Superior Court of California
County of Kern
Bakersfield Department 11

Date: 03/06/2019 **BCV-18-102633**

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

Courtroom Staff

Honorable: David R. Lampe **Clerk:** Veronica D. Lancaster

NATURE OF PROCEEDINGS: RULING ON DEFENDANTS' ANTI-SLAPP MOTION TO STRIKE THE COMPLAINT; HERETOFORE SUBMITTED ON MARCH 5, 2019

RULING:

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 ("the 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, the 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, the 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.

The court sustains the following objections based on the grounds asserted: 7, 15, 23, 26-27, 29, 31, 32, 34, 36-37, 39, 43, and 47-50. The court also sustains objections 6, 12, and 33 on relevance grounds and objection 38 for lack of foundation.

The court overrules Defendants' remaining objections to the extent not expressly discussed herein.

The court overrules Defendants' objections to the ten-point footnotes in the Department's brief and request for striking of the same based on "'the guiding principle of deciding cases on their merits rather than on procedural deficiencies.' [Citation.]" (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.) As Defendants have had a full opportunity to rebut the contents of these footnotes in their reply brief and have not petitioned this court for additional pages to respond, they can claim no prejudice or due process violation resulting from the noncompliance. The court further notes a rough parity in overall content based on the Department's use of 28 double-spaced lines per page and Defendants' use of 37 lines per page using 1.5 spacing. The court recognizes the length and wordiness of some of the footnotes and gives them the weight they deserve.

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

I. Procedural History

In December 2017, the Department initiated an action (case number BCV-17-102855) under section 12974 of the Government Code on its own behalf and on behalf of real parties in interest Eileen and Mireya Rodriguez-Del Rio, seeking temporary and preliminary relief under the Unruh Civil Rights Act as incorporated into the Fair Employment and Housing Act.

The court declined to provide temporary relief but overruled a subsequent demurrer by Defendants. Defendants opposed the request for preliminary relief based on the Free Exercise Clauses of the United States and California constitutions, and the Free Speech Clause of the United States Constitution. The court denied the Department's motion for preliminary relief based solely on the merits of Defendants' Free Speech defense.

Following denial of preliminary relief but before entry of judgment, Defendants brought an anti-SLAPP motion, which this court denied in an order entered May 1, 2018. As stated in that order, the Fifth District has articulated the following standard for evaluating an anti-SLAPP motion:

> Section 425.16 was enacted in 1992 to provide a procedure for expeditiously resolving "non-meritorious litigation meant to chill the valid exercise of the constitutional rights

of freedom of speech and petition in connection with a public issue. [Citation.]" (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235, 83 Cal.Rptr.2d 677.) It is California's response to meritless lawsuits brought to harass those who have exercised these rights. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 644, 49 Cal.Rptr.2d 620, disapproved on another ground in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5, 124 Cal.Rptr.2d 507, 52 P.3d 685 (*Equilon Enterprises*).) This type of suit, referred to under the acronym SLAPP, or strategic lawsuits against public participation, is generally brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff. (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 927, 116 Cal.Rptr.2d 187.)

When served with a SLAPP, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76, 124 Cal.Rptr.2d 519, 52 P.3d 695 (*City of Cotati*).)

The court first decides whether the defendant has made a threshold showing that the challenged cause of action is one "'arising from'" protected activity. (*City of Cotati, supra,* 29 Cal.4th at p. 76, 124 Cal.Rptr.2d 519, 52 P.3d 695.) The moving defendant must demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant's] right of petition or free 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.)

The court declined to rule on the first prong, finding instead that the Department's case had minimal merit necessary to survive an anti-SLAPP motion under the second prong. The court noted the Department's mandate to enforce anti-discriminatory public accommodation laws and found that "Defendant's conduct was discriminatory, and fell within the ambit of the law and may be actionable if not otherwise constitutionally protected." That same day (May 1, 2018), the court entered judgment for Defendants under Government Code section 12974.

In September 2018, the court granted in part and denied in part a motion to enforce judgment brought by Defendants, finding that its decision on the merits of the constitutional defense was plenary in nature while recognizing that it was "necessarily based upon the facts which are known or knowable at the time it is rendered." Accordingly, the court allowed the Department to continue its investigation and concluded "that any such further proceeding should be brought before this court in the nature of action or petition for modification of the court's original judgment."

The Plaintiff sought a writ from the Fifth District concerning the court's September 2018 order. Pending final resolution of Defendants' petition, the Fifth District stayed the court's order and specifically noted "that petitioner may continue its investigation and file a complaint pursuant to Government Code section 12965." The appellate matter remains pending (case number F078245).

