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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUDY GONZALEZ,

Plaintiff,

vs.

XTREME MANUFACTURING, LLC; and
DOES 1-100, inclusive,

Defendants.

Case No.: 1:20-cv-01704-JLT-SKO

DECLARATION OF JENNY D.
BAYSINGER IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: March 10, 2023
Time: 9:00 a.m.
Dept.: Courtroom 4, Seventh Floor
Judge: United States District Judge
Jennifer L. Thurston

I, Jenny D. Baysinger, declare:

1. I am an attorney duly licensed to practice before all the courts of this state and am a shareholder of Mayall Hurley P.C., attorneys for Plaintiff Rudy Gonzalez, individually, on behalf of all others similarly situated, and as a proxy for the LWDA ("Gonzalez" or "Plaintiff").

2. I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto under oath.

Procedural History

3. My office began investigating Mr. Gonzalez's claims in September 2020 and undertook representation of him in November 2020.

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1 4. On December 1, 2020, my office provided written notice to the Labor and Workforce
2 Development Agency (“LWDA”) and Defendant Xtreme Manufacturing, LLC (“Xtreme” or
3 “Defendant”), on behalf of Gonzalez regarding specific provisions of the Labor Code alleged to have
4 been violated by Xtreme, including the facts and theories to support those alleged violations.

5 5. On December 2, 2020, my office reached out to Xtreme Manufacturing, LLC, at its
6 corporate location in Henderson, Nevada, to formally request copies of Plaintiff’s personnel and
7 payroll records.

8 6. On December 4, 2020, my office filed a Class Action Complaint in the United States
9 District Court, Eastern District of California alleging eight (8) causes of action, including 1) failure to
10 pay minimum wage, 2) failure to pay overtime, 3) failure to provide meal periods, 4) failure to provide
11 rest periods, 5) failure to reimburse business expenses, 6) failure to pay all wages at the end of
12 employment, 7) failure to furnish accurate, itemized wage statements, and 8) unfair business practices
13 (the “Class Claims”).

14 7. In the wake of service of the initial Complaint, I met and conferred with counsel for
15 Xtreme regarding claimed deficiencies in the pleadings. After the notice period outlined in California
16 Labor Code section 2699.3 expired (and in order to bolster the factual allegations Xtreme’s counsel
17 contended were lacking), on February 22, 2021, I filed a First Amended Class Action Complaint for
18 Damages (the “FAC”) adding a cause of action seeking to assess and collect civil penalties pursuant to
19 the PAGA and two (2) individual claims for failure to timely provide personnel and payroll records.

20 8. In April 2021, the Parties exchanged initial disclosures. On April 8, 2021, my office
21 also propounded Interrogatories, Set One and Requests for Production of Documents, Set One on
22 Xtreme.

23 9. Between the filing of the FAC and May 2021, the Parties also continued to meet and
24 confer regarding additional deficiencies Xtreme’s counsel contended remained, particularly as to
25 Gonzalez’s UCL claim.

26 10. In May 2021, the Parties began discussing the potential of early mediation. On May 7,
27 2021, the Parties agreed to mediate with experienced wage and hour mediator Lou Marlin and

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1 scheduled mediation for September 7, 2021. In light of the agreement to mediate, the Parties stayed
2 formal discovery in favor of informal pre-mediation information exchange.

3 **Investigation, Discovery**

4 11. Through independent inquiry, research, and informal discovery, Class Counsel
5 thoroughly and diligently investigated and pursued the Class Claims. This process has included, but
6 not been limited to, (1) obtaining and reviewing Plaintiff's personnel file, payroll records, and time
7 records through formal and informal discovery; (2) researching Defendant, the scope of its operations
8 (both within and outside of California); (3) identifying, researching, and pleading the appropriate
9 claims, including amending the Lawsuit to assert additional claims as they ripened and/or were
10 discovered and to address alleged deficiencies identified by defense counsel; (4) exhausting
11 administrative remedies; (5) identifying, requesting, securing, and reviewing pertinent policies,
12 practices, and procedures; (6) identifying, requesting, and securing the payroll and time records for all
13 Class Members between December 5, 2016 and October 28, 2021; (7) propounding informal discovery
14 to secure relevant policy documents and numerical information regarding the size of the classes and
15 the scope of the claims, (8) retaining an expert to analyze the payroll and time data provided by
16 Defendant and personally conducting spot checks to ensure the accuracy of the damages calculations;
17 (9) creating a reliable damages model; and (10) developing and implementing a strategy for mediation
18 and settlement.

19 12. Between May 2021 and the present, Plaintiff propounded formal discovery that was
20 then set aside in favor of informal pre-mediation data and information exchange.

21 13. In advance of mediation, in October 2021 Xtreme provided Class Counsel with
22 numerical information identifying the number of Class Members, the number of workweeks in the
23 Class Period, the number of PAGA Members, the number of pay periods in the PAGA Period, the
24 number of meal period premiums paid, the average hourly rate, and the total number of Class
25 Members whose employment ended after December 4, 2017. At that time Xtreme also provided an
26 agreed upon sampling of time and wage records for Class Members,

27 14. After some apparent discrepancies/deficiencies with the data provided, Xtreme
28 ultimately agreed to provide *all* of the time and wage data for Class Members for the time period

1 December 5, 2016 through October 28, 2021. This production consisted of hundreds of pages of
2 documents relating to its policies, practices and procedures, as well as more than 400,000 line items of
3 payroll and time data (each line consisting of multiple data points) relating to 205 putative Class
4 Members. It is my understanding the data informally provided includes the entirety of all putative
5 class members during that timeframe; nearly the entire Class Period. In addition, the Parties have
6 spoken at length about the strengths and weaknesses of each sides' claims and defenses, the
7 certifiability of the claims, and the scope of Defendant's potential liability.

8 15. My office retained a qualified and experienced expert to analyze the data and create a
9 damages model for use during the mediation. This included providing full evaluation of all of the data
10 furnished by Xtreme and then extrapolating to include the time period December 4, 2016 through
11 March 1, 2022 (the "Class Period").

12 16. Prior to the mediation, I had multiple discussions with Plaintiff's retained expert to
13 ensure the parameters of the analysis were appropriate and accurate, the data provided was usable and
14 reliable (including cross-checking with Plaintiff's time records to ensure accuracy), and the reliability
15 of the damages model. I also personally spot-checked a number of calculations to ensure their
16 accuracy.

17 **Settlement Negotiations and Mediation**

18 17. The Parties ultimately attended a full-day mediation with Lou Marlin on December 23,
19 2021. This was after the initial September 7, 2021 mediation date had to be rescheduled due to
20 difficulties/unexpected delays with the data exchange. The Parties' December 23, 2021 mediation
21 session had to be suspended after a few hours due to an unexpected health emergency facing counsel
22 for Xtreme.

23 18. The Parties scheduled a continued mediation for February 22, 2022. Between
24 December 23, 2021, and February 22, 2022, the Parties engaged in ongoing negotiations with the
25 assistance of Mr. Marlin. Prior to the continued mediation date, the Parties reached an agreement in
26 principle to resolve the entirety of the Class Claims.

27 19. At the time of the mediation (and preliminary approval), it was estimated that there
28 were 219 members of the Class who worked a total of 19,676 workweeks during the Class Period.

20. According to the Declaration of Evelin Reyes, submitted concurrently herewith, the Class actually consists of 218 Class Members who worked a total of 19,673 workweeks. These slight decreases only serve to increase the benefits of the Settlement to the Class.

21. On April 1, 2022, the Parties executed a Memorandum of Understanding memorializing their agreement in principle.

22. After months of additional negotiations regarding the terms of a long-form settlement agreement, in June 2022 the Parties agreed to and executed the Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement Agreement” or “SA”), a true and correct, fully executed copy of which is attached as **Exhibit 1** hereto.

23. There was no fraud or collusion at the mediation with Mr. Marlin or in the subsequent settlement negotiations, all of which were adversarial and conducted at arms’ length.

Class Counsel’s Damages Analysis and Valuation of the Class Claims

24. The Settlement Agreement represents a compromise of highly disputed claims. Xtreme vigorously denies Plaintiff’s allegations in their entirety, denies that certification is appropriate (except for settlement purposes), contends it has complied with the law, and asserts numerous affirmative defenses, both legal and factual.

25. The FAC and Settlement have and will result in substantial benefits to all Class Members and is in the collective best interest of the Class. Specifically, the Settlement requires Xtreme to pay a \$290,000 GSA to be distributed amongst 218 Participating Class Members. This is expected to result in a cognizable average recovery of \$745.12 per Class Member and \$8.25 per workweek.

26. Reviewing and analyzing the payroll data provided for the vast majority of the Class, Class Counsel and their expert developed a damages model, pre-mediation, illustrating Defendant’s maximum exposure. Class Counsel also evaluated the maximum damages against the defenses asserted by Xtreme and the likelihood of success of some of Xtreme’s arguments and determined a more realistic and reasonable anticipated damages exposure. This damages model informed the litigation and the settlement negotiations.

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Maximum Damages Analysis

Unpaid Wages

27. The crux of the Class' claim for unpaid wages is based on an off-the-clock theory. More specifically, Gonzalez alleges that he frequently worked hours beyond those that were recorded on his timecards—that he was instructed managers/supervisors would clock out for him when he had to work beyond his scheduled shift but they did not accurately do so. Instead, the managers would simply enter Plaintiff's shift hours instead of the time he actually worked and he would thus be denied wages and/or have his time entries edited to reduce his hours. Plaintiff Gonzalez kept a log for a short period within which he recorded his actual hours worked versus those that were recorded in Xtreme's time-keeping system.

28. Unfortunately, there are no records of the time other Class Members spent working off-the-clock and there is limited information regarding the impact edited time entries actually had. Class Counsel, instead, assumed that Gonzalez's log is generally reflective/indicative of the impact of all edited time entries. This was determined to be a reasonable assumption based on Gonzalez's observations of his co-workers and the fact the impact of edits on his time were relatively substantial (1.5 full hours per edit).

29. The time data provided by Defendant reflects 7,172 instances where Class Member time entries were "edited", though they do not reflect the nature of the edit (i.e. the amount of time edited and whether it was reduced or expanded). Using Gonzalez's experience as a template, and assuming each of the 7,172 edits resulted in a reduction of 1.5 hours of Class Member worktime, results in 10,758 hours. This implicates \$204,617.16 in potential unpaid wages because of editing, plus an additional \$134,475 in liquidated damages (\$12.50 x 10,758).

30. In total, Defendant's expected maximum liability for unpaid wages is calculated to be **\$339,092.16**; \$204,617.16 in actual unpaid/underpaid wages, \$134,475 in liquidated damages.

Meal Period Damages

31. Based on the time records for the Class, the actual violation rate of missed first meal periods reflected in the time records was only 1.67% (1,451 missed out of 86,390 meal period eligible shifts). The deficient second meal period rate reflected in the time records is considerably higher at

99.65%. There were a total of 35,546 presumptively denied meal periods, with 505 meal period premiums paid. The resulting amount of outstanding unpaid meal period premiums presumptively owed to Class Members was calculated by our expert to be **\$256,331**.

Rest Period Damages

32. Since rest breaks are not recorded, but are rather time worked, the time records provided by Xtreme did not reflect any missed rest periods. Gonzales, however, indicates he was forced to work through rest periods during at least 1 shift per workweek (i.e. 20%). Assuming a slightly higher violation rate of 25%, Xtreme faces **\$429,122** in unpaid rest period premiums.

Waiting Time Penalties

33. According to data provided by Xtreme, and confirmed by Plaintiff's expert, there were 132 members of the Class whose employment ended between December 5, 2017 and the end of the Class Period. The average hourly rate for these individuals was \$19.02. The *maximum* waiting time penalty exposure is **\$602,553.60**.

