

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
3 CHRISTINA J. PREJEAN (SBN 314772)
christina@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl
PMB 42554
6 West Hollywood, CA 90069
7 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

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

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

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

17 *Plaintiff(s),*

18
19 vs.

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

23 *Defendant(s).*
24

Case No. 21CV387173

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF FELIS
A. PEREZ’S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: February 8, 2023
Hearing Time: 1:30 p.m.
Hearing Dept.: 3, The Honorable
Patricia M. Lucas
Action filed: September 29, 2021



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
FELIS A. PEREZ, and all others similarly situated



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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1 procedures are fully compliant with all applicable laws. On or about May 23, 2022 Plaintiff filed
2 a supplemental letter with the LWDA and a Second Amended Complaint with the Court adding
3 NxEdge San Carlos, LLC and NxEdge CSL, LLC as Defendants. NxEdge San Carlos, LLC, a
4 Delaware limited liability company, and NxEdge CSL, LLC, a Nevada limited liability company,
5 (“Defendants”) are related to the named defendant in the Action and had comparable wage and
6 hour practices and policies during the relevant time period. Defendants filed an answer to
7 Plaintiff’s Second Amended Complaint. A true and correct copy of the complaint is attached
8 hereto as **Exhibit 3**. A true and correct copy of Plaintiff’s First Amended Complaint is attached
9 hereto as **Exhibit 4**. A true and correct copy of Defendants’ Answer is attached hereto as **Exhibit**
10 **5**. A true and correct copy of Plaintiff’ Second Amended Complaint and supplemental LWDA
11 letter is attached as **Exhibit 6**. A true and correct copy of Defendants’ Answer to Plaintiff’s
12 Second Amended Complaint is attached to as **Exhibit 7**.

13 7. The Parties thereafter engaged in an informal, voluntary exchange of information
14 in the context of privileged settlement discussions to facilitate an early mediation. Defendants
15 produced Plaintiff’s entire personnel file (including policies and agreements he signed and
16 acknowledged), copies of their relevant company written policies, time-keeping records, email
17 messages, and paycheck data and records for the putative class, and more detailed time and
18 payroll data for a random sample of putative class members specifically selected by Plaintiff’s
19 counsel.

20 8. On April 28, 2022, following much of the foregoing informal discovery and
21 exchange of information, the Parties participated in a mediation session presided over by The
22 Honorable John Leo Wagner (ret.), an experienced class action mediator. During the mediation,
23 the Parties had a full day of productive negotiations and reached agreement on a class-wide
24 settlement during the second mediation session. During the mediation sessions, each side,
25 represented by his/their respective counsel, recognized the risk of an adverse result in the Action
26 and agreed to settle the Action and all other matters covered by this Agreement pursuant to the
27 terms and conditions of this Agreement.

28 *Ascertainable and Numerous Class*

1 9. A class is ascertainable when it may be readily identified without unreasonable
2 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined
3 Class is ascertainable because its members may be identified by reference to Defendants’ records



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1 and Defendants have agreed to share the relevant information from their records to facilitate the
2 settlement process. Therefore, the Settlement Class is ascertainable.

3 10. The Settlement Class has sufficiently numerous members to render joinder
4 impractical. No set number is required as a matter of law to maintain a class action. The California
5 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
6 approximately 331 Class Members as of March 2022. Plaintiff maintains that it would be
7 impractical and economically inefficient to require each Settlement Class Member to separately
8 maintain an individual action or be joined as a named plaintiff in this action. In light of these
9 considerations, the Settlement Class' membership is sufficiently numerous.

10 ***Predominant Common Questions***

11 11. A question of law or fact is common to the members of a class if it may be resolved
12 through common proof. In this case, there are many predominant common questions. Plaintiff
13 asserts all class members were subject to the same or similar operations and employment policies,
14 practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay
15 wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to
16 authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay
17 wages, failure to maintain required payroll records, and related labor law violations, all of which
18 Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff
19 asserts that common questions include, but are not limited to: (1) Whether Defendants failed to
20 pay all wages earned to class members for all hours worked, including minimum and overtime
21 wages, and at the correct rates of pay; (2) Whether Defendants failed to provide the class with all
22 meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
23 the class one additional hour of pay on workdays they failed to provide the class with one or
24 more meal or rest periods in compliance with California law; (4) Whether Defendants knowingly
25 and intentionally failed to provide the class with accurate wage statements; (5) Whether
26 Defendants willfully failed to provide the class with timely final wages; and (6) Whether
27 Defendants engaged in unfair competition within the meaning of Business and Professions Code
28 section 17200, *et seq.*, with respect to the class.

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1 **Typicality**

2 12. Plaintiff contends that his claims are typical for the purposes of certifying the
3 Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same
4 relevant policies and procedures governing his compensation, hours of work and meal and rest
5 periods. Because Plaintiff contends that he was subject to the same general course of conduct as
6 absent Class Members, resolving the common questions as they apply to Plaintiff will determine
7 Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could
8 potentially be subject to the same primary affirmative defenses as those of absent Class Members.
Accordingly, Plaintiff's claims are typical of the Class.

9 **Adequacy**

10 13. The adequacy requirement is met where the plaintiff is represented by counsel
11 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
12 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
13 represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
ability to represent the class.

14 14. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest
15 with the absent Settlement Class Members. Plaintiff contends that he is an adequate class
16 representative. Plaintiff and the Class Members have strong and co-extensive interests in this
17 litigation because they all worked for Defendants during the relevant time period, allegedly
18 suffered the same alleged injuries from the same alleged course of conduct, and there is no
19 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff
20 has demonstrated his commitment to the Settlement Class by, among other things, retaining
21 experienced counsel, providing counsel with documents and extensively speaking with them to
22 assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
23 well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit
had been unsuccessful. Thus, Plaintiff is adequate to serve as settlement class representative.

24 **Background of Class Counsel**

25 15. In 1991, I earned a Bachelor of the Arts degree with a major in Political Science
26 from the University of California at Berkeley. In 1995, I earned a Juris Doctor degree from
27 Southwestern University School of Law.
28



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1 16. In December of 1995, the Supreme Court for the State of California admitted me
2 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this
3 State. On May 11, 2012, I also became admitted to the District of Columbia Bar. In February
4 2013, I became admitted to the New York State Bar.

5 17. My law practice has always focused on representation of private and public
6 employees with claims of unpaid wages, wrongful termination, harassment, family and medical
7 leave, whistleblowing, discrimination, benefits, and civil rights violations. One of my websites,
8 FightWrongfulTermination.com, provides a further description of my practice.

9 18. I have tried many cases before California and federal courts, government agencies
10 and neutral arbitrators. I am a member of the California Employment Lawyers Association
11 (CELA).

12 19. Since I started practicing law, I have tried many cases before courts, arbitrators
13 and government agencies. Some of my cases are:

14 a. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
15 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
16 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
17 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
18 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
19 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego
20 Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
21 And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

22 b. *Jorge Guzman v. Department of Justice*, United States District Court,
23 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
24 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
25 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
26 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
27 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
28 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
1999.

 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton
(the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights



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1 claims and wrongful termination claims against employer in a month-long jury trial. The jury
2 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
3 Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
4 Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
5 Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

6 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
7 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
8 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
9 escrow officer who subsequently absconded with the money. The jury awarded compensatory
10 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
11 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
12 Legal Services.

13 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
14 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
15 Customs Agent, followed by an award of Attorneys' fees and costs.

16 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
17 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
18 wrongful termination against his former employer. The Neutral Arbitrator awarded
19 compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
20 resolved shortly thereafter by means of a confidential settlement.

21 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
22 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
23 first and only case to be successfully prosecuted through trial under the Labor Code Private
24 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
25 aggrieved employees against someone other than an employer for civil penalties including unpaid
26 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
27 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
28 case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

20. Since 2007, I have prosecuted several traditional wage & hour class actions as the
sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
v. Quality Vessel Engineering, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*



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1 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
2 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
3 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
4 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
an hourly rate of \$525.00 for my services.

5 21. In my representation of employees, I have prosecuted several lawsuits on behalf
6 of employees with claims of rest and meal period and overtime violations or other wage claims.

7 22. I have been involved in the prosecution of numerous wage and hour class actions
8 at various stages of litigation. A small sampling of the wage and hour class action cases in which
9 I have recently been counsel of records is as follows:

10 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
11 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
settlement on behalf of assistant fitness manager employees).

12 b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
13 000382146 (appointed Class Counsel and granted final approval of class action settlement by the
14 court on behalf of nonexempt employees).

15 c. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct.,
16 Case No. BC465017 (appointed Class Counsel and granted final approval by this Court of class
action settlement on behalf of merchandiser employees).

17 d. *Deckard v. MSL Community Management LLC*, Riverside County
18 Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of
19 class action settlement on behalf of caregivers and medical technicians).

20 e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
21 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
22 approval of class action settlement on behalf of boutique manager and assistant manager
employees).

23 f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
24 (appointed Class Counsel and granted final approval by this Court of class action settlement on
25 behalf of personal trainer employees).



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Ste 900
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1 g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No.
2 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
3 action settlement on behalf of medical devices employees).

4 h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
5 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
6 behalf of hourly employees).

7 i. *La Fleur v. Medical Management International, Inc.*, United States
8 District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class
9 Counsel and granted final approval of class action settlement on behalf of practice managers).

10 j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
11 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
12 settlement on behalf of non-exempt hourly employees excluding truck drivers).

13 k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
14 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
15 settlement on behalf of security guard employees).

16 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
17 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
18 on behalf of dairy and agricultural laborers).

19 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
20 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
21 settlement on behalf of call concert rigging employees).

22 n. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
23 Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class
24 action settlement by the court on behalf of hourly employees).

25 o. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
26 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
27 (appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
28 customer account executives).

p. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
BC511072 (appointed Class Counsel and granted final approval of class action settlement on
behalf of bobtail truck drivers).



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1 q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
2 BC431249 (granted class certification through contested motion and appointed Class Counsel in
3 case on behalf of former pharmacy employees based on late final wage payments in violation of
4 Labor Code §§ 201–203).

5 r. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
6 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
7 approval of class action settlement by the court on behalf of auditor employees).

8 s. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
9 Class Counsel and granted final approval by this Court of class action settlement involving
10 alleged misclassification of sales employees and unpaid vacation pay).

11 t. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
12 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
13 settlement on behalf of service account manager employees).

14 u. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
15 No. BC421485 (granted class certification through contested motion and appointed Class
16 Counsel in case on behalf of former security workers based on late final wage payments in
17 violation of Labor Code §§ 201–203).

18 v. *Vang v. Burlington Coat Factory Corporation*, United States District
19 Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel
20 and granted final approval of class action settlement by the court on behalf of assistant store
21 manager employees).

22 w. *Volney-Parris v. Southern California Edison Company*, Los Angeles
23 Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of
24 class action settlement on behalf of customer specialist employees).

25 x. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior
26 Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class
27 action settlement on behalf of hourly employees).

28 ***Class Action Treatment Is Superior***

23. A class action is also superior to other means adjudicating the issues in this action.
The predominance of common legal and factual questions shows that this Court could fairly
adjudicate the claims of Class Members through a single class action. In view of the *theoretical*



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1 alternatives that proposed class members could potentially utilize—representative PAGA action
2 (where there is less relief available), individual civil lawsuits or wage claims through the Division
3 of Labor Standards Enforcement (where there would be relatively little money at stake, but the
4 claims would be time-consuming to litigate)—a class action is plainly superior to all of them.
5 Thus, this consideration supports conditional class action treatment for purposes of this
6 Settlement only.

7 ***The Settlement is Presumptively Fair***

8 24. The class settlement here satisfies all of the *Kullar* factors. The Settlement
9 resulted from thorough, arms’ length, negotiations between experienced counsel with the
10 assistance of a respected mediator after sufficient discovery was exchanged to assess the relative
11 strengths and weaknesses of their respective cases and Defendants’ estimated exposure. Both
12 defense counsel and I are particularly experienced in employment law and wage and hour class
13 actions. We are experienced and qualified to evaluate the class claims, the viability of the
14 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
15 negotiated many wage and hour class settlements, including many involving the same issues
16 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
17 settlement in light of the complexities of the case and uncertainties of class certification and
18 litigation, and a fair result for the Class Members.

19 ***Exposure & Risk Analysis***

20 25. On or about September 10, 2021, Plaintiff, through his attorneys, sent a letter to
21 the Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant
22 NxEdge MH LLC: failure to pay all wages for all hours worked, unauthorized and unlawful wage
23 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
24 to compensate employees at one hour’s pay at employees’ regular rate of pay for each day on
25 which employees did not receive one or more meal or rest periods, failure to issue proper wage
26 statements, failure to timely pay wages, failure to maintain required payroll records, and related
27 allegations (the “PAGA letter”). Plaintiff asserted these representative claims on behalf of all
28 Class Members who are or were employed during the applicable statutory period. On or about
May 20, 2022, Plaintiff, through his attorneys, sent a letter to the Labor Workforce Development
Agency (“LWDA”) alleging the same facts against Defendants NxEdge San Carlos, LLC, and
NxEdge CSL, LLC.



