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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, an agency of the State of California, Plaintiff, v. CATHY'S CREATIONS, INC. d/b/a TASTRIES, a California Corporation; and CATHY MILLER, an individual, Defendants. EILEEN RODRIGUEZ-DEL RIO and MIREYA RODRIGUEZ-DEL RIO, Real Parties in Interest.	CASE NO.: BCV-17-102855 **IMAGED FILE** **DEFENDANTS CATHARINE MILLER'S AND TASTRIES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ENFORCE THE JUDGMENT** **Reservation No.: 31560** Date: September 5, 2018 Time: 8:30 a.m. Dept: 11 Judge: Hon. David R. Lampe Action Filed: December 13, 2017 Judgment Entered: May 1, 2018

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1. INTRODUCTION

Plaintiff the Department of Fair Employment & Housing (DFEH) began an investigation into Defendants Catharine Miller and Tastries for an alleged violation of the Unruh Civil Rights Act and then brought an action against them under Government Code section 12974. In denying the DFEH's motion for a preliminary injunction, this Court unequivocally stated that—with respect to the DFEH's Unruh Act claim—"[t]he state cannot succeed on the facts presented as a matter of law," and then entered judgment in favor of Defendants. (Ex. 1, Notice of Entry of Judgment, p. 6 [page numbers added].)[1] Later, at a Case Management Conference wherein the parties discussed the "res judicata effect" of the decision, the Court emphasized that the Government Code section 12974 "is an action," and that "the defendant[s] may have certain rights here that arise by virtue of the action." (Ex. 2, Transcript of March 16, 2018, Case Management Conference, 3:9-19, 5:5-6.) Now, the DFEH has claimed it can, and has attempted to, re-open its investigation into Defendants to determine whether to bring an action against them for violation of the Unruh Act under a separate procedural statute—Government Code section 12965. This investigation is in violation of this Court's judgment, and should be immediately stopped. Thus, Defendants hereby move for an order enforcing the judgment.

2. FACTUAL & PROCEDURAL HISTORY

On August 26, 2017, Defendant Catharine Miller welcomed Real Parties in Interest Mireya and Eileen Rodriguez-Del Rio into her bakery, Defendant Tastries. Defendants soon discovered, however, that the Rodriguez-Del Rios were seeking to commission them to create a custom-wedding cake to celebrate and promote a same-sex marriage. As a result, Defendants informed the Rodriguez-Del Rios that they could not create the custom art, and that instead Defendants would be referring the commission to another cake artist. That same day, the Rodriguez-Del Rios began publicizing their encounter with Defendants on social media, and it garnered widespread media attention—including with offers from other wedding professionals to provide free services.

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[1] All exhibits are attached to the concurrently filed Declaration of Charles S. LiMandri.

Two months later, on October 18, 2017, the Rodriguez-Del Rios filed a complaint against Defendants with Plaintiff DFEH for sexual orientation discrimination. The DFEH subsequently, on October 26, informed Defendants that an investigation into them had been opened, and with that notice propounded written interrogatories. On November 9, 2017, the DFEH agreed to extend the time for Defendants to respond to its written discovery to December 15, 2017. But something happened between those two dates, and on December 14, the DFEH decided to appear ex parte seeking a temporary restraining order and order to show cause re preliminary injunction—commencing the instant action. The only occurrence of note was the United States Supreme Court oral argument on December 5, 2017, in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n* (2018) 138 S.Ct. 1719. That case also involved a cake artist who declined a commission to create a custom wedding cake to celebrate and promote a same-sex wedding. During that oral argument, Justice Anthony Kennedy several times indicated that he would lead a majority in upholding the rights of the cake artist—which he did. (*Id.* at 1723-32.)

On December 14, 2017, this Court denied the DFEH's request for a temporary restraining order, and set an order to show cause hearing for February 2, 2018. At that time, the Court ordered that "the Petition is the complaining document in the action, which is equivalent to the Complaint." As a result, Defendants answered the complaint-equivalent and subsequently also attacked it with a demurrer and an anti-SLAPP motion. As part of its aggressive litigation tactics, on January 10, 2018, the DFEH filed new preliminary injunction papers—converting the proceeding from an order to show cause re preliminary injunction to a motion for a preliminary injunction. Pending its motion for a preliminary injunction, the DFEH paused its investigation, and took all previously scheduled investigative interviews off-calendar.

