

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02074-WYD-STV

MASTERPIECE CAKESHOP INCORPORATED,  
a Colorado corporation; and  
JACK PHILLIPS,

*Plaintiffs,*

v.

AUBREY ELENIS, Director of the Colorado Civil Rights Division, in her official and individual capacities;  
ANTHONY ARAGON, as member of the Colorado Civil Rights Commission, in his official and individual capacities;  
MIGUEL “MICHAEL” RENE ELIAS, as member of the Colorado Civil Rights Commission, in his official and individual capacities;  
CAROL FABRIZIO, as member of the Colorado Civil Rights Commission, in her official and individual capacities;  
CHARLES GARCIA, as member of the Colorado Civil Rights Commission, in his official and individual capacities;  
RITA LEWIS, as member of the Colorado Civil Rights Commission, in her official and individual capacities;  
JESSICA POCOCK, as member of the Colorado Civil Rights Commission, in her official and individual capacities;  
AJAY MENON, as member of the Colorado Civil Rights Commission, in his official and individual capacities; and  
PHIL WEISER, Colorado Attorney General, in his official capacity,

*Defendants.*

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**DECLARATION OF JACK PHILLIPS IN SUPPORT OF  
PLAINTIFFS’ AMENDED MOTION FOR PRELIMINARY INJUNCTION**

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I, JACK PHILLIPS, hereby declare as follows:

1. I am competent to testify and, in addition to my sworn testimony in the First Amended Verified Complaint, make this declaration based on my personal knowledge.
2. As a cake artist, I use artistic skills such as designing, painting, sculpting, and decorating to create expressive cakes.
3. My work as a cake artist is akin to the work of a painter or sculptor, except that instead of working with canvas or clay, I create art with edible materials like icing and fondant.
4. When customers ask me to create a custom cake, I collaborate with them on ways to improve any messages that they want the cake to communicate or any design or image that they want the cake to contain.
5. One of the key parts of my job as a cake artist is to act as a design consultant who improves on the ideas for cakes that my customers bring me.
6. During conversations with customers, I often educate them about what designs will look good, offer suggestions about how to express a particular idea or improve the look of the cake, provide advice about what words, designs, symbols, themes, or images to include, and give ideas on what the requested cake should look like or what messages it should communicate.
7. Even when customers have a general idea of what they want a cake to look like or the messages that they want it to communicate, they typically rely on my input and suggestions, which are based on decades spent creating cake art.
8. When discussing a custom cake request with a customer, I retain complete freedom, discretion, and control over the artistic details of the cake and the process of creating that

cake, and I reserve the right to decline any suggestion, demand, or request that a customer makes.

9. My role as a cake artist includes taking my customer's idea, consulting on essential details like the cake's design, shape, wording, message, and overall appearance, and using my artistic skills like sketching, designing, painting, and sculpting to bring it to life.
10. When I craft a custom expressive cake, I intend to and do in fact communicate through that cake. That is why I decline to create custom cakes that convey messages in conflict with my faith.
11. Since the summer of 2012, I have endured countless hateful phone calls and multiple death threats directed at me and my family because of my decision not to create a wedding cake celebrating a same-sex marriage.
12. Since I declined that request, I have had countless people come into my shop who have told me that they are gay and that they support my freedom to decline to create cakes that express messages in violation of my faith.
13. On June 26, 2017, my shop was contacted by Autumn Scardina, who requested a special cake designed pink on the inside and blue on the outside to celebrate a gender transition. Autumn told us that the design was a reflection of a transition from male to female and that the cake was to celebrate that transition.
14. We declined that request because its design communicated that sex can be changed, can be chosen, and is determined by perceptions or feelings rather than biology. The cake also expressed celebration for those ideas. All of those messages conflict with my religious

beliefs because I believe that sex is given by God, is biologically determined, and cannot be chosen or changed.

15. I would not create that requested cake with its requested message for anyone. For example, I would not create such a cake for a person who does not identify as transgender if that person were purchasing it to give to a friend.
16. I would create countless custom two-color cakes or blue and pink cakes for Autumn Scardina so long as the requested cake does not express a message that violates my faith. For example, I would create Autumn a custom cake with a blue and pink bunny for a child's birthday party.
17. I would create countless custom two-color cakes or blue and pink cakes for customers who identify as transgender so long as the requested cake does not express a message that violates my faith. For example, if a customer who identifies as transgender requests a custom cake with a blue and pink bunny for a child's birthday party, I would create it.
18. I would create a custom cake with a blue exterior and a pink interior for Autumn Scardina so long as the cake does not visually represent and celebrate a gender transition or otherwise express messages that conflict with my religious beliefs. For example, if Autumn requested a custom cake with a blue exterior and pink interior because Autumn's favorite colors are blue and pink, I would create it.
19. I would create a custom cake with a blue exterior and pink interior for people who identify as transgender so long as the cake does not visually represent and celebrate a gender transition or otherwise express messages that conflict with my religious beliefs. For example, if a customer who identifies as transgender requests a cake with a blue exterior



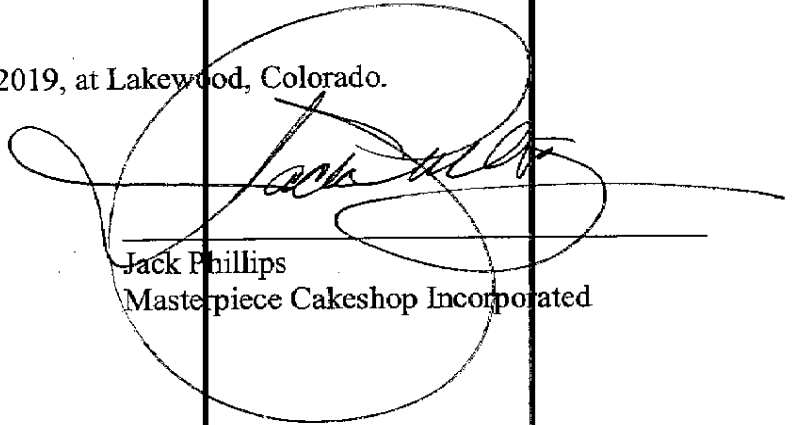
and pink interior because that customer's favorite colors are blue and pink, I would create it.

20. Masterpiece Cakeshop continues to regularly get requests for custom cakes that express through words, designs, symbols, themes, or images messages that conflict with my religious beliefs. At times when the media discusses me or my cases a lot, I receive those kinds of requests daily. At other times, when the media isn't discussing me or my cases as much, I still typically get those kinds of requests once every two to three weeks. It is my impression that a number of those requests are seeking to harass us at Masterpiece Cakeshop and to get us to do something that the state of Colorado considers a violation of the Colorado Anti-Discrimination Act.
21. Exhibit 7 in support of the Amended Motion for Preliminary Injunction is a redacted copy of portions of call records that I received from my telephone company, Comcast, in September 2018.

**DECLARATION UNDER PENALTY OF PERJURY**

I, JACK PHILLIPS, a citizen of the United States and a resident of the State of Colorado, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of January, 2019, at Lakewood, Colorado.



Jack Phillips  
Masterpiece Cakeshop Incorporated

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-02074-WYD-STV

MASTERPIECE CAKESHOP INCORPORATED,  
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AUBREY ELENIS, Director of the Colorado Civil Rights Division, in her official and individual capacities;  
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CHARLES GARCIA, as member of the Colorado Civil Rights Commission, in his official and individual capacities;  
RITA LEWIS, as member of the Colorado Civil Rights Commission, in her official and individual capacities;  
JESSICA POCOCK, as member of the Colorado Civil Rights Commission, in her official and individual capacities;  
AJAY MENON, as member of the Colorado Civil Rights Commission, in his official and individual capacities; and  
PHIL WEISER, Colorado Attorney General, in his official capacity,

*Defendants.*

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**DECLARATION OF JULIE PETERSON IN SUPPORT OF  
PLAINTIFFS’ AMENDED MOTION FOR PRELIMINARY INJUNCTION**

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I, JULIE PETERSON, hereby declare:

1. I am over the age of eighteen and competent to testify, and I make this declaration based on my personal knowledge.

2. I am one of the legal assistants for the attorneys representing Plaintiffs Masterpiece Cakeshop Incorporated and Jack Phillips in this litigation.

3. Exhibit 1 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a "Request for Information" that the Colorado Civil Rights Division sent to Masterpiece Cakeshop, which includes the "Charge of Discrimination" ("CCRD Charge No. CP2018011310") that Autumn Scardina filed with the Division on July 20, 2017. Our office received a copy of that document from Masterpiece Cakeshop.

4. Exhibit 2 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the "Response to Request for Information" that was filed by Masterpiece Cakeshop with the Colorado Civil Rights Division on September 19, 2017. Our office filed that document with the Division on behalf of Masterpiece Cakeshop.

5. Exhibit 3 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the "Rebuttal to Written Position Statement in Response to the Charge of Discrimination" that Autumn Scardina filed with the Colorado Civil Rights Division on November 7, 2017. Our office received a copy of that document from the Division.

6. Exhibit 4 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the "Determination" in Charge No. CP2018011310, listing Autumn Scardina as the Complainant and Masterpiece Cakeshop Incorporated as the Respondent, and signed on behalf of the Colorado Civil Rights Division by "Aubrey Elenis, Director Or Authorized

Designee.” It is dated June 28, 2018. Our office received a copy of that document from the Division.

7. Exhibit 5 in support of Plaintiffs’ Amended Motion for Preliminary Injunction is a true and accurate copy of the “Notice of Hearing and Formal Complaint” that the Colorado Civil Rights Commission filed in *Scardina v. Masterpiece Cakeshop Incorporated* on October 9, 2018. Our office received a copy of that document from the Commission.

8. Exhibit 6 in support of Plaintiffs’ Amended Motion for Preliminary Injunction is a true and accurate copy of a webpage of Scardina Law. This webpage is found at <https://www.scardinalaw.com/Employment-Disputes.shtml>. I downloaded this webpage on January 17, 2019.

9. Exhibit 8 in support of Plaintiffs’ Amended Motion for Preliminary Injunction are true and accurate copies of three “Determinations” in three cases (“Charge No. P20140069X,” “Charge No. P20140070X,” and “Charge No. P20140071X”) that were filed with the Colorado Civil Rights Division, and three letters from the Commission affirming those determinations. These documents were part of the court record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

10. Exhibit 9 in support of Plaintiffs’ Amended Motion for Preliminary Injunction is a true and accurate copy of the 2017 Annual Report for the Colorado Civil Rights Commission and Colorado Civil Rights Division. This report is found at <https://drive.google.com/file/d/1ffflF5G4WWbqAVxu1wgh3Y0KnJhrHEt/view>. I downloaded the report from that webpage on October 18, 2018.

11. Exhibit 10 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the merits brief that the Colorado Civil Rights Commission filed with the United States Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

12. Exhibit 11 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of an amicus brief, "Brief of Amici Curiae Colorado Organizations and Individuals in Support of Respondents," that was filed with the United States Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018). This brief names One Colorado in its list of amici curiae.

13. Exhibit 12 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of an amicus brief, "Brief Amici Curiae of Lambda Legal Defense and Education Fund, Inc., One Colorado and One Colorado Educational Fund in Support of Appellees," that was filed with the Colorado Court of Appeals in *Craig v. Masterpiece Cakeshop, Ltd.*, 370 P.3d 272 (Colo. App. 2015).

14. Exhibit 13 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a webpage of the group One Colorado that lists the organization's board members. This webpage is found at <https://one-colorado.org/board-of-directors/>. I downloaded this webpage on October 18, 2018.

15. Exhibit 14 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a One Colorado webpage titled "Heidi Jeanne Hess." This webpage is found at <https://one-colorado.org/our-team/heidi-jeanne-hess/>. I downloaded this webpage on October 18, 2018.

16. Exhibit 15 in support of Plaintiffs' Amended Motion for Preliminary Injunction are true and accurate screenshots of a Twitter webpage that belongs to a person identified as Heidi J Hess. These screenshots were taken from a webpage found at <https://twitter.com/hjhess3?lang=en>. I captured these screenshots in October 2018.

17. Exhibit 16 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of public session minutes from a Colorado Civil Rights Commission meeting held May 30, 2014. This document is found at <https://drive.google.com/file/d/0B83TDPp7IaM2T21pZGIONG1nM0kwaHIEQzNaYVM4RUMORWIB/view>. I downloaded this document on October 18, 2018.

18. Exhibit 17 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the transcript of the Colorado Civil Rights Commission meeting held May 30, 2014. The transcript was part of the record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

19. Exhibit 18 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of public session minutes from a Colorado Civil Rights Commission meeting held July 25, 2014. This document is found at <https://drive.google.com/file/d/0B83TDPp7IaM2bUk3NVBOOEhqX2dzUkRqZzdldUVkVy12WFpN/view>. I downloaded this document on October 18, 2018.

20. Exhibit 19 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the transcript of the Colorado Civil Rights Commission meeting held July 25, 2014. The transcript was part of the record in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

21. Exhibit 20 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a Colorado Public Radio article titled "Former Civil Rights Commissioner Diann Rice Speaks Out: 'I Don't Have Any Regrets.'" This article is found at <http://www.cpr.org/news/story/former-civil-rights-commissioner-diann-rice-responds-i-have-no-religious-bias>. I downloaded this webpage on October 18, 2018.

22. Exhibit 21 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of the Colorado Department of Regulatory Agencies webpage identifying the commissioners on the Colorado Civil Rights Commission. This webpage is found at <https://www.colorado.gov/pacific/dora/civil-rights/commission>. I downloaded this webpage on October 18, 2018.

23. Exhibit 22 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of an Inside Out Youth Services webpage. This webpage is found at <https://www.insideoutys.org/about/>. I downloaded this webpage on October 18, 2018.

24. Exhibit 23 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a Colorado Springs Independent article titled "Lottie Prize winner: Jessie Pocock." This article is found at <https://www.csindy.com/coloradosprings/lottie-prize-winner-jessie-pocock/Content?oid=2962716>. I downloaded this webpage on October 18, 2018.

25. Exhibit 24 in support of Plaintiffs' Amended Motion for Preliminary Injunction are true and accurate screenshots taken from a Twitter page that belongs to a person identified as Jessie Pocock. These screenshots were taken from a webpage found at [https://twitter.com/jessie\\_pocock](https://twitter.com/jessie_pocock). I captured these screenshots on October 18, 2018.



26. Exhibit 25 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a City of Denver webpage about Human Rights and Community Partnerships that lists Anthony Aragon as a staff member and describes his work. This webpage is found at <https://www.denvergov.org/content/denvergov/en/human-rights-and-community-partnerships/about-us.html>. I downloaded this webpage on October 22, 2018.

27. Exhibit 26 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a Westword article about Anthony Aragon. This article is found at <https://www.westword.com/news/public-servant-anthony-aragon-runs-for-office-in-the-imperial-court-5118948>. I downloaded this webpage on October 18, 2018.

28. Exhibit 27 in support of Plaintiffs' Amended Motion for Preliminary Injunction are true and accurate screenshots of a Facebook webpage that belongs to a person identified as Anthony Aragon. These screenshots were taken from a webpage found at <https://www.facebook.com/anthony.aragon.50>. I captured these screenshots on October 18, 2018. It includes a post that is dated December 5, 2017—the day that the Supreme Court held oral argument in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

29. Exhibit 28 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of a National LGBTQ Task Force webpage that contains a biography of Anthony Aragon. This webpage is found at <http://www.thetaskforce.org/nac-bio-anthony-aragon/>. I downloaded this webpage on October 18, 2018.

30. Exhibit 29 in support of Plaintiffs' Amended Motion for Preliminary Injunction is a true and accurate copy of an amicus brief, "Brief for National LGBTQ Task Force, et al. as Amici

Curiae Supporting Respondents,” that was filed with the Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).

31. Exhibit 30 in support of Plaintiffs’ Amended Motion for Preliminary Injunction is a true and accurate copy of an article available at Smithsonian.com entitled “A Proud Day at American History Museum as LGBT Artifacts Enter the Collections.” This webpage is found at <https://www.smithsonianmag.com/smithsonian-institution/will-grace-affirms-role-american-history-180952400/?no-ist>. I downloaded this webpage on November 28, 2018.

32. Exhibit 31 in support of Plaintiffs’ Amended Motion for Preliminary Injunction is a true and accurate copy of the Colorado Civil Rights Division and Commission’s “Case Comments” from the *Scardina v. Masterpiece Cakeshop* file. The Colorado Attorney General’s Office sent our office a copy of that document with a letter dated November 7, 2018.

**DECLARATION UNDER PENALTY OF PERJURY**

I, Julie Peterson, a citizen of the United States and a resident of the State of Arizona, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of January, 2019, at Scottsdale, Arizona.

  
\_\_\_\_\_  
Julie Peterson



## COLORADO

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

### REQUEST FOR INFORMATION

Please submit the following specific, written information and/or documentation by the deadline indicated. Your failure to do so may result in our issuing a finding based on the available evidence.

Please be advised that you are expected to provide a complete response to each question. If you, or your representative, believe that a question is impermissible, is not relevant, or is overly broad in scope, do not simply object and/or decline to answer. Rather, contact the assigned investigator to discuss your concerns. Failure to do so will be viewed as a refusal to cooperate. The investigator is always willing to discuss the scope of the request, and in most instances, can narrow, modify and/or clarify it to ensure that only information essential to the specific facts and allegations of your case is required.