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1 26. On September 29, 2021, Plaintiff filed a class action complaint in the Santa Clara
2 Superior Court, alleging against NxEdge MH LLC the same wage and hour claims as set forth in
3 the earlier of the PAGA letters and adding a cause of action for unfair competition. On November
4 29, 2021, Plaintiff filed a first amended class action complaint in the Santa Clara County Superior
5 Court, adding a cause of action under the Labor Code Private Attorneys General Act of 2004
6 (“PAGA”). On or about May 23, 2022, Plaintiff filed a second amended class action complaint
7 in the Santa Clara County Superior Court, adding NxEdge San Carlos, LLC, and NxEdge CSL,
8 LLC as named defendants. The second amended complaint is the “Operative Complaint.”

9 27. On June 2, 2022, Defendants answered Plaintiff’s Second Amended Complaint
10 and denied, and continue to deny, all of Plaintiff’s material allegations. Specifically, Defendants
11 deny the failure to pay all wages for all hours worked, unauthorized and unlawful wage
12 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
13 to compensate employees at one hour’s pay at employees’ regular rate of pay for each day on
14 which employees did not receive one or more meal or rest periods, failure to issue proper wage
15 statements, failure to timely pay wages, failure to maintain required payroll records, and related
16 allegations in the Action. Defendants contend that they have complied with the Labor Code, the
17 Business & Professions Code, and the applicable Wage Order at all times. Defendants further
18 allege that the Plaintiff’s claims are not amenable to class treatment because common issues do
19 not predominate. Settlement para. A.B.C.D.E. Plaintiff prepared “damages” estimates for
20 mediation. In advance of the mediation, Plaintiff determined Defendants’ maximum exposure
21 for restitution and penalties to be approximately \$5,934,485.06 (consisting of \$374,000.00 in
22 unpaid wages, \$187,050.00 in missed meal period premium wages, \$374,100.00 in missed rest
23 break premium wages, \$368,150.00 for wage statement penalties, \$431,660.06 for waiting time
24 penalties, and \$2,296,210.06 for civil penalties). True and correct copies of the spreadsheets I
25 prepared for mediation of this Action are collectively attached to this declaration as **Exhibit 8**.
26 The estimates are in essence “home run” projections that omit data points that will undoubtedly
27 reduce the maximum possible damages award and do not factor in any of the risks involved in
28 litigating this Action. Plaintiff calculated the damages based on the number of workweeks and
pay periods provided by Defendants, Plaintiff’s reports, and the sample data. *Id.* Plaintiff also
considered the possibility that Defendants could launch a *Pick Up Stix* campaign and pursue
individual release agreements from the Class Members. Defendants also represented that they



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1 had interviewed Defendants' current employees regarding Plaintiff's claims and would provide
2 declarations from them, under penalty of perjury, that were favorable to Defendants with respect
3 to the relevant factual issues at issue in Plaintiff's action. Plaintiff's Counsel applied discounts
4 to the maximum exposure to account for all other risks discussed below. While it is difficult to
5 assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say
6 that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is
7 substantial and alone justifies a significant discount because Defendants would likely by trial
8 have gathered releases from the majority of the Class Members. A settlement for approximately
9 20.93% of the potential recovery is a proportion substantially in excess of recovery proportions
sanctioned by existing case law.⁶

10 28. My initial estimates do not realistically account for the risks outlined below or the
11 risk that a class will not be certified. Therefore, I believe a class settlement for \$1,242,000.00 is
fair and reasonable.

12 29. **Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
13 recovery for unpaid wages would be extremely limited at best, largely because Defendants'
14 bonuses were non-discretionary and therefore would not support the claim that it did not include
15 them in the regular rate for purposes of calculating overtime wages.

16 30. **Risks Associated with the Meal Period Claims.** There are risks to Plaintiff's
17 meal period claim. Defendants presented evidence that, for the entire duration of Perez's
18 employment, Defendants' policies required employees to, among other things, take compliant
19 rest and meal periods. These policies required employees to take all scheduled rest breaks and to
20 report to Human Resources any instances when they were unable to take their rest breaks due to
21 job demands. Defendants' policies also required that meal periods be accurately recorded, that
employees report instances when they were unable to take their meal period, and that employees

22 _____
23 ⁶ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
24 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
25 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
26 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
27 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
28 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 take all scheduled meal periods, unless waived. These policies also discussed with employees
2 during orientation and reinforced verbally on a frequent basis. Perez acknowledged receipt of
3 Defendants' policies and understood that compliance with these policies was a condition of his
4 employment. With respect to meal periods specifically, Defendants use meal period waivers as
5 applicable. Moreover, Defendants have posted a sign next to employee time clocks urging
6 employees to take their meal periods before the end of the fifth hour of work. With respect to
7 meal and rest periods, Defendants presented evidence that it is standard practice that employee
8 teams working together in various departments take meal and rest breaks together, at the same
9 time, and if one were to walk through the facility during breaks times, they would observe empty
10 production floors. Accordingly, Defendants anticipate that multiple witnesses will testify Perez
11 (and others) regularly took their rest breaks and were not denied rest breaks or meal periods.
12 Defendants contend that, to establish a violation for missed meal periods, a plaintiff must do
13 more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an
14 employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it
15 has no further duty to “police meal breaks and ensure no work thereafter is performed.” *Id.* at
16 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
17 employee from taking a proper break, or otherwise failed to release the employee of all control.
18 *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular
19 employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal.
20 2010) 271 F.R.D. 629, 641. *Id.*

21 31. Defendants contend they did not impede or discourage Plaintiff, or any other
22 employees, from taking their meal or rest periods. Defendants’ policies mandate that employees
23 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
24 of their meal breaks each day on their time records. The time records that comprise the random
25 sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were
26 taken the vast majority of the time. Of the time records that show a late, short or no lunch,
27 individualized evidence may be necessary to determine whether they occurred due to conduct of
28 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
the value of Plaintiff’s meal period claim would be substantially reduced at trial.

32. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff’s rest
period claim. In accordance with the law, NxEdge requires employees to take such rest breaks.



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(213) 725-9094 Tel
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Office:
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NxEdge maintains a compliant rest break policy, requiring that its employees report instances when they were unable to take their rest breaks due to job demands. See Ex. 3. This policy also mandates that employees take all scheduled rest breaks. See *id.* Per NxEdge policy (as found in the Employee Handbook), “[a]ny non-exempt employee who does not receive their meal or break periods must advise their manager promptly so that the Company may determine how to correct the situation. Defendants contend that their policies hold that if a non-exempt employee is unable to take a meal or rest period as discussed above due to the demands of the job, he or she must inform his or her manager or Human Resources; otherwise, NxEdge will assume that the employee voluntarily skipped the meal or rest period, which may subject the employee to disciplinary action.” *Id.* Perez acknowledged that he had read and understood NxEdge’s rest break policy. Also, NxEdge has scheduled rest breaks and its departments go on breaks as a team. Furthermore, it is standard practice that employee teams working together in various departments take meal and rest breaks together, at the same time.

33. Employers are not required to record rest periods and such periods are paid. Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants’ written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

34. **Risks Associated with the Statutory “Wage Statement” Penalty Claims.**

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff’s wage statement claim has the same underlying risks as the above claims, as it is



1 derivative of them. On their face, the wage statements issued by Defendants comply with the
2 requirements of Labor Code section 226.

3 35. **Risks Associated with The Waiting Time Penalties Claim.** Plaintiff's claim for
4 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
5 Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good
6 faith Defendants put forth will defeat this claim.

7 36. **Risks Associated With the PAGA Claim.** Regarding PAGA, a court has
8 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*
9 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
10 award). As set forth above, Defendants have posed valid defenses to the Labor Code claims
11 underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant
12 uncertainty. There is a risk that the Court would consider the maximum civil penalty available to
13 be confiscatory. Moreover, the current COVID-19 pandemic could motivate the Court to further
14 reduce the penalty award to avoid what it may consider a confiscatory taking.

15 37. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and
16 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
17 counsel estimated a maximum exposure of approximately \$2,296,210.06 in civil penalties. This
18 estimate did not take into account any of the risks discussed above and assumed a violation for
19 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
20 period for the same alleged violations of different Labor Code provisions and derivative
21 violations. Although two federal district court decisions held that "stacking" PAGA penalties in
22 this fashion may be appropriate to determine the amount in controversy for purposes of removal
23 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
24 multiple PAGA penalties for the same violation for the same pay period under different Labor
25 Code provisions. This may be because the PAGA does not provide for what many employers
26 characterize as claim splitting and not merely stacking.



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(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
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1 38. I am aware of only two significant awards under the PAGA in a contested
2 proceeding, both issued by federal district courts.⁷ PAGA penalty awards are often small even
3 for egregious, intentional violations of the Labor Code.⁸

4 39. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a
5 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only
6 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.
7 Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal
8 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
defendant's meal period violations. A similar result could occur here.

9 40. **Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
10 right to settle a putative class member's disputed wage claims individually, without the consent
11 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796

12 _____
13 ⁷ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
14 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
15 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
16 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
17 suffered a particularly sizeable injury – the court found that the defendant's policies caused
18 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
19 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to
20 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
compensate its flight attendants for work performed outside of “block time” (time during which
the aircraft is moving), including time spent participating in pre-flight briefings, boarding
passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved
on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)
U.S. Dist. LEXIS 13253.

21 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
22 awarded approximately \$102 million in damages, primarily based on the defendants' failures to
comply with the requirements of California Labor Code section 226.

23 ⁸ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
24 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
25 correct copy of the complaint is attached as **Exhibit 9**. The plaintiff sought in excess of \$9
26 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
27 Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
28 copy of the statement of decision is attached as **Exhibit 10**, 19:8-20:19. Also, on October 24,
2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by
very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company,*
Inc., LA Superior Court case no. BC492828. A similar result could occur here.



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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 (2009). As discussed above, Defendants may launch a “pick off” settlement campaign to pursue
2 individual release agreements from the Class Members, thereby potentially narrowing the size of
3 the Settlement Class – 331 members - until it is no longer numerous enough for class certification.
4 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
5 significant reduction of claim value in settlement negotiations.

6 41. While the evidence gathered through Plaintiff’s discovery supports the merits of
7 the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
8 presents significant risks that support a downward departure from Defendants’ estimated liability
9 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
10 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
11 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
12 adequate, and reasonable compromise amount for these claims and warrants preliminary
13 approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
14 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v.*
15 *J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning
16 defendant’s financial stability “strongly supports the reasonableness of the settlement”); *See*
17 *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049,
18 * 3.

19 ***Allocation of the PAGA Payment***

20 42. The settlement of PAGA penalties in the sum of \$20,000.00, of which 75%
21 (\$150,00.00) will be paid to the LWDA and 25% (\$50,00.00) will be distributed to the Class, is
22 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
23 for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the
24 LWDA was not the result of self-interest at the expense of other Class Members.

25 ***Attorneys’ Fees and Costs***

26 43. I intend to request Class Counsel Attorneys’ Fees of \$413,999.00 (one-third of
27 the GSA) and Class Counsel’s litigation costs incurred in prosecuting this Action, which I
28 currently estimate to be approximately \$25,000.00 and will be no more than \$25,000.00 at the
conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this
case these amounts are well within the range of reasonableness and thus warrant this Court’s
preliminary approval. In addition, based on my experience in wage and hour class action matters,



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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
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1 fee awards of approximately one-third of the settlement fund are routinely approved as
2 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in
3 several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*,
4 Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall*,
5 *Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund);
6 *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-
7 third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court,
8 Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San
9 Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The*
10 *Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of
11 fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-
12 00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los
13 Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los
14 Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group*,
15 *Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*,
16 U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund);
17 *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-
18 third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case
19 No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare
20 Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles
21 Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles
22 Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No.
23 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No.
24 BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.
25 CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern
26 District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National*
27 *Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund);
28 *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No.
13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/*
Florida/ Oregon, Inc., United States District Court, Eastern District of California, Case No.
EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los

1 Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern*
2 *California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of
3 fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third
4 of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-
5 282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior
6 Court, Case No. CIVDS1500146 (one-third of fund).

7 44. The amount of fees and costs requested are commensurate with (1) the risk Class
8 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
9 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
10 achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class
11 Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained
12 information from putative class members, met and conferred with Defendants' counsel on
13 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
14 by Defendants and obtained through other sources, researched applicable law, and estimates of
15 "damages" for purposes of settlement discussions, among other tasks.

16 45. Class Counsel have borne all the risks and costs of litigation and will receive no
17 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour
18 class action litigation and used that experience to obtain a fair result for the Class. Considering
19 the amount of the attorney fees requested, the work performed, and the risks incurred, the
20 requested fees and costs are reasonable and should be awarded.

21 ***Class Representative Payment***

22 46. The Settlement provides that Plaintiff may seek a Class Representative Payment
23 of \$50,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the
24 risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours
25 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
26 retaining experienced counsel, providing them with information about his work history with
27 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
28 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
being actively involved in the settlement process to ensure a fair result for the Settlement Class
as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See Labor*



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PMB 42554
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(213) 725-9094 Tel
(213) 634-2485 Fax
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Ste 900
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Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Payment is fair, adequate, and reasonable, and thus warrant preliminary approval.

