

UNITED STATES DISTRICT COURT  
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; §  
THE WOODLANDS BAKING, LLC, §  
a Texas Limited Liability Company; §  
CUSTOM VERSION CORPORATION, §  
a Texas Corporation §

Plaintiffs, §

Civil Action No. 4:11-CV-23

v. §

PAMELA F. JENKINS, Individually; and §  
THE CUPCAKERY LLC, a Nevada §  
Limited Liability Company §

Defendants. §

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTION TO DISMISS**

Plaintiffs RICKY B. PERRITT, Individually, THE CUPCAKERY, LLC, a Texas Limited Liability Company, BUSTER BAKING, LLC, a Texas Limited Liability Company, THE WOODLANDS BAKING, LLC, a Texas Limited Liability Company, and CUSTOM VERSION CORPORATION, a Texas Corporation (collectively “Plaintiffs”) file this response to Defendants PAMELA F. JENKINS Individually and THE CUPCAKERY LLC, a Nevada Limited Liability Company (collectively “Defendants”) Motion to Dismiss (Docket No. 21), and would respectfully show unto the Court as follows:

Plaintiffs filed their Original Complaint and Application for Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, Declaratory Judgment and Damages (“Plaintiff’s Original Complaint”) in this matter on or about January 14, 2011 which includes:

(1) an application for injunctive relief, (2) a request for declaratory judgment, (3) a claim for breach of duty of loyalty, (4) a claim for breach of fiduciary duty, and (5) a claim for breach of contract. (Docket No. 1).

On or about February 9, 2011, Defendants filed an answer to Plaintiffs' Original Complaint (Docket No. 22). Additionally, on or about February 9, 2011, Defendants filed a Motion to Dismiss seeking to dismiss the third and fourth causes of action in Plaintiff's Original Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), specifically, Plaintiffs' claims for breach of duty of loyalty and breach of fiduciary duty alleging Plaintiffs "plead no facts to support such a relationship of extraordinary confidence and trust." (Docket No. 21).

On or about March 2, 2011 Plaintiffs filed their First Amended Complaint and Verified Application for Injunctive Relief, which includes: (1) a verified application for injunctive relief, (2) a request for declaratory judgment, (3) a claim for breach of contract, and (4) a claim for fraud-fraudulent inducement and claims involving Promissory Notes. In their Amended Complaint, Plaintiffs are no longer asserting claims for breach of duty of loyalty and breach of fiduciary duty as set forth in the third and fourth causes of action in their Original Complaint; therefore Defendants' motion to dismiss is moot, of no effect, and should be denied.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order denying Defendants' Motion to Dismiss (Docket No. 21) in its entirety finding the motion is moot and of no effect.

Respectfully submitted,

**SIEBMAN, BURG, PHILLIPS & SMITH, LLP**

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 2nd day of March, 2011, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

**SIEBMAN, BURG, PHILLIPS & SMITH, LLP**

/s/ Clyde M. Siebman