**SUBPOENA POWER NOTICE:** You should be aware that the State of Colorado's Anti-Discrimination statute grants the Director of the Colorado Civil Rights Division the authority to subpoena witnesses and to compel the production of books, papers and records relevant to the charge [C.R.S. 24-34-306(2)(a)]. Such subpoena is enforceable in the district court in which the alleged discriminatory practice occurred. Subpoena authority is exercised only when, in the judgment of the Director, the Respondent's failure to voluntarily cooperate makes it necessary.

1. Written Position Statement in response to the Charge of Discrimination to include:
  - a. a specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.
  - b. General nature of your business or organization and the service it provides.
  - c. Your response should contain the name, job/position title; the comparative protected class information (e.g. if the Charging Party is



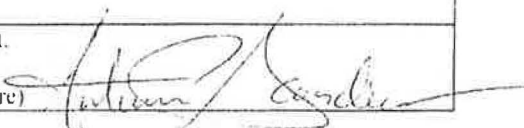
- alleging racial discrimination, indicate race) of the official(s) who made the business decision which is the basis of this complaint.
- d. Also, identify by job/position title and any other employee(s) who was/were involved in this business decision and provide the protected class information for these individuals.
  - e. Provide supporting documentation substantiating the reason(s) for the business decision.
2. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reason(s) for Charging Party's asserted denial of the goods, services, benefits or privileges offered. *For each witness*, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and protected class identification:
    - a. *If a person named above is no longer a member/employee*, provide the above requested identifying information, the affiliation separation date and a brief reason for the separation.
  3. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. *If not available in written form*, please provide a written explanation of how such situations have been handled in the past.
  4. Provide any other information/documentation/witnesses you deem relevant to the merits of this complaint or which you believe will support your position.
  5. Note if the Charging Party is currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?
  6. Provide a list of any individuals you have denied goods, services, benefits, or privileges to in the past. Provide the protected class information for the individuals listed and briefly state the reason for each denial.



COLORADO DIVISION

JUL 20 2017

OF CIVIL RIGHTS

<b>CHARGE OF DISCRIMINATION</b>		CCRD Charge No. CP2018011310
The Privacy Act of 1974 affects this form. See Privacy Act Statement before completing this form.		
<b>COLORADO CIVIL RIGHTS DIVISION</b>		
Name <i>(Charging Party)</i> Autumn Scardina		(Area Code) Telephone (818) 205-5560
Street Address 7779 Everett Way	City, State, and Zip Code Arvada, CO 80005	County Jefferson
Name of Place of Public Accommodation <i>(Respondent)</i> Masterpiece Cakeshop Incorporated		(Area Code) Telephone (303) 763-5754
Street Address 3355 S. Wadsworth Blvd	City, State, and Zip Code Lakewood, CO 80227	County Jefferson
Discrimination Based on: Sex (Female); Transgender (Gender Identity)	Date Most Recent Discrimination Occurred June 26, 2017	
<p><b>I. Jurisdiction:</b> The Colorado Civil Rights Division has jurisdiction over the subject matter of this charge; that each named Respondent is subject to the jurisdiction of the Colorado Civil Rights Division and is covered by the provisions of the Colorado Revised Statutes (C.R.S. 1973, 24-34-301, et. seq.), as reenacted.</p> <p><b>II. Personal Harm:</b> That on or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation based on my sex (female) and/or transgender (gender identity).</p> <p><b>III. Respondent's Position:</b> N/A</p> <p><b>IV. Discrimination Statement:</b> I believe I was unlawfully discriminated against because: of my protected class (es) in violation of the Colorado Anti-Discrimination Act (CADA). 1.) On or about June 26, 2017, I was denied full and equal enjoyment of a place of public accommodation. Specifically, the Respondent refused to prepare my order for a cake with pink interior and blue exterior, which I disclosed was intended for the celebration of my transition from male to female. Furthermore, the Respondent indicated to me that to prepare such a cake would be against their religious beliefs. 2.) I believe I was discriminated against because of my protected class (es).</p> <p><b>V. WHEREFORE:</b> The Charging Party prays that the Colorado Civil Rights Division grant such relief as may exist within the Division's power and which the Division may deem necessary and proper.</p>		
I declare under penalty of perjury that the foregoing is true and correct.		
Date 7/20/17	Charging Party/Complainant (Signature) 	

## **Statement of Discrimination**

### **First Date of Occurrence**

**Why you think the incident or action taken was discriminatory (e.g. "This incident shows that I was denied service because of my age").**

On June 26, 2017, I contacted Masterpiece Cakeshop to request that they prepare a birthday cake to celebrate my upcoming birthday. They asked what I wanted the cake to look like, and I explained I was celebrating my birthday on July 6, 2017 and that it would also be the 7th year anniversary of my transition from male to female. When I explained I am a transexual and that I wanted my birthday cake to celebrate my transition by having a blue exterior and a pink interior, they told me they will not make the cake based on their religious beliefs. I was stunned and asked for the woman's name. The phone was disconnected. I called back and explained we got disconnected and believe I was hung up on. I called again and asked that they give me the employees name, and I was hung up on again.

**Was anyone treated more favorably than you? Who? Provide information related to their protected classes (e.g., if you are alleging race discrimination, what is the person's race? If age discrimination, what was the person's age?)**

I believe so. I cannot be sure because I am not a part of all their sales, but the woman on the phone did not object to my request for a birthday cake until I told her I was celebrating my transition from male to female. I believe that other people who request birthday cakes get to select the color and theme of the cake. I believe that I was not allowed to order a birthday cake because I requested that its color and theme celebrate my transition from male to female. The woman on the phone told me they do not make cakes celebrating gender changes.



September 19, 2017

Ms. Aubrey Elenis  
Colorado Civil Rights Division  
1560 Broadway Street, Suite 1050  
Denver, CO 80202

Case Number: CP2018011310

Re: Response to Request for Information

Dear Ms. Elenis,

Respondent, Masterpiece Cakeshop, Ltd., submits the following response to your Request for Information:

**1. Written Position Statement in response to the Charge of Discrimination.**

***Nature of Respondent's Business***

Respondent is a small cake shop in Lakewood, Colorado, owned and operated by Jack Phillips ("Jack"). Jack's love for art and design began at an early age. Discovering that he could blend his skills as a pastry chef, sculptor, and painter, he spent nearly two decades in bakeries owned by others before opening Masterpiece Cakeshop twenty-four years ago. He carefully chose Masterpiece's name: it would not be just a bakery, but an art gallery of cakes.<sup>1</sup> With this in mind, Jack created a Masterpiece logo depicting an artist's paint palate with a paintbrush and whisk. And for over a decade, a large picture has hung in the shop depicting Jack painting at an easel. Since long before this Charge was filed, Jack has been an artist using cake as his canvas with Masterpiece as his studio.

Jack is also a man of deep faith who strives to honor God in all aspects of his life, including how he treats people and runs his business. Jack welcomes homeless people into his store, offers them refreshments, and develops friendships with them. He provides a safe place at the cake shop for drug and alcohol abusers to share a cup of coffee, discuss their problems, and receive encouragement to change.<sup>2</sup> He hosts Bible studies there. And because of his faith, Jack pays his employees above the market rate and helps them with financial and personal needs outside of work. He even closes the cake shop on Sundays so that he and his employees can attend religious services. These decisions make little financial sense, but Jack's bottom line has never been just about dollars and cents. He aims to love God and love other people through his work.

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<sup>1</sup> See Attachment A (collage of Jack's artistic cakes).

<sup>2</sup> Jack declines to serve baked goods containing alcohol for this reason in part.

His Christian faith also teaches him to serve everyone, and he does. Jack welcomes people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations and offers his artistic talent to create elaborately designed custom cakes for anyone. He eagerly seeks to serve people who are different from him. But Jack cannot design custom cakes that express ideas or celebrate events at odds with his religious beliefs for any customer. In other words, his decisions on whether to design a specific custom cake never focus on *who* the customer is, but on *what* the custom cake will express or celebrate. These limitations on Jack's custom work have no bearing on his premade baked items, which he sells to everyone, no questions asked.<sup>3</sup>

There are many custom cakes that Jack will not create. For example, he will not design cakes that celebrate Halloween; express anti-family themes (such as a cake glorifying divorce); contain hateful, vulgar, or profane messages (such as a cake disparaging gays, lesbians, or transsexuals); or promote atheism, racism, indecency, or any other message that violates his religious beliefs. Jack also declines to speak on some subjects altogether—like sex-changes or gender transitions, as relevant here. Jack has chosen not to address this subject for a number of reasons: (1) Jack cannot promote particular viewpoints on this subject due to his religious beliefs;<sup>4</sup> (2) Jack finds particular viewpoints on the subject offensive and objectionable;<sup>5</sup> and (3) Jack seeks to avoid creating artistic expression concerning controversial subjects because they pose distractions and may alienate segments of his diverse clientele. So for all these reasons, he has decided not to create any custom cakes that address the topic of sex-changes or gender transitions.

### ***Response to the Charge***

As you are aware, Respondent and the Colorado Civil Rights Commission are involved in ongoing litigation before the United States Supreme Court. Specifically, on June 26, 2017, the Court granted Respondent's petition for a writ of certiorari to answer an important question: whether applying the Colorado Anti-Discrimination Act ("CADA") to compel a cake artist to create objectionable expression violates the Free Speech or Free Exercise Clauses of the First Amendment. See *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111).

On that same day, the cake shop was flooded with telephone calls in response to the Court's decision to hear Jack's case. Some came from members of the press and others came from people wishing to comment on the day's news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party's among them—ranged in content and sincerity.

Ordinarily, Jack answers the telephone because he has received numerous hateful calls—including death threats—and prank custom cake requests in the last few years since news of his court case spread. He does this because he wants to protect his family from hearing hateful

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<sup>3</sup> Jack also creates and sells pre-made cupcakes, cookies, brownies, cakes, candles, and coffee.

<sup>4</sup> For example, because of his religious beliefs, Jack cannot create custom cakes promoting the idea that a person's sex is anything other than an immutable God-given biological reality. At the same time, due to those same beliefs, he cannot create custom cakes denigrating a person for any reason, including because of their professed gender identity.

<sup>5</sup> See *supra* Note 4.



comments and to prevent them from having to deal with phony custom cake requests. But on the day that the Supreme Court decided to hear Jack’s case, Jack needed help.

In the hours after the press reported that the Supreme Court had decided to hear Jack’s case, the Charging Party, who appears to be a Denver-based attorney<sup>6</sup> involved in LGBT advocacy,<sup>7</sup> called the cake shop to request a custom cake. Debra Phillips (“Debi”), Jack’s wife, answered the telephone. Once Debi learned that the Charging Party was requesting a custom cake, she solicited some essential details, as the cake shop does for every customer that requests a custom cake. For example, Debi asked about when the cake was needed, the requested size, flavors, and other essential details. At no time, however, did Debi ask about any personal characteristic of the Charging Party.

As the Charging Party admits, the Party requested that the cake be designed with a blue exterior with a pink interior to celebrate a sex-change from male to female.<sup>8</sup> But because of Jack’s unwillingness to create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions—whether celebrating or denigrating them—for any customer, Debi politely told the Charging Party that the cake shop could not fulfill the request. When the Charging Party pressed further, asking Debi to repeat her response so that someone else could hear, Debi asked that the Charging Party hold on the line while she went to get Jack. Debi did not know that someone else was on the telephone line. When Jack came to the telephone, the line was disconnected.

The Charging Party immediately called back. This time Jack’s daughter, Lisa Eldfrick (“Lisa”), answered the telephone. Like her mom, Lisa came to understand that the Charging Party was requesting a custom cake concerning a sex-change or gender transition. But Lisa knew that the cake shop does not create artistic expression addressing that subject for any customer. So she politely indicated that, although the Charging Party is welcome to purchase any of the cake shop’s premade items or obtain a different custom cake, the cake shop could not fulfill this particular custom cake request. Not satisfied, the Charging Party pressed further. Lisa then politely repeated the cake shop’s position and asked if the Charging Party had any further requests. The Charging Party—now miffed and derisive—pressed even more. Once Lisa realized that the Charging Party would not accept her answer and only sought to continue criticizing the cake shop’s policy, she politely ended the telephone call. Like her mom, Lisa never asked about any personal characteristic of the Charging Party.

During all the telephone interactions between Debi, Lisa, and the Charging Party, neither Debi nor Lisa asked the Charging Party about or discussed the Party’s sex or gender identity. Debi and Lisa never saw the Charging Party or did any research about the Charging Party; Debi and Lisa only spoke to the Charging Party over the telephone. In making its decision to decline Charging Party’s request, Respondent never made any decision based on the Charging Party’s sex or gender identity.

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<sup>6</sup> <http://www.scardinalaw.com/About/Autumn-Scardina.shtml>

<sup>7</sup> <http://www.scardinalaw.com/Employment-Disputes.shtml>

<sup>8</sup> Charging Party Statement; *see* Attachment B (witness statement of Debra Phillips).

About a month later, the cake shop received the Charge (Case No. CP2018011310) in the mail. Jack, Debi, and Lisa then learned that the Charging Party believed the custom cake request to be connected to the Charging Party's birthday. This, however, was not clear to Debi and Lisa on the phone calls. Both Debi and Lisa understood that the caller was requesting a custom cake to celebrate a sex-change or gender transition. And if the Charging Party was, in fact, requesting a cake concerning a sex-change or gender transition, regardless of the event it was connected to, the cake shop cannot fulfill that request because it does not create artistic expression that addresses that subject for any customer.

### ***Employment & Protected Class Information***

- Jack is a heterosexual male and a Christian. He is a co-owner of Masterpiece Cakeshop, Ltd. Jack is the primary cake artist and makes the final business decisions and policies for the cake shop.
- Debi is a heterosexual female and a Christian. She is a co-owner of Masterpiece Cakeshop, Ltd. and serves as a secretary and service representative for the cake shop.
- Lisa is a heterosexual female and a Christian. She is a service representative for Masterpiece Cakeshop, Ltd.

### ***Supporting Documents***

Respondent does not maintain written documents or records that detail the policies concerning the decisions described herein.

## **2. Written Statements**

See Attachments B, C, & D.

## **3. Copies of Documents**

Respondent does not maintain written documents or records that detail the policies concerning the decisions described herein.

## **4. Other Information**

Respondent and its agents did not treat the Charging Party differently from how it treats other customers. Thus Respondent did not violate CADA. Respondent offered the Charging Party the same artistic services that it offers to every other customer. Respondent did not inquire about the Charging Party's sex or gender identity and never made any decision based off of that sex or gender identity. Once Respondent learned that the Charging Party was requesting a custom cake that it will not create for any customer, Respondent politely told the Charging Party that it could not fulfill the request. Respondent then reaffirmed its willingness to provide the Charging Party

any goods or artistic services it offers to other customers. This is how Respondent always treats customers who request a custom cake that it does not create.

Not satisfied with equal treatment, the Charging Party requests better treatment and access to more goods and artistic services than any other customer receives. Yet Respondent cannot give the Charging Party preferred treatment; otherwise, it would risk opening itself up to a CADA violation.

The Division has already affirmed that CADA permits other cake artists to decline to create cakes that convey messages that the cake artist deems offensive or objectionable. *See, e.g., Jack v. Le Bakery Sensual, Inc.*, No. P20140070X (Colo. Div. of Civ. Rights Mar. 24, 2015) (finding no probable cause where a cake artist declined to create a cake with a religious message that the cake artist deemed offensive); *Jack v. Gateaux, Ltd.*, No. P20140071X (Colo. Div. of Civ. Rights Mar. 24, 2015) (same); *Jack v. Azucar Bakery*, No. P20140069X (Colo. Div. of Civ. Rights Mar. 24, 2015) (same). The message that the Charging Party’s requested cake would communicate is a message that Jack considers objectionable. Thus, consistent with the Division’s own precedent, Respondent did not violate CADA.

On top of that, the Constitution protects Respondent’s right to control the content of its artistic expression. *See Turner Broad. Sys., Inc. v. FCC*, 522 U.S. 622, 641 (1994) (plurality opinion) (explaining that individuals and businesses have the right to determine for themselves “the ideas and beliefs deserving of expression, consideration, and adherence”); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 576 (1995) (discussing principles of expressive autonomy); *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (“The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster ... an idea they find morally objectionable.”). This right applies both to individuals and “business corporations generally.” *Hurley*, 515 U.S. at 574. Thus, a cake artist who serves all people, like Jack does, cannot be forced to create objectionable artistic expression.

If that were not enough, the Constitution also protects Respondent’s and its owners’ right to freely exercise their religion. Indeed, the scope of protected religious exercise extends beyond “belief and profession” to “the performance of (or abstention from) physical acts’ that are ‘engaged in for religious reasons’” and even to “[b]usiness practices” that are “compelled or limited by the tenets of a religious doctrine.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770 (2014) (quoting *Emp’t Div. Dep’t of Human Res. v. Smith*, 494 U.S. 872, 877 (1990)). Respondent cannot create custom cakes that celebrate or promote the idea that biological sex is anything other than an immutable God-given biological reality. Communicating that message would violate Respondent’s religious beliefs. Applying CADA to force Respondent to create religiously objectionable artistic expression, then, would violate Respondent’s and its owners’ free exercise rights.

