

**NEW YORK CITY DEPARTMENT OF CONSUMER AND WORKER PROTECTION
CONSENT ORDER AND SETTLEMENT AGREEMENT**

In the Matter of: Van Leeuwen Ice Cream, LLC 56 Dobbin Street Brooklyn, NY 11222 Respondent.	Summons Number 220178HR
---	--------------------------------

I. INTRODUCTION

1. New York City Department of Consumer and Worker Protection (“DCWP” or the “Department”) is an agency of the City of New York with the duty and authority to administer and enforce violations of Title 20 of the New York City Administrative Code (“NYC Code”) and Title 6 of the Rules of the City of New York (“6 RCNY” or “Rules”). DCWP has its principal place of business at 42 Broadway, New York, NY 10004.
2. Van Leeuwen Ice Cream, LLC (“Van Leeuwen” or “Respondent”) offers food or beverages to the public for consumption on or off premises in New York City and has its corporate address at 56 Dobbins Street, Brooklyn, New York. Van Leeuwen is registered with the New York State Department of State under DOS ID: 5455338.
3. DCWP and Respondent enter into this Consent Order and Settlement Agreement (“Consent Agreement”) and voluntarily agree to its terms and conditions. DCWP and Respondent are referred to collectively herein as the Parties and individually as a Party.
4. Each of the undersigned expressly warrants and represents that they have the full power, capacity, and authority to execute and deliver this Consent Agreement on behalf of the Party indicated.
5. This Consent Agreement shall be binding upon, enforceable against, and inure to the benefit of the Parties and their respective successors, assigns, heirs, executors and administrators, and upon any corporation, partnership or entity into or with which any Party may merge or consolidate.
6. Pursuant to 6 RCNY § 6-04 of the Rules, this Consent Agreement shall have the force and effect of a final order of the DCWP Commissioner.
7. This Consent Agreement becomes effective as of the date upon which it is fully executed by all Parties.

II. BACKGROUND

8. The New York City ban on cashless establishments makes it, “unlawful for a food store or a retail establishment to refuse to accept payment in cash from consumers.” NYC Code § 20-840(b) (the “Cashless Ban”). A food store is defined as “an establishment which gives or offers for sale food or beverages to the public for consumption or use on or off the premises, or on or off a pushcart, stand or vehicle.” NYC Code § 20-840(a). A retail establishment is defined as “an establishment wherein consumer commodities are sold, displayed or offered for sale, or where services are provided to consumers at retail.”
9. The Cashless Ban was enacted in February, 2020, and became effective on November 19, 2020.
10. Shortly after the effective date of the Cashless Ban, DCWP received numerous complaints alleging that Respondent was refusing to accept cash payments. Respondent sells food and beverages for consumption on and off their premises and is required to accept cash payments. DCWP investigated Respondent’s refusal to accept cash at locations throughout New York City.
11. As a result of the investigation, DCWP determined that sufficient cause existed to charge Respondent with multiple violations of NYC Code § 20-840(b), and due to Respondent’s continued refusal to come into compliance with the cashless ban law, several administrative actions were brought against them.
12. The New York City Office of Administrative Trials and Hearings (“OATH”) found Respondent in violation of the Cashless Ban over 90 times.
13. Respondent failed to appear at the majority of the administrative hearings, and has failed to pay some of the outstanding civil penalties against them.
14. On October 11, 2022, the Department notified Respondent that it intended to seek an injunction in New York State Supreme Court prohibiting Respondent from refusing to accept cash payments.
15. Respondent enters into this Consent Agreement to avoid protracted litigation. Respondent represents that, as of October 17, 2022: (a) all of Respondent’s New York City locations have removed all signage, stickers, and placards indicating that they do not accept cash and/or that they only accept credit/debit and (b) all New York City locations have begun accepting cash and will continue to do so in compliance with NYC Code § 20-840(b) unless they otherwise comply with NYC Code § 20-840(e) and Paragraphs 16-19 of this Consent Agreement.

III. COMPLIANCE PROVISIONS

16. Respondent represents that all of its New York City locations have removed all signage, stickers, and placards indicating that they do not accept cash and/or that they only accept credit/debit. Each of Respondent's New York City locations have begun accepting cash and will continue to do so in compliance with NYC Code § 20-840(b), unless they install devices that "convert cash, without charging a fee or requiring a minimum deposit amount greater than one dollar, into a prepaid card that allows a consumer to complete a transaction" ("Reverse ATM's") in compliance with NYC Code § 20-840(e).
17. Respondent has represented that it plans to install Reverse ATM's into certain New York City locations. Respondent shall notify the Department at least two days before it begins to use Reverse ATMs at its New York City locations to comply with the Cashless Ban. Any correspondence should be sent by email to kdusseau@dcwp.nyc.gov.
18. None of Respondent's New York City locations may refuse to accept cash until they have installed a Reverse ATM in compliance with NYC Code § 20-840(e) and this Consent Agreement.
19. Respondent shall comply fully with all applicable portions of the NYC Code, including the Consumer Protection Law, the Rules of the City of New York, and all other relevant city, state, and federal laws and regulations, including the Cashless Ban, without regard to any requirement delineated or not delineated in this Consent Agreement. Where, however, the terms of this Consent Agreement exceed statutory requirements, Respondent must comply with this Consent Agreement.