The Department filed a complaint in October 2018 and an amended complaint in November 2018. Defendants then filed the instant anti-SLAPP motion.

II. Legal Analysis

As an overarching principle and before turning to the two-pronged test under the anti-SLAPP law, the court reiterates its previous conclusion that "[t]his does not appear to be the type of action addressed by section 425.16." 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 parties in interest rather than to obtain an economic advantage over Defendants.

Moreover, as the Fifth District's interim order authorized the instant complaint pending final resolution of the writ proceeding, a decision from this court granting the anti-SLAPP motion could be viewed as conflicting.

Regardless, the two-pronged test confirms that SLAPP relief is unwarranted.

A. A Determination Under the First Prong of the Anti-SLAPP Law Is Unnecessary.

Defendants claim that their refusal to fill the order for the Rodriguez-Del Rios' wedding cake amounted to "conduct in furtherance of the exercise of the constitutional right of . . . free speech in connection with . . . an issue of public interest" protected under the statute's first prong. (Code Civ. Proc., § 425.16(e)(4).)

The Supreme Court recently recognized that the anti-SLAPP law "uses certain open-ended terms that raise nuanced questions of interpretation," and accordingly endeavored "to clarify the scope of the statute." (*Rand Resources, LLC v. City of Carson* (Feb. 4, 2019, S235735) __ Cal.5th __ [2019 WL 418745 at pp. *5, *8].) To this end, it affirmed that "a topic of widespread, public interest" falls "within the ambit of" the first prong, but only where "the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (*Id.* at p. *5 (quotation marks omitted).) It is not sufficient that a claim "was filed after, or because of, protected activity, or when protected activity merely provides evidentiary support or context for the claim," unless the activity supplies an element of the challenged claim. (*Ibid.*)

"[W]hile discrimination may be carried out by means of speech . . . and an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account of a discriminatory or retaliatory consideration." (*Park v. Bd. of Trustees of Cal. State U.* (2017) 2 Cal.5th 1057, 1066.) "Conflating, in the anti-SLAPP analysis, discriminatory decisions and speech involved in reaching those decisions or evidencing discriminatory animus could render the anti-SLAPP statute 'fatal for most harassment, discrimination and retaliation actions against public employers.' [Citation.]" (*Id.* at p. 1067.)

Thus, there is certainly an argument to be made under the first prong on the Department's side. Assuming *arguendo* that Defendants' activity satisfies the first prong, the Department's complaint

nevertheless has minimal merit.

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, instead, a baker refusing to use her talents to design and create an artistic work not yet conceived, with knowledge that others will deem such work an endorsement of same-sex marriage, when she does not wish to convey and does not condone that message?

The court's ruling was plenary in its announcement of the applicable legal standard as to co-opted speech, because understanding the legal standard is a prerequisite to resolving any specific case or controversy between real parties in interest.

While the court also applied its test to the facts it had in front of it based on the Department's preliminary investigation, it never intended by entering judgment to foreclose the Department's ability to complete its full investigation and see the matter through to its logical conclusion, as contemplated by the Government Code. Indeed, the court's order on the motion to enforce judgment explicitly stated that "[t]he DFEH is not foreclosed from reasonably investigating the factual underpinnings of this court's adjudication, provided that the investigation proceeds in a lawful and legitimate manner." Instead, its entry of judgment, and ruling on the motion to enforce judgment, resulted from the application of simple logic in ascertaining the path the legislature intended the Department to follow under the Government Code, in light of section 12974's unique statutory scheme.

It is an "elementary rule" of statutory construction that "statutes in pari materia—that is, statutes relating to the same subject matter—should be construed together." (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 50.) In so doing, the court must harmonize these statutes "both internally and with each other" and avoid an interpretation that would produce "absurd results[.]" (*Tuolumne Jobs & Small Business Alliance v. Super. Ct.* (2014) 59 Cal.4th 1029, 1037 (quotation marks omitted).)

Additionally, as a "general rule" it is well established that "one trial judge cannot reconsider and overrule an order of another trial judge. [Footnote.]" (*People v. Riva* (2003) 112 Cal.App.4th 981, 991.) "[I]mportant public policy reasons" underlie this rule, including to avoid "'plac[ing] the second judge in the role of a one-judge appellate court.' [Footnote.]" (*Ibid.*) "The rule also discourages forum shopping, conserves judicial resources, prevents one judge from interfering with a case ongoing before another judge and prevents a second judge from ignoring or arbitrarily rejecting the order of the previous judge which can amount to a violation of due process." (*Ibid.* (footnotes omitted).)