On February 5, 2018, the Court issued a detailed eight page, single-spaced, minute order denying the DFEH's motion for a preliminary injunction. (Ex. 1, pp. 6-13.) In so doing, the Court unequivocally stated that, with respect to the DFEH's claim for violation of the Unruh Act, "[t]he state cannot succeed on the facts presented as a matter of law." (Ex. 1, p. 6.)

That minute order was subsequently attached to the Court's final order on the DFEH's motion for a preliminary injunction, dated March 2, 2018. (Ex. 1, pp. 4-13.) In the DFEH's

proposed final order, the DFEH inserted the following language, but the Court struck it:

> The DFEH brought this civil action pursuant to Government Code section 12974, which authorizes "a civil action for appropriate temporary or preliminary relief pending a final disposition of [a] complaint [filed with the DFEH.]" Because this Order denies the DFEH temporary or preliminary relief pending the DFEH's final disposition of the underlying administrative complaint, no relief remains available to the DFEH in this Government Code section 12974 action.

(Ex. 1, p. 5 [brackets in original].)

On March 16, 2018, the Court held a case management conference to determine the future of this case. At that case management conference, the Court stated that it struck the above language because "it was not an issue that had been in my mind or in the Court's mind in rendering its ruling; and, therefore, I took no action with respect to it." (Ex. 2, 2:26-28.) But the Court did warn the DFEH that "I'm not sure what the res judicata effect of my [order is]…. [Y]ou know, there could be a res judicata application to certain aspects—at least to certain aspects of the decision[.]" (Ex. 2, 5:5-10.) This is because, even though "the object of the statute [Government Code section 12974] is provisional relief," "it is an action," and therefore "the defendant may have certain rights here that arise by virtue of [it being an] action." (Ex. 2, 3:7-19.) Finally, the Court noted that "the issue of res judicata, that's … an issue for … a later proceeding" and depends on "what steps the Department would take after judgment[.]" (Ex. 2, 8:4-11.) As a result, Defendants informed the DFEH that they believed the parties should submit a proposed judgment to the Court, and the parties met and conferred on the text of that proposed judgment. The parties' meeting and conferring was not fruitful, and so on March 26 and 29, 2018, the parties submitted competing proposed judgments to the Court.

On May 1, 2018, the Court entered a minute order in which it stated that "the court is not fully satisfied with the alternative forms of judgment crafted respectively by each of the parties. The court will prepare its own form of judgment," and then the Court did enter its own judgment. (Ex. 1, pp. 3-13.) That judgment attached the Court's final order on the DFEH's motion for a preliminary injunction. (Ex. 1, pp. 4-13.) It also stated "that Defendants … are deemed the prevailing party for purposes of the [r]ight to recover litigation costs as permitted by law." (Ex. 1,

p. 3.) Notice of Entry of that judgment was served on May 9, 2018. (Ex. 1, p. 14.) On May 14, 2018, Defendants filed their memorandum of costs in the amount of $3,829.21. (Ex. 3.) On June 4, 2018, the time for the DFEH to file a motion to tax costs ran, with the DFEH not filing any such motion.[2]

On April 30, 2018, the DFEH filed a notice of appeal with respect to the Court's denial of its motion for a preliminary injunction. On June 14, 2018, the DFEH decided to abandon that appeal. On July 9, 2018, the time for the DFEH to file an appeal from the final judgment ran, again with the DFEH filing no such notice of appeal.

On July 10, 2018, Defendants sent the DFEH an email requesting payment of the costs award because the deadline for the DFEH to appeal had run. (Ex. 4.) On July 16, 2018, the DFEH responded that "the DFEH is continuing the investigation and would like to calendar the investigative interviews we previously subpoenaed." (Ex. 5 [Email dated July 16, 2018, 2:02 p.m.].) Defendants responded that the final judgment precludes the DFEH from continuing to prosecute them, and that if the DFEH persisted, Defendants would file a motion to enforce the judgment. (Ex. 5 [Email dated July 16, 2018, 2:55 p.m.].) The DFEH refused to back down stating, "[l]et's … finish the investigation. If the DFEH determines a violation occurred, then we'll mediate. If we can't settle, the DFEH will file a civil complaint[.]" (Ex. 5 [Email dated July 17, 2018, 1:04 p.m.)

