

1 J. KIRK DONNELLY (SBN 179401)
2 LAW OFFICES OF J. KIRK DONNELLY, APC
3 2173 Salk Ave., Suite 250
4 Carlsbad, CA 92008
5 Tel. (760) 209-5894
6 kdonnelly@jkd-law.com

7 Counsel for Plaintiff Gerardo Gutierrez

FILED
Superior Court of California
County of San Francisco

AUG 22 2024

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

10 GERARDO GUTIERREZ, individually, and
11 on behalf of all others similarly situated,

12 Plaintiff,

13 vs. FRAICHE CATERING, INC., a
14 California corporation, and DOES 1 through
15 50, inclusive,

16 Defendants.

CASE NO. CGC-23-605255

~~[PROPOSED]~~ JUDGMENT

Date: August 9, 2024

Time: 9:30 a.m.

Dept.: 302

17
18
19
20
21
22
23
24
25
26
27
28
~~[PROPOSED]~~ JUDGMENT

1 The Court, having previously entered its Order Granting Plaintiff's Motion for
2 Final Approval of Class and Representative Action Settlement and Award of Attorneys' Fees and
3 Costs, hereby enters JUDGMENT as follows:

4 1. The Court has jurisdiction over this matter and over all parties to the action,
5 including the members of the Settlement Class.

6 2. The Class Action and PAGA Settlement Agreement ("Settlement Agreement"),
7 attached as Exhibit 1 to the Declaration of J. Kirk Donnelly (filed on or about February 28, 2024),
8 is the product of arms-length negotiations between the parties and the terms of the Settlement
9 Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class. The
10 Settlement Agreement therefore is finally approved, and its terms incorporated herein. The Court
11 orders the parties to the Settlement Agreement to perform forthwith their respective duties and
12 obligations thereunder.

13 3. The Settlement Class, which was provisionally certified by the Court in its April 5,
14 2024 Order Granting Preliminary Approval, hereby is certified under California Code of Civil
15 Procedure Section 382 for purposes of settlement only. The Settlement Class includes all current
16 and former California employees who worked for Defendant Fraiche Catering, Inc. ("Fraiche") in
17 one or more of the following job positions – dishwasher, cook, lead cook, event
18 coordinator/specialist/producer, financial controller, marketing manager, bartender, server and/or
19 delivery – at any time during the Class Period of March 20, 2019 to October 1, 2023. The
20 Aggrieved Employees include all current and former California employees who worked for
21 Defendant Fraiche in one or more of the following job positions – dishwasher, cook, lead cook,
22 event coordinator/specialist/producer, financial controller, marketing manager, bartender, server
23 and/or delivery – at any time during the PAGA Period of February 5, 2022 to October 1, 2023.

24 4. The Court adjudges all Participating Class Members, on behalf of themselves and
25 their respective former and present representatives, agents, attorneys, heirs, administrators,
26 successors, and assigns, release the Released Parties from all claims that were alleged, or
27 reasonably could have been alleged, based on the facts stated in the Complaint, including but not
28 limited to claims for unpaid minimum wages; failure to pay overtime; failure to provide meal

1 premiums and/or unpaid meal period premiums; failure to authorize and permit rest breaks and/or
2 unpaid rest break premiums; failure to reimburse expenses; failure to timely pay final wages;
3 failure to provide complete wage statements; violation of relevant and/or applicable sections of
4 the relevant Industrial Welfare Commission Wage Order(s); and unfair competition under
5 Business & Professions Code sections 17200, *et seq.* arising from violations of the above the
6 Labor Code sections (the "Released Class Claims"). The operative release period for the Released
7 Class Claims is the Class Period. Participating Class Members do not release any other claims,
8 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
9 Housing Act, unemployment insurance, disability, social security, workers' compensation, or
10 claims based on facts occurring outside the Class Period.

11 5. The Court finds further adjudges that all Aggrieved Employees are deemed to
12 release, on behalf of themselves and their respective former and present representatives, agents,
13 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
14 PAGA penalties that were alleged in the Complaint and Plaintiff's PAGA Notices, or reasonably
15 could have been alleged based on the facts stated in the Complaint and the PAGA Notices,
16 including but not limited to PAGA claims premised on violation of Labor Code sections 201-203,
17 204, 216, 221-224, 226, 226.7, 245 *et seq.*, 510, 512, 1174, 1194, 1197, 1198, 1199, 2802,
18 2810.5, and applicable sections of the relevant Industrial Welfare Commission Wage Order(s)
19 (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is
20 the PAGA Period.

