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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

SHARLEEN HERNANDEZ, as an
individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

DREYER'S GRAND ICE CREAM, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: BCV-22-100888

REPRESENTATIVE ACTION COMPLAINT

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Sharleen Hernandez (“Plaintiff”), hereby submits this Representative Action
2 Complaint against Defendant Dreyer’s Grand Ice Cream, Inc. (“Defendant”) and Does 1-50
3 (hereinafter collectively referred to as “Defendants”), on behalf of herself and all other aggrieved
4 employees of Defendants, for penalties for violations of the California Labor Code, as follows:

5 **INTRODUCTION**

6 1. This representative action is within the Court’s jurisdiction under California
7 Labor Code sections 201, 202, 203, 226(a), 226.7 and 2698 *et. seq.*, and the California Industrial
8 Welfare Commission’s (“IWC”) Wage Orders.

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against employees of Defendant.

11 3. Plaintiff is informed and believes and based thereon alleges that Defendants
12 jointly and severally have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by: (a) failing to pay meal/rest period premium wages at
14 the regular rate of pay; (b) failing to provide accurate itemized wage statements; and (c) failing
15 to pay all final wages upon separation of employment.

16 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
17 engaged in, among other things a system of willful violations of the California Labor Code and
18 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
19 knowingly deny employees the above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code sections
22 201, 202, 203, 226(a), 226.7 and 2698 *et. seq.*

23 6. Venue is proper in Kern County because Defendant maintains operations in
24 Bakersfield, California.

25 **PARTIES**

26 7. Plaintiff is a former non-exempt employee of Defendant. Plaintiff’s employment
27 with Defendant ended on or about November 8, 2021.

28 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant

1 complained of in this action in ways that have deprived her of the rights guaranteed by California
2 Labor Code sections 201, 202, 203, 226(a), 226.7 and 2698 *et. seq.*, and the applicable IWC
3 Wage Orders.

4 9. Plaintiff is informed and believes and based thereon alleges that Defendant
5 Dreyer's Grand Ice Cream, Inc. was and is a Delaware corporation that does business in
6 California, including in Kern County.

7 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
8 mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and
9 partnerships, licensed to do business and actually doing business in the State of California.

10 11. As such, and based upon all the facts and circumstances incident to Defendants'
11 business in California, Defendants are subject to California Labor Code sections 201, 202, 203,
12 226(a), 226.7 and 2698 *et. seq.*, and the applicable IWC Wage Orders.

13 12. Plaintiff does not know the true names or capacities, whether individual, partner
14 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
15 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
16 complaint when the true names and capacities are known. Plaintiff is informed and believes and
17 based thereon alleges that each of said fictitious defendants were responsible in some way for the
18 matters alleged herein and proximately caused Plaintiff and other aggrieved employees to be
19 subject to the illegal employment practices, wrongs and injuries complained of herein.

20 13. At all times herein mentioned, each of said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
22 Defendants, and each of them, were the agents, servants, and employees of each of the other
23 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
24 acting within the course and scope of said agency and employment.

25 14. Plaintiff is informed and believes and based thereon alleges that at all times
26 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
27 joint venturer of, or working in concert with each of the other co-defendants and was acting
28 within the course and scope of such agency, employment, joint venture, or concerted activity.

1 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
2 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

4 15. At all times herein mentioned, Defendants, and each of them, were members of,
5 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

7 16. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
13 the damages as herein alleged.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 2698 *ET. SEQ.***

16 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND ALL AGGRIEVED**
17 **EMPLOYEES, AGAINST ALL DEFENDANTS)**

18 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
19 though fully set forth herein.

20 18. Plaintiff brings this cause of action as a proxy for the State of California, and in
21 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 14, 2021,
22 through the present, for Defendant's policy and practice of: (a) failing to pay meal/rest period
23 premium wages at the regular rate of pay, in violation of Labor Code section 226.7; (b) failing to
24 provide accurate, itemized wage statements, in violation of Labor Code section 226(a); and (c)
25 failing to pay final wages in a timely manner to separated employees as a result of the
26 underpayment of meal/rest period premiums, in violation of Labor Code sections 201, 202, and
27 203.

28 19. At all relevant times, Defendant failed in its affirmative obligation to ensure that

1 Plaintiff and other Aggrieved Employees had the opportunity to take and were provided with off-
2 duty meal and rest periods in accordance with the mandates of the California Labor Code and the
3 applicable IWC Wage Order. For each workday that a meal or rest period is not provided,
4 employees are entitled to one additional hour of pay at the employee's regular rate of pay.

5 20. Aggrieved Employees earned non-discretionary incentive wages. During
6 workweeks where Aggrieved Employees earned both non-discretionary incentive wages and
7 meal/rest period premiums, Defendant paid the meal and rest period premium wages at the
8 employee's base hourly rate of pay. As such, Plaintiff and other Aggrieved Employees are owed
9 additional meal/rest period premiums based on the correct, higher regular rate of pay.

10 21. Defendant failed in its affirmative obligation to provide accurate itemized wage
11 statements, in violation of Labor Code section 226(a). Plaintiff and other Aggrieved Employees
12 were paid hourly. As such, the wage statements should have reflected all applicable hourly rates
13 in effect during the pay period and the corresponding number of hours worked at each hourly
14 rate.

15 22. The wage statements provided to Plaintiff and other Aggrieved Employees failed
16 to identify all applicable hourly rates, including those for overtime and/or double overtime wages
17 and pandemic pay. Additionally, the wage statements did not accurately show the total hours
18 worked during the pay period. The hours listed as the "total hours" on the wage statement do not
19 correlate to the correct number of total hours worked during each pay period. Furthermore, as a
20 result of the underpayment of meal/rest period premium wages, the wage statements provided to
21 Aggrieved Employees failed to identify the accurate rates of pay for the meal/rest period
22 premium and the accurate gross/net wages earned during the pay period.

23 23. On or about February 14, 2022, Plaintiff sent written notice to the California
24 Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
25 sections 201, 202, 203, 226(a) and 226.7, pursuant to Labor Code section 2698, *et seq.*, the
26 Private Attorney General Act ("PAGA"). More than sixty-five days has elapsed since Plaintiff
27 sent written notice.

28 11. To date, the LWDA has not responded to Plaintiff's written notice. As such,

1 pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil
2 penalties for Defendant's violation of Labor Code sections 201, 202, 203, 226(a) and 226.7 for
3 the time period described above, on behalf of herself and other Aggrieved Employees.

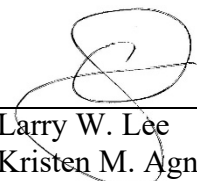
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
6 this suit is brought against Defendants, jointly and severally, as follows:

- 7 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
8 Labor Code section 2698 *et seq.*, and for costs and attorneys' fees;
9 2. For attorneys' fees and costs as provided by California Labor Code section 2699,
10 and Code of Civil Procedure section 1021.5; and
11 3. For such other and further relief the Court may deem just and proper.
12

13 DATED: April 13, 2022

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
Employees
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