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, Custom Version Corporation, a Texas Corporation,	§	
Plaintiffs,	§	CAUSE NO. 4:11-CV-23
v.	§	
PAMELA F. JENKINS, Individually; and The Cupcakery, LLC, a Nevada Limited Liability Company,	§	
Defendants.	§	

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND VERIFIED APPLICATION FOR INJUNCTIVE RELIEF AND ORIGINAL 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 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 ("BBLLC"), the Woodlands Baking, LLC, a Texas Limited Liability Company's ("WBLLC"), and Custom Version Corporation, a Texas Corporation's ("CVC") (collectively, Perritt, Texas Cupcakery, BBLLC, WBLLC, and CVC are the "Plaintiffs") First Amended Complaint and Verified Application for Injunctive Relief (the "Amended Complaint") and assert the following Counterclaims:

Defendants respond that the allegations in the Introductory Paragraph of the Amended 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 of the Amended Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 1 of the Amended 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 in the Eastern District of Texas, Cause No. 4:09-cv-406, and that Jenkins and Perritt entered into a settlement agreement that resolved the 2009 suit. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 2 of the Amended Complaint.

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

II. PARTIES

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

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

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

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

8. Defendants lack knowledge or information sufficient to admit or deny the

allegations in Paragraph 8 of the Amended Complaint; therefore, such allegations are denied.

9. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 9 of the Amended Complaint; therefore, such allegations are denied.

10. Defendants admit that Jenkins is an individual resident of the State of Nevada. Defendants admit that Jenkins has been served with process. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 10 of the Amended Complaint.

11. Defendants admit the allegations in sentences one and two of Paragraph 11 of the Amended Complaint. Defendants admit that the Nevada Cupcakery has been served with process. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 11 of the Amended Complaint.

III. JURISDICTION AND VENUE

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

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

14. The allegations in Paragraph 14 of the Amended Complaint constitute legal conclusions for which no answer is required. To the extent an answer is required, Defendants deny the allegations in Paragraph 14 of the Amended Complaint.

15. The allegations in Paragraph 15 of the Amended Complaint constitute legal conclusions for which no answer is required, and 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 pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses. However, to the extent an answer is required, Defendants deny the allegations in Paragraph 15 of the Amended Complaint.

16. Defendants deny the allegations in Paragraph 16 of the Amended Complaint.

IV. FACTS

17. Defendants admit the allegations in Paragraph 17 of the Amended Complaint.

18. Defendants admit that Jenkins requested a loan from Perritt in 2005. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 18.

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

20. Defendants admit that Jenkins requested a loan from Perritt to allow Jenkins to buy out Pietro and Kalman's interest in the Nevada Cupcakery. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 20 of the Amended Complaint.

21. Defendants deny the allegations in Paragraph 21 of the Amended Complaint.

22. Defendants admit that Perritt and Jenkins executed a one (1) page Agreement on April 20, 2007, which document speaks for itself. To the extent an answer is required, Defendants deny the remaining allegations in Paragraph 22 of the Amended Complaint.

23. 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 23 of the Amended 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 23 of the Amended Complaint. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations of Paragraph 24.

25. Defendants deny the allegations of Paragraph 25.

26. Defendants admit that the first store opened by the Nevada Cupcakery was in Las Vegas, Nevada and that Jenkins opened a second store in Las Vegas, Nevada in January 2008. Defendants further admit that the Nevada Cupcakery received funds from CVC and that the Nevada LLC is repaying the funds to CVC. The Promissory Note referenced in Paragraph 26 of the Amended Complaint is a document that speaks for itself. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 26 of the Amended Complaint.

27. Defendants admit that Perritt opened a store 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 remaining allegations in Paragraph 27 of the Amended Complaint; therefore such allegations are denied.

28. Defendants admit that Perritt opened a store in Dallas, Texas. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 28 of the Amended Complaint; therefore, such allegations are denied.

29. Defendants admit that Perritt opened a store in Houston. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 29 of the Amended Complaint; therefore, such allegations are denied.

30. Defendants admit that Perritt brought suit against Jenkins in 2009 in the Eastern District of Texas, Cause No. 4:09-cv-406, and that Jenkins and Perritt entered into a settlement agreement that resolved the 2009 suit. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 30 of the Amended Complaint.

31. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 31 of the Amended Complaint.

32. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 32 of the Amended Complaint.

33. Defendants deny the amount of the current balance referenced in Paragraph 33 of the Amended Complaint. Defendants further respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the remaining allegations in Paragraph 33 of the Amended Complaint.

34. Defendants deny the amount of the current balance referenced in Paragraph 34 of the Amended Complaint. Defendants further respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the remaining allegations in Paragraph 34 of the Amended Complaint.

