



EMPLOYEES FIRST LABOR LAW

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November 29, 2023

DREYER'S GRAND ICE CREAM, INC.

5929 College Avenue
Oakland, CA 94618

SENT VIA ELECTRONIC & U.S. MAIL

DREYER'S GRAND ICE CREAM, INC.

7301 District Boulevard
Bakersfield, CA 93313

LABOR & WORKFORCE DEVELOPMENT AGENCY

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Labor Code § 2699 Penalties
Case: JAVYN MADKINS V. DREYER'S GRAND ICE CREAM, INC., ET AL.

Dear LWDA and Associated Gentilepersons:

The undersigned law firm and associated counsel represent Plaintiff Javyn Madkins, et al. ("Plaintiffs") and other aggrieved employees (collectively "Aggrieved Employees") for the violation of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 226.8, 510, 512, 515, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 et seq.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California against Dreyer's Grand Ice Cream, Inc., associated entities/companies and DOES 1 through 20 inclusive (all defendants being collectively referred to herein as "Defendants").

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 Defendants engaged in with respect to our client and all of their California employees.



RELEVANT FACTS

Aggrieved Employees were employed by Defendants as customer account associates, security guards, utility technicians, ice cream makers, operators, forklift operators, bakery/oven operators, production supervisors, production assistants, inventory control coordinators, category development managers, network distribution analysts, shift supervisors, payroll specialists, IT, technical support, marketing/advertising/media, other non-exempt employees or misclassified exempt employees, and Dreyer's Grand Ice Cream, Inc. representatives within the headquarters and regional locations of Defendants. During that time Plaintiffs worked without proper pay in accordance with California law, without meal breaks and rest periods, without accurate wage statements. Plaintiffs are also informed and believes that there are other aggrieved employees employed by Defendants as non-exempt employees, within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Specifically, Employees were required to post-shift hours, off-the-clock, for which they were never paid wages. Additionally, Employees were required to work during their unpaid meal periods which they were consistently denied. Defendants also failed to pay Aggrieved Employees proper overtime wages. The uncompensated hours, discussed above, caused Aggrieved Employees to work in excess of eight (8) hours on a given day and/or forty (40) hours in a given week, entitling Aggrieved Employees to overtime wages, which they were never paid.

As a result, Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226, and Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

Aggrieved Employees complain of the following violations:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. As discussed above, Aggrieved Employees were consistently required to work off-the-clock hours under Defendants' employ, for which they were never paid. Specifically, Employees were required to post-shift hours, off-the-clock, for which they were never paid wages. Additionally, Employees were required to work during their unpaid meal periods which they were consistently denied. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Meal-Period Liability Under Labor Code § 226.7



Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Specifically, Employees were consistently required to work through their alleged meal periods, without pay, thus being denied an uninterrupted 30-minute meal, period all in violation of Labor Code and applicable Wage Orders. Defendants also failed to pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employee’s effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Specifically, Aggrieved Employees were required to work through their periods which they were continuously denied. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. As discussed above, Specifically, as discussed above, Employees were required to work off-the-clock hours without pay; during post-shift hours, and during their unpaid meal periods which they were denied. These uncompensated working hours caused Employees to work in excess of eight (8) hours on a given day, and/or forty (40) hours in a given week, entitling Employees to overtime wages which they were never paid, in violation of Labor Code § 510 and applicable Wage Orders. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, and premium pay for deficiently provided meal



periods and rest breaks discussed above. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Failure to Protect Whistleblowers Pursuant to Labor Code § 1102.5, et seq.

California Labor Code 1102.5 states that an employer shall not retaliate against an employee for reporting any activity they have reason to believe is illegal. Furthermore, an employer shall not retaliate against an employee for refusing take part in any activity that may violate state or federal laws. Defendants have violated the above-mentioned labor code by failing to protect Employees who reported illegal activities Defendants were engaging in. Thus, Plaintiff and Aggrieved Employees seek to recover compensation for damages incurred by Defendants' failure to abide by the California Labor Code 1102.5.

We are constrained to move forward with the filing of this complaint, alleging the causes of action discussed herein. 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.



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Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a § 2699 claim in an amended complaint.

Best Regards,

EMPLOYEES FIRST LABOR LAW

Jonathan LaCour, Esq.