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ENDORSED
FILED
ALAMEDA COUNTY

JAN 14 2019

CLERK OF THE SUPERIOR COURT



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15 *Attorneys for Plaintiffs*

16
17 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
18
19 FOR THE COUNTY OF ALAMEDA
20
21 (UNLIMITED JURISDICTION)
22

23 FRANCISCO ZAMORA, MANUEL
24 RODRIGUEZ, and SANTIAGO
25 MACIAS,

26 Plaintiffs,

27 vs.

28 SCHNITZER STEEL INDUSTRIES,
INC.; SECA EQUIPMENT REMOVAL &
DISMANTLING, INC. and DOES 1-50,
INCLUSIVE,

Defendants.

Case No.: RG 16833438

**DECLARATION OF ENRIQUE
MARTINEZ IN SUPPORT OF
UNOPPOSED MOTION FOR
APPROVAL OF PRIVATE ATTORNEY
GENERAL ACT (PAGA) PENALTIES
SOUGHT AS PART OF INDIVIDUAL
SETTLEMENT AGREEMENT**

1 I, Enrique Martinez, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and an
3 attorney with the Law Offices of John E. Hill in Oakland, California. I am counsel of record for
4 the Plaintiffs in this action. I have personal knowledge of the facts set forth in this declaration
5 and could and would testify competently to them.

6 2. I make this Declaration in support of Plaintiffs' Unopposed Motion for Approval
7 of Private Attorney General Act (PAGA) Penalties Sought as Part of Individual Settlement
8 Agreement ("Settlement Agreement") and to attest to the material terms of the Settlement
9 Agreement.

10 3. On February 26, 2016, I mailed a Private Attorney General Act (PAGA) letter to
11 the Labor Workforce Development (LWDA) for only the three Plaintiffs in this case. Attached
12 hereto as Exhibit 1 is a true and correct copy of the PAGA letter.

13 4. Plaintiffs' Complaint in this action seeks the recovery of all penalties available
14 under the law, including claims for penalties under PAGA for only the three Plaintiffs. The crux
15 of Plaintiffs' Complaint was for alleged Fair Employment and Housing Act (FEHA) claims, but it
16 also included Labor Code violations which were ancillary claims.

17 5. On May 8, 2017, and without admitting liability, Defendant SECA sent Plaintiffs
18 checks for alleged meal period violations under the Labor Code in the amount of \$6,166.50 for all
19 three Plaintiffs. Plaintiffs alleged they were owed more in lunch violations and also in missed
20 rest periods, and did not cash the checks.

21 6. The Parties attended mediation on November 20, 2018 with experienced mediator
22 Hon. David A. Garcia (Ret.) at JAMS in San Francisco and were able to reach an agreement.

23 7. The Parties settled all claims for penalties the Plaintiffs arguably could have
24 recovered under PAGA, should the case have gone to trial, and the Court found any such penalty
25 was only available through PAGA.

26 8. The Parties agreed that only the Plaintiffs' PAGA claims were being released, and
27 not those of any other workers. The Parties attributed a settlement value of \$1,500 to Plaintiffs'
28 PAGA claims. Of this amount, 75% will be paid to the Labor Workforce Development Agency

1 with the remainder to be paid to Plaintiffs. I attest that the settlement amount for the Labor Code
2 claims (\$7,500) covered approximately 37 percent of Plaintiffs' meal and rest premiums
3 (\$20,500) allegedly owed to Plaintiffs under the California Labor Code.

4 9. Our clients, with their counsel, considered other factors in arriving at the
5 settlement value, including: (1) unrecorded rest periods; (2) Defendants denied any liability,
6 including any liability to PAGA in this matter, which would have entitled Plaintiffs to recover
7 penalties under PAGA; and, (3) factual and legal matters would have been further litigated given
8 the disputes and thus significant investments of time and expense by the Parties to litigate the
9 claims for penalties.

