



MAKAREM
& ASSOCIATES
Attorneys At Law

Ron Makarem*
Samuel Almon
Jared Walder
Alexis Hames
Dan Bass
Marina Serrano

Of counsel
Deborah Gutierrez
Cameron Stewart
Marcus Jackson
Kirk Donnelly

November 1, 2022

FILED ONLINE WITH THE LWDA

ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

SENT VIA CERTIFIED MAIL AND EMAIL

SOLARIS TRADING CORPORATION
c/o Todd B. Scherwin
Nazanin Afshar
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
tscherwin@fisherphillips.com
nafshar@fisherphillips.com

Re: *Jorge Hernandez Zuluaga v. Solaris Trading Corporation et al.*

Written Notice – Private Attorneys General Act (“PAGA”) – California Labor Code
§ 2698 *et seq.*

To PAGA Administrator and to Whom It May Concern:

Our firm represents Jorge Hernandez Zuluaga and other similarly situated aggrieved employees (collectively, “Claimant”) in his claim against Solaris Trading Corporation (“Solaris”) and its agents (together, “Respondents”) in connection with various violations of the California Labor Code and applicable Industrial Welfare Commission Wage Order(s).

In accordance with the required notice under Labor Code §2699.3 of the Private Attorneys General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”) and the Respondents of the below Labor Code violations for all non-exempt aggrieved employees of Solaris. As also required by Labor Code §2699.3, this notice is contemporaneously being filed online.

11601 Wilshire Bl. Ste. 2440 - Los Angeles, CA 90025

Office: 310.312.0299 - Fax: 310.312.0296

www.makaremlaw.com

*Certified Legal Malpractice Specialist

California law permits individuals to sue their respective employers and/or anyone acting on behalf of the employer who violates or causes to be violated applicable wage and hour laws on behalf of the Labor and Workforce Development Agency to eradicate violations of the Labor Code by allowing private plaintiffs to seek and recover the civil penalties associated with each Labor code violation (Labor Code §2698 *et seq.*). Not only does a “PAGA” action authorize a plaintiff to recover the penalties for violations that harm the plaintiff, it also authorizes the recovery of penalties for violations affecting all of the other employees of the plaintiff’s employer.

Under PAGA, plaintiffs are entitled to recover the civil penalties provided by statute for the violations alleged, or, if no civil penalties are provided by statute, plaintiffs are entitled to \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Claimant hereby issues this Notice to both the LWDA and Respondents in compliance with the notice requirements of Labor Code section 2699.3(a)(1).

Based on the violations described herein, it is our client’s intention to file a representative action against Respondents seeking to recover unpaid wages, civil penalties, and attorneys’ fees. We hereby demand that Respondents immediately act to rectify the various violations described herein, including, without limitation, paying all current and former employees wages for all hours worked, paying all overtime wages for overtime hours worked, paying minimum wages for all hours worked, meal and rest period premiums in the amount of one hour of pay at the employees’ regular rate of pay for each day with a non-compliant meal period and another hour of pay for each day with a non-compliant rest period, plus all penalties and interest. We further demand that Respondents immediately correct its non-compliant policies and procedures relating to these various Labor Code violations.

Claimant was first hired by Solaris in or around 1987 as a mechanic. On or around March 21, 2020, Respondents terminated Claimant’s employment. Claimant gives notice of the following specific provisions of the Labor Code that have been violated and the facts and theories to support the alleged violations:

Violation	Facts and Theories
Labor Code sections 204, 218, 218.5, 218.6 & 1194	Labor Code section 204 provides that covered employees are entitled to receive all wages earned for the pay period corresponding to the payday. Here, Respondents regularly failed to timely pay Claimants all wages earned for labor performed each pay period. For example, Respondents regularly suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. Respondents failed to pay Claimants overtime wages for all overtime hours worked and failed to pay minimum wages for all hours worked. Respondents also failed to provide the requisite one hour of pay at the regular rate of compensation for shifts with non-compliant meal periods and/or rest breaks. Accordingly, Respondents violated the above code sections.