As discussed above, the Division has already recognized that a cake artist does not violate CADA when the cake artist declines to create a cake with a message that he or she considers offensive or objectionable. When the government denies that same protection to a cake artist who has a religious reason for his conduct, its actions must overcome strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993). Here, however, the

government cannot show a narrowly tailored compelling interest in forcing Respondent and its owners to violate their sincerely held religious beliefs by creating objectionable artistic expression.

### **5. The Charging Party is Welcome at Masterpiece Cakeshop**

The Charging Party remains welcome in Respondent's store and to all goods and artistic services that Respondent offers. Indeed, the Charging Party will receive the same treatment as every other customer who telephones Respondent or comes through its door.

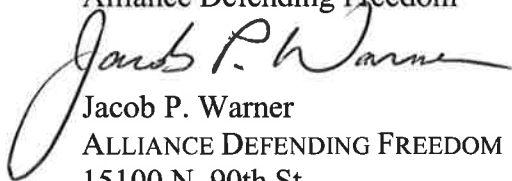
### **6. List of Individuals for whom Respondent Could Not Fulfill Custom Cake Requests in the Past**

- Respondent declines to create approximately 2 to 5 custom cakes per week because it cannot fulfill the request within the time provided. Respondent has no information concerning the protected characteristics of these requestors.
- In the past year, Respondent has declined to create a cake promoting white supremacy because the cake would promote an objectionable message. Respondent has no information concerning the protected characteristics of this requestor.
- In the past couple years, Respondent has declined to create multiple cakes denigrating gays and lesbians because the cakes would promote an objectionable message. Respondent has no information concerning the protected characteristics of these requestors.
- During the past few years, Respondent has declined to create custom wedding cakes for all requestors because of its unwillingness to create artistic expression that celebrates conceptions of marriage that violate Respondent's sincerely held religious beliefs. Respondent has no information concerning the protected characteristics of these requestors.
- In 2012, before Respondent stopped offering to create custom wedding cakes, it declined to create a custom wedding cake to celebrate a same-sex wedding for Charlie Craig and David Mullins. Respondent could not create custom artistic expression to celebrate a conception of marriage that violates its religious beliefs. At that time, same-sex marriage was illegal in Colorado. Craig and Mullins are homosexual males.
- Before withdrawing from the wedding cake industry, Respondent also declined to create custom wedding cakes for other same-sex weddings. Respondent has no information concerning the protected characteristics of these requestors.
- In the more distant past, Respondent declined to create a divorce cake because of its objectionable anti-family theme. Respondent has no information concerning the protected characteristics of this requestor.

- Respondent cannot remember every custom cake request it has declined to create since 1993. Respondent has no information concerning the protected characteristics, or identities, of requestors not previously mentioned who have requested objectionable custom cakes during this time.

Respectfully submitted this 19th day of September, 2017.

Alliance Defending Freedom



Jacob P. Warner

ALLIANCE DEFENDING FREEDOM

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Counsel for Respondent

**Attachment A – Collage of Jack’s Custom Cakes**



















**Attachment B – Witness Statement of Debra Phillips**

Date: 09/19/2017

I am Debra Phillips, a co-owner of Masterpiece Cakeshop, Ltd. I also serve as a secretary and service representative at the cake shop. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court’s decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day’s news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party’s among them—ranged in content and sincerity.

Ordinarily my husband, Jack Phillips, answers the telephone calls because the cake shop has received numerous hateful calls—including death threats—and prank requests for custom cakes in the last few years after news of Jack’s court case spread. But he needed my help on that day due to the large volume of calls in response to the Supreme Court’s decision to hear our case. In the hours after news of the Supreme Court’s decision broke, I received a telephone call from a person—whom I believe to be the Charging Party—asking for a custom cake. I asked the person to give some details about the cake (e.g., when the cake was needed, the requested size, flavors, and other essential details), as we do whenever someone expresses interest in ordering a custom cake.

The person indicated that the requested cake would need to be designed to celebrate a sex-change or gender transition. Specifically, as best I can recall, I think that the person requested a custom cake with a blue exterior and pink interior to celebrate a sex-change from male to female. But I knew that the cake shop does not create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions for any customer. So I politely told the person that the cake shop could not fulfill the request. The person pressed further, asking that I repeat the cake shop’s position for someone else to hear, at which time I asked the person to hold on the line while I went to get Jack. I did not know that someone else was on the telephone line. Jack came to the telephone, but the phone was disconnected.

I did not hang up the telephone while the person was on the line. I never asked about any of the person’s personal characteristics. Nor were the person’s personal characteristics considered when I disclosed the cake shop’s policy. I also did not ask what the cake was for. I treated the person just like every other person who calls and requests a custom cake.

/s/ Debra Phillips

Debra Phillips  
Masterpiece Cakeshop, Ltd.  
3355 S. Wadsworth Blvd., H-117  
Lakewood, CO 80227  
(303) 763-5754

**Attachment C – Witness Statement of Lisa Eldfrick**

Date: 09/19/2017

I am Lisa Eldfrick and serve as a service representative at Masterpiece Cakeshop Ltd. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court’s decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day’s news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party’s among them—ranged in content and sincerity.

Ordinarily my father, Jack Phillips, answers the telephone calls because the cake shop has received numerous hateful calls—including death threats—and prank requests for custom cakes in the last few years after news of Jack’s court case spread. But he needed my help on that day due to the large volume of calls in response to the Supreme Court deciding to hear our case. In the hours after news of the Supreme Court’s decision broke, I received a telephone call from a person—whom I believe to be the Charging Party—asking for a custom cake. I believed this person was the same person who had talked to my mom moments before. The person desired a custom cake designed to celebrate a sex-change or gender transition from male to female.

But I knew that the cake shop does not create artistic expression that addresses or promotes messages and viewpoints on the subject of sex-changes or gender transitions for any customer. So I politely told the person that the cake shop could not fulfill the request. Not satisfied, the person pressed further. I repeated the cake shop’s position and asked if the person had any other requests. The person—now miffed and derisive—pressed more. Once I realized that the person would not accept the cake shop’s answer and only sought to continue criticizing the cake shop’s policy, I politely ended the telephone call.

I never asked about any of the person’s personal characteristics. Nor were the person’s personal characteristics considered when I disclosed the cake shop’s policy. I also did not ask what the cake was for. I treated the person just like every other person who calls and requests a custom cake.

/s/ Lisa Eldfrick

Lisa Eldfrick

Masterpiece Cakeshop, Ltd.

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Lakewood, CO 80227

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### Attachment D – Witness Statement of Jack Phillips

I am Jack Phillips, an artist and co-owner of Masterpiece Cakeshop, Ltd. I carefully chose Masterpiece's name to reflect my vision for the cake shop: it would not be just a bakery, but an art gallery of cakes. Accordingly, I have developed skills as a pastry chef, sculptor, and painter, to design and create the best custom cakes possible for my customers over the last twenty-four years. Each custom cake I design and create communicates a message. So my decisions to create or not to create cakes are very important to me. Although I serve everyone, I cannot design and create cakes that promote every event or express every message. I am the primary cake artist and make the final decisions and policies for the cake shop. This statement reflects my best recollection of the circumstances referred to in the Charge.

On June 26, 2017, the cake shop received an unusually large number of phone calls in response to the U.S. Supreme Court's decision to review a high-profile case involving the cake shop. *See Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272 (Colo. App. 2015), *cert. granted*, 85 U.S.L.W. 3593 (U.S. Jun. 26, 2017) (No. 16-111). Some calls came from members of the press and others came from people wishing to comment on the day's news, both supporters and detractors. In the same way that calls from commenters ranged in viewpoint and tone, calls from prospective customers—the Charging Party's among them—ranged in content and sincerity.

Ordinarily I answer the telephone because I have received numerous hateful calls—including death threats—and prank requests for custom cakes at the cake shop in the last few years after news of my court case spread. But I could not handle all the calls on the day the Supreme Court decided to hear my case. So in the hours after news of the Supreme Court's decision broke, my wife, Debra Phillips, received a telephone call from a person—whom she believes to be the Charging Party—asking for a custom cake. She asked me to come to the telephone and talk with the caller. When I picked up the phone, the line was disconnected. I never talked to the caller. Nor did I know any of the personal characteristics of the caller.

My Christian faith teaches me to serve everyone, and I do. I welcome people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations and offer my artistic talent to create custom cakes for anyone. But I cannot create custom cakes that celebrate Halloween; express anti-family themes (such as a cake glorifying divorce); contain hateful, vulgar, or profane messages (such as a cake disparaging gays, lesbians, or transsexuals); or promote atheism, racism, indecency, or any other message that violates my religious beliefs. I also decline to speak on some subjects altogether—like sex-changes or gender transitions, as relevant here. I have chosen not to address this subject for a number of reasons: (1) I cannot promote particular viewpoints on this subject due to my religious beliefs;<sup>1</sup> (2) I find particular viewpoints on the subject offensive;<sup>2</sup> and (3) I seek to avoid creating artistic expression concerning controversial subjects because they pose distractions and may alienate segments of my diverse clientele. So for all these reasons, I have decided not to create any custom cakes that address the topic of sex-changes or gender transitions.

/s/ Jack Phillips  
Jack Phillips

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<sup>1</sup> For example, because of my religious beliefs, I cannot promote the idea that a person's sex is anything other than an immutable God-given biological reality. At the same time, due to those same beliefs, I cannot promote ideas that denigrate any person, including because of their gender identity.

<sup>2</sup> See supra Note 1.

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November 6, 2017

SENT VIA FACSIMILE AND USPS

COLORADO DIVISION

Ms. Aubrey Elenis  
Colorado Civil Rights Division  
1560 Broadway Street, Suite 1050  
Denver, CO 80202  
FAX: 303-894-7830

NOV 07 2017

OF CIVIL RIGHTS

RE: Case Number CP2018011310

Dear Ms. Elenis:

Thank you for affording my client the opportunity to rebut to the Response to Request for Information letter dated September 19, 2017 from Alliance Defending Freedom on behalf of Masterpiece Cakeshop, Ltd. (hereinafter "Masterpiece").

**1. Rebuttal to Written Position Statement in Response to the Charge of Discrimination:**

Ms. Scardina does not dispute the nature of Masterpieces business. She takes no issue with his religious beliefs nor does she dispute that the business serves a noble and useful purpose to the community in providing a "safe place at the cake shop for drug and alcohol abusers to share a cup of coffee". Rather, she agrees that the business provides valuable and beneficial services to the community and merely wishes to be able to access those services to the same degree and scope as the general public without regard to her gender identity.

While Mr. Phillips alleges that he "welcomes people from all walks of life, including individuals of all races, faiths, gender identities, and sexual orientations", the facts surrounding this case demonstrate that is simply not true. Specifically, Mr. Phillips refused to offer his services to create a custom birthday cake for Ms. Scardina upon learning that she transitioned genders from male-to-female.

In *Tesmer v. Colorado High School Activities Association*, 140 P.3d 249, 254 (Colo. App. 2006), the Colorado Court of Appeals concluded that to prevail on a discrimination claim under CADA, plaintiffs must prove that, "but for" their membership in an enumerated class, they would not have been denied the full privileges of a place of public accommodation. The division explained that plaintiffs need **not** establish that their membership in the enumerated class was the "sole" cause of the denial of services. *Id.* Rather, it is sufficient that they show that the discriminatory action was based in whole or in part on their membership in the protected class. *Id.*; *Craig v. Masterpiece Cakeshop Inc.* 2015 COA 115.

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**EXHIBIT 3**





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The facts at issue demonstrate that but for Ms. Scardina's gender identity, she would not have been denied the full privileges of the place of public accommodation. Importantly, as the attached supporting affidavits explain, Ms. Scardina did not request that Masterpiece make any statements regarding "sex-changes or gender transitions". She merely requested that Masterpiece help her celebrate her birthday by preparing a custom cake, a task that Masterpiece admittedly performs. At no time did Ms. Scardina request that Masterpiece make any representation or statement concerning her gender or "sex-changes". Rather, she merely requested that they prepare a birthday cake using a blue colored cake and pink frosting. It was not until, and only because of Ms. Scardina's gender identity, that Masterpiece refused to provide her services. Such a decision is aberrant to Colorado law and discriminatory in purpose, intent, and effect.

While Masterpiece is free to decline to create cakes for any number of reasons, it is prohibited by Colorado Law from discriminating against individuals on the basis of gender identity. C.R.S. 1973 24-34-301, et seq. Masterpiece routinely provides custom cakes that celebrate birthdays. Masterpiece's website has an entire section dedicated to "Birthday" cakes<sup>1</sup> and at least two of the pictures of cakes provided by Masterpiece appear to be cakes prepared to celebrate birthdays. Furthermore, Masterpiece's website boasts that "custom designs are his specialty; if you can think it up, Jack can make it into a cake!"<sup>2</sup>

When Ms. Scardina requested a custom birthday cake, Masterpiece appeared happy to comply and began working with Ms. Scardina to complete the order. Ms. Scardina inquired about Masterpiece's ability to create a cake using different colors for the outside and inside of the cake and Masterpiece agreed they could accommodate that request. Ms. Scardina then requested that the cake have blue frosting with pink cake, to which Masterpiece had no objection. It was not until and only upon Ms. Scardina's disclosure that she is a transgender woman that Masterpiece refused to provide services to Ms. Scardina. Such conduct is the very definition of discriminatory conduct.

Masterpiece is willing to prepare and create birthday cakes for cisgender individuals and boasts that they are able to create custom cakes. Masterpiece does not deny that they provide custom birthday cakes to the general public and boasts that they can create any cake it's customer's can think of. Masterpiece did not object to the design of pink frosting with blue cake nor did they object to the cakes message until Ms. Scardina disclosed her gender identity. There is nothing inherently offensive or inappropriate about a cake with pink frosting and blue cake. Masterpiece admits that there is no company policy or general term of service that prohibits preparing cakes with pink frosting and blue cake to customers.<sup>3</sup> Masterpiece does not appear to

<sup>1</sup> <http://masterpiececakes.com/birthday/>

<sup>2</sup> <http://masterpiececakes.com/>

<sup>3</sup> Nor does Masterpiece appear to allege that cakes with pink frosting and blue cake are offensive to his religious beliefs. While Masterpiece claims to be a "man of deep faith" and a "Christian", he provides no evidence to suggest that such a faith prohibits him from preparing cakes with pink frosting and blue cake. Ms. Scardina performed an

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take issue with or decline to sell cakes with pink frosting and blue cakes in general. Rather, Masterpiece's objection and unwillingness to provide services to Ms. Scardina rests entirely on her gender identity, and is therefore discriminatory on the basis of her gender identity.

Ms. Scardina did not request that Masterpiece make any statement regarding her transition nor did she request that the cake celebrate a "sex change from male to female". Rather, she requested a custom birthday cake to celebrate her birth with friends and family. Masterpiece was willing to provide such a service and only objected upon learning of Ms. Scardina's gender identity. There is no viewpoint or statement inherent in a cake with blue interior and pink exterior independent of Ms. Scardina's gender identity and Masterpiece does not generally prohibit the same.

Masterpiece's reliance on the Divisions decision in *Jack v. Le Bakery Sensual, Inc.*<sup>4</sup> is inapposite because the requested cake could not be considered objectionable absent Ms. Scardina's gender identity. In *Le Bakery Sensual*, the Division found that a baker did not discriminate against a Christian patron on the basis of his creed when it refused his requests to create two bible-shaped cakes inscribed with derogatory messages about gays, including "Homosexuality is a detestable sin. Leviticus 18:2." The Division found that the bakeries did not refuse the patron's request because of his creed, but rather because of the offensive nature of the requested message. Importantly, there was no evidence that the bakeries based their decisions on the patron's religion, and evidence had established that all three regularly created cakes with Christian themes. Conversely, Masterpiece admits that its decision to Ms. Scardina's requested birthday cake was because of its opposition to her gender identity, which is tantamount to discrimination on the basis of sexual orientation. Unlike the request in *Le Bakery Sensual, Inc.*, there is nothing inherently offensive about the cake Ms. Scardina requested. Furthermore, Masterpiece expressed a willingness and ability to prepare a cake with blue exterior and pink interior and did not object to the request until Ms. Scardina indicated her gender identity.

The Constitution does not protect Masterpiece's discriminatory conduct. Simply put, discrimination by a commercial entity is entitled to no constitutional protection. *Roberts v. United States Jaycees* (1984) 468 U.S. 609. The Anti-Discrimination Act as applied in this context deals with commercial conduct not speech. While Masterpiece argues that baking pastries and cakes is "speech" or "expressive conduct" and therefore protected by the First Amendment of the United States Constitution, commercial entities like Masterpiece are not entitled to special exemptions from anti-discrimination laws merely because they characterize their business ventures as expression or speech. *Citizen Publ'g Co v. United States*, (1969) 394 U.S. 131, 139-40

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exhaustive search of all versions of the New Testament but was not able to find any biblical passages that pertain to the creation of cakes with pink frosting and blue cake

<sup>4</sup> Jack v. Azucar Bakery, Charge No. P20140069X, at 2 (Colo. Civil Rights Div. Mar. 25, 2015), available at <http://perma.cc/5K6D-VV8U>

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(holding that although media organizations are entitled to the highest levels of First Amendment protection, they are subject to restraints on certain business or commercial practices in their sales policies.); *Arcara v. Cloud Books, Inc.* (1986) 478 U.S. 697.

As the United States Supreme Court held in *Sorrell v. IMS Health Inc.*<sup>5</sup> “restrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct.” The Constitution does not guarantee a right to choose customers without restraint from the State. A shopkeeper has no Constitutional right to deal only with persons of his or her choosing. *Roberts v. United States Jaycees* (1996) 468 U.S. 609; *Hearths of Atlanta Motel, Inc. v. United States* (1964) 379 U.S. 241.

