STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	
MICHAEL FRANKLIN,	)	Charge No.: 2023CP2311
Petitioner.	)	ALS No.: 24-0312

ORDER

This matter coming before the Commission on January 8, 2025, by a panel of three, Commissioners Elizabeth A. Coulson, Demoya R. Gordon, and Stephen A. Kouri II presiding, upon the Request for Review ("Request") of Michael Franklin ("Petitioner") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2023CP2311, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW**,** THEREFORE, it is hereby **ORDERED** that the dismissal of Counts A and B of the Petitioner's charge is **VACATED** and Counts A and B are **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and the Illinois Human Rights Act ("Act").[2]

DISCUSSION

On November 3, 2022, the Petitioner filed a charge of discrimination with the Respondent, perfected on December 3, 2023, alleging that Panda Express denied him the full and equal enjoyment of its facilities and services based on his race, Black (Count A), and color, medium complexioned (Count B), in violation of Section 5-102(A) of the Act. On October 3, 2024, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner went to Panda Express, a nationwide chain of restaurants, located at 6420 W. Fullerton in Chicago, Illinois, on October 31, 2022. He stated that when he walked up to the order counter, there were no other customers and at least eight staff members, all of whom were White or Mexican. The Petitioner stated that the cashier made eye contact with him but did not greet him, which was upsetting to him, or ask him if she could take his order. The Petitioner said, "excuse me," to the cashier, but she was holding her head down and did not respond.

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[1] In a Request for Review proceeding, the party filing the Request for Review is the "Petitioner" and the Illinois Department of Human Rights is the "Respondent."

[2] This order is entered pursuant to a 3-0-0 vote by the Commissioners.

The Petitioner stated that, while he was waiting for his order to be taken, a couple (non-Black and non-medium complexioned) came into the restaurant and were immediately assisted by the cashier. The Petitioner then was made to wait longer before his order was taken. The Petitioner began speaking up loudly and asking why his order was not being taken. The cashier then took his order. The Petitioner stated that another staff member prepared his order and brought the order to the back of the restaurant. The Petitioner stated that he asked loudly about his order and where it was.

The Petitioner stated that the manager came up to assist him. He watched the manager get his food from the back of the restaurant. The Petitioner refused the food and requested a fresh plate, which the manager then prepared for him. The Petitioner told the manager that he was being discriminated against. The manager apologized and gave him his food for free.

The Petitioner stated that on November 1, 2022, he filed a complaint of discrimination on Panda Express's website.

According to Area Coach of Operations Rhea Barredo, the Petitioner filed a complaint of unfriendly team/service, stating that he was ignored and stopped at the line; that the staff seemed like they did not want him there; that Panda Express refused to provide him a cup for water; that the staff took his food to the back for about seven minutes; that a manager came out and when he told her that it had been about ten minutes, she gave him the food for free; that they tried to give him old food, but then made him new food; and that he was racially discriminated against. Panda Express sent the Petitioner an apology email informing him they would be addressing his concerns with the associates at the Fullerton location.

The Petitioner argues that he was denied the full and equal enjoyment of Panda Express's facilities and service because of his race (Count A) and color (Count B). The Act states that it is a violation for any person on the basis of unlawful discrimination to "[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." 775 ILCS 5-102(A). A *prima facie* case of discrimination in a public place of accommodation requires that 1) the petitioner is a member of a protected class, 2) he attempted to exercise the right to full benefits and enjoyment of a public place of accommodation, 3) he was denied those benefits and enjoyment, and 4) he was treated less favorably than similarly situated persons outside his protected class. *Williams v. Human Rights Comm'n*, 2022 IL App (1st) 200927-U, ¶ 27. Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be less than a preponderance. 775 ILCS 5/7A-102(D)(2).

Here, the Petitioner argues that Panda Express staff members refused to take his order, and then took the order of a non-Black, non-medium-complexioned couple who came in after him before taking his order. Then, after his order was taken, the staff member took his food to the back of the

restaurant where it sat out for seven minutes. Even when the manager intervened, the Petitioner had to insist on getting a fresh plate of food. It was not until he told the manager that he was being discriminated against did she apologize and offer his food for free. The Commission concludes that there is substantial evidence that the Petitioner was treated less favorably than customers outside his protected class.

The Respondent found lack of substantial evidence, reasoning that the Petitioner was not denied service because he received food, even if delayed. The full and equal enjoyment of a restaurant, however, includes more than just receiving food. *See In re Florence Johnson and Ranch Steak House*, IHRC, ALS No. 1823, 1987 ILHUM LEXIS 4, *8 (March 2, 1987) (finding that complainant was denied full and equal enjoyment of restaurant where she was initially refused service, then isolated from other customers, and treated rudely by the waitress); *In re Velma J. Henderson and Steak N Shake, Inc*., IHRC, ALS No. S-9735, 1998 ILHUM LEXIS 384, * (September 25, 1998) (finding that complainant was denied full and equal enjoyment of restaurant where she received slow service and customers outside her protected class arrived after her and received service before her); *In re Request for Review by: Irwin Hugh Rolle*, IHRC, ALS No. 23-0293, 2024 ILHUM LEXIS 42, *5 (March 5, 2024) (stating that "the Act contemplates more 'full and equal enjoyment' than simply the purchase of food").

In its Response to the Petitioner's Request, the Respondent further argues that the Petitioner was not denied service because Panda Express "rectified the error and served him a fresh hot meal free of charge." The Respondent provides no legal citation in support of its position that a restaurant has not violated a customer's civil rights when it offers not to charge a customer after he complains multiple times about the lack of service and alleges discriminatory intent. Even if it could, when it is disputed whether the facts of the case constitute an adverse action, such a matter is best left to a trier of fact to determine. *See* 775 ILCS 5/8A-102(I)(1) ("When all the testimony has been taken, the hearing officer shall determine whether the respondent has engaged in or is engaging in the civil rights violation with respect to the person aggrieved as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence."). Because there is more than a mere scintilla of evidence of discrimination, the Commission vacates the dismissal of Counts A and B and remands for a finding of substantial evidence on both counts.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Counts A and B of the Petitioner's charge is **VACATED** and Counts A and B are **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Act.

***This Order is not yet final and appealable*.**

STATE OF ILLINOIS)
) **Entered this 14th day of JANUARY 2025.**
HUMAN RIGHTS COMMISSION)

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II