

MAR 01 2022

BY Jessica Joanis
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6 Attorneys for Plaintiff/Cross-Defendants,
WATERS EDGE WINERIES, INC., and KEN LINEBERGER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO

11 WATERS EDGE WINERIES, INC., a California
corporation,

12 Plaintiff,

13 vs.

14 FRANSON FAMILY WINERIES, LLC, a
15 California Limited Liability Company; and
KYLE FRANSON, an individual,

16 Defendants.

CASE NO. CIVDS1723250
The Hon. Brian S. McCarville, Dept. S30

[PROPOSED] ORDER AND JUDGMENT

Action Filed: 11/22/2017
Trial Date: 9/7/2021

17 AND RELATED CROSS ACTION

20 **ORDER AND JUDGMENT**

21 This matter came on for a bench trial on September 7-8, 14-16, and 20-21, 2021. Leo A. Bautista
22 and Josephine Brosas of Lewis Brisbois Bisgaard & Smith LLP appeared on behalf of Plaintiff/Cross-
23 Defendants Waters Edge Wineries, Inc. and Ken Lineberger (collectively, "Waters Edge"), and Jason
24 Coberly of Soden & Steinberger, APLC appeared on behalf of Defendants/Cross-Complainant Franson
25 Family Wineries, LLC and Kyle Franson (collectively, "Franson"). The Court heard testimony from
26 parties Ken Lineberger and Kyle Franson, third parties Tim Vandergrift, Kylie Aseltine, Roxanne
27 Rapske, Matthew Wentworth, Mark Mitzenmacher, Jennifer Hulan, Robin Harter, and damages experts
28 Henry Kahrs and Ryan Nguyen.

1 The trial herein heard testimony and evidence on the following claims: (1) Waters Edge's
2 Complaint for Breach of Written Contract, Breach of Implied Contract, Declaratory Relief, and
3 Injunctive Relief; (2) Franson's First Amended Answer and Affirmative Defenses; (3) Franson's Cross-
4 Complaint for Fraud, Rescission, and Unfair Competition; and (4) Waters Edge's Answer and
5 Affirmative Defenses. The Court entered into evidence the exhibits identified in the parties' joint agreed-
6 upon exhibit list which was submitted to the Court on September 21, 2021. The Court also considered the
7 parties' Requests for Judicial Notice.

8 The Court issued its Statement of Intended Decision on December 16, 2021, finding for Waters
9 Edge on all causes of action in its Complaint, and finding that Franson failed to establish any of its
10 affirmative defenses and failed in all causes of action in its Cross-Complaint. The Court ordered Waters
11 Edge to prepare the Order, Judgment, and give notice. Franson filed its Objections to the Court's
12 Statement of Intended Decision on December 29, 2021.

13 After considering all the evidence at trial, including arguments of counsel as well as the parties'
14 written closing statements, and Franson's Objections, the Court hereby overrules Franson's Objections to
15 the Court's Statement of Intended Decision and issues the following Order and Judgment.

16 The Court hereby Orders as follows:

- 17 1. The Court's Statement of Intended Decision filed on December 16, 2021 is hereby made final
18 and is attached as Exhibit "A" hereto and is made part hereof.
- 19 2. The Court finds for Waters Edge on all causes of action in its Complaint in the principle sum
20 of \$1,835,998.00 together with costs and attorney's fees.
- 21 3. The Court finds that Franson has failed to establish any of its affirmative defenses as outlined
22 in its answer and has failed in all causes of action as to the Cross-Complaint.
- 23 4. The Court finds that Waters Edge is the prevailing party after trial with respect to all causes of
24 action in the Complaint and in the Cross-Complaint.
- 25 5. The Court Orders Franson to immediately comply with all the post-termination obligations in
26 the December 12, 2012 Franchise Agreement. Copied below is the portion of said agreement
27 containing Franson's post-termination obligations that Franson must comply with which is
28 hereby incorporated in the Court's Order.

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2 POST-TERM OBLIGATIONS

3 14. Upon the expiration or termination of this Agreement:

