

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order: Felis A. Perez
2. Title of the proposed order: Preliminarily Approving Class Action Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Preliminary Approval of Class Action Settlement
 - b. Date and time: April 5, 2023 at 1:30 p.m.
 - c. Place: Santa Clara County Superior Court - Dept. 19
4. The proposed order was served on the other parties in the case.


(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: FELIS A. PEREZ, et al. v. NXEDGE MH, LLC, et al.

CASE NUMBER:
21CV387173**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):
The Spivak Law Firm
1801 Century Park East, 25th Fl, Los Angeles, CA 90067

b. My electronic service address is (*specify*):
emily@spivaklaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Dora Lane Esq., Attorney for NXEDGE MH, LLC; NXEDGE SAN CARLOS, LLC; and NXEDGE CSL, LLC

b. To (*electronic service address of person served*): DLane@hollandhart.com

c. On (*date*): March 17, 2023

☒ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 17, 2023

Emily Houny Ly

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

SHORT TITLE: FELIS A. PEREZ, et al. v. NXEDGE MH, LLC, et al.

CASE NUMBER:
21CV387173**ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)***(This attachment is for use with form POS-050/EFS-050.)***NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:****Name of Person Served****Electronic Service Address****Date of Electronic Service***(If the person served is an attorney,
the party or parties represented should
also be stated.)*Sarah J. Walsh, Esq., Attorney for
NXEDGE MH, LLC; NXEDGE
SAN CARLOS, LLC; and NXEDGE

sjwalsh@hollandhart.com

Date: March 17, 2023David K. Crockett, Esq., Attorney
for NXEDGE MH, LLC; NXEDGE
SAN CARLOS, LLC; and NXEDGE

DKCrockett@hollandhart.com

Date: March 17, 2023

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

Date: _____

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
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3 THE SPIVAK LAW FIRM
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6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 FELIS A. PEREZ, and all others similarly situated
(Additional attorneys for the Parties on following page)
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12 **(UNLIMITED JURISDICTION)**
13

14 FELIS A. PEREZ, on behalf of himself, all others
similarly situated, the general public, and as an
15 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
16 Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 NXEDGE MH, LLC, a Delaware limited
20 liability company; NXEDGE SAN CARLOS,
LLC, a Delaware limited liability company;
21 NXEDGE CSL, LLC, a Nevada limited liability
company; and DOES 3–50, inclusive,
22

23 *Defendant(s).*

Case No. 21CV387173

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Date: April 5, 2023
Hearing Time: 1:30 p.m.
Hearing Dept.: 19, The Honorable
Theodore C. Zayner
Action filed: September 29, 2021



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1 **ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)**

2 WALTER L. HAINES (SBN 71075)
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7 Attorneys for Plaintiff(s),
8 FELIS A. PEREZ, and all others similarly situated

9 **ATTORNEYS FOR DEFENDANTS**

10 DORA V. LANE (SBN 235113)
11 dlane@hollandhart.com
12 S. JORDAN WALSH (SBN 296860)
13 sjwalsh@hollandhart.com
14 DAVID K. CROCKETT (SBN 317816)
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Reno, NV 89511-2094
Telephone: (775) 327-3000
16 Facsimile: (775) 786-6179
17 Attorneys for Defendants NXEDGE MH, LLC; NXEDGE SAN CARLOS,
18 LLC; and NXEDGE CSL, LLC
19
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1 The Motion of Plaintiff Felis A. Perez (hereafter referred to as "Plaintiff") for
2 Preliminary Approval of a Class Action Settlement (the "Motion") was considered by the Court,
3 The Honorable Theodore C. Zayner presiding. The Court having considered the Motion, the
4 First Amended Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement"
5 or "Settlement Agreement"), and supporting papers, HEREBY ORDERS THE FOLLOWING:
6

7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
11 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
12 Settlement falls within the range of reasonableness and appears to be presumptively valid,
13 subject only to any objections that may be raised at the final hearing and final approval by this
14 Court. The Court will make a determination at the hearing on the motion for final approval of
15 class action settlement (the "Final Approval Hearing") as to whether the Settlement is fair,
16 adequate and reasonable to the Settlement Class.
17

