

**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 §  
 §  
 v. §  
 §  
 PAMELA F. JENKINS, Individually; and §  
 The Cupcakery, LLC, a Nevada Limited §  
 Liability Company, §  
 §  
 Defendants. §

CAUSE NO. 4:11-CV-23

**DEFENDANT PAMELA F. JENKINS AND DEFENDANT  
THE CUPCAKERY, LLC, A NEVADA LIMITED LIABILITY  
COMPANY’S FIRST AMENDED ANSWER AND COUNTERCLAIMS**

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 First Amended 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 (“WLLC”) (collectively, Perritt, Texas Cupcakery, BLLC and WLLC are the “Plaintiffs”) Original Complaint and Application for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages (the “Complaint”) and assert the following Counterclaims:

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](http://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. 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.

### **COUNTERCLAIMS**

Pamela F. Jenkins ("Jenkins") and The Cupcakery, LLC, a Nevada Limited Liability Company ("Nevada Cupcakery") (the "Counter-Plaintiffs"), hereby file their counterclaims against 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 ("WLLC") (collectively, Perritt, Texas Cupcakery, BLLC and WLLC are the "Counter-Defendants"), as follows:

### **PARTIES**

1. Ricky B. Perritt ("Perritt") is an individual resident of the State of Texas.

2. The Cupcakery, LLC ("Texas Cupcakery") is a Texas limited liability company.

3. Buster Baking, LLC (“BLLC”) is a Texas limited liability company.
4. The Woodlands Banking, LLC (“WBLLC”) is a Texas limited liability company.

### **JURISDICTION AND VENUE**

5. This cause of action arises under 28 U.S.C. § 1332. The Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) for the related claims arising under state law.

6. Counter-Defendants have submitted to the personal jurisdiction of the Court by filing the original action in this Court. The Court also has personal jurisdiction over Counter-Defendants because they do business within the State of Texas.

7. As explained more fully in Defendants/Counter-Plaintiffs’ pending motion to transfer venue, this action should be transferred to the District of Nevada, Las Vegas Division. These counterclaims are filed in this venue because they are related to the claims previously asserted by Plaintiffs/Counter-Defendants.

### **BACKGROUND FACTS**

8. On January 14, 2011, Counter-Defendants filed their Original Complaint and Application for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages (Dkt. No. 1) (the “Complaint”). Attached as Exhibit A to the Complaint was a confidential Settlement Agreement, executed by Jenkins and Perritt, dated October 28, 2009. Counter-Defendants’ pleadings quoted to and/or recited the terms of the confidential Settlement Agreement. Counter-Defendants also recited in their pleadings the terms of other confidential agreements regarding ownership and financial information of the Counter-Plaintiff and Counter-Defendant entities, including a one page Agreement, attaching as its Exhibit A an Assignment and Assumption of Limited Liability Company Interest, executed by Jenkins and Perritt, dated April 20, 2007 (the “Assignment and Assumption Agreement”) (the

Settlement Agreement and the Assignment and Assumption Agreement are the “Confidential Agreements”).

9. Thereafter the Las Vegas Sun newspaper ran several articles on the lawsuit, republishing some of the terms of the Confidential Agreements that Counter-Defendants had already made public.

10. As a result, Counter-Plaintiffs’ business reputations and relationships have been harmed. Several of Counter-Plaintiffs’ business dealings have been either halted or delayed on account of the confidential information published in the press, with business partners, one a bank denying a small business loan, citing to the articles as reason for pulling out of or delaying their business dealings with Counter-Plaintiffs.

11. As a result of Counter-Defendants’ conduct, Counter-Plaintiffs have suffered and continue to accrue damages in excess of the Court’s jurisdictional limit.

**Count One: Breach of Contract Claim**

12. Counter-Plaintiffs repeat and re-allege the allegations of the paragraphs above and below.

13. Jenkins and Perritt entered into the Confidential Agreements, which are valid and enforceable contracts.

14. Jenkins fully performed all of her obligations under the Confidential Agreements.

15. Perritt materially breached the Confidential Agreements by publishing their contents.

16. As a direct and proximate result of Perritt’s breach, Counter-Plaintiffs have suffered injury.

17. All conditions precedent for recovery for breach of contract and attorney's fees have been performed or have occurred. It has been necessary for Counter-Plaintiffs to engage counsel to represent them in the collection of this claim. Counter-Plaintiffs have agreed to pay said attorneys a reasonable fee for their services and they are, therefore, entitled to recover such fees from Perritt pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §38.001, *et seq.*

**Count Two: Tortious Interference**

18. Counter-Plaintiffs repeat and re-allege the allegations of the paragraphs above and below.

19. Jenkins had valid contracts, the Confidential Agreements.

20. Texas Cupcakery, WBLLC, and BBLLC willfully and intentionally interfered with the Confidential Agreements by, among other things, making public the confidential terms of those agreements.

21. Texas Cupcakery, WBLLC, and BBLLC's interference proximately caused Counter-Plaintiffs' injury.

22. Counter-Plaintiffs have incurred actual damage and loss as a result of Texas Cupcakery, WBLLC, and BBLLC's wrongful actions.

23. Counter-Plaintiffs assert that this conduct was intentional and constitutes the type of malicious conduct that allows for the recovery of exemplary damages. Accordingly, Counter-Plaintiffs seek exemplary damages in an amount to be determined by the trier of fact.

**Count Three: Tortious Interference with Prospective Relations**

24. Counter-Plaintiffs repeat and re-allege the allegations of the paragraphs above and below.

25. There was a reasonable probability that Counter-Plaintiffs would have entered into business relationships with third persons.

26. Counter-Defendants intentionally interfered with the relationships.

27. Counter-Defendants' conduct was independently tortious or unlawful.

28. The interference proximately caused the Counter-Plaintiffs' injury.

29. Counter-Plaintiffs have suffered actual damage or loss as a result of Counter-Defendants wrongful acts.

30. Counter-Plaintiffs assert that this conduct was intentional and constitutes the type of malicious conduct that allows for the recovery of exemplary damages. Accordingly, Counter-Plaintiffs seek exemplary damages in an amount to be determined by the trier of fact.

WHEREFORE, PREMISES CONSIDERED, Counter-Plaintiffs respectfully request that the Court:

A. Enter judgment against Counter-Defendants for actual, consequential, compensatory, and exemplary damages suffered by Counter-Plaintiffs;

B. Award Counter-Plaintiffs pre-judgment and post-judgment interest at the highest rates allowed by law;

C. Award Counter-Plaintiffs their reasonable attorneys' fees and costs incurred in prosecuting this action; and

D. Grant Counter-Plaintiffs such other and further relief in law or in equity to which Counter-Plaintiff may be justly entitled.

Respectfully submitted,

/s/Jodie A. Slater

Jodie A. Slater  
Texas State Bar No. 24046862

STRONG & NOLAN, LLP  
1701 N. Market St., Suite 200  
Dallas, Texas 75202  
(214) 635-5643 (telephone)  
(214) 752-6929 (telecopy)  
jodie@strongnolan.com

**ATTORNEY FOR DEFEDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of March 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:

Michael J. Whitten  
Michael J. Whitten & Associates, P.C.  
218 N. Elm Street  
Denton, Texas 76201

Clyde M. Siebman  
Siebman, Burg, Phillips & Smith, LLP  
Federal Courthouse Square  
300 North Travis Street  
Sherman, TX 75090

/s/ Jodie A. Slater  
Jodie A. Slater