This Court previously concluded that the “nature of the proceedings and evidence presented show that the Department, consistent with its mandate, has brought the instant complaint to vindicate a legally cognizable right belonging to the real	See Response to # 35.

1	parties in interest rather than to obtain	
2	an economic advantage over	
3	Defendants.”	
4	<u>Evidence:</u>	
5	Mann Decl., ¶ 6, Ex. 4 [March 27, 2019	
6	Order Denying Defendants Catharine	
7	Miller’s and Tastries’ Anti-SLAPP	
8	Motion to Strike the Complaint, 5:22-	
9	25].	
10	91. <u>Fact:</u>	<u>Objection/Disputed.</u>
11	Defendants allege that “DFEH’s	Defendants object to this “fact” as this
12	interpretation and enforcement of the	statement is defective and in violation of the
13	Unruh Act as applied treat Miller’s and	requirements of California law. (See Cal.
14	Tastries’ decisions to create speech and	Rules of Court, rule 3.1350; <i>Reeves, supra</i> , 121
15	exercise their religious beliefs	Cal.App.4th at 105.) This is not a fact but a
16	differently from those similarly situated	legal conclusion and a description of the
17	to them, thereby violating their equal	procedural history of this case. (See <i>Quiroz,</i>
18	protection rights under the Fourteenth	<i>supra</i> , 140 Cal.App.4th at 1271, fn.16 [“the
19	Amendment.”	determination as to what claim was pleaded
20	<u>Evidence:</u>	by the initial complaint is not a statement of
21	Mann Decl., ¶ 5, Ex. 3 [Defendants’	material fact on which summary adjudication,
22	Verified First Amended Answer to	or anything else, turned. It is rather a legal
23	Plaintiff’s First Amended Complaint,	conclusion properly reached based on an
24	17:3-16].	examination of the four corners of the
25		pleading”].)

Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: October 6, 2021

By:



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Paul M. Jonna

Mark D. Myers

Jeffrey M. Trissell

Robert E. Weisenburger

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Creations, Inc. and Catharine Miller

EXHIBIT 5

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15

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

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

20 Plaintiff,

21 v.

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

24 Defendants.

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

26 Real Parties in Interest.
27
28

CASE NO.: BCV-18-102633

IMAGED FILE

**DECLARATION OF JEFFREY M.
TRISSELL, ESQ. IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

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

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

7 **THE DFEH'S ADMINISTRATIVE INVESTIGATION**

8 2. On October 18, 2017, the Real Parties in Interest Eileen and Mireya Rodriguez-Del
9 Rio filed a complaint against Defendants with Plaintiff DFEH for sexual orientation discrimination.
10 On October 26, 2017, the DFEH informed my clients that they had been placed under
11 administrative investigation.

12 3. With that October 26, 2017 notice, the DFEH propounded over thirty-five
13 administrative interrogatories on Defendants. On November 9, 2017, the DFEH agreed to extend
14 the time for Defendants and my office to respond to those interrogatories from November 25 to
15 December 15, 2017.

16 4. Despite this extension, and without waiting to hear from my clients, on December
17 13, 2017, the DFEH rushed into court and filed a petition for preliminary injunctive relief under
18 Gov. Code, § 12974. That action was titled *Dept. of Fair Employment and Housing v. Miller*, Kern Cty.
19 No. BCV-17-102855. This preliminary injunctive relief was sought solely pending the DFEH's
20 internal administrative investigation.

21 5. The next day, December 14, 2017, the DFEH tried to obtain a temporary restraining
22 order and order to show cause re: preliminary injunction against my clients making custom wedding
23 cakes for opposite-sex weddings unless they made custom wedding cakes for same-sex weddings.
24 We had less than 12 hours to prepare Defendants' defense.

25 6. That same day, the court denied the DFEH's request for a temporary restraining
26 order but scheduled an order to show cause hearing on the DFEH's request for a preliminary
27 injunction for February 2, 2018. At that time, the court ordered that "the Petition is the
28 complaining document in the action, which is equivalent to the Complaint."

1 7. The timing of the DFEH's decision to initiate a petition for preliminary injunctive
2 relief under Gov. Code, § 12974 has always been strange. The DFEH's timing was two days before
3 Defendants planned to respond to the DFEH's interrogatories. However, it was also 10 days after
4 the Supreme Court heard oral argument in *Masterpiece Cakeshop, Ltd v. Colorado Civil Rights*
5 *Comm'n*, No. 16-111, and so it could be inferred that the filing was in response to that oral argument
6 which favored Defendants' constitutional rights.

7 8. As part of its aggressive litigation tactics, on January 10, 2018, the DFEH filed a
8 renewed motion seeking a preliminary injunction that would force Defendants to either create
9 custom cakes expressing messages that violate her faith or none whatsoever.

10 9. In response to the DFEH's motion for a preliminary injunction, my office and
11 Defendants argued that Defendants did not make any distinction on the basis of sexual orientation,
12 but rather their objection is simply to sending a message celebrating any form of marriage except
13 between one man and one woman. Defendants do not wish to send such a message for any person,
14 regardless of their sexual orientation. That remains Defendants' position.

15 10. On February 5, 2018, the court denied the DFEH's motion for a preliminary
16 injunction, unequivocally holding that "[t]he state cannot succeed [on its Unruh Act claim] on the
17 facts presented as a matter of law." (See *Dept. of Fair Employment and Housing v. Miller* (Cal. Super.
18 2018) 2018 WL 747835.)

19 11. Specifically, the Court stated:

20 The State asks this court to compel Miller to use her talents to
21 design and create a cake she has not yet conceived with the
22 knowledge that her work will be displayed in celebration of a
23 marital union her religion forbids. For this court to force such
24 compliance would do violence to the essentials of Free Speech
25 guaranteed under the First Amendment.

26 (*Id.*)

27 12. The DFEH did not appeal the court's ruling. Instead, the agency waited for months,
28 then continued its fruitless investigation of Defendants. On October 17, 2018, the DFEH filed this
instant civil action, containing no new material facts.

13. 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 was not just happened 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.” A true and correct copy of the relevant pages of this hearing transcript is attached as **Exhibit A**.

AUTHENTICATION OF EXHIBITS

14. Attached to the Appendix of Exhibits as **Exhibit 1** is a true and correct copy of the First Amended Complaint, dated November 29, 2018.

15. Attached to the Appendix of Exhibits as **Exhibit 2** is a true and correct copy of Plaintiff DFEH's Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Form Interrogatories, dated January 10, 2020.

16. Attached to the Appendix of Exhibits as **Exhibit 3** is a true and correct copy of Plaintiff DFEH's Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Special Interrogatories, dated January 10, 2020.

17. Attached to the Appendix of Exhibits as **Exhibit 4** is a true and correct copy of Plaintiff DFEH's Further Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Special Interrogatories in Lieu of Requests for Admission, dated January 27, 2020.

18. Attached to the Appendix of Exhibits as **Exhibit 5** is a true and correct copy of Plaintiff DFEH's Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Requests for Production of Documents, dated January 10, 2020.

19. Attached to the Appendix of Exhibits as **Exhibit 6** is a true and correct copy of Plaintiff DFEH's Amended Responses to Defendant Catharine Miller's Form Interrogatories, dated November 8, 2019.

20. Attached to the Appendix of Exhibits as **Exhibit 7** is a true and correct copy of Plaintiff DFEH's Responses to Defendant Catharine Miller's Special Interrogatories [Set One], dated July 24, 2019.

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24. Attached to the Appendix of Exhibits as **Exhibit 11** is a true and correct copy of Plaintiff DFEH's Responses to Defendant Catharine Miller's Requests for Production of Documents [Set Two], dated October 19, 2020.

25. Attached to the Appendix of Exhibits as **Exhibit 12** is a true and correct copy of Plaintiff DFEH's Responses to Defendant Catharine Miller's Requests for Production of Documents [Set Three], dated August 3, 2021.

26. Attached to the Appendix of Exhibits as **Exhibit 13** is a true and correct copy of Relevant Portions and Exhibits of the Deposition of Real Party in Interest Eileen Rodriguez-Del Rio (Eileen Del Rio).

27. Attached to the Appendix of Exhibits as **Exhibit 14** is a true and correct copy of Relevant Portions and Exhibits of the Deposition of Real Party in Interest Mireya Rodriguez-Del Rio (Mireya Rodriguez).

28. Attached to the Appendix of Exhibits as **Exhibit 15** is a true and correct copy of Relevant Portions and Exhibits of the Deposition of Witness Samuel Salazar.

29. Attached to the Appendix of Exhibits as **Exhibit 16** is a true and correct copy of Relevant Portions and Exhibits of the Deposition of Witness Patrick Grijalva Salazar.

30. Attached to the Appendix of Exhibits as **Exhibit 17** is a true and correct copy of Relevant Portions and Exhibits of the Deposition of Witness Jessica Criollo.

1 31. Attached to the Appendix of Exhibits as **Exhibit 18** is a true and correct copy of
2 Relevant Portions and Exhibits of the Deposition of Witness Mary Johnson.

