

**KINGSLEY SZAMET
EMPLOYMENT LAWYERS**
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

APRIL HARRIS, an individual, on behalf of
herself and others similarly situated

PLAINTIFF,

v.

VAN LEEUWEN ICE CREAM LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 25STCV14407

[Case Assigned for All Purposes to Hon.
Carolyn B. Kuhl in Dept. 12]

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
2. Penalties Pursuant to Labor Code § 203
3. Violation of Business & Professions Code § 17200
4. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff APRIL HARRIS, an individual, on behalf of herself, all others similarly situated,
2 and on behalf of the people of the State of California and as an “aggrieved employee” under Labor
3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”), complains of
4 Defendant VAN LEEUWEN ICE CREAM LLC (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as an non-
10 exempt employee by VAN LEEUWEN ICE CREAM LLC, in the
11 State of California, who worked more than 3.5 hours in any single
shift since four (4) years prior to the filing of this action to the
present. (“Proposed Class”)

12 2. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
14 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
15 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
16 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
17 of pay at the employee’s regular rate of compensation for each workday that the rest period was
18 not provided, as required by California state wage and hour laws. Defendant has also had a
19 consistent policy of failing to pay rest period premiums in compliance with California law.

20 3. For at least three (3) years prior to the filing of this action continuing to the present,
21 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
22 the Proposed Class.

23 4. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
24 pursuant to Labor Code §§ 201, 202, 203, 226.7; Wage Order 5-2001; and California Code of
25 Regulations, Title 8, Section 11050, seeking rest period penalties, other penalties, injunctive and
26 other equitable relief, and reasonable attorneys’ fees and costs.

27 5. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
28 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of

1 all benefits Defendant enjoyed from its unlawful conduct as described herein.

2 6. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
3 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
4 PAGA, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim
5 pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or
6 formerly employed by Defendant during the liability period as defined in her PAGA notice letter
7 (*see* Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
8 penalties for Defendant’s violations of Labor Code §§ 201, 202, 203, and 226.7.

9 **II.**

10 **JURISDICTION AND VENUE**

11 7. This Court has subject matter jurisdiction over all causes of action asserted herein
12 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
13 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
14 of interest, exceeds \$35,000, and because each cause of action asserted arises under the laws of the
15 State of California or is subject to adjudication in the courts of the State of California.

16 8. This Court has personal jurisdiction over Defendant because Defendant has caused
17 injuries in the County of Los Angeles and the State of California through their acts, and by their
18 violation of the California Labor Code, California state common law, and California Business &
19 Professions Code § 17200, *et seq.*

20 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
21 Civil Procedure § 395. Defendant operates within California and does business within Los
22 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed
23 Class Members within the State of California and the county of Los Angeles.

24 10. This case should be classified as complex according to Rule 3.400 of the California
25 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
26 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
27 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
28 require substantial post judgment judicial supervision.

11. Plaintiff files this amended complaint adding a claim for penalties pursuant to Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

III.

PARTIES

A. PLAINTIFF

12. Plaintiff APRIL HARRIS is a resident of California.

13. Plaintiff and all Proposed Class Members were regularly required to work without being provided rest periods.

14. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

15. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

16. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

17. Defendant VAN LEEUWEN ICE CREAM LLC is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 5915 Franklin Avenue, Los Angeles, CA 90028. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

18. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

IV.

21. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

23. Plaintiff and the Proposed Class have been required to work four hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest periods by way of a lawful policy.

25. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

1 V.

2 CLASS ACTION ALLEGATIONS

3 26. Plaintiff brings this action on behalf of herself, and all others similarly situated as
4 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
5 proposed class composed of and defined as follows:

6 All persons who are employed or have been employed as an non-
7 exempt employee by VAN LEEUWEN ICE CREAM LLC, in the
8 State of California, who worked more than 3.5 hours in any single
9 shift since four (4) years prior to the filing of this action to the
10 present. ("Proposed Class")

11 27. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
12 amend or modify the class description with greater specificity, by division into subclasses, or by
13 limitation to particular issues.

