



JOSE GARAY, APLC

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July 22, 2024

VIA ONLINE SUBMISSION- PAGA NOTICE

California Labor and Workforce Development Agency
Private Attorneys General Act.

Re: Claudia Hernandez v. Yamamoto of Orient INC.

Dear California Labor and Workforce Development Agency and Target Corporation:

Please be advised that JOSE GARAY, APLC and ANGEL CITY LAW and represent the interests of Claudia Hernandez, ("Claimant") and submits a PAGA/LWDA notice.

The purpose of this correspondence is to notify that Claimant intends to seek penalties, on behalf of herself and all other aggrieved employees, against her former Employer(s) YAMAMOTO OF ORIENT, INC. ("Employer") pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698 et seq. Claimant worked for Employer as a non-exempt warehouse employee (Claimant). Claimant is a covered employee and YAMAMOTO OF ORIENT, INC is a covered Employer pursuant to Labor Code § 2100 et. seq.

Claimant intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code § 2698, et seq., the Private Attorneys General Act of 2004 ("PAGA"). Claimant intends to seek penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of the Employer ("Aggrieved Employees"). This letter is sent in compliance with California Labor Code § 2699.3.

This correspondence serves as Claimant's written notice by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code § 2699.3(a)(1). The specific provisions of the Labor Code alleged to have been violated are as follows: Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 558, 558.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2100 – 2112, 2800, and 2802.

As detailed below, Employer violated several of California's wage and hour laws during Claimant employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2100 et. seq. 2800 and 2802, and the Industrial Welfare Commission Wage Orders ("IWC Wage Order") including inter alia, The applicable IWC Wage Order. The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT-TIME WAGES, AND OVERTIME COMPENSATION

Employer has engaged in numerous unlawful practices which resulted in the failure to pay Claimant and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight-time wages, and overtime compensation.

First, Employer regularly required Claimant and other Aggrieved Employees to work off-the-clock to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to: (1) respond to Employer and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; (3) perform work after clocking out for the end of their shift; and, (4) perform work during meal periods. Claimant and other Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight-time wages. Moreover, this off-the-clock work typically caused Claimant and other Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in a week, resulting in a failure to pay overtime compensation.

Second, Employer also failed to accurately record the actual time she and other Aggrieved Employees, which resulted in Employer's failure to pay for all hours worked, including minimum wages, straight-time wages, premium, overtime wages, sick pay, premium pay, bonus pay, and vacation pay.

Finally, and as a matter of policy and/or practice, Employer failed to pay overtime to Claimant and other Aggrieved Employees for the correct legal rate all overtime hours worked based on regular rates of pay including premium pay rates when applicable. Employer also failed to factor non-discretionary bonus pay into the regular rate of pay for Claimant and other Aggrieved Employees. Employer further failed to properly calculate the correct legal sick pay rate when paying bonuses and when accounting for used sick pay and properly accruing the correct amount of sick pay.

As a result of the foregoing practices, Employer has failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including non-discretionary bonus pay, minimum wages, straight-time wages, and overtime compensation. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198. Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS & PREVENTED COMPLIANCE WITH MEAL PERIOD LAWS

Employer failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Employer required Claimant and other Aggrieved Employees

to work more than five (5) hours per day but did not provide uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employer regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal period after their tenth (10th) hour of work. On the occasions that Claimant and other Aggrieved Employees did take a meal period, their meal periods were frequently interrupted, cut short, and/or were “working meal periods.” Moreover, Claimant and Aggrieved Employees were not credited with time on task even though they were required to be on call or on standby during meal periods in violation of Labor Code § 2103.

Employer’s excessive quotas, policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employer’s management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employer failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employer failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person oral interruptions; and, (7) Employer’s policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on meeting unlawful quota and production demands and/or completing job requirements over employees’ right to receive timely, uninterrupted, and duty-free meal periods. Employer also required Claimant and Aggrieved Employees to use the restroom facilities during their meal and or rest periods in violation of Labor Code § 2100 et seq. This requirement was not disclosed in any of Employer’s written policies.