3. LEGAL STANDARD

"Every court shall have the power to do all of the following: … To compel obedience to its judgments … in an action or proceeding pending therein." (Code of Civ. Proc. § 128(a)(4).) "It is [also] a well-established principle of law that a court possesses inherent power to enforce its judgments." (*Security Trust & Savings Bank v. Southern Pac. R. Co.* (1935) 6 Cal.App.2d 585, 588.)

"[A] court of equity retains inherent jurisdiction to oversee and enforce execution of its decrees." (*Brown v. Brown* (1971) 22 Cal.App.3d 82, 84; see also *Torjesen v. Mansdorf* (2016) 1 Cal.App.5th 111, 118 ["Without question, the superior court has jurisdiction over disputes related to the enforcement of judgments"]; *Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 264 ["[T]he

[2] The judgment uses the word "fight," not "right." This appears to be a typographical error to Defendants, which is plausible since the letters "f" and "r" are adjacent on a normal keyboard. However, if it is not a typographical error, Defendants did win that fight by filing a memorandum of costs which the DFEH did not contest.

court had continuing jurisdiction under section 410.50, derived from its jurisdiction at the time of the original judgment, to enter the renewal."].)

4. LEGAL ARGUMENT

The DFEH argues that it sought relief under Government Code section 12974, which solely provides for provisional and temporary relief. Thus, the DFEH argues, the Court's decision on its motion for a preliminary injunction could not have been an adjudication on the merits of its Unruh Act claim, and the DFEH now has the opportunity to attempt to skirt around the Court's order. If, in so skirting, the DFEH turns up additional evidence such that the DFEH believes it can succeed on the merits, the DFEH will then seek permanent relief under Government Code section 12965, which is a procedural mechanism whereby the DFEH can obtain permanent relief for alleged violations of the Unruh Act.

The DFEH's argument fails for two reasons. First, any proceeding—including a special proceeding—requires an underlying cause of action. And a final judgment is by definition the final determination of the rights of the parties on that cause of action. As a result, since the Court issued (per the parties' agreement) a final judgment, and the DFEH chose not to appeal, the DFEH became barred by the doctrine of res judicata (i.e., claim preclusion) from continuing to litigate the underlying cause of action.

Second, even if this action does not act as res judicata on the DFEH's cause of action for violation of the Unruh Act, it does act as collateral estoppel (i.e., issue preclusion) in two distinct ways. When a Court adjudicates issues *on the merits* in any proceeding which ends with a final judgment which is not contested on appeal, then those issues become final and cannot be re-litigated by the same parties. Here, in the Government Code section 12974 action, the parties did litigate the alleged violation of the Unruh Act *on the merits*, and that action ended with a final judgment which was not contested on appeal. Thus, the issue of whether Defendants' encounter with the Rodriguez-Del Rios on August 26, 2017, was unlawful cannot be re-litigated by the DFEH.

More broadly, however, even if no final judgment were entered on the Government Code section 12974 action, the Court's preliminary injunction order still acts as collateral estoppel. Defendants believe the DFEH may reverse course and argue that its motion for a preliminary

injunction was just one motion in its investigation; not truly a separate action, and so there is not yet any real finality with respect to the DFEH's claim that Defendants' conduct was unlawful. But this argument does not hold water. Collateral estoppel still applies even if no judgment was entered, so long as the proceeding came to a natural and complete conclusion, and the order at issue was acquiesced to by the decision not to appeal.

Relying on its false argument that it can continue prosecuting Defendants, the DFEH has also ignored Defendants' demand that the DFEH pay the litigation costs identified on Defendants' unchallenged memorandum of costs. Therefore, in addition to ordering the DFEH to comply with the judgment by ceasing its investigation into Defendants, Defendants request that the Court order the DFEH to reimburse Defendants for their litigation costs.