Wage Statement Damages

34. The factual basis of the wage statement claim asserted on behalf of the Class is wholly derivative. Plaintiff contends that the wage statements fail to accurately identify 1) total hours worked, 2) total gross and net earnings, and 3) total number of hours worked at each wage rate because of the failure to pay for all hours worked and failure to pay meal/rest period penalties. *Naranjo v. Spectrum Sec. Svcs., Inc.*, 13 Cal.5th 93, 120 (failure to pay meal/rest period premiums creates a derivative 226 violation) (Cal. 2022).

35. Although there is a potential question as to whether the requisite injury can be established for a purely derivative wage statement violation such as this, the maximum potential wage statement exposure was calculated by my office's expert to be **\$325,750** (6,515 inaccurate wage statements x \$50/violation). *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1354-1355 (Cal. App. 2d Dist. 2018).

Unreimbursed Expenses

36. Gonzalez contends that he was forced to incur expenses, specifically purchasing his uniform (including boots and masks once the COVID pandemic began) that went wholly

unreimbursed. These expenses were, at most, \$200 per Class Members exposing Xtreme to **\$43,600** in liability for allegedly unreimbursed expenses.

37. In total, Xtreme's exposure for damages and statutory penalties based on the Class Claims was calculated at **\$1,996,448.76**.

38. The Settlement amount allocated to Class Claims (\$280,000) constitutes 14% of the maximum potential recovery available to the Class if they prevailed entirely on each of the legal theories *and* proved all of the damages actually occurred.

39. These all-in figures assume a 100% probability of prevailing at certification, defeating Defendant's planned motion for summary judgment (including attacking Plaintiff's Article III standing to the wage statement claim under *Spokeo v. Robbins*, 136 S.Ct. 1540 (2016)), maintaining certification through trial, and prevailing completely after a trial on the merits.

40. Under the circumstances, and considering the legal and factual defenses asserted by Defendant, 100% success is unlikely.

Defendant's Defenses and Realistic Liability

41. Because 100% success in litigation is unrealistic, Class Counsel also determined a much more realistic estimate for the potential recovery of the Class. Under this more measured approach, Class Counsel (1) applied a 25% discount to the off-the-clock claim due to the inherent difficulty in demonstrating that off-the-clock work has occurred and certifying such claims, leaving \$254,319.12. *Vasquez v. Crane Cartage, LLC*, 2020 WL 4547444 *3 (E.D. Cal. 2020); *In re Wells Fargo Loan Processor Overtime Pay Litigation*, 2011 WL 3352460 *6 (N.D. Cal. 2011); (2) applied a 75% discount to the meal period claim to account for the fact that a) the vast majority of the presumptively missed meal periods were second meal periods and b) Xtreme generally obtained written second meal period waivers from Gonzalez and other Class Members that would render most of those presumptive violations inapplicable/non-compensable (See **Exh. 2**), leaving \$64,082.75 (3) applied a 75% discount to the rest period claim to account for the likely event that some of the breaks that were missed were voluntarily foregone by the Class Member and because the written waivers Gonzalez was required to execute purport to acknowledge all rest breaks were taken (thus making proving damages for missed meal periods extremely difficult) resulting in \$107,280.50, (4) applied a

1 50% discount to the waiting time penalty claim to account for the potential that some of the Class
2 Members who are also former employees would be unable to demonstrate any compensable wages
3 that were actually unpaid during employment and Defendant's anticipated argument that its failure to
4 pay any meal premium wages was not willful and the law was unsettled at the time of the non-
5 payments (*Naranjo v. Spectrum Security Svcs., Inc.*, 13 Cal.5th 93, 102 (Cal. 2022)), leaving
6 \$301,276.80, (5) applied a 50% discount to the wage statement claim to account for the potential that
7 injury could not be demonstrated due to the wholly derivative nature of the alleged deficiencies in the
8 wage statements and/or Gonzalez lacks Article III, leaving \$162,875, and (6) applied no discount to
9 the reimbursement claim (\$43,600).

10 42. Under this more measured approach, I determined the Class' total realistic recoverable
11 damages/statutory penalties to be \$933,434.17.

12 43. The portion of the GSA allocated to Class claims, \$280,000 (\$290,000 - \$10,000
13 allocated to resolve PAGA Claims), represents 30% of this realistic recovery. The Class is recovering
14 more than the realistic value of the unpaid minimum wage/OT claim. Considering all of the risks, I
15 believe this recovery is fair, adequate, and reasonable.

16 44. The Net Class Settlement Amount, which does not include amounts allocated to resolve
17 PAGA Claims, is expected to be \$159,936.30. Each Participating Class Member is slated to receive a
18 cognizable payment of \$733.65 on average as compensation for the non-PAGA component of the
19 Released Claims; the Settlement is expected to distribute more than \$8.00 (\$8.13) per workweek to
20 Class Members. This number is slightly higher than initially expected because Class Counsel's
21 litigation expenses are only \$12,897.03, instead of the originally estimated \$14,000.

22 45. Overall, Xtreme raised a number of legitimate substantive arguments against the Class
23 Claims, which have the potential to substantially limit and/or potentially eviscerate the Class'
24 recovery. At the very least, the defenses would have resulted in substantial motion practice,
25 particularly on Xtreme's *Sonner* argument, which would limit the Class' recovery to 3 years from the
26 filing of the Lawsuit if successful, along with Defendant's continued contention all meal and rest
27 periods were lawfully provided as evidenced by the written waivers/acknowledgments Xtreme

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1 routinely obtains, and the failure to properly pay meal rest period premiums was not sufficiently
2 willful to allow for imposition of waiting time penalties.

3 46. Since it was only recently established law that meal and rest period premiums constitute
4 “wages” which are required to be paid in full on separation, Xtreme is expected to have argued any
5 failures to pay all wages could not have been sufficiently “willful” to justify imposition of waiting
6 time penalties. *Diaz v. Grill Concepts Svcs., Inc.*, 23 Cal.App.5th 859, 868 (2d Dist. Cal. 2018)
7 (holding that failure to pay is not willful if there is uncertainty in the law or employer has good faith
8 argument, based in law or fact, that the wages were not due). It is also anticipated Xtreme would raise
9 an argument that the imposition of full waiting time penalties was unconstitutionally excessive in the
10 event the Class prevailed on that claim.

11 47. Xtreme was also expected to vigorously challenge the substantive validity of both the
12 off-the-clock claims and the meal/rest break claims, as well as their certifiability.

13 48. With respect to the off-the-clock claims, the Class would be challenged at the
14 certification stage in that there was no facially invalid written policy upon which the claim is based.
15 Instead, the claim is based on a practice Gonzalez contends was facilitated and approved by the plant’s
16 general manager and was commonly applied to all employees working in the Selma, CA plant
17 (Xtreme’s only CA location). While such a common practice could certainly support certification,
18 particularly because there was only one location and the primary enforcer of the practice was the plant
19 manager, there is cognizable risk to the Class. *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165-1166
20 (9th Cir. 2014); *Wren v. RGIS Inventory Specialists*, 256 F.R.D. 180, 205-206 (N.D. Cal. 2009); but
21 see *Clemens v. Hair Club for Men, LLC*, 2016 WL 1461944 * 6 (N.D. Cal. 2016).

22 49. Even if the certification hurdle were cleared, damages on the off-the-clock claims are
23 somewhat unpredictable and implicate some risk. Since there are generally no records of off-the-clock
24 work, which is believed to be the case here other than for the short period Gonzalez was keeping his
25 personal “log”, establishing damages is challenging though not impossible. Compare *Espinoza v.*
26 *West Coast Tomato Growers, LLC*, 2016 W 4468175 * 4 (S.D. Cal. 2016); *Valladon v. City of*
27 *Oakland*, 2009 WL 2591346 * 3 (N.D. Cal. 2009) with *Smith v. Ceva Logistics U.S., Inc.*, 2010 WL
28 11506874 * 12 (C.D. Cal. 2010).

1 50. Meal period claims are often difficult to certify. Here, the claims are founded on a
2 written policy Plaintiff contends is facially deficient in a number of respects (See Exhs. 3-4). In
3 particular, the written policy improperly advises Class Members that employees may waive any
4 second meal period—such meal periods are *only* waivable if the employee worked a shift of less than
5 twelve (12) hours. The audit trail relating to Plaintiff’s time records reflect that his hours were often
6 modified/edited downward in order to put him below twelve (12) hours of work (and thus artificially
7 capable of waiving his second meal period). Additionally, Defendant appears to have changed their 2d
8 meal period waiver form in 2020 to a simple acknowledgement (as opposed to a waiver). See Exh. 5.
9 Time records reflect, however, that Plaintiff and other Class Members did not actually take 2d meal
10 periods more than 95% of the time they worked shifts in excess of 10 hours. Such a substantial
11 amount of second meal periods not taken underscores the existence of a policy discouraging or
12 otherwise interfering with employees’ ability/right to second meal periods.

13 51. While the above facts tend to support certification of meal period claims, the existence
14 of the waivers/acknowledgments pose a threat to maintaining such. *Hines v. KFC U.S. Properties,*
15 *Inc.*, 2010 WL 11451496 * 4-5 (certifying meal break class despite employer’s argument that some
16 employees executed written waivers); *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973 * 6 (S.D. Cal.
17 2009) (where individualized inquiries as to reason breaks were not taken is required, certification may
18 be improper). Although I believe certification of this claim is likely, establishing damages poses a
19 further hurdle as Xtreme’s obligation is only to make meal periods “available” and the written waivers
20 and acknowledgments challenge Plaintiff’s expected proof (through his testimony and that of other
21 Class Members) that meal periods were actually denied despite the Class Members’ attestation to the
22 contrary.

23 52. The rest period claim likely has an easier certification road, in that there is a policy that
24 is facially unlawful because it does not give effect to the “major fraction thereof” language of the
25 applicable wage order. See *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1032 (Cal. 2012).
26 Instead, Xtreme’s written policy simply provides (unlawfully) that rest periods are given for every 4
27 hours worked. See **Exhs. 3-4**. That said, demonstrating damages will be difficult in light of the facts
28 that 1) rest periods are generally not recorded so presumptions are more problematic to establish and

1 2) Xtreme had a practice of requiring Class Members to execute daily acknowledgements indicating
2 they *did, in fact*, receive all necessary rest periods (Exhs. 2, 5).

3 53. The certifiability of the derivative wage statement claims are tied to the certifiability of
4 the underlying claims and are thus subject to the risks outlined in the preceding sections. E.g. *Dawson*
5 *v. Hertz Transporting, Inc.*, 2018 WL 6112623 * 9 (C.D. Cal. 2018); *Lampe v. Queen of the Valley*
6 *Med. Ctr.*, 19 Cal.App.5th 832, 852 (1st Dist. Cal. 2018). In addition, the wage statement claim is
7 subject to the substantive challenge that requisite injury is lacking because of the wholly derivative
8 nature of the claims and the wage statements accurately outlined the amounts *actually paid* to Class
9 Members. *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-1337 (2d Dist. Cal. 2018).
10 While I believe the wage statement claim is viable because the wage statements did not accurately
11 reflect the hours Plaintiff and Class Members actually worked (primarily due to the failure to record
12 off-the-clock hours Xtreme knew were being worked), the case law presents a risk. *Castillo v. Bank of*
13 *Am. Nat. Assn.*, 2019 WL 7166055 * 8 (C.D. Cal. 2019).

14 54. Considering all of the circumstances, and the inherent risks in further litigation that
15 would undoubtedly have included multi-pronged legal attacks in the Class Claims, the Settlement,
16 which is expected to provide an average net recovery of \$733.65 to each Participating Class Member
17 (more than \$8.00 per workweek).

18 55. While I am confident that certification and success on the merits could have been
19 attained, continued litigation was guaranteed to be costly, time consuming, and uncertain in outcome.
20 Appellate proceedings would only further delay and jeopardize recovery by Class Members. Shifting
21 sentiment regarding PAGA claims and potential standing issues add yet another layer of concern to
22 continued litigation. By contrast, the proposed Settlement ensures timely relief and substantial
23 recovery for the Class.