Aggrieved Employees were adversely and unlawfully impacted by Employer’s meal period policies which discouraged them from taking legal breaks to meet Employer’s quota requirements. As such, Employer’s policies and practices prevented employees from complying with California’s meal period laws pursuant to California Labor Code § 2102 which states, “*An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An Employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to § 2101.*”

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for missed meal periods as required under California law. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 512(a), 1198, and 2100 - 2112.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 226.3, 558, 1197.1, and 1199 penalties; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS & PREVENTED COMPLIANCE WITH REST PERIOD LAWS

Employer failed to authorize and permit Claimant and other Aggrieved Employees from taking legal 10-minute rest periods. Employer required Claimant and other Aggrieved Employees to work through rest periods or to remain on call or to standby for quota updates or quota related communications verbally or through radios or cell phones. Claimant and other Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employer's excessive quotas, policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete, and duty-free rest periods because, among other reasons: (1) Employer did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employer's management at various levels, affecting all hourly-non-exempt warehouse employees, failed and refused to implement and enforce legally compliant rest period policies and practices and instead aggressively pushed aggrieved employees to meet excessive quotas; (3) Employer failed to adequately inform and train managers, leads, supervisors and foreman and Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employer failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employer failed to ensure that there was adequate staffing (except to utilize staffing agencies to replace employees who failed to meet quota) to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employer required Claimant and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, recovery periods, and meal periods, which included responding to in-person oral interruptions; and, (7) Employer's policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing quotas, production demands, and other job requirements over the employees' right to receive legal rest periods. Furthermore,

Aggrieved Employees were adversely impacted by Employer's meal and rest period policies which discouraged them from taking legal breaks to meet Employer's quota requirements. Employer in fact enforced silent quotas which adversely impacted Aggrieved Employees rights under Labor Code § 2102, and which prevented them from complying with California's rest, meal, and recovery period laws. Employer also required Claimant and Aggrieved Employees to use the restroom facilities during their rest periods in violation of Labor Code § 2100 et seq. This requirement was not disclosed in any of Employer's written policies.

As such, Employer's policies and practices prevented employees from complying with California's Labor Code § 226.7 legal right to rest, recovery and meal period laws all in violation of California Labor Code § 2102 which states, "*An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An Employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to § 2101.*"

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the missed rest periods as required under California law. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 226.7(a), 1198, and 2100 et seq.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code sections 226.3, 558, 1197.1, and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO AUTHORIZE AND PERMIT RECOVERY PERIODS AND PAY RECOVERY PERIOD PREMIUMS & PREVENTED COMPLIANCE WITH RECOVERY PERIOD LAWS

Employer failed to provide recovery periods when requested by Aggrieved Employees or pay premium wages when a recovery period was not provided as required by Labor Code § 226.7. Employer in fact discouraged recovery periods and pressured Aggrieved Employees to utilize meal and rest period time as recovery periods. If Aggrieved Employees complained or did not accede to Employer's unlawful policies, they were verbally reprimanded, written up negatively for performance, ranked as unproductive or ranked in low quartiles targeted for termination, terminated, and/or adversely impacted by Employer's quota requirements in violation of Labor Code § 2102.

5. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

Employer failed to timely pay Ms. Hernandez and other Aggrieved Employees all wages earned each pay period including, *inter alia*, overtime compensation, straight-time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code § 204(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.

As to each pay period, Employer failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight-time wages, and meal and rest period premiums. Accordingly, Employer violated California Labor Code § 201(a), 202(a) and 203(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

7. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, Employer issued inaccurate wage statements to Ms. Hernandez and other Aggrieved Employees that failed to include the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employer violated California Labor Code § 226(a).

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties; penalties pursuant to California Labor Code § 226.3; and attorneys' fees and costs.

8. FAILURE TO MAINTAIN & PROVIDE ACCURATE RECORDS.

Employer failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, rest periods, recovery periods, and/or total daily hours worked, and total hours worked per payroll period. Accordingly, Employer violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d). Employer's illegal and detrimental time rounding policy caused Claimant and other Aggrieved Employees' compensable work time to be improperly recorded, depriving them of their full compensation. These failures also caused Aggrieved Employees to receive sick pay, bonus pay, vacation pay, and premium pay below the lawful rate.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; California Labor Code § 1174.5 penalties; and attorneys' fees and costs.

9. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an Employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of her or her obedience to the directions

of the Employer. The applicable IWC Wage Order requires Employer to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and other Aggrieved Employees incurred necessary business-related expenses and costs that the Employer did not fully reimburse. These costs include but are not limited to the use of Claimant and other Aggrieved Employees' personal cell phones to send and receive messages and calls with supervisors to communicate their duties and the scope of work. Aggrieved Employees were also required to purchase items such as box cutters and other sundry tools for the benefit of Employer without reimbursement. Accordingly, Employer violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; penalties pursuant to paragraph (20)(A) of the applicable IWC Wage Order; and attorneys' fees and costs.

10. FAILURE TO PAY VACATION TIME.

Pursuant to California Labor Code § 227.3, "[W]henver a contract of employment or Employer policy provides for paid vacations, and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to him as wages at her final rate in accordance with such contract of employment or Employer policy respecting eligibility or time served." During the relevant time period, Employer failed to pay Claimant and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employer violated California Labor Code § 227.3.

Claimant, for herself and other Aggrieved Employees, will therefore seek PAGA default penalties pursuant to Labor Code § 2699; California Labor Code § 227 penalties; and attorneys' fees and costs.