Settlement Shares

47. The Settlement Shares will be paid to each Class Member based on his or her eligible Pay Periods compared to the total Pay Periods. Settlement para. III.D.b. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

48. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, para. IV.B. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

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Office:
15303 Ventura Bl
Ste 900
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1 *Settlement Administration Duties*

2 49. The duties of the Settlement Administrator are spelled out in section III(C) of the
3 Settlement and in the bid provided by Simpluris, Inc., a true and correct copy of which is attached
4 hereto as **Exhibit 11**.

5 *Settlement Administration Costs*

6 50. With regard to the settlement administration costs provision (Settlement para.
7 I.N), it is reasonable. Before agreeing to Simpluris, Inc. the Parties sought and reviewed bids
8 from other reputable third-party administrators: (A) Simpluris, Inc. = \$7,300.00; (B) Phoenix
9 Settlement Administrators = \$7,500.00; and C) CPT Group, Inc. = \$10,000.00. A true and correct
10 copy of the bid from Phoenix Settlement Administrators is attached hereto as **Exhibit 12**. A true
11 and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 13**. The bid
12 provided by Simpluris, Inc. was comparable. Thus, settlement administration costs provision
13 should be given preliminary approval.

14 *Notice of Settlement to the LWDA*

15 51. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement
16 with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiff’s
17 Motion is being filed with the Court. A true and correct copy of Plaintiff’s submission with the
18 LWDA and a confirmation email is attached hereto as **Exhibit 14**.

19 I declare under the penalty of perjury of the laws of the State of California that the
20 foregoing is true and correct to the best of my knowledge.

21 Executed on Friday, November 04, 2022 at Los Angeles, California.

22 

23 DAVID SPIVAK,
24 Declarant



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28 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

EXHIBIT 1

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
3 CHRISTINA J. PREJEAN (SBN 314772)
christina@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl
PMB 42554
6 West Hollywood, CA 90069
7 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

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

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

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

17 *Plaintiff(s),*

18 vs.
19

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

23 *Defendant(s).*
24

Case No. 21CV387173

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Action filed: September 29, 2021
Dept: 3, The Honorable Patricia
M. Lucas

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
FELIS A. PEREZ, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

DORA LANE (SBN 235113)
DLane@hollandhart.com
HOLLAND & HART LLP
5441 Kietzke Lane
Second Floor
Reno, NV 89511
Telephone: (775) 327-3045
Facsimile: (775) 786-6179

Attorneys for Defendant(s),
NXEDGE MH LLC, NXEDGE SAN CARLOS, LLC, AND NXEDGE CSL, LLC

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Felis A. Perez
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 on the one hand, and Defendants NxEdge MH LLC, NxEdge San Carlos, LLC, and NxEdge
5 CSL, LLC (collectively “Defendants”). Plaintiff and Defendants are collectively referred to
6 herein as the “Parties.”

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8 **I. DEFINITIONS.**

9 The following definitions are applicable to this Settlement Agreement, in addition to other
10 terms defined elsewhere in the Agreement:

11 **A. “Action”** shall mean: (1) the civil action commenced on September 29, 2021, as
12 amended, by Plaintiff against Defendants in the Superior Court of California, County of Santa
13 Clara, Case No. 21CV387173, entitled: “Felis A. Perez, on behalf of himself, and all others
14 similarly situated, and as an ‘aggrieved employee’ on behalf of other ‘aggrieved employees’
15 under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*, vs. NxEdge MH LLC,
16 a Delaware limited liability company, *et al.*; and DOES 1 through 50, inclusive, *Defendant(s)*.”

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18 **B. “Class,” “Class Members,” or “Settlement Class”** shall mean all persons
19 Defendants employed in California as regular full-time or part-time hourly, non-exempt
20 employees (current and former) who have not executed releases of claims under the California
21 Labor Code and/or applicable Wage Orders/regulations during the Class Period.

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23 **C. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action:
24 David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law
25 Group.

26 **D. “Class Counsel Fees Payment”** and **“Class Counsel Litigation Expenses**
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1 **Payment**” shall mean the amounts awarded to Class Counsel by the Court to compensate them
2 for, respectively, their fees and expenses in connection with the Action, including their pre-filing
3 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
4 post-Settlement compliance procedures.

5 **E. “Class Notice**” shall mean the Notice of Proposed Settlement attached as **Exhibit**
6 **A** and incorporated by reference into this Agreement.

7 **F. “Class Period**” shall mean the period of time from September 29, 2017 through
8 the earlier of the date of the Court's preliminary approval order and the latest date before the
9 Class exceeds 22,604 pay periods worked. The release period for purposes of this Settlement will
10 be the period between September 29, 2017 and the earlier of the date of the Court's preliminary
11 approval order and the date when the pay periods worked and/or Class Members first exceed 331
12 Class Members and/or 20,549 pay periods by more than 10 percent (the “Release End Date”).
13 Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement
14 Administrator will advise Plaintiff’s counsel of Defendants’ report of the total number of pay
15 periods worked and Class Members.

16 **G. “Class Representative Payment**” shall mean the special payment made to
17 Plaintiff in his capacity as Class Representative to compensate him for initiating the Action,
18 performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees
19 and expenses in the event he was unsuccessful in the prosecution of the Action.

20 **H. “Court**” shall mean the Superior Court for the County of Santa Clara, Downtown
21 Superior Court, 191 North First Street, San Jose, CA 95113.

22 **I. “Defense Counsel**” shall mean the attorneys representing Defendants in the
23 Action: Dora Lane and David Crockett of Holland & Hart LLP.

1 **J. “Effective Date”** is defined as follows: If no objection to this Settlement or to any
2 of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the
3 Settlement Class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that
4 the Court enters an order of final approval of this Settlement; however, if any objection to this
5 Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the
6 Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the
7 expiration of the time for the filing of any appeal of the order of final approval of this Settlement.
8 If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has
9 been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of
10 the appeal or the dissolution of the writ.

11
12 **K. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court
13 to determine whether to approve finally and implement the terms of this Agreement.

14
15 **L. “Gross Settlement Amount”** shall mean the Gross Settlement Amount of
16 One Million Two Hundred Forty Two Thousand Dollars and Zero Cents (\$1,242,000.00) payable
17 by Defendants as provided by this Agreement. The Gross Settlement Amount is non-
18 reversionary; no portion of the Gross Settlement Amount will return to Defendants. Defendants’
19 employer-side payroll taxes arising from the payments made under this Settlement will be paid
20 by Defendants separate from and in addition to the Gross Settlement Amount.

21
22 **M. “Judgment”** shall mean the Order of Final Judgment entered by the Court that
23 the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
24 this Action.

25 **N. “Net Settlement Amount”** shall mean \$1,242,000.00 payable by Defendants
26 pursuant to this Settlement, less:

- 1 1. the Class Representative Payment approved by the Court;
- 2 2. the Class Counsel Fees Payment (one-third or 33 and 1/3% of Gross
- 3 Settlement Amount) and the Class Counsel Litigation Expenses Payment (of not more than
- 4 \$25,000.00) approved by the Court;
- 5 3. the Settlement Administrator’s reasonable fees and expenses approved by
- 6 the Court (not to exceed \$17,500.00);
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- 8 4. the amount of \$20,000.00 as PAGA Penalties for the PAGA claim, of
- 9 which \$5,000.00 will be paid to the PAGA Members and \$15,000.00 will be paid to the LWDA;
- 10 5. any other fees or expenses (other than attorneys’ fees and expenses)
- 11 incurred by Plaintiff in implementing the terms and conditions of this Agreement as approved by
- 12 the Court.

13 **O. “PAGA”** means the California Labor Code Private Attorneys General Act of

14 2004 (Lab. Code §§ 2698, *et seq.*).

15 **P. “PAGA Members”** means all individuals Defendants employed in California as

16 hourly, non-exempt employees (current and former) during the PAGA Period.

17 **Q. “PAGA Penalties”** means the portion of the Gross Settlement Amount that the

18 Parties have agreed to allocate as civil penalties in order to settle claims arising under PAGA.

19 The Parties have agreed to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00), of

20 which, payment from the Gross Settlement Amount to the LWDA will be made in the amount of

21 Fifteen Thousand Dollars and Zero Cents (\$15,000.00), which is 75% of the PAGA Penalties.

22 Five Thousand Dollars and Zero Cents (\$5,000.00), 25% of the PAGA Penalties, will remain in

23 the Net Settlement Amount for distribution pro rata to PAGA Members as described in this

24 agreement. PAGA Members will receive payment from the employee portion of the PAGA

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1 Penalties regardless of whether they submit a request for exclusion if the PAGA Penalties are
2 approved by the Court.

3 **R. “PAGA Period”** shall mean September 10, 2020 through the earlier of the date
4 of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay
5 periods.
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7 **S. “Participating Class” or “Participating Class Members”** shall mean all
8 Settlement Class members who do not submit a valid and timely letter requesting to be excluded
9 from the Settlement, consistent with the terms set forth in this Settlement Agreement.

10 **T. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
11 approval of the Settlement without material change.

12 **U. “Released Claims”** shall mean all claims, rights, demands, liabilities and causes
13 of action that are alleged, or reasonably could have been alleged based on the facts and claims
14 during the period of September 29, 2017 through the earlier of the date of the Court's preliminary
15 approval order and the latest date before the Class exceeds 22,604 pay periods asserted in the
16 Operative Complaint and/or in the letter(s) sent by Plaintiff to the LWDA concerning Defendants
17 and the other Released Parties, whether sounding in law or equity, tort, contract, statute, or other
18 applicable federal, state or local law or regulation, including but not limited to the following
19 claims: failure to pay all wages for all hours worked, unauthorized and unlawful wage deductions,
20 failure to provide meal periods, failure to authorize and permit rest periods, failure to compensate
21 employees at one hour’s pay at employees’ regular rate of pay for each day on which employees
22 did not receive one or more meal or rest periods, failure to issue proper wage statements, failure
23 to timely pay wages, failure to maintain required payroll records, unfair business practices that
24 could have been premised on the claims, causes of action or legal theories of relief described
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1 above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all
2 claims under PAGA or for civil penalties that could have been premised on the claims, causes of
3 action or legal theories described above or any of the claims, causes of action or legal theories of
4 relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the
5 California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6,
6 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198,
7 2698, 2699, all applicable IWC Wage Orders and order provisions, and any and all damages,
8 restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or
9 costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation
10 benefits, unemployment insurance benefits, or any other claim or right that as a matter of law
11 cannot be waived or released. The Parties acknowledge that Released Claims includes any claims
12 for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet
13 and confer in good faith if the Court requires changes to the scope of the Released Claims.
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16 **V. "Released Parties"** shall mean Defendants, and any of their former and present
17 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
18 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
19 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
20 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
21 organizations, and all persons acting under, by, through or in concert with any of them, and each
22 of them.
23

24 **W. "Response Deadline"** shall mean the date 60 days after the Settlement
25 Administrator mails the Class Notice to Class Members, which is the last date on which Class
26 Members may submit Exclusion Requests, written objections to the Settlement, or Workweek
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1 disputes. In the event the 60th day falls on a Sunday or federal holiday, the Response Deadline
2 will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline
3 for Exclusion Requests or Objections will be extended fifteen (15) calendar days for any Class
4 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
5 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to
6 the next day on which the U.S. Postal Service is open.

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8 **X. “Settlement”** shall mean the disposition of the Action and all related claims
9 effectuated by this Agreement.

10 **Y. “Settlement Account”** shall mean a fund within the meaning of Treasury
11 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
12 Administrator for the benefit of Participating Class Members and PAGA Members.

13 **Z. “Settlement Administrator”** shall mean Simpluris, Inc. or another administrator
14 proposed by the Parties and appointed by the Court to administer the Settlement. The Parties
15 represent that they do not have any financial interest in the Settlement Administrator or otherwise
16 have a relationship with the Settlement Administrator that could create a conflict of interest.

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18 **AA. “Settlement Share”** shall mean each Settlement Class Member’s allocated share
19 of the Net Settlement Amount as provided by this Agreement and any payment a PAGA Member
20 is eligible to receive from the PAGA Penalties per Section III.C.4.