21 6. One individual -- Nancy H. Byrd -- submitted a timely and valid request for
22 exclusion. This individual is therefore excluded from the Class and is not bound by the
23 Settlement Agreement or this Judgment, except as to the release of claims under the Private
24 Attorneys General Act ("PAGA").

25 7. The Settlement Administrator is ordered to distribute to the Participating Class
26 Members and Aggrieved Employees their respective settlement payments as provided in the
27 Settlement Agreement. Funds attributable to uncashed checks that remain after the check void
28 date shall be forwarded to the California State Controller's Unclaimed Property Fund. No funds

1 shall revert to Defendant.

2 8. The Court approves an award of attorney's fees to Class Counsel in the amount of
3 \$58,333.33, and an award of actual costs and expenses in the amount of \$8,000.00. Such
4 amounts shall be paid as provided in the Settlement Agreement.

5 9. The Court approves a service payment to Plaintiff and Class Representative
6 Gerardo Gutierrez in the amount of \$2,500.00, and the Settlement Administrator is ordered to
7 make such payment consistent with the terms of the Settlement Agreement.

8 10. The Settlement Agreement provides the Settlement Administrator, ILYM Group,
9 Inc., shall be paid from the Gross Settlement Amount for its services in administering the
10 settlement. As set forth in the Declaration of Nick Castro, the Settlement Administrator is owed
11 \$6,500.00 for services rendered and to be rendered in administering the settlement. The Court
12 therefore orders that ILYM be paid the amount of \$6,500.00 from the Gross Settlement Amount
13 consistent with the terms of the Settlement Agreement.

14 11. The Court approves civil penalties under PAGA in the amount \$5,000.00, and
15 finds that amount is fair, reasonable, and adequate, and consistent with PAGA's underlying
16 purposes. The PAGA civil penalties shall be distributed to the Labor & Workforce Development
17 Agency and Aggrieved Employees as provided under PAGA and the Settlement Agreement.

18 12. A compliance hearing is set for July 11, 2024, at 9:30 a.m., in Department 302 of
19 the San Francisco County Superior Court. The parties are ordered to file a joint compliance
20 report no later than ten (10) calendar days before the compliance hearing.

21 13. Under California Rule of Court 3.769(h), without affecting the finality of this
22 Judgment in any way, the Court retains jurisdiction over: (1) implementation and enforcement of
23 the Settlement Agreement pursuant to further orders of this Court until this Judgment becomes
24 effective and each and every act agreed to be performed by the parties has been performed under
25 the terms of the Settlement Agreement; (2) any other action necessary to conclude this settlement
26 and to implement the Settlement Agreement; and (3) the enforcement, construction, and
27 interpretation of the Settlement Agreement.

28 14. Neither this Judgment nor the Settlement Agreement upon which it is based are an

1 admission or concession by any party of any fault, omission, liability or wrongdoing. This
2 Judgment is not a finding of the validity or invalidity of any claims in this action or a
3 determination of any wrongdoing by any party. The final approval of the parties' settlement will
4 not constitute any opinion, position or determination of this Court as to the merits of the claims or
5 defenses of any party.

6 15. Judgment is hereby entered as follows: Plaintiff Gerardo Gutierrez and the
7 Participating Class Members, consisting of all current and former California employees who
8 worked for "Fraiche" in one or more of the following job positions – dishwasher, cook, lead cook,
9 event coordinator/specialist/producer, financial controller, marketing manager, bartender, server
10 and/or delivery – at any time during the Class Period of March 20, 2019 to October 1, 2023, who
11 have not otherwise opted out, shall take nothing from Fraiche except as set forth in the Settlement
12 Agreement.

13 **IT IS SO ORDERED.**

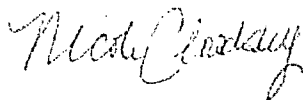
14
15 Dated: 22 Aug. 2024



Judge of the Superior Court

16
17
18 APPROVED AS TO FORM AND CONTENT:

19 FREEMAN MATHIS & GARY

20 

21

22 Lynn Hollenbeck
23 Nicole Cloudsley
24 Attorneys for Defendant
FRAICHE CATERING, INC.