11. VIOLATION OF LABOR CODES 226, 1198.5, & 2104, FAILURE TO PROVIDE PERSONNEL FILE & QUOTA DESCRIPTION

Employer was served with a valid request for Claimant's personnel file and Employer refused to provide Claimant's personnel file and refused to disclose Claimant's written quota description as provided for under Labor Code sections 226, 2104. A request for Claimant's personnel file and quota description was submitted timely and more than 21 days passed, and Employer failed to comply with Labor Code § 226, 1198.5, 2104.

12. VIOLATION OF CALIFORNIA'S WAREHOUSE QUOTA LAWS

Employer knew or should have known it imposed systematic quota and production demands on Claimants and other Aggrieved Employees which violated the rights of employees pursuant to Labor Code sections 2100 et. seq. Employer had a duty to ensure its production demands/quotas did not prevent Claimants' and other Aggrieved Employees' from complying with laws pertaining to meal periods, rest periods, bathroom breaks, and/or expose them to safety or OSHA hazards. Employer is a "covered employer" and its warehouse employees are "covered employees."

Employer implements quotas as defined in Labor Code § 2100(h) and subjects Claimant and Aggrieved Employees to adverse employment action as defined in Labor Code § 2102 which states:

“An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to [Section 2101](#).”

Furthermore, Employer willfully, knowingly and intentionally failed to establish quotas that did not harm Claimants and Aggrieved Employees all to increase Employer’ profits without concern for employee safety. Employer, in fact, tracked meals, rest, and recovery periods that were not provided and did nothing to change its policies and practices. Employer also restricted and monitored the use of bathroom facilities and charged the time employees used the bathroom against their quota. In other words, employees who did not wait to use the restroom during meal or rest periods or before or after their shift, were penalized for not meeting quota either through reprimands, warnings, and termination. Employer maintained a point system designed to prevent employees from complying with California law as alleged in this notice and systematically used to punish employees.

Claimants and other Aggrieved Employees were not permitted to take compliant breaks, including recovery periods when requested, due to Employer’ unlawful policy and practice to favor production goals over employee rights. Consequently, Claimants and other Aggrieved Employees were not authorized or permitted to take breaks, including first, second, and third rest breaks and Employer’ policies prevented Aggrieved Employees from taking compliant breaks as required by California law.

Furthermore, Employer did not provide to each employee a written description of each quota the employee works under, maintained secret (undisclosed) quotas, and failed to provide written disclosures each and every time quotas changed (Labor Code §2103) either seasonally, daily, hourly, weekly, and/or monthly. This includes the number of tasks to be performed or materials that must be produced or handled within a time period, and any potential adverse employment action that could result from failing to meet the quota. This information has not been given by Employer to all new employees when hired commencing January 1, 2022, to the present.

Employer failed to produce Claimants’ production quota upon pursuant to Labor Code sections 2100-2112 to new hires, current, and former employees.

Employer has been previously sued for many of the violations alleged herein, and rather than change its policies, it continues to violate the law intentionally and willfully. In fact, Employer have been the subject of OSHA investigations and DIR investigations and have been

financed and rather than comply with authorities and the state it continues to violate California's quota and labor laws.

13. VIOLATION OF CALIFORNIA'S TEMPERATURE & HEAT ILLNESS PREVENTION LAWS

Furthermore, Employer failed to maintain adequate temperature which created excessive heat or humidity exposing Claimants and Aggrieved Employees to be exposed to temperature related hazards. Employer failed to maintain a comfortable working environment. The IWC Wage Orders require temperature to be maintained at comfortable levels. Section 15 of the Wage Orders states the following:

15. Temperature

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60 (degrees), a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 60 degrees.

(C) A temperature of not less than 68(degrees) shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

Pursuant to Section 15(b), Defendant has and have always had an affirmative duty to prevent and reduce excessive heat or humidity created by the work environment, location, department or any other area of work that creates excessive heat and where employees are exposed to heat illness thereby requiring safety measures including, but not limited to, recovery periods. Defendant, however, has no written policy regarding preventative measures as required by California law or as required by Labor Code § 226.7.

Claimant will also seek injunctive relief to enforce compliance with California's quota laws.

Sincerely,



Jose R. Garay, Esq.

EMPLOYER NOTICE PROVIDED VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Agent for Service of Process for *YAMAMOTO OF ORIENT INC.*

Attn:

**1505 Corporation
REGISTERED AGENT
SOLUTIONS, INC.**

Agent

**Re: YAMAMOTO OF
ORIENT INC.**

*CA
Registered
Corporate
(1505) Agent
Authorized
Employee(s)*

**JACKSON YANG 720
14TH ST, SACRAMENTO,
CA 95814**