21 **II. RECITALS**

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23 **A.** On or about September 10, 2021, Plaintiff, through his attorneys, sent a letter to
24 the Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant
25 NxEdge MH LLC: failure to pay all wages for all hours worked, unauthorized and unlawful wage
26 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
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1 to compensate employees at one hour's pay at employees' regular rate of pay for each day on
2 which employees did not receive one or more meal or rest periods, failure to issue proper wage
3 statements, failure to timely pay wages, failure to maintain required payroll records, and related
4 allegations (the "PAGA letter"). Plaintiff asserted these representative claims on behalf of all
5 Class Members who are or were employed during the applicable statutory period. On or about
6 May 20, 2022, Plaintiff, through his attorneys, sent a letter to the Labor Workforce Development
7 Agency ("LWDA") alleging the same facts against Defendants NxEdge San Carlos, LLC, and
8 NxEdge CSL, LLC.
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10 **B.** On September 29, 2021, Plaintiff filed a class action complaint in the Santa Clara
11 Superior Court, alleging against NxEdge MH LLC the same wage and hour claims as set forth in
12 the earlier of the PAGA letters and adding a cause of action for unfair competition. On November
13 29, 2021, Plaintiff filed a first amended class action complaint in the Santa Clara County Superior
14 Court, adding a cause of action under the Labor Code Private Attorneys General Act of 2004
15 ("PAGA"). On or about May 23, 2022, Plaintiff filed a second amended class action complaint
16 in the Santa Clara County Superior Court, adding NxEdge San Carlos, LLC, and NxEdge CSL,
17 LLC as named defendants. The second amended complaint is the "Operative Complaint."
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19 **C.** On June 2, 2022, Defendants answered Plaintiff's Second Amended Complaint
20 and denied, and continue to deny, all of Plaintiff's material allegations. Specifically, Defendants
21 deny the failure to pay all wages for all hours worked, unauthorized and unlawful wage
22 deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure
23 to compensate employees at one hour's pay at employees' regular rate of pay for each day on
24 which employees did not receive one or more meal or rest periods, failure to issue proper wage
25 statements, failure to timely pay wages, failure to maintain required payroll records, and related
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1 allegations in the Action. Defendants contend that they have complied with the Labor Code, the
2 Business & Professions Code, and the applicable Wage Order at all times. Defendants further
3 allege that the Plaintiff's claims are not amenable to class treatment because common issues do
4 not predominate.

5 **D.** The Parties thereafter engaged in an informal, voluntary exchange of information
6 in the context of privileged settlement discussions to facilitate an early mediation. The Parties
7 exchanged discovery requests, documents, information, and data including but not limited to pre-
8 suit evidence request and preservation letters, pre-mediation data and document exchanges, and
9 related activities.

10 **E.** On April 28, 2022, following much of the foregoing informal discovery and
11 exchange of information, the Parties participated in a mediation session presided over by
12 Mediator John Leo Wagner, an experienced class action mediator. During the mediation, the
13 Parties had a full day of productive negotiations and reached agreement on a class-wide
14 settlement during the second mediation session. During the mediation sessions, each side,
15 represented by his/their respective counsel, recognized the risk of an adverse result in the Action
16 and agreed to settle the Action and all other matters covered by this Agreement pursuant to the
17 terms and conditions of this Agreement.

18 **F.** Based on their own thorough, independent investigation and evaluation of this
19 case, Class Counsel are of the opinion that the settlement with Defendants for the consideration
20 and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest
21 of the Settlement Class in light of all known facts and circumstances, including the risk of
22 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
23 Defendants, the risks of adverse determinations on the merits, and numerous potential appellate
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1 issues. Although Defendants contend they have no liability in this case, Defendants' counsel
2 shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given
3 the respective risks associated with the case.

4 **G.** This Agreement represents a compromise and settlement of highly disputed
5 claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants
6 that Plaintiff's claims in the Action have merit or that they have any liability to Plaintiff or the
7 Class on those claims or to the State, or as an admission by Plaintiff that Defendants' defenses
8 raised in the Action have merit. This Agreement is intended to fully, finally, and forever
9 compromise, release, resolve, discharge, and settle the released claims subject to the terms and
10 conditions set forth in this Agreement.

12 Based on the foregoing Recitals, the Parties agree as follows:

13 **III. SETTLEMENT TERMS AND CONDITIONS**

14 **A. Certification for Settlement Purposes.** Solely for the purposes of effectuating
15 this Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
16 certification of the Settlement Class. The Parties agree that if for any reason the Settlement is not
17 preliminarily and finally approved, the conditional certification of the Settlement Class will be
18 of no force or effect, does not constitute an admission by Defendants that class certification is
19 proper, and will not be deemed admissible in this or any other proceeding, and that the Parties
20 will litigate the issue of class certification.

21 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
22 Agreement, the Gross Settlement Amount of One Million Two Hundred Forty Two Thousand
23 Dollars and Zero Cents (\$1,242,000.00), plus Defendants' employer share of employer-side
24 payroll taxes, is the maximum amount payable by Defendants. In no event will Defendants be
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1 required to pay more than the Gross Settlement Amount under this Agreement, including for
2 distribution to the Plaintiff, Class Counsel, Class Members, LWDA, and Settlement
3 Administrator.

4 **C. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
5 conditions of this Agreement, the Settlement Administrator will make the following payments
6 out of the Gross Settlement Amount as follows:

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8 **1. To Plaintiff.**

9 **(a) Class Representative Payment.** In addition to his Settlement
10 Share, Plaintiff will apply to the Court for an award of not more than Fifty Thousand Dollars and
11 Zero Cents (\$50,000.00) as his Class Representative Payment. Defendants will not oppose a
12 Class Representative Payment of not more than \$50,000.00. Plaintiff will receive no other
13 payment other than his Settlement Share and Class Representative Payment, and acknowledges
14 that he is aware of no other facts or circumstances related to his employment with Defendants
15 that could give rise to any additional entitlement to any further payments. The Settlement
16 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
17 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
18 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
19 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
20 on the Class Representative Payment. The Class Representative Payment is in exchange for the
21 release of Released Claims against the Released Parties, the general Release of Claims by
22 Plaintiff, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any
23 adjustments made by the Court to the requested Class Representative Payment shall not be
24 deemed a material modification of this Settlement Agreement. In the event that the Court reduces
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1 or does not approve the requested Class Representative Payment, the Settlement Agreement
2 remains in full force and effect, Plaintiff shall not have the right to revoke the Settlement for that
3 reason, it shall remain binding, and any portion of the Class Representative Payment not awarded
4 to Plaintiff will not revert to Defendants, but instead shall be returned to the Net Settlement
5 Amount.

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7 **2. To Class Counsel.** Class Counsel will apply to the Court for an award of
8 not more than Four Hundred Thirteen Thousand Nine Hundred and Ninety Nine Dollars and Zero
9 Cents (\$413,999.00) (which is 33 and 1/3% of the Gross Settlement Amount) as their Class
10 Counsel Fees Payment and an amount not more than Twenty Five Thousand Dollars and Zero
11 Cents (\$25,000.00) as their Class Counsel Litigation Expenses Payment, and Defendants will not
12 oppose this request. The Settlement Administrator will pay the amount approved by the Court
13 (but not more than Four Hundred Thirteen Thousand Nine Hundred and Ninety Nine Dollars and
14 Zero Cents (\$413,999.00) in fees and not more than Twenty Five Thousand Dollars and Zero
15 Cents (\$25,000.00) in expenses) out of the Gross Settlement Amount. Withholding and
16 deductions will not be taken from the Class Counsel Fees and Litigation Expenses Payment and
17 one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

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19 **3. To the Settlement Administrator.** The Settlement Administrator will be
20 paid from the Gross Settlement Amount its reasonable fees and expenses as approved by the
21 Court in an amount currently estimated to not exceed Seventeen Thousand Five Hundred Dollars
22 and Zero Cents (\$17,500.00).

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24 **4. To the LWDA.** The Parties will jointly apply to the Court for approval of
25 a settlement of claims under the Private Attorneys General Act (“PAGA”), California Labor Code
26 section 2698, *et seq.*, for Twenty Thousand Dollars and Zero Cents (\$20,000.00), of which,
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1 payment from the Gross Settlement Amount to the LWDA will be made in the amount of Fifteen
2 Thousand Dollars and Zero Cents (\$15,000.00), which is 75% of the PAGA settlement. Five
3 Thousand Dollars and Zero Cents (\$5,000.00), 25% of the PAGA settlement, will remain in the
4 Net Settlement Amount for distribution and will be distributed to PAGA Members on a *pro rata*
5 basis based on the total number of Individual Pay Periods (full or partial) worked by each PAGA
6 Member during the PAGA Period. Partial Pay Periods shall be rounded up to the nearest whole
7 integer. PAGA Members shall receive their portion of the PAGA Penalties regardless of their
8 decision to submit a request for exclusion to opt out of the Settlement.
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10 **D. Allocation of Net Settlement Amount and Calculation of Settlement Shares.**

11 Subject to the terms and conditions of this Agreement, the Settlement Administrator will
12 distribute a payment from the Net Settlement Amount to each Participating Class Member. The
13 Settlement Share for each Participating Class Member will be calculated as follows,
14 understanding that the formulas below do not constitute an admission by either party, and are
15 intended only to provide a practical means to simplify and administer the claims process:
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17 **(a) Participating Class Members' Settlement Shares.** The
18 settlement shares are allocated 20.00% to wages (for which employment taxes will be deducted
19 and W-2s issued) and 80.00% to penalties and interest (for which 1099s will be issued, if legally
20 required).
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22 **(b) Class Portion of Settlement Ratio Calculation.** The Settlement
23 Administrator shall assign to each Class Member a "Settlement Ratio," which shall be a fractional
24 number comprised of (a) that Class Member's Individual Pay Periods worked as the numerator,
25 and (b) the aggregate total of all Class Members' Individual Pay Periods worked as the
26 denominator. The Settlement Administrator shall assign to each Class Member the "Settlement
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Share” which shall be calculated by multiplying that Class Member’s Settlement Ratio by amount allocated to Class Members from the Net Settlement Amount.

(c) **PAGA Portion of Settlement Ratio Calculation.** The Settlement Administrator shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional number comprised of (a) that PAGA Member’s Individual Pay Periods worked during the PAGA Period as the numerator, and (b) the aggregate total of all PAGA Members’ Individual Pay Periods worked during the PAGA Period as the denominator. The Settlement Administrator shall assign to each PAGA Member the “Settlement Share” which shall be calculated by multiplying that PAGA Member’s Settlement Ratio by amount allocated to PAGA Members from the Net Settlement Amount.

2. **Settlement Share Worksheet.** Upon calculation of the Class Members’ and PAGA Members’ Settlement Share, the Settlement Administrator shall furnish to Class Counsel and Defense counsel a worksheet containing a list of unique identifying numbers for each of the Class Members with their corresponding Individual Pay Periods and Settlement Shares.

E. **Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the Class Members’ claims for Defendants’ failure to pay all wages for all hours worked, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to compensate employees at one hour’s pay at employees’ regular rate of pay for each day on which employees did not receive one or more meal or rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of PAGA and the unfair competition law. Each Class Member shall be individually responsible for the employee’s share of applicable payroll tax

1 withholdings and deductions. Accordingly, each Settlement Share allocated to wages will be
2 reduced by applicable employee-side payroll tax withholdings and deductions, and the
3 Settlement Administrator will issue a Form W-2 to each Participating Class Member. The
4 remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement
5 Administrator, if legally required. For PAGA Members who submit a timely and valid request
6 for exclusion to opt out of the class portion of the Settlement, 100% of the individual Settlement
7 Share to that individual shall consist of the amount calculated by multiplying that PAGA
8 Member's Settlement Ratio by the sum allocated to PAGA Members from the Net Settlement
9 Amount, and shall be allocated as penalties, and not wages, for which the Settlement
10 Administrator will issue to the PAGA Member an IRS Form-1099 (if legally required).
11 Defendants will be responsible for the normal employer's share of any payroll tax attributable to
12 the wage portion of the Settlement Share payments. Defendants' payment of the normal
13 employer's share of payroll taxes attributable to the wage portion of the Settlement Share
14 payments will be in addition to the Gross Settlement Amount or Net Settlement Amount.

17 **F. Appointment of Settlement Administrator.** The Parties will ask the Court to
18 appoint Simpluris, Inc., a qualified administrator, to serve as the Settlement Administrator,
19 which, as a condition of appointment, will agree to be bound by this Agreement and the
20 Stipulation and Protective Order filed in this proceeding, with respect to the performance of its
21 duties and its compensation. The Settlement Administrator's duties will include preparing,
22 printing, and mailing the Class Notice to all Class Members; and using reasonable measures to
23 contact all Class Members, including conducting a National Change of Address search on all
24 Class Members before mailing the Class Notice to each Class Member's address. The Settlement
25 Administrator's duties will also include re-mailing the Class Notice to the Class Member's new
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1 address for those Class Members whose address has changed; providing the Parties with weekly
2 status reports about the delivery of Class Notice; calculating Settlement Shares and resolving any
3 disputes regarding applicable workweeks and/or pay periods; issuing and distributing checks to
4 effectuate the payments due under the Settlement; reporting to the Court as required; and
5 otherwise administering the Settlement pursuant to this Agreement. The Settlement
6 Administrator's reasonable fees and expenses, including the cost of printing and mailing the
7 Class Notice, will be paid out of the Gross Settlement Amount, as set forth herein, subject to
8 Court approval. Any portion of the of the Settlement Administrator's fees and expenses that are
9 not used or which are not awarded by the Court will not revert to Defendants, but instead will be
10 part of the Net Settlement Amount for distribution to Participating Class Members. If the
11 Settlement Administrator's fees and expenses exceed Seventeen Thousand Five Hundred Dollars
12 and Zero Cents (\$17,500.00), such cost will be deducted from the Net Settlement Amount.

