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Superior Court of California
County of Fresno
By: A. Hoffman, Deputy

Attorneys for Plaintiff TROY DION PROE,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

TROY DION PROE, on behalf of himself and
current and former aggrieved employees

Plaintiff,

vs.

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

Defendants.

Case No.: [24CECG01063](#)

PAGA ACTION

**PLAINTIFF TROY DION PROE'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff TROY DION PROE ("Plaintiff"), who alleges and complains
against Defendants XTREME MANUFACTURING, LLC; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to authorize or permit

1 all legally required and/or compliant meal periods or pay meal period premium wages; failure to
2 authorize or permit all legally required and/or compliant rest periods or pay rest period premium
3 wages; statutory penalties for failure to provide accurate wage statements; statutory waiting time
4 penalties in the form of continuation wages for failure to timely pay employees all wages due upon
5 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
6 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
7 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
8 others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to Fresno County, including but not limited to, at 1775 Park
18 St., Selma, CA 93662.

19 **III. PARTIES**

20 3. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of himself and other current and former employees subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who work, worked, or will
24 work for Defendants as direct employees as well as temporary employees employed through temp
25 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
26 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
27 employed by Defendants in an hourly position at Defendants' location in Fresno from in or around
28 April 7, 2014, until on or about July 24, 2023.

1 4. Plaintiff is informed and believes and thereon alleges that Defendant XTREME
2 MANUFACTURING, LLC is authorized to do business within the State of California and is doing
3 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
4 hereto were persons acting on behalf of Defendant XTREME MANUFACTURING, LLC in the
5 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
6 Defendant XTREME MANUFACTURING, LLC operates in Fresno County and employed
7 Plaintiff and aggrieved employees in Fresno County, including but not limited to, at 1775 Park St.,
8 Selma, CA 93662.

9 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
10 through 50 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
13 working conditions of employment of Plaintiff and aggrieved employees.

14 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
15 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
16 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
17 supervisor, independent contractor and/or employee of each defendant who violated or caused to
18 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
19 the Industrial Welfare Commission's wage orders regulating hours and days of work.

20 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names, and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
24 named defendants is in some manner responsible for the events and allegations set forth in this
25 complaint.

26 8. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
28 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
3 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

4 **(Against all Defendants by Plaintiff)**

5 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
7 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, and the applicable
8 Wage Orders.

9 11. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 12. **Failure to pay wages to hourly non-exempt employees for workdays that**
12 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
13 current and former aggrieved California-based hourly non-exempt employees regularly worked
14 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

15 13. California law requires an employer to authorize or permit an employee an
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
17 all duties and the employer relinquishes control over the employee's activities prior to the
18 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
19 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the employee
21 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
22 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
23 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
24 period is only permitted when: (1) the nature of the work prevents an employee from being
25 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26 14. If an employer fails to provide an employee a meal period in accordance with the
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 1 at §11.

2 15. In this case, Defendants failed to authorize or permit legally required and compliant
3 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
4 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
5 limited to:

6 (a) Failing to authorize or permit Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees a second uninterrupted duty-free meal period of
8 no less than thirty (30) minutes for shifts exceeding ten (10) hours.

9 16. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
10 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
11 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
12 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
13 employees did not receive legally required and compliant meal periods, in violation of Labor Code
14 section 226.7.

15 17. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
16 and other current and former aggrieved California-based hourly non-exempt employees not
17 receiving wages to compensate them for workdays during which Defendants did not provide them
18 with meal periods in compliance with California law.

19 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
20 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
21 current and former aggrieved California-based hourly non-exempt employees regularly worked
22 shifts of more than three-and-a-half (3.5) hours.

23 19. California law requires every employer to authorize and permit an employee a rest
24 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
25 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
26 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
27 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
28 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code

1 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
2 each work period. Wage Order 1 at §12. Additionally, the rest period requirement “obligates
3 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
4 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
5 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

6 20. If the employer fails to authorize or permit a required rest period, the employer
7 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
8 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
9 Wage Order 1 at § 12.