10 10. Based on the various factors discussed above, I respectfully request the Court
11 approve the PAGA penalties sought as part of the Parties' Settlement Agreement.

12 I make this Declaration under penalty of perjury under the laws of the United States and
13 the State of California, at Oakland, California.

14
15 Dated: January 9, 2019

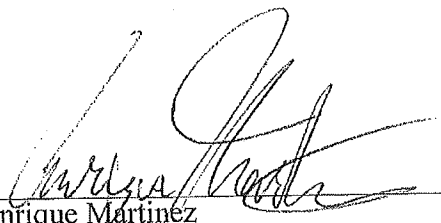
16 By: 
17 Enrique Martinez
18 Attorney for Plaintiffs
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28

EXHIBIT 1

LAW OFFICES OF JOHN E. HILL

A PROFESSIONAL CORPORATION

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Enrique Martinez

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The State Bar of California
Board of Legal Specialization

February 26, 2016

CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

SECA Equipment Removal & Dismantling, Inc.
684 Bitritto Ct.
Modesto, CA 95356

C T Corporation System
c/o Schnitzer Steel Industries, Inc.
818 West Seventh St., Ste. 930
Los Angeles, CA 90017

Schnitzer Steel Industries, Inc.
1101 Embarcadero West
Oakland, CA 94607

Re: Claims of Francisco Zamora, Manuel Rodriguez, and Santiago Macias
Rodriguez Against SECA Equipment Removal & Dismantling, Inc.
and Schnitzer Steel Industries, Inc.

Dear Labor and Workforce Development Agency, SECA Equipment Removal & Dismantling, Inc. and Schnitzer Steel Industries, Inc.:

Please be advised that Francisco Zamora, Manuel Rodriguez, and Santiago Macias Rodriguez ("Plaintiffs") have retained the Law Offices of John E. Hill to represent them for claims against their employers SECA Equipment Removal & Dismantling, Inc., ("SECA") and Schnitzer Steel Industries, Inc. ("Schnitzer") (hereinafter referred to collectively as "Defendants").

Pursuant to Labor Code §§ 2699(h), 2699.3(a) and 2699.5(a), this letter shall serve as Plaintiffs' wage/hour and penalties claim letter against Defendants. Plaintiffs intend to file a civil action against Defendants and, as "aggrieved employees," seek penalties under the Private Attorneys General Act of 2004 ("PAGA").

FACTUAL BACKGROUND

Plaintiffs Francisco Zamora, Manuel Rodriguez, and Santiago Macias Rodriguez were employed by Defendants. Plaintiff Francisco Zamora worked for Defendants from approximately July 2014 to August 2015. Plaintiff Manuel Rodriguez worked for Defendants from approximately March 2014 to September 2015. Plaintiff Santiago Macias Rodriguez worked for Defendants from approximately February 2013 to September 2015. Plaintiffs handled recycled material, including parts from the old Bay Bridge. For instance, Plaintiffs cut enormous pieces of iron into small pieces at Schnitzer's recycling yard located in Oakland that were shipped out to various locations.

Defendants required Plaintiffs to show up to Defendant Schnitzer's yard and work under the supervision of Schnitzer's agents. Plaintiffs typically worked six days per week and over 8 hours per day. Plaintiffs were paid at an hourly rate with a paycheck. After Plaintiffs were diagnosed with high lead levels due to the handling of the Bay Bridge parts, Defendants terminated them.

During Plaintiffs' employment, Defendants failed to provide them with all of their legally compliant meal and rest periods or pay them meal/rest premium compensation for missed meal and rest periods, as required by Labor Code §§ 226.7 and 512 and IWC Wage Order No. 1-2001. As a result, Plaintiffs also were not provided with any accurate itemized wage statements. Plaintiffs' claims against Defendants are set forth in detail below.