3 32. Attached to the Appendix of Exhibits as **Exhibit 204** is a true and correct copy of
4 Declaration of Jessica Criollo, dated February 19, 2019.

5 33. Attached to the Appendix of Exhibits as **Exhibit 230** is a true and correct copy of
6 photographs of Tastries Bakery cakes.

7 34. Attached to the Appendix of Exhibits as **Exhibit 231** is a true and correct copy of
8 photographs of décor at Tastries Bakery.

9 35. Attached to the Appendix of Exhibits as **Exhibit 254** is a true and correct copy of
10 Declaration of Mary Johnson, dated February 19, 2019.

11 36. Attached to the Appendix of Exhibits as **Exhibit 527** is a true and correct copy of
12 Declaration of Mireya Rodriguez-Del Rio in Support of DFEH's Petition and Ex Parte Application
13 for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction, dated
14 December 7, 2017.

15 37. Attached to the Appendix of Exhibits as **Exhibit 553A** is a true and correct copy of
16 Eileen Rodriguez-Del Rio's Facebook post regarding Tastries Bakery, dated August 26, 2017.

17 38. Attached to the Appendix of Exhibits as **Exhibit 553B** is a true and correct copy of
18 Eileen Rodriguez-Del Rio's Facebook post regarding Tastries Bakery, dated August 26, 2017, with
19 the timestamp of 1:13 p.m. shown.

20 39. Attached to the Appendix of Exhibits as **Exhibit 555A** is a true and correct copy of
21 Eileen Del Rio's Facebook review of Tastries Bakery, dated August 26, 2017, bates numbered
22 CM1903.

23 40. Attached to the Appendix of Exhibits as **Exhibit 555B** is a true and correct copy of
24 Eileen Rodriguez-Del Rio Facebook page.

25 41. Attached to the Appendix of Exhibits as **Exhibit 556** is a true and correct copy of text
26 messages between Samuel Salazar, Patrick Grijalva-Salazar, and Mireya Rodriguez, bates numbered
27 SAM0006-SAM0012.

42. Attached to the Appendix of Exhibits as **Exhibit 559** is a true and correct copy of text messages between Patrick Grijalva-Salazar and Mireya Rodriguez, bates numbered PAT0083-PAT0085.

43. Attached to the Appendix of Exhibits as **Exhibit 564** is a true and correct copy of social media response and threats to Tastries Bakery and Cathy Miller.

44. Attached to the Appendix of Exhibits as **Exhibit 565** is a true and correct copy of photographs of Tastries Bakery vehicle with a smashed window, bates numbered CM1392-CM1393.

45. Attached to the Appendix of Exhibits as **Exhibit 564** is a true and correct copy of Eileen Rodriguez-Del Rio Facebook post, dated August 31, 2017.

46. Attached to the Appendix of Exhibits as **Exhibit 627A** is a true and correct copy of photographs of Eileen and Mireya Rodriguez-Del Rio's wedding, bates numbered DFEH00295-DFEH00299.

47. Attached to the Appendix of Exhibits as **Exhibit 627B** is a true and correct copy of photographs of Eileen and Mireya Rodriguez-Del Rio posted on Facebook by Mireya Rodriguez-Del Rio (“Wen Rod”).

48. Attached to the Appendix of Exhibits as **Exhibit 631** is a true and correct copy of Eileen and Mireya Rodriguez-Del Rio's wedding cake, bates numbered DFEH00175.

I declare until penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on September 8, 2021.


Jeffrey M. Trissell, Esq.

EXHIBIT A

1 Charles S. LiMandri, SBN 110841
cslimandri@limandri.com
2 Paul M. Jonna, SBN 265389
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3 Jeffrey M. Trissell, SBN 292480
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4 Milan L. Brandon II, SBN 326953
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Tel: (312) 782-1680
13 *Application forthcoming

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

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

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

20 Plaintiff,

21 v.

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

24 Defendants.

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

26 Real Parties in Interest.
27
28

CASE NO.: BCV-18-102633

IMAGED FILE

**DECLARATION OF JEFFREY M.
TRISSELL, ESQ. IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION**

Date: Nov. 4, 2021

Time: 8:30 a.m.

Dept: 11

Judge: Hon. David R. Lampe

Action Filed: Oct. 17, 2018

Trial Date: Dec. 13, 2021

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

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

7 **THE DFEH'S ADMINISTRATIVE INVESTIGATION**

8 2. On October 18, 2017, the Real Parties in Interest Eileen and Mireya Rodriguez-Del
9 Rio filed a complaint against Defendants with Plaintiff DFEH for sexual orientation discrimination.
10 On October 26, 2017, the DFEH informed my clients that they had been placed under
11 administrative investigation.

12 3. With that October 26, 2017 notice, the DFEH propounded over thirty-five
13 administrative interrogatories on Defendants. On November 9, 2017, the DFEH agreed to extend
14 the time for Defendants and my office to respond to those interrogatories from November 25 to
15 December 15, 2017.

16 4. Despite this extension, and without waiting to hear from my clients, on December
17 13, 2017, the DFEH rushed into court and filed a petition for preliminary injunctive relief under
18 Gov. Code, § 12974. That action was titled *Dept. of Fair Employment and Housing v. Miller*, Kern Cty.
19 No. BCV-17-102855. This preliminary injunctive relief was sought solely pending the DFEH's
20 internal administrative investigation.

21 5. The next day, December 14, 2017, the DFEH tried to obtain a temporary restraining
22 order and order to show cause re: preliminary injunction against my clients making custom wedding
23 cakes for opposite-sex weddings unless they made custom wedding cakes for same-sex weddings.
24 We had less than 12 hours to prepare Defendants' defense.

25 6. That same day, the court denied the DFEH's request for a temporary restraining
26 order but scheduled an order to show cause hearing on the DFEH's request for a preliminary
27 injunction for February 2, 2018. At that time, the court ordered that "the Petition is the
28 complaining document in the action, which is equivalent to the Complaint."

1 7. The timing of the DFEH's decision to initiate a petition for preliminary injunctive
2 relief under Gov. Code, § 12974 has always been strange. The DFEH's timing was two days before
3 Defendants planned to respond to the DFEH's interrogatories. However, it was also 10 days after
4 the Supreme Court heard oral argument in *Masterpiece Cakeshop, Ltd v. Colorado Civil Rights*
5 *Comm'n*, No. 16-111, and so it could be inferred that the filing was in response to that oral argument
6 which favored Defendants' constitutional rights.

7 8. As part of its aggressive litigation tactics, on January 10, 2018, the DFEH filed a
8 renewed motion seeking a preliminary injunction that would force Defendants to either create
9 custom cakes expressing messages that violate her faith or none whatsoever.

10 9. In response to the DFEH's motion for a preliminary injunction, my office and
11 Defendants argued that Defendants did not make any distinction on the basis of sexual orientation,
12 but rather their objection is simply to sending a message celebrating any form of marriage except
13 between one man and one woman. Defendants do not wish to send such a message for any person,
14 regardless of their sexual orientation. That remains Defendants' position.

15 10. On February 5, 2018, the court denied the DFEH's motion for a preliminary
16 injunction, unequivocally holding that "[t]he state cannot succeed [on its Unruh Act claim] on the
17 facts presented as a matter of law." (See *Dept. of Fair Employment and Housing v. Miller* (Cal. Super.
18 2018) 2018 WL 747835.)

19 11. Specifically, the Court stated:

20 The State asks this court to compel Miller to use her talents to
21 design and create a cake she has not yet conceived with the
22 knowledge that her work will be displayed in celebration of a
23 marital union her religion forbids. For this court to force such
compliance would do violence to the essentials of Free Speech
guaranteed under the First Amendment.

24 (*Id.*)

25 12. The DFEH did not appeal the court's ruling. Instead, the agency waited for months,
26 then continued its fruitless investigation of Defendants. On October 17, 2018, the DFEH filed this
27 instant civil action, containing no new material facts.

13. 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 was not just happened 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.” A true and correct copy of the relevant pages of this hearing transcript is attached as **Exhibit A**.

AUTHENTICATION OF EXHIBITS

14. Attached to the Appendix of Exhibits as **Exhibit 1** is a true and correct copy of the First Amended Complaint, dated November 29, 2018.

15. Attached to the Appendix of Exhibits as **Exhibit 2** is a true and correct copy of Plaintiff DFEH's Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Form Interrogatories, dated January 10, 2020.

16. Attached to the Appendix of Exhibits as **Exhibit 3** is a true and correct copy of Plaintiff DFEH's Supplemental Responses to Defendant Tastries Bakery's Corrected Amended Special Interrogatories, dated January 10, 2020.

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18 (Eileen Del Rio).

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28

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48. Attached to the Appendix of Exhibits as **Exhibit 631** is a true and correct copy of Eileen and Mireya Rodriguez-Del Rio's wedding cake, bates numbered DFEH00175.

I 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 on September 8, 2021.


Jeffrey M. Trissell, Esq.