4.1. Legal standard: claim preclusion (res judicata)

"The California Supreme Court has recognized that 'A valid final judgment on the merits in favor of a defendant serves as a complete bar to further litigation on the same cause of action.' This doctrine is commonly referred to as res judicata." (*Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1473 [quoting *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795].) "The doctrine of res judicata gives conclusive effect to a former judgment in subsequent litigation between the same parties involving the same cause of action…. A prior judgment for the defendant on the same cause of action is a complete bar to the new action." (*Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 866–867.)

"California's res judicata doctrine is based upon the primary right theory. The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action." (*Wade v. Ports America Management Corp.* (2013) 218 Cal.App.4th 648, 657 [citations and quotation marks omitted].) Thus, "[r]es judicata applies when the earlier suit (1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." (*Mpoyo v. Litton Electro-Optical Systems* (9th Cir. 2005) 430 F.3d 985, 987 [quotation marks and ellipses omitted].)

"A trial court has no authority to enter multiple final judgments determining multiple issues between the same parties to an action. 'A judgment is the final determination of the rights of the

parties in an action or proceeding.' Ordinarily only one final judgment in an action is authorized." (*Horton v. Jones* (1972) 26 Cal.App.3d 952, 958 [quoting Code of Civ. Proc. § 577].) "'[F]inality' is an attribute of every judgment at the moment it is rendered; indeed, if a judicial determination is not immediately 'final' in this sense it is not a judgment…. **The Legislature has incorporated this meaning of finality into the very definition of a judgment: 'A judgment is the final determination of the rights of the parties in an action or proceeding.'**" (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304 [quoting Code of Civ. Proc. § 577; emphasis added].)

4.2. Legal standard: issue preclusion (collateral estoppel)

In contrast to claim preclusion, "[i]ssue preclusion prevents relitigation of **issues** argued and decided in prior proceedings." (*Castillo v. City of Los Angeles* (2001) 92 Cal.App.4th 477, 481 [quotation marks omitted; emphasis added].) The requirements are: "(1) the issue is identical to that decided in the former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding is final and on the merits, and (5) preclusion is sought against a person who was a party … to the former proceeding." (*Id.*)

"[F]or purposes of issue preclusion … 'final judgment' [i.e., 'final and on the merits'] includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." (Rest.2d Judgments (1982) § 13.) As a result, numerous cases have found specific interlocutory orders to be final for purposes of issue preclusion—even in the absence of a final judgment. (See, e.g., *Ayala v. Dawson* (2017) 13 Cal.App.5th 1319, 1332 ["Ayala appeared … in the … proceeding, contested the issue of jurisdiction, … was given an evidentiary hearing, and lost on the merits. He … cannot argue that Judge Daniels's order was somehow tentative, subject to change, or never reached a point of finality."]; *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072, 1086 ["Plaintiff chose not to appeal from Judge Pollak's 'Order Denying Petition And Statement Of Decision,' which all parties treat as intended to be the final determination on the merits of plaintiff's mandamus claim. Judge Pollak's ruling thus qualifies as a final judgment"].)

In determining whether a prior order was "final and on the merits" for purposes of issue

preclusion, even in the absence of an actual final judgment, courts apply "the following factors: (1) whether the decision was not avowedly tentative; (2) whether the parties were fully heard; (3) whether the court supported its decision with a reasoned opinion; and (4) whether the decision was subject to an appeal." (*Border Business Park, Inc. v. City of San Diego* (2006) 142 Cal.App.4th 1538, 1565; see also *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 774.)

In applying the above to the adjudication of a motion for a preliminary injunction, "[t]here is no inflexible rule as to the effect of the granting or denial of a preliminary injunction on subsequent litigation, but **[if] it appears that the court intended a final adjudication of the issue involved, a decision on an application for a preliminary injunction does [] amount to a decision on the ultimate rights in controversy**" such that issue preclusion applies. (*Bomberger v. McKelvey* (1950) 35 Cal.2d 607, 612 [emphasis added; double negative omitted]; see also *In re Holy Hill Community Church* (B.A.P. 9th Cir., Jan. 5, 2016, No. AP 2:14-AP-01744-WB) 2016 WL 80032, at *5 [citing *Bomberger* to apply issue preclusion based on prior preliminary injunction order]; *Malahoff v. Saito* (2006) 111 Hawai'i 168, 181, fn. 16 [citing *Bomberger* for proposition that issue preclusion can be based on prior preliminary injunction order]; *George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd.* (1989) 49 Cal.3d 1279, 1298, fn. 2 [Kennard, J., concurring in reversal but asserting proper basis for reversal was issue preclusion].)