24 56. The Released Claims, defined in Paragraph 33 of the Settlement, were narrowly
25 tailored to track the factual allegations underlying the claims advanced on behalf of the Class and do
26 not include a Civil Code section 1542 waiver.

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PAGA Penalty Exposure Calculations

57. Defendant also faces a maximum of \$2,002,800 in civil penalty exposure for the alleged Labor Code violations—this assumes a failure to pay wages during each and every pay period and an associated wage statement violation (at \$250 per violation), only 25% of which would have been payable to PAGA Members.¹

58. Because PAGA penalties are discretionary, often reduced significantly by courts, and because the propriety of imposing the heightened 226.3 civil penalty is questionable, a steep discount of 90% or more is appropriate, leaving \$200,280.

59. The Settlement allocates \$10,000 to resolution of claims for PAGA civil penalties arising out of the alleged violations of the Labor Code committed against the Class. This equates to 0.5% of the maximum and 5% of the realistic PAGA exposure, which is an appropriate resolution under the circumstances because the punitive and deterrent purposes of the PAGA are being served by the substantial damages and statutory penalties being paid to the Class in resolution of substantive Class Claims. *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057 *8-9 (N.D. Cal. 2018) (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health & Rehabilitation Svcs., Inc.*, 2018 WL 746393 *10 (E.D. Cal. 2018).

60. After deduction of administrative costs, attorneys' fees and litigation expenses, a service payment to Gonzalez, and the LWDA's portion of the PAGA allocation, it is expected that \$159,936.30 will remain to be distributed to Participating Class Members and 2,500 will be distributed to PAGA Members (regardless of whether he/she opts out of the Settlement).

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¹ 75% of any civil penalties recovered shall be paid to the LWDA and 25% to the aggrieved employees. Section 2699(i).

There is a definite split of authority regarding whether the \$250 penalty in Labor Code section 226.3 or the default \$100 penalty provision applies to wage statement claims. *Gunther v. Alaska Airlines, Inc.*, 72 Cal.App.5th 334, 355-356 (4th Dist. Cal. 2021) (holding default PAGA penalty controls in claims for wage statement violations); *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (3d Dist. Cal. 2018) ("Section 226.3 provides the civil penalty for failure to comply. In our view, LWDA would not be prohibited from seeking civil penalties for a grossly inadequate wage statement simply because the employer did provide a statement. Otherwise, the purpose of the statute would be thwarted."). Labor Code section 226.3 provides a civil penalty of "two hundred fifty dollars (\$250) per employee per violation. Under *Raines*, Defendant would owe \$1,669,000 (\$250 x 6,676 deficient wage statements). If the \$100 penalty is used, Xtreme's total PAGA exposure for failing to provide accurate itemized wage statements would plummet to only \$667,600 (6,676 deficient wage statements x \$100).

1 61. This is substantial and cognizable monetary recovery, particularly considering the
2 nature and inherent risks of further litigation.

3 **The Class Notice and Notice Plan Comply with Rule 23 and Satisfy Due Process**

4 62. Attached as Exhibit A to the Settlement Agreement is true and correct copy of the
5 proposed Class Notice which was reviewed and approved by the Parties. In conjunction with its Order
6 Granting Plaintiff's Motion for Preliminary Approval of Class Settlement (Dkt. No. 31), this Court
7 required certain modifications to the Class Notice which are reflected in Exhibit A to the Admin. Dec.
8 submitted concurrently herewith.

9 63. The revised Class Notice meets all of the requirements of procedural due process and
10 Rule 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action
11 in a straightforward manner; succinctly describing the essential terms of the proposed Settlement,
12 including the Class Representative's proposed Service Payment and the amount Class Counsel will
13 request for attorney's fees and litigation expenses; identifying the claims that are being released by the
14 Class; identifying all parties against whom claims are being released; providing Class Members with
15 information on how to participate in, exclude themselves from, or object to the Settlement; clearly
16 providing all applicable deadlines for such action; informing Class Members of the consequences if
17 they decide to exclude themselves from the Settlement; and advising them that, if they choose to
18 participate and the Settlement is approved, they will be bound by the resulting judgment. Further, the
19 Class Notice clearly explains the manner in which Class Members can obtain further information (e.g.,
20 through the Court's website or contacting the Court or Administrator or Class Counsel).

21 64. Because all Class Members are current or former employees of Xtreme, for whom
22 Defendant has current or last known addresses as well as SSNs, notice here was simpler and more
23 reliable than in other types of class actions that require published notice to reach unidentifiable class
24 members. In fact, the Settlement Administrator here was able to secure a 99% successful mail rate.
25 Admin Dec. at ¶ 9.

26 **Contact With Class Members**

27 65. My office received contact from a handful of Class Members during the notice period
28 (and since). None of these individuals expressed any concerns with the Settlement or his/her

1 estimated share. The general tone of the contacts was positive and Class Members uniformly simply
2 sought information regarding the logistics and timing of expected distribution.

3 **Notice to the Labor and Workforce Development Agency**

4 66. The Parties agreed that \$10,000 of the GSA be allocated to settle claims to assess and
5 collect civil penalties brought pursuant to the PAGA. Labor Code § 2699(i) affirmatively mandates
6 that 75 percent of the apportioned PAGA Settlement Amount – or \$7,500 – shall be payable to the
7 LWDA. The remaining 25 percent, or \$2,500, will be distributed to the PAGA Members (Class
8 Members who were employed between December 1, 2019 and March 1, 2022. Under the
9 circumstances, I believe such amount is reasonable and sufficiently and serves the deterrent and
10 punitive purposes of the PAGA. The Parties expect that at least \$159,936.30 will ultimately be
11 distributed to Participating Class Members, with an additional \$2,500 for PAGA Members (regardless
12 of participation in the Class), which will provide a substantial average recovery to Class Members.

13 67. The average recovery per PAGA Member is \$13.51 and equates to \$0.50 per pay period
14 worked during the PAGA Period. This is in addition to the distribution of the Net Settlement
15 attributable to Class Claims. Class Members who are also PAGA Members (185 individuals) will
16 receive an average of \$747.16.

17 68. I transmitted the Settlement Agreement in compliance with Labor Code § 2699(l)(2) to
18 the LWDA on September 12, 2022. See **Exhibit 6**. My office also transmitted copies of the
19 preliminary approval papers to the LWDA.

20 69. As of the filing of this declaration, which is more than four (4) months since the agency
21 was first advised of the Settlement, the LWDA has not contacted my office or otherwise voiced any
22 objection or concern regarding the Settlement or its allocation to resolution of the PAGA Claims.

23 **Plaintiff Has and Will Serve the Class Well**

24 70. Plaintiff Gonzalez's interests in prosecuting this Class Action and obtaining the most
25 beneficial recovery possible fully comport with the interests of the Class Members. Plaintiff
26 understands the claims and theories that are being advanced, has been involved through the litigation
27 and has no conflicts with the other members of the Class he seeks to represent. Plaintiff was subjected
28 to the same unlawful policies, practices, and procedures, having been 1) underpaid because of

1 Defendant's failures to pay for all hours actually worked (primarily because of time entry edits), 2)
2 failed to provide meal and rest periods and associated premiums, 3) furnished inaccurate itemized
3 wage statements, 4) not timely paid all wages due and owing upon separation, and 5) not reimbursed
4 all business expenses. Were he not serving as Class Representative, Plaintiff would be a Class
5 Member.

6 71. Plaintiff has and is prepared to continue adequately representing the interests of the
7 Class Members. Plaintiff has demonstrated his commitment to prosecuting this Class Action on behalf
8 of the Class Members by, amongst other things, locating and retaining attorneys, participating in
9 discovery and investigation, filing this action and willingly exposing his name and reputation to
10 detriment by filing the Class Action, and helping to facilitate the Settlement for which approval is now
11 sought, including participating in and being available throughout the entire remote mediation process.

12 72. In addition, Gonzalez has shown his dedication/commitment to the Class's interests
13 above his own by his willingness to give up very straightforward individual claims (worth at least
14 \$1,500) in order to secure the GSA *for the entire Class*.

15 **Experience of Class Counsel**

16 73. In May, 2004, I received a B.A. from California State University, Sacramento. In May
17 2007, I received a J.D. with distinction from the University of the Pacific, McGeorge School of Law.
18 In November, 2007, I became a member of the State Bar of California. I have been an attorney with
19 Mayall Hurley P.C. since 2013. I became a Shareholder in March 2019 and have been a member of
20 the management team as the Human Resources Director since 2020. Prior to joining Mayall Hurley, I
21 spent two (2) years as a Deputy District Attorney, and an additional three (3) years as a litigation
22 associate for the Sacramento law firm of Downey Brand, LLP. I have been focusing my practice
23 almost exclusively on employment litigation, representing both employees and employers, for the past
24 ten (10) years.

25 74. My law firm, Mayall Hurley P.C., primarily through attorneys Robert J. Wasserman
26 and me, has pursued this action aggressively, and many other similar class, collective, and
27 representative actions. For instance, Mayall Hurley P.C. has recently been approved as class counsel
28 in *Markson, et al. v. CRST International, Inc., et al*, Central District of California Case No. 5:17-cv-

01261-SB; *Espinoza/Renteria v. Love's Country Stores, Inc.*, San Bernardino County Superior Court
Case No. CIVDS2016581; *Rodriguez v. Allen Distribution, L.P.*, San Joaquin County Superior Court
Case No. STK-CV-UOE-2020-000; *McGee v. Brosnan Risk West Coast*, San Mateo County Superior
Court Case No. 19-CV-04464; *Botti v. SAFE Credit Union*, Sacramento County Superior Court Case
No. 34-2019-00261736; *Mediodia v. SoCal Jet Services, Inc.*, Los Angeles County Superior Court
Case No. 18STCCV09751; *Flores v. Dart Container Corp., et al*, Eastern District of California Case
No. 2:19-cv-00083-WBS-EFB; *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior
Court Case No. STK-CV-UOE-2019-6065; *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County
Superior Court Case No. STK-CV-UOE-2020-1774; *Modica v. Iron Mountain Information*
Management Svcs., Inc., United States District Court, Eastern District of California Case No. 2:19-cv-
00370-TLN-JDP; *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
Case No. RG19027231; *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior
Court Case No. 37-2018-00004296-CU-OE-CTL; *Pacheco v. Bushfire Grill, Inc., et al*, United States
District Court, Southern District of California, Case No. 3:18-cv-01696-JAH-WVG; *Wise v. ULTA*
Salon, Cosmetics & Fragrance, Inc., United States District Court, Eastern District of California, Case
No. 1:17-cv-00853-DAD-EPG; *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County
Superior Court, Case No. RG18906875; *Mansur v. Owens-Brockway Glass Container, Inc.*, San
Joaquin County Superior Court, Case No. STK-CV-UOW-2018-14631; *Alderson v. Alameda County*
Agricultural Fair Association, Alameda County Superior Court, Case No. RG18912654; *Terry v.*
Mare Island Dry Dock, LLC, Solano County Superior Court, Case No. FCS051650; *Mettler, Bender,*
and Rojas v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case
No. STK-CV-UOE-2018-476; *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County
Superior Court, Case No., ST-CV-UOE-2017-5296; *Garcia, et al. v. HMS Host USA, Inc.*, United
States District Court, Northern District of California, Case No. 17-cv-03069-RS; *Ali v. Sutter Valley*
Medical Foundation, Inc., Sacramento County Superior Court, Case No. 34-2017-00217486; *Grady, et*
al. v. People 2.0 dba The Hire Source, et al., San Joaquin County Case No. STK-CV-UOE-2017-
13867; *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County Superior Court,
Case No. 17CV3121427; *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case