EXHIBIT A

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SESSIONS

PAGE

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

3

Motion

3

1 BAKERSFIELD, CA; FRIDAY, JUNE 5, 2020

2 AFTERNOON SESSION

3 DEPARTMENT 13 HON. DAVID LAMPE, JUDGE

4 --000--

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

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

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

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

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

18 THE COURT: I have Mr. Trissell.

19 MR. TRISSELL: Yes, Your Honor.

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

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

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

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

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

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

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

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

26 THE COURT: Okay. I understand that.

27 MR. MANN: Okay.

28 THE COURT: I mean, I understand your

1 argument.

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

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

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

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

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

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

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

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

14 THE COURT: All right.

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

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

1 THE COURT: Who just spoke?

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

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

8 Okay. Very good. Thank you.

9 MR. MANN: Thank you, Your Honor.

10 MR. TRISSELL: Thank you Your Honor.

11 MR. CHAN: Thank you, Your Honor.

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

14 --o0o--

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

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

16 Dated this 15th day of June, 2020.

17
18
19 *Virginia A. Greene*
20
21

22 _____
23 Virginia A. Greene, CSR
24 Certified Shorthand Reporter No. 12270
25
26
27
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EXHIBIT 6

FEB 26 2018

FILED
SUPERIOR COURT OF CA, COUNTY OF KERN

MAR 02 2018

TERRY McNALLY, CLERK
BY [Signature] DEPUTY

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

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

Petitioner,

vs.

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

Respondents,

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

Complainants.

Case No. BCV-17-102855


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

(Gov. Code, § 12974)

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



COURT PAPER
State of California

-1-

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

FILED BY FAX

SCANNED

AA00638

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

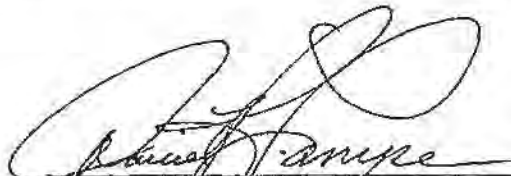
7 Based on the evidence presented, submissions of the parties, the complete file in this matter,
8 the oral argument of the parties, and good cause appearing, it is the order of this Court that
9 Petitioner's Petition for Preliminary Injunction is DENIED. ~~The DFEH brought this civil action~~
10 ~~pursuant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

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

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

25 IT IS SO ORDERED.

26 DATED: 3.2.18

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





Superior Court of California
County of Kern
Bakersfield Department 11

Date: 02/05/2018

Time: 8:00 AM - 5:00 PM

BCV-17-102855

Courtroom Staff

Honorable: David R. Lampe

Clerk: Veronica D. Lancaster

Court reporter: None

Bailliff: NONE

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

Introduction

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

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

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

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

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

BCV-17-102855

AA00640

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

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

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

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

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

Facts

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

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

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

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

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

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

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and with which Miller disagrees.

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

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

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

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

MINUTE ORDER
Page 5 of 8

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

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

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

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

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

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

MINUTE ORDER
Page 6 of 8

Conclusion

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

Ruling Upon Objections

The court rules as follows upon the evidentiary objections presented.

Defendant's Objections:

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

State's Objections:

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

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

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

MINUTE ORDER FINALIZED BY: VERONICA LANCASTER

DATE: FEBRUARY 05, 2018

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

BCV-17-102855

AA00646

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

CERTIFICATE OF MAILING

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

Date of Mailing: February 05, 2018

Place of Mailing: Bakersfield, CA

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

Terry McNally
CLERK OF THE SUPERIOR COURT

Date: February 05, 2018

By:

Verónica Lancaster, Deputy Clerk

MAILING LIST

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

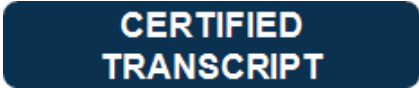
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EXHIBIT 7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN
METROPOLITAN DIVISION
HON. DAVID R. LAMPE, JUDGE, DEPARTMENT 11

--000--



DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING,	)	Pages 1-51
Plaintiff(s),	)	Case No. BCV-17-102855
vs.	)	Bakersfield, California
CATHY MILLER, et al.,	)	FEBRUARY 2, 2018
Defendant(s).	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff:	Department of Fair Employment & Housing By: MR. GREGORY MANN, ESQ. and By: MR. TIMOTHY MARTIN, ESQ. 2218 Kausen Drive, Suite 100 Elk Grove, California 95758
For the Defendant:	Freedom of Conscience Defense Fund By: MR. CHARLES LIMANDRI, ESQ. P.O. Box 9520 Rancho Santa Fe, California 92067

Reported By:	Melissa K. Gum, CSR No. 7438 Official Reporter, RDR, CRR, CRC
--------------	--

1 offends her conscience because she believes it will offend
2 her God, who is quite clear as to how he views the
3 institution of marriage, which he created. That is both
4 speech and free exercise.

5 THE COURT: But -- I hate to be repetitive, but
6 your argument then just went back to free speech.

7 MR. LIMANDRI: Yes. I involved both, and it's hard
8 to separate, but I believe it comes to the same conclusion.
9 If you do the strict scrutiny analysis, which you're
10 required to do when you have pure expressive speech or free
11 exercise of religion --

12 THE COURT: But I don't get to strict scrutiny or
13 any scrutiny on the free exercise issue unless I decide that
14 the free exercise is implicated. I understand your argument
15 about the wedding cake, I do. But if I read the Unruh
16 Act -- I'm trying to reference -- give me just a minute.

17 MR. LIMANDRI: Yes, your Honor.

18 THE COURT: I can't put my finger on it, but the
19 free exercise case that was addressed in the briefing, it's
20 about the common reference to the case. I think it starts
21 with an L, Lubiski?

22 MR. MANN: Lukumi.

23 MR. LIMANDRI: Lukumi. I believe I have that
24 citation.

25 THE COURT: Yeah. Lukumi. Lukumi there was a
26 content of an ordinance or a statute you could look at to
27 say that its application had indirect -- was indirectly a
28 restraint on free exercise because it -- by its terms it

1 referred to ritual slaughter of animals. And here I read
2 the Unruh Act, which is a public accommodation act. It
3 provides, you know, laudable goals of free access to the
4 marketplace, free of discrimination. There's nothing there
5 that by its terms implicates religion, either directly or
6 indirectly, and there's no evidence before the Court that
7 the Department is going around singling out Christian
8 providers. I think perhaps it would be a different case if
9 the Department was on a statewide basis saying Christian
10 here, Christian here, Christian here and only enforcing the
11 law against Christians, wouldn't the Department be doing the
12 same thing if a baker was not a Christian but was an
13 agnostic bigot who just didn't want to do it because the
14 couple was same sex without advancing the religious element?
15 The Department would be in here on -- not the same issue,
16 but they'd be in here asking for the same remedy; right?

17 MR. LIMANDRI: I'm not sure. I can't speak for
18 them. I believe if we look at this -- I'm happy to address
19 that more specifically -- that there is an element of my
20 client being targeted in this case in the sense that there
21 is no reason to rush in for a TRO on the heels of the oral
22 argument in the Masterpiece Cake case two days before my
23 client was responding to 41 interrogatories setting forth
24 her full position on the matter; and if the DFEH had
25 completed their investigation, they'd realize that my client
26 was, in fact, she believes targeted -- we've presented
27 evidence to that -- by the same-sex couple that apparently
28 was going around audio taping people to see if they would

EXHIBIT 8

FILED

KERN COUNTY SUPERIOR COURT
03/27/2019BY Delgado, Erika
DEPUTY

JANETTE WIPPER (#275264)
Chief Counsel
ANTHONY GRUMBACH (#195107)
Associate Chief Counsel
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Attorneys for Plaintiff, DFEH
(Fee Exempt, Gov. Code, § 6103)

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

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

Plaintiff,

vs.

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

Defendants.

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

Real Parties in Interest.

Case No. BCV-18-102633-DRL

~~[PROPOSED]~~ ORDER DENYING
DEFENDANTS CATHARINE
MILLER'S AND TASTRIES' ANTI-
SLAPP MOTION TO STRIKE THE
COMPLAINT

Hearing Date: March 5, 2019
Time: 8:30 a.m.
Dept.: 11
Judge: Hon. David R. Lampe

ORDER

Defendants Catharine Miller's and Tastries' Anti-SLAPP Motion to Strike the Complaint in the above-entitled action came on for hearing on March 5, 2019, at 8:30 a.m. in Department 11 of the Kern County Superior Court, Metropolitan Division, the Honorable David R. Lampe presiding.

Plaintiff Department of Fair Employment and Housing (Department) appeared through its counsel of record, Gregory J. Mann. Defendants appeared through their counsel of record, Charles S. LiMandri.

Based on the evidence presented, submissions of the parties, the complete file in this matter, the oral argument of the parties, and good cause appearing, and as stated in this Court's Minute Order dated March 6, 2019, which is copied and incorporated in its entirety below, it is hereby ORDERED and DECREED as follows:

The court DENIES the motion of defendants Catharine Miller and Cathy's Creations, Inc. d/b/a Tastries to strike the complaint of plaintiff Department of Fair Employment and Housing (Department) under section 425.16 of the California Code of Civil Procedure, known as the anti-SLAPP (strategic lawsuit against public participation) law. In light of this ruling, the court OVERRULES the Department's objections to Defendants' evidence, and Defendants' objections to the Department's objections to Defendants' evidence, as moot.

