

KYLE TODD, P.C.

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December 17, 2021

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/207>)

Re: *Simon v. Schnitzer Steel Industries, Inc., et al.*

Dear PAGA Administrator:

Our office represents Sophia Simon (hereinafter, "Ms. Simon") who is pursuing claims for unpaid wages and other labor violations accrued during her time working for her former employers, Schnitzer Steel Industries, Inc. (hereinafter, "Schnitzer") and Pick-N-Pull Auto Dismantlers, Pasadena, Inc. (Pick-N-Pull) (hereinafter also to be referred to as "Respondents"). Ms. Simon is informed and believes, and on this basis alleges, that Schnitzer and Pick-N-Pull are an integrated enterprise and joint employers based on their interrelation of operations, common management, centralized control of labor relations, common ownership, and financial control.

The address for service of process for Schnitzer Steel Industries, Inc. is as follows:

c/o CT Corporation System
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

The address for service of process for Pick-N-Pull Auto Dismantlers, Pasadena, Inc. is as follows:

Joseph P. Faso
4453 Yacht Harbor Dr.
Stockton, CA 95204

Ms. Simon intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Simon seeks relief on behalf of herself, the State of California, and other persons who were employed by Schnitzer and its Pick-N-Pull subsidiaries ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

Schnitzer and Pick-N-Pull's Company-Wide and Uniform Payroll and HR Practices

Schnitzer is a metal recycling and steel manufacturing business, and the parent corporation of numerous subsidiaries including, Pick-N-Pull Auto Dismantlers, Pasadena, Inc. Schnitzer is the

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owner of the Pick-N-Pull chain of self-service auto parts stores with several locations throughout California. Upon information and belief, Ms. Simon alleges that Schnitzer & Pick-N-Pull maintains a Human Resources (HR) department for all of its non-exempt, hourly-paid employees, including Ms. Simon and other aggrieved employees. At all relevant times, Schnitzer and Pick-N-Pull issued and maintained uniform, standardized practices and procedures that prevented compliance with California's Labor Code sections as enumerated herein for all non-exempt, hourly-paid employees in California, including Ms. Simon and other aggrieved employees, regardless of their location or position.

Upon information and belief, Ms. Simon alleges that Schnitzer and Pick-N-Pull maintain a centralized Payroll department at their corporate headquarters, which processes payroll for all non-exempt, hourly paid employees working for Schnitzer and Pick-N-Pull in California, including Ms. Simon and other aggrieved employees. Further, Ms. Simon alleges that Schnitzer and Pick-N-Pull maintain policies and procedures that prevent full and total compliance with its wage statement requirements as it pertains to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee's employment ended. Ms. Simon alleges that the deficient policies and procedures, affecting employees company-wide, have led to the following violations as described throughout this notice.

Violation of California Labor Code §§ 226.7 – Failure to Provide Meal or Rest Periods, Failure to Pay Premium Wages for Missed Meal and Rest Periods, and Failure to Maintain Accurate Payroll Records

California Labor Code section 226.7 mandates that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. Further, Labor Code section 226.7 provides that if an employer fails to provide an employee a meal 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. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

During the relevant time period, Schnitzer and Pick-N-Pull failed to provide Ms. Simon and other aggrieved employees with all of their proper and Labor Code-compliant rest breaks. Ms. Simon and other aggrieved employees were not able to take all of their rest breaks because Schnitzer and Pick-N-Pull failed to relieve them of duty at the statutorily-required intervals set by California law. Schnitzer and Pick-N-Pull's supervisors did not ensure that Ms. Simon and other aggrieved employees would be relieved of duty long enough to take all of their rest breaks at the rate of four hours or major fraction thereof. Schnitzer failed to pay premium compensation for late rest periods and rest periods that were not provided at all.

Schnitzer and Pick-N-Pull also failed to pay Ms. Simon and other aggrieved employees the proper premium compensation for non-compliant meal periods that were not taken at the statutorily-required intervals set by California law, meaning at a rate of every five hours. Schnitzer and Pick-N-Pull did not calculate the premium compensation at Ms. Simon's regular rate of pay because it omitted non-discretionary bonuses and incentive pay from the calculation when issuing meal break premiums to Ms. Simon and other aggrieved employees for meal periods that were not provided in accordance to California law. As a result, Ms. Simon and other aggrieved employees were shorted on the rate at which they were paid for any meal premiums due and owing, resulting Respondents' failure to provide meal periods in accordance to Labor Code Section 512 and the applicable wage order.