1 No. 2026223; *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
 2 California, Case No. 2:17-at-00592; *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court,
 3 Northern District of California, Case No. 3:16-cv-02832-JD; *Titus v. The Martin-Brower, LLC*, United
 4 States District Court, Eastern District of California, Case No. 2:17-cv-00558-JAM-GGH; *Hugues v.*
 5 *The Morning Star Trucking Company, LLC, et al.*, Yolo County Superior Court Case No. CV16-1215;
 6 *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States District Court, Eastern
 7 District of California, Case No. 2:16-cv-01747-WBS-KJN; *Guzman-Padilla, et al. v. Gerard Van De*
 8 *Pol, et al.*, United States District Court, Eastern District of California, Case No. 2:17-cv-00196-JAM-
 9 KJN; *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court, Central District
 10 of California, Case No. SACV 15-01618-CJC(DFMx); *Stevens v. Suncrest Solar, Inc.*, Fresno County
 11 Superior Court, Case No. 16CECG03355; *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda
 12 County Superior Court Case No. RG17866256; *Maasrani v. Waterton Hospitality Management*, San
 13 Mateo County Superior Court, Case No. 17CIV05470; *Huynh v. Parker-Hannifin Corporation*,
 14 Stanislaus County Superior Court, Case No. 2022325; *Moser v. O'Connor Woods Housing*
 15 *Corporation*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2014-0009861; *Bastami v.*
 16 *Semiconductor Components Industries, LLC*, Santa Clara County Superior Court, Case No.
 17 16cv297447; *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court, Case
 18 No. BC592580; *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District Court,
 19 Eastern District of California, Case No. 1-16-cv-00066-SKO; *Clark v. Arrow Sign Co.*, San Joaquin
 20 County Superior Court, Case No. STK-CV-UOE-2016-6457, and *Moreno v. B.R. Funsten & Co.*,
 21 Solano County Superior Court Case No. FCS046149, all wage-and-hour class actions with claims
 22 similar to the instant matter. Not including this matter, we have several other wage-and-hour class
 23 actions currently pending final approval in which we have been preliminarily approved as class
 24 counsel. My law firm and I have also represented plaintiffs in numerous representative employment
 25 actions, settlements in which have been approved by multiple California and federal courts, and are
 26 currently prosecuting dozens more.

27 75. Mayall Hurley, P.C. has also obtained class and/or conditional certification (outside of
 28 the settlement context) in a number of cases, including *Liu v. QNAP, Inc.*, Los Angeles County

1 Superior Court Case No. 19PSCV00668; *Bice v. Vensure HR, Inc., et al.*, San Joaquin County
2 Superior Court, Case No. STK-CU-UOE-2016-1264; *Perez et al. v. Abbate Family Farms Limited*
3 *Partnership et al.*, San Joaquin County Superior Court, Case No. 39-2012-00288653-CU-OE-STK,
4 *Wilk v. Skechers U.S.A., Inc.*, United States District court, Central District of California, Case No. 5-
5 18-CV-01921-JGB-SP; *Titus v. Paramount Equity Mortgage, LLC*, United States District Court,
6 Eastern District of California, Case No. 2:17-cv-00349-MCE-KJN; and *Solati v. RPM Mortgage, LLC*,
7 Solano County Superior Court Case No. FCS048401.

8 76. I am also currently lead counsel or co-lead counsel in approximately 8 employment
9 class action cases and a handful of PAGA representative cases.

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States of America that the foregoing is true and correct. Executed on this 3rd day of February, 2023,
12 in Lodi, California.

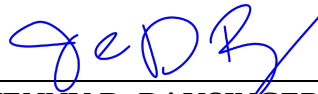
13
14 
15 JENNY D. BAYSINGER

EXHIBIT 1

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

This Joint Stipulation of Class and Representative Action Settlement Agreement and Release (the “Agreement” or the “Settlement”) is between Plaintiff Rudy Gonzalez (“Plaintiff”) and Defendant Xtreme Manufacturing, LLC (“Defendant”) (collectively, “the Parties”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the “Released Claims” (as defined below) on a class and representative action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained in this Agreement. This Agreement, which is contingent upon Final Court approval, contains the terms of the Parties’ agreement. Plaintiff and Class Counsel believe that the settlement set forth in this Agreement confers substantial benefits upon the Class Members.

DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

1. “Action” means the First Amended Complaint filed February 22, 2021 in the lawsuit entitled *Gonzalez v. Xtreme Manufacturing, LLC*, (U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO). The Action also includes all claims that Plaintiff alleged in his December 1, 2020 PAGA letter.
2. “Administrator” or “Settlement Administrator” means Simpluris, Inc., the third-party administrator proposed by the Parties and appointed by the Court to administer the Settlement.
3. “Class” means "all current and former non-exempt California employees of Xtreme who worked at least one shift from December 4, 2016 to March 1, 2022" (the “Class Members”).
4. “Class Counsel” means Mayall Hurley P.C..
5. “Class Counsel Fees Payment” means the amounts to be paid to Class Counsel as approved by the Court to compensate them for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures in an amount of up to \$96,666.67, or one-third of the GSA.
6. “Class Counsel Litigation Expenses Payment” means the amount to reimburse Class Counsel for their litigation expenses of not more than \$14,000, subject to proof and as approved by the Court.
7. “Class Data List” means information for each Class Member that Defendant will provide to the Settlement Administrator. To the extent available, the Class Data List will contain each Class Member’s full name; last-known mailing address; telephone number; Social Security number; number of workweeks

(full or partial) worked by each individual Class Member during the Class Period; and number of Pay Periods (full or partial) worked as a PAGA Member during the PAGA Period.

8. “Class Member” is a member of the Class. There are an estimated 219 Class Members who have worked an estimated 19,679 workweeks during the Class Period.
9. “Class Notice” or “Notice” means the Court-approved Notice of Class Action Settlement in a form substantively similar to Exhibit A, to be mailed to Class Members informing them of the settlement, including their rights to request exclusion or to object to the Settlement, of their estimated payment to be received without the need to return a claim form, and the date set for the Final Approval Hearing.
10. “Class Period” means the period from December 4, 2016 to March 1, 2022.
11. “Class Representative Service Payment” means the payment approved by the Court to be made to the Plaintiff in his capacity as Class Representative to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event he failed in the prosecution of the Action, and for the general release of all claims by him as set forth herein.
12. “Court” means the United States District Court, Eastern District of California.
13. “Defendant’s Counsel” means Evan R. Moses and Michael J. Nader of Ogletree Deakins.
14. “Effective Date” means the date on which all of the following have occurred: (a) the Court grants final approval of this Settlement; and (b) the Judgment becomes Final as defined in this Agreement.
15. “Final” means the last of the following dates, as applicable: (a) after Judgment is entered, then the due date to appeal the Judgment when no appeal is filed, and (b) after Judgment is entered and a timely appeal is filed, the date the Judgment is affirmed and is no longer subject to appeal.
16. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve the terms of this Agreement and enter the Judgment.
17. “Gross Settlement Amount” or “GSA” means the non-reversionary sum of two hundred ninety thousand dollars (\$290,000) which shall be inclusive of the Individual Class Settlement Payments to Participating Class Members, Individual PAGA Payments to PAGA Members, Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the LWDA Payment, but excluding any employer-side payroll taxes due on the portion of the Individual Settlement

Payments allocated to wages which Defendant shall pay separately and in addition to the Gross Settlement Amount.

18. “Individual Class Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who submits a request for exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Class Settlement Payment.
19. “Individual PAGA Payment” means the pro rata share of the \$2,500 (25% of the total \$10,000 PAGA Civil Penalty Payment) amount allocated to alleged aggrieved employees out of the PAGA Civil Penalty Payment that each PAGA Member will receive.
20. “Judgment” means the Final Approval Order and Judgment entered by the Court.
21. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Civil Penalty Payment, and Administration Expenses. The Net Settlement Amount is the total amount that will be paid to Participating Class Members, in the form of Individual Class Settlement Payments.
22. “Non-Participating Class Member” means a Class Member who submits a valid and timely request for exclusion from the Settlement in the manner described in the Notice of Class Action Settlement.
23. “Notice Packet” means the Class Notice, the Change of Address Form approved by the Parties and subject to Court approval, and the pre-printed return envelope, all of which the Settlement Administrator will mail to each Class Member.
24. “PAGA refers to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2699, *et seq.*
25. “PAGA Civil Penalty Payment” means the sum of \$10,000 to be paid out of the Gross Settlement Amount, designated by the Parties as PAGA civil penalties of which \$7,500 (75%) shall be paid pursuant to the PAGA to the Labor and Workforce Development Agency (“LWDA”), (“LWDA Payment”), and the remaining \$2,500 (25%) shall be paid proportionately to all PAGA Members.
26. “PAGA Members” are those Class Members employed during the PAGA Period and who will be paid an Individual PAGA Payment, regardless of whether they exclude themselves from the Class Settlement.
27. “PAGA Period” means that period from December 1, 2019 to March 1, 2022.

28. “PAGA Release” means all causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, that seek civil penalties and other relief available pursuant to the PAGA against the Released Parties. Regardless of whether any Class Member opts out of the Class Settlement, they will still be bound by the PAGA Release if they are PAGA Members. The period of the PAGA Release is the PAGA Period.
29. “Participating Class Member” means a Class Member who does not submit a valid and timely request for exclusion from the Class Settlement.
30. “Pay Period” means any Workweek in which a Class Member worked at all during the PAGA Period. Defendant’s employees were paid on a weekly basis.
31. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.
32. “Qualified Settlement Fund” or “QSF” means the account established by the Administrator for the Gross Settlement Amount and employer-side payroll taxes and distribution as provided by this Agreement and as ordered by the Court.
33. “Released Claims” means all causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, which includes all claims alleged in the PAGA Letter and all causes of action alleged in the First Amended Complaint. This includes, but is not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, arising out of or based upon the allegations in the Action, including the California Labor Code, the Fair Labor Standards Act, the California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code § 17200, et seq.; including, without limitation, the following categories of allegations, to the fullest extent such claims are releasable by law: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay; (c) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (d) all claims for failure to provide compliant rest periods and pay related premiums at the regular rate; (e) all claims for failure to reimburse business expenses; (f) all claims for failure to pay timely current wages and associated penalties; (g) all claims for failure to pay final wages; and (h) all claims for failure to provide accurate wages statements. The Class Members understand and agree that this release includes a good-faith compromise of disputed wage claims. The period of the Released Claims shall extend for the Class Period. The res judicata effect of the Judgment will be the same as the Released Claims.

- 34. “Released Parties” means Xtreme Manufacturing, LLC and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.
- 35. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- 36. “Workweeks” means any workweek (Thursday through Wednesday) in which Settlement Class Members worked at any time at all during that workweek.

RECITALS

- 37. On December 1, 2020, Plaintiff filed a PAGA letter with the Labor and Workforce Development Agency (the “PAGA Letter”) alleging several wage and hour claims, including the following: the failure to pay minimum wages for all hours worked, the failure to pay overtime wages, the failure to provide compliant meal and rest breaks, the failure to reimburse for all business expenses, the failure to pay all wages due and owing at the end of employment, and the failure to provide accurate itemized wage statements.
- 38. On December 4, 2020, Plaintiff filed a Class Action Complaint alleging several wage and hour claims, including the following: failure to pay minimum wage, the failure to pay overtime wages under the FLSA and the California Labor Code, the failure to provide meal and rest breaks, the failure to reimburse for all business expenses, the failure to pay all wages due and owing at the end of employment, the failure to provide accurate itemized wage statements, and unlawful business practice.
- 39. On February 22, 2021, Plaintiff filed a First Amended Class Action Complaint (“FAC”). The FAC alleged wage and hour claims, including the following: the failure to pay minimum wages, the failure to pay overtime wages under the FLSA and the California Labor Code, the failure to provide meal and rest breaks, the failure to reimburse for all business expenses, the failure to pay all wages due and owing at the end of employment, the failure to provide accurate itemized wage statements, unlawful business practices, the failure to timely provide payroll records to the named plaintiff, the failure to timely provide personnel records to the named plaintiff, and the PAGA Claims.
- 40. In advance of the mediation on December 23, 2021, Defendant produced 100% of the timekeeping and payroll data of all putative class members, as well as policies and practices related to the claims in the Action.
- 41. On December 23, 2021, the Parties participated in a mediation with Louis Marlin, Esq., a prominent mediator experienced in resolving wage and hour class and collective actions. The Parties continued negotiations, with the assistance of the mediator, through February 22, 2022. As a result of the mediation, the Parties reached an agreement to settle all causes of action alleged in the Action by the Plaintiff under the Fair Labor Standards Action (“FLSA”), the California Labor Code, and California Business and Professionals Code, and under the Private Attorneys General Act (the “PAGA”) in the lawsuit entitled *Gonzalez v. Xtreme Manufacturing, LLC*,

(U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO).