18 2. For purposes of this Preliminary Approval Order, the "Settlement Class" means
19 all persons Defendants employed as regular full-time or part-time hourly, non-exempt
20 employees (current and former) in California (collectively "Class Members") who have not
21 executed releases of claims under the California Labor Code and/or applicable Wage
22 Orders/regulations who worked anytime during the Class Period. The "Class Period" shall mean
23 the period of time from September 29, 2017, through the earlier of the date of the Court's
24 preliminary approval order and the latest date before the Class exceeds 22,604 pay periods
25 worked. Defendants estimated for purposes of mediation that there are 20,549 Pay Periods
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1 worked by 331 Class Members for the period of September 29, 2017 through March 17, 2022.
2 These numbers would be expected to increase proportionately for the passage of time between
3 that date and the time of court approval. Before the Parties seek or a Party seeks court approval
4 of the Settlement, the Settlement Administrator will advise Plaintiff's counsel of Defendants'
5 report of the total number of Pay Periods worked and Class Members. The "Effective Date"
6 means as follows: If no objection to this Settlement or to any of the terms and or conditions of
7 the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor
8 to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final
9 approval of this Settlement; however, if any objection to this Settlement or to any of the terms
10 and or conditions of the Stipulation is filed by a member of the Settlement class, or any
11 intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the
12 filing any appeal of the order of final approval of this Settlement. If an appeal is filed or any
13 writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ
14 dissolved and when there is no further time to appeal the dismissal of the appeal or the
15 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation
16 of Defendants to pay any funds into the Settlement Account.

17
18
19 3. This action is provisionally certified pursuant to section 382 of the California
20 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
21 for purposes of settlement only with respect to the proposed Settlement Class.

22
23 4. The Court hereby preliminarily finds that the Settlement was the product of
24 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
25 making this preliminary finding, the Court considered the nature of the claims set forth in the
26 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the



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1 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
2 represents a compromise of the Parties' respective positions. The Court further preliminarily
3 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
4 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
5 finds that the Settlement was entered into in good faith.
6

7 5. The Court finds that the dates set forth in the Settlement for mailing and
8 distribution of the Class Notice meet the requirements of due process and provide the best notice
9 practicable under the circumstances and constitute due and sufficient notice to all persons
10 entitled thereto, and directs the mailing of the Class Notice by first class mail to the Settlement
11 Class as set forth in the Settlement. Accordingly, the Court orders the following implementation
12 schedule for further proceedings:
13

- 14 a. Within fourteen (14) days of this Order, Defendants shall provide Simpluris,
15 Inc., the appointed Settlement Administrator, with: (a) An electronic database
16 of all Class Members, last known mailing address, Social Security number
17 and Defendants' employee identification number ("Class Members' Data");
18 and (b) Corresponding to each Class Member's name, Defendants shall
19 provide a figure indicating the total number of Pay Periods worked by the
20 Class Member during the Class Period and the PAGA Period. That number
21 of Pay Periods shall be referred to as that Class Member's "Individual Pay
22 Periods;" (c) If any of the Class Members' Data are unavailable to
23 Defendants, Defendants will so inform Class Counsel and the Parties will
24 make their best efforts to reconstruct or otherwise agree upon the Class
25 Members' Data prior to when it must be submitted to the Settlement
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1 Administrator. Class Members' Data will otherwise remain confidential and
2 will not be disclosed to anyone, except as necessary to applicable taxing
3 authorities, or pursuant to Defendants' express written authorization or by
4 order of the Court.

5
6 **b. Mailing of Class Notice.** By Simpluris, Inc., approximately fourteen (14)
7 days after receiving the Class Members' Data, or as soon thereafter as it can
8 do so, the Settlement Administrator will mail the Class Notice to all identified
9 Class Members via first-class U.S. mail using the mailing address
10 information provided by Defendants, unless modified by any updated address
11 information that the Settlement Administrator obtains in the course of
12 administration of the Settlement.

13
14 **c. Returned Class Notice.** If a Class Notice is returned because of an incorrect
15 address, the Settlement Administrator will promptly, and not later than ten
16 (10) days from receipt of the returned Class Notice, search for a more current
17 address for the Class Member and re-mail the Class Notice to the Class
18 Member. The Settlement Administrator will use the Class Members' Data
19 and otherwise work with Defendants' Counsel and Class Counsel to find a
20 more current address. The Settlement Administrator will be responsible for
21 taking reasonable steps, consistent with its agreed-upon job parameters, court
22 orders, and fee, to trace the mailing address of any Class Member for whom
23 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
24 reasonable steps shall include the tracking of all undelivered mail;
25 performing address searches for all mail returned without a forwarding
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1 address; and promptly re-mailing to Class Members for whom new addresses
2 are found. If the Class Notice is re-mailed, the Settlement Administrator will
3 note for its own records and notify Class Counsel and Defendants' Counsel
4 of the date and address of each such re-mailing as part of a weekly status
5 report provided to the Parties.