4 A. Reversion of Rights; Discontinuation of Trademark Use. All of your
5 rights to the use of the Trademarks (and all other names and marks adopted in
6 connection with the Store) and all other rights and licenses granted herein (including
7 your license to use the software) and the right and license to conduct business under
8 the Trademarks at the Authorized Location will revert to us without further act or
9 deed of any party. All of your right, title and interest in, to and under this
10 Agreement will become our property. On our demand, you must assign to us or our
11 assignee your remaining interest in any lease then in effect for the Store (although
12 we will not assume any past due obligations). You must immediately comply with
13 the post-term non-compete obligations under subparagraph 10.D, return the
14 production management software, cease all use and display of the Trademarks and
15 any other marks and names adopted in connection with your Store and of any
16 proprietary material (including the Operations Manual and the product preparation
17 materials) and of all or any portion of promotional materials furnished or approved
18 by us, assign all right, title and interest in the telephone numbers for the Store (in
19 accordance with the Assignment attached as Appendix E), all domain names and
20 websites connected with the Store and cancel or assign to us or our designee, at our
21 option, any adopted marks, assumed name rights, or equivalent registrations filed
22 with authorities. You must pay all sums due to us or designees and all sums you
23 owe to third parties that have been guaranteed by us. You must immediately return
24 to us, at your expense, all copies of the Operations Manual and product preparation
25 materials then in your possession or control or previously disseminated to your
26 employees and continue to comply with the confidentiality provisions of
27 subparagraph 6.G. You must promptly at your expense and subject to subparagraph
28 14.B, remove or obliterate all Store signage, displays or other materials in your
possession at the Authorized Location or elsewhere that bear any of the Trademarks,
other adopted marks, or names or materials confusingly similar to the Trademarks
and so alter the appearance of the Store as to differentiate the Store unmistakably
from duly licensed stores identified by the Trademarks. If, however, you refuse to
comply with the provisions of the preceding sentence within 30 days, we have the
right to enter the Authorized Location and remove all Store signage, displays or
other materials in your possession at the Authorized Location or elsewhere that bear
any of the Trademarks, other adopted marks or names or material confusingly
similar to the Trademarks or other marks, and you must reimburse us for our costs
incurred. Notwithstanding the foregoing, in the event of expiration or termination of
this Agreement, you will remain liable for your obligations pursuant to this
Agreement or any other agreement between you and us that expressly or by their
nature survive the expiration or termination of this Agreement.

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6. The Court hereby Orders Waters Edge to file and serve its Memorandum of Costs within fifteen (15) days of the entry of this Order and Judgment.

7. The Court hereby Orders Waters Edge to file and serve its Motion for Attorneys' Fees within sixty (60) days of the entry of this Order and Judgment.

Judgment is hereby entered in favor of Waters Edge and against Franson, in the principle sum of \$1,835,998.00 together with costs and attorney's fees. This judgment is joint and severable as to Franson Family Winery, LLC and Kyle Franson based upon the personal guarantee signed by Kyle Franson.

Dated: 3/1/2022

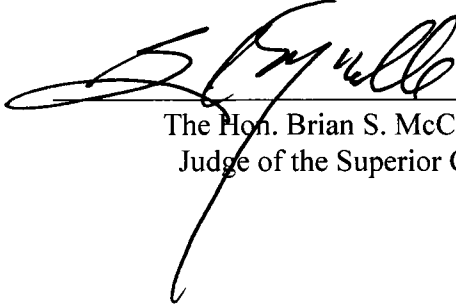

The Hon. Brian S. McCarville
Judge of the Superior Court

EXHIBIT “A”

DEC 16 2021

BY *C.R. Junker*
C.R. JUNKER DEPUTY

1 SUPERIOR COURT
2 COUNTY OF SAN BERNARDINO
247 West Third Street, Department S21
San Bernardino, California 92415

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 WATERS EDGE WINERIES, INC., a
California Corporation

12
13 Plaintiff,

14 vs.

15 FRANSON FAMILY WINERIES, LLC, a
California Limited Liability Company; and
16 KYLE FRANSON, an individual,

17 Defendants.

18 And related cross actions.
19

Case No.: CIVDS1723250

STATEMENT OF INTENDED DECISION

20 The matter came on for trial on September 7, 2021. Plaintiff Cross
21 Defendant (herein after Plaintiff) was present in court represented by Leo A. Bautista,
22 Esq. and Josephine A. Brosas, Esq. of Lewis, Brisbois, Bisgaard & Smith, LLP.
23 Defendants Cross Complainants were present in court represented by Jason W.
24 Coberly, Esq. of Soden and Steinberger, APLC. The matter was tried as a court trial,
25 the parties have previously waived their right to a trial by jury. The matter concluded
26 presentation of evidence on September 21, 2021. The minutes reflect the witnesses
27 called, the exhibits admitted, and requests for judicial notice. By agreement of the
28 parties, oral argument was waived and it was agreed that the matter would be

1 submitted to the court by way of written closing statements and written proposed
2 Statements of Intended Decision with a simultaneous exchange to occur on November
3 12, 2021. Thereafter, the matter was to be submitted to the court for its decision. The
4 court hereby renders its Statement of Intended Decision.