42. This Agreement represents a compromise and settlement of highly disputed claims. The Parties agree that nothing in this Agreement is an admission by the Defendant that the claims in the Action have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties stipulate to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, the Parties agree that this stipulation regarding class certification will become null and void, and Defendant reserves the right to contest the certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

SETTLEMENT TERMS AND CONDITIONS

43. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is two hundred ninety thousand dollars (\$290,000), which is inclusive of all payments contemplated in this resolution. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant under any circumstances.
44. **Modification of Gross Settlement Amount.** Defendant estimates that the total number of putative class members is 219 and that the workweeks in the Class Period is 19,679. The Parties agree that if, after the Court's preliminary approval of this settlement, the verified count of the number of putative class members for the total Class Period increases by more than 10% (and thus is actually more than 241), then for each Class Member that exceeds the 10% cap, the Gross Settlement Amount will increase by \$1,324. In the alternative, the Parties agree that if, after preliminary approval, the verified count of the number of workweeks increases by more than 5% (is actually more than 20,663 workweeks) then for each workweek that exceeds the 5% cap, the Gross Settlement Amount shall increase by \$14.74. In the event that the final count of both the putative class members and the workweeks increases above their respective caps, then only the count (among the two) that results in the larger increase to the MSA will apply. The MSA cannot be doubly increased if both increases are beyond
45. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Administrator will make the following payments from the Gross Settlement Amount:
- a) **To Plaintiff:** Plaintiff will apply to the Court for an award of not more than \$5,000 in addition to his Individual Class Settlement Payment share. The Administrator will pay the Class Representative Service Payment

approved by the Court. No payroll tax withholding and deductions will be taken from this payment. The Administrator shall issue an IRS Form 1099 to Plaintiff with respect to the Class Representative Service Payment. To receive the payment, the Plaintiff agrees to a Code of Civil Procedure section 1542 waiver and a general release of all claims, excluding any claims that he cannot release as a matter of law, such as claims for workers' compensation, and social security benefits.

- b) **To Class Counsel:** Class Counsel will apply to the Court for an award of up to \$96,666.67 as their Class Counsel Fees Payment and up to \$14,000 for all costs and litigation expenses incurred, subject to proof, as Class Counsel Litigation Expenses Payment. Defendant will not oppose requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. For these payments, the Administrator will issue one or more IRS Forms 1099.
- c) **To the LWDA.** The Parties will seek approval from the Court for the PAGA Civil Penalty Payment of \$10,000, allocated 75% (\$7,500) for the LWDA Payment as its share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$2,500) to be distributed to all PAGA Members based on their number of Pay Periods employed during the PAGA Period, in relation to the aggregate number of Pay Periods employed during the PAGA Period. Because there is no right to opt out of a PAGA settlement, all PAGA Members will receive a proportionate share of the 25% portion of the PAGA Civil Penalty Payment, i.e., their Individual PAGA Payment, irrespective of a valid and timely request for exclusion from the Class Settlement.
- d) **To the Administrator.** The Administrator will pay to itself its reasonable fees and expenses documented and approved by the Court in an amount not to exceed \$5,500.00. ("Administration Expenses").
- e) If the Court approves any payment described in this section in an amount less than requested, the Parties agree to retain the remainder in the Net Settlement Amount for distribution to Class Members.

46. **Settlement Payments to the Class.** Following the deduction of the Court-approved sums from the Gross Settlement Amount for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, Administration Expenses, the LWDA Payment, and the collective Individual PAGA Payments, the remaining Net Settlement Amount, estimated at \$158,833.33 shall be distributed to Participating Class Members based upon the number of Workweeks employed during the Class Period in relation to the number of Workweeks employed by all Participating Class Members during the Class Period. The Net Settlement Amount is determined by deducting the anticipated Court-approved payments as follow:

Gross Settlement Amount: **\$ 290,000**

- Class Representative Service Payment \$5,000
- Class Counsel Fees Payment \$96,666.67
- Class Counsel Litigation Expenses \$14,000
- LWDA Payment \$ 7,500
- Individual PAGA Payments \$ 2,500
- Administration Expenses \$5,500

Net Settlement Amount: **\$158,833.33**

- a) **Individual Class Settlement Payment.** Individual Class Settlement Payments will be paid from the Net Settlement Amount and paid pursuant to the formula as follows: (i) First, using the Class Data List, the Administrator will compute the total number of workweeks of all Participating Class Members collectively during the Class Period; this sum shall be known as the “Workweek Total;” (ii) Second, the Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value of each eligible Workweek; this shall be known as the “Workweek Value;” (iii) Third, the Administrator will multiply the number of Workweeks of a Participating Class Member during the Class period by the Workweek Value to determine the Participating Class Member’s Individual Class Settlement Payment.
- b) **Allocation of the Settlement Payment, and Tax Forms.** The Administrator shall allocate 20% of each Participating Class Member’s Individual Class Settlement Payment to wages and 80% to penalties and interest allegedly due to employees, which shall also include the sum of the Individual PAGA Payments. The Settlement Administrator will be responsible for issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties and interest.
- c) **Effect of Non-Participating Class Members.** Non-Participating Class Members are those who returned a valid and timely request for exclusion, and they will not receive an Individual Class Settlement Payment share of the Net Settlement Amount. Their exclusion from the Class will neither affect the Gross Settlement Amount nor affect the Net Settlement Amount. Their respective Individual Class Settlement Payment shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Workweeks employed during the Class Period. However, since there is no right to opt out of a PAGA settlement, each Non-Participating Class Member who is also a PAGA Member shall receive a pro-rata share of the 25% portion of the PAGA Civil Penalty Payment allocated to them, and they will be bound to the release of

all of the claims for civil penalties under the PAGA that are included in the Released Claims.

47. **Appointment of Administrator.** The Parties agree to use Simpluris, Inc to serve as the Administrator, which, as a condition of appointment, will agree to follow this Agreement with respect to the performance of its duties and its compensation. The Administrator's duties will include formatting, printing, and mailing the Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Notice Packets; re-mailing Notice Packets that are returned to the Class Member's new address as located upon skip-tracing or as provided by Counsel for the Parties; setting up a toll-free telephone number to receive calls from Class Members, and a post office box to receive communications from Class Members which include for instance, disputed claims, change of address forms, requests for exclusion, and objections, providing the Parties with weekly status reports, calculating Individual Class Settlement Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports and filings required under this Settlement and to administrate the Settlement, including, but not limited to, the DE 9, the DE 9C, 1099s, W-2s and W-3s; handling uncashed checks, and providing declarations as requested by the Parties, and otherwise administering the Settlement pursuant to this Agreement. The Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Individual Class Settlement Payment and/or Individual PAGA Payment. The Settlement Administration Expenses, including the cost of printing and mailing the Notice Packet, will come from the Gross Settlement Amount. Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Settlement Agreement.

48. **Procedure for Approving Settlement.**

a. **Motion for Preliminary Approval of Settlement.**

i. After execution of this Agreement, Plaintiff will file a Motion for Preliminary Approval seeking the Court's preliminary approval of the proposed Settlement, as well as conditional class certification, approval of the Notice, and appointment of Class Counsel, Plaintiff as the Class Representative, and Simpluris as the Administrator, and setting a date for the Final Approval Hearing. Class Counsel shall be responsible for preparing the Motion for Preliminary Approval, supporting declarations, and its exhibits. Class Counsel agrees to provide Defendant's Counsel with drafts of the Motion for Preliminary Approval and any other documents they intend to submit in support of their Motion for Preliminary Approval at least five

(5) business days in advance of the filing of such documents to allow Defendant's Counsel reasonable time to review and comment on such papers, and Class Counsel further agrees to reasonably incorporate the comments from Defendant's Counsel.

- ii. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion for Preliminary Approval, and submit an Order Granting Preliminary Approval of the Settlement.
- iii. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of the Released Claims, or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval.

49. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, the Notice Packet will be mailed to all members of the Class as follows:

- a. No later than twenty (20) days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will, to the extent possible, provide the Class Data List to the Administrator. The Administrator shall maintain the Class Data List as private and confidential and shall not disclose such data to any persons or entities other than Defendant's Counsel. The Class Data List is being supplied solely to be used for settlement notification and settlement administration purposes and shall not be used for any other purpose by the Administrator or Class Counsel. The Parties agree that the Class Data List will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendant or any other Released Parties and will only be used to administer the Settlement under the terms provided herein. No later than three (3) days after receipt of the Class Data List, the Administrator shall notify counsel for the Parties that the information in the Class Data List has been received.
- b. Upon receipt of the Class Data List, the Administrator will perform a search of the United States Post Office's National Change of Address database to update and correct any known or identifiable changes to Class Member addresses before mailing the Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than twenty-one (21) calendar days following receipt of the Class Data List, the Administrator will mail the Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Administrator obtains in the course of

administration of the Settlement. The Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses. The content of the Notice Packet shall include a Notice of Class Action Settlement, Change of Address form, and a pre-printed return envelope that is subject to Court approval and modification as necessary to fulfill the Parties' desire to resolve the case.

- c. The exterior of the mailing envelope containing the Notice Packet, shall include the following language on the left side of the envelope below the Administrator's mailing address:

**IMPORTANT LEGAL DOCUMENT: You may
get Money from a Class Action Settlement; your
prompt reply to correct a bad address is required.**

- d. If a Notice Packet is returned because of an incorrect address, the Administrator will promptly, and not longer than ten (10) days from receipt of the returned Notice Packet, search for a more current address and re-mail the Notice Packet to the Class Member. The Administrator will use the Class Data List and otherwise work with Defendant to find the most current address. The Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Notice Packet is re-mailed, the Administrator will note for its own records and notify Counsel for the Parties of the date of each such re-mailing as part of a weekly status report provided to the Parties.
- e. As part of its weekly status report, the Administrator will inform Class Counsel and Defendant's Counsel of the number of requests for exclusions, number of disputed claims, and number of objections received, and will provide all written objections upon receipt to Class Counsel and Defendant's Counsel
- f. No later than twenty (20) days before the date Plaintiff will file the Motion for Final Approval of the Settlement, the Administrator will provide its declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the requests for exclusions, disputed claims, and objections received. Prior to the Final Approval Hearing, the Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

- 50. **Objections to Settlement; Disputes as to the Number of Workweeks; and Requests for Exclusion.** Class Members may submit objections as to any

term of the Settlement, dispute the number of Workweeks allocated to them, and request exclusion pursuant to the following procedures:

- a. **Object to Settlement.** The Class Notice will provide that only Participating Class Members may object to the Settlement. Participating Class Members may submit a written objection to the Administrator no later than forty-five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if an objection was timely received. Written objections must be signed by the Class Member and should set forth: (1) the full name and address of the objecting Class Member; (2) the grounds for each objection made; and (3) whether the Class Member intends to appear at the Final Approval Hearing. Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and Defendant's Counsel with this notice no later forty five (45) days after the Administrator mailed the Notice Packets. Class Members may also appear at the Final Approval Hearing to orally object, even if they have not submitted a written objection. Any Class Member who fails to submit a timely written objection or to present an objection at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to object in writing.
- b. **Dispute the Number of Workweeks.** Class Members may dispute the number of Workweeks the Class Notice allocates to them during the Class Period, and they must do so no later than forty five (45) days after the Administrator mails the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a dispute was timely received. If there is a dispute, the Administrator shall consult with the Parties to determine whether an adjustment is warranted. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy. Class Members who receive a re-mailed Class Notice shall have an additional twenty (20) days from their original deadline to dispute in writing the number of Workweeks allocated to them during the Class Period.
- c. **Requests for Exclusion.** The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must postmark and mail to the Administrator a written request for exclusion no later than forty five (45) days after the Administrator's mailing of the Notice Packets. The date of mailing on the envelope shall be deemed the exclusive means for determining if a request for exclusion was timely received. Class Members who receive a re-mailed Class

Notice shall have an additional twenty (20) days from their original deadline to request in writing an exclusion from the Settlement.