6
7 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
8 court days prior to the Final Approval Hearing, the Settlement Administrator
9 will provide the Parties for filing with the Court a declaration of due diligence
10 setting forth its compliance with its obligations under this Agreement. Prior
11 to the Final Approval Hearing, the Settlement Administrator will supplement
12 its declaration of due diligence if any material changes occur from the date
13 of the filing of its prior declaration.

14
15 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
16 Class Members may submit requests to be excluded from the effect of the
17 Settlement, or objections to the Settlement, pursuant to the following
18 procedures:

19 i. **Request for Exclusion from Settlement.** A Class Member may
20 request to be excluded from the effect of this Agreement, though not
21 the PAGA Released Claims, and any payment of amounts under this
22 Agreement, though not the PAGA Payment, by timely mailing a letter
23 to the Settlement Administrator stating that the Class Member wants
24 to be excluded from this Action. This letter must include the Class
25 Member's name, address, telephone number, last four digits of the
26
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1 Class Member's Social Security number, and signature. To be valid
2 and timely, the request to be excluded must be postmarked by the date
3 specified in the Class Notice (60 days from the initial mailing of the
4 Class Notice by the Settlement Administrator). A Class Member who
5 properly submits a valid and timely request to be excluded from the
6 Action shall not receive any payment of any kind in connection with
7 this Agreement or this Action, shall not be bound by or receive any
8 benefit of this Agreement, and shall have no standing to object to the
9 Settlement. A request for exclusion must be mailed to the Settlement
10 Administrator at the address provided on the Class Notice. The
11 Settlement Administrator shall transmit the request for exclusion to
12 counsel for the Parties as follows:
13
14

15 *To Class Counsel:*

16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 8605 Santa Monica Bl
19 PMB 42554
20 West Hollywood, CA 90069

21 *To Defense Counsel:*

22 Dora Lane, Esq.
23 Holland & Hart LLP
24 5441 Kietzke Lane
25 Second Floor
26 Reno, NV 89511

- 27 ii. **Objections to Settlement.** The Class Notice will provide that any
28 Class Member who does not request exclusion from the Action and
who wishes to object to the Settlement should submit an objection in
writing to the Settlement Administrator by sixty (60) days after the
Settlement Administrator mails the Class Notice, a written objection
to the Settlement which sets forth the grounds for the objection and
the other information required by this paragraph. The objection



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1 should be mailed to the Settlement Administrator at the address
2 provided on the Class Notice. The Settlement Administrator shall
3 transmit the objections to counsel for the Parties as follows:

4 *To Class Counsel:*

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Bl
8 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Dora Lane, Esq.
Holland & Hart LLP
5441 Kietzke Lane
Second Floor
Reno, NV 89511

9
10 The written objection should state the objecting Class Member's full
11 name, address, and the approximate dates of his or her employment
12 with Defendants. The written objection should state the basis for each
13 specific objection and any legal support in clear and concise terms.
14 The written objection also should state whether the Class Member
15 intends to formally intervene and become a party of record in the
16 action, and upon formally intervening, appear and argue at the Final
17 Approval Hearing. However, the objectors will be provided with the
18 opportunity to speak at the final approval hearing regardless of
19 whether they have filed an appearance or submitted a written
20 opposition beforehand.

21
22 If the objecting Class Member does not formally intervene in the action
23 and/or the Court rejects the Class Member's objection, the Class
24 Member may still be bound by the terms of this Agreement.

25
26 f. **Report.** Not later than fourteen (14) days after the deadline for submission
27 of requests for exclusion, the Settlement Administrator will provide the
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Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

6. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement.

7. The Court approves, for settlement purposes only, David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8. The Court approves, for settlement purposes only, Felis A. Perez as the Class Representative.

9. The Court approves Simpluris, Inc. as the Settlement Administrator.

10. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiff's Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on _____ at _____.m. in Department 19 of the Superior Court for the State of California, County of Santa Clara, located at the Downtown Superior Court, 191 North First Street, San Jose, CA 95113 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action



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1 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
2 Court sixteen (16) court days before the Final Approval Hearing.

3 14. If for any reason the Court does not execute and file a final approval order and
4 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason,
5 the proposed Settlement that is the subject of this order, and all evidence and proceedings had
6 in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to
7 the litigation, as more specifically set forth in the Settlement.
8

9 15. The Court expressly reserves the right to adjourn or continue the Final Approval
10 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
11 give prompt notice of any continuance to Settlement Class Members who object to the
12 Settlement.
13

14 **IT IS SO ORDERED.**

15
16 **DATE** **THE HONORABLE THEODORE C. ZAYNER**
17 **SUPERIOR COURT JUDGE**
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