5 This Statement of Intended Decision will become the court's Statement of
6 Decision pursuant to CCP §632 (et seq) unless one of the parties files an application
7 pursuant to California Rule of Court 3.1590 (et seq). The purpose of the court's
8 Statement of Intended Decision is to provide the parties the factual and legal basis for
9 the decision. It is the court's view of the facts and the applicable law and hence the
10 legal basis for the decision. *Schmidt v. Superior Court*, 2020 44 Cal.App 5th 570.

11 This case involves two sophisticated businessmen brought together by a third
12 party which, after, a good deal of ground work resulted in the execution of a franchise
13 agreement between Plaintiff and Defendants with Kyle Franson executing a personal
14 guarantee for Defendant's performance. The franchise agreement and personal
15 guarantee were among the many exhibits submitted by the parties during the
16 presentation of the evidence. The agreement and subsequent conduct of the parties
17 post execution form the basis of the underlying complaint and cross complaint. During
18 the trial, the court heard from eleven witnesses, assessed each witnesses' credibility,
19 viewed hundreds of pages of the exhibits, as well as considered these items of Judicial
20 Notice.

21 Prior to the execution of the agreement by Defendant, Kyle Franson engaged in
22 extensive due diligence. He reviewed the proposed franchise agreement. He looked at
23 possible business plans. He spoke with other individual franchisees of the business.
24 He visited sites and prepared a pro-forma plan without the aid or assistance of Plaintiff.

25 Plaintiff's proposed business plan was to have a footprint consisting of a winery
26 and a small wine bar, possibly encompassing bistro or walk-away foods. After his due
27 diligence and consideration of various options, Defendant decided to adopt an

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1 expanded format with a larger wine bar, winery, onsite and offsite storage, as well as a
2 full service restaurant that eventually entailed the use of a large number of employees.
3 Defendant located a site which required extensive renovations to get it up and running.
4 After significant remodeling, Defendant opened his Water's Edge operation.

5 The franchise agreement in evidence provided unambiguously for a monthly 2%
6 service fee and a 5% commission on "all sales" or "gross sales" with the Defendant
7 being obligated to provide an accounting on a monthly basis to allow for proper
8 accounting of both the service and commission fees. The agreement entered into by
9 the parties did not provide any reduction for sales of food or anything else. All sales
10 were subject to the 5% commission. The agreement also provided for start-up onsite
11 assistance in wine making, recommended items for purchase in the manufacture of
12 wine, and the branding of products. In short order, Defendant's operation gained
13 widespread success exceeding even the Defendant's initial expectations. It is clear
14 from this court's analysis of Kyle Franson's testimony that he believed he should not be
15 paying commission on the food and other items, even though not excluded from the
16 agreement. Franson's rent was higher, his start-up costs were higher, and his employee
17 salaries were all a factor that contributed to his costs, but those as well enabled him to
18 reap higher benefits.

19 Both Plaintiff and Defendants began discussions with an eye towards possibly
20 modifying the agreement, but the court finds that those discussions never led to any
21 modification of the original franchise agreement.

22 The evidence is clear and convincing to the court that the Defendant breached
23 the agreement with respect to the agreed contractual obligation to pay the 5%
24 commission on all sales. The evidence also discloses that the Defendant failed to
25 provide all the required monthly reports with respect to all sales.

26 Defendants alleged that they were defrauded and misrepresentations were
27 made with respect to products provided by Plaintiff, specifically in the manufacture of
28 wine. This was referred to as the "invert sugar" issue. There was conflicting evidence

1 presented to the court on this issue. It is illegal in some instances in California to use
2 the "invert sugar" process. At bench, the issue is whether or not those facts have been
3 established by the Defendants by any persuasive evidence.

4 A wine kit was in fact brought to court and it was used by witnesses to
5 demonstrate how the wine manufacture process took place. Neither party had the
6 alleged kit tested for "invert sugar" although that could have been done. Under the
7 maxim of law that if a party presents weaker evidence when it could have provided
8 stronger evidence, the court may distrust the weaker evidence. The court finds that
9 Defendants did not establish any basis to terminate the franchise agreement for fraud
10 or misrepresentation as to the "invert sugar" allegations. In addition, Kyle Franson
11 testified that he had wine that he knew or believed was produced with "invert sugar", but
12 went ahead to sell that wine to members of the public who patronized Defendant's
13 establishment. As such, the court finds that Kyle Franson is without clean hands on
14 this issue and finds him to be not credible on that issue.