As to Defendants' objections to the Department's evidence, this Court OVERRULES objections 1, 8, 10, 11, 13, 16-21, 24, 25, 28, 30, 35, 40-42, and 44-46. The court also OVERRULES objections 3-4 and notes that hearsay exceptions would apply under section 1220 of the Evidence Code (admission of a party) and/or section 1221 (adoptive admission). Next, the court OVERRULES objections 2, 5, and 9, and notes that Defendants' "sham declaration" arguments are impeachment matters that go to weight and not admissibility.

In addition, this Court OVERRULES objections 14, 22, and 51. "[V]iolation of duty to protect Miller's rights" is not a recognized evidentiary objection, and Defendants' claims that simple statements of fact concerning baking practices "drip[] with the DFEH's animus and anti-religious bigotry" amount to gross hyperbole. To the extent Defendants' true concern is with trade secrets, section 1060 would have provided recourse.



1 The court SUSTAINS the following objections based on the grounds asserted: 7, 15, 23, 26-
2 27, 29, 31, 32, 34, 36-37, 39, 43, and 47-50. The court also SUSTAINS objections 6, 12, and 33 on
3 relevance grounds, and objection 38 for lack of foundation.

4 The court OVERRULES Defendants' remaining objections to the extent not expressly
5 discussed herein.

6 The court OVERRULES Defendants' objections to the ten-point footnotes in the
7 Department's opposition brief and request for striking of the same based on "the guiding principle of
8 deciding cases on their merits rather than on procedural deficiencies." [Citation.]" (*Oliveros v. County*
9 *of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.) As Defendants have had a full opportunity to
10 rebut the contents of these footnotes in their reply brief and have not petitioned this court for
11 additional pages to respond, they can claim no prejudice or due process violation resulting from the
12 noncompliance. The court further notes a rough parity in overall content based on the Department's
13 use of 28 double-spaced lines per page and Defendants' use of 37 lines per page using 1.5 spacing.
14 The court recognizes the length and wordiness of some of the footnotes and gives them the weight
15 they deserve.

16
17 **I. Procedural History**

18 In December 2017, the Department initiated an action (case number BCV-17-102855) under
19 section 12974 of the Government Code on its own behalf and on behalf of real parties in interest
20 Eileen and Mireya Rodriguez-Del Rio, seeking temporary and preliminary relief under the Unruh
21 Civil Rights Act as incorporated into the Fair Employment and Housing Act.

22 The court declined to provide temporary relief but overruled a subsequent demurrer by
23 Defendants. Defendants opposed the request for preliminary relief based on the Free Exercise
24 Clauses of the United States and California constitutions, and the Free Speech Clause of the United
25 States Constitution. The court denied the Department's motion for preliminary relief based solely on
26 the merits of Defendants' Free Speech defense.

27 ///

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1 Following denial of preliminary relief but before entry of judgment, Defendants brought an
2 anti-SLAPP motion, which this court denied in an order entered May 1, 2018. As stated in that order,
3 the Fifth District has articulated the following standard for evaluating an anti-SLAPP motion:

4 Section 425.16 was enacted in 1992 to provide a procedure for expeditiously
5 resolving “non-meritorious litigation meant to chill the valid exercise of the
6 constitutional rights of freedom of speech and petition in connection with a
7 public issue. [Citation.]” (*Sipple v. Foundation for Nat. Progress* (1999) 71
8 Cal.App.4th 226, 235, 83 Cal.Rptr.2d 677.) It is California’s response to
9 meritless lawsuits brought to harass those who have exercised these rights.
10 (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 644, 49
11 Cal.Rptr.2d 620, disapproved on another ground in *Equilon Enterprises v.*
12 *Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5, 124 Cal.Rptr.2d 507, 52
13 P.3d 685 (*Equilon Enterprises*.) This type of suit, referred to under the acronym
14 SLAPP, or strategic lawsuits against public participation, is generally brought to
15 obtain an economic advantage over the defendant, not to vindicate a legally
16 cognizable right of the plaintiff. (*Kajima Engineering & Construction, Inc. v.*
17 *City of Los Angeles* (2002) 95 Cal.App.4th 921, 927, 116 Cal.Rptr.2d 187.)

18 When served with a SLAPP, the defendant may immediately move to strike the
19 complaint under section 425.16. To determine whether this motion should be
20 granted, the trial court must engage in a two-step process. (*City of Cotati v.*
21 *Cashman* (2002) 29 Cal.4th 69, 76, 124 Cal.Rptr.2d 519, 52 P.3d 695 (*City of*
22 *Cotati*.)

23 The court first decides whether the defendant has made a threshold showing that
24 the challenged cause of action is one “arising from” protected activity. (*City of*
25 *Cotati, supra*, 29 Cal.4th at p. 76, 124 Cal.Rptr.2d 519, 52 P.3d 695.) The
26 moving defendant must demonstrate that the act or acts of which the plaintiff
27 complains were taken “in furtherance of the [defendant’s] right of petition or free
28 speech under the United States Constitution or the California Constitution in
connection with a public issue....” (§ 425.16, subd. (b)(1); *Equilon Enterprises,*
supra, 29 Cal.4th at p. 67, 124 Cal.Rptr.2d 507, 52 P.3d 685.) If the court
concludes that such a showing has been made, it must then determine whether
the plaintiff has demonstrated a probability of prevailing on the claim. (*Navellier*
v. Sletten (2002) 29 Cal.4th 82, 88, 124 Cal.Rptr.2d 530, 52 P.3d 703
(*Navellier*.)

To establish the requisite probability of prevailing, the plaintiff need only have
“stated and substantiated a legally sufficient claim.”” (*Navellier, supra*, 29
Cal.4th at p. 88, 124 Cal.Rptr.2d 530, 52 P.3d 703.) “Put another way, the
plaintiff “must demonstrate that the complaint is both legally sufficient and
supported by a sufficient prima facie showing of facts to sustain a favorable
judgment if the evidence submitted by the plaintiff is credited.”” (*Id.* at pp. 88–
89, 124 Cal.Rptr.2d 530, 52 P.3d 703.) The plaintiff need only establish that his
or her claim has minimal merit to avoid being stricken as a SLAPP. (*Soukup v.*
Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291, 46 Cal.Rptr.3d 638,
139 P.3d 30 (*Soukup*.) Nevertheless, a plaintiff cannot simply rely on his or her
pleadings, even if verified. Rather, the plaintiff must adduce competent,
admissible evidence. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105
Cal.App.4th 604, 614, 129 Cal.Rptr.2d 546.)

(*Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 479-480.)



1 The court declined to rule on the first prong, finding instead that the Department's case had
2 minimal merit necessary to survive an anti-SLAPP motion under the second prong. The court noted
3 the Department's mandate to enforce anti-discriminatory public accommodation laws and found that
4 "Defendant's conduct was discriminatory, and fell within the ambit of the law and may be actionable
5 if not otherwise constitutionally protected." That same day (May 1, 2018), the court entered judgment
6 for Defendants under Government Code section 12974.

7 In September 2018, the court granted in part and denied in part a motion to enforce judgment
8 brought by Defendants, finding that its decision on the merits of the constitutional defense was
9 plenary in nature while recognizing that it was "necessarily based upon the facts which are known or
10 knowable at the time it is rendered." Accordingly, the court allowed the Department to continue its
11 investigation and concluded "that any such further proceeding should be brought before this court in
12 the nature of action or petition for modification of the court's original judgment."

13 The Plaintiff sought a writ from the Fifth District concerning the court's September 2018
14 order. Pending final resolution of Defendants' petition, the Fifth District stayed the court's order and
15 specifically noted "that petitioner may continue its investigation and file a complaint pursuant to
16 Government Code section 12965." The appellate matter remains pending (case number F078245).

17 The Department filed a complaint in October 2018 and an amended complaint in November
18 2018. Defendants then filed the instant anti-SLAPP motion.

19 **II. Legal Analysis**

20 As an overarching principle and before turning to the two-pronged test under the anti-SLAPP
21 law, the court reiterates its previous conclusion that "[t]his does not appear to be the type of action
22 addressed by section 425.16." The nature of the proceedings and evidence presented show that the
23 Department, consistent with its mandate, has brought the instant complaint to vindicate a legally
24 cognizable right belonging to the real parties in interest rather than to obtain an economic advantage
25 over Defendants. Moreover, as the Fifth District's interim order authorized the instant complaint
26 pending final resolution of the writ proceeding, a decision from this court granting the anti-SLAPP
27 motion could be viewed as conflicting.

28 Regardless, the two-pronged test confirms that SLAPP relief is unwarranted.



1 **A. A Determination Under the First Prong of the Anti-SLAPP Law Is Unnecessary.**

2 Defendants claim that their refusal to fill the order for the Rodriguez-Del Rios' wedding cake
3 amounted to "conduct in furtherance of the exercise of the constitutional right of . . . free speech in
4 connection with . . . an issue of public interest" protected under the statute's first prong. (Code Civ.
5 Proc., § 425.16(e)(4).)