10 21. In this case, Defendants failed to authorize or permit all legally required and
11 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
13 limited to:

14 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
15 non-exempt employees to employees to remain on the premises during their rest periods, resulting
16 in rest periods that were not duty-free and/or were less than a net (10) minutes;

17 (b) Failing to authorize or permit Plaintiff and other current and former aggrieved
18 California-based hourly non-exempt employees an uninterrupted, duty-free rest breaks for every
19 four (4) hours worked or major fraction thereof; and

20 (c) Failing to authorize or permit Plaintiff and other current and former aggrieved
21 California-based hourly non-exempt employees a third uninterrupted duty-free rest period of a net
22 (10) minutes for shifts exceeding ten (10) hours.

23 22. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
24 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
25 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
26 workday they did not receive legally required and compliant rest periods, in violation of Labor
27 Code section 226.7.

28 23. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff

1 and other current and former aggrieved California-based hourly non-exempt employees not
2 receiving wages to compensate them for workdays in which Defendants did not provide them with
3 rest periods in compliance with California law.

4 **24. Failure to timely pay earned wages during employment:** In California, wages
5 must be paid at least twice during each calendar month on days designated in advance by the
6 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
7 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
8 16th and the 26th day of that month and wages earned between the 16th and the last day,
9 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
10 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
11 paid within seven (7) calendar days following the close of the payroll period in which wages were
12 earned. Labor Code section 204(d).

13 **25.** As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
14 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
15 exempt employees' earned wages (including meal period premium wages and/or rest period
16 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
17 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
18 aggrieved California-based hourly non-exempt employees' their earned wages within the
19 applicable time frames outlined in Labor Code section 204.

20 **26. Failure to provide complete and accurate wage statements:** Labor Code section
21 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
22 employee his or her wages, the employer must "furnish each of his or her employees ... an
23 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
24 employee, except for any employee whose compensation is solely based on a salary and who is
25 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
26 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
27 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
28 deductions made on written orders of the employee may be aggregated and shown as one item, (5)

1 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
2 name of the employee and his or her social security number, (8) the name and address of the legal
3 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee.”

5 27. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
6 and other current and former aggrieved California-based hourly non-exempt employees all wages
7 earned (including meal period premium wages and/or rest period premium wages) rendered
8 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
9 wage statements inaccurate, in violation of Labor Code section 226.

10 28. **Failure to pay employees all wages due at time of termination/resignation:** An
11 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
12 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
13 hours of resignation (Labor Code section 202).

14 29. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
15 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
16 all their earned wages (including meal period premium wages and/or rest period premium wages),
17 Defendants failed to pay those employees timely after each employee’s termination and/or
18 resignation, in violation of Labor Code sections 201, 202, and 203.

19 30. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
20 employee, on behalf of himself or herself and other current or former employees, to bring a civil
21 action to recover civil penalties against all Defendants pursuant to the procedures specified in
22 Labor Code section 2699.3.

23 31. Plaintiff has complied with the procedures for bringing suit specified in Labor
24 Code section 2699.3. On January 4, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA
25 and provided notice to Defendants by certified mail which provided notice of the specific
26 provisions of the Labor Code alleged to have been violated, including the facts and theories to
27 support the violations alleged.

28 32. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by

1 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
2 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
3 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
4 to investigate Plaintiff's claims.

5 33. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, and
7 512. During Plaintiff's employment and continuing through the present, preceding Plaintiff
8 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

9 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512; one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation [penalty amounts established by Labor Code section 2699(f)(2)].

13 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
14 for each employee for each pay period for the initial violation, and for each subsequent violation,
15 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code section 226.3].

17 34. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
18 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
21 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

22 **ON THE FIRST CAUSE OF ACTION:**

23 1. That Defendants be found to have violated the provisions of the Labor Code and
24 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

25 2. For any and all legally applicable penalties during the relevant statute of limitations
26 subject to any permissible tolling, including but not limited to those recoverable under the
27 California Labor Code, including but not limited to section 2699(f);

28 3. For attorneys' fees and costs of suit, including but not limited to those recoverable

1 under California Labor Code section 2699(g); and

2 4. For such and other further relief, in law and/or equity, as the Court deems just or
3 appropriate

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5 Dated: March 11, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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By: Colby A. Meagle-Dunn

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