

CAUSE NO. _____

PASTOR JORDAN BROWN,
Plaintiff,

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IN THE _____ DISTRICT COURT

V.

OF TRAVIS COUNTY, TEXAS

WHOLE FOODS MARKET, INC.
Defendant.

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR DISCLOSURE,
AND DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, Pastor Jordan Brown (“Pastor Jordan” or “Plaintiff”) and files this Original Petition, Request for Disclosure, and Demand for Jury Trial against Defendant Whole Foods Market, Inc. (“Whole Foods” or “Defendant”), and respectfully shows this Court as follows:

**I.
PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.
2. Plaintiff Pastor Jordan Brown is an individual residing in Travis County, Texas.
3. Defendant Whole Foods Market, Inc. is a Texas corporation doing business in Texas. This Defendant may be served by serving its registered agent, C.T. Corporation Systems, 1999 Bryan Street, Suite 190, Dallas, Texas 75201.
4. This Court has subject matter jurisdiction because Plaintiff’s damages are within the jurisdictional limits of the Court.
5. At this time, based on the preliminary facts that are currently available, Plaintiff

seeks monetary relief pursuant to TEX. R. CIV. P. 47(c)(4) within the jurisdictional limits of this Court.

6. Venue is proper in Travis County, Texas because it is the County in which Defendant's Whole Foods store is located and because all of a substantial part of the events or omissions giving rise to this claim occurred in Travis County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002.

II. **FACTUAL BACKGROUND**

7. Pastor Jordan Brown grew up in a family of pastors and was called to the ministry at an early age. He began preaching at age 14, and is currently the founder and Lead Pastor of Church of Open Doors.

8. Pastor Jordan is an openly gay African-American man.

9. The Church of Open Doors is a non-denominational, Christian-based church in Austin, Texas. Pastor Jordan founded the Church in 2014. It stands as a safe place welcoming all, including members of the LGBT community.

10. In its first years, the Church conducted a clothing drive for the homeless, did monthly outreach providing food for the homeless, supported LifeWorks, and raised money to support single-parent households who lost their homes in the flooding that took place in Austin, Texas.

11. Pastor Jordan's ministry focuses on people who have experienced "brokenness," and creating an atmosphere where the members of his congregation can have the freedom to experience God in their own way.

12. The Church's ministry delivers a message of personal empowerment. For instance, on February 24, 2016, the Church posted the following message on its Twitter account: "God didn't create us to live our lives in fear. He created us to live with power, love, and a sound mind or courage."

13. Pastor Jordan's sermons regularly touch on these topics. For instance, a recent sermon was entitled: "Growing in a Dark Place." He preached that God expects us to use our places of hurt and pain to grow as individuals.

14. Pastor Jordan is active in the local community, serving as a member of the Austin Gay and Lesbian Chamber of Commerce and its Toastmasters program. He is also a volunteer for the Austin Young Chamber of Commerce.

15. He is in a six-year, committed same-gender relationship. One month ago, he got engaged to his longtime partner.

16. On April 14, 2016, Pastor Jordan went to the Whole Foods flagship location at 525 N. Lamar Blvd., Austin, Travis County, Texas 78703, to pick up a cake for one of his congregation members. He was planning to deliver the cake around lunchtime as a surprise gift.

17. Specifically, Pastor Jordan was looking for a cake with the personalized message: "Love Wins." Pastor Jordan approached the bakery counter, pointed to a blank, pre-frosted cake in the display case, and asked for the words "Love Wins" to be added to the cake.

18. The Whole Foods bakery associate removed the cake selected by Pastor Jordan from the display case. She brought it over to the prep table and began writing on it in icing. She then sealed it with a Whole Foods sticker, and handed it to Pastor Jordan. Once it was sealed, there was no way to alter the cake without breaking the Whole Foods sticker.

19. Pastor Jordan rushed out the door with the cake.

20. He set the cake on the floor of the passenger seat side of the car. While stopped at a stop light, Pastor Jordan looked down and saw for the first time that the cake had a terrible anti-gay slur written directly across the middle of it:



21. He immediately pulled the car over.

22. He first called the Whole Foods corporate office and left a detailed voicemail describing what had happened. The voicemail included his name and explained that he had just left the store on Lamar where the bakery associate wrote an offensive and inappropriate message on the cake. His voicemail also requested that someone call him back immediately. However, no one from Whole Foods' corporate office returned his call that day.

23. He then called the store on Lamar directly, and spoke to Team Leader Geoff Nunez. Pastor Jordan told Nunez that he had just left the store where he had purchased a cake. He also

explained that he had asked the bakery associate to write "Love Wins" in icing, and she wrote "LOVE WINS FAG" instead.

24. Nunez was apologetic stating that this was completely inappropriate and that he planned to terminate whoever had done this. He offered Pastor Jordan a gift card and said Whole Foods would replace the cake. However, Nunez also requested that Pastor Jordan send pictures of the cake to his email address, and said he was going to investigate the matter, and call him back within approximately two hours.

25. At 2:49 pm on April 14, 2016, Pastor Jordan emailed Nunez three pictures of the cake still inside the Whole Foods packaging with the word "FAG" featured prominently in the center of the cake. He also attached a picture of the receipt for his purchase to the email. The picture of the cake Pastor Jordan sent is attached hereto as Exhibit A.