Masterpiece does not have a Constitution’s right to discriminate based on religious belief. In fact, similar arguments have been dismissed by the United States Supreme Court as “patently frivolous”. *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 (1968); *Bob Jones Univ. v. United States* 461 U.S. 226 (1990)(holding that the right to free exercise of religion does not require exceptions to laws aimed at eradicating racial discrimination.); *Norwood v. Harrison* 413 U.S. 455 (1973).

In short, despite the denials of the same, the evidence clearly shows that Masterpiece and its agents treated Ms. Scardina differently from how it treats other customers. While other customers are allowed to purchase custom made birthday cakes, Ms. Scardina was denied such services based entirely on her gender identity. While Masterpiece boasts that “if you can think it up; Jack can make it a cake,” it refused to make the cake Ms. Scardina thought of because of her gender identity. While Masterpiece has no general policies prohibiting the use of pink frosting and blue cake and was willing to prepare such a cake for Ms. Scardina until she disclosed her gender identity, it refuses to provide such a cake to her specifically because of her gender identity. This key distinction appears to be missed by Masterpiece in its response to the charge.

Sincerely,

*/s/ Autumn Scardina*

Autumn Scardina, Esq.

SCARDINA LAW

<sup>5</sup> 564 U.S. 552, 567 (2011)

**ATTACHMENT A – WITNESS STATEMENTS**

**WITNESS 1:**

**Todd Scardina**

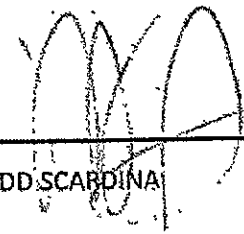
**301 S. Ogden Street, Denver, CO 80209**

**(720) 838-3717**

I, Todd Scardina, hereby submit the following statement in support of the Rebuttal Statement in Case Number CP2017011310, Scardina V. Masterpiece Cakeshop:

1. I am the younger brother to the claimant in this matter, Autumn Scardina.
2. My sister and I are both attorneys in Colorado and partners at the law firm named Scardina Law, LLC.
3. On June 26, 2017, the following events occurred:
  - a. In the afternoon, I was driving my car with Ms. Scardina in the front passenger seat. My sister reminded me that her birthday was coming up on July 6, 2017 and indicated that she would like to celebrate her birthday with a custom cake.
  - b. She indicated she would like Masterpiece Cakeshop to prepare the cake and I observed her google their information from her smartphone.
  - c. At first, I could only overhear Ms. Scardina's portion of the telephone call as the phone was not on speakerphone. The initial conversation was as follows:
    - i. Ms. Scardina inquired about whether Masterpiece Cakeshop prepared custom birthday cakes.
    - ii. Ms. Scardina explained that her birthday was coming up on July 6, 2017 and asked if they could prepare it on time.
    - iii. Ms. Scardina indicated that she would need a cake that would serve approximately 6-8 people.
    - iv. Ms. Scardina began to discuss the design for the cake and requested that the cake have pink interior and blue exterior.
    - v. Ms. Scardina then explained the design was to celebrate her birthday which coincided with the day she came out as transgender.
    - vi. Up through this point in the conversation, my sister's demeanor was calm, friendly, and polite.
    - vii. At this point in the conversation, I observed my sister's demeanor change. She appeared not to believe what was being said on the phone and indicated to me and the person on the phone that she would put the phone on speaker for me to hear. She then put the call on her phone's speakerphone.
  - d. The following portions of the conversation were on speakerphone and observed directly by me:
    - i. Ms. Scardina asked for the person at Masterpiece Cakeshop to confirm that she was refusing to make the cake as requested. The individual from Masterpiece

- Cakeshop responded by indicating that "they do not make cakes to celebrate sex-changes".
- ii. Ms. Scardina responded by explaining it is not a cake to celebrate sex-changes but a custom birthday cake that would celebrate both the date of her birth and the date she came out as transgender.
  - iii. Masterpiece Cakeshop said "we don't make cakes for that" and the phone went dead.
- e. I then observed Ms. Scardina call Masterpiece Cakeshop immediately thereafter. This call was placed on speakerphone and I witnessed the following conversation:
- i. Ms. Scardina indicated that she had called and the phone was disconnected.
  - ii. Ms. Scardina requested the individual's name, as she appeared upset that she had been disconnected previously. The individual refused to provide her name.
  - iii. Ms. Scardina explained again that she was calling to order a birthday cake and that she wanted it to be blue on the outside and pink on the inside because her birthday was the same day as she came out as transgender.
  - iv. Masterpiece Cakeshop again declined to take the order stating that it would violate their religious beliefs. Ms. Scardina asked how a blue cake with pink interior would offend anyone's religion, and the call was terminated by Masterpiece Cakeshop.
- f. My sister was very upset with the interaction. She was emotionally distraught and frustrated with the lacking respect and service from Masterpiece Cakeshop.

  
\_\_\_\_\_  
TODD SCARDINA 11/6/2017

**WITNESS 2:**

**Autumn Scardina**

**7779 Everett Way, Arvada, CO 80005**

**(818) 205-5560**

**(720) 838-3717**

I, Autumn Scardina, hereby submit the following statement in support of the Rebuttal Statement in Case Number CP2017011310, Scardina V. Masterpiece Cakeshop:

1. I am the claimant in this matter.
2. My birthday is July 6, 1978.
3. On July 6, 2010, I came out as transgender.
4. On June 26, 2017, the following events occurred:
  - a. In the afternoon, I was a passenger in my brother's car.
  - b. I had wanted to celebrate my birthday with a custom cake.
  - c. I had heard about Masterpiece Cakeshop and wanted to see if they would make a custom cake for my birthday.
  - d. I googled Masterpiece Cakeshop's information from my smartphone and called to inquire about a custom birthday cake.
  - e. The individual identified herself as someone associated with Masterpiece Cakeshop and asked how she could help me.
  - f. I began by asking if they made custom birthday cakes. The individual responded that they did prepare custom birthday cakes.
  - g. They asked me when my birthday was, and I explained it was on July 6, 2017 and I inquired if that would give them enough time. They indicated that would be fine.
  - h. They then asked how big of a cake I would need.
  - i. I explained that it would probably need to serve 6-8 people.
  - j. I then explained that I wanted a cake with blue exterior and pink interior. I asked if they could prepare a cake with blue frosting and pink cake.
  - k. They indicated that they could prepare such a cake.
  - l. I thanked them and explained that the design was a reflection of the fact that I transitioned from male-to-female and that I had come out as transgender on my birthday.
  - m. At this point, Masterpiece indicated they would not be able to prepare my cake. The person indicated that they did not prepare such cakes and I believe she mentioned her religious beliefs.
  - n. I started to become upset and indicated I would put the phone on speakerphone so my brother, Todd Scardina, could hear her portion of the conversation.
  - o. I then asked her to confirm that she was refusing to prepare the cake for me.
  - p. She indicated they do not prepare cakes for "sex changes." I explained it was for my birthday, not a sex change, and she stated that Masterpiece Cakeshop said "we don't make cakes for that" and the phone went dead.
  - q. I call Masterpiece Cakeshop immediately thereafter.

- r. This call was placed on speakerphone.
- s. I indicated that I had just called and the phone was disconnected.
- t. I requested the individual's name. The individual refused to provide her name.
- u. I explained again that I was calling to order a birthday cake and that I wanted it to be blue on the outside and pink on the inside because my birthday was the same day as the day I came out as transgender.
- v. Masterpiece Cakeshop again declined to take my order, stating that it would violate their religious beliefs.
- w. I asked how a blue cake with pink interior would offend anyone's religion, and the call was terminated by Masterpiece Cakeshop.



Autumn Scardina



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 825  
Denver, CO 80202

Charge No. CP2018011310

Autumn Scardina  
7779 Everett Way  
Arvada, CO 80005

Complainant

Masterpiece Cakeshop Incorporated  
3355 S. Wadsworth Blvd  
Lakewood, CO 80227

Respondent

**DETERMINATION**

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is sufficient evidence to support the Complainant’s claim of discrimination. As such, a **Probable Cause** determination is hereby issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Complainant alleges that on or about June 26, 2017, she was denied full and equal enjoyment of a place of public accommodation based on her sex (female) and/or transgender status (gender identify).

The Respondent denies the allegation of discrimination and contends that it will not design custom cakes that express ideas or celebrate events at odds with its owner and staff’s religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The Charging Party bears the burden of proving that discrimination has occurred. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the burden of explaining, with





sufficient clarity, a non-discriminatory justification for the action taken. This is in response to the specifically alleged action named in the charge. In addition, the Respondent has the burden to produce documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a non-discriminatory reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate reason is merely a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

“Unlawful discrimination” means treatment that is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through a preponderance of the evidence in the record, adequately shows that the Respondent's reason is pretext (i.e., is not to be believed), and that the Charging Party's protected status was the main reason for the adverse action taken. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. See Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997); Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

On or about June 26, 2017, the Complainant contacted the Respondent to order a cake and spoke with Debi Phillips (“D. Phillips”) (female), Co-Owner. The Complainant contends that she requested a custom birthday cake. D. Phillips acknowledges that the Complainant called and requested a custom cake, but asserts that based on their conversation, it was not clear that she was requesting a birthday cake. D. Phillips states that she solicited details about the Complainant's wishes for the cake, including the date it was needed, the size, and desired flavors. The Complainant responded that she would need the cake by July 6, 2017, needed it to serve 6-8 people, and wanted the cake to have a blue exterior and a pink interior. The Complainant asserts that she “explained that the design was a reflection of the fact that [she] transitioned from male-to-female and that [she] had come out as transgender on [her] birthday.” D. Phillips states that after the Complainant informed her that the cake was “to celebrate a sex-change from male to female,” she instructed the Complainant that the Respondent would not make the requested cake. At this point, the phone call ended.

Shortly thereafter, the Complainant called the Respondent again and spoke with Lisa Eldfrick (“Eldfrick”) (female), Service Representative. The Complainant states that she told the person who answered, Eldfrick, that she had just called and was disconnected. She asserts that she told Eldfrick that she “was calling to order a birthday cake and that [she] wanted it to be blue on the outside and pink on the inside because [her] birthday was the same day as the day [she] came out as transgender.” Eldfrick asserts that she informed the Complainant that the Respondent would not fulfill this request. The evidence indicates that the Complainant questioned the Respondent’s policies and that Eldfrick ended the phone call without responding to the Complainant’s inquiries.

Jack Phillips (male), Owner, who admittedly makes all final business decisions for the Respondent, affirms this position, contending that the Respondent will not create custom cakes that address the topic of sex-changes or gender transitions. He contends that he will not support a message that “promote[s] the idea that a person’s sex is anything other than an immutable God-given biological reality.”

The Respondent asserts that it declines to make more than two to five custom cakes per week, due to time constraints. The Respondent also states that it refuses to make custom cakes for other expressions that it deems to be objectionable.

Denial of Full and Equal Enjoyment of a Place of Public Accommodation/Sex/Transgender Status:

To prevail on a claim of discriminatory denial of full and equal enjoyment of goods, services, benefits or privileges of a place of public accommodation, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods or services from the Respondent; (3) the Charging Party was otherwise a qualified recipient of the services of the Respondent; 4) the Respondent denied the Charging Party the full and equal enjoyment of its services; and 5) the circumstances give rise to an inference of unlawful discrimination based on a protected class.

The Complainant is a member of protected class based on her sex (female) and transgender status (gender identity). On or about June 26, 2017, the Complainant sought goods and service from the Respondent by requesting a custom cake. The Complainant was a qualified recipient of the services by the Respondent. An employee of the Respondent initially indicated that she was willing to assist the Complainant with this request, however, when the Complainant requested a blue exterior and a pink interior, explaining that the design reflected the Complainant’s gender transition from male to female, the Respondent refused to provide the requested service to the Complainant. The Respondent asserts that it will not provide the service of creating cakes that “promote the idea that a person’s sex is anything other than an immutable God-given biological reality.” The evidence thus

demonstrates that the refusal to provide service to the Complainant was based on the Complainant's transgender status. A claim of discriminatory denial of full and equal enjoyment of a place of public accommodation has been established. As asserted by the Supreme Court, "It is unexceptional that Colorado law can protect gay persons, just as it can protect other classes of individuals, in acquiring whatever products and services they choose on the same terms and conditions are offered to other members of the public." Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 U.S. \_\_\_\_ (2018).

Based on the evidence contained above, I determine that the Respondents have violated C.R.S. 24-34-602, as re-enacted, in respect to the Complainant's claim that the Respondents denied her equal enjoyment of a place of public accommodation.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division

  
Aubrey Elenis, Director  
Or Authorized Designee

6-28-2018  
Date

**Certificate of Mailing**

This is to certify that on July 2, 2018 a true and exact copy of the Closing Action of the above-referenced charge was deposited in the U.S. mail, postage prepaid, addressed to the parties and or representatives listed below:


CCRD Case number CP2018011310

Autumn Scardina  
7779 Everett Way  
Arvada, CO 80005

Todd Scardina, Esq.  
Scardina Law  
1245 E. Colfax Ave., Suite 302  
Denver, CO 80218

Masterpiece Cakeshop, Incorporated  
3355 S. Wadsworth Blvd. H-117  
Lakewood, CO 80227

Jacob Warner, Esq.  
Alliance for Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, AZ 85260



---

Jon Wilson  
Colorado Department of Regulatory Agencies  
Colorado Civil Rights Division  
1560 Broadway, Suite 825  
Denver, CO 80202

STATE OF COLORADO COLORADO CIVIL RIGHTS COMMISSION	^ COURT USE ONLY ^
AUTUMN SCARDINA, Complainant,  v.  MASTERPIECE CAKESHOP INCORPORATED and JACK PHILLIPS, Respondents.	
<b>NOTICE OF HEARING AND FORMAL COMPLAINT</b>	

**YOU ARE HEREBY NOTIFIED** pursuant to § 24-34-306(4) C.R.S., that a hearing will be held before an Administrative Law Judge at 9:00 a.m. on **Monday February 4, 2019** on the fourth floor at the Office of Administrative Courts, 1525 Sherman Street, Denver, Colorado 80203, to determine whether Respondents violated § 24-34-601 *et seq.*, C.R.S. (2018) by denying Complainant Autumn Scardina (Scardina) the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations at its place of public accommodation because of Scardina’s sexual orientation (transgender status).

Pursuant to the authority set forth in §§ 24-34-305(1)(d) and 24-34-306(4), C.R.S. (2018), the Colorado Civil Rights Commission (Commission), having determined that the circumstances warrant a hearing, hereby charges and alleges as follows:

1. Respondent, Masterpiece Cakeshop Incorporated (Masterpiece or “the bakery”), is a bakery that engages in sales of goods and services to the public. Masterpiece is a place of public accommodation as defined by § 24-34-601(1), C.R.S., and is therefore subject to the jurisdiction of the Commission.

2. Respondent, Jack Phillips (Phillips) is the owner and operator of Masterpiece, and is a person as defined by §24-34-301(5)(a), C.R.S. As Masterpiece’s owner, Phillips is responsible for providing the full and equal enjoyment of its goods and services to the public regardless of protected class, and is therefore subject to the jurisdiction of the Commission.

3. Timeliness and all other jurisdictional and procedural requirements of title 24, article 34, parts 3 and 4 have been satisfied.

4. Upon information and belief, on June 26, 2017, Scardina contacted Masterpiece by telephone to order a cake to celebrate her birthday. Scardina asked if the bakery sold made-to-order birthday cakes. The individual on the phone answered in the affirmative and asked for the date of her birthday. Scardina responded that it was on July 6th and asked if that would be enough time to make the cake. Masterpiece's representative indicated that that the bakery could accommodate that timing.

5. Upon information and belief, Scardina requested a cake with a blue exterior and a pink interior, and indicated that she would need a cake big enough to serve 6-8 people.

6. Upon information and belief, Masterpiece's representative stated that the bakery would make the cake as requested by Scardina. Scardina then mentioned that the design was a reflection of the fact that she had transitioned from male to female and that she had come out as transgender on her birthday. Masterpiece's representative then stated that the bakery would not make the cake as requested by Scardina because it does not make cakes to celebrate a sex-change and terminated the call.

7. Upon information and belief, Scardina called Masterpiece back and spoke to a different individual about the exchange that took place during her initial call and confirmed that the cake she had ordered was to celebrate her birthday. Masterpiece's representative responded that the bakery would not make a cake for Scardina and terminated the call.

8. On July 20, 2017, Scardina filed a charge of discrimination with the Colorado Civil Rights Division alleging that Respondents discriminated against her in a place of public accommodation based on her sex (female) and/or sexual orientation (transgender status).

9. During the Colorado Civil Rights Division's investigation of the charge, Phillips affirmed his employees' decision to not fulfill Scardina's order, and cited his religious beliefs as the reason why the bakery would not do so.

10. Upon information and belief, the bakery sells made-to-order birthday cakes to non-transgendered individuals.

11. On June 28, 2018, following the investigation, the Division Director's authorized designee found probable cause for crediting the allegations of the charge

that Masterpiece discriminated against Scardina in a place of public accommodation based on her sexual orientation (transgender status).

12. As required by § 24-34-306(2)(b)(II), C.R.S. (2018), the Division Director's authorized designee ordered the parties to attempt amicable resolution of the charge by compulsory mediation.