35. Defendants lack knowledge or information sufficient to admit or deny the allegations in the last sentence of Paragraph 35 of the Amended Complaint; therefore, such allegations are denied. Defendants further respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent a further answer is required, Defendants deny the remaining allegations in Paragraph 35 of the Amended Complaint.

36. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 36 of the Amended Complaint.

37. Defendants respond that Exhibit A to the Amended Complaint is a document that

speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 37 of the Amended Complaint.

38. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 38 of the Amended Complaint.

39. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 39 of the Amended Complaint.

40. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 40 of the Amended Complaint.

41. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 41 of the Amended Complaint; therefore, such allegations are denied.

42. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 42 of the Amended Complaint; therefore, such allegations are denied.

43. Defendants deny the allegations in Paragraph 43 of the Amended Complaint.

44. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 44 of the Amended Complaint.

45. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations in Paragraph 46 of the Amended Complaint.

47. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 47 of the Amended Complaint; therefore, such allegations are denied.

48. Defendants admit that the website www.thecupcakery.com is hosted by BannerView.com, that BannerView.com has hosted the website www.thecupcakery.com since October 28, 2009, and that the Nevada Cupcakery and BannerView.com have a longstanding business relationship. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 48 of the Amended Complaint.

49. Defendants deny the allegations in Paragraph 49 of the Amended Complaint.

50. Defendants deny the allegations in Paragraph 50 of the Amended Complaint.

51. Defendants deny the allegations in Paragraph 51 of the Amended Complaint.

52. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 50 of the Amended Complaint; therefore, such allegations are denied.

53. Defendants deny the allegations in sentence one of Paragraph 53 of the Amended Complaint. Defendants lack knowledge or information sufficient to admit or deny the allegations in sentence two of Paragraph 53 of the Amended Complaint; therefore, such allegations are denied.

54. Defendants deny the allegations in Paragraph 54 of the Amended Complaint.

55. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 55 of the Amended Complaint; therefore, such allegations are denied.

56. Defendants lack knowledge or information sufficient to admit or deny the allegations in Paragraph 56 of the Amended Complaint; therefore, such allegations are denied.

57. Defendants admit that Perritt, the Texas Cupcakery, BBLLC and WBLLC filed the instant lawsuit on or about January 14, 2011. Defendants deny the allegations in sentence

one of Paragraph 57 of the Amended Complaint. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 57 of the Amended Complaint.

58. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 58 of the Amended Complaint.

59. Defendants respond that Exhibits B and C to the Amended Complaint are documents that speak for themselves. To the extent an answer is required, Defendants deny the allegations in Paragraph 59 of the Amended Complaint.

60. Defendants respond that Exhibit B to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 60 of the Amended Complaint.

61. Defendants respond that Exhibit C to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 61of the Amended Complaint.

62. Exhibit C to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 62 of the Amended Complaint.

63. Exhibit C to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 63 of the Amended Complaint.

64. Defendants admit that Jenkins did not consult with Perritt or counsel at Greenburg Traurig, LLP prior to responding to questions from the Las Vegas Sun on or about January 20, 2011, or prior to talking to her public relations representative, who was in Las Vegas, Nevada,

regarding the January 19, 2011 press release. To the extent not expressly admitted herein, Defendants deny the allegations in Paragraph 64 of the Amended Complaint.

65. Defendants admit that Jenkins did not consult with Perritt prior to responding to questions from the Las Vegas Sun on or about January 20, 2011, or prior to talking to her public relations representative, who was in Las Vegas, Nevada, regarding the January 19, 2011 press release. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 65 of the Amended Complaint; therefore, such allegations are denied.

66. Defendants admit that Jenkins was physically located in Texas when she spoke to her public relations representative, who was located in Las Vegas, Nevada, regarding the January 19, 2011 press release. To the extent not expressly admitted herein, Defendants deny the remaining allegations in Paragraph 66 of the Amended Complaint.

67. Defendants admit that the Court held a hearing on Perritt, the Texas Cupcakery, BBLLC, and WBLLC's request for a temporary restraining order on or about January 31, 2011. All allegations in Paragraph 67 that are not expressly admitted herein are hereby denied.

68. The newsletter referenced in Paragraph 68 of the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 68 of the Amended Complaint.

69. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 69 of the Amended Complaint.

70. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 70 of the Amended Complaint.

71. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 71 of the Amended Complaint.

72. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 72 of the Amended Complaint.

73. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 73 of the Amended Complaint.

74. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 74 of the Amended Complaint.

75. Defendants admit that they intend to sell the Cupwich in Nevada and through the internet. To the extent not expressly admitted herein, Defendants deny the remaining allegations in Paragraph 75 of the Amended Complaint.