IV. CIVIL PENALTIES

20. Upon execution of this Consent Agreement, Respondent agrees to pay all outstanding civil penalties in the amount of \$33,500 to DCWP by no later than November 2, 2022, pursuant to the instructions set forth in Paragraphs 22-24 below.
21. Summons Numbers 22N00486 and 22N00457, both currently pending at OATH, will be withdrawn at execution of this Consent Order.
22. All payments shall be made by certified check, money order or attorney trust check made payable to the New York City Department of Consumer and Worker Protection and sent by certified mail, return receipt requested, or any other mailing method that has a tracking system, to:

New York City Department of Consumer and Worker Protection
General Counsel Division
ATTN: Legal Operations Director
42 Broadway, 9th Floor
New York, NY 10004

23. All payments related to this Consent Agreement must reference Van Leeuwen Consent Order Payments.
24. Upon sending such payment, Respondent shall send tracking information to the following email address:

By email: kdusseau@dcwp.nyc.gov

V. CONSEQUENCES OF BREACH

25. If Respondent has breached any provision of this Consent Agreement, the Department may (a) void the Consent Agreement and prosecute all potential violations arising from its investigation at OATH and (b) impose a penalty of \$500 per breach per 6 RCNY § 6-04, notwithstanding any other penalties due and owing resulting from Respondent's violation of applicable laws and regulations.
26. In addition, in the event of a breach of this Consent Agreement the Department reserves the right to initiate a lawsuit against Respondent in New York State Supreme Court to compel compliance with the Cashless Ban, and to seek related penalties and any other relief to which the City of New York or the Department is entitled.

VI. WAIVER OF APPEALS

27. This Consent Agreement shall have the force and effect of a final order of the DCWP Commissioner and Respondent hereby expressly and irrevocably waives all right to any hearing, challenge, or appeal in any court or administrative body of any fact, issue, or matter covered by this Consent Agreement, whether those rights arise under local, state, or federal law.

VII. NOTICES



28. Unless otherwise mandated by the terms of this Consent Agreement, any notices, reports, or other written material required to be produced pursuant to this Consent Agreement must be provided as follows:

By email: ConsentCompliance@dcwp.nyc.gov
By mail: New York City Department of Consumer and Worker Protection
General Counsel Division
ATTN: Legal Operations Director
42 Broadway, 9th Floor
New York, NY 10004

VIII. MISCELLANEOUS

29. This Consent Agreement does not constitute an approval of any of Respondent's business practices, and Respondent is prohibited from making any representation to the contrary.
30. The provisions of this Consent Agreement shall be construed in accordance with the laws of the State of New York.
31. If any provision of this Consent Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Consent Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Consent Agreement are declared to be severable.
32. Any failure by the Department to insist upon the strict performance by Respondent of any provision(s) of this Consent Agreement shall not be deemed a waiver of such provision(s), or any other provisions of the Consent Agreement, and shall not limit the Department's right to enforce any provision of this Consent Agreement in the future.
33. Nothing in this Consent Agreement shall be construed as relieving Respondent of its duty to comply with all applicable local, state, and federal laws.
34. This Consent Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter of the Consent Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the same subject matter. The express terms of this Consent Agreement control and supersede any course of performance or dealings inconsistent with its terms.
35. Except as expressly provided herein, this Consent Agreement does not bar or limit in any way the authority of the Department to exercise its investigative and enforcement powers under any law or rule within the Department's jurisdiction.
36. The Parties have read this Consent Agreement carefully, understand each of its terms and conditions, and agree to be bound by the same. The Parties have sought, or had the opportunity to seek, independent legal counsel to the extent they deemed such advice necessary in connection with the review and execution of this Consent Agreement.

37. This Consent Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument. Signed signature pages may be transmitted by email, and any such signature shall have the same legal effect as an original.

<p>New York City Department of Consumer and Worker Protection</p> <p> By: Kristen Dusseau 10/19/22 Senior Staff Counsel Date 42 Broadway, 8th Floor New York, NY 10004 kdusseau@dcwp.nyc.gov</p>	<p>Van Leeuwen Ice Cream, LLC</p> <p> By: Laura O'Neill 10/19/22 Co-Founder Date 119 North 11th Street #1A Brooklyn, NY 11249 laura@vanleeuwenicecream.com</p>
--	--