15 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

16 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
17 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
18 for Preliminary Approval"), setting a date for the Final Approval Hearing. Any disagreement
19 among the Parties concerning the Class Notice or other documents necessary to implement the
20 Settlement will be referred to the Court.

21 **1.** At the hearing on the Motion for Preliminary Approval, the Parties
22 anticipate that they will appear and support the granting of the motion, and that Class Counsel
23 will submit an Order Granting Preliminary Approval of Settlement, Approval of Notice to Class
24 and Setting Hearing for Final Approval of Settlement.

25 **2.** Should the Court decline to approve the Settlement, the Settlement will be
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1 null and void and the Parties will have no further obligations under it.

2 **B. Notice to Class Members.** After the Court enters its order granting Preliminary
3 Approval of the Settlement, every Class Member will be provided with a “Class Notice.”

4 **1. List of Class Members.** Within fourteen (14) days after the Court grants
5 Preliminary Approval of the Settlement, Defendants shall provide to the Settlement
6 Administrator:

7 **(a)** An electronic database of all Class Members, last known mailing
8 address, Social Security number, and Defendants’ employee identification number (“Class
9 Members’ Data”).

10 **(b)** Corresponding to each Class Member’s name, Defendants shall
11 provide a figure indicating the total number of Pay Periods worked by the Class Member during
12 the Class Period. That number of Pay Periods shall be referred to as that Class Member’s
13 “Individual Pay Periods.”

14 **(c)** If any of the Class Members’ Data are unavailable to Defendants,
15 Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct
16 or otherwise agree upon the Class Members’ Data prior to when it must be submitted to the
17 Settlement Administrator. Class Members’ Data will otherwise remain confidential and will not
18 be disclosed to anyone, except as necessary to applicable taxing authorities, or pursuant to
19 Defendants’ express written authorization or by order of the Court.

20 **2. Mailing of Class Notice.** Within fourteen (14) days after receiving the
21 Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will
22 mail the Class Notice to all identified Class Members via first-class U.S. mail using the mailing
23 address information provided by Defendants, unless modified by any updated address
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1 information that the Settlement Administrator obtains in the course of administration of the
2 Settlement.

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

17 **4. Declaration of Settlement Administrator.** Not later than twenty-one
18 (21) court days prior to the Final Approval Hearing, the Settlement Administrator will provide
19 the Parties for filing with the Court a declaration of due diligence setting forth its compliance
20 with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement
21 Administrator will supplement its declaration of due diligence if any material changes occur from
22 the date of the filing of its prior declaration.

23 **C. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
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1 estimated Settlement Share, the Class Member may produce evidence to the Settlement
2 Administrator for the Class Period. In order for the dispute to be considered, he/she must follow
3 the directions on the Class Notice. To be valid and timely, all disputes and supporting documents
4 must be postmarked by the Response Deadline. Absent evidence rebutting Defendants' records,
5 Defendants' records will be presumed determinative. However, if a Class Member produces
6 evidence contrary to Defendants' records by the Response Deadline, the Settlement
7 Administrator shall notify Class Counsel and Defense Counsel to discuss and resolve the dispute,
8 including providing all available relevant information to all counsel. The Parties will attempt to
9 resolve all disputes jointly and in good faith. If the Parties cannot reach an agreement, the
10 Settlement Administrator will make the final determination on the issue.

11
12 **D. Requests for Exclusion from Settlement; and Objections to Settlement.** Class
13 Members may submit requests to be excluded from the effect of the Settlement, or objections to
14 the Settlement, pursuant to the following procedures:

15
16 **1. Request for Exclusion from Settlement.** A Class Member may request
17 to be excluded from the effect of this Agreement, and any payment of amounts under this
18 Agreement, by timely mailing a letter to the Settlement Administrator stating that the Class
19 Member wants to be excluded from this Action. This letter must include the Class Member's
20 name, address, telephone number, signature, the last four digits of the Class Member's Social
21 Security number, and a clear statement requesting to be excluded from the settlement of the class
22 claims in a form that is the same or substantially similar to the following: "I wish to exclude
23 myself from the class settlement reached in the matter of *Perez v. NxEdge MH LLC, NxEdge San*
24 *Carlos, LLC, and NxEdge CSL, LLC*. I understand that by excluding myself, I will not receive
25 money from the settlement of my individual claims." To be valid and timely, the request to be
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1 excluded must be postmarked by the Response Deadline and received by the Settlement
2 Administrator. A Class Member who properly submits a valid and timely request to be excluded
3 from the Action shall not receive any payment of any kind in connection with this Agreement or
4 this Action, shall not be bound by or receive any benefit of this Agreement, and shall have no
5 standing to object to the Settlement, except that the request for exclusion shall not be effective
6 as to the release of claims arising under PAGA and shall not preclude the Class Member from
7 receiving their share of the PAGA Penalties. A request for exclusion must be mailed to the
8 Settlement Administrator at the address provided on the Class Notice. The Settlement
9 Administrator shall transmit the request for exclusion to counsel for the Parties as follows:
10

11
12 *To Class Counsel:*

13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
17 West Hollywood, CA 90069

To Defense Counsel:

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

17 **2. Objections to Settlement.** The Class Notice will provide that any Class
18 Member who does not request exclusion from the Action and who wishes to object to the
19 Settlement should submit an objection in writing to the Settlement Administrator. To be valid,
20 an objection must be postmarked by the Response Deadline and received by the Settlement
21 Administrator. The written objection to the Settlement should set forth the grounds for the
22 objection and the other information required by this paragraph. The objection should be mailed
23 to the Settlement Administrator at the address provided on the Class Notice. The Settlement
24 Administrator shall transmit the objections to counsel for the Parties as follows:
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To Class Counsel:

To Defense Counsel:

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

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

Counsel will promptly file such objection with the Court.

The written objection should state the objecting Class Member's full name, address, and the approximate dates of his or her employment with Defendants. The written objection should state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing.

Regardless of whether an objecting Class Member complies with the objection procedure encouraged above, the Court will provide a Class Member with the opportunity to speak at the final approval hearing regardless of whether he or she has filed an appearance or submitted a written opposition beforehand. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement.

E. Report. Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the 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.

F. No Solicitation of Objection; Right to Void. Neither the Parties, nor their

1 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member
2 to seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment.
3 If Class Members accounting for more than 5.00% of the Class submit valid requests to be
4 excluded from the Settlement, then Defendants shall have the unilateral right to void this
5 Settlement. Defendants may do so by giving notice to Class Counsel and the Court of their
6 election to void the Settlement not later than seven (7) days before the Final Approval Hearing.
7 No sums shall be payable by Defendants if this Agreement is voided as provided for herein with
8 one exception: Defendants agree to pay any fees owing to the Settlement Administrator for
9 services rendered in the event Defendants exercise their right to void the Settlement.
10

11 **G. Additional Briefing and Final Approval.** Plaintiff will file with the Court a
12 motion for final approval of the Settlement and payment of the Settlement Administrator's
13 reasonable fees and expenses and a memorandum in support of their motion; and Plaintiff and
14 Class Counsel will serve on Defendants and file with the Court a motion for awards of the Class
15 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
16 Expenses Payment pursuant to this Settlement, and memoranda in support of their motions.
17

18 Before the Final Approval Hearing, the Parties shall be entitled to file and serve a
19 response to any Class Member's objection to the Settlement and/or reply in support of their
20 motion for final approval of the Settlement, and payment of the Settlement Administrator's
21 reasonable fees and expenses to the extent that any opposition to the motion is filed; and Plaintiff
22 and Class Counsel may file replies in support of their motions for the Class Representative
23 Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
24

25 If the Court ultimately does not grant final approval of the Settlement or grants final
26 approval conditioned on any material change to the Settlement, then either Party will have the
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1 unilateral right to void the Settlement in its entirety; if that occurs, the Parties will have no further
2 obligations under the Settlement, including any obligation by Defendants to pay the Gross
3 Settlement Amount or any amounts that otherwise would have been payable under this
4 Agreement, except that Defendants and Plaintiff will jointly and equally pay the Settlement
5 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
6 right to void the Settlement under this Paragraph. However, an award by the Court of a lesser
7 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment,
8 the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not
9 constitute a material modification to the Settlement within the meaning of this Paragraph and
10 shall not render the Settlement voidable. Plaintiff and Class Counsel shall retain the right to
11 appeal awards of attorneys' fees and costs less than requested.
12

13 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
14 the Parties will present for the Court's approval and entry a Proposed Final Order and Judgment.
15 The Final Order and Judgment shall permanently bar all Participating Class Members from
16 prosecuting against Defendants any claims within the scope of the Releases contained in this
17 Agreement.
18

19 After entry of the Judgment, the Court will have continuing jurisdiction over the Action
20 and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as may be appropriate
22 under court rules or applicable law.
23

24 **H. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
25 terms and conditions of this Agreement, and that no Class Member timely objects to the
26 Settlement and formally intervenes into the action as required under the California Supreme
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1 Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106
2 (2018) or files a motion pursuant to Civil Procedure Code section 663, Defendants, and their
3 counsel hereby waive, except as provided for in this Agreement or prohibited by law, any and all
4 rights to appeal from the Judgment, including all rights to any post-judgment proceeding and
5 appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any
6 extraordinary writ, and any appeal, and the Judgment therefore will become non-appealable at
7 the time it is entered. The waiver of appeal does not include any waiver of the right to oppose
8 any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the
9 Judgment, the time for consummation of the Settlement (including making any payments under
10 the Settlement) will be suspended until the appeal is fully and finally resolved and the Judgment,
11 consistent with the terms of this Agreement, becomes Final.
12

13 **I. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
14 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
15 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies
16 the Judgment such that there is a material modification to the Settlement, and that court's decision
17 is not completely reversed and the Judgment is not fully affirmed on review by a higher court,
18 then either Plaintiff or Defendants will have the unilateral right to void the Settlement, which the
19 Party must do by giving written notice to the other Parties, the reviewing court, and the Court,
20 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or
21 materially modifying the Judgment becomes final. The Party exercising his/their right to
22 unilaterally void the Settlement pursuant to this provision agrees to pay any fees owing to the
23 Settlement Administrator for services rendered. An order vacating, reversing or modifying the
24 Court's award of the Class Representative Payment, or the Class Counsel Fees Payment and/or
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1 Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material
2 modification of the Judgment within the meaning of this paragraph, and shall not render the
3 Settlement voidable.

4 **J. Establishment of Settlement Account.** The Settlement Administrator shall
5 establish a Settlement Account for distributing Settlement Shares and Payments identified in this
6 Agreement. Within ten (10) business days of the Effective Date, Defendants shall pay the Gross
7 Settlement Amount into the Settlement Account. Should the 10th business day following the
8 Effective Date fall on a weekend or state/federal holiday, Defendants shall remit payment on the
9 following weekday/non-holiday.

11 **K. Default on Payment.** In the event Defendants fail to pay any portion of the Gross
12 Settlement Amount, it shall be considered a default. In the event Defendants fail to make any
13 payment on the date it is due, the Settlement Administrator will provide notice to Class Counsel
14 and Defense Counsel within five (5) business days of the missed payment. Thereafter,
15 Defendants will have fifteen (15) days to cure the default and tender payment to the Settlement
16 Administrator. In the event Defendants fail to cure the default within the times set forth herein,
17 Plaintiff may, among other remedies, elect to enter judgment against Defendants, on an ex parte
18 basis, for the balance of the unpaid Gross Settlement Amount to date, and Plaintiff will be entitled
19 to recover interest at ten percent (10%) per year and reasonable attorneys' fees and costs.

21 **L. Payment of Settlement Shares.** Within ten (10) business days of receipt of the
22 Gross Settlement Amount, the Settlement Administrator shall pay Settlement Shares, from the
23 Settlement Account, to all Class Members (who do not submit valid requests to be excluded from
24 the Action). The Settlement Administrator shall pay each Settlement Share by sending a check
25 in the appropriate amount to the Class Member at the address indicated in the list of Class
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1 Member names and addresses provided by Defendants, or as subsequently determined by the
2 Settlement Administrator to be the correct address.

3 **M. Uncashed Settlement Share Checks.** Any check issued by the Settlement
4 Administrator to Class Members who do not timely and validly opt out shall be negotiable for
5 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
6 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
7 (collectively, “Voided Settlement Checks”), plus any interest that has accrued on those funds,
8 will be paid to the California Unclaimed Property Fund.
9

10 **N.** The Settlement Administrator will mail or wire all required payments no later than
11 fourteen (14) calendar days after receipt of the funds representing the Gross Settlement Amount
12 from Defendants. Proof of payment will be filed with the Court.
13

14 **O. Final Report by Settlement Administrator to Court.** Within ten (10) calendar
15 days after final disbursement of all funds from the Settlement Account, the Settlement
16 Administrator will serve on the Parties for filing with the Court a declaration providing a final
17 summary report on the disbursements of all funds from the Settlement Account.

