

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RICKY B. PERRITT, Individually;	§	
The Cupcakery, LLC, a Texas Limited	§	
Liability Company; Buster Baking, LLC,	§	
a Texas Limited Liability Company; and the	§	
Woodlands Baking, LLC, a Texas Limited	§	
Liability Company,	§	
	§	
Plaintiffs	§	CAUSE NO. 4:11-CV-23
	§	
v.	§	
	§	
PAMELA F. JENKINS, Individually; and	§	
The Cupcakery, LLC, a Nevada Limited	§	
Liability Company,	§	
	§	
Defendants.	§	

**DEFENDANT PAMELA F. JENKIS AND DEFENDANT THE CUPCAKERY, LLC, A
NEVADA LIMITED LIABILITY COMPANY’S ANSWER TO PLAINTIFFS’
ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION,
DECLARATORY JUDGMENT AND DAMAGES**

Defendant Pamela F. Jenkins (“Jenkins”) and Defendant The Cupcakery, LLC, a Nevada Limited Liability Company (“Nevada Cupcakery”) (collectively, Jenkins and The Nevada Cupcakery are the “Defendants”) file this their Answer to Plaintiffs Ricky B. Perritt (“Perritt”), The Cupcakery, LLC, a Texas Limited Liability Company (the “Texas Cupcakery”), Buster Baking, LLC, a Texas Limited Liability Company (“BLLC”), and the Woodlands Baking, LLC, a Texas Limited Liability Company’s (“WBLLC”) (collectively, Perritt, Texas Cupcakery, BLLC and WBLLC are the “Plaintiffs”) Original Complaint and Application for Temporary

Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages (the “Complaint”):

Defendants respond that the allegations in the introductory Paragraph of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations therein.

I. NATURE OF THE CASE

1. The allegations in Paragraph 1.01 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 1.01 of the Complaint. Defendants, however, admit that Jenkins is an individual resident of the State of Nevada.

2. Defendants admit that Perritt brought suit against Jenkins in 2009 and that Jenkins and Perritt entered into a settlement agreement that resolved the 2009 suit. Exhibit A to the Complaint is a document that speaks for itself. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 1.02 of the Complaint.

3. Defendants deny the allegations in Paragraph 1.03 of the Complaint.

II. PARTIES

4. Defendants lack knowledge or information sufficient to admit or deny the allegations of Paragraph 2.01 of the Complaint; therefore, such allegations are denied.

5. Defendants lack knowledge or information sufficient to admit or deny the allegations of Paragraph 2.02 of the Complaint; therefore, such allegations are denied.

6. Defendants lack knowledge or information sufficient to admit or deny the allegations of Paragraph 2.03 of the Complaint; therefore, such allegations are denied.

7. Defendants lack knowledge or information sufficient to admit or deny the allegations of Paragraph 2.04 of the Complaint; therefore, such allegations are denied.

8. Defendants admit that Jenkins is an individual resident of the State of Nevada. Defendants admit that Jenkins has been served with process. Defendants deny that Jenkins maintains any residence in the State of Texas. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 2.05 of the Complaint.

9. Defendants admit the allegations of Paragraph 2.06 of the Complaint.

III. JURISDICTION AND VENUE

10. The allegations in Paragraph 3.01 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 3.01 of the Complaint.

11. The allegations in Paragraph 3.02 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 3.02 of the Complaint.

12. The allegations in Paragraph 3.03 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 3.03 of the Complaint.

13. The allegations in Paragraph 3.04 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 3.04 of the Complaint.

14. Defendants deny the allegations in Paragraph 3.05 of the Complaint.

IV. FACTS

15. Defendants admit the allegations in Paragraph 4.01 of the Complaint.

16. Defendants admit that Jenkins requested a loan from Perritt in 2005. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 4.02.

17. Defendants deny the allegations in Paragraph 4.03 of the Complaint.

18. Defendants deny the allegations in Paragraph 4.04 of the Complaint.

19. Defendants deny the allegations in Paragraph 4.05 of the Complaint.

20. Defendants admit that Perritt and Jenkins executed a one (1) page Agreement on April 20, 2007, which document speaks for itself. To the extent not expressly admitted herein, Defendants deny the remaining allegations in Paragraph 4.06 of the Complaint.

21. Defendants admit that Perritt and Jenkins executed an Assignment and Assumption of Limited Liability Company Interest on April 20, 2007, which document speaks for itself. The allegations in sentence two of Paragraph 4.07 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in sentence two of Paragraph 4.07 of the Complaint. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 4.07 of the Complaint.

22. Defendants deny the allegations of Paragraph 4.08.

23. Defendants deny the allegations of Paragraph 4.09.

24. Defendants admit that Jenkins opened a second store in Las Vegas, Nevada in January 2008. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 4.10 of the Complaint.

25. Defendants admit that Jenkins appeared at the grand opening of The Cupcakery in Frisco, Texas. Defendants deny allegations that Jenkins did not contribute capital to the Frisco, Texas store. To the extent not expressly admitted or denied herein, Defendants lack knowledge

or information sufficient to admit or deny the allegations in Paragraph 4.11 of the Complaint; therefore such allegations are denied.

26. Defendants admit that Perritt opened a store in Dallas, Texas. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 4.12 of the Complaint; therefore, such allegations are denied.

27. Defendants admit Perritt brought suit against Jenkins in 2009, that Jenkins did not file an Answer to the 2009 lawsuit, and that Kirk Kaplan represented Jenkins with respect to the 2009 lawsuit. Exhibit A to the Complaint is a document that speaks for itself. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 4.13 of the Complaint.