From a practical perspective, issue preclusion is rarely applied based on a preliminary injunction order, but such an application has been recognized in many courts. "The fact that our judgment … was rendered in an appeal from a preliminary injunction order does not preclude application of collateral estoppel…. [S]uch a judgment … **will be given preclusive effect if it is necessarily based upon a determination that constitutes an insuperable obstacle to the plaintiff's success on the merits.**" (*Miller Brewing Co. v. Joseph Schlitz Brewing Co.* (7th Cir. 1979) 605 F.2d 990, 995 [citations omitted]; see also *Gjertsen v. Board of Election Com'rs of City of Chicago* (7th Cir. 1984) 751 F.2d 199, 202.)

"[F]indings made in granting or denying preliminary injunctions can have preclusive effect if the circumstances make it likely that the findings are 'sufficiently firm' to persuade the court that there is no compelling reason for permitting them to be litigated again. Whether the resolution in

the first proceeding is sufficiently firm to merit preclusive effect turns on a variety of factors, including '**whether the parties were fully heard, whether the court filed a reasoned opinion, and whether that decision could have been, or actually was appealed**.'" (*Hawksbill Sea Turtle v. Federal Emergency Management Agency* (3d Cir. 1997) 126 F.3d 461, 474, fn. 11 [citations omitted; emphasis added]; see also *In re Brown* (3d Cir. 1991) 951 F.2d 564, 569.)

4.3. Application of claim preclusion

"It is well settled that a party may not split a single cause of action raising the same obligation as the basis of separate suits[.]" (*Hatch v. Bank of America N. T. & S. A.* (1960) 182 Cal.App.2d 206, 210.) Indeed, "[u]nder the doctrine of res judicata, once a plaintiff prevails on his claim, the cause of action is merged into the judgment and the plaintiff's only remaining right is on the judgment. This merger prohibits a plaintiff from splitting a single cause of action into successive suits." (*Craig v. County of Los Angeles* (1990) 221 Cal.App.3d 1294, 1301 [citations omitted].)

Here, the DFEH brought a claim for violation of the Unruh Act using the procedural mechanism laid out in Government Code section 12974. The DFEH unequivocally lost, and now seeks to re-open its investigation into Defendants so it can bring a claim for violation of the Unruh Act using the procedural mechanism laid out in Government Code section 12965. But this new investigation is barred by res judicata because it "(1) involve[s] the same 'claim' or cause of action as the [earlier action], (2) [the earlier action] reached a final judgment on the merits, and (3) [the earlier action] involved identical parties or privies." (*Mpoyo*, *supra*, 430 F.3d at 987 [quotation marks and ellipses omitted].) It is undisputable that the "same claim" is at issue—it is the claim for violation of the Unruh Act based on Defendants' decision not to make custom art for the Real Parties in Interest. It is also undisputable that under both the Section 12974 action, and the anticipated Section 12965 action, the same parties will be present: the DFEH as the plaintiff; Catharine Miller and Tastries as the defendants; and Mireya and Eileen Rodriguez-Del Rio as the real parties in interest.

The only factor even potentially at issue is whether the earlier Government Code section 12974 action "reached a final judgment on the merits." As stated above, the Court's use of the term "judgment" is itself telling because "[t]he Legislature has incorporated this meaning of

finality into the very definition of a judgment: 'A judgment is the final determination of the rights of the parties in an action or proceeding.'" (*Sullivan*, *supra*, 15 Cal.4th at 304.) Also telling is the fact that the DFEH requested that the Court use language stating that the preliminary injunction order was solely adjudicating the DFEH's request for "temporary or preliminary relief," and the Court refused to do so. (Ex. 1, p. 5.) But dispositive are the Court's statements at the May 16, 2018, case management conference. The Court unequivocally stated in its preliminary injunction order that the DFEH "cannot succeed on the facts presented as a matter of law" (Ex. 1, p. 6), and then warned the DFEH "there could be a res judicata application to certain aspects—at least to certain aspects of the decision" depending on "what steps the Department would take after judgment[.]" (Ex. 2, 5:5-10, 8:4-11.)