At the same time, however, another rule holds that one trial court cannot bind a second trial court

"called upon to rule on the same issue"—

> This is akin to saying that the first trial court to rule on a particular issue establishes the "law of the case." This doctrine, however, does not apply to rulings of the trial court. (9 Witkin; Cal. Procedure (4th Ed.1997) § 896, p. 930; *Provience v. Valley Clerks Trust Fund* (1984) 163 Cal.App.3d 249, 256, 209 Cal.Rptr. 276.)

(*People v. Sons* (2008) 164 Cal.App.4th 90, 100 (hereafter *Sons*).)

There is one "obvious" solution: "Once a designated trial court hears a matter, it should continue to hear it, including retrials, until final judgment is rendered." (*Sons, supra,* 164 Cal.App.4th at p. 100 n.7.)

Applying these rules, the court's reading of section 12965 together with section 12974 was necessary to avoid the absurd potential for nullification of the court's prior ruling as to the applicable legal standard were a new complaint assigned to a different judge. While the court stands by its theoretical analysis of the procedural aspects of sections 12974 and 12965, the formal complaint that the Fifth District authorized (at least temporarily) in the writ proceeding has been assigned to this court, assuaging the court's concerns as a practical matter.

The court has spoken conclusively as to the applicable legal test but has made only preliminary pronouncements on a limited record as to the application of that test to the case at bar (finding that the Department "could not succeed on the facts presented" while recognizing that the factual record was subject to further development).

With this background in mind, the court turns now to Defendants' arguments under the second prong of the anti-SLAPP law.

2. *Res Judicata* and Collateral Estoppel

The court entered judgment in May 2018 because it had resolved all matters then in front of it and sought to preserve its constitutional analysis, and followed up with its September 2018 order on the motion to enforce judgment.

As a jurisdictional matter, the court may issue a ruling on the anti-SLAPP motion despite pending proceedings before the Fifth District, as that proceeding involves a writ not subject to the automatic stay in section 916 of the Code of Civil Procedure, as opposed to a direct appeal. (*In re Brandy R.* (2007) 150 Cal.App.4th 607, 609-610.)

Even so, it is not necessary for this court to take up the question of whether the May 2018 judgment and the court's ruling on the issues presented therein were "final" and "on the merits," (*Cf. Civic Western Corp. v. Zila Industries, Inc.* (1977) 66 Cal.App.3d 1, 12 [noting that the terms "judgment" and "final judgment" "are meaningless unless qualified by context, i.e., a judgment may be final, but modifiable at the trial level, or final for the purpose of appeal. (See 4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, § 2, pp. 3182-3183.)"].) Regardless, the doctrines of *res judicata* and collateral estoppel are not impediments to the Department's probability of success in the instant matter.

"'[A] court may not give preclusive effect to the decision in a prior proceeding if doing so is contrary to the intent of the legislative body that established the proceeding in which res judicata or collateral estoppel is urged.' [Citation.]" (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 945.) In other words, all or part of a claim "subsists as a possible basis for a second action by the plaintiff against the defendant" where "it is the sense of the [statutory or constitutional] scheme that the plaintiff should be permitted to split his claim," as illustrated by the following scenario—

> For nonpayment of rent, landlord A brings a summary action to dispossess tenant B from leased premises. A succeeds in the action. A then brings an action for payment of the past due rent. The action is not precluded if, for example, the 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.

(Rest.2d Judgments, § 26, com. e, ilus. 5; *cf. Samara v. Matar* (2018) 5 Cal.5th 322, 331-332 [favorably citing the Restatement (Second) of Judgments].) This example is on point.

Defendants describe "the main issue" as "Miller's practice of referring individuals who seek a cake which would celebrate a message which Miller finds offensive to another bakery." As discussed above, the court's ruling on the merits of Defendants' Free Speech defense was based on a preliminary record. The court agreed that the Government Code contemplated further investigation by the Department and the potential for further court proceedings upon "final disposition" of its internal review, whether through a

motion for modification of judgment or the new complaint. (Gov. Code, § 12974.) Further, the initial proceeding was an expedited matter seeking preliminary relief while the instant complaint presents a regular action that also demands actual and punitive damages. Thus, despite ambiguities in the legislature's intended execution of the mechanics of this scheme as identified by this court, it is clear that giving preclusive effect to the judgment at issue would violate the legislature's design.

Moreover, as previously noted, assignment of the new complaint to the undersigned has satisfied the procedural concerns the court otherwise would have had with maintaining judicial integrity.

3. Minimal Merits Analysis – Free Speech

Defendants' citation to case law from the United Kingdom provides no basis for the court to reconsider its prior finding under settled California jurisprudence that Defendants' refusal to fill the Rodriguez-Del Rios' order for a wedding cake amounted to discrimination on the basis of sexual orientation within the ambit of the Unruh Civil Rights Act that would be actionable absent a viable constitutional defense.