26. Approximately two hours later, Nunez called back and said that Whole Foods had come to the conclusion that the store had not done anything wrong, and that their bakery associate had done nothing wrong. Nothing in his statement revealed whether or not he had actually spoken to the bakery associate or what kind of investigation he performed. Pastor Jordan asked Nunez directly, "if the bakery associate did not do this, then who wrote this on my cake?" Nunez responded to the effect of, "I don't know, and we can't help you," and hung up the phone. This call lasted approximately 54 seconds. There was no apology, and it appeared that the offer for the gift card and replacement cake had been revoked.

27. Pastor Jordan spent the remainder of the day in tears. He was and is extremely upset.

28. At the time of filing this Petition, it is impossible to calculate the emotional distress

that these events have caused.

29. Whole Foods Market is a publicly traded company with 443 stores, 85,000 employees, and \$15.4 billion in sales in 2015. It is number 218 on the Fortune 500 list, and is the eighth largest food and drug store in the United States.

30. According to the Whole Foods website, one of the “Core Values” at Whole Foods is that: “Customers are fellow human beings with feelings and emotions like our own; they are equals to be treated with courtesy and respect at all times.” *See* <http://www.wholefoodsmarket.com/mission-values/core-values/declaration-interdependence>, accessed on April 15, 2016.

31. Another one Whole Foods’ “Core Values” is: “We want our stores to become community meeting places where our customers come to join their friends and to make new ones. Our stores are ‘inclusive.’ Everyone is welcome, regardless of race, gender, sexual orientation, age, beliefs, or personal appearance. We value diversity — Whole Foods Market stores are for everyone.” *See* <http://www.wholefoodsmarket.com/mission-values/core-values/declaration-interdependence>, accessed on April 15, 2016.

32. Despite these stated values, Whole Foods apparently has no quality or oversight system in place to ensure that offensive language and imagery do not appear on personalized products made in the store. This cake contained a slur directed at the LGBT community, but the next could contain slurs directed at different races, religions, or national origins.

33. The potential for racial, sexual, religious, and anti-LGBT slurs to be written on personalized cakes is high, and Whole Foods knew or should have known that slurs or harassing messages could be written on cakes and then presented to a customer without any oversight or

prior warning.

34. Additionally, once Whole Foods was notified of this incident, it did not take prompt remedial action to address this problem.

35. On information and belief, Whole Foods has not fired the bakery associate who wrote the word “fag” on the cake.

36. On information and belief, Whole Foods has not fired the manager in charge of the bakery.

37. On information and belief, Whole Foods has not ordered immediate harassment or tolerance training for bakery employees, so that such an incident will be avoided in the future.

38. And, on information and belief, Whole Foods has made no changes to its corporate policies or policies in its stores in Austin, Texas or elsewhere that allowed this incident to occur in Austin, just below the CEO’s office.

39. This same problem could occur again tomorrow, and other customers could be similarly harmed.

III.

CAUSE OF ACTION: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

40. Plaintiff adopts and incorporates herein by reference all preceding paragraphs.

41. Plaintiff is a person seeking relief in his individual capacity.

42. Defendant acted intentionally or recklessly in that it knew or had reason to know of facts that create a high degree of risk of emotional distress or harm to another person and then deliberately proceeded to act in conscious disregard of or with indifference to that risk.

43. Plaintiff suffered severe emotional distress, including painful emotion and mental

reactions like embarrassment, fright, horror, grief, shame, humiliation, and worry, of the kind that no reasonable person could expect to endure without undergoing unreasonable suffering.

44. Defendant's conduct was extreme and outrageous—so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community.

45. Defendant's conduct proximately caused Plaintiff's emotional distress.

46. No alternative cause of action would provide a remedy for the severe emotional distress caused by Defendant's conduct. Defendant inflicted severe emotion distress in a manner so unusual that Plaintiff has no other means of redress.

47. In bringing this action, Plaintiff relies exclusively on the laws of the State of Texas.

IV.
VICARIOUS LIABILITY

48. Defendant is liable for its employees or agents committing the acts complained of herein based on the legal theories of ratification, actual and apparent authority, and respondeat superior. Defendant is further liable for employees or agents acting in the course and scope of their duties.

V.
CONDITIONS PRECEDENT

49. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

VI.
REQUEST FOR DISCLOSURE

50. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant

disclose, within fifty (50) days of the service of this request, the information or material described in Rule 194.2.

VII.
DEMAND FOR JURY TRIAL

51. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

VIII.
DAMAGES

52. As a result of the above mentioned facts, Plaintiff has suffered damages in an amount in excess of the minimum jurisdictional limits of this Court.

53. Plaintiff demands judgment in his favor and requests the following relief against Defendant:

- a. All actual damages, including past and future mental anguish, loss of society, medical expenses, and lost earning capacity;
- b. Exemplary damages;
- c. Pre-judgment and post-judgment interest as allowed by law;
- d. Court costs and expenses;
- e. Equitable relief,
- f. Any such further relief as the Court deems proper and just under the circumstances.

IX.
PRAYER

54. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon trial by a jury or this Court, Plaintiff be granted judgment against Defendant as requested herein, and for such other and further relief, both general and special, at law and in equity, to which Plaintiff may be shown justly entitled.

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