18 **V. RELEASE OF CLAIMS**

19 **A. Plaintiff and Class Members.** The Parties agree that it is their intent that the
20 resolution set forth in this Settlement will release and discharge the Released Claims by way of
21 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
22 action of any kind by each and all of the Settlement Class Members (including participation to
23 any extent in any representative or collective action) against the Released Parties. This release
24 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
25 Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid
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1 requests for exclusion from the Settlement, will release all Released Claims under PAGA against
2 the Released Parties. The State of California will also release all Released Claims under PAGA
3 against the Released Parties. The Parties intend that the judgment pursuant to California Rule of
4 Court 3.769(h) entered by the Court shall be final and binding upon all Settlement Class Members
5 (including Plaintiff).

6
7 **B. Release of Claims by Plaintiff.** Upon the Effective Date, and only after
8 Defendants pay the entirety of the Gross Settlement Amount, Plaintiff will be deemed to have
9 released the Released Parties of and from all of the Released Claims during the Class Period.
10 These claims include all claims alleged or could have been alleged based on the facts,
11 circumstances, and/or primary rights at issue in the Complaint and any amendments thereto. They
12 include without limitation: (1) all claims for failure to pay all wages for all hours worked,
13 including minimum wages, and overtime wages; (2) all claims for failure to provide rest periods
14 and claims for rest period premium pay; (3) all claims for failure to provide meal periods and
15 claims for meal period premium pay; (4) all claims for failure to provide accurate wage
16 statements and related penalties; (5) all claims for failure to timely pay wages during employment
17 and at termination; (6) all claims for violation of California Business and Professions Code §§
18 17200, et seq., to the extent such claims are predicated on the other claims released herein; and
19 (7) all claims for violation of PAGA and all related claims for penalties, to the extent such claims
20 are predicated on the other claims released herein. Plaintiff's release set forth herein shall include
21 a waiver of all rights under California Civil Code §1542, which includes a release of all known
22 and unknown claims against the Released Parties during the Class Period. Civil Code section
23 1542 provides:

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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiff will be deemed to have waived his rights under Civil Code §1542 during the Class Period, as set forth above. Plaintiff's release excludes any claim for worker's compensation. It also includes any claims arising out of or relating to Plaintiff's employment relationship with Defendants based on events pre-dating Plaintiff's execution of this Joint Stipulation, including but not limited to claims for harassment, discrimination, wrongful termination, negligent infliction of emotional distress and intentional infliction of emotional distress and related prayers for compensatory and punitive damages, interest, attorney fees and costs.

C. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement, Class Counsel and any counsel associated with Class Counsel (The Spivak Law Firm and United Employees Law Group), including without limitation David G. Spivak, Esq. and Walter L. Haines, Esq., waive any claim to costs and attorneys' fees and expenses against Defendants or the Released Parties arising from or related to the Action, except those incurred to enforce this Agreement and collect the Judgment, including but not limited to claims based on the California Labor Code, the California Civil Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the "Class Counsel Released Claims").

D. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for in this Agreement, and Plaintiff, Settlement Class Members, and PAGA Members are not relying on any statement, representation, or calculation by

1 Defendants or by the Settlement Administrator in this regard. Plaintiff, Settlement Class
2 Members, and PAGA Members understand and agree that except for Defendants' payment of the
3 employer's portion of any payroll taxes, they will be solely responsible for the payment of any
4 taxes and penalties assessed on the payments described herein.

5 E. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
6 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
7 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
8 PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS
9 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
10 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
11 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
12 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
13 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
14 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
15 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
16 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
17 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
18 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR
19 TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
20 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
21 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
22 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
23 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
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1 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
2 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
3 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
4 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
5 AGREEMENT.
6

7 **VI. NON-PUBLICITY PROVISION**

8 The Parties and their counsel agree that they will not issue any press releases, initiate any
9 contact with the press, respond to any press inquiry, or have any communication with the press
10 about the fact, amount, or terms of the Settlement. In addition, the Parties and their counsel agree
11 that they will not engage in any advertising or distribute any marketing materials relating to the
12 Settlement of this case in any manner that identifies the Defendants, including but not limited to
13 any postings on any websites maintained by Class Counsel. Neither Plaintiff nor Class Counsel
14 will discuss the terms or the fact of the Settlement with third parties other than (1) their immediate
15 family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3)
16 other Class Members. If comment or information is requested by the media or any third party,
17 Plaintiff and Class Counsel will provide no information other than to indicate the matter has been
18 resolved (or words to that effect). Plaintiff and Class Counsel agree not to publish any of the
19 terms or conditions of this Settlement in any manner that identifies the Defendants. However,
20 Class Counsel may identify this Settlement in other matters to demonstrate their adequacy as
21 counsel in such other matters.
22
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24 **VII. MISCELLANEOUS TERMS**

25 **A. No Effect on Other Benefits.** The Settlement Shares will not result in any
26 additional employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and
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1 shall not have any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff
2 and Class Members will be deemed to have waived all such claims, whether known or unknown
3 by them, as part of their release of claims under this Agreement.

4 **B. No Admission of Liability.** Defendants deny that they have engaged in any
5 unlawful activity, have failed to comply with the law in any respect, or have any liability to
6 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
7 purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will
8 be construed as an admission of liability or wrongdoing by Defendants, or an admission by
9 Plaintiff that any of his claims was non-meritorious or any defense asserted by Defendants was
10 meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the
11 Action will have no bearing on, and will not be admissible in connection with, any litigation
12 (other than solely in connection with the Settlement).
13

14 **C.** Whether or not the Judgment becomes Final, neither the Settlement, this
15 Agreement, any document, statement, proceeding or conduct related to the Settlement or the
16 Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or
17 admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to
18 Defendants or any other Released Parties, including, but not limited to, evidence of a
19 presumption, concession, indication or admission by any of the Released Parties of any liability,
20 fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in
21 evidence against any of the Released Parties, in any further proceeding in the Action, or any other
22 civil, criminal or administrative action or proceeding except for purposes of effectuating the
23 Settlement pursuant to this Agreement.
24

25 **D. Integrated Agreement.** After this Agreement is signed and delivered by all
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1 Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement
2 between the Parties relating to the Settlement, and it will then be deemed that no oral
3 representations, warranties, covenants, or inducements have been made to any Party concerning
4 this Agreement or its exhibits other than the representations, warranties, covenants, and
5 inducements expressly stated in this Agreement and its exhibits.
6

7 **E. Attorney Authorization.** Class Counsel and Defense Counsel warrant and
8 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
9 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
10 its terms, and to execute any other documents required to effectuate the terms of this Agreement.
11 The Parties and their counsel will cooperate with each other and use their best efforts to effect
12 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
13 the form or content of any document needed to implement the Agreement, or on any supplemental
14 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will
15 seek the assistance of the Court, and in all cases, all such documents, supplemental provisions
16 and assistance of the court will be consistent with this Agreement.
17

18 **F. Use and Return of Documents and Data.** Upon written request from
19 Defendants, Class Counsel will return or destroy all originals, copies, and summaries of
20 documents and data provided to Class Counsel by Defendants in connection with the settlement
21 negotiations in this matter. Class Counsel will confirm in writing to Defendants the destruction
22 of all such documents and data within fourteen (14) days of such request.
23

24 **G. Modification of Agreement.** This Agreement, and all parts of it, may be
25 amended, modified, changed, or waived only by an express written instrument signed by all
26 Parties or their successors-in-interest.
27
28

1 **H. Agreement Binding on Successors.** This Agreement will be binding upon, and
2 inure to the benefit of, the successors of each of the Parties.

3 **I. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
4 be governed by and interpreted according to the laws of the State of California, without giving
5 effect to any conflict of law principles or choice of law principles.

6 **J. Cooperation in Drafting.** The Parties have cooperated in the drafting and
7 preparation of this Agreement. This Agreement will not be construed against any Party on the
8 basis that the Party was the drafter or participated in the drafting.

9 **K. Fair Settlement.** The Parties and their respective counsel believe and warrant that
10 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived
11 at this Agreement through arms-length negotiations, considering all relevant factors, current and
12 potential.

13 **L. Headings.** The descriptive heading of any section or paragraph of this Agreement
14 is inserted for convenience of reference only and does not constitute a part of this Agreement.

15 **M. Notice.** All notices, demands or other communications given under this
16 Agreement will be in writing and deemed to have been duly given as of the third calendar day
17 after mailing by United States mail, addressed as follows:

18 *To Class Counsel:*
19 David G. Spivak, Esq.
20 The Spivak Law Firm
21 8605 Santa Monica Bl
22 PMB 42554
23 West Hollywood, CA 90069

24 *To Defense Counsel:*
25 Dora Lane, Esq.
26 Holland & Hart LLP
27 5441 Kietzke Lane
28 Second Floor
Reno NV 89511

29 **Execution in Counterpart.** This Agreement may be executed in one or more
30 counterparts. 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 original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

Dated: 09 / 22 / 2022

By: 
FELIS A. PEREZ

Dated: _____

By: _____
THOMAS PRICE
Vice President
NXEDGE MH LLC, NXEDGE SAN
CARLOS, LLC, and NXEDGE CSL,
LLC

Dated: 09 / 20 / 2022

THE SPIVAK LAW FIRM
By: 
DAVID G. SPIVAK
MAYA CHEAITANI
CHRISTINA PREJEAN, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

Dated: _____

UNITED EMPLOYEES LAW GROUP
By: _____
WALTER L. HAINES, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

Dated: _____

HOLLAND & HART LLP
By: _____
DORA LANE, Attorneys for
Defendants, NxEdge MH LLC,
NxEdge San Carlos, LLC, and NxEdge
CSL, LLC

1 instrument provided that counsel for the Parties will exchange between themselves original signed
2 counterparts. Facsimile signatures will be presumptive evidence of execution of the original,
3 which shall be produced on reasonable request. Any executed counterpart will be admissible to
4 prove the existence and contents of this Agreement.

5
6 Dated: _____

By: _____
FELIS A. PEREZ

7
8 Dated: _____

By: _____
THOMAS PRICE
Vice President
NXEDGE MH LLC, NXEDGE SAN
CARLOS, LLC, and NXEDGE CSL,
LLC

12
13 THE SPIVAK LAW FIRM

14 Dated: _____

By: _____
DAVID G. SPIVAK
MAYA CHEAITANI
CHRISTINA PREJEAN, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

18 UNITED EMPLOYEES LAW GROUP

19 Dated: September 22, 2022

By: 
WALTER L. HAINES, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

22
23 HOLLAND & HART LLP

24 Dated: _____

By: _____
DORA LANE, Attorneys for
Defendants, NxEdge MH LLC,
NxEdge San Carlos, LLC, and NxEdge
CSL, LLC

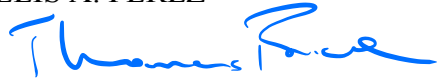
1 instrument provided that counsel for the Parties will exchange between themselves original signed
2 counterparts. Facsimile signatures will be presumptive evidence of execution of the original,
3 which shall be produced on reasonable request. Any executed counterpart will be admissible to
4 prove the existence and contents of this Agreement.

5
6 Dated: _____

By: _____

FELIS A. PEREZ

7
8 Dated: September 26, 2022

By: 

THOMAS PRICE

Vice President

NXEDGE MH LLC, NXEDGE SAN
CARLOS, LLC, and NXEDGE CSL,
LLC

12
13 THE SPIVAK LAW FIRM

14 Dated: _____

By: _____

DAVID G. SPIVAK

MAYA CHEAITANI

CHRISTINA PREJEAN, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

18 UNITED EMPLOYEES LAW GROUP

19 Dated: _____

By: _____

WALTER L. HAINES, Attorneys for
Plaintiff, FELIS A. PEREZ, and all
others similarly situated

22
23 HOLLAND & HART LLP

24 Dated: September 26, 2022

By: 

DORA LANE, Attorneys for
Defendants, NxEdge MH LLC,
NxEdge San Carlos, LLC, and NxEdge
CSL, LLC

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EXHIBIT A

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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR COURT APPROVAL**

Felis A. Perez v. NxEdge MH LLC, et al., Case No. 21CV387173

As a current or former hourly, non-exempt employee of NxEdge MH LLC, NxEdge San Carlos, LLC, or NxEdge CSL, LLC in California who has not signed a release, you may

Simpluris ID: <<Simpluris ID>>	Please provide current address (if different) here:
<<Name>>	_____
<<Address1>>	_____
<<Address2>>	_____
<<City>>, <<State>> <<Zip Code>>	_____

be entitled to receive money from a class action settlement.

*The Santa Clara County Superior Court has authorized this Class Notice.
This is not a solicitation from a lawyer.*

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A CURRENT OR FORMER HOURLY, NON-EXEMPT EMPLOYEE OF NXEDGE MH LLC, NXEDGE SAN CARLOS, LLC, AND NXEDGE CSL, LLC IN THE STATE OF CALIFORNIA WHO HAS NOT EXECUTED A RELEASE OF CLAIMS UNDER THE CALIFORNIA LABOR CODE AND/OR APPLICABLE WAGE ORDERS/REGULATIONS BETWEEN SEPTEMBER 29, 2017 AND THE EARLIER OF THE DATE OF THE COURT'S PRELIMINARY APPROVAL ORDER AND THE LATEST DATE BEFORE THE CLASS EXCEEDS 22,604 PAY PERIODS WORKED.