Nevertheless, this court previously determined under strict scrutiny (and based on the limited factual record in front of it) that "[t]he 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."

Here, the focus of the parties' minimal merits analysis is the threshold question of whether Defendants' refusal to fill the order for the Rodriguez-Del Rios' wedding cake was expressive, amounting to protected speech.

While the Department would normally have the burden of substantiating its case under section 425.16, there is conflicting case law as to whether their advancement of an affirmative defense shifts the burden to Defendants for purposes of an anti-SLAPP motion. (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 683.) "What is important is that, regardless of the burden of proof, the court must determine whether the plaintiff can establish a prima facie case of prevailing, or whether the defendant has defeated the plaintiff's evidence as a matter of law." (*Ibid.*)

The parties have identified no intervening case law that would control the court's analysis, although intervening dicta has bolstered the validity of the court's test differentiating between the simple denial of goods and the creation of expressive works. The Supreme Court recently stated the following:

> [I]f a baker refused to sell any goods or any cakes for gay weddings, that would be a different matter and the State would have a strong case under this Court's precedents that this would be a denial of goods and services that went beyond any protected rights of a baker who offers goods and services to the general public and is subject to a neutrally applied and generally applicable public accommodations law.

(*Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Com.* (2018) 138 S.Ct. 1719, 1728.) In a concurrence, two justices affirmed the distinction between "whether [a baker] had refused to create a *custom* wedding cake for the [same-sex couple] or whether he refused to sell them *any* wedding cake (including a premade one)." (*Id.* at p. 1740 (Thomas, J. & Gorsuch, J., concurring).)

The Department now argues that the facts developed from its continuing investigation show (1) the Rodriguez-Del Rios sought to purchase a cake that, while labeled as "custom," was equivalent to a premade, or store-bought display cake, (2) Defendants nevertheless refused to sell to them, and (3) Defendants had a policy of refusing to supply wedding cakes for same-sex couples regardless of whether or not those cakes were custom, such that the Rodriguez-Del Rios would not have been able to purchase *any* wedding cake from Defendants. In other words, the Department argues that Defendants' actions amounted to a complete denial of goods or services.

The Department has supplied sufficient admissible evidence in this respect to substantiate a *prima facie* case if accepted as true (leaving aside conflicting evidence proffered by Defendants and making no determination on the merits).

4. Minimal Merits Analysis – Free Exercise

In the court's ruling on the request for preliminary relief, it stated the following:

> 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 terms 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 . . .

Defendants essentially concede the minimal merit of Plaintiff's complaint under the Free Exercise Clause of the United States Constitution by admitting that the Free Exercise Clause no longer "relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."

Assuming *arguendo* that strict scrutiny would apply under the Free Exercise Clause of article I, section 4 of the California Constitution, the minimal merits analysis would require evidence that application of the Unruh Civil Rights Act (1) does not substantially burden a religious belief or practice, or (2) represents the least restrictive means for achieving a compelling government interest. (*North Coast Women's Care Medical Group, Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1158 (hereafter *North Coast*) [finding where a physician had refused to provide certain fertility treatment a same-sex couple that the Act furthered "California's compelling interest in ensuring full and equal access to medical treatment irrespective of sexual orientation, and there are no less restrictive means for the state to achieve that goal"].)

First, the court has already found it to be an open question as to whether Defendants' actions could even qualify as a religious practice. The unsettled nature of the law in this area supports a finding of minimal merit. Second, assuming the likelihood that Defendants can establish a substantial burden on a religious belief or practice, the Department's evidence discussed above goes to the question of least-restrictive means by asking whether the Rodriguez-Del Rios are seeking to compel Defendants to bake a custom wedding cake for their same-sex celebration or merely to sell them a cake that Defendants would ordinarily sell to other customers. Thus, the Department's evidence in this regard is sufficient to substantiate a *prima facie* case to the same extent as discussed above in the Free Speech context. Moreover, the question of the Department's compelling state interest in preventing discrimination in public accommodations is unsettled but passes minimal merit in light of the *North Coast* case.

III. Conclusion

For the foregoing reasons, the court denies Defendants' anti-SLAPP motion.

Copy of minute order mailed to all parties as stated on the attached certificate of mailing. A courtesy copy is emailed to counsel as stated on the attached certificate of mailing.

MINUTE ORDER FINALIZED BY: VERONICA LANCASTER *ON:* MARCH 06, 2019

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 March 06, 2019*** 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: March 06, 2019

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.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: March 06, 2019

By: Veronica Lancaster Signed: 3/6/2019 09:42 AM
Veronica Lancaster, Deputy Clerk

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