Labor Code section 1194, 1197, and 1197.1	Labor Code section 1194 provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Here, Respondents failed to pay Claimants their earned minimum and/or overtime wages for all hours worked. Respondents regularly required Claimants to work off the clock, failed to pay Claimants at their overtime rate for overtime hours worked, and/or failed to pay minimum wages for all hours worked.
Labor Code sections 510, 558, and 1194	Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Labor Code section 1194 provides “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Here, Claimants were not paid minimum wages for all hours worked. Claimants also worked in excess of eight hours in one workday and/or in excess of 40 hours in one workweek, and were not compensated with overtime pay. Claimants also worked seven days straight without being paid one and one-half times the regular rate of pay for the first eight hours of work on the seventh day. As a result of this practice, Labor Code sections 510 and 1194 were violated.
Labor Code Sections 226.7 and 512	Labor Code Sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Under these provisions, a first meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee’s 10th hour or work. If an employer fails to provide an employee meal periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

	Here, Claimants regularly worked in excess of five hours per shift and did not receive compliant and timely thirty-minute meal periods. For example, Claimants regularly were not allowed to take their meal period or were required to take it after the fifth hour of the workday depending on how busy the repair shop was. Claimants were not compensated with an hour of pay at their regular rate of pay for shifts when their meal periods were not taken or taken late.
Labor Code section 226.7	Labor Code section 226.7 and IWC 4-2001, section 12 provide that employers shall authorize and permit employees to take rest periods at the rate of (10) minutes net rest time per four (4) hours of work, or major fraction thereof. This means that an employer must provide 10 minutes net rest time for each four- hour period worked by employees. If an employer fails to provide an employee rest periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Here, Employer did not comply with these rest period provisions, as Respondents routinely failed to authorize and permit Claimants to take their ten (10) minute rest periods for each four (4) hours, or major fraction thereof, they had worked. For example, Claimants routinely performed four consecutive hours of work without receiving a ten-minute rest period. Claimants rarely if ever were able to take a compliant 10-minute rest break. Respondents also failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each day on which Claimants did not receive one or more compliant rest periods.
Labor Code Section 226, 226.3	Labor Code Section 226 provides: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

	employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.” Here, Respondents failed to provide compliant wage statements because they failed to reflect all compensable hours, failed to accurately reflect gross wages earned, and/or failed to reflect the correct hourly rate. As another example, Respondents failed to provide compliant wage statements because the wage statements failed to list meal and/or rest period premiums that were owed for shifts with non-compliant meal and/or rest periods. Labor Code 226.3 also provides that “[A]ny employer who violates subdivision (a) of 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation ...” for failure to keep records required in subdivision (a) of Section 226.
Labor Code section 226, 226.3, 1174, and 1174.5	Labor Code section 1174 provides that employers shall keep payroll records showing the hours worked and wages paid to each employee. These records are to be kept in accordance with rules established by the commission, but must be kept on file for a minimum of three (3) years. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).” Here, as a result of the aforementioned practices, including Respondents failing to pay overtime wages for all hours overtime hours worked, failing to pay minimum wages for all hours worked, failing to authorize and permit compliant meal and rest periods and failing to pay meal or rest period premiums, Respondents knowingly and intentionally failed to maintain records, including but not limited to: all hours worked by Claimants, meal periods taken, rest periods taken, and accurate itemized wage statements.
Labor Code Sections 201, 202, and 203	Labor Code Section 201 states that if an employer discharges an employee, earned but unpaid wages at the time of discharge are due and payable immediately. Similarly, Labor Code Section 202 provides “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the

	employee is entitled to his or her wages at the time of quitting.” Under section 203, if an employer willfully fails to pay in accordance with sections 201 or 202, any wages of an employee who is discharged or quits shall continue as a penalty. Here, Respondents failed to pay all earned wages, including wages for time spent undergoing mandatory security checks, unpaid overtime, and wages for non-compliant meal periods to employees who quit or were discharged, in violation of Sections 201 and 202. Nor has Employer paid any of the continuation wages under Section 203.
--	--

Please notify us within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If notice is not received within 65 calendar days of the postmark date of this letter, we will proceed with a civil action for penalties pursuant to Labor Code Section 2699. This civil action will be pursued on behalf of Claimants. Please send the Notice to our office located at 11601 Wilshire Blvd., Suite 2440, Los Angeles, California 90025.

Thank you for your attention to this matter.

Respectfully,

MAKAREM & ASSOCIATES, APLC

By: 
Daniel J. Bass