- i. To be valid, a request for exclusion must be timely and must comply with the instructions detailed in the Class Notice, including providing (1) the name and address of the Class Member requesting exclusion; (2) a statement expressing that the Class Member elects to be excluded from the Settlement; and (3) a signature by the Class Member. If a question is raised about the authenticity of a signed request for exclusion, the Administrator will have the right to demand additional proof of the Class Member's identity.
- ii. A Non-Participating Class Member will not participate in or be bound by the Released Claims and the Judgment. However, a Non-Participating Class Member who is also a PAGA Member will be bound by the PAGA Release. Defendant will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. However, even if a Class Member opts out of the Settlement, the Class Member will still receive a proportionate share of the PAGA Civil Penalty Payment allocated to the PAGA Members. The Administrator will determine the Individual PAGA Payment by comparing the number of Pay Periods the PAGA Member was employed during the PAGA Period to the total number of Pay Periods all PAGA Members were employed during the PAGA Period. In this instance, any Class Member who is also a PAGA Member will only be bound by the PAGA Release.
- iii. A Class Member who does not complete and mail a timely request for exclusion in the manner and by the deadline specified above will automatically become a Participating Class Member, will receive a Settlement Payment, and be bound by all terms and conditions of the Settlement, including the Released Claims if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or he has objected to the Settlement.
- iv. Persons who submit a request for exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement because the Settlement no longer concerns them.
- v. All Participating Class Members who do not submit a valid and timely request for exclusion will receive a Individual Class Settlement Payment without the need to file a claim form, and the terms of the Released Claims and Judgment will bind them.

- d. **Report.** No later than ten (10) days after the deadline for submission of requests for exclusions, the Administrator will provide Class Counsel and Defendant's Counsel with a complete and accurate count of Participating Class Members and Non-Participating Class Members.
- 51. **Right of Defendant to Reject Settlement.** If more than five percent (5%) of the Class Members return valid and timely requests for exclusion, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void no later than ten (10) days after the Administrator notifies the Parties, for the final time, of the number of valid requests for exclusion received. If Defendant exercises this right, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.
- 52. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
- 53. **Additional Briefing and Final Approval.**
 - a. Upon the expiration of the deadline for submission of requests for exclusions, objections, and disputes, and with the Court's permission, a Final Approval Hearing shall be conducted.
 - b. As directed by the Court after preliminary approval, the Plaintiff will file with the Court a Motion for Final Approval of the Settlement, that shall include Class Counsel's application for the Class Counsel Fees Payment, and the Class Counsel Litigation Expense Payments, and the Class Representative Service Payment, as well as the Administration Expenses and PAGA Civil Penalty Payment. Class Counsel shall be responsible for preparing the Motion for Final Approval, and any supporting declarations, and exhibits thereto. Class Counsel agrees to provide Defendant's Counsel with drafts of all documents they intend to submit in support of the Motion for Final Approval at least seven (7) days in advance of the filing to allow Defendant's Counsel reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Defendant's Counsel. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order, including a good faith attempt to address and/or cure any issues identified by the Court as necessary for final approval.

- c. If any opposition is filed, then no later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the Motion for Final Approval of the Settlement.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of the Released Claims), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Agreement for the Court's approval. But an award by the Court of lesser amounts than those sought by Class Counsel for the Class Representative Service Payment, and Class Counsel for the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Agreement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, Class Counsel will present for the Court's approval and entry the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
54. **Waiver of Right to Appeal.** Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement to the Administrator waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate the judgment, a motion for a new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If there is an appeal from the Judgment, it suspends the time for consummation of the Settlement (including making payments under the Settlement) until the appeal is finally resolved and the Judgment becomes final.
55. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of the Released Claims), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court no later than 21 days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material

modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

56. **Funding and Other Payments.** No later than seven (7) calendar days after the Judgment becomes Final as defined herein, the Administrator shall send Defendant's Counsel electronic wiring instructions for paying the Gross Settlement Amount (\$290,000) into the QSF (or additional amounts if applicable under the "Modification of Gross Settlement Amount" section herein). Defendant shall fund the QSF with the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes on the later of the following dates: (a) by April 1, 2023, or (b) within thirty (30) calendar days after the Effective Date of this Settlement as defined herein. Within fourteen (14) days after Defendant funds the QSF, the Administrator will pay to Participating Class Members, their Individual Class Settlement Payments via first-class regular U.S. Mail; to all PAGA Members, their Individual PAGA Payments; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; and to the Administrator, the Settlement Administration Expenses. The Judgment cannot become Final, and Defendant will not be obligated to fund the QSF, unless and until there is no possibility of an appeal or further appeal (by anyone who has the right to, or claims to have the ability to, take an appeal) that could potentially prevent this Settlement from becoming final and binding.
57. **Uncashed Settlement Share Checks.** A Class Member must cash their Settlement Payment check within one-hundred and eighty (180) days of the Administrator's mailing of the checks. If the Administrator receives a returned check, it will make all reasonable efforts to re-mail it to the Class Member at their correct address. If a Class Member's Settlement Payment check is not cashed within thirty (30) days after its initial mailing, the Administrator will send a postcard notifying the Class Member that unless the check is cashed by the 180th day, it will expire and become non-negotiable, and the Administrator will offer to replace the check if it was lost or misplaced and not cashed. If the check remains uncashed after one-hundred and eighty (180) days since the Administrator's mailing of the checks, the Administrator will void the checks, and transmit the funds to the State of California's Controller, Unclaimed Property Division for further handling on behalf of the Class Member.
58. **Final Report by Administrator to Court.** Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Administrator will serve on the Parties and file with the Court a declaration as a final report on the disbursements of all funds from the Gross Settlement Amount.

59. **Released Claims.**

- a. **Participating Class Members.** As of Effective Date, the Released Parties shall be entitled to a full and final accord, satisfaction, settlement, and release of the Released Claims for the Class Period from Participating Class Members, including Plaintiff.
- b. **PAGA Members.** As of the Effective Date, all PAGA Members are bound by the PAGA Release.
- c. **Plaintiff.** As of the Effective Date, Plaintiff hereby fully and finally releases Defendant and the Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law, including but not limited to those claims raised in the Action and/or that could have been raised in the Action, and those arising from or related to Plaintiff's employment with Defendant, and the termination of that employment ("Plaintiff's Released Claims"). Plaintiff's Released Claims includes all of the Released Claims as defined herein as well as all other wage and hour claims, claims under California Business and Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the PAGA, claims under the Fair Labor Standards Act, and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, as well as all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, arising from or relating to Plaintiff's relationship, or termination of relationship, with any Released Party through the Effective Date for any type of relief. Plaintiff further covenants that he will not become a member of any other legal actions against the Released Parties, as that term is defined, asserting any of Plaintiff's Released Claims, and will opt out of any such actions if necessary. For the avoidance of doubt, this is a complete and general release to the maximum extent by law, and this release excludes only the release of claims not permitted by law.
- d. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, Plaintiff's Released Claims shall include all such claims, whether known or unknown, without exception, by the releasing party.

Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of California Civil Code section 1542, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in him or him favor at the time of executing the release and that, if known by him or her, would have materially affected him or him settlement with the debtor or released party.

- e. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel waives any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- 60. **Limitation on Public Statements About Settlement.** Prior to final approval, the Parties agree not to disclose the terms of this Settlement except in court papers filed to seek approval and any other disclosures agreed to by the Parties that are necessary to effectuate the Settlement. Plaintiff and Class Counsel shall not issue any press releases, or hold any press conferences, or publish information about the settlement on any website, or otherwise publicize the settlement. However, Plaintiff's counsel may (in future declarations submitted in Court) refer to the fact that this matter settled on a class and representative action basis for purposes detailing the experience of counsel. Plaintiff and Plaintiff's Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the Court.
- 61. Plaintiff and his Counsel represent that other than the instant Action, they have no present intent to assert any other claims against Defendant in any judicial, arbitral, or administrative forum. Plaintiff and their Counsel also represent that they do not know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties acknowledge, understand and agree that the representations described in this paragraph are essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.
- 62. If the Court does not grant final approval of this Settlement for any reason, the Parties agree to attend mediation again in an effort to reach a settlement approved by the Court.

63. **Miscellaneous Terms.**

a. **No Admission of Liability or Class Certification for Other Purposes.**

- i. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).
- ii. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- iii. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

62. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

63. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effectuate the implementation of the Settlement. In the event the Parties are unable to reach an agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court for resolution.
64. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
65. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
66. **Agreement Binding on Successors.** This Agreement is binding upon, and inures to the benefit of, the successors of each of the Parties. The Parties warrant that they understand and have full authority to enter this Agreement, and intend it to be fully enforceable and binding on all Parties, pursuant to California Code of Civil Procedure section 664.6, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any Settlement Conference confidentiality provisions which might otherwise apply under federal or state law.
67. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
68. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
69. **Fair and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations facilitated by an experienced and respected wage and hour class action mediator, taking into account all relevant factors, current and potential.

70. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within sixty (60) days after the Judgment becomes Final, Class Counsel will return or destroy all such documents and data, and provide written confirmation to Defendant of the destruction.
71. **Exhibits and Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement. The terms of this Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement.
72. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Mayall Hurley, P.C.

Robert J. Wasserman

Email: rwasserman@mayalllaw.com

Jenny D. Baysinger

Email: jbaysinger@mayalllaw.com

Attorney at Law

Mayall Hurley, P.C.

2453 Grand Canal Blvd.

Stockton, CA 95207

Tel: (209) 477-3833

Fax: (209) 473-4818

To Defendant:

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Michael J. Nader, Esq.

Email: Michael.nader@ogletree.com

500 Capitol Mall, Suite 2500

Sacramento, CA 95814

Telephone: (916) 840-3150 / Fax: (916) 840-3159

73. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed

counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

74. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the Parties agree to jointly request the Court to stay all proceedings with this Action, except for such proceedings needed to secure approval of this settlement, and the time to bring the Action to trial shall be extended pending the outcome of the settlement process.
75. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.
76. **Court Filings.** The Parties agree not to object to any Court filings consistent with this Settlement Agreement.
77. **Invalidity of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 6/6/2022, 2022

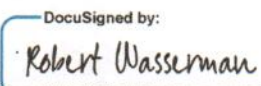
DocuSigned by:
By: 
E48566927C8D45E...
Plaintiff
Rudy Gonzalez

Dated: June 26th, 2022

By: 
Authorized Agent for Defendant
Xtreme Manufacturing, LLC

APPROVED AS TO FORM:

Dated: 6/6/2022, 2022

DocuSigned by:
By: 
077A13A0E77A4C5...
Robert J. Wasserman
Jenny D. Baysinger
Class Counsel
Mayall Hurley, P.C.

Dated: June 28, 2022

By: 
Evan R. Moses
Michael J. Nader
Counsel for Defendant
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Exhibit A

U.S. District Court, Eastern District of California

Gonzalez v. Xtreme Manufacturing, LLC, (U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO).