14 28. This action has been brought and may properly be maintained as a class action
15 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
16 community of interest in the litigation and the Proposed Classes are easily ascertainable.

17 **A. NUMEROSITY**

18 29. The potential members of the Proposed Class as defined are so numerous that
19 joinder of all the members of the Proposed Class is impracticable. While the precise number of
20 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
21 that Defendant currently employ, and during the relevant time periods employed over 50 members
22 of the Proposed Class.

23 30. Plaintiff alleges that Defendant's employment records would provide information
24 as to the number and location of all Proposed Class Members. Joinder of all members of the
25 Proposed Class is not practicable.

26 **B. COMMONALITY**

27 31. There are questions of law and fact common to the Proposed Class that predominate
28 over any questions affecting only individual Proposed Class Members. These common questions
of law and fact include, without limitation:

1 a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5 -
2 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
3 of their right to take rest periods and failing to provide required rest periods throughout the term
4 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
5 periods;

6 b. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
7 compensation due and owing at the time that any Proposed Class Member's employment with
8 Defendant terminated;

9 c. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
10 Code by engaging in the acts previously alleged; and

11 d. Whether Plaintiff and the members of the Proposed Class are entitled to
12 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

13 e. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts
14 alleged herein.

15 **C. TYPICALITY**

16 32. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
17 all members of the Proposed Class sustained injuries and damages arising out of and caused by
18 Defendant's common course of conduct in violation of laws, regulations that have the force and
19 effect of law, and statutes as alleged herein.

20 **D. ADEQUACY OF REPRESENTATION**

21 33. Plaintiff will fairly and adequately represent and protect the interests of the
22 members of the proposed Class.

23 34. Counsel who represent Plaintiff and the Proposed Class are competent and
24 experienced in litigating large employment class actions.

25 **E. SUPERIORITY OF CLASS ACTION**

26 35. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
28 practicable, and questions of law and fact common to the Proposed Class predominate over any

1 questions affecting only individual members of the Proposed Class. Each member of the Proposed
2 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
3 practice of failing to provide rest periods, and failing to pay all wages upon resignation or
4 termination.

5 36. Class action treatment will allow those similarly situated persons to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
8 action that would preclude its maintenance as a class action.

9 **VI.**

10 **FIRST CAUSE OF ACTION**

11 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

12 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

13 **LABOR CODE § 226.7**

14 37. Plaintiff, on behalf of herself and the proposed Class, realleges and incorporates by
15 reference all previous paragraphs.

16 38. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
17 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
18 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant
19 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

20 39. Plaintiff and the Class consistently worked shifts with no rest breaks, and Defendant
21 failed to maintain an accurate policy advising Plaintiff and the Class of these rest breaks and failed
22 to provide Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by
23 the Labor Code during the relevant time period.

24 40. Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to
25 provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes per four
26 (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis,
27 Defendant failed to provide Plaintiff and the Proposed Class with a second rest period despite
28 regularly requiring Plaintiff and the Proposed Class to work over six (6) hours.

41. Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Plaintiff and the Proposed Class rarely took their rest breaks, and if they did, they were interrupted due to clients coming in and out of the store.

42. On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of failing to pay rest period premiums in compliance with California law.

43. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

44. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

45. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

46. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

47. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those

1 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
2 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
3 Members' daily wage multiplied by thirty (30) days.

4 **VIII.**

5 **THIRD CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

7 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

8 48. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
9 reference all previous paragraphs.

10 49. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
11 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
12 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
13 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
14 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
15 interest within the meaning of Code of Civil Procedure § 1021.5.

16 50. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
17 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
18 appropriate equitable relief.

19 51. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
20 practices.

21 52. California's wage and hour laws express fundamental public policies. Providing
22 employees with proper wages and compensation are fundamental public policies of this State and
23 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
24 vigorously minimum labor standards, to ensure that employees are not required or permitted to
25 work under substandard and unlawful conditions, and to protect law-abiding employers and their
26 employees from competitors who lower their costs by failing to comply with minimum labor
27 standards.