Regardless of how the DFEH procedurally brought its claim for violation of the Unruh Act, seeking either provisional relief, or permanent relief—the Court did reach the merits of the Unruh Act claim and denied it. Since the DFEH did not appeal, permitting the adjudication of that claim to become final, res judicata applies. (See *In re Matthew C.* (1993) 6 Cal.4th 386, 393 ["If an order is appealable … and no timely appeal is taken therefrom, the issues determined by the order are res judicata."].)

4.4. Application of issue preclusion

Here, even if claim preclusion does not apply, there are compelling reasons for applying issue preclusion because the Court's order on the DFEH's motion for a preliminary injunction (1) "was not avowedly tentative;" (2) "the parties were fully heard;" (3) "the court supported its decision with a reasoned opinion;" and (4) "the decision was subject to an appeal." (*Border Business Park, Inc.*, *supra*, 142 Cal.App.4th at 1565.)

First, the Court's decision was not "avowedly tentative" but the exact opposite. In adjudicating the DFEH's motion for a preliminary injunction, the Court did not rest its order on the balancing of the preliminary injunction factors. Rather, the Court stated that "[t]he State cannot succeed on the facts presented as a matter of law." (Ex. 1, p. 6.) In coming to that conclusion, the Court noted that "[a]n interest in preventing dignitary harms … is not a compelling basis for infringing free speech" because "the point of all speech protection is to shield just those choices of

content that in someone's eyes are hurtful." (Ex. 1, p. 11 [ellipses omitted].) The Court also noted, citing *Obergefell v. Hodges* (2015) 135 S.Ct. 2584, that the belief that "marriage is a sacramental commitment between a man and a woman" is not "[s]mall-minded bigot[ry]," but rather "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." It is clear that "the court intended a final adjudication of the issue involved[.]" (*Bomberger*, *supra*, 35 Cal.2d at 612.)

It is also clear that "the parties were fully heard" and the court "supported its decision with a reasoned opinion[.]" (*Border Business Park, Inc.*, *supra*, 142 Cal.App.4th at 1565.) Defendants responded to comprehensive written discovery, and all parties submitted lengthy and detailed declarations. Based on the undisputed facts, the Court issued a detailed, eight-page, single-spaced order. (Ex. 1, pp. 6-13.) And based on the Court's analysis in that order, it is clear that no additional facts uncovered in investigation would change the result. If the DFEH argues that it was not fully heard, that was its own doing. "'There is no suggestion that the court would have prevented [the DFEH] from being 'fully heard'…. If [the DFEH] was not 'fully heard' it was because [it] so elected." (*Schmidlin*, *supra*, 157 Cal.App.4th at 775.)

Finally, not only could the DFEH have filed an appeal, it did so, and then abandoned that appeal. "[The DFEH] effectively acquiesced in the ruling by failing to … fil[e] an appeal…. Having decided not to pursue the remedy available to it, it should not now be able to contend that the order is not a final adjudication of the issues it addressed." (*Border Business Park, Inc.*, *supra*, 142 Cal.App.4th at 1565.)

4.5. Request for litigation costs

The Court's judgment clearly states "that Defendants … are deemed the prevailing party for purposes of the [r]ight to recover litigation costs as permitted by law." (Ex. 1, p. 3.) Defendants timely filed a memorandum of costs in the amount of $3,829.21, which the DFEH did not challenge. (Ex. 3.) Defendants also demanded payment of their litigation costs, but the DFEH refused to respond. (Ex. 4.) Thus, Defendants request that the Court order the DFEH to pay Defendants' litigation costs within 10 days.

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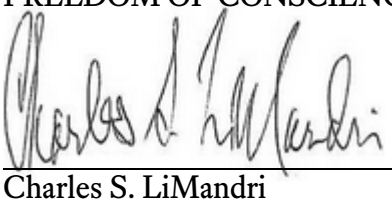
5. CONCLUSION

For all of the above-described reasons, Defendants respectfully request that the Court issue an order enforcing its judgment.

Respectfully submitted,

FREEDOM OF CONSCIENCE DEFENSE FUND

Dated: July 24, 2018 By: 

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