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

To: All current and former non-exempt California employees of Xtreme Manufacturing, LLC who worked at least one shift from December 4, 2016 to March 1, 2022” (the “Class Members”).

All current and former non-exempt California employees of Xtreme Manufacturing, LLC who worked at least one shift from December 1, 2019 to March 1, 2022 (the “PAGA Members”).

A putative class action and representative action under the California Private Attorneys General Act of 2004 (“PAGA”), which was brought on behalf of the Class and PAGA Members (defined above) and against Defendant Xtreme Manufacturing, LLC has been settled for \$290,000.00. As explained in this Notice, if the Court approves this class and PAGA Settlement then you may receive payments under this Settlement. You are receiving this Notice because based on Defendant’ records, you are a Class Member and/or a PAGA Member.

If you are a Class Member and/or a PAGA Member, you are eligible for payment from the Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to participate and receive your share of the money from the class and PAGA settlement, you do <u>not</u> need to do anything. If you do nothing, you will be mailed a settlement payment and you will release certain claims. [You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.]
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you ask to be excluded from the class portion of the settlement and money is later awarded, you will not receive any share from the class settlement money. But if you exclude yourself, you keep any rights as an individual to sue Defendant separately about the same legal claims that are being settled here. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is [45 calendar days from date of mailing]. If you are a PAGA Member, even if you exclude yourself from the class action, you will still receive a portion of the PAGA settlement money and be bound by the release of PAGA claims.
OBJECT	Object to the Settlement if you think the Settlement is not fair by sending your written objection to the Settlement Administrator and, if you wish,

appear at the Final Approval Hearing. If you submit a Request for Exclusion from the Settlement, you cannot also object to it. **The deadline to submit an objection is [45 calendar days from date of mailing].**

- **Your rights and options – and the deadlines to exercise them – are explained in this Notice.**
- **Defendant support the settlement and will not retaliate in any manner against any class member who remains in the class and receives a settlement payment.**

BASIC INFORMATION

1. **Why was this notice issued**

A Court authorized this Notice because you have a right to know about a proposed Settlement of a class and representative PAGA action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the U.S. District Court for the Eastern District of California, and the case is known as *Gonzalez v. Xtreme Manufacturing, LLC*, (U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO)(the “Action” or the “Lawsuit”).

2. **What is the Lawsuit about?**

On February 22, 2021, Plaintiff Rudy Gonzalez filed a First Amended Class Action Complaint (“Complaint”) alleging wage and hour claims, including the failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal and rest breaks, the failure to reimburse for all business expenses, the failure to pay all wages due and owing at the end of employment, the failure to provide accurate itemized wage statements, unlawful business practices, the failure to timely provide payroll records to the named plaintiff, the failure to timely provide personnel records to the named plaintiff, and additional PAGA Claims seeking civil penalties for the violations.

Defendant denies all of the claims in the Lawsuit. However, Defendant has agreed to settle the Lawsuit to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated.

3. **What is a class action?**

In a class action lawsuit, a Class Representative (in this case, Rudy Gonzalez) sues on behalf of others who may have similar claims, who are called a class or class members.

4. **Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff, nor did the Court decide in favor of Defendant. Instead, both sides agreed to a no-fault settlement of the Lawsuit (“Settlement”). That way, they avoid the cost of further litigation including a trial, and the people affected will get compensation from the Settlement.

5. **Who are the Parties in these Lawsuits?**

Plaintiff Rudy Gonzalez was an employee of the Defendant. The Defendant is Xtreme Manufacturing, LLC Diamonds, LLC.

6. **Who are the Attorneys representing the Plaintiff and the Class?**

Mayall Hurley, P.C.
Robert J. Wasserman
Email: rwasserman@mayallaw.com
Jenny D. Baysinger
Email: jbaysinger@mayallaw.com
Attorney at Law
Mayall Hurley, P.C.
2453 Grand Canal Blvd.
Stockton, CA 95207
Tel: (209) 477-3833
Fax: (209) 473-4818

You also have the right to hire an attorney (at your own cost) to represent you, or to enter an appearance and represent yourself.

THE TERMS OF THE SETTLEMENT

7. **What is the Settlement Amount?**

The proposed Settlement provides for a maximum payment of \$290,000.00 to fully and finally resolve all claims in the Lawsuit (referred to as the “Total Settlement Amount”). Class Counsel will apply to the Court for attorneys’ fees of up to 96,666.67; litigation costs estimated at \$14,000; a “Class Representative Service Payment” of up to \$5,000 to the Plaintiff for his work and effort in prosecuting this case, risks taken for the payment of costs in the event of loss, and a general release of all claims; settlement administration expenses to Simpluris, Inc., estimated at \$5,500; and a “PAGA Payment” to the California Labor Workforce and Development Agency (“LWDA”) and PAGA Members in settlement of claims for penalties under PAGA. The exact amount of the attorneys’ fees, litigation costs, Class Representative service payments, and settlement administration expenses will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount (“NSA”), is estimated to be \$158,833.33. The NSA will be apportioned and paid out entirely, automatically, to all “Participating Class Members,” who are the Settlement Class Members who do not ask to be excluded from the class action settlement, as “Individual Settlement Payments.”

No portion of the Total Settlement Amount will revert to Defendant under any circumstances.

8. **How will the Individual Settlement Payments be calculated and how much will my award be?**

Participating Class Members will receive a pro-rata share of the NSA based on the number of weeks they worked for Defendant during the time period of December 4, 2016 to March 1, 2022 (the “Class Settlement Period”).

Here’s how it works – the NSA will be entirely distributed to the Participating Class Members. The NSA allocated to each individual Participating Class Member will be based on the individual’s total number of weeks worked during the Class Settlement Period, in relation to the total number of weeks worked by all Participating Class Members. Weeks will be calculated according to Defendant’ records.

Based on Defendant's records, you worked _____ work weeks during the Class Settlement Period and your estimated Individual Settlement Payment is \$_____, before applicable tax withholdings, although the actual amount that is paid may be lower or higher than the amount estimated. If you wish to dispute your number of workweeks during the Class Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of weeks during the Class Settlement Period.

Individual Settlement Payments shall be subject to applicable withholding taxes on that portion of the payment allocated to wages. Individual Settlement Payments will be allocated 20% to wages for which an IRS W-2 form will be issued, and 80% to penalties and interest for which an IRS 1099 form will be issued as required. You will be responsible for the tax consequences of your Individual Settlement Payments, for filing your own returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due. You should consult with a tax advisor concerning the tax consequences of the Individual Settlement Payment you could receive under the Settlement.

9. How will the PAGA Payment be distributed?

The Parties will seek approval from the Court to designate \$10,000.00 of the Total Settlement Amount as penalties recoverable under the PAGA. 75% of this amount, or \$7,500.00, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$2,500.00, will be distributed to the PAGA Members as "Individual PAGA Payments." The Individual PAGA Payments are paid in addition to any Individual Settlement Payments (the Individual Settlement Payment and the Individual PAGA Payments are the "Settlement Payment"). 100% of the PAGA Payment will be treated as penalties and interest. You should consult with a tax advisor concerning the tax consequences of the Individual PAGA Payment you could receive under the Settlement.

Not all Class Members are PAGA Members entitled to an Individual PAGA Payment. You are only a PAGA Member if you worked for Defendant during the period December 1, 2019 to March 1, 2022 (the "PAGA Settlement Period"). The Individual PAGA Payments will be calculated on a pro-rata basis based on the number of pay periods that you worked during the PAGA Settlement Period. Based on Defendant's records, your total pay periods during the PAGA Settlement Period is _____. Based on that, your anticipated approximate Individual PAGA Payment is \$_____. If you wish to dispute your number of pay periods during the PAGA Settlement Period, you must notify the Settlement Administrator in writing, no later than forty-five (45) days after the mailing of this Notice. Please provide any proof you may have that you were employed by Defendant for a different number of pay periods during the PAGA Settlement Period.

HOW TO GET PAYMENT

10. How can I get my Settlement Payment?

If the Settlement is approved, you do not need to do anything to receive a Settlement Payment. If the Court approves the Settlement at a final approval hearing, your Settlement Payment will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Settlement Payment will be mailed to the last known address it has on file for you** if the Court approves the settlement.

11. When can I expect to receive my Settlement Payment?

If the Court approves the Settlement, and there are no pending objections, your share of the Settlement will be paid after the Court grants final approval of the Settlement. ***Your share of the Settlement will be mailed to the address on file for you.*** Again, if this address is not correct, or if you move after you receive this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at 800-_____.

12. What am I giving up to get a Settlement Payment?

Participating Class Members will be giving up or “releasing” the claims described below:

Release of Class and PAGA Claims: After the Court grants final approval of the Settlement, each Participating Settlement Class Member will be bound by the approval and judgment and thereby fully and forever release Defendant and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns (the “Released Parties”) from all causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, including, but not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, statutory and civil penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, arising out of or based upon the allegations in the Action, including the California Labor Code, the Fair Labor Standards Act, the California Industrial Welfare Commission Wage Orders, the PAGA, and the California Business and Professions Code § 17200, et seq. These released claims include, without limitation, the following categories of allegations, to the fullest extent such claims are releasable by law: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee’s regular rate of pay; (c) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (d) all claims for failure to provide compliant rest periods and pay related premiums at the regular rate; (e) all claims for failure to reimburse business expenses; (f) all claims for failure to pay timely current wages and associated penalties; (g) all claims for failure to pay final wages; and (h) all claims for failure to provide accurate wages statements. The PAGA Members also release all causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, that seek civil penalties and other relief available pursuant to the PAGA against the Released Parties.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT
13. Can I exclude myself from the class settlement?

If you do not wish to participate in the class settlement for whatever reason, you can exclude yourself from the class settlement (that is, “opt out” of the Settlement). If you opt out, you keep your right to sue the Defendant for the same claims on an individual basis. However, you cannot opt out of the PAGA portion of the Settlement. To opt out and exclude yourself from the Class and this Settlement so that you do not become a Participating Settlement Class Member, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class. The letter must state in substance:

“I have read and understand the Notice of Settlement of Class and Representative Action and I wish to exclude myself from the Settlement described in the Notice.”

Your letter requesting to exclude yourself must include the case name, *Gonzalez v. Xtreme Manufacturing, LLC*, (U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO), your full name, current address and telephone number. It must be addressed to the Administrator at [address], postmarked on

14. If I don't exclude myself from the class settlement, can I sue Defendant for the same thing later?

No. Unless you exclude yourself from the class settlement, you give up any right to sue Defendant for the claims that this Settlement resolves. *If you have a separate arbitration or lawsuit already against any of the Defendant, you should speak to your lawyer in that case immediately.* You may need to exclude yourself from this Class and this case by the above deadline in order to continue your separate arbitration or lawsuit.

15. If I exclude myself from the class settlement, can I get money from this settlement?

Not from the Class Settlement. If you request to be excluded from the Settlement, you will not receive an Individual Settlement Payment. You also will not be able to object to the Settlement as explained below. Your Individual Settlement Payment will be redistributed to the Participating Class Members.

However, if you are a PAGA Member, you will receive an Individual PAGA Payment regardless of whether you exclude yourself from the class settlement.

No portion of the Total Settlement Amount will go back to Defendant as a result of any person opting out of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, and you don't request to be excluded from the class settlement, you can object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it before the Court decides whether to grant final approval of the Settlement.

To object in writing, you must submit a timely written objection to the Administrator. Your objection must state that you object to the proposed Settlement of this case entitled *Gonzalez v. Xtreme Manufacturing, LLC*, (U.S. District Court, Eastern District of California, Case No. 1:20-cv-01704-JLT-SKO). Be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail your written objection to the Administrator at [address], postmarked on or before _____, 2022. [45 days from mailing of Notice Packet] Requests for exclusion postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact attorneys for Plaintiff and the Class (see Paragraph 6 above) or the Settlement Administrator. Please **DO NOT** contact attorneys for Defendant or any of the Defendant's managers and supervisors, or owners.