28 53. Defendant has violated statutes and public policies as alleged herein. Through the

1 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
2 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
3 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
4 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
5 guaranteed to all employees under law.

6 54. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
7 violation of § 17200, *et seq.* of the Business & Professions Code.

8 55. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
9 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
10 § 17200, *et seq.* of the Business & Professions Code.

11 56. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
12 others similarly situated have been damaged in a sum as may be proven.

13 57. Unless restrained, Defendant will continue to engage in the unlawful conduct as
14 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
15 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
16 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
17 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
18 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
19 proposed Class the money Defendant has unlawfully failed to pay.

20 **IX.**

21 **FOURTH CAUSE OF ACTION**

22 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

23 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

24 58. Plaintiff, on behalf of herself and the Proposed Class, reallege and incorporate by
25 reference all previous paragraphs.

26 59. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
27 seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§
28 201, 202, 203, 226.7; Wage Order 5-2001; and California Code of Regulations, Title 8, Section

1 11050, which call for civil penalties.

2 60. Plaintiff brings this representative action on behalf of themselves and the State of
3 California as well as a group of aggrieved employees defined as: “All persons who are employed
4 or have been employed as a non-exempt employee by VAN LEEUWEN ICE CREAM LLC, in
5 the State of California who worked more than 3.5 hours in any single shift since one (1) year prior
6 to the date of Plaintiff’s PAGA Notice Letter to the LWDA and Defendant and continuing to the
7 present”. (“aggrieved employees”).

8 61. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
9 2699, *et seq.* because of Defendant’s violation of Labor Code §§ 201, 202, 203, and 226.7, which
10 call for civil penalties.

11 62. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties
12 in an amount to be shown at trial, subject to the following formula:

13 a. \$100 for the initial violation per employee per pay period.

14 b. \$200 for each subsequent violation per employee per pay period.

15 63. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
16 twenty-five percent (25%) to the affected employees.

17 64. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
18 LWDA¹ and mailed a letter by certified mail to Defendant’s entity address, which is 5915 Franklin
19 Avenue, Los Angeles, CA 90028, as proscribed by the Code on May 15, 2025, describing
20 Defendant’s conduct in violation of Labor Code §§ 201, 202, 203, and 226.7, (*see* Exhibit “1”).
21 Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice
22 (*see* Exhibit “2”). Additionally, Plaintiff received signed green return receipts from Defendant,
23 indicating that it received Plaintiff’s letter. (*see* Exhibit “3”).

24 65. As no letter evidencing the LWDA’s intention to investigate was received by
25 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
26

27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 action as though the LWDA had not chosen to investigate pursuant to Labor Code
2 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
3 Amended Class and Representative Action Complaint immediately.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff prays for the following relief:

6 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class
7 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
8 to the filing of this action to the present as may be proven;

9 2. For penalties pursuant to Labor Code § 203 for all employees who were terminated
10 or resigned equal to their daily wage times thirty (30) days;

11 3. An award of prejudgment and post judgment interest;

12 4. An order enjoining Defendant and its agents, servants, and employees, and all
13 persons acting under, in concert with, or for it from providing Plaintiff with rest periods and wages
14 upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226.7, and IWC 5-2001;

15 5. For restitution for unfair competition pursuant to Business & Professions Code
16 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

17 6. For injunctive relief pursuant to Business & Professions Code §17200, *et seq.* to
18 remedy the unfair, unlawful and fraudulent activity alleged above.

