

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

September 5, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Mannette Mann v. Yusen Logistics (Americas) Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Mannette Mann (“Ms. Mann”) in claims arising from her employment with Yusen Logistics (Americas) Inc.; and Does 1 through 100 (collectively “Yusen”). Ms. Mann is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Yusen’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” include all of Yusen’s non-exempt employees who worked for Yusen in California during the one year immediately preceding the date of this letter through the present.

Yusen employed Ms. Mann in the non-exempt job position of “Forklift Operator” (or similarly titled position). Ms. Mann has been employed by Yusen from approximately February 2023 to the present.

During Ms. Mann’s employment with Yusen, Yusen required Ms. Mann and other aggrieved employees to be subject to an alternative workweek schedule (“AWS”) that called for four 10-hour shifts per workweek without paying overtime for hours worked over 8 hours but less than 10 hours. However, upon information and belief, the AWS was not properly instituted because, prior to any AWS election, Yusen failed to follow the notice/disclosures procedures required by Wage Order 9, § 3(C), including (but not limited to) by failing to provide written notice/disclosure regarding the AWS in Spanish, even though at least 5% of Yusen’s workforce primarily speaks Spanish. As a result of its failure to properly institute an AWS, Yusen has improperly failed to pay Ms. Mann and other aggrieved employees time-and-a-half for all overtime hours worked, resulting in unpaid overtime wages.

Yusen has also failed to provide Ms. Mann and other aggrieved employees with all legally compliant meal periods due to Yusen’s meal period policies/practices. Specifically, Ms. Mann was not provided with meal periods that were a full 30 minutes of

“net rest” in an area away from the work station that is appropriate for rest, which employers are required by the Wage Order to maintain for their employees to use during their meal and rest periods. Because of the distance between the breakroom, the time clocks, and the areas where Ms. Mann performed her work duties, including the area between where she was required to park her forklift prior to walking to the time clocks and breakroom, Ms. Mann and other aggrieved employees would have to shorten their meal periods several minutes in order to return to work before the end of 30 minutes. Thus, Ms. Mann and other aggrieved employees were not provided with full 30-minute meal periods of net rest in an area appropriate for rest away from the workstation. In addition, Yusen failed to provide Ms. Mann and other aggrieved employees with second meal periods on shifts over 10.0 hours. On those occasions when Ms. Mann was not provided with all legally-required meal periods to which she was entitled, Yusen failed to compensate Ms. Mann with the proper meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7, calculated at the regular rate of pay instead of at Ms. Mann’s base rate of pay.

Yusen has also failed to authorize and permit all required rest periods for Ms. Mann and other aggrieved employees. Specifically, Yusen failed to authorize and permit an uninterrupted 10-minute rest period for every four hours worked or major fraction thereof. Ms. Mann was not provided with rest periods that were a full 30 minutes of “net rest” in an area away from the work station that is appropriate for rest, which employers are required by the Wage Order to maintain for their employees to use during their meal and rest periods. Because of the distance between the breakroom and the areas where Ms. Mann performed her work duties, Ms. Mann and other aggrieved employees would have to shorten rest meal periods several minutes in order return to their work stations before the end of ten minutes. On those occasions when Ms. Mann was not authorized and permitted all legally required rest periods to which she was entitled, Yusen failed to compensate Ms. Mann with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Yusen maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

Yusen also failed to properly calculate the regular rate of pay when calculating their employees’ sick time pay by failing to include all forms of non-discretionary incentive pay when calculating the sick pay rate. Instead, Yusen calculated sick time pay at the base rate earned by Ms. Mann and other non-exempt employees, thus providing Ms. Mann and other non-exempt employees with sick time pay at below the regular rate of pay, in violation of California law. This failure to include all forms of non-discretionary incentive pay in the regular rate of pay also resulted in an underpayment of overtime wages.

As a result of Yusen’s failure to compensate Ms. Mann and other aggrieved employees for overtime wages, all meal period premium wages, and sick time pay at the correct regular rate of pay, Yusen maintained inaccurate payroll records and failed to issue accurate, compliant, itemized wage statements.

As described above, Yusen committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 9 (“Wage Order 9”):

Overtime Violations

As alleged above, Yusen was, and is, required to properly pay Ms. Mann and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 510, 558, 1194(a) and 1198; Wage Order 9, § 3. Wage Order 9, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work in the workweek. Wage Order 9, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. As described herein, Yusen caused Ms. Mann and other aggrieved employees to work overtime and/or double-time hours but did not compensate Ms. Mann or other aggrieved employees at one and one-half times (or two times) their “regular rate” of pay for such hours

Meal Period Violations

As alleged above, Yusen failed to provide Ms. Mann and other aggrieved employees with all required and compliant meal periods, due to Yusen’s meal period policies/practices that often fail to provide first meal periods before the end of the fifth hour of work, and which fail to provide second meal periods for shifts of over 10.0 hours. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. As a result, Ms. Mann and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, Yusen also failed to authorize and permit Ms. Mann and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 12. As a result, Ms. Mann and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Yusen was required to furnish Ms. Mann and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned, and the name of the legal entity that is the employer. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 9, § 7. As a result of Yusen's failure to pay all required meal and rest period premium wages, Yusen maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Mann and other aggrieved employees in violation of Labor Code § 226. Yusen's failure to comply with its wage statement obligations was knowing and intentional, and Ms. Mann and other aggrieved employees have suffered injury as a result.

As an "aggrieved employee," Ms. Mann will initiate a civil action on behalf of herself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Mann's own investigation, and on information and belief, Yusen committed and continues to commit the following Labor Code violations:

- a. Yusen violated Labor Code §§ 204, 510, 1194, and 1198 by failing to pay Ms. Mann and other aggrieved employees all overtime compensation earned;
- b. Yusen violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Mann and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- c. Yusen violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Ms. Mann and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Mann and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- d. Yusen violated Labor Code § 204 by failing to pay Ms. Man and other aggrieved employees all wages earned at least twice during each calendar month; and
- e. Yusen violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Mann and other aggrieved employees.

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Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Yusen if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to be 'P. Haines', with a long horizontal flourish extending to the right.

Paul K. Haines

cc: Yusen Logistics (Americas) Inc. (via certified mail)