Ms. Simon and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.7 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, Schnitzer and Pick-N-Pull failed to timely pay Ms. Simon and other aggrieved employees all wages due to them, including, but not limited to, meal and rest break period premiums calculated at the regular rate of pay of each employee within any time period specified by California Labor Code section 204.

Ms. Simon and aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 204, 210 and/or 2699(a), (f)-(g), to the full extent permitted by law.

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Violation of California Labor Code §§ 226(a) and 1174(d) - Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Schnitzer has not provided Ms. Simon and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, Schnitzer and Pick-N-Pull knowingly and intentionally provided Ms. Simon and other aggrieved employees with uniform incomplete and inaccurate wage statements. The wage statements Ms. Simon and other aggrieved employees received were incorrect because Ms. Simon and other aggrieved employees were entitled to premium payments for non-compliance with California's break requirements, but ultimately did not receive such premiums. Furthermore Ms. Simon and other aggrieved employees were shorted on meal period premiums because Schnitzer and Pick-N-Pull did not calculate the premium compensation at each employee's regular rate of pay because it omitted non-discretionary bonuses and incentive pay from the calculation. As a result, the wage statements Ms. Simon and other aggrieved employees received did not list all wages owed. These inaccurate wage statements made it more difficult for Ms. Simon and other aggrieved employees to determine what compensation they were owed but were not paid.

Because Schnitzer and Pick-N-Pull did not accurately compensate Ms. Simon and other aggrieved employees for all hours worked, specifically with respect to meal and rest break premiums as described above, Schnitzer and Pick-N-Pull did not list the correct amount of gross wages and net wages earned by Ms. Simon and other aggrieved employees in compliance with section 226(a)(1) and 226(a)(5), respectively.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and

complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), Schnitzer and Pick-N-Pull willfully failed to maintain accurate payroll records for Ms. Simon and other aggrieved employees showing the necessary and correct premium rates of pay for non-compliant meal and rest periods.

Because of the aforementioned practices, amongst other known violations, Schnitzer and Pick-N-Pull failed to provide the correct net and gross wages earned on wage statements. They also failed to maintain accurate records of all earnings of Ms. Simon and aggrieved employees, as required by Labor Code Section 1199, including section 7 of all applicable wage orders. Ms. Simon and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 1199, 226, 226.3, 226.6, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (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.

Schnitzer and Pick-N-Pull failed to pay Ms. Simon and other aggrieved employees who are no longer employed by Schnitzer and Pick-N-Pull all of their earned wages, including, but not limited to, payment for all meal and rest break period violations, either at the time of discharge, or within seventy-two (72) hours of their leaving Schnitzer's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Simon and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§233, 246 – Failure to Pay All Accrued Sick Days

Because of Respondents' failure to incorporate non-discretionary pay or non-discretionary bonuses into calculating the regular adjusted rate for purposes of issuing and paying for sick days or sick leave, Respondents also failed to recognize and appropriately pay Ms. Simon and other aggrieved employees for all sick hours earned and paid during the relevant period, as required by California Labor Code sections 246 and 233.

Accordingly, Ms. Simon and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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California Labor Code §§558 and 558.1

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Schnitzer and Pick-N-Pull, at all relevant times, were an employer or person acting on behalf of an employer(s) who violated Ms. Simon’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Simon seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Simon, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Respondents for violations of California Labor Code sections 201, 202, 203, 204, 210, 222.5, 226, 226(a), 226.3, 226.6, 226.7, 512, 558, 558.1, 1174, 1198, and 1199.

Therefore, on behalf of all aggrieved employees and herself, Ms. Simon seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. On behalf of Ms. Simon and other aggrieved employees, we respectfully request the Labor Workforce Development Agency notify our office within sixty (60) days if it wishes to investigate further.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Los Angeles, CA 90017
(323) 208 – 9171

Best Regards,
/s/ Kyle Todd

Kyle Todd, Esq.