- A proposed settlement of \$1,242,000.00 (the "Gross Settlement Amount") will be used to pay claims to: All persons Defendants NxEdge MH LLC, NxEdge San Carlos, LLC, and NxEdge CSL, LLC employed in California as regular full-time or part-time hourly, non-exempt employees who have not executed releases of claims under the California Labor Code and/or applicable Wage Orders/regulations during the "Class Period" of September 29, 2017 to the earlier of the date of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay periods worked (the "Class Members"). The Gross Settlement Amount includes (a) expenses and fees of the Settlement Administrator up to \$17,500.00; (b) an Class Representative Payment of \$50,000.00 to the Plaintiff Felis A. Perez as the class representative; (c) attorneys' fees of up to \$413,999.00 and litigation expenses of up to \$25,000.00 to Class Counsel; and (d) \$20,000.00 allocated to settle claims brought pursuant to the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* ("PAGA") (75% of which will go to the California Labor & Workforce Development Agency ("LWDA") and 25% of which will go to Class Members). The Court must approve these payments at the Final Approval Hearing.

- Defendants estimated for purposes of settlement that there are 20,549 Pay Periods worked by 331 Class Members for the period of September 29, 2017 through March 17, 2022. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court approval. The release period for purposes of the Settlement will be the period between September 29, 2017 and the earlier of the preliminary approval order date and the date when the pay periods worked and/or Class Members first exceed 331 Class Members and/or 20,549 pay periods by more than 10 percent (the “Release End Date”). Before the Parties seek or a Party seeks court approval of the Settlement, the Settlement Administrator will advise Plaintiff’s counsel of Defendants’ report of the total number of Pay Periods worked and Class Members.
- The settlement resolves a lawsuit entitled *Felis A. Perez v. NxEdge MH LLC, et al.*, Case No. 21CV387173 (the “Action”) for Defendants’ alleged failure to pay all wages for all hours worked, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and other legal consequences that would follow from these failures, including claims under California’s Business & Professions Code and PAGA. This settlement avoids the costs and risks from continuing the Action, pays money to persons like you, and releases Defendants from alleged liability.
- The Court has not made a determination of the validity of the claims in the Action. Defendants deny any and all liability arising from any of the claims and contend that they are not responsible for a failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, or related wrongs, and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of Pay Periods worked, rounded up to the nearest full Pay Period, during the Class Period.

**PLEASE READ THIS ENTIRE CLASS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

HOW MUCH WILL I GET?

You have a total number of <<number of Pay Periods>> Pay Periods worked during the Class Period.

It is expected that you will receive approximately <<Individual Settlement Payment amount>> from this Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Action.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Action. However, you may not opt out of the PAGA Released Claims.

1 2 3	OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Simpluris, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court.
4 5	DISPUTE THE PAY PERIODS CALCULATION	If you feel that you worked a different amount of Pay Periods as an hourly, non-exempt employee than identified above, you may dispute that calculation by writing to the Settlement Administrator.
6 7 8	ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. If you timely file and serve a written objection, and if you also want to speak about your objection at the hearing, you should send a letter to the Settlement Administrator, Simpluris, Inc., providing notice of your intention to appear and speak at the hearing.

9 **IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT**

10 **1. Why did I get this Class Notice?**

11 You were sent this Class Notice because you have a right to know about the proposed settlement
12 in the Action and about all of your options before the Court rules on whether to finally approve
13 the settlement. If the Court approves the settlement, and after any objections and appeals are
14 resolved, a “Settlement Administrator” appointed by the Court will make the payments that the
15 settlement allows. This Class Notice explains the Action, the proposed settlement, your legal
16 rights, and what benefits are available and how to receive them.

17 The Court in charge of this case is the Santa Clara County Superior Court. The person who sued
18 is called “Plaintiff” and the organizations he sued are called “Defendants.”

19 **2. What is the Action about?**

20 In the Action, Felis A. Perez (“Plaintiff”) alleged violations of the California Labor Code, the
21 California Business & Professions Code, and PAGA, including causes of action for: failure to
22 pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure
23 to authorize and permit rest periods, failure to issue proper wage statements, failure to timely pay
24 wages, failure to maintain required payroll records, unfair competition under California’s
25 Business & Professions Code, and claims for civil penalties for violations of the PAGA.

26 **3. Why is there a settlement?**

27 The parties disagree on the probable outcome of the case with respect to liability, damages, and
28 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
and disruption associated with continued litigation and they have therefore chosen to resolve their
differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet
Class Members are still entitled to receive payments if they comply with the instructions in this

1 Class Notice. The parties entered into this settlement after arms-length negotiations while using
2 the services of an experienced and neutral mediator. The Plaintiff and Class Counsel believe that
the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

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

4 The Court must approve the terms of the proposed settlement as fair and reasonable. Once
5 approved, the settlement will affect all Class Members, except those who have properly opted
6 out. This Class Notice explains your legal rights, the terms of the settlement, what you must do
7 to participate, and the amount of money you may receive. Please read this entire Class Notice
carefully.

8 **5. What should I do?**

9 You can do nothing, and if you are entitled to a payment, you will be paid. Be mindful, however,
10 that if this Class Notice reaches you and the address where you now live is different, you need to
11 contact the Settlement Administrator and provide updated information so that any future
correspondence or the settlement check itself reaches you and is not returned as an address
12 unknown.

13 **6. How much will my payment be?**

14 After all fees, costs, and offsets are taken as set forth under the Settlement Agreement (which is
15 available for review), the remainder will be used to pay Class Members a pro-rata payment based
16 on the number of Pay Periods each Class Member worked during the Class Period and PAGA
Members a pro-rata payment based on the number of Pay Periods each PAGA Member worked
during the PAGA Period (“Pro-Rata Share”).

17 The Settlement Administrator shall determine by how many Pay Periods each such Class
18 Member has.

19 Your estimated payment is listed above, on page 2 of this document. If you do not dispute your
20 Pay Periods worked calculation, and do not opt out of the settlement, you will be bound by the
21 settlement and receive a settlement payment. **In other words, you do not need to take any
action to receive a settlement payment.**

22 If you wish to dispute the number of Pay Periods worked credited to you or anything else about
23 your employment status, you must write to the Settlement Administrator indicating what you
24 believe is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S.
Mail with proof of the submission date (such as a postmark or delivery service date stamp). Your
correspondence must be mailed to the address below:

25 *Perez v. NxEdge MH LLC Class Action Settlement Administrator*

26 c/o _____

27 _____
28 _____

1 If the Settlement Administrator re-mailed your Class Notice to a new address, you will have
2 additional 15 days from the date of the re-mailed Class Notice to write to the Settlement
3 Administrator to dispute your Pay Periods worked information. You must also send any
4 documents or other information that you contend supports your belief that the information set
5 forth above is incorrect. The Settlement Administrator will resolve any dispute based upon
6 Defendants' records and any information you provide. Please be advised that the information on
7 this Notice is presumed to be correct unless the documents you submit are company records from
8 Defendants.

7. When would I get my payment?

9 The Court will hold a hearing on <<final approval hearing date>> at <<final approval hearing
10 time>> ____m to decide whether to approve the proposed settlement. If the Court approves the
11 settlement and anyone objects, there may be appeals. It is always uncertain when these objections
12 and appeals can be resolved, and resolving them can take time. To check on the progress of the
13 settlement, call the Settlement Administrator at <<settlement administrator phone number>> or
14 contact Class Counsel (see below for Class Counsel's contact information.). Please be patient.

15 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
16 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
17 all uncashed funds will be paid to the California State Controller's Office Unclaimed Property
18 Fund with the identity of the Class Member to whom the funds belong, to be held for the Class
19 Member.

8. What am I releasing?

20 If you do not exclude yourself from the settlement (according to the procedures explained below),
21 you will release certain claims as follows:

22 The Parties agree that it is their intent that the resolution set forth in this Settlement will
23 release and discharge the Released Claims by way of any further attempt, by lawsuit,
24 administrative claim or action, arbitration, demand, or other action of any kind by each
25 and all of the Settlement Class Members (including participation to any extent in any
26 representative or collective action) against the Released Parties. This release will not take
27 effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
28 Agreement. All PAGA Members, regardless of whether they submit timely and valid
requests for exclusion from the Settlement, will release all Released Claims under PAGA
against the Released Parties. The State of California will also release all Released Claims
under PAGA against the Released Parties.

"Released Claims" shall mean all claims, rights, demands, liabilities and causes of action
that are alleged, or reasonably could have been alleged based on the facts and claims
during the period of September 29, 2017 through the earlier of the date of the Court's
preliminary approval order and the latest date before the Class exceeds 22,604 pay periods
worked as asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiff to
the LWDA concerning Defendants and the other Released Parties, whether sounding in

1 law or equity, tort, contract, statute, or other applicable federal, state or local law or
2 regulation, including but not limited to the following claims: failure to pay all wages for
3 all hours worked, unauthorized and unlawful wage deductions, failure to provide meal
4 periods, failure to authorize and permit rest periods, failure to compensate employees at
5 one hour's pay at employees' regular rate of pay for each day on which employees did
6 not receive one or more meal or rest periods, failure to issue proper wage statements,
7 failure to timely pay wages, failure to maintain required payroll records, unfair business
8 practices that could have been premised on the claims, causes of action or legal theories
9 of relief described above or any of the claims, causes of action or legal theories of relief
10 pleaded in the Action, all claims under PAGA or for civil penalties that could have been
11 premised on the claims, causes of action or legal theories described above or any of the
12 claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's
13 letter(s) to the LWDA, including but not limited to the California Code of Regulations
14 and to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7,
15 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, and 2699;
16 and any and all damages, restitution, disgorgement, civil penalties, statutory penalties,
17 taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not
18 apply to claims for workers' compensation benefits, unemployment insurance benefits,
19 or any other claim or right that as a matter of law cannot be waived or released. The
20 Parties acknowledge that Released Claims includes any claims for penalties by a PAGA
21 Member resulting from any LWDA investigation. The Parties will meet and confer in
22 good faith if the Court requires changes to the scope of the Released Claims.

23 **"Released Parties"** shall mean Defendants, and any of their former and present agents,
24 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
25 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations,
26 divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
27 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries
28 thereof, affiliated organizations, and all persons acting under, by, through or in concert
with any of them, and each of them.

The release provisions of this Settlement will not take effect until Defendants have paid the Gross Settlement Amount in full per this Settlement Agreement.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail to the Settlement Administrator with the following sentence, or something similar, stating: "I wish to exclude myself from the class settlement reached in the matter of *Perez v. NxEdge MH LLC, NxEdge San Carlos, LLC, and NxEdge CSL, LLC*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." You will have **60 days** from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing and mailed to the Settlement Administrator, Simpluris, Inc., <<settlement administrator mailing address>> and be postmarked no later than <<response deadline>>, or it will not be considered and you will be bound by the settlement. You must include your full name (and former names, if

any), address, telephone number, and the last four digits of your Social Security number in your request and you must sign the written request. If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to opt out. However, you cannot opt-out of the PAGA Released Claims and will receive your pro rate share of the PAGA Penalties whether or not you opt out of the settlement.

10. Do I have a lawyer in this case?

The Court has appointed David G. Spivak of the Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094, david@spivaklaw.com, and Walter L. Haines of United Employees Law Group to represent you and other Class Members in the Action. These lawyers are called Class Counsel. They will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees of approximately 33 and 1/3% (one-third) of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs of not more than \$25,000.00 incurred in connection with the Action. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by objecting. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing or in person. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers should (a) clearly identify the case name and number (*Felis A. Perez v. NxEdge MH LLC, et al*, Case No. 21CV387173), (b) be submitted to the Settlement Administrator by mailing them to the Settlement Administrator, Simpluris, Inc., <<settlement administrator mailing address>>, and (c) be filed or postmarked on or before <<response deadline>>.

Your written objection should state your full name, address, and the approximate dates of your employment with Defendants. The written objection should also state the basis for each specific objection and any legal support in clear and concise terms. The written objection also should state whether you intend to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the final approval hearing.

If the Settlement Administrator re-mailed your Class Notice to a new address, you will have additional 15 days from the date of the re-mailed Class Notice to object. Class Members may appear at the final approval hearing to be heard on their objections, even if they have not previously served a written objection.

1
2 **13. When and where will the Court decide whether to approve the settlement?**

3 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
4 hearing time>> .m in Department 3 at the Santa Clara County Superior Court, Downtown
5 Superior Court, 191 North First Street, San Jose, CA 95113, (The Honorable Patricia M. Lucas
6 presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and
7 adequate. If there are objections that were properly made, the Court will consider them. The
Court will listen to people who have asked to speak at the hearing. The Court may also decide
how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to
approve the settlement. We do not know how long this decision will take.