13. Upon information and belief, efforts to resolve the matter amicably through the ordered mediation have been unsuccessful.

14. On October 2, 2018, the Commission voted to notice this matter for a hearing and to file this formal complaint.

15. The Commission alleges that Masterpiece denied service to Scardina based on her sexual orientation (transgender status), as defined by § 24-34-301(7), C.R.S. (2018), in a violation of § 24-34-601(2)(a), C.R.S. (2018).

16. The Commission further alleges that Masterpiece is not a place that is principally used for religious purposes, as contemplated by § 24-34-601(1), C.R.S. (2018).

The Commission seeks the following relief:

1. That Masterpiece and Phillips be ordered to allow Scardina and all customers that seek goods and services from the bakery, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations of this place of public accommodation, regardless of their sexual orientation.

2. That Masterpiece and Phillips be ordered to cease and desist their practices of discriminating against persons based on their sexual orientation and to immediately discontinue their policy and practice of refusing to provide goods and services to persons due to their sexual orientation.

3. That Masterpiece and Phillips be ordered to adopt a corrective policy which will allow Scardina and other similarly situated persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations provided by the bakery regardless of their sexual orientation.

4. That Masterpiece and Phillips be ordered to report to the Commission all remedial action taken to eliminate the discriminatory practices until such time as it has been established that all discriminatory practices have ceased.

5. That Masterpiece and Phillips be ordered not to retaliate against Scardina in any way.



6. That Masterpiece and Phillips be ordered to provide any other relief which may be available to Scardina by virtue of operation of law and any other relief the Commission deems just and proper.

Masterpiece and Phillips may file a verified answer prior to the date of the hearing. The hearing will be conducted pursuant to sections 24-34-306 and 24-4-105, C.R.S. (2018). Failure to answer the complaint at hearing may result in entry of default judgment against Masterpiece and Phillips.

Dated this 9th day of October, 2018.

BY THE COMMISSION:



COMMISSIONER

**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **NOTICE OF HEARING AND FORMAL COMPLAINT** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 9 day of October, 2018 addressed as follows:

Autumn Scardina  
7779 Everett Way  
Arvada, CO 80005

John McHugh  
Reilly Pozner LLP  
1700 Lincoln Street, Suite 3400  
Denver, CO 80203

Masterpiece Cakeshop, Incorporated  
3355 S. Wadsworth Blvd., H-117  
Lakewood, CO 80227

Jacob Warner, Esq.  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> St.  
Scottsdale, AZ 85260

By interdepartmental mailing services, copies were sent to:

Matthew Azer  
Director/Chief ALJ  
Office of Administrative Courts  
1525 Sherman St, 4th Floor  
Denver, CO 80203

Michelle Brissette Miller  
First Assistant Attorney General  
Employment/Personnel & Civil Rights Unit  
Civil Litigation & Employment Law Section  
1300 Broadway, 10th Floor  
Denver, CO 80203

By Hand Delivery for filing on October 9, 2018:

Office of Administrative Courts  
1525 Sherman St, 4th Floor  
Denver, CO 80203

Adriana Camonca



Scardina Law

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📍 Contact

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**303-502-5540**

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**Standing Up for Employees in Employment Disputes**

**EXHIBIT 6**

Every job comes with challenges, but those challenges should not include mistreatment. If you have been wrongfully terminated, if your employment contract has been violated, if you have been harassed or if you have been otherwise mistreated at work, you may have the right to pursue an employment law claim for compensation.

At Scardina Law in Denver, our attorneys stand up for the rights of employees throughout Colorado. Our goal is to get you fair compensation and send the message to employers that there are repercussions for wrongdoing and mistreatment.

## Fighting Discrimination in the Workplace

One of the biggest sources of employment disputes is discrimination in the workplace. Discrimination can come in many forms, from outright termination to harassment and name-calling to being turned down for promotions or routinely given the most undesirable job duties. While employers have a great deal of freedom, if discrimination is due to the victim's gender, sexual orientation, gender identity, race, religion, age or certain other factors, it becomes illegal.

Our lawyers are proud to stand up for the rights of members of the LGBT community who have been discriminated against or harassed in the workplace. We take great pride in taking on employers who discriminate against lesbian, gay, bisexual and transgender people and serving them their just desserts. This extends not only to wrongful termination and other forms of discrimination, but to hiring discrimination and retaliation as well. Let us help you seek justice.

## Free Employment Dispute Consultation

Call us at [303-502-5540](tel:303-502-5540) or [send an email](#). Our team is ready to protect your employee rights through negotiation or trial.

### PRACTICE AREAS

- > Family Law
- > Personal Injury
- > Insurance Disputes
- > Construction Defects

### **EXHIBIT 6**

> Business Disputes

> Employment Disputes

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 Email Us For A Response

## Scardina Law

1245 E. Colfax Ave. Suite 302

Denver, CO 80218

[Denver Law Office Map](#)

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### **EXHIBIT 6**

**Telephone Number** 3037635754  
**Call Type** BOTH  
**Start Date** 09-18-2016 00:00:00  
**End Date** 09-17-2018 00:00:00

Call Date	Connect Time	From Number	To Number	Billable Time	Call Type
09-18-2016	09:49:05	[REDACTED]	3037635754	00:00:00	Terminating
09-18-2016	11:58:06	[REDACTED]	3037635754	00:00:00	Terminating
09-19-2016	07:49:57	[REDACTED]	3037635754	00:01:34	Terminating
09-19-2016	08:34:19	[REDACTED]	3037635754	00:00:30	Terminating
09-19-2016	09:02:45	[REDACTED]	3037635754	00:02:57	Terminating
09-19-2016	09:52:38	[REDACTED]	3037635754	00:01:49	Terminating
09-19-2016	09:59:04	[REDACTED]	3037635754	00:06:17	Terminating
09-19-2016	10:02:34	[REDACTED]	3037635754	00:00:16	Terminating
09-19-2016	10:12:07	[REDACTED]	3037635754	00:01:51	Terminating
09-19-2016	10:48:29	[REDACTED]	3037635754	00:00:12	Terminating
09-19-2016	11:52:38	[REDACTED]	3037635754	00:01:47	Terminating
09-19-2016	12:25:45	[REDACTED]	3037635754	00:01:05	Terminating
09-19-2016	12:56:53	[REDACTED]	3037635754	00:00:08	Terminating
09-19-2016	13:15:47	[REDACTED]	3037635754	00:03:50	Terminating
09-19-2016	13:54:57	[REDACTED]	3037635754	00:01:08	Terminating
09-19-2016	14:01:38	[REDACTED]	3037635754	00:00:43	Terminating
09-19-2016	14:19:31	[REDACTED]	3037635754	00:03:17	Terminating
09-19-2016	14:31:56	[REDACTED]	3037635754	00:00:39	Terminating
09-19-2016	14:36:14	[REDACTED]	3037635754	00:01:35	Terminating
09-19-2016	14:43:29	[REDACTED]	3037635754	00:01:47	Terminating
09-19-2016	15:10:30	[REDACTED]	3037635754	00:03:00	Terminating
09-19-2016	15:40:39	[REDACTED]	3037635754	00:02:21	Terminating
09-19-2016	16:03:51	[REDACTED]	3037635754	00:04:27	Terminating
09-19-2016	16:35:36	[REDACTED]	3037635754	00:02:08	Terminating
09-19-2016	16:41:04	[REDACTED]	3037635754	00:04:30	Terminating
09-20-2016	08:31:48	[REDACTED]	3037635754	00:02:01	Terminating
09-20-2016	09:09:48	[REDACTED]	3037635754	00:01:17	Terminating
09-20-2016	09:09:48	[REDACTED]	3037635754	00:01:17	Terminating
09-20-2016	09:12:25	[REDACTED]	3037635754	00:02:00	Terminating
09-20-2016	09:41:39	[REDACTED]	3037635754	00:01:45	Terminating
09-20-2016	09:44:24	[REDACTED]	3037635754	00:01:12	Terminating
09-20-2016	10:09:41	[REDACTED]	3037635754	00:03:19	Terminating
09-20-2016	10:21:21	[REDACTED]	3037635754	00:00:34	Terminating
09-20-2016	10:27:12	[REDACTED]	3037635754	00:03:43	Terminating
09-20-2016	10:50:19	[REDACTED]	3037635754	00:00:00	Terminating
09-20-2016	10:50:42	[REDACTED]	3037635754	00:00:19	Terminating
09-20-2016	11:19:33	[REDACTED]	3037635754	00:00:39	Terminating
09-20-2016	11:29:36	[REDACTED]	3037635754	00:00:00	Terminating
09-20-2016	12:25:30	[REDACTED]	3037635754	00:05:02	Terminating
09-20-2016	12:26:11	[REDACTED]	3037635754	00:00:34	Terminating
09-20-2016	12:27:03	[REDACTED]	3037635754	00:00:36	Terminating

**EXHIBIT 7**

10-06-2017	09:58:55	[REDACTED]	3037635754	00:00:54	Terminating
10-06-2017	10:04:59	[REDACTED]	3037635754	00:03:30	Terminating
10-06-2017	10:27:07	[REDACTED]	3037635754	00:01:33	Terminating
10-06-2017	10:44:26	[REDACTED]	3037635754	00:00:45	Terminating
10-06-2017	10:54:44	[REDACTED]	3037635754	00:00:00	Terminating
10-06-2017	10:54:54	[REDACTED]	3037635754	00:00:14	Terminating
10-06-2017	12:02:32	[REDACTED]	3037635754	00:01:10	Terminating
10-06-2017	12:26:13	[REDACTED]	3037635754	00:01:35	Terminating
10-06-2017	12:34:31	[REDACTED]	3037635754	00:00:25	Terminating
10-06-2017	12:46:25	[REDACTED]	3037635754	00:04:12	Terminating
10-06-2017	12:51:34	[REDACTED]	3037635754	00:13:12	Terminating
10-06-2017	13:36:37	[REDACTED]	3037635754	00:00:39	Terminating
10-06-2017	13:38:21	[REDACTED]	3037635754	00:00:23	Terminating
10-06-2017	13:38:21	[REDACTED]	3037635754	00:00:21	Terminating
10-06-2017	14:13:49	[REDACTED]	3037635754	00:04:32	Terminating
10-06-2017	14:23:04	[REDACTED]	3037635754	00:00:31	Terminating
10-06-2017	14:26:43	[REDACTED]	3037635754	00:01:17	Terminating
10-06-2017	14:27:20	[REDACTED]	3037635754	00:00:00	Terminating
10-06-2017	14:27:20	[REDACTED]	3037635754	00:00:00	Terminating
10-06-2017	14:29:24	[REDACTED]	3037635754	00:04:13	Terminating
10-06-2017	14:29:24	[REDACTED]	3037635754	00:04:15	Terminating
10-06-2017	14:41:31	[REDACTED]	3037635754	00:03:09	Terminating
10-06-2017	15:11:44	[REDACTED]	3037635754	00:03:54	Terminating
10-06-2017	15:19:31	[REDACTED]	3037635754	00:02:33	Terminating
10-06-2017	15:26:59	[REDACTED]	3037635754	00:00:54	Terminating
10-06-2017	16:07:51	[REDACTED]	3037635754	00:01:17	Terminating
10-06-2017	17:07:10	8182055560	3037635754	00:00:47	Terminating
10-06-2017	18:04:35	[REDACTED]	3037635754	00:00:28	Terminating
10-06-2017	18:31:41	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	07:10:13	[REDACTED]	3037635754	00:00:53	Terminating
10-07-2017	07:48:28	[REDACTED]	3037635754	00:00:34	Terminating
10-07-2017	09:42:51	[REDACTED]	3037635754	00:02:43	Terminating
10-07-2017	09:42:51	[REDACTED]	3037635754	00:02:45	Terminating
10-07-2017	10:00:54	[REDACTED]	3037635754	00:00:28	Terminating
10-07-2017	10:13:38	[REDACTED]	3037635754	00:00:16	Terminating
10-07-2017	10:35:32	[REDACTED]	3037635754	00:00:16	Terminating
10-07-2017	11:04:01	[REDACTED]	3037635754	00:00:55	Terminating
10-07-2017	11:40:57	[REDACTED]	3037635754	00:00:26	Terminating
10-07-2017	11:42:26	[REDACTED]	3037635754	00:01:08	Terminating
10-07-2017	12:29:26	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	12:29:26	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	12:29:28	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	12:29:28	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	13:34:19	[REDACTED]	3037635754	00:00:52	Terminating
10-07-2017	13:36:35	[REDACTED]	3037635754	00:00:00	Terminating
10-07-2017	13:39:57	[REDACTED]	3037635754	00:00:45	Terminating
10-07-2017	13:45:08	[REDACTED]	3037635754	00:00:10	Terminating

**EXHIBIT 7**



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140069X

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charging Party

Azucar Bakery  
1886 S. Broadway  
Denver, CO 80210

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

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The Division finds that the Respondent did not discriminate based on the Charging Party's creed. Instead, the evidence reflects that the Respondent declined to make the Charging Party's cakes, as he had envisioned them, because he requested the cakes include derogatory language and imagery. The evidence demonstrates that the Respondent would deny such requests to any customer, regardless of creed.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was treated unequally and denied goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the requested cake by the Charging Party was denied solely on the basis that the writing and imagery were "hateful and offensive".

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof,





then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Pastry Chef Lindsay Jones ("Jones") (Christian). The Charging Party asked Jones for a price quote on two cakes made in the shape of open Bibles. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands in front of a cross, with a red "X" over the image. The Charging Party also requested that each cake be decorated with Biblical verses. On one of the cakes, he requested that one side read "God hates sin. Psalm 45:7" and on the opposite side of the cake "Homosexuality is a detestable sin. Leviticus 18:2." On the second cake, which he requested include the image of the two groomsmen with a red "X" over them, the Charging Party requested that it read: "God loves sinners," and on the other side "While we were yet sinners Christ died for us. Romans 5:8." The Charging Party did not state that the cakes were intended for a specific purpose or event.

After receiving the Charging Party's order, Jones excused herself from the counter and discussed the order with Owner Marjorie Silva ("Silva") (Catholic) and Manager Michael Bordo ("Bordo") (Catholic). Silva came to the counter to speak with the Charging Party. Silva asked the Charging Party about his general cake request and the Charging Party explained that he wanted two cakes made to look like Bibles. The Charging Party then explained to Silva that he wanted the verses as referenced above to appear on the cakes.

Silva states that she does not recall the specific verses that the Charging Party requested, but recalls the words "detestable," "homosexuality," and "sinners." The parties dispute what occurred next. The Charging Party alleges that Silva told him that she would have to consult with an attorney to determine the legality of decorating a cake with words that she felt were discriminatory. Silva denies that she told the Charging Party that she needed to consult with

an attorney, and states that she informed the Charging Party that she would make him cakes in the shape of Bibles, but would not decorate them with the message that he requested. Silva states that she declined to decorate the cakes with the verses or image of the groomsmen and offered instead provide him with icing and a pastry bag so he could write or draw whatever message he wished on the cakes himself. Silva also avers that she told the Charging Party that her bakery “does not discriminate” and “accept[s] all humans.”

Later that day, the Charging Party returned to the bakery to inquire if Silva was still declining to make the cakes as requested. Bordo states that he reiterated the bakery would bake the cakes, but would not decorate them with the requested Biblical verses or groomsmen. The Charging Party asked Bordo if “he consider[ed] not baking [his] cake discrimination against [him] as a Christian,” to which Bordo responded “no.” The Charging Party then left the bakery.

The Charging Party maintains that he did not ask the Respondent or its employees to agree with or endorse the message of his envisioned cakes.

The Respondent avers that the Charging Party’s request was not accommodated because it deemed the design and verses as discriminatory to the gay, lesbian, bisexual, and transgender community. The Respondent further states that “in the same manner [it] would not accept [an order from] anyone wanting to make a discriminatory cake against Christians, [it] will not make one that discriminates against gays.” The Respondent states that it welcomes all customers, including the Charging Party, regardless of their protected class.

The evidence demonstrates that the Respondent specializes in cakes for various occasions, including weddings, birthdays, holidays, and other celebrations. On the Respondent’s website, there are images of cakes created for customers in the past. There are numerous cakes decorated with Christian symbols and writing. Specifically, in the category of “Baby Shower and Christening Cakes” there are images of three cakes depicting the Christian cross, two of which include the words “God Bless” and one inscribed with “Mi Bautizo” (Spanish for “my baptism”). There is also an image of a wedding cake created by the Respondent depicting an opposite sex couple embracing in front of a Christian cross. The Respondent’s website also provides that the bakery will make cakes “for every season of the year,” including the Christian holidays of Easter and Christmas.

The Respondent states that it has previously denied cake requests due to business constraints, such as inability to meet customer deadlines due to high demand, but maintains that it would deny any requests deemed “offensive” or “hateful.”

Comparative data reflects that the Respondent employs six persons, of whom three are Catholic and three are non-Catholic Christian. The record reflects that, in an average year, the Respondent produces between 60 and 80 cakes with Christian themes and/or symbolism.

### Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified

recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by “demeaning his beliefs.” There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than customers outside of his protected class.

### Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Respondent was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Respondent denied the Charging Party’s request to make cakes that included the Biblical verses and an image of groomsmen with a red “X” over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Indeed, the evidence demonstrates that the Respondent would have made a cake for the Charging Party for any event, celebration, or occasion regardless of his creed. Instead, the Respondent’s denial was based on the explicit message that the Charging Party wished to include on the cakes, which the Respondent deemed as discriminatory. Additionally, the evidence demonstrates that the Respondent regularly creates cakes with Christian themes and/or symbolism, which are presumably ordered by Christian customers. Finally, the Respondent avers that it would similarly deny a request from a customer who requested a cake that it deemed discriminatory towards Christians.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(l)].

On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140070X

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charging Party

Le Bakery Sensual, Inc.  
300 E. 6<sup>th</sup> Ave.  
Denver, CO 80203

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party’s claims of unequal treatment and denial of goods or service based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party’s creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake requested by the Charging Party was denied solely on the basis that the writing and imagery were “hateful.”

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in

**EXHIBIT 8**





the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Owner John Spotz ("Spotz") (no religious affiliation). The Charging Party asked Spotz for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble open Bibles. Spotz informed the Charging Party that he "had done open Bibles and books many times and that they look amazing." The Charging Party then elaborated that on one cake, he wanted an image of two groomsmen, appearing before a cross, with a red "X" over the image. The Charging Party described the image as "a Ghostbusters symbol over the illustration to indicate that same-sex unions are un-Biblical and inappropriate." The Charging Party wanted Biblical verses on both cakes. The Charging Party showed Spotz the verses, which he had written down on a sheet of paper, and read them aloud. The verses were: "God hates sin. Psalm 45:7" "Homosexuality is a detestable sin. Leviticus 18:2" and on the cake with the image of groomsmen before a cross with a red "X", the verses: "God loves sinners" and "While we were yet sinners Christ died for us. Romans 5:8."

After the Charging Party made the request for the image of the groomsmen with the "X" over them, Spotz asked if the Charging Party was "kidding him." The Charging Party responded that his request was serious. Spotz then informed the Charging Party that he would have to decline the order as envisioned by the Charging Party because he deemed the requested cake "hateful." The Charging Party did not state to Spotz or the Division whether the cakes were intended for a specific purpose or event. The Charging Party then left the bakery, after Spotz declined to create the cakes as the Charging Party had requested.

The Charging Party maintains that he did not ask the Respondent, or its employees, to agree with or endorse the message of his envisioned cakes.

The Respondent avers that everyone, including the Charging Party, is welcome at its bakery, regardless of creed, race, sex, sexual orientation or disability. The Respondent states that its refusal to create the specific cake requested by the Charging Party was based on its policy “not [to] make a cake that is purposefully hateful and is intended to discriminate against any person’s creed, race, sex, sexual orientation, disability, etc.” The Respondent avers that the Charging Party’s request was intended to “denigrate individuals of a specific sexual orientation.”

The record reflects that the Respondent specializes in making unique and intricate cakes for various occasions. The Respondent’s website provides “[it] can design cakes that look like people, cars, motorcycles, houses, magazines, and just about anything you can imagine.” The Respondent’s website also includes images of cakes it has created for customers in the past, including cakes made to look like books and magazines. The Respondent also makes wedding cakes for both opposite sex and same sex couples, as well cakes for the Christian holidays of Christmas and Easter.

The Respondent denies that it has ever denied services or goods to customers based on their creed and/or religion.

It is the Respondent’s position that production of the cake requested by the Charging Party would run afoul of C.R.S. § 24-34-701, which provides that a place of public accommodation may not “publish . . . or display in any way manner, or shape by any means or method . . . any communication . . . of any kind, nature or description that is intended or calculated to discriminate or actually discriminates against any . . . sexual orientation . . . .”

Spotz states that the only time he recalls denying a cake request was when he received a phone call in which the caller asked if he could decorate a cake with “a sexy little school girl.”

Comparative data reflects that the Respondent employs four persons, of whom one is Catholic, one is Jewish, and two have no religious affiliation. The record reflects that the Respondent creates at least one Christian themed cake per month, increasing to three or four Christian themed cakes in the month of December.

### Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by “demeaning his beliefs.” There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than other customers because of his creed.

The Charging Party's request was denied because he requested the cakes include language and images the Respondent deemed hateful.

### Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to make cakes that included the requested Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence demonstrates that the Respondent was prepared to create the cakes as described by the Charging Party, until he requested the specific imagery of the two groomsmen with a red "x" placed over image and the "hateful" Biblical verses. Additionally, the record reflects that the Respondent has produced cakes featuring Christian symbolism in the past, which were presumably ordered by Christian customers.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601 (2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].



On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date



**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

Charge No. P20140071X

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charging Party

Gateaux, Ltd.  
1160 N. Speer Blvd.  
Denver, CO 80204

Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party’s claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party’s creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake order requested by the Charging Party was denied because the cakes included what was deemed to contain “offensive” or “derogatory” messages and imagery. In addition, the Respondent was uncertain whether it could technically create the cakes as described by the Charging Party.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element (“prima facie”) of the particular claim must be proven, through a majority (“preponderance”) of the evidence. If the Charging Party meets this initial burden of proof,

**EXHIBIT 8**



then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Manager Michelle Karmona ("Karmona"). The Charging Party asked Karmona for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble an open Bible. He also requested that each cake be decorated with Biblical verses. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands, with a red "X" over the image. On one cake, he requested that one side read "God hates sin. Psalm 45:7" and on the opposite side of the cake "Homosexuality is a detestable sin. Leviticus 18:2." On the second cake, with the image of the two groomsmen covered by a red "X," the Charging Party requested that it read: "God loves sinners" and on the other side "While we were yet sinners Christ died for us. Romans 5:8." The Charging Party did not state to the Respondent or the Division whether the cake was intended for a specific purpose or event.

The parties dispute the events that occurred next. The Charging Party alleges that Karmona initially indicated that the Respondent would be able to make the Bible shaped cakes, but once she read the Biblical verses, she excused herself from the counter. The Charging Party further alleges that Karmona returned a short time later, informing him that she had spoken with the Respondent's Owner, Kathleen Davia ("Davia") (Catholic). The Charging Party claims that at this time Karmona informed him that the Respondent would bake the cakes, but would not include such a "strong message." The Respondent denies that this occurred, claiming instead that the Charging Party had indicated that he wanted the groomsmen to be three-dimensional figurines with a "Ghostbusters X" over the figures. Karmona felt the Respondent would be unable to accommodate the request as described by the Charging Party, based on "technical capabilities." The Respondent claims that the Charging Party was told that the

Bible-shaped cakes, with the Biblical verses, *sans* the groomsmen figurines and “Ghostbusters X,” could be made.

The Respondent avers that, as with all customers, the Charging Party was asked to elaborate as to the purpose of the cakes, how he wished to present it, and how he would use it. The Charging Party would not provide an explanation to the Respondent. The Respondent alleges that it was the Charging Party’s refusal to elaborate that left it with the impression that it would not be able to produce the cakes as requested by the Charging Party. The Respondent avers that it consistently requests that customers provide an image for them to replicate when it is something the Respondent does not “stock.” For example, the Respondent avers that a customer requesting a cake with the image of a popular cartoon character can easily be created; however, when a customer requests a specific image without a photo reference or elaboration of the image, the Respondent will decline the request. Karmona then referred the Charging Party to another bakery with the belief that that bakery would be better suited to create the cakes as envisioned by the Charging Party.

The Respondent does not have a specific policy regarding the declination of a customer request, but states that the employee who receives the order also decorates the cake. It is the Respondent’s position that, based on its individual employees’ pastry knowledge, experience, and qualifications, they are best able to determine whether they have the ability to create the cake that a customer requests. Therefore, in the case of the Charging Party’s request, Karmona determined that she would be unable to create the cakes as the Charging Party described.

The Respondent states that it has previously denied customer requests based on technical requirements, including inability to create the requested image, and requests for buttercream iced cakes where the Respondent maintained a fondant decorated cake would be preferable. Additionally, the Respondent states that it has denied customer requests for cakes that included crude language such as “eat me” or “ya old bitch” or “naughty images,” on the basis that the imagery and messages were not what the Respondent wished to represent in its products. The Respondent’s other reasons for declining customers’ request include: availability of the product, insufficient time to create the cake requested, and scheduling conflicts.

The Charging Party avers that he did not ask the Respondent, or any of its employees, to agree with or endorse the message of his envisioned cakes.

Comparative data indicates that the Respondent employs six persons, of whom two are non-Catholic Christian, two are Agnostic, one is Catholic, and one is Atheist. The record reflects that the Respondent regularly creates Christian themed cakes and pastries, including items for several Catholic and non-Catholic Christian church events. Additionally, the evidence demonstrates that they have produced a number of cakes with Christian imagery and symbolism during the relevant time period.

The Respondent states that the Charging Party is welcome to return to the bakery.

### Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Charging Party alleges that the Respondent treated him differently than persons outside of his protected class by “demeaning his beliefs.” The evidence demonstrates that the Respondent attempted to engage the Charging Party in a dialogue regarding the cakes in more detail, which the Charging Party declined. There is insufficient evidence to demonstrate that the Respondent treated the Charging Party differently based on his creed. The evidence demonstrates that the Respondent would not create cakes with wording and images it deemed derogatory. The Respondent has denied other customers request for derogatory language without regard to the customer’s creed.

### Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words “un-Biblical and inappropriate.” The Respondent denied the Charging Party’s request to make cakes that included the Biblical verses and an image of groomsmen with a red “X” over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence suggests that based on the Respondent’s understanding of the Charging Party’s request, it would be unable to create the cake that he envisioned. The record reflects that the Respondent has denied customer requests for similar reasons. Additionally, the evidence demonstrates that the Respondent regularly produces cakes and other baked goods with Christian symbolism and messages, and continues to welcome the Charging Party in its bakery.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission’s Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

- a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or
- b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(l)].

On Behalf of the Colorado Civil Rights Division

  
Jennifer McPherson, Interim Director  
Or Authorized Designee

3/24/2015  
Date





**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charge Number: P20140070X; William Jack vs. Le Bakery Sensual, Inc.

Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández'.

Rufina Hernández,  
Director

cc: Le Bakery Sensual, Inc.  
Jack Robinson





**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charge Number: P20140071X; William Jack vs. Gateaux, Ltd.

Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández', is written over the text 'On behalf of the Commission'.

Rufina Hernández,  
Director

cc: Gateaux, Ltd.  
Kathleen Davia







**COLORADO**

Department of  
Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway Street, Suite 1050  
Denver, CO 80202

June 30, 2015

William Jack  
4987 E. Barrington Ave.  
Castle Rock, CO 80104

Charge Number: P20140069X; William Jack vs. Azucar Sweet Shop and Bakery.

Dear Mr. Jack:

This letter is to inform you that the Colorado Civil Rights Commission has reviewed your appeal. The Commission has determined that there is insufficient basis to warrant further action and has affirmed the director's decision of no probable cause.

If you wish to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, you need to file within 90 days of the date of this mailing pursuant to CRS 24-34-306(2)(b)(I)(B & C).

Pursuant to CRS 24-34-306 (2) (b) (I) if you as the Charging Party do not file such an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action.

On behalf of the Commission

A handwritten signature in black ink, appearing to read 'Rufina Hernández', is written over the typed name.

Rufina Hernández,  
Director

cc: Azucar Sweet Shop and Bakery  
David Goldberg



Colorado Civil Rights Commission

Colorado Civil Rights Division

# 2017 ANNUAL REPORT

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Hon. John W. Hickenlooper, Governor

Marguerite Salazar, Executive Director, Department of Regulatory Agencies

Aubrey Elenis, Director, Colorado Civil Rights Division

**EXHIBIT 9**

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# LETTER FROM THE DIRECTOR



Aubrey Elenis, Esq.

Dear Coloradans,

As Director of the Colorado Civil Rights Division, I am excited to share this report with you which highlights the work of Division and the Commission during the 2016-2017 fiscal year.

This year, the Division launched a new online filing and case management system, CaseConnect, which allows parties to file intake information and submit evidence. Parties are able to communicate with staff through this system and can check on the status of their case throughout the investigative process. The Division is pleased to be able to offer parties an additional method of communication, and provide updates in a more efficient and expeditious manner. Over half of the discrimination complaints that the Division receives are now submitted through CaseConnect.

The Division has also seen an increase in the number of discrimination complaints filed this fiscal year. In order to address discrimination complaints in a more timely manner, the Division made available additional staff for the Division's Alternative Dispute Resolution (ADR) program. Through the ADR program, the Division provides parties the option to utilize its neutral professional mediators to facilitate discussions and negotiations as they attempt to resolve the charge and dispute before the investigation process commences. Parties can save time, resources, and unwanted stress by participating in good faith to reach a mutually acceptable solution through the ADR process.

The Division is dedicated to serving all Coloradans, and I encourage you to learn more about the Division and the Commission in this annual report, and by visiting our website: <https://www.colorado.gov/dora/civil-rights>

Regards,

A handwritten signature in black ink that reads "Aubrey Elenis". The signature is written in a cursive, flowing style.

Aubrey Elenis, Director

# LETTER FROM THE COMMISSION

Dear Coloradans,

We are pleased to present this annual report outlining the work and accomplishments of the Commission and the Civil Rights Division during the 2016-2017 state fiscal year. In this report for fiscal year 2016-17, you will find information regarding the powers and duties of the Commission, the Division's intake, investigation and Alternative Dispute Resolution (ADR) processes, as well as highlights and statistics regarding cases investigated, types of allegations filed, and case outcomes.

The Colorado Civil Rights Commission is a seven member volunteer board appointed by the Governor and confirmed by the Colorado State Senate. The Commission is tasked with eliminating unfair or discriminatory practices through education and outreach and partnering with other agencies and organizations to plan and provide education programs on anti-discrimination laws. The Commission also reviews appeals submitted by Complainants in which a No Probable Cause determination has been issued in their case. In addition, the Commission decides whether or not a case should be set for hearing before an Administrative Law Judge when a Probable Cause decision is issued, and the parties are unable to resolve the case through conciliation, which is a process offered through the Division's Alternative Dispute Resolution program.

We are committed to partnering with communities across Colorado to proactively advance equal rights in the most cost effective manner and least disruptive to the regulated community. We encourage you to attend our monthly meetings held in Denver and around the state so that you can hear about the current activities of the Commission and the Division and participate in discussions regarding the civil rights issues in your local communities. We also encourage you to visit our website, <https://www.colorado.gov/dora/civil-rights>, to learn more about the Colorado Anti-Discrimination Act, its enforcement, and as well as current news and events.

We are privileged to serve on the Commission and we are committed to enforcing the state's anti-discrimination laws in the areas of employment, housing, and places of public accommodation with support from the Colorado Civil Rights Division, the Department of Regulatory Agencies, and the Attorney General's office. Thank you for the opportunity to engage in this important work.

Respectfully,

The Colorado Civil Rights Commission



# MEET THE COMMISSION



**Anthony Aragon**  
Democrat,  
Representing State or  
Local Government  
Entities, Denver

*Term expires: 3/16/19*



**Ulysses J. Chaney**  
Republican,  
Representing  
state/local  
government entities,  
Colorado Springs

*Resigned: 2/1/17*



**Dr. Miquel Elias**  
Republican,  
Representing Commun-  
ity at Large, Pueblo

*Term expires: 3/13/20*



**Carol Fabrizio**  
Unaffiliated,  
Representing  
Business, Denver

*Term expires: 3/16/19*



**Heidi Hess**  
Democrat,  
Representing  
Community at Large,  
Clifton

*Resigned: 1/9/18*



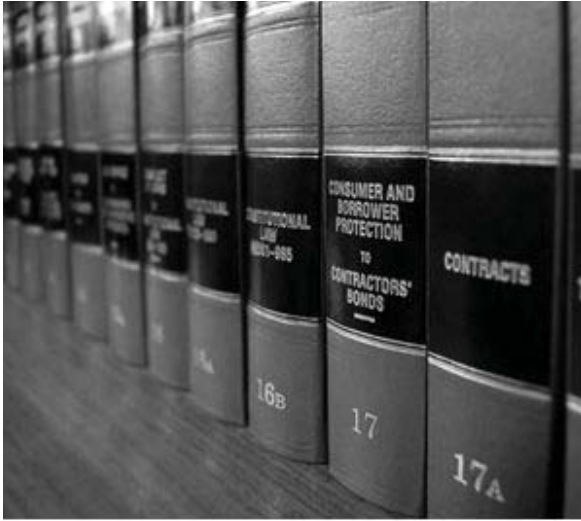
**Rita Lewis**  
Democrat,  
Representing Small  
Business, Denver

*Term expires: 3/16/19*



**Jessica Pocock**  
Unaffiliated,  
Representing  
Community at Large,  
Colorado Springs

*Term expires: 3/13/20*



## CCRC & CCRD OVERVIEW

### Civil Rights Commission

The Colorado Civil Rights Commission (Commission) -- is a seven-member, bipartisan panel appointed by the Governor of Colorado pursuant to the Colorado Anti-Discrimination Act.

It has members representing various political parties, the community at large, as well as businesses, and groups that have been historically discriminated against. The members come from all regions of the State of Colorado.

#### Functions of the Civil Rights Commission

The mission of the Commission is to review appeals of cases investigated and dismissed by the Civil Rights Division; reach out to various communities to provide awareness of civil rights issues and protections; conduct hearings involving illegal discriminatory practices; initiate investigations regarding discrimination issues with broad public policy implications; advise the Governor and General Assembly regarding policies and legislation that address discrimination; and adopt and amend rules and regulations that provide standards and guidelines regarding the State statutes prohibiting discrimination.