FAILURE TO PROVIDE ADEQUATE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, Cal. Admin Code Title 8, §11040,
"Meal Period" and "Rest Period" Sections of IWC Wage Order 1-2001)

Pursuant to the "Meal Period" Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Pursuant to the "Rest Period" Section of the applicable IWC Wage Order, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." If an employer fails to provide an employee a meal or rest period in accordance with the applicable provision of the order, 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.

Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the

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employee with a second meal period of not less than 30 minutes" Labor Code § 226.7(a) states 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."

Defendants did not provide Plaintiffs with all of their legally compliant meal and rest periods because they were not given timely and uninterrupted meal and rest periods due to the demands of their supervisors and the job. Further, when Plaintiffs worked more than 10 hours per day, they were not provided with a second meal period. Labor Code § 226.7(b) states: "[I]f 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 work day that the meal or rest period is not provided." Consequently, Defendants must pay one hour of wages for each day a proper meal period was not provided, and one hour of wages for each day a proper rest period was not provided. Plaintiffs seek to pursue remedies pursuant to the PAGA for these violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code § 226)

Defendants are required under Labor Code § 226(a) to furnish each of their employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned, (5) the inclusive dates of the period for which the employee is paid, (6) the name of the employee and the last four digit of the social security number or an employee identification number, (7) the name and address of the legal entity that is the employer, (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Defendants did not provide Plaintiffs with accurate itemized wage statements complying with the requirements of § 226(a) including, but not limited to, providing the total hours worked by the employee and gross wages earned because Defendants failed to compensate Plaintiffs for their missed meal and rest breaks. As a result, Plaintiffs were prevented from ascertaining the true amount of wages due and owed to them.

Labor Code § 226.3 imposes a civil penalty of two hundred fifty dollars (\$250) for the first violation, and one thousand dollars (\$1,000) for each subsequent violation of Labor Code section 226(a). Plaintiffs seek to pursue remedies pursuant to the PAGA for these violations.

**CIVIL PENALTIES FOR VIOLATION OF LABOR CODE &
IWC WAGE ORDERS**
(Labor Code § 558)

Labor Code § 558 subjects any employer or anyone acting on behalf of an employer who violates Part 2, Chapter 1 of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil

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penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation, in addition to an amount sufficient to recover underpaid wages.

As set forth above, Defendants underpaid Plaintiffs by failing to pay them meal and rest period premium pay and by failing to provide them with adequate meal and rest periods as required by Labor Code § 512 and IWC Wage Order 1-2001. As a result, Defendants are liable for civil penalties under Labor Code § 558, including penalties in the amount of all wages due and unlawfully withheld by Defendants.

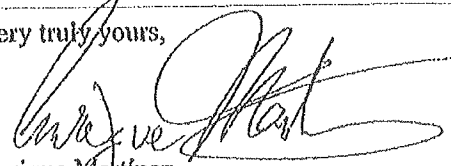
ATTORNEYS' FEES, INTEREST, & PENALTIES
(Labor Code §§ 218.5, 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code §§ 218.5 and 2699(g)(1) give employees the right to recover in a civil action the unpaid balance of the full amount of their owed wages, including reasonable attorneys' fees, and costs of suit. Accordingly, Defendants are liable for attorneys' fees and costs. Plaintiffs have already incurred and will continue to incur costs in seeking to recover back-owed wages. Additionally, Plaintiffs will seek civil penalties under Labor Code § 2699, which will amount to \$100 per pay period for the initial violation and two hundred dollars (\$200) per pay period for each subsequent violation as a result of the Labor Code violations set forth above.

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiffs become aware of additional compensation owed to them, they reserve the right to revise these facts and/or add any new claims by amending the claim letter. Based on the foregoing, Plaintiffs seek to file a civil action to pursue their own claims against Defendants and seek to pursue remedies pursuant to the PAGA for these violations.

Should you have any questions and/or comments, please do not hesitate to contact the undersigned. In the meantime, I look forward to your response.

Very truly yours,



Enrique Martinez
Attorney for Plaintiffs