19 7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
20 Code §§ 201, 202, 203, 226.7;

21 8. An award providing for payment of costs of suit;

22 9. An award of attorneys' fees; and

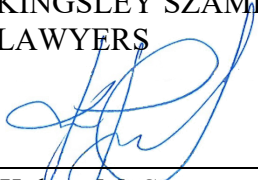
23 10. Such other and further relief as this Court may deem proper and just.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.
26
27
28

1 DATED: July 21, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

2
3 By: 

4 Kelsey M. Szamet

5 Attorneys for Plaintiff and the Proposed Class
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "1"



16133 Ventura Boulevard, Suite 1200, 
Encino, California 91436
service@kingsleylawyers.com 
www.kingsleylawyers.com 
(818) 990-8300 

May 15, 2025

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
Via Electronic Submission: <https://dir.tfaforms.net/308>

Van Leeuwen Ice Cream LLC
5915 Franklin Avenue
Los Angeles, CA 90028
Via Certified Mailing # 9589 0710 5270 1148 9683 72

Greenberg Traurig, LLP
Ellen Bandel
Ellen.bandel@gtlaw.com
Ashley Attia
Ashley.attia@gtlaw.com
1840 Century Park East, Suite 1900
Los Angeles, CA 90067-2121
Via Electronic Mail Transmission

Re: April Harris v. Van Leeuwen Ice Cream LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents April Harris (“Plaintiff”) and a proposed group of current and former employees working for Van Leeuwen Ice Cream LLC (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as a non-exempt employee by Van Leeuwen Ice Cream LLC, in the State of California who worked more than 3.5 hours in any single shift since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

May 15, 2025

Page 2 of 3

Pursuant to Labor Code § 226.7 and Wage Order 5-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Additionally, on a regular and consistent basis, Defendant failed to provide Plaintiff and the aggrieved employees with a second rest period despite regularly requiring Plaintiff and the aggrieved employees to work over six (6) hours. As Such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7. Plaintiff and the aggrieved employees rarely took their rest breaks, and if they did, they were interrupted due to clients coming in and out of the store.

On July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an Employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendants have had a consistent policy of failing to pay rest period premiums in compliance with California law.

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Further, under Labor Code § 2699.3(c)(2)(A), Defendant may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, and 226.7, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

///
///
///

LABOR & WORKFORCE DEVELOPMENT AGENCY

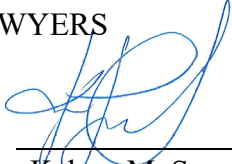
California Labor Code §2699 Penalties

May 15, 2025

Page **3** of **3**

Very truly yours,

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Kelsey M. Szamet

[KMS/tg]

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley Szamet Employm

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

818-990-8300

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

April Harris

Plaintiff/Aggrieved Employee Occupation *

Clerk

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Van Leeuwen Ice Cream LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

5915 Franklin Avenue

Employer City *

Los Angeles

Employer State * California	Employer Zip/Postal Code * 90028
Employer Industry * Other	Employer Industry for "Other" Ice Cream Store

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

PAGA Letter -... Leeuwen.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)

[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case



State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

From noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Date Thu 5/15/2025 2:05 PM
To Service <service@kingsleylawyers.com>

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-1098954-25

Order Number: ORD-000326549

Total:\$75.00

Card Type: [REDACTED]

Date: 5/15/2025

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436



Thank you for submission of your PAGA Case.

From noreply@salesforce.com <noreply@salesforce.com>
on behalf of
LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Date Thu 5/15/2025 2:06 PM
To Service <service@kingsleylawyers.com>

External Email!

5/15/2025

LWDA Case No. LWDA-CM-1098954-25
Law Firm : Kingsley Szamet Employment Lawyers
Plaintiff Name : April Harris
Employer: Van Leeuwen Ice Cream LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Van Leeuwen Ice Cream LLC
5915 Franklin Avenue
Los Angeles, CA 90028



9590 9402 8465 3186 4072 33

2. Article Number (Transfer from service label)

9589 0710 5270 1148 9683 72

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

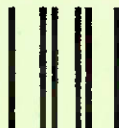
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Mail Restricted Delivery | |

Domestic Return Receipt

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 8465 3186 4072 33

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Gr. 5.15.25
Van Leeuwen Ice Cream