6 The Supreme Court recently recognized that the anti-SLAPP law "uses certain open-ended
7 terms that raise nuanced questions of interpretation," and accordingly endeavored "to clarify the
8 scope of the statute." (*Rand Resources, LLC v. City of Carson* (Feb. 4, 2019, S235735) __ Cal.5th __
9 [2019 WL 418745 at pp. *5, *8].) To this end, it affirmed that "a topic of widespread, public interest"
10 falls "within the ambit of" the first prong, but only where "the defendant's act underlying the
11 plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free
12 speech." (*Id.* at p. *5 (quotation marks omitted).) It is not sufficient that a claim "was filed after, or
13 because of, protected activity, or when protected activity merely provides evidentiary support or
14 context for the claim," unless the activity supplies an element of the challenged claim. (*Ibid.*)

15 "[W]hile discrimination may be carried out by means of speech . . . and an illicit animus may
16 be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from
17 speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the
18 plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory
19 consideration." (*Park v. Bd. of Trustees of Cal. State U.* (2017) 2 Cal.5th 1057, 1066.) "Conflating, in
20 the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or
21 evidencing discriminatory animus could render the anti-SLAPP statute 'fatal for most harassment,
22 discrimination and retaliation actions against public employers.' [Citation.]" (*Id.* at p. 1067.)

23 Thus, there is certainly an argument to be made under the first prong on the Department's
24 side. Assuming *arguendo* that Defendants' activity satisfies the first prong, the Department's
25 complaint nevertheless has minimal merit.

26 ///

27 ///

28 ///



B. The Department's Complaint Has at Least Minimal Merit.

Defendants raises three arguments under the second prong of the anti-SLAPP law:

First, [the Department's] complaint is barred by principles of res judicata and collateral estoppel because the main issue has already been adjudicated. The issue of whether Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery [sic], has already been found constitutional. Second, intervening case law makes clear that Miller did not discriminate on the basis of *sexual orientation*, but rather refused to announce a specific message, which is not something prohibited by the Unruh Act. Third, if this Court were to look past res judicata, and re-examine its prior holding, its substance remains valid—Miller's decision not to make the cake is constitutionally protected.

As Defendants rely on their characterization of the court's prior rulings, a review of the same is in order.

1. This Court's Prior Rulings

Prior to applying a rule to the facts of a particular case “[i]t is, emphatically, the province and duty of the judicial department, to say what the law is.’ (*Marbury v. Madison* (1803) 1 Cranch 137, 5 U.S. 137, 177, 2 L.Ed. 60.)” (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 469-470.)

In evaluating the Department's entitlement to preliminary relief under Government Code section 12974, this court first had to examine the tension between the Unruh Civil Rights Act and the Free Speech Clause of the First Amendment and to determine, as a matter of statutory and constitutional interpretation, the extent to which one must yield to the other. It is this determination that the court views as final—its finding that the constitutional right to free speech supersedes the ability of the Department to enforce the Unruh Civil Rights Act against otherwise discriminatory practices in certain circumstances; in other words, that the Unruh Civil Rights Act may be unconstitutional as applied.

Exploring this principle's constraints, the court pronounced a legal test of general applicability as to compelled expression, a test which stands or falls apart from the particular facts of this case. To wit, does the factual scenario involve a baker's mere refusal to sell an existing cake made available for public sale, or to provide cake-baking services not fundamentally founded upon speech, based on the baker's perception of the customer's gender identification? Or does it concern,



1 instead, a baker refusing to use her talents to design and create an artistic work not yet conceived,
2 with knowledge that others will deem such work an endorsement of same-sex marriage, when she
3 does not wish to convey and does not condone that message?

4 The court’s ruling was plenary in its announcement of the applicable legal standard as to co-
5 opted speech, because understanding the legal standard is a prerequisite to resolving any specific case
6 or controversy between real parties in interest.

7 While the court also applied its test to the facts it had in front of it based on the Department’s
8 preliminary investigation, it never intended by entering judgment to foreclose the Department’s
9 ability to complete its full investigation and see the matter through to its logical conclusion, as
10 contemplated by the Government Code. Indeed, the court’s order on the motion to enforce judgment
11 explicitly stated that “[t]he DFEH is not foreclosed from reasonably investigating the factual
12 underpinnings of this court’s adjudication, provided that the investigation proceeds in a lawful and
13 legitimate manner.” Instead, its entry of judgment, and ruling on the motion to enforce judgment,
14 resulted from the application of simple logic in ascertaining the path the legislature intended the
15 Department to follow under the Government Code, in light of section 12974’s unique statutory
16 scheme.

17 It is an “elementary rule” of statutory construction that “statutes in pari materia—that is,
18 statutes relating to the same subject matter—should be construed together.” (*Droeger v. Friedman,*
19 *Sloan & Ross* (1991) 54 Cal.3d 26, 50.) In so doing, the court must harmonize these statutes “both
20 internally and with each other” and avoid an interpretation that would produce “absurd results[.]”
21 (*Tuolumne Jobs & Small Business Alliance v. Super. Ct.* (2014) 59 Cal.4th 1029, 1037 (quotation
22 marks omitted).)

23 Additionally, as a “general rule” it is well established that “one trial judge cannot reconsider
24 and overrule an order of another trial judge. [Footnote.]” (*People v. Riva* (2003) 112 Cal.App.4th
25 981, 991.) “[I]mportant public policy reasons” underlie this rule, including to avoid “plac[ing] the
26 second judge in the role of a one-judge appellate court.” [Footnote.]” (*Ibid.*) “The rule also
27 discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a
28 case ongoing before another judge and prevents a second judge from ignoring or arbitrarily rejecting



1 the order of the previous judge which can amount to a violation of due process.” (*Ibid.* (footnotes
2 omitted).)

3 At the same time, however, another rule holds that one trial court cannot bind a second trial
4 court “called upon to rule on the same issue”—

5 This is akin to saying that the first trial court to rule on a particular issue
6 establishes the “law of the case.” This doctrine, however, does not apply to
7 rulings of the trial court. (9 Witkin; Cal. Procedure (4th Ed.1997) § 896, p. 930;
8 *Provience v. Valley Clerks Trust Fund* (1984) 163 Cal.App.3d 249, 256, 209
9 Cal.Rptr. 276.)

10 (*People v. Sons* (2008) 164 Cal.App.4th 90, 100 (hereafter *Sons*).)

11 There is one “obvious” solution: “Once a designated trial court hears a matter, it should
12 continue to hear it, including retrials, until final judgment is rendered.” (*Sons, supra*, 164 Cal.App.4th
13 at p. 100 n.7.)

14 Applying these rules, the court’s reading of section 12965 together with section 12974 was
15 necessary to avoid the absurd potential for nullification of the court’s prior ruling as to the applicable
16 legal standard were a new complaint assigned to a different judge. While the court stands by its
17 theoretical analysis of the procedural aspects of sections 12974 and 12965, the formal complaint that
18 the Fifth District authorized (at least temporarily) in the writ proceeding has been assigned to this
19 court, assuaging the court’s concerns as a practical matter.

20 The court has spoken conclusively as to the applicable legal test but has made only
21 preliminary pronouncements on a limited record as to the application of that test to the case at bar
22 (finding that the Department “could not succeed on the facts presented” while recognizing that the
23 factual record was subject to further development).

24 With this background in mind, the court turns now to Defendants’ arguments under the
25 second prong of the anti-SLAPP law.

26 **2. Res Judicata and Collateral Estoppel**

27 The court entered judgment in May 2018 because it had resolved all matters then in front of it
28 and sought to preserve its constitutional analysis, and followed up with its September 2018 order on
the motion to enforce judgment.



1 As a jurisdictional matter, the court may issue a ruling on the anti-SLAPP motion despite
2 pending proceedings before the Fifth District, as that proceeding involves a writ not subject to the
3 automatic stay in section 916 of the Code of Civil Procedure, as opposed to a direct appeal. (*In re*
4 *Brandy R.* (2007) 150 Cal.App.4th 607, 609-610.)

5 Even so, it is not necessary for this court to take up the question of whether the May 2018
6 judgment and the court's ruling on the issues presented therein were "final" and "on the merits," (*Cf.*
7 *Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 12 [noting that the terms
8 "judgment" and "final judgment" "are meaningless unless qualified by context, i.e., a judgment may
9 be final, but modifiable at the trial level, or final for the purpose of appeal. (See 4 Witkin, Cal.
10 Procedure (2d ed. 1971) Judgment, § 2, pp. 3182-3183.)"].) Regardless, the doctrines of *res judicata*
11 and collateral estoppel are not impediments to the Department's probability of success in the instant
12 matter.

