

**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.

**PLAINTIFFS’ UNOPPOSED MOTION TO RESTRICT PUBLIC ACCESS TO THE
REPLY IN SUPPORT OF AMENDED MOTION FOR PRELIMINARY INJUNCTION
AND ACCOMPANYING EXHIBITS**

Plaintiffs Jack Phillips and Masterpiece Cakeshop (collectively, Phillips) move this Court under Local Rule 7.2 for an order restricting public access to Plaintiffs’ Reply in Support of Amended Motion for Preliminary Injunction and the exhibits accompanying it. Doc. 127. Phillips

seeks Level 1 protection for those documents, which would limit access to the parties and the Court. The grounds for this motion are explained below. As required by Local Rule 7.1(a), Phillips's counsel asked counsel for Defendants (collectively, Colorado) for their position on this motion. Colorado's counsel indicated that they do not oppose the filing of this motion to restrict access, although they reserve the right to file a motion to strike Phillips's reply and its accompanying exhibits, which Colorado has already done. *See* Doc. 129.

The parties have entered into a stipulated protective order. Doc. 111. While that document was filed on February 5, 2019, it has yet to be entered by this Court. The parties have nevertheless agreed to abide by it in the meantime. Under that stipulation, the parties have agreed (among other things) to treat as "confidential" any "information required to remain confidential pursuant to § 24-34-306(3), C.R.S." Doc. 111, ¶ 2, which, as that statute provides, includes "the information gathered during the [Colorado Civil Rights Division's] investigation, or the efforts to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion." Colo. Rev. Stat. § 24-34-306(3).

Three of the exhibits that Phillips filed with the reply in support of their amended motion for preliminary injunction have been marked confidential by Colorado. Phillips disagrees with that designation of those documents, but to respect the parties' agreement and Colorado's desire to shield from public disclosure documents that it believes must remain confidential under state law, public access to the reply brief and its accompanying exhibits should be restricted.

If Colorado is correct in its belief that those documents must remain confidential under state law, that interest outweighs the presumption of public access to court filings. And if Colorado is correct in its belief about those documents, a serious injury—in the form of a violation

of state law—will result if access is not restricted, and only restriction will adequately protect Colorado’s interests.

One way to maximize public access to Phillips’s filing while shielding from public disclosure the documents that Colorado believes are confidential is to permit Phillips to file on the publicly accessible docket (1) the exhibits to the reply brief that Colorado did not mark confidential and (2) a redacted version of the reply brief that blocks out references to the information disclosed in the three exhibits that Colorado marked confidential. The Court could order Phillips to do this if it prefers that alternative to restricting access to the entire filing.

As stated above, Phillips questions whether Colorado was correct in designating the three exhibits as confidential. So Phillips is planning to challenge the designation of those documents as he is permitted to do under the parties’ stipulation. That process requires (1) the challenging party to provide written notice of the objection to the party that designated the documents, (2) the parties to try to resolve the dispute without court intervention, and (3) the challenging party (no sooner than 10 business days after raising the issue with the designating party) to file an appropriate motion with the Court. Doc. 111, ¶ 10. On February 21, 2019, Phillips first provided Colorado with written notice of his objection to the confidentiality designation of those documents, *see* Doc. 129 at 3-4; so according to the stipulated agreement, the earliest that Phillips could file a motion challenging that designation is March 7. But even if Phillips files a motion challenging that designation, this Court should grant this motion and restrict public access to the documents in question until that subsequent motion is filed and decided.

For the foregoing reasons, this Court should enter an order restricting public access to Plaintiffs’ Reply in Support of Amended Motion for Preliminary Injunction and the exhibits

accompanying it, Doc. 127, and subject those documents to Level 1 protection, which would limit access to the parties and the Court. In addition, the Court could order Phillips to file on the publicly accessible docket (1) the exhibits to the reply brief that Colorado did not mark confidential and (2) a redacted version of the reply brief that blocks out references to the information disclosed in the three exhibits that Colorado marked confidential.

Respectfully submitted this 26th day of February, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2019, the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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