15 Defendant also claims Plaintiff misrepresented information regarding the
16 existence and number of certain franchises at the time Defendants began their due
17 diligence. Again, there are conflicting witnesses on this issue. The court finds from the
18 testimony presented that no material misrepresentations were made to Defendant as to
19 the wine manufacturing franchises in existence. Additionally, Defendant Kyle Franson
20 suggested that he was misled as to the timeline for the production of wines. Again,
21 there is conflicting testimony on this issue. After listening to all the witnesses on this
22 issue, the court finds there was no misrepresentation or fraud committed by Plaintiff
23 with respect to the timeline of the manufacture and ultimate sale of the wines. Finally,
24 the court recalls video in which Kyle Franson said that his only problem was his
25 business's growth and development in the area. In fact, he testified that he was afraid
26 someone else might buy an available adjacent franchise which would cause him
27 competition. Defendant went on to negotiate the purchase and sale of that franchise
28 from Plaintiff.

1 Both parties presented accountants on the issue of damages. Based upon a
2 review of each, the testimony of witness, Henry Kahrs, was more reasonable and the
3 court finds his credibility outweighs that of witness Nguyen, who flip-flopped during his
4 testimony. Mr. Nguyen adopted the Plaintiff's expert's position on the issue of
5 rescission, but changed his testimony later and offered no credible reasons.

6 Based upon all the witnesses and the documentary evidence, as well as
7 considering the written arguments of counsel and the proposed Statements of Intended
8 Decision the court finds that the Plaintiff has met its burden of proof to establish that the
9 Defendants have breached the franchise agreement that was entered into by the
10 parties on December 12, 2012. The evidence establishes that Kyle Franson executed
11 a personal guarantee as to the franchise agreement. The documentary evidence
12 establishes that Defendants failed to pay the required royalties on the gross sales and
13 failed to report the necessary financial information to Plaintiff. Defendants have not
14 established any credible evidence to support his claims for fraud, rescission, or unfair
15 competition as affirmative defenses or by way of cross complaint.

16 As such, the court finds for Plaintiff, Waters Edge Wineries, Inc., on all causes of
17 action in its complaint in the principle sum of \$1,835,998.00 together with costs and
18 attorney's fees. Those costs to be set by cost bill and attorney's fees by noticed
19 motion. This judgment is joint and severable as to Franson Family Winery, LLC and
20 Kyle Franson based upon the personal guarantee. The court finds that the Defendant
21 has failed to establish any of its affirmative defenses as outlined in its answer and has
22 failed in all causes of action as to the cross complaint. Plaintiff is to prepare order,
23 judgment, and give notice.

24 Dated this 16th day of December, 2021

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27 HON. BRIAN S. McCARVILLE
28 Judge of the Superior Court

1 **PROOF OF SERVICE (Code of Civil Proc., §§ 1013a)**
2 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
3 **FOR THE COUNTY OF SAN BERNARDINO**

4
5 **TITLE OF CASE: WATERS EDGE v. FRANSON**

6 **CASE NUMBER: CIVDS1723250**
7

8 **DECLARATION OF SERVICE BY MAIL**

9
10 I hereby declare that I am a citizen of the United States, over the age of 18, employed in
11 the above-named county, and not a party to nor interested in this proceeding. My
12 business address is: 247 West Third Street, Tenth Floor, San Bernardino, California
13 92415-0210. On December 16, 2021, I served the foregoing document described as
STATEMENT OF INTENDED DECISION on the other parties in this action by placing
the true copies thereof enclosed in sealed envelopes addressed as follows:

14 **Name and Address of Persons Served:**

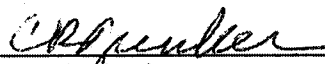
15
16 **Leo A. Bautista, Esq.**
17 **Josephine A. Brosas, Esq.**
18 **Lewis Brisbois Bisgaard & Smith**
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071

19 **Jason W. Coberly, Esq.**
20 **Soden & Steinberger, APLC**
21 **550 West C Street, Suite 1160**
San Diego, CA 92101

22 At the time of mailing this notice there was regular communication between the place of
23 mailing and the place(s) to which this notice was addressed.

24 I declare under penalty of perjury the foregoing to be true and correct.
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26
27 **DATED: 12/16/21**

by 
Christine R. Junker
Administrative Assistant II

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CALIFORNIA STATE COURT PROOF OF SERVICE
Waters Edge Wineries, Inc. v. Franson Family Wineries, LLC, et al.
Case No. CIVDS1723250 – File No. 41709-02

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

On January 13, 2022, I served the following document(s): **[PROPOSED] ORDER AND JUDGMENT** on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Robert J. Steinberger, Esq.	T: (619) 239-3200
Jason W. Coberly, Esq.	F: (619) 238-4581
SODEN & STEINBERGER, APLC	jcoberly@sodensteinberger.com
550 West C Street, Suite 1160	<i>Attorneys for Defendant/Cross-Complainant</i>
San Diego, CA 92101	FRANSON FAMILY WINERY, LLC

The documents were served by the following means:

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address Cora.Ruvalcaba@Lewisbrisbois.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 2022, at Los Angeles, California.



Cora Ruvalcaba