13 "[A] court may not give preclusive effect to the decision in a prior proceeding if doing so is
14 contrary to the intent of the legislative body that established the proceeding in which *res judicata* or
15 collateral estoppel is urged." [Citation.]" (*Pacific Lumber Co. v. State Water Resources Control Bd.*
16 (2006) 37 Cal.4th 921, 945.) In other words, all or part of a claim "subsists as a possible basis for a
17 second action by the plaintiff against the defendant" where "it is the sense of the [statutory or
18 constitutional] scheme that the plaintiff should be permitted to split his claim," as illustrated by the
19 following scenario—

20 For nonpayment of rent, landlord A brings a summary action to dispossess tenant
21 B from leased premises. A succeeds in the action. A then brings an action for
22 payment of the past due rent. The action is not precluded if, for example, the
23 statutory system discloses a purpose to give the landlord a choice between, on
the one hand, an action with expedited procedure to reclaim possession which
does not preclude and may be followed by a regular action for rent, and, on the
other hand, a regular action combining the two demands.

24 (Rest.2d Judgments, § 26, com. e, illus. 5; *cf. Samara v. Matar* (2018) 5 Cal.5th 322, 331-332
25 [favorably citing the Restatement (Second) of Judgments].) This example is on point.

26 Defendants describe "the main issue" as "Miller's practice of referring individuals who seek a
27 cake which would celebrate a message which Miller finds offensive to another bakery." As discussed



1 above, the court's ruling on the merits of Defendants' Free Speech defense was based on a
2 preliminary record. The court agreed that the Government Code contemplated further investigation
3 by the Department and the potential for further court proceedings upon "final disposition" of its
4 internal review, whether through a motion for modification of judgment or the new complaint. (Gov.
5 Code, § 12974.) Further, the initial proceeding was an expedited matter seeking preliminary relief
6 while the instant complaint presents a regular action that also demands actual and punitive damages.
7 Thus, despite ambiguities in the legislature's intended execution of the mechanics of this scheme as
8 identified by this court, it is clear that giving preclusive effect to the judgment at issue would violate
9 the legislature's design.

10 Moreover, as previously noted, assignment of the new complaint to the undersigned has
11 satisfied the procedural concerns the court otherwise would have had with maintaining judicial
12 integrity.

13 3. Minimal Merits Analysis – Free Speech

14 Defendants' citation to case law from the United Kingdom provides no basis for the court to
15 reconsider its prior finding under settled California jurisprudence that Defendants' refusal to fill the
16 Rodriguez-Del Rios' order for a wedding cake amounted to discrimination on the basis of sexual
17 orientation within the ambit of the Unruh Civil Rights Act that would be actionable absent a viable
18 constitutional defense.

19 Nevertheless, this court previously determined under strict scrutiny (and based on the limited
20 factual record in front of it) that "[t]he State cannot meet the test that its interest outweighs the Free
21 Speech right at issue in this particular case, or that the law is being applied by the least restrictive
22 means."

23 Here, the focus of the parties' minimal merits analysis is the threshold question of whether
24 Defendants' refusal to fill the order for the Rodriguez-Del Rios' wedding cake was expressive,
25 amounting to protected speech.

26 While the Department would normally have the burden of substantiating its case under section
27 425.16, there is conflicting case law as to whether their advancement of an affirmative defense shifts
28 the burden to Defendants for purposes of an anti-SLAPP motion. (*Dickinson v. Cosby* (2017) 17

1 Cal.App.5th 655, 683.) “What is important is that, regardless of the burden of proof, the court must
2 determine whether the plaintiff can establish a prima facie case of prevailing, or whether the
3 defendant has defeated the plaintiff’s evidence as a matter of law.” (*Ibid.*)

4 The parties have identified no intervening case law that would control the court’s analysis,
5 although intervening dicta has bolstered the validity of the court’s test differentiating between the
6 simple denial of goods and the creation of expressive works. The Supreme Court recently stated the
7 following:

8 [I]f a baker refused to sell any goods or any cakes for gay weddings, that would
9 be a different matter and the State would have a strong case under this Court’s
10 precedents that this would be a denial of goods and services that went beyond
11 any protected rights of a baker who offers goods and services to the general
12 public and is subject to a neutrally applied and generally applicable public
13 accommodations law.

14 (*Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Com.* (2018) 138 S.Ct. 1719, 1728.) In a
15 concurrence, two justices affirmed the distinction between “whether [a baker] had refused to create a
16 custom wedding cake for the [same-sex couple] or whether he refused to sell them *any* wedding cake
17 (including a premade one).” (*Id.* at p. 1740 (Thomas, J. & Gorsuch, J., concurring).)

18 The Department now argues that the facts developed from its continuing investigation show
19 (1) the Rodriguez-Del Rios sought to purchase a cake that, while labeled as “custom,” was equivalent
20 to a premade, or store-bought display cake, (2) Defendants nevertheless refused to sell to them, and
21 (3) Defendants had a policy of refusing to supply wedding cakes for same-sex couples regardless of
22 whether or not those cakes were custom, such that the Rodriguez-Del Rios would not have been able
23 to purchase *any* wedding cake from Defendants. In other words, the Department argues that
24 Defendants’ actions amounted to a complete denial of goods or services.

25 The Department has supplied sufficient admissible evidence in this respect to substantiate a
26 *prima facie* case if accepted as true (leaving aside conflicting evidence proffered by Defendants and
27 making no determination on the merits).

28 ///

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///



1 **4. Minimal Merits Analysis – Free Exercise**

2 In the court’s ruling on the request for preliminary relief, it stated the following:

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

13 Defendants essentially concede the minimal merit of Plaintiff’s complaint under the Free
14 Exercise Clause of the United States Constitution by admitting that the Free Exercise Clause no
15 longer “relieve[s] an individual of the obligation to comply with a valid and neutral law of general
16 applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes
17 (or proscribes).”

18 Assuming *arguendo* that strict scrutiny would apply under the Free Exercise Clause of article
19 I, section 4 of the California Constitution, the minimal merits analysis would require evidence that
20 application of the Unruh Civil Rights Act (1) does not substantially burden a religious belief or
21 practice, or (2) represents the least restrictive means for achieving a compelling government interest.
22 (*North Coast Women’s Care Medical Group, Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1158
23 (hereafter *North Coast*) [finding where a physician had refused to provide certain fertility treatment a
24 same-sex couple that the Act furthered “California’s compelling interest in ensuring full and equal
25 access to medical treatment irrespective of sexual orientation, and there are no less restrictive means
26 for the state to achieve that goal”].)

27 First, the court has already found it to be an open question as to whether Defendants’ actions
28 could even qualify as a religious practice. The unsettled nature of the law in this area supports a
29 finding of minimal merit. Second, assuming the likelihood that Defendants can establish a substantial
30 burden on a religious belief or practice, the Department’s evidence discussed above goes to the
31 question of least restrictive means by asking whether the Rodriguez-Del Rios are seeking to compel
32 Defendants to bake a custom wedding cake for their same-sex celebration or merely to sell them a

1 cake that Defendants would ordinarily sell to other customers. Thus, the Department's evidence in
2 this regard is sufficient to substantiate a *prima facie* case to the same extent as discussed above in the
3 Free Speech context. Moreover, the question of the Department's compelling state interest in
4 preventing discrimination in public accommodations is unsettled but passes minimal merit in light of
5 the *North Coast* case.

6 **III. Conclusion**

7 For the foregoing reasons, the court denies Defendants' anti-SLAPP motion.

8
9 IT IS SO ORDERED.

10
11
12 DATED: _____ Signed: 3/27/2019 01:50 PM



HON. DAVID R. LAMPE
JUDGE OF THE SUPERIOR COURT



EXHIBIT 9

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

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

v.

Defendants.

Real Parties in Interest.

Action Filed: December 13, 2017

1 I, REINA BENITEZ, declare as follows:

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

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

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

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

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

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

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

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

6
7
8 
9 Reina Benitez

EXHIBIT 10

1 Charles S. LiMandri, SBN 110841
Paul M. Jonna, SBN 265389
2 Teresa L. Mendoza, SBN 185820
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6 Attorneys for Defendants CATHY'S
7 CREATIONS, INC. d/b/a TASTRIES,
a California Corporation; and CATHY
8 MILLER, an individual.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF KERN

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

15 Plaintiff,

16 v.

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

19 Defendants.
20

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

23 Real Parties in Interest.
24
25
26
27
28

) CASE NO.: BCV-17-102855

) **IMAGED FILE**

) **DECLARATION OF CATHARINE**
) **MILLER IN SUPPORT OF OPPOSITION**
) **TO OSC RE PRELIMINARY**
) **INJUNCTION**

) Date: February 2, 2018
) Time: 1:30 p.m.
) Dept: 11

) Judge: Hon. David R. Lampe

) Action Filed: December 13, 2017

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

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

5 **Authentication**

6 2. Attached hereto as **Exhibit A** is a true and correct copy of my responses to the
7 Department of Fair Employment & Housing's interrogatories which I provided to them on
8 December 15, 2017. Everything contained therein is true and correct to the best of my knowledge.