### Civil Rights Division

The Colorado Civil Rights Division (Division) is a neutral, fact-finding, administrative agency that provides civil rights education to the community, provides mediation and alternative dispute resolution services to resolve civil rights claims, and conducts investigations of charges of discrimination alleging violations of the Colorado Anti-Discrimination Act in the areas of employment, housing, and in places of public accommodation.

#### Civil Rights Division's Investigative Process

After a complaint is filed, an investigation is initiated. The investigation involves the collection of documentary evidence, witness interviews, and any other evidence relevant to resolving the complaint.

Once the investigation is completed, the Division Director or her designee issues a decision as to whether sufficient evidence exists to support the allegations of discrimination. If the decision is that no discrimination occurred, a Complainant may appeal the decision to the Commission.

If the Division finds that discrimination occurred, the statute requires that the Division attempt to settle the matter with the parties through a mandatory mediation conference. If mediation is unsuccessful, the Commission determines whether to set the case for an adjudicatory administrative hearing.

### Civil Rights Division's Mediation Process

In order to resolve matters at the earliest possible stage in a case, the Division offers an Alternative Dispute Resolution (mediation) program early in an investigation, which can identify viable options for the early constructive resolution of cases.

### Civil Rights Division's Training/Legal Advice Offerings

Because the Division is a neutral agency, it cannot provide legal advice or provide an opinion on a claim that may be brought before the Division. However, the Division and Commission engage in outreach and education to inform Coloradans of issues in civil rights and discrimination law.

The Division offers training programs to businesses and housing providers to help them ensure that they comply with the Colorado Anti-Discrimination Act (CADA). The Division also partners with other organizations and through independent outreach efforts to better serve the communities of Colorado.

The Division is increasingly providing internet-based access to all educational materials and has reached thousands of individuals and numerous communities to provide awareness of the anti-discrimination laws in Colorado. As statutory revisions are made affecting pertinent civil rights laws, updates are made to the brochures, teaching programs, and the Division's website that reflect those changes.

## How does the CCRD & CCRC Help Serve Coloradans?

The mission of the Division and Commission is to promote equal treatment of all people in Colorado and foster a more open and receptive environment in which to conduct business, live, and work.

We are dedicated to promoting fair and inclusive communities through the enforcement of the civil rights laws, mediation, education, and outreach.





# ENFORCEMENT

## Case Processing

The primary mission of the Colorado Civil Rights Division (CCRD) is to enforce the anti-discrimination laws in the areas of employment, housing, and public accommodations under Title 24, Article 34, Parts 3-7, of the Colorado Revised Statutes. The Division investigates matters that come to its attention from Complainants in the public or which the Commission files with the Division on its own motion. The Division also works in conjunction with, and maintains work-share agreements with its federal counterparts, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD). To avoid duplication of effort and provide more efficient customer service to the public, the Division investigates matters that are filed with both EEOC and HUD (“dual filing”), as well as cases that have jurisdiction exclusive to Colorado law. The staff of the Division strives to provide the best customer service to the public, as well as to all parties in a case, by the fairest and most transparent methods possible.



## Charges Filed with CCRD

Cases are filed with the Division by Complainants alleging discrimination based on a protected class. A “protected class” is a characteristic of a person which cannot be targeted for discrimination. The specific Colorado Anti-Discrimination law falls under Title 24 of the Colorado Revised Statutes. As shown on the next page, discrimination charges based on retaliation, disability, and sex continue to be the highest in Fiscal Year 2016-2017, followed by race, age and national origin. Retaliation is an adverse action taken against someone who has opposed discrimination or participated in the investigation of a discrimination complaint or has engaged in other protected activity, such as requesting a reasonable accommodation for a disability.

Fiscal Year	Employment	Housing	Public Accommodation	Total Charges Filed
FY14-15	766	112	85	963
FY15-16	737	154	98	989
FY16-17	903	159	76	1138

# PROTECTED CLASSES IN COLORADO

## Housing, Employment, and Public Accommodations (PA)

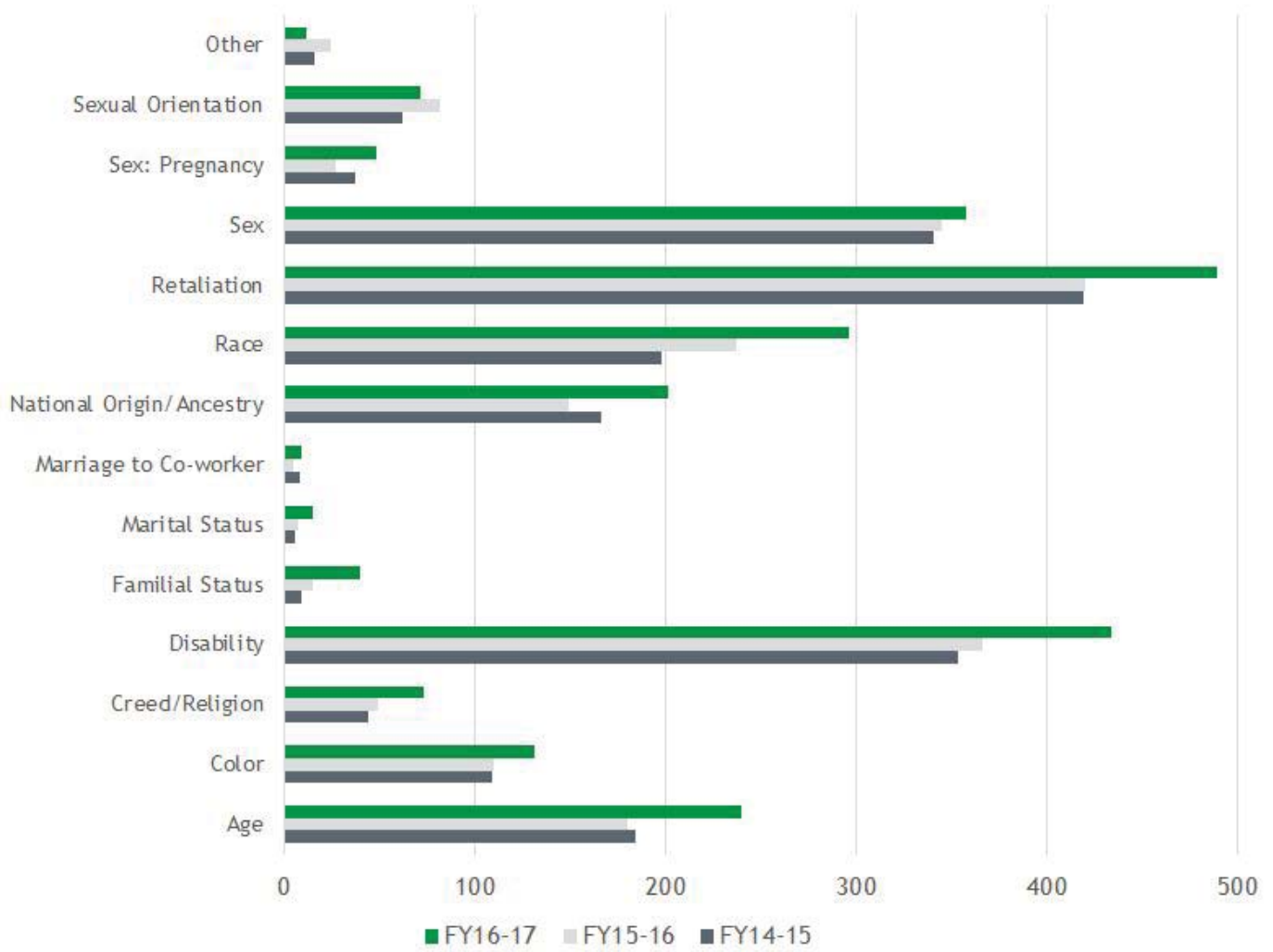
Age (employment only)	National Origin/Ancestry
Color	Race
Creed	Religion (employment and housing only)
Disability	Retaliation (for engaging in protected activity)
Familial status (housing only)	Sex
Marital status (housing and PA only)	Sexual Orientation/Transgender
Marriage to Co-worker (employment only)	

## Basis of Charges Filed FY15-FY17

Basis*	FY14-15	FY15-16	FY16-17
Age	184	180	240
Color	109	110	131
Creed/Religion	44	49	73
Disability	353	366	433
Familial Status	9	15	40
Marital Status	6	7	15
Marriage to Co-worker	8	5	9
National Origin/Ancestry	166	149	201
Race	198	237	296
Retaliation	419	420	489
Sex	340	345	357
Sex: Pregnancy	37	27	48
Sexual Orientation	62	82	71
Other	16	24	12

\* May be more than one basis per case

## Charges Filed by Major Protected Class



## Charges Filed by Allegation Type



## Charges Filed by County FY16-17

[Consider including 1-2 sentences introducing the chart here.]

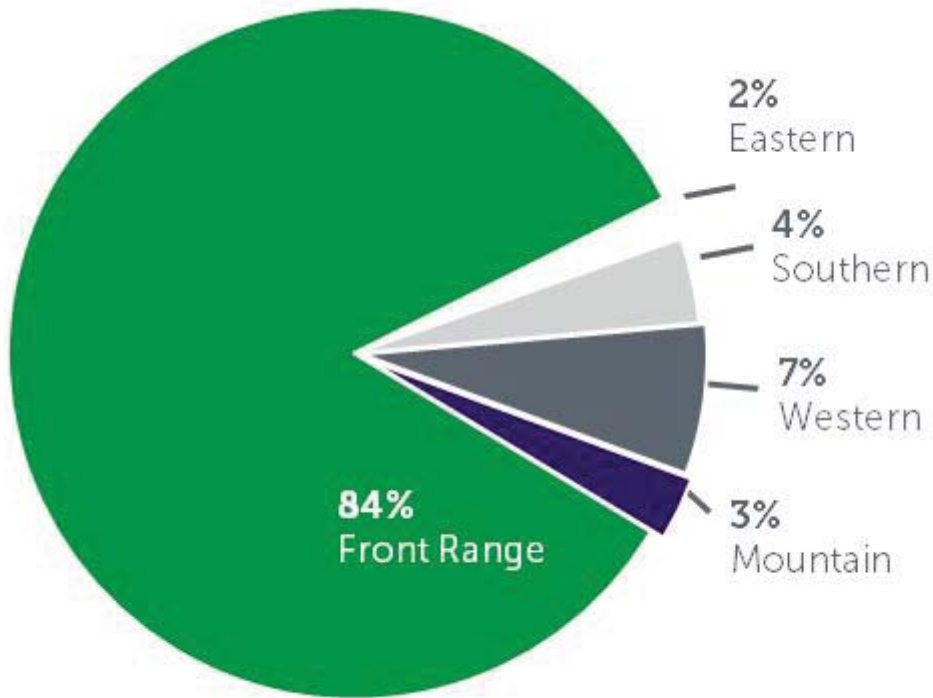
County	Employment	Housing	Public Accommodations	Total
Adams	73	6	1	80
Alamosa	2	0	2	4
Arapahoe	151	12	21	184
Archuleta	2	0	1	3
Baca	0	0	0	0
Bent	0	0	0	0
Boulder	59	4	7	70
Broomfield	12	2	2	16
Chaffee	2	0	0	2
Cheyenne	1	0	0	1
Clear Creek	0	0	0	0
Costilla	0	0	0	0
Conejos	0	0	0	0
Crowley	1	0	0	1
Custer	3	0	0	3
Delta	5	0	1	6
Denver	193	29	38	261
Douglas	35	3	5	43
Eagle	2	0	0	2
Elbert	1	0	0	1
El Paso	49	19	9	77
Fremont	8	0	0	8
Garfield	17	0	0	17
Gilpin	1	0	2	3
Grand	1	0	0	0
Gunnison	3	1	1	5
Hinsdale	0	0	0	0

Huerfano	1	0	0	1
Jackson	2	0	0	0
Jefferson	75	7	10	92
Kiowa	0	0	0	0
Kit Carson	1	0	0	1
La Plata	5	1	0	5
Lake	0	0	0	0
Larimer	45	7	2	54
Las Animas	3	0	1	4
Lincoln	0	0	0	0
Logan	11	1	2	14
Mesa	22	1	1	24
Mineral	0	0	0	0
Moffat	2	0	0	2
Montezuma	2	0	0	2
Montrose	8	0	1	9
Morgan	7	0	0	7
Otero	3	0	0	3
Ouray	1	1	0	2
Park	0	2	0	2
Phillips	0	0	0	0
Pitkin	1	0	0	1
Prowers	2	0	0	2
Pueblo	21	0	5	26
Rio Blanco	0	0	0	0
Rio Grande	4	0	0	4
Routt	3	0	0	3
Saguache	0	0	0	0
San Miguel	2	0	1	3
Sedgwick	0	0	0	0
Summit	4	0	0	4
Teller	5	0	0	5
Washington	0	0	0	0

Weld	34	2	1	37
Yuma	2	0	0	2

\*some county data missing from online filings

## Charges Filed by Region



# INVESTIGATIONS & FINDINGS

When a formal complaint is filed alleging discrimination, the Division’s investigative staff conducts a neutral investigation. Evidence is gathered from both parties in the case, witnesses are interviewed, and documents and records are requested. The investigation under Colorado law provides a transparent process to allow the parties the opportunity to provide information and evidence that corroborates their allegations and which refutes the allegations of the opposing party.

After the investigation, the Division Director or her designee makes a determination as to whether there is sufficient evidence to support a finding of “probable cause” that discrimination has occurred. If the Director finds probable cause, the parties are required to attempt to resolve the matter through a mandatory mediation process (also called “Conciliation”). If the Director finds that there is “no probable cause” to believe that discrimination has occurred, the Complainant has the right to appeal that determination to the Commission. In employment cases, if the case is dismissed, the Complainant may file a legal complaint in civil court; however, in housing cases, the Complainant may file in civil court at any time without needing to exhaust administrative remedies prior to filing in court. If the Director finds probable cause in an employment case and the case is not settled in conciliation, the Commission then decides whether the matter will be noticed for hearing before an Administrative Law Judge. In housing cases, if the Director finds probable cause and the case is not settled in conciliation, the statute requires that the case be set for hearing.

The below chart provides statistics concerning the number of “Probable Cause” and “No Probable Cause” determinations issued by the Director in the past three years.

## Findings of CCRD

Area of Jurisdiction	FY14-15		FY15-16		FY16-17	
	Probable Cause	No Probable Cause	Probable Cause	No Probable Cause	Probable Cause	No Probable Cause
Employment	18	449	16	271	16	383
Housing	3	93	15	81	14	121
Public Accommodation	1	55	2	55	2	66

## Appeals

As explained, when the Director finds no probable cause in a case, the Complainant may appeal the decision to the Commission within ten days. The Commission will review the matter taking into consideration the argument and evidence that proves existing evidence was misinterpreted or new evidence presented that was not available during the investigation process. The following are the number of appeals filed with the Commission in the past three fiscal years.

Fiscal Year	Employment	Housing	Public Accommodation	Total
FY14-15	51	14	13	78
FY15-16	47	16	25	88
FY16-17	63	23	16	102

## Cases Completed

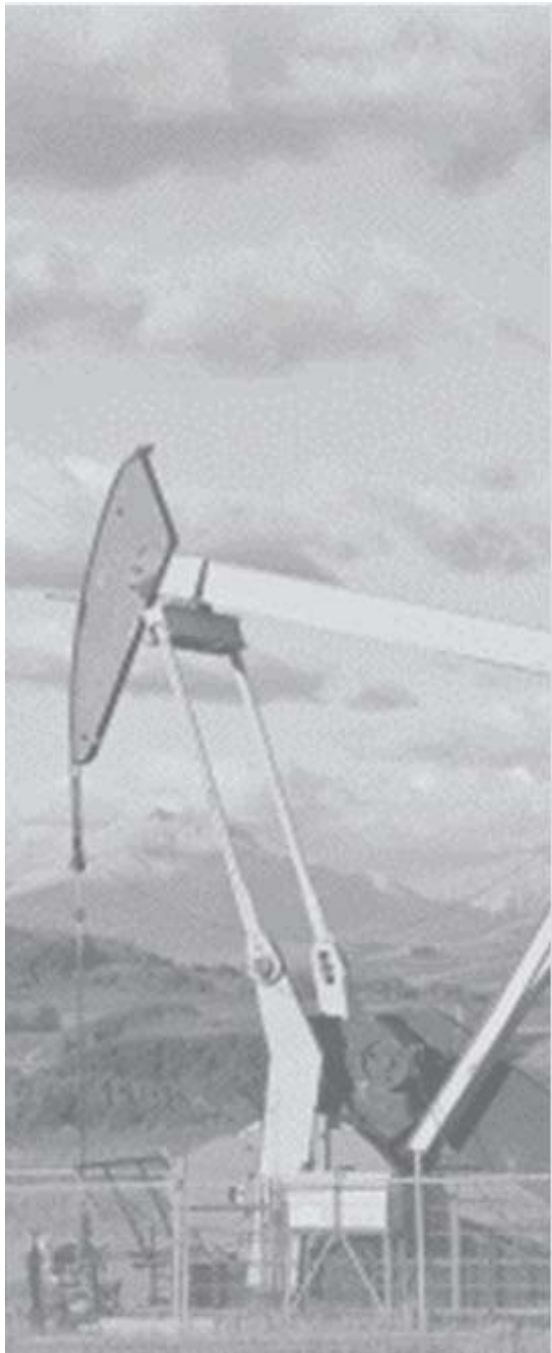
Cases are closed under a number of circumstances, including: probable cause/no probable cause finding, successful mediation, closed after hearing, lack of jurisdiction, right to sue issued, and withdrawal or administrative closure. The Division strives to address as many cases as quickly as possible so that the parties are served by the process and matters can be resolved. The following chart demonstrates the number of cases that the Division closed in the past three fiscal years.