28. In response to the allegations in Paragraph 4.14 of the Complaint, Exhibit A to the Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 4.14 of the Complaint.

29. In response to the allegations in Paragraph 4.15 of the Complaint, Exhibit A to the Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 4.15 of the Complaint.

30. In response to the first sentence of Paragraph 4.16 of the Complaint, Exhibit A to the Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in sentence one of Paragraph 4.16 of the Complaint. Defendants deny the allegations in the second sentence of Paragraph 4.16 of the Complaint.

31. Defendants lack knowledge or information sufficient to admit or deny the allegations of sentence one of Paragraph 4.17 of the Complaint; therefore, such allegations are denied. The allegations in the second sentence of Paragraph 4.17 of the Complaint constitute

legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in sentence two of Paragraph 4.17 of the Complaint.

32. The allegations in Paragraph 4.18 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 4.18 of the Complaint.

33. Defendants deny the allegations of Paragraph 4.19 of the Complaint.

34. Defendants deny the allegations of Paragraph 4.20 of the Complaint.

35. Defendants admit that the website www.thecupcakery.com is hosted by BannerView.com, which is located in Las Vegas, Nevada and that the Nevada Cupcakery and BannerView have a longstanding business relationship. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 4.21 of the Complaint.

36. Defendants deny the allegations in Paragraph 4.22 of the Complaint.

37. Defendants deny the allegations in Paragraph 4.23 of the Complaint.

38. The allegations in sentence one of Paragraph 4.24 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in sentence one of Paragraph 4.24 of the Complaint. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 4.24 of the Complaint; therefore, such allegations are denied.

39. Defendants deny the allegations in sentences one and two of Paragraph 4.25 of the Complaint. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 4.25 of the Complaint; therefore, such allegations are denied.

40. The allegations in sentence one of Paragraph 4.26 of the Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 4.26 of the Complaint.

**V. FIRST CAUSE OF ACTION
APPLICATION FOR RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

41. Defendants respond that the allegations in Paragraph 5.01 constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 5.01 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

42. Defendants respond that the allegations in Paragraph 5.02 constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 5.02 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

VI. SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT

43. Defendants respond that the allegations in Paragraph 6.01 constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 6.01 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

44. Defendants respond that the allegations in Paragraph 6.02 constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants

deny the allegations in Paragraph 6.02 of the Complaint and state that plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

VII. THIRD CAUSE OF ACTION – BREACH OF THE DUTY OF LOYALTY

- 45. Defendants deny the allegations in Paragraph 7.01 of the Complaint.
- 46. Defendants deny the allegations in Paragraph 7.02 of the Complaint.

VIII. FOURTH CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

- 47. Defendants deny the allegations in Paragraph 8.01 of the Complaint.
- 48. Defendants deny the allegations in Paragraph 8.02 of the Complaint.

IX. FIFTH CAUSE OF ACTION – BREACH OF CONTRACT

- 49. Defendants deny the allegations in Paragraph 9.01 of the Complaint.
- 50. Defendants deny the allegations in Paragraph 9.02 of the Complaint.
- 51. Defendants deny the allegations in Paragraph 9.03 of the Complaint.

X. PRAYER FOR RELIEF

52. Defendants respond that the allegations in the “Prayer for Relief” constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 10.01 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

53. Defendants respond that the allegations in the “Prayer for Relief” constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 10.02 of the Complaint and state that Plaintiffs have no valid

cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

54. Defendants respond that the allegations in the "Prayer for Relief" constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 10.03 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

55. Defendants respond that the allegations in the "Prayer for Relief" constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 10.04 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

56. Defendants respond that the allegations in the "Prayer for Relief" constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 10.05 of the Complaint and state that Plaintiffs have no valid cause of action, have not suffered any damage, and are not entitled to recover any damages, attorneys' fees, equitable relief, or any relief whatsoever.

57. All allegations in the Complaint not expressly admitted above are hereby denied.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred in whole or in part for failure to state a claim upon which relief may be granted.

2. Plaintiffs' claims are barred in whole or in part because Plaintiffs lack standing to bring suit.

3. Plaintiffs' claims are barred in whole or in part by fraud.
4. Plaintiffs' claims are barred in whole or in part by waiver and/or estoppel.
5. Plaintiffs' claims are barred in whole or in part by their own fault and/or conduct.
6. Plaintiffs' claims are barred in whole or in part because they failed to mitigate their damages.
7. Plaintiffs' claims are barred in whole or in part by unclean hands.
8. Plaintiffs' claims are barred in whole or in part by the failure to satisfy all conditions precedent to recovery.
9. Plaintiffs' claims are barred in whole or in part by laches.
10. Plaintiffs' claims for equitable relief, such as the request for injunctive relief, are not supported by the pleadings. Plaintiffs have an adequate remedy at law. In order to be entitled to seek any equitable relief, Plaintiffs must plead and prove lack of an adequate remedy at law. Plaintiffs have failed to plead or prove that they lack an adequate remedy at law.
11. Plaintiffs' claims are frivolous and groundless, entitling Defendants to recover their reasonable costs and attorneys' fees in defending this suit.

WHEREFORE, Defendants pray that upon final trial or hearing herein that Defendants be granted the following relief:

- a. That Plaintiffs take nothing by their action and that Plaintiffs' Complaint be dismissed with prejudice;
- b. That Defendants be awarded their reasonable attorneys' fees and all costs of court, together with any prejudgment interest to which Defendants may be entitled;

- c. That Defendants be awarded all such other and further relief, general or special, at law or in equity, to which they may be entitled.

Respectfully submitted,

/s/Jodie A. Slater

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ATTORNEY FOR DEFEDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ Jodie A. Slater

Jodie A. Slater