9 **Overview of My Sincerely Held Religious Beliefs**

10 3. I am a creative designer who owns and operates Cathy's Creations, Inc., doing
11 business as "Tastries," a small bakery in Bakersfield, California. I am the 100% shareholder of
12 Tastries. I have used my creative talents in many ways over the years: through music, elementary
13 education, floral arrangements, interior design, and event planning. I have always had a unique
14 ability to provide inspiring and creative vision to every project and service. With Tastries, I direct a
15 team of culinary artists who, by creating a vast selection of artistic bakery designs, help enrich my
16 clients' life celebrations.

17 4. I am a practicing Christian and woman of deep faith; I seek to honor God in all
18 aspects of my life. This includes how I treat people and how I run my business. I believe God has
19 called me to abide by His precepts that He set forth in the Bible. In other words, I strive to honor
20 God by making my life edifying to Him. As a Christian, I desire my life to be one of grace, love,
21 compassion, and truth. Among the fundamental principles of my faith is the belief that God
22 designed marriage to be between a man and a woman. Accordingly, this belief guides Tastries'
23 marriage-related products and services. I understand that others may hold views that are different
24 from mine (including customers and employees), but I do not require anyone to share this view as a
25 condition for service or employment.

26 5. My faith also teaches me to welcome and serve everyone. And I do. I welcome
27 people from all lifestyles, including individuals of all races, creeds, gender identities, and sexual
28 orientations. In other words, I offer my artistic vision to create specially designed custom cakes and

1 desserts for anyone. I eagerly seek to serve all people, but I cannot design custom cakes that
2 express ideas or celebrate events that conflict with my core religious beliefs. Specifically, my
3 decisions on whether to design a custom cake never focus on the client's identity. Rather, they
4 focus on what the custom cake will express or celebrate. These limitations on my custom work
5 have no bearing on my premade items, which were not made for any specific purpose or message
6 and are available to all customers for any use they may choose.

7 6. On the other hand, there are many custom cakes that I will not create. For example, I
8 will not design cakes that celebrate divorce, or that contain explicit sexual content, satanic symbols,
9 or demonic images. Nor will I design cakes that demean people for any reason-including their sexual
10 orientation, or promote violence, drunkenness, drug abuse, racism, or any other message that
11 conflicts with my fundamental Christian principles. This policy applies across the board, and my
12 custom wedding cakes are no exception. They are my artistic expression because, through them, I and
13 my business communicate a message of profound importance to me. For example, my custom
14 wedding cakes announce a basic message: this event is a wedding, and the couple's union is a
15 marriage. They also declare an opinion: the couple's wedding and marriage should be celebrated.
16 These expressions have a lasting value through pictures presenting the wedding cake as a centerpiece
17 of the celebration. Therefore, whenever I create a custom wedding cake, I am expressing a message
18 about marriage.

19 7. Like many Christians, I believe that marriage is a sacred union between one man
20 and one woman. I also believe, in accordance with the Bible's teachings, that marriage represents
21 the relationship between Jesus Christ and His Church. Weddings signify that the "two [have]
22 become one flesh" and that no one should separate "what God has joined together." (Mark 10:8-9.)
23 Regardless of whether my wedding clients plan an overtly religious event, I believe that all
24 weddings are sacred and that they create an inherently religious relationship. Thus, I would
25 consider it sacrilegious to express through my designs an idea about marriage that conflicts with
26 my religious beliefs. For this reason, I cannot provide custom wedding products and services that
27 celebrate any form of marriage other than the Biblical model of a husband and wife.

28 ///

The Design Process for Creating a Tastries Wedding Cake

8. I participate in every part of the custom cake design and creation process. I (or one of my team members) visits with every prospective client who seeks a custom-designed wedding cake. During this meeting, I and my client develop specific features of the custom wedding cake; the overall process usually takes between one and two hours. In this meeting, I first learn about the overall theme, color palette, venue, and style for the wedding. Then we turn to the details of the cake. Once this design process is complete and the client wishes to commission me for the custom wedding cake, I and my client complete the order form. The order will usually include details of delivery and set-up at the wedding venue. I deliver some custom wedding cakes to wedding celebrations. But my husband, Mike Miller, delivers most of them.

9. I have coordinated weddings for which I also created the custom wedding cake. I was an event coordinator before purchasing the bakery; indeed, my involvement in event services is what motivated me to purchase the bakery. Due to my responsibilities with the bakery, I am not coordinating as many events now as I have in the past. Whenever I coordinate a wedding, I invest approximately 20 to 30 hours meeting with the couple, at least 30 hours designing, researching, and retrieving the decor, and between 10 to 100 hours (depending on the event) decorating the venue and coordinating rehearsals and the event itself. For large events, I will bring team members to assist me.

10. My custom wedding cakes are often delivered close to the time that the event begins. Mike, me, or one of my team members will often be seen during delivery and set-up. Guests will ask who designed the cake, and I will receive follow-up custom cake requests from wedding guests. Some clients even ask for my business cards to display at the reception. They know that their custom wedding cake will stand as the iconic centerpiece of the wedding celebration and that some of their friends will want to know who designed it. My clients often share my contact information with those who are interested in commissioning my artistic services.

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Tastries' and Gimme Some Sugar's Reasonable Accommodation

11. In the summer of 2016, I contacted Stephanie Caughell-Fisher at Gimme Some Sugar after a same-sex couple booked a cake with me. I met with Stephanie at her shop and I recall the following conversation:

- a. I knew she was an amazing decorator. The only other time I had been in her shop, I had asked her if she was ever interested, I would love to have her work at Tastries. Stephanie said, "My dream is to have a little French Bakery in Europe, but if you ever need help just let me know, and I would be happy to help you on busy weekends or any other time." We had also seen each other at the Sugar Festival and a few other events.
- b. I told her I had a situation and needed help. I was upset because I could not do a cake for a same-sex couple who had come to the bakery. I told her, "Stephanie I am not sure what to do, and I don't want to offend you, but at the same time I am hoping we can work together. I have two men who would like me to do their wedding cake and I just can't do it. I know you are in a relationship with another woman, I know that we both are Christians and we see things differently, but would you be willing to do their cake? I don't want to hurt anyone, but with my Christian beliefs I just can't bake the cake, but I want to help them get what they need." She came around the counter and hugged me. By then we were both teary-eyed and we talked about our beliefs. She said, "I totally understand how you feel because you are just like my mother. She loves me but does not understand my relationship." We talked about our religious convictions and understood each other. Again she said, "I totally understand, my mother and you think the same way. It is ok." Then she said, "Why don't you just send me their contact information and I can give them a call. Here are my business cards, you can just refer your clients to me, I understand." She went behind the counter, gave me her business cards. I was choked up and very appreciative. I thanked her and told her I would bring their order form and deposit by.

12. I have since referred three couples to Stephanie. All of them were very understanding of my sincerely held religious beliefs about marriage, and two of them continue to frequent the bakery.

13. This policy is rationally related to Tastries' business because, as a bakery with a third of its business relating to the wedding industry, Tastries necessarily comes into close contact with religion. The policy ensured that Tastries' employees' free exercise of religion interests, and same-sex couples' interests in obtaining a wedding cake, were both met. The policy was not based on animus towards people of sexual orientation, but rather based on accommodating Tastries' employees' interests in the free exercise of religion.

Summary of the Incident

14. I welcomed Mireya and Eileen Rodriguez Del-Rio to my cake shop on August 26, 2017, just like I would any other prospective client. They came into the shop with an older woman and joined a couple of men who were already there. This was not unusual; I often meet with couples along with members of the wedding party. I believed these five were the bride and groom along with the maid of honor, the best man, and a mother. But it was unusual that no one began filling out the custom cake request form or wished to sample the cupcakes that had been prepared for tasting.

15. So, I asked for some details. Mireya told me that she wanted a custom three-tiered wedding cake with decorative ribbon and two sheet cakes with matching finish. I then asked Mireya to fill out the custom cake request form. Mireya said that Eileen would do it. As I handed the clipboard with the form to Eileen, I asked, "Which one of you is the groom?" One of the men pointed to Eileen and said, "She is." I turned to Eileen, who was filling out the custom cake request form. Eileen laughed and said, "I still have trouble remembering to write Rodriguez-Del Rio." This perplexed me. Ordinarily, people change names after they marry, not before. So, I asked where they were getting married. They said, "At the Metro." I asked some other general questions like "What time are you getting married?" and "Did you get the early or late set-up time at the Metro?" But Mireya and Eileen had difficulty answering these questions. It appeared that they were thinking about these details for the first time.

1 16. Because of this, I questioned the sincerity of this custom cake request. In any event,
2 I knew that I could not create custom cakes to celebrate and promote a same-sex wedding. So, I
3 assumed the best and politely declined the opportunity to create the requested custom cakes. I then
4 referred Mireya and Eileen to another cake artist who could create them. I also invited them to
5 sample the cake flavors. But suddenly, one of the men startled me by reaching over my shoulder to
6 grab the order form. Then the group abruptly left the shop. I later learned that the two men had
7 signed up for a cake tasting at a separate time. She also learned that Mireya and Eileen had been
8 married since December 2016, ninth months before.