THE COURT'S FINAL FAIRNESS HEARING

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department __ of the [Court] located at the _____ on _____, 2022, at ____ a.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's

request for attorneys' fees and litigation costs, the Class Representatives' Enhancement Awards, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions from the Judge. But you are welcome to come at your own expense to support or object to the settlement. If you send your timely written objection to the Settlement Administrator, you don't have to come to Court to object but you can if you wish to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and if required pay your own lawyer to attend if you so desire.

19. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak, however, to be sure that any objection will be considered by the Court, you should submit a timely written objection, or a notice of intent to appear at the hearing. To do so, please timely submit the objection or notice of intent to appear to the Settlement Administrator listed in section 16 no later than **[45 days after mailing of postcard.]** Any notice of intent to appear should include a description of any arguments you intend to make.

GETTING MORE INFORMATION

20. Who may I contact if I have questions about the settlement?

This Notice is only a summary of the Lawsuit and proposed Settlement. For more information, you may personally inspect the files and the Settlement Agreement at the U.S. District Court for the Eastern District of California located at the _____, during regular Court hours. You may also contact Class Counsel if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1- _____, or you can write to Settlement Administrator, at _____ **[insert address]**.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT OR ANY OF THEIR MANAGERS, SUPERVISORS, OWNERS OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. **It is your responsibility to ensure that the Settlement Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Settlement Payment will be sent if the Settlement is approved.

B. **Settlement Payment checks should be cashed promptly upon receipt.** Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or PAGA Member who did not cash his or her Settlement Payment check. If your Settlement Payment check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2



MEAL AND REST BREAK ACKNOWLEDGMENT FORM

The company requires you to take meal and rest breaks throughout the day depending on the length of your shift. To ensure you take and enjoy meal and rest breaks, the company requires you to complete this form and submit it to your manager by no later than the next work day (e.g. for breaks taken on Thursday, you must submit this form by Friday; for breaks taken on Friday, you must submit this form by Monday; etc.). Failure to timely and accurately submit this form may result in discipline, up to and including termination. Meal and rest breaks must be **uninterrupted**, meaning you are relieved of all duty and should not do any work on break. If, for any reason, you miss a break or have a break interrupted on a given day, you must identify in this form the reason for the missed or interrupted break.

Meal Breaks – Complete ONE option below. Consult your manager if you do not know which option applies.

Hours of Work *	Meal Breaks
6 hours or less	I waived my meal break: ☐ Yes OR I took an uninterrupted, 30-minute meal break, which began before the end of my 5 th hour of work: ☐ Yes ☐ No
Between 6 and 10 hours	I took an uninterrupted, 30-minute meal break, which began before the end of my 5 th hour of work: ☐ Yes ☐ No
Between 10 and 12 hours	I took an uninterrupted, 30-minute meal break, which began before the end of my 5 th hour of work; and I waived my second meal break: ☒ Yes OR I took an uninterrupted, 30-minute meal period, which began before the end of my 5 th hour of work; and I took a second uninterrupted, 30-minute meal period which began before the end of my 10 th hour of work: ☐ Yes ☐ No
12 hours or more	I took an uninterrupted, 30-minute meal period, which began before the end of my 5 th hour of work; and I took a second uninterrupted, 30-minute meal period which began before the end of my 10 th hour of work: ☐ Yes ☐ No

**Measured from the start of your shift, including rest and recovery breaks, but not including meal breaks.*

Rest Breaks – You must take 10-minute, uninterrupted rest breaks according to the schedule below.

Hours of Work	Rest Breaks	I took my rest breaks according to the schedule provided: ☒ Yes ☐ No
0 - 3.5 hours	No rest break	
3.5 – 6 hours	1 st rest break	
6 – 10 hours	2 nd rest break	
10 – 14 hours	3 rd rest break	
14 – 18 hours	4 th rest break	
18 – 22 hours	5 th rest break	

Recovery Breaks – If you work outdoors in temperatures of 80 degrees Fahrenheit or more, the company encourages you to take recovery breaks of no less than 5 minutes to cool down to prevent overheating.

If you answered “No” to any question above, explain why your break was missed or interrupted:

By signing below, I acknowledge that the information above is true and correct.

Employee Name: Rudy GONZALEZ

Employee ID: 16880

Employee Signature: [Signature]

Date: 1-10-19

EXHIBIT 3



California State-Specific Handbook Policies

Breaks - Employees are entitled to 10 minutes for each four hours worked, occurring in the middle of the period.

Recovery Period Breaks - Employees who work out doors in temperatures of 80 degrees Fahrenheit or above are encouraged to take "recovery breaks" of no less than 5 minutes to cool down in the shade and get a drink of water when they feel the need to protect themselves from overheating. These breaks may be taken on an as needed basis. The breaks may be taken in any designated break area. If there is no designated break area at your location, please call Human Resources at 702.851.3701

Even when temperatures do not reach 80 degrees, recovery breaks may be taken upon request.

Meals - Employees are required to take a 30-minute meal period before beginning of their 5th hour worked. If employee works 10 hours they are entitled to a 2nd meal break but can waive this break in writing. Employees may not waive their 2nd meal period if they did not take their first meal period.

Vacation - All accrued, unused vacation time is paid at termination up to a maximum of 1. times the annual accrual.

Leave of Absence - *Contact Human Resources for all required forms and documents*

All State leaves of absence may run concurrent with FMLA or Ahern's Personal leave of absence, if qualified and appropriate.

Time Off to Vote - Employees who are unable to vote in state wide elections because of their work schedule may take 2 hours off from work, with pay, at the beginning or end of their working hours to vote, unless they receive advance written approval from their supervisor to vote at another time during working hours. Where possible, the employee must give the employer 2 working days' notice that the time off from work to vote is needed.

California Family Rights Act (CFRA) - Ahern is a covered employer under the CFRA, which entitles employees in California to maximum of twelve (12) weeks per year of unpaid leave for specific CFRA qualifying reasons. If an employee is eligible under both the FMLA and the CFRA, the leave will run concurrently, and Ahern, to the extent permitted by law, will deduct the leave time taken from the employee's entitlement under each Act for which the reason for the leave is a qualifying reason. In addition, Ahern, to the extent permitted by law, will require employees

EXHIBIT 4

completed, which may take up to 2 business days.

Overtime

Non-exempt (hourly) employees will be compensated for any and all overtime worked according to applicable state and federal law. All employees are required to be available for a reasonable amount of overtime, as conditions dictate, and their supervisors must approve all overtime in advance. If you work additional hours without your supervisor's knowledge or approval, you may be subject to corrective counseling, up to and including termination. For purposes of computing overtime, the workweek begins on Thursday and runs through Wednesday night. Time paid for non-work time such as holidays, vacation, bereavement, sick days, or jury duty is not included when computing overtime pay.

Meal and Rest Breaks

To perform at our best, we need to keep up our stamina throughout the day. Rest breaks and meal periods are provided as an opportunity for rest and relaxation. To facilitate this, you are entitled to meal and rest periods depending on the length of your shift, your job classification and specific state law. If for any reason you do not take meal break(s) or your meal break time is shorter than 30 minutes, notify your supervisor so your time worked is accurate.

This is a general provision for which the specifics may vary from state to state. Please check with your supervisor or the Human Resources Department for information specific to your area.

In order to comply with state law, Xtreme Manufacturing may need to schedule rest and/or meal breaks. Failure to comply will result in disciplinary action, up to and including termination.

Time Records

Government regulations require Xtreme Manufacturing to keep accurate records of the time worked by most classes of its employees. Therefore, employees must maintain accurate records of the time they arrive at and leave work, including meal breaks. A time clock is provided for this purpose. Employees must accurately clock in and out at the beginning and end of their shifts and meal periods.

Employees are not permitted to perform any work function while off the clock. This includes checking e-mails, messages or answering the phone.

Failure to maintain time records, falsification of time records, clocking in for another employee, requesting that someone do so for you or knowingly permitting another to falsify time records are serious offenses and are subject to disciplinary action, up to and including termination and possible legal action.

Employees are not permitted to begin or end their workday or workweek outside of their regularly scheduled shift without the prior approval of their supervisor.

EXHIBIT 5

**WEEKLY MEAL AND REST BREAK****ACKNOWLEDGMENT FORM**

The Company requires you to take Meal and Rest Breaks throughout the day depending on the length of your shift. To ensure you take and enjoy Meal and Rest Breaks, the company requires you to complete this form and submit it to your manager by no later than Monday for the previous workweek. Failure to timely and accurately submit this form may result in discipline, up to and including termination.

Meal and Rest Breaks must be **uninterrupted**, meaning you are relieved of all duty and should not do any work on break. You are free to come and go during your Meal Break. If, for any reason, you miss a Meal Break or have a Meal Break interrupted on a given day, you must notify your supervisor immediately of the reason for the missed or interrupted break.

In general, when an employee works for a period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work (in other words, no later than the start of the employee's sixth hour of work). When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work (in other words, no later than the start of the employee's eleventh hour of work).

1st hour	2nd hour	3rd hour	4th hour	5th hour
0.0 - 1.0	1.01 - 2.0	2.01 - 3.0	3.01 - 4.0	4.01 - 5.0
6th hour	7th hour	8th hour	9th hour	10th hour
5.01 - 6.0	6.01 - 7.0	7.01 - 8.0	8.01 - 9.0	9.01 - 10.0
11th hour	12th hour	13th hour	14th hour	15th hour
10.01 - 11.0	11.01 - 12.0	12.01 - 13.0	13.01 - 14.0	14.01 - 15.0
16th hour	17th hour	18th hour	19th hour	20th hour
15.01 - 16.0	16.01 - 17.0	17.01 - 18.0	18.01 - 19.0	19.01 - 20.0

Your Meal Break is untimely (and a penalty is possibly owed) if it is taken after working 5.01 hours (although the Meal Break can be waived altogether if an employee works no more than 6 hours). In addition, a Meal Break Penalty may be owed if an employee is prevented from taking a full thirty-minute Meal Break, or if an employee takes a second Meal Break after completing more than 10 hours of work (though the Meal Break can be waived altogether if the employee works no more than 12 hours). No more than one meal period penalty is owed for a single day – regardless of how many non-compliant Meal Breaks there were that day.

Ahern will provide one hour of penalty pay for any day in which an employee:

- 1) Failed to take one or more earned meal breaks; provided that no penalty will be paid where an employee worked between 5.01 and 6.0 hours and opted to waive the meal break and no penalty will be paid where an employee worked between 10.01 and 12.0 hours and opted to waive the second meal break;
- 2) Took his/her first meal break after the fifth hour of work;
- 3) Was prevented from taking a meal break that was at least thirty-minutes in length; or
- 4) Took his/her second meal break after having worked more than ten hours.

***Workdays totaling less than 5.01 hours do not require a Meal Break to be taken.**

By signing below, you are acknowledging that for the previous workweek of:

Sunday **01/19/2020** to Saturday **01/25/2020** you took all required Meal Breaks and all scheduled Rest Breaks in a timely and uninterrupted manner and also that you have not been injured on the job while working during this period.

Employee Printed Name: Rudy Gonzalez

Employee ID #: 16880

Employee Signature: [Signature]

Date: **01/27/2020**

EXHIBIT 6

Jenny Baysinger

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Monday, September 12, 2022 9:22 AM
To: Jenny Baysinger
Subject: Thank you for your Proposed Settlement Submission

09/12/2022 09:22:02 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7Cj%7Cj%7Cbaysinger%40mayallaw.com%7Cb1926e7b5f8a4348b14408da94daf423%7C05d52ced3a0f41ca99a7a9f9e83f079b%7C0%7C0%7C637985965374846064%7CUnknown%7CTW%7Cf%7CpbGZsb3d8eyJWl%7CjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=4cE8DDhZdW7rl53yCgKrDzFRNN4nsL3HMLncU4v4BGs%3D&reserved=0