Fiscal Year	Employment	Housing	Public Accommodation	Total
FY14-15	644	122	67	833
FY15-16	563	118	62	743
FY16-17	751	183	91	1025



# EMPLOYMENT CASES

Below are summaries of cases in which allegations of retaliation and discrimination based on age were made and in which the Division's examination of evidence supported the allegations asserted. Retaliation occurs when someone is subject to adverse action by a Respondent for engaging in protected civil rights related activity, for example, complaining of discriminatory conduct, participating in a civil rights related investigation, or requesting a reasonable accommodation for a disability.



## Significant Employment Cases

The Division found Probable Cause that the Complainant, a derrick hand for a drilling contractor, was retaliated against when he complained of discrimination. The Complainant alleged that a co-worker pointed a BB gun at him and called him "bitch" and "nigger." The evidence demonstrates that the Complainant reported the allegations of discrimination to his supervisor. The evidence shows that Complainant was discharged within a few days of reporting the allegations of discrimination to his supervisor. The Respondent asserted that it offered to re-assign the Complainant to another work site, however, the Complainant refused, and because he did not want to be reassigned to another work site, was discharged. The evidence demonstrated that the Respondent's assertions were pre-textual and that the Complainant was discharged based on retaliation because he complained that he was being discriminated against based on his race.

The Complainant, age 61, was employed by the Respondent, a construction company, as a laborer. He worked for the Respondent for approximately one year when he was assigned to a new work crew and a new manager. The Complainant alleged that on a daily basis, the new manager would "yell" at workers and tell them they were not working fast enough, and would disparage older workers, suggesting that "they weren't good for anything." The Respondent conceded that it had received several complaints about this manager for allegedly telling older employees that they were "pieces of dirt, lazy, and not worth a shit," wanted to fire them, and planned on hiring younger employees to replace them. Interviews conducted with other employees confirmed the Complainant's allegations of harassment based on his age. While the Respondent removed the manager from this particular work crew, remedial action by an employer does not negate a claim of harassment when the harasser is a supervisor or manager.



# HOUSING CASES

Allegations of discrimination based on familial status and race were supported by evidence obtained in two cases filed with the Division during the 2016-2017 fiscal year. Familial status is a protected class specifically in housing. Familial status refers to having a child or children under the age of 18 in the household. It also includes individuals in the process of adopting or obtaining custody of children under the age of 18, as well as pregnant women.

## Significant Housing Cases

The Complainant rented an apartment from the Respondent landlords and signed another lease after living at the property for a year. Prior to her lease expiring, she expressed interest in renewing the lease for another year, and the landlords agreed to renew it without a rent increase. The Complainant alleges that she later informed her landlords that she was pregnant. The Respondent landlords agree that they told the Complainant that they had concerns about the Complainant living in the apartment with an infant, as they were concerned the infant would cry, which could lead to noise complaints from her neighbors. The landlords then informed the Complainant they would be raising her rent when her lease expired, and even though the Complainant agreed to pay the increase, the Respondents refused to renew her lease, stating that they planned to renovate the unit and possibly move into the unit themselves. The evidence demonstrated that the landlords did not move into the unit or renovate it, and instead, posted the unit for rent approximately 2 weeks after the Complainant moved out. The evidence demonstrated that none of the other tenants' leases were non-renewed, and none of the other tenants experienced rent increases as did the Complainant. The evidence obtained found that the landlords' reasoning for the non-renewal of the Complainant's lease was pretextual. The Division issued a Probable Cause determination that the Complainant was denied housing based on her familial status.

The Complainant filed a charge of discrimination with the Division alleging that she was denied housing based on her race/color (African American/Black). She rented an apartment from the Respondent owner for over a year without incident. The Respondent owner retained the services of a new property management company, who threatened the Complainant with eviction for allegedly smoking marijuana on the property and for damage to the property allegedly made by her children. The Complainant asserted that she does not smoke marijuana. Neighbors of the Complainant who are not African American/Black were interviewed, who confirmed that they did smoke marijuana. The evidence obtained during the investigation demonstrated that the Respondent property management company did not take steps to determine where the marijuana smoke was coming from, and assumed that it came from the Complainant's unit. The Respondent reported that the Complainant's lease was not renewed for several incidents involving the Complainant's children, such as breaking windows and throwing rocks at residents. The Respondent maintained that local law enforcement was called to address these incidents. The Division contacted the local law enforcement agency and records from the agency revealed that the reports involving broken windows at the property and rocks thrown at residents did not involve the Complainant or her children, but the children of other residents at the property not of the Complainant's protected class.

The evidence demonstrated that these residents did not receive Demands for Compliance or Possession, and that their leases were renewed upon request. The Complainant's lease was not renewed, despite her request to do so. The evidence obtained during the investigation demonstrated that the Complainant was denied housing based on her race/color (African American/Black).



# PUBLIC ACCOMMODATION CASES

Colorado's laws also protect against discrimination in places of Public Accommodation, such as a library or a theatre. The law prohibits the denial of full and equal enjoyment of goods, services, facilities, privileges, and advantages in a place of public accommodation to any person of a protected class. A "place of public accommodation" is any place of business engaged in sales to the public and any place offering services to the public. Other examples include stores, restaurants, hotels, hospitals, parks, museums, sporting or recreational facilities, campsites, hospitals, and educational institutions (does not include churches, synagogues, mosques, or other places that are principally used for religious purposes).

NO place of public accommodation may post a sign which states or implies, "We reserve the right to refuse service to anyone."

## Significant Public Accommodation Cases

The Complainant asserted that he was denied services due to his disability (hearing impairment). The evidence demonstrated that he attempted to obtain services from a company that provides services and technologies related to vehicle operation. The Complainant requested that a sign language interpreter be present to relay how to operate the technology that was being installed in his vehicle. The Respondent refused to provide an interpreter, forcing the Complainant to communicate in writing, even though American Sign Language is his first language, not English. The evidence demonstrated that communicating through writing was not effective for the Complainant, and that the Respondent had the resources to provide an interpreter, but refused to do so. The Division issued a Probable Cause finding in the case.

The Complainant filed a charge with the Division alleging that she was harassed based on her sex, female. The Complainant was a guest at the Respondent hotel. The Complainant asserted that a male valet carried her luggage to her room. The Complainant reported that the valet led her to a condominium instead of her room, and asked her if she would like to "hang out" and noted that the walls of the condominium were "soundproof." The Complainant states that she declined the invitation and was able to escape the situation when another person walked by. The Complainant avers that later in the evening the valet called her room and asked her if he could come up to her room and drink with her. She

declined. She states that she later saw the valet standing outside of her door, waiting for her to come out of her room. The Complainant contends that she felt unsafe and immediately checked out of the hotel. She went to the front desk and asked for a refund, which was provided. The front desk staff asked her why she was not satisfied with her stay, and she reported her concerns about the valet's behavior. The evidence shows that the Respondent immediately conducted its own investigation into the Complainant's allegations, and promptly terminated the employment of the valet. The Division determined that the Respondent had not discriminated against the Complainant based on her sex, as the Respondent took reasonable care to prevent and promptly correct any adverse treatment based on the Complainant's sex.



# ALTERNATIVE DISPUTE RESOLUTION

In order to encourage parties in a case to consider potential resolutions of matters under investigation, the Division offers Alternative Dispute Resolution (ADR) as a time and cost savings alternative to investigation and litigation. This mediation program is provided at no cost to the parties. The process benefits the parties in that it allows open discussion and resolution of a matter at its lowest possible level. Prior to the initiation of an investigation, the Division provides the parties the opportunity to participate in voluntary mediation. This is a formal meeting held between the parties where a Division mediator acts as a neutral intermediary to assist the parties in reaching a compromise. As previously discussed, the ADR unit also conducts compulsory mediation as required by statute after probable cause is found in a case.

Fiscal Year	Mediations			Conciliations			Total		
	Number of Mediations Held	Mediations Resulting in Settlements	Value of Mediated Settlements	Number of Conciliations Held	Conciliations Resulting in Settlements	Value of Conciliated Settlements	Total Held	Total Resulting in Settlements	Total Value
FY14-15	92	44	\$ 542,685	22	10	\$256,250	114	54	\$798,935
FY15-16	114	69	\$949,029	28	17	\$169,021	142	86	\$1,118,050
FY16-17	128	50	\$2,663,406	39	11	\$206,850	167	61	\$ 2,870,256



The Division makes it a priority to provide parties with the opportunity to settle cases as often as possible. In many cases it proves to be a beneficial resolution. The parties are able to be heard as well as feel empowered to address a situation or improve relationships. Above are some statistics that demonstrate the work and outcomes of the program.

To improve customer service, reduce resources expended, and increase benefit to the parties in a case, the Division strives to decrease the time it takes to conduct mediations and conciliations. In this fiscal year, the Division was able to conduct 88% of its formal mediations within 45 days or less of the date the request for mediation was made.

# OUTREACH & EDUCATION

Public education is a key part of the Commission’s and Division’s mission. Through the outreach and education program, we can raise public awareness of civil rights issues and knowledge of the laws prohibiting discrimination in employment, housing and places of public accommodations in Colorado.

In addition to the monthly educational training in Anti-Discrimination in Employment and Fair Housing provided in the main office in Denver, outreach members of the staff travel around the state providing educational presentations to businesses and individuals. In Fiscal Year 2016-2017, in addition to its regular training classes offered in Denver, the Division conducted training and outreach events in Longmont, Greeley, Fort Collins, Cortez, Colorado Springs, Grand Junction, Cañon City, Black Hawk, Aurora, Pueblo, Durango, Gunnison, Montrose, Boulder and Westminster.



The Division partners with other organizations to provide outreach, and leverages valuable resources by working with various organizations including city councils, academic institutions, non-profit organizations, and other government agencies thereby providing a greater ability to educate the public regarding anti-discrimination laws.

The Division also maintains a website at <https://www.colorado.gov/dora/civil-rights> where the public can learn about the Division and Commission, enroll in upcoming trainings, obtain information about anti-discrimination laws and rules, and download forms to file a complaint of discrimination. Members of the public are always encouraged to let us know how the website is assisting them with their needs.

## Training & Outreach Events

Fiscal Year	Number of Trainings	No. of Trainings as Part of a Settlement	Number of Outreach Events	Total Trainings and Outreach
FY14-15	47	2	21	68
FY15-16	47	5	19	66
FY16-17	45	5	26	71

# BUDGET

The Civil Rights Division is funded by the State of Colorado's General Fund. The Division's work is also supported by contractual agreements with the U.S. Department of Housing and Urban Development and the U.S. Equal Employment Opportunity Commission. Under the agreements, when Colorado and the federal government share jurisdiction, the Division conducts investigations on behalf of the federal government, avoiding duplicative effort and allowing for a more effective use of resources.

## Budget FY 2016-2017 for FTEs

Source	Amount	Full-Time Employees
State General Funds	\$1,804,280	21.2
Grant Funds	\$672,138	6
<b>Total</b>	<b>\$ 2,476,418</b>	<b>27.2</b>



# HISTORY OF CIVIL RIGHTS IN COLORADO

- |      |   |
|------|---|
| 1876 | The Colorado Constitution was ratified after 100 Black men demanded and were given the right to vote.   |
| 1885 | The Colorado General Assembly passed the Public Accommodations Act prohibiting discrimination on the basis of race or color.  |
| 1893 | Colorado expanded its laws and granted women the right to vote.   |
| 1917 | Discriminatory advertising was added to the prohibitions contained in the 1895 Public Accommodations Act.   |
| 1951 | The General Assembly passed the Colorado Anti-Discrimination Act creating the Fair Employment Practices Division, attached to the state's Industrial Commission, forerunner of the Colorado Department of Labor and Employment. The Division's mission was to research and provide education regarding employment discrimination and conduct hearings regarding job discrimination cases involving public employers; However, the fledgling agency was given no compliance or enforcement powers. |
| 1955 | Lawmakers gave the agency independence when they renamed it the Colorado Anti-Discrimination Commission, detached it from the Industrial Commission, and gave it enforcement authority over public agencies.  |
| 1957 | The General Assembly repealed an existing statute that prohibited interracial marriage and made the Commission a full-fledged agency when they added private employers with six or more employees to its jurisdiction, and charged the Commission with enforcing the 1895 Public Accommodations Act.  |
| 1959 | Colorado passed the nation's first state fair housing law to cover both publicly assisted and privately financed housing and added it to the Commission's jurisdiction.   |
| 1965 | The Colorado legislature renamed the agency the Colorado Civil Rights Commission.   |
| 1969 | Sex was added as a protected status under Colorado's fair housing law.  |
| 1973 | Marital status was added as a protected status under Colorado's fair housing law.   |
| 1977 | Physical disability was added as a protected status under Colorado's anti-discrimination laws.  |



1979

The Colorado Civil Rights Commission passed its first Sunset Review and was placed under the Department of Regulatory Agencies. The legislature also consolidated all of the state's civil rights laws into a single set of statutes and imposed a time limit (180 days) on the agency's jurisdiction.

1986

The General Assembly amended the state's fair employment statutes to include age (40-69 years) as a protected status.

1989

A second Sunset Review left the Commission and the Division stronger when legislators amended the statutes as follows:

- granted the Director subpoena power in the investigation of housing cases,
- granted Commission power to award back pay in employment cases and actual costs to obtain comparable housing in housing cases,
- added mental disability and marriage to a co-worker as protected classes in employment,
- required complainants to exhaust administrative remedies before filing a civil action in employment cases,
- made retaliation for testifying in a discrimination charge illegal, and
- made mediation mandatory after a finding of probable cause.

1990

Legislators amended Colorado's fair housing statutes to meet the federal requirement for "substantial equivalency," as follows:

- prohibited discrimination based on familial status (families with children under age 18),
- required builders of new multi-family dwellings to meet seven specific accessibility standards,
- required landlords to make "reasonable modifications" for persons with disabilities, including permitting disabled tenants to make structural changes at their own expense,
- gave parties to housing discrimination cases the option of having their case decided in a civil action rather than a hearing before an administrative law judge,
- gave courts or the Commission power to assess fines and award actual and compensatory damages in housing cases,
- gave title companies, attorneys, and title insurance agents power to remove illegal covenants based on race or religion,
- added mental disability as a protected status under Colorado's fair housing law.
- In employment cases, the legislature prohibited any lawful off-premises activity as a condition of employment illegal, with sole recourse through civil suits (dubbed the "smoker's rights" bill).

1991

The legislature gave the Director subpoena power in employment cases.

1992

Legislators fine-tuned the State's fair housing law to meet certain federal equivalency requirements as follows:

- prohibited "blockbusting" and discriminating in the terms and conditions of real estate loans, and
- excluded persons currently involved in illegal use of or addiction to a controlled substance from the definition of mental disability.

1993

The time limit for processing charges was extended from 180 days to 270 days, with the provision of a 180-day right-to-sue request.

1999

Colorado Civil Rights Division's third legislative Sunset Review left the agency with two new statutory mandates:

- gave jurisdiction to the agency for workplace harassment cases without economic loss,
- authorization to intervene in intergroup conflicts and offer voluntary dispute resolution services.

2000

The U.S. Courts of Appeals for the 10<sup>th</sup> Circuit in *Barzanji v. Sealy Mattress Co*, issued an opinion in a case that was initially filed with the Division, which placed additional limitations on the concept of “continuing violations” and reaffirmed that the date of notification of adverse employment action is the correct date of record for purposes of measuring jurisdictional filing deadlines.

2007

The legislature added sexual orientation, including transgender status, as a protected class in employment cases.

2008

The legislature added sexual orientation, including transgender status, as a protected class in housing and public accommodation cases, but exclude churches and other religious organizations from jurisdiction under the public accommodation statute.

2009

The Colorado Civil Rights Division’s fourth legislative Sunset Review left the agency in place with three new statutory mandates:

- gave jurisdiction to the agency for claims involving terms and conditions of employment;
- allowed the Civil Rights Commission to initiate complaints; and
- extended the Division’s subpoena authority.

2013

The state legislature passed the Colorado Job Protection and Civil Rights Enforcement Act of 2013 which was signed by the Governor on May 6, 2013. Effective January 1, 2015, the Act expands the remedies a plaintiff may claim in a lawsuit in which intentional employment discrimination is proven to include attorneys’ fees, compensatory and punitive damages, and front pay. Additionally, effective January 1, 2015 the Act permits age claims to be made by employees whose age is 40 years and over, with no ceiling as to the maximum age an individual may be in order to bring a claim of age discrimination.

2016

The state legislature passed the Pregnancy Workers Fairness Act of 2016, which was signed by the Governor on June 1, 2016 and went into effect August 10, 2016. This Act requires employers to provide reasonable accommodations to pregnant workers and applicants, as well as conditions related to pregnancy, such as recovery from childbirth. If an employee/applicant requests an accommodation related to pregnancy/childbirth, the employer must engage in an interactive process with the employee/applicant and provide reasonable accommodations to perform the essential functions of the position unless the accommodation would pose an undue hardship on the employer’s business.