9 **Aftermath of the Incident**

10 17. On the same day as the incident, at 1:13 p.m., Eileen began publicizing my offer of a
11 reasonable accommodation on social media. Within a few hours, Eileen's post had gone viral, and
12 by 5:00 p.m. that night, several news organizations were interviewing customers in the Tastries parking
13 lot and publishing stories on my refusal to design a custom wedding cake for a same-sex wedding.
14 Other wedding professionals also came forward to offer their services free of charge.

15 18. I later learned that Mireya and Eileen visited Party Palace, a popular wedding venue
16 in Bakersfield, approximately a week before coming to Tastries. At Party Palace they met with
17 Reina Benitez, and brought out a cell phone to video-record the conversation. Reina told Mireya
18 and Eileen that Party Palace was already booked for the date they of their wedding reception. Either
19 Mireya or Eileen then asked whether Reina had any objection to renting out Party Palace for same-
20 sex weddings, and Reina said no. The couple then stopped recording the conversation and left.
21 Reina found the recording odd, but of no concern. However, when she saw Mireya or Eileen
22 appearing on television, she approached my husband Mike to tell him about her experience.

23 19. After I learned about this, I realized that Mireya and Eileen's statement that they had
24 booked the Metro, a highly prestigious and sought after wedding venue, could not have been true
25 since they were still looking for a venue only a week before and, in my experience, the Metro could
26 not have been booked for a wedding reception a mere six to seven weeks before the event. I also
27 found incongruous Mireya and Eileen's statements online and to the media that they were
28 "shocked" that a wedding professional might have a religious objection to facilitating a same-sex

1 wedding since Mireya and Eileen were earlier asking such professionals whether they would have
2 any such objection. As a result, I came to the conclusion that Mireya and Eileen had not come to
3 Tastries shopping for a wedding cake, but instead shopping for a lawsuit.

4 **Irreparable Harm**

5 20. Tastries is likely to suffer irreparable injury if the Court issues a preliminary
6 injunction precluding it from making wedding cakes unless it custom designs same-sex wedding
7 cakes. 25-30% of Tastries' sales revenue comes from designing custom wedding cakes. Due to my
8 religious convictions I cannot make same-sex wedding cakes, and therefore the injunction would
9 practically consist of an order to stop making wedding cakes altogether. Should Tastries stop
10 selling wedding cakes, it would likely become insolvent and be forced to close.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 11 day of January 2018, at Bakersfield, California.

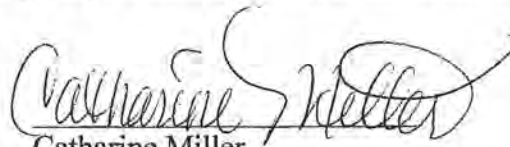
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15 Catharine Miller
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EXHIBIT 11

1 JANETTE WIPPER (#275264)
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2 NELSON CHAN (#109272)
Assistant Chief Counsel
3 GREGORY J. MANN (#200578)
Associate Chief Counsel
4 2218 Kausen Drive, Suite 100
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6
7 Attorneys for Plaintiff DFEH
(No Fee Pursuant to Gov. Code, § 6103)

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

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

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

13)
14) Plaintiff,)

15 vs.)

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

18)
19) Defendants)

20 EILEEN RODRIGUEZ-DEL RIO and MIREYA)
21 RODRIGUEZ-DEL RIO,)

22)
23) Real Parties in Interest.)
24)
25)
26)
27)
28)

Case No. BCV-18-102633-DRL

**DECLARATION OF MIREYA
RODRIGUEZ-DEL RIO IN SUPPORT
OF DFEH'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**



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State of California
Std. 113 Rev. 3-95
FE&H Automated

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Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc., et al. (Rodriguez-Del Rio, et al.) – Case No. BCV-18-102633-DRL
**DECLARATION OF MIREYA RODRIGUEZ-DEL RIO IN SUPPORT OF
DFEH'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION**

1 **DECLARATION OF MIREYA RODRIGUEZ-DEL RIO**

2 I, Mireya Rodriguez-Del Rio, declare as follows:

3 1. I am a real party in interest in this matter. I have personal knowledge of the matters set
4 forth herein, and if called as a witness, I could testify competently as to the truth of the matters
5 asserted herein, except as to those matters asserted upon information and belief, and, as to those
6 matters, I believe them to be true.

7 2. After being officially married on December 7, 2016, in an intimate ceremony, we
8 wanted to have a larger ceremony and reception with our extended family and friends. We had set a
9 date for October 2017 for our vow exchange and wedding reception.

10 3. We visited Tastries for the first time on August 17, 2017, looking for a cake for our
11 wedding reception. Rosemary Perez helped us. We saw lots of sample cakes displayed throughout the
12 bakery.

13 4. I saw a display cake I liked and told Rosemary that we wanted a cake just like it:
14 round, three-tiers with white buttercream frosting and decorated with a few frosting rosettes. We gave
15 Rosemary the details she asked us for. We also wanted a matching sheet cake. We did not want any
16 writing or written message on any of the cakes. We did not want a cake topper from Tastries.

17 5. On October 7, 2017, we exchanged our vows and celebrated our wedding at a
18 reception at the Metro Galleries with around 100 of our family and friends.

19 6. We had reserved the Metro Galleries and paid our deposit in August 2016. Attached
20 hereto as **Exhibit A** is a true and correct copy of the contract we signed with the Metro Galleries to
21 reserve the reception venue.

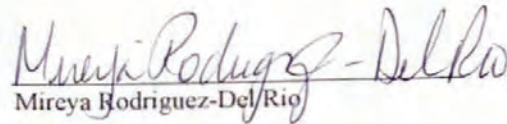
22 7. Since Tastries refused to take our order for cakes for our wedding reception, we ended
23 up ordering cakes from another baker. The main cake we had at our reception looked just like the one
24 we wanted to order from Tastries. The only differences were that the cake we actually had was
25 decorated with real flowers and the buttercream was more wavy than scaly, while the one we wanted
26 to order from Tastries would have been decorated with frosting rosettes. And instead of a matching
27 sheet cake that we would have ordered from Tastries, we had loaf cakes at our reception. Attached
28



1 hereto as **Exhibit B** is a true and correct copy of a photo of the actual main cake we had at our
2 wedding reception.

3
4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed on this 7th day of September 2021, in Bakersfield, California.

7
8 
9 Mireya Rodriguez-Del Rio



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State of California
Std. 113 Rev. 3-95
FESH Automated

-3-

Dept. Fair Empl. & Hous. v. Cathy's Creations, Inc., et al. (Rodriguez-Del Rio, et al.) - Case No. BCV-18-102633-DRL
DECLARATION OF MIREYA RODRIGUEZ-DEL RIO IN SUPPORT OF
DFEH'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

Exhibit A

Metro 10/7/17

METRO SPECIAL EVENTS

1604 19TH St. Bakersfield, Ca 93301 . info@theMetroGalleries.com
www.MetroSpecialEvents.com

Name: X Mireya Rodriguez / Eileen Del Rio

Address: X [REDACTED]

Phone: X [REDACTED]

Email: X [REDACTED]

RENTAL AGREEMENT AND HOUSE RULES

This agreement is between Metro Special Events

and X Mireya Rodriguez & Eileen Del Rio

for a Ceremony & Reception

on Saturday, October 7th 2017

EVENT TIME: Start- 6pm Stop- 12pm (Music must be lowered in volume by 10pm, House closing is Midnight)

RENTAL FEES: 50% of total is required to book and reserve date. If under \$1000, payment in full is required to book and reserve date . **NO REFUNDS**

Basic: \$ \$1700 **Small:** \$ **Shower:** \$ **Custom:** \$

Extras:

Deposit: \$ \$850 paid **Balance:** \$ \$850 due 9/16/17
Due 3 weeks in advance of event. A \$150 late fee will be incurred unless payment is made or arranged for a later date.

Damage/Cleaning Deposit: \$500 (refundable if no damages have occurred or extra clean up is not needed) Due the day of the event and is required for event to start. Is returned within 7 days or less from your event.

* Check # 2373 \$850 paid 8/17/16
\$850 Balance due 9/16/17

artwork. This will be taken out of the security/damage deposit. If damage exceeds \$500 the rentee will be charged and the fee is due immediately.

Metro food and beverage equipment such as ice tubs, chaffing dishes must be signed out to the rentee. These items cannot leave the premises. If any of the signed out items are missing after the event, the rentee will be charged accordingly per item. The fee will be deducted from the damage/security deposit. All items must be cleaned after use.

Beer kegs are not permitted unless behind the designated bar.

No rice, glitter or confetti allowed. (clean up charge of \$300 will be assessed) X M.R.

Metro Special Events reserves the right to shut down event at anytime for violation of one or more of the above stated rules and policies. NO REFUNDS will be given.

I have read the above and agree to abide by all the house rules and regulations.

Rentee: X Mireya Rodriguez Date: X 8/17/16

For Metro Special
Events: Rocky Lopez

Title: Director of Events
Date: 8/17/16