

1 Charles S. LiMandri, SBN 110841
Paul M. Jonna, SBN 265389
2 Jeffrey M. Trissell, SBN 292480
B. Dean Wilson, SBN 305844
3 FREEDOM OF CONSCIENCE DEFENSE FUND
4 P.O. Box 9520
Rancho Santa Fe, California 92067
5 Telephone: (858) 759-9948; Fax: (858) 759-9938

6 Attorneys for Defendants

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF KERN

10 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of California,
11
12 Plaintiff;

13 v.

14 CATHY'S CREATIONS, INC. dba TASTRIES,
15 a California Corporation; and
CATHARINE MILLER, an individual,
16
17 Defendants.

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

20 Real Parties in Interest.
21

CASE NO.: BCV-18-102633
IMAGED FILE
DEFENDANTS' ANSWER
TO PLAINTIFF'S FIRST
AMENDED COMPLAINT

22
23
24
25
26
27
28

1 Defendants Cathy’s Creations, Inc. dba Tastries (“Tastries”) and Catharine Miller submit
2 the following response to Plaintiff Department of Fair Employment and Housing’s (DFEH) first
3 amended complaint.

4
5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30(d), Miller and Tastries deny generally
7 and specifically each and every allegation in the DFEH’s first amended complaint.

8
9 **AFFIRMATIVE DEFENSES**

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

12 **First Affirmative Defense**

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

14 The DFEH’s complaint fails to state any claim upon which relief can be granted against Miller
15 and Tastries.

16 **Second Affirmative Defense**

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

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

24 **Third Affirmative Defense**

25 **(Unclean Hands)**

26 The DFEH’s claims are barred based on the equitable doctrine of unclean hands. Specifically,
27 the Rodriguez-Del Rios conspired with one another and/or aided and abetted one another in bringing
28 what they know is a fraudulent and meritless complaint to, *inter alia*, collect a money judgment under

1 applicable state statutes; carry out a defamatory social media crusade against Miller and Tastries
2 Bakery; destroy Tastries Bakery's business; publicly humiliate and inflict severe emotional distress
3 on Miller; and further a political agenda by falsely alleging that Miller, and Christians in general, are
4 bigoted and homophobic.

5 **Fourth Affirmative Defense**

6 **(Abuse of Process)**

7 The DFEH is precluded from bringing this lawsuit because it is a blatant abuse of process.
8 Specifically, the Rodriguez-Del Rios conspired with one another and/or aided and abetted one
9 another in filing what they know is a fraudulent and meritless complaint against Miller and Tastries.
10 Through their abuse of legal process, the Rodriguez-Del Rios impermissibly seek, *inter alia*, to collect
11 a money judgment under the Unruh Act and punitive damages, to harm Tastries Bakery's business,
12 and to publicly humiliate and inflict severe emotional distress on Miller.

13 **Fifth Affirmative Defense**

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

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

20 **Sixth Affirmative Defense**

21 **(Justification)**

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

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Seventh Affirmative Defense

(Estoppel)

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

Eighth Affirmative Defense

(No Injury)

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

Ninth Affirmative Defense

(Punitive Damages Not Available)

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

Tenth Affirmative Defense

(Attorney’s Fees Not Available)

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

Eleventh Affirmative Defense

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

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

1 Act as applied violate Miller's and Tastries' free exercise rights under the California Constitution.
2 Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would violate the
3 defendants' free exercise rights.

4 **Twelfth Affirmative Defense**

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

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

20 **Thirteenth Affirmative Defense**

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

22 The DFEH's interpretation and enforcement of the Unruh Act as applied violate Miller's and
23 Tastries' free speech rights under the Free Speech Clause of the First Amendment to the United
24 States Constitution. Specifically, the DFEH's actions force the defendants to create custom cakes
25 that express messages that violate their sincerely held religious beliefs. The DFEH's actions also
26 pressure the defendants, to avoid violating their religious beliefs, to permanently stop creating custom
27 expressive cakes. The DFEH's interpretation and enforcement of the Unruh Act similarly violate
28 Miller's and Tastries' First Amendment freedom of expressive association because they force the

1 defendants to collaborate and associate with others to create and express messages that violate their
2 religious beliefs. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would
3 violate Miller’s and Tastries’ free speech rights.

4 **Fourteenth Affirmative Defense**

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

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

15 **Fifteenth Affirmative Defense**

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

17 The DFEH’s interpretation and enforcement of the Unruh Act as applied treat Miller’s and
18 Tastries’ decisions to create speech and exercise their religious beliefs differently from those similarly
19 situated to them, thereby violating their equal protection rights under the Fourteenth Amendment.
20 Specifically, the DFEH’s discriminatory interpretation and enforcement of the Unruh Act infringes
21 on Miller’s and Tastries’ fundamental rights, including their free exercise, free speech, and due
22 process rights. The DFEH’s discriminatory interpretation and enforcement of the Unruh Act single
23 out orthodox Christians—a suspect class of marginalized and disfavored people of faith—for adverse
24 treatment. By infringing on Miller and Tastries’ equal protection rights, the DFEH does not further
25 any compelling, or even legitimate, government interest in a narrowly tailored way. Accordingly, the
26 DFEH’s interpretation and enforcement of the Unruh Act violate Miller’s and Tastries’ equal
27 protection rights. Likewise, any judgment in favor of the DFEH and the Rodriguez-Del Rios would
28 violate the defendants’ equal protection rights.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Additional Affirmative Defenses

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

PRAYER FOR RELIEF

WHEREFORE, Miller and Tastries pray for the following relief:

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

Respectfully submitted,

FREEDOM OF CONSCIENCE DEFENSE FUND



Dated: April 11, 2019 By: _____

Charles S. LiMandri
Paul M. Jonna
Jeffrey M. Trissell
B. Dean Wilson

Attorneys for Defendants