76. Defendants deny the allegations in Paragraph 76 of the Amended Complaint.

77. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 77 of the Amended Complaint.

78. Defendants deny the allegations in Paragraph 78 of the Amended Complaint.

V. VERIFIED APPLICATION FOR INJUNCTIVE RELIEF

79. Defendants respond that the allegations contained in Paragraph 79 do not require a response and incorporate their responses to the allegations in Paragraphs 1 through 78, as if

fully set forth herein.

80. Defendants deny the allegations in Paragraph 80 of the Amended Complaint.

81. Defendants deny the allegations in Paragraph 81 of the Amended Complaint.

82. Defendants deny the allegations in Paragraph 82 of the Amended Complaint.

83. Defendants deny the allegations in Paragraph 83 of the Amended Complaint.

84. Defendants deny the allegations in Paragraph 84 of the Amended Complaint.

85. Defendants deny the allegations in Paragraph 85 of the Amended Complaint.

86. Defendants deny the allegations in Paragraph 86 of the Amended Complaint.

87. Defendants deny the allegations in Paragraph 87 of the Amended Complaint.

VI. SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT

88. Defendants respond that the allegations contained in Paragraph 88 do not require a response and incorporate their responses to the allegations in Paragraphs 1 through 87, as if fully set forth herein.

89. Defendants deny the allegations in Paragraph 89 of the Amended Complaint.

90. Defendants deny the allegations in Paragraph 90 of the Amended Complaint.

VII. SECOND CAUSE OF ACTION – BREACH OF CONTRACT

91. Defendants respond that the allegations contained in Paragraph 91do not require a response and incorporate their responses to the allegations in Paragraphs 1 through 90, as if fully set forth herein.

92. Defendants deny the allegations in Paragraph 92 of the Amended Complaint.

93. Defendants deny the allegations in Paragraph 93 of the Amended Complaint.

94. Defendants deny the allegations in Paragraph 94 of the Amended Complaint.

95. Defendants deny the allegations in Paragraph 95 of the Amended Complaint.

96. Defendants deny the allegations in Paragraph 96 of the Amended Complaint.

97. Defendants deny the allegations in Paragraph 97 of the Amended Complaint.

98. Defendants deny the allegations in Paragraph 98 of the Amended Complaint.

99. Defendants deny the allegations in Paragraph 99 of the Amended Complaint.

100. Defendants deny the allegations in Paragraph 100 of the Amended Complaint.

101. Defendants deny the allegations in Paragraph 101of the Amended Complaint.

VIII. THIRD CAUSE OF ACTION – FRAUD – FRAUDULENT INDUCEMENT

102. Defendants respond that the allegations contained in Paragraph 102 do not require a response and incorporate their responses to the allegations in Paragraphs 1 through 101, as if fully set forth herein.

103. Defendants deny the allegations in Paragraph 103 of the Amended Complaint

104. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 104 of the Amended Complaint.

105. Defendants respond that Exhibit A to the Amended Complaint is a document that speaks for itself. To the extent an answer is required, Defendants deny the allegations in Paragraph 58 of the Amended Complaint.

106. Defendants deny the allegations in Paragraph 106 of the Amended Complaint.

107. Defendants deny the allegations in Paragraph 107 of the Amended Complaint.

108. Defendants deny the allegations in Paragraph 108 of the Amended Complaint.

109. Defendants deny the allegations in Paragraph 109 of the Amended Complaint.

110. Defendants deny the allegations in Paragraph 110 of the Amended Complaint.

111. Defendants deny the allegations in Paragraph 111 of the Amended Complaint.

112. Defendants deny the allegations in Paragraph 112 of the Amended Complaint.

IX. DAMAGES

113. Defendants deny the allegations in Paragraph 113 of the Amended Complaint.

X. EXEMPLARY DAMAGES

114. Defendants deny the allegations in Paragraph 114 of the Amended Complaint.

X. PRAYER FOR RELIEF

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 the Amended Complaint's "Prayer for Relief" 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.

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

AFFIRMATIVE DEFENSES

1. Plaintiffs' 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 are barred in whole or in part by failure of consideration.

11. Plaintiffs' claims are barred by the doctrine of unconscionability.

12. Plaintiffs' claims for equitable relief, such as the request for injunctive relief, are not supported by the pleadings.

13. 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 ("BBLLC"), and the Woodlands Baking, LLC, a Texas Limited Liability Company's ("WBLLC") (collectively, Perritt, Texas Cupcakery, BBLLC and WBLLC 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 ("BBLLC") is a Texas limited liability company.

4. The Woodlands Banking, LLC ("WBLLC") is a Texas limited liability company.