8 **14. Do I have to come to the hearing?**

9 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
10 come at your own expense. If you sent an objection, you do not have to come to Court to talk
11 about it. As long as you timely mailed your written objection, the Court will consider it. You
may also pay your own lawyer to attend, but it is not required.

12 **15. May I speak at the hearing?**

13 Regardless of whether you properly objected to the settlement, you may speak at the fairness
14 hearing.

15 **16. What happens if I do nothing at all?**

16 You will participate in the settlement and receive payment. You will be bound by the release as
17 set forth herein.

18 **GETTING MORE INFORMATION**

19 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
20 or the Settlement Administrator if you would like more information about the case. You may call
21 <<settlement administrator phone number>> or write the Settlement Administrator, Simpluris,
Inc., located at <<settlement administrator mailing address>>.

22 You can also access the Santa Clara County Superior Court's Online Services at
23 [https://www._____](https://www._____.), or by visiting the Clerk's Office at the Santa Clara County
24 Superior Court, Downtown Superior Court, 191 North First Street, San Jose, CA 95113), between
_:0 a.m. and _:0 p.m., Monday through Friday, excluding Court holidays.

25 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE**
26 **TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

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

Plaintiff(s),

vs.

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

Defendant(s).

Case No. 21CV387173

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

Action filed: September 29, 2021
Dept: 3, The Honorable Patricia M. Lucas

The Motion of Plaintiff Felis A. Perez (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Patricia M. Lucas presiding. The Court having considered the Motion, the Joint

1 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
2 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

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

15
16 3. This action is provisionally certified pursuant to section 382 of the California
17 Code of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action
18 for purposes of settlement only with respect to the proposed Settlement Class.

19 4. The Court hereby preliminarily finds that the Settlement was the product of
20 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
21 making this preliminary finding, the Court considered the nature of the claims set forth in the
22 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
23 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
24 represents a compromise of the Parties' respective positions. The Court further preliminarily
25 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
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1 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
2 finds that the Settlement was entered into in good faith.

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

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

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

9
10 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
11 address, the Settlement Administrator will promptly, and not later than ten
12 (10) days from receipt of the returned Class Notice, search for a more current
13 address for the Class Member and re-mail the Class Notice to the Class
14 Member. The Settlement Administrator will use the Class Members' Data
15 and otherwise work with Defendants' Counsel and Class Counsel to find a
16 more current address. The Settlement Administrator will be responsible for
17 taking reasonable steps, consistent with its agreed-upon job parameters, court
18 orders, and fee, to trace the mailing address of any Class Member for whom
19 a Class Notice is returned as undeliverable by the U.S. Postal Service. These
20 reasonable steps shall include the tracking of all undelivered mail;
21 performing address searches for all mail returned without a forwarding
22 address; and promptly re-mailing to Class Members for whom new addresses
23 are found. If the Class Notice is re-mailed, the Settlement Administrator will
24 note for its own records and notify Class Counsel and Defendants' Counsel
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1 of the date and address of each such re-mailing as part of a weekly status
2 report provided to the Parties.

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

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

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

11
12 *To Class Counsel:*

13 David G. Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

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

- 17
18 ii. **Objections to Settlement.** The Class Notice will provide that any
19 Class Member who does not request exclusion from the Action and
20 who wishes to object to the Settlement should submit an objection in
21 writing to the Settlement Administrator by _____, or 60
22 days after the Settlement Administrator mails the Class Notice, a
23 written objection to the Settlement which sets forth the grounds for
24 the objection and the other information required by this paragraph.
25 The objection should be mailed to the Settlement Administrator at the
26 address provided on the Class Notice. The Settlement Administrator
27
28

shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

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

To Defense Counsel:

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

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

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

- f. **Report.** Not later than fourteen (14) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent

1 timely requests to be excluded from the Action and all Class Members who
2 objected to the settlement.

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

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

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

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

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

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

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

16 13. A Final Approval Hearing shall be held on _____ at _____.m. in
17 Department 3 of the Superior Court for the State of California, County of Santa Clara, located
18 at the Downtown Superior Court, 191 North First Street, San Jose, CA 95113 to consider the
19 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by
20 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys'
21 fees and costs and the Class Representative Payment to the Class Representative. The notice of
22 motion and all briefs and materials in support of the motion for final approval of class action
23 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
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1 Court on or before _____.

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

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

13 **IT IS SO ORDERED.**
14

15 _____
16 **DATE**

17 **THE HONORABLE PATRICIA M. LUCAS**
18 **SUPERIOR COURT JUDGE**
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

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

Plaintiff(s),

vs.

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

Defendant(s).

Case No. 21CV387173

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: September 29, 2021
Dept: 3, The Honorable Patricia
M. Lucas

This matter came on for hearing on _____ at _____.m. in Department 3 of the above-captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action Settlement and Release of Claims (the “Settlement”) filed herewith

1 which provides for a Gross Settlement Amount (“GSA”) of up to \$1,242,000.00 in compromise
2 of all disputed claims on behalf of all hourly, non-exempt employees (current and former) in
3 California at any time during the period from September 29, 2017 through the earlier of the date
4 of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay
5 periods worked (“Settlement Class Period”). All capitalized terms used herein shall have the
6 same meaning as defined in the Settlement.
7

8 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
9 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
10 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
11 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
12 and the evidence and argument received by the Court in conjunction with the motions for
13 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
14 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
15 DETERMINATIONS¹:
16

17 1. The Court has jurisdiction over the subject matter of the Action and over all
18 Parties to the Action, including all Class Members. Pursuant to this Court’s Order Granting
19 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
20 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
21 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
22 right to request exclusion, their right to comment upon or object to the Settlement, and their right
23
24

25 _____
26 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
27 Settlement entered on _____ is attached hereto as **Exhibit A** and incorporated by
28 reference. A true and correct copy of the Court’s Minute Order dated _____ is
attached hereto as **Exhibit B** and incorporated by reference.

1 to appear in person or by counsel at the final approval hearing and be heard regarding final
2 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
3 No member of the Settlement Class presented written objections to the proposed Settlement as
4 part of this notice process, stated an intention to appear, or actually appeared at the final approval
5 hearing.

6
7 2. For purposes of this Final Order and Judgment, the Class Members are all persons
8 Defendants employed as regular full-time or part-time hourly, non-exempt employees (current
9 and former) in California during the Class Period at any time during the period of September 29,
10 2017 to the earlier of the date of the Court's preliminary approval order and the latest date before
11 the Class exceeds 22,604 pay periods worked ("Settlement Class Period").

12
13 3. The Court finds and determines that the notice procedure afforded adequate
14 protections to Class Members and provides the basis for the Court to make an informed decision
15 regarding final approval of the Settlement based on the responses of Class Members. The Court
16 finds and determines that the notice provided in this case was the best notice practicable, which
17 satisfied the requirements of law and due process as to all persons entitled to such notice.

18 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
19 resolution set forth in this Settlement will release and discharge the Released Claims by way of
20 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other
21 action of any kind by each and all of the Settlement Class Members (including participation to
22 any extent in any representative or collective action) against the Released Parties. This release
23 will not take effect until Defendants have paid the Gross Settlement Amount in full per this
24 Settlement Agreement. All PAGA Members, regardless of whether they submit timely and valid
25 requests for exclusion from the Settlement, will release all Released Claims under PAGA against
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1 the Released Parties. The State of California will also release all Released Claims under PAGA
2 against the Released Parties. “**Released Claims**” shall mean all claims, rights, demands,
3 liabilities and causes of action that are alleged, or reasonably could have been alleged based on
4 the facts and claims during the period of September 29, 2017 through the earlier of the date of
5 the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay
6 periods worked as asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiff to
7 the LWDA concerning Defendants and the other Released Parties, whether sounding in law or
8 equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including
9 but not limited to the following claims: failure to pay all wages for all hours worked, unauthorized
10 and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit
11 rest periods, failure to compensate employees at one hour’s pay at employees’ regular rate of pay
12 for each day on which employees did not receive one or more meal or rest periods, failure to
13 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
14 records, unfair business practices that could have been premised on the claims, causes of action
15 or legal theories of relief described above or any of the claims, causes of action or legal theories
16 of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been
17 premised on the claims, causes of action or legal theories described above or any of the claims,
18 causes of action or legal theories of relief pleaded in the Action or Plaintiff’s letter(s) to the
19 LWDA, including but not limited to the California Code of Regulations and to Labor Code
20 sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174,
21 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, and 2699; and any and all damages,
22 restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys’ fees or
23 costs resulting therefrom. Released Claims shall not apply to claims for workers’ compensation
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1 benefits, unemployment insurance benefits, or any other claim or right that as a matter of law
2 cannot be waived or released. The Parties acknowledge that Released Claims includes any claims
3 for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet
4 and confer in good faith if the Court requires changes to the scope of the Released Claims.
5 **“Released Parties”** shall mean Defendants, and any of their former and present agents,
6 employees, servants, officers, directors, partners, trustees, representatives, shareholders,
7 stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions,
8 joint venturers, assigns, predecessors, successors, service providers, insurers, consultants,
9 subcontractors, joint employers, employee benefit plans and fiduciaries thereof, affiliated
10 organizations, and all persons acting under, by, through or in concert with any of them, and each
11 of them.
12

13 2. The Court further finds and determines that the terms of the Settlement are fair,
14 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
15 provisions of the Settlement, including the release of claims contained therein, should be and
16 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
17 according to its terms. As of the Effective Date of Settlement, and for the duration of the
18 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
19 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
20 against the Released Parties as fully set forth in the Settlement. No objections were received by
21 the Parties or the Court through the date of this Final Order and Judgment. The Court finds _____
22 Class Member(s)—_____—submitted a request for exclusion from the Settlement
23 as determined by the Settlement Administrator and therefore is/are not in the Settlement Class.
24
25

26 3. The Court finds and determines that (a) the Settlement Shares to be paid to
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1 Participating Class Members and (b) the LWDA payment as civil penalties under the California
2 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
3 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
4 final approval to, and orders the payment of, those amounts be made to the Participating Class
5 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
6 accordance with the terms of the Settlement.
7

8 4. The Court further grants final approval to and orders that the following payments
9 be made in accordance with the terms of the Settlement:

10 a. Class Counsel fees & costs of \$413,999.00 in attorneys’ fees and
11 \$25,000.00 in litigation costs to Class Counsel;

12 b. \$50,000.00 as a Class Representative Payment award payable to Plaintiff
13 Felis A. Perez for his service as a Class Representative;

14 c. \$17,500.00 in costs of the Settlement Administrator payable to Simpluris,
15 Inc. for its services as the Settlement Administrator; and
16

17 d. Payment of \$15,000.00 (75% of the (\$20,000.00 PAGA penalty) to the
18 LWDA.

19 7. The settlement shall proceed as directed in the Settlement, and no payments
20 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement.
21 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
22 jurisdiction of all matters relating to the interpretation, administration, implementation,
23 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
24 California Rule of Court 3.769(h).
25

26 8. Within 10 business days of the Effective Date of Settlement, Defendants shall
27
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1 deposit the Settlement proceeds in an account designated by the Settlement Administrator: (i) the
2 total amount of all Settlement Shares to Participating Class Members, (ii) the Court-approved
3 Class Counsel fees & costs, (iii) the Court-approved Class Representative Payment, (iv) the
4 Court-approved costs of the Settlement Administrator, and (v) the payment to the LWDA.

5 9. Defendants' payment of such sums shall be the sole financial obligation of
6 Defendants under the Settlement, and shall be in full satisfaction of all claims released herein,
7 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
8 expenses.
9

10 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
11 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
12 Share check. After the expiration of the 180-day period, on Defendants' behalf, the Settlement
13 Administrator shall remit any amounts from Voided Settlement Checks and otherwise unclaimed
14 (the "Residue"), plus interest on the Residue at the legal rate of interest from the date of entry of
15 the initial judgement to the California Unclaimed Property Fund.
16

17 11. The Parties shall file a final accounting report by _____. A non-
18 appearance case review re submission of a final report is scheduled for _____ at
19 _____. **m. in Department 3.** The Parties shall also prepare and file a stipulation and
20 proposed order and proposed Amended Final Order and Judgment by _____ which
21 includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
22 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
23 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
24 If there are objections by any party or non-party, class counsel shall immediately notify the Court
25 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
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1 stipulation and proposed order and separate amended judgment is scheduled for
2 _____ at _____.m. in Department 3.

3 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
4 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
5 deposit funds for distribution by the Settlement Administrator to Participating Class Members in
6 accordance with the Settlement.
7

8 13. The Court hereby enters final judgment in this case in accordance with the terms
9 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this
10 Final Order and Judgment.

11 14. The Parties are hereby ordered to comply with the terms of the Settlement.

12 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
13 provided by the Settlement and this Final Order and Judgment.
14

15 16. The Settlement is not an admission by Defendants nor is this Final Order and
16 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
17 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
18 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
19 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
20 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
21 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
22 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
23 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
24 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
25 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
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1 and any other papers and records on file in the Action may be filed in this Court or in any other
2 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
3 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
4 the Released Claims.

5 17. This document shall constitute a Judgment for purposes of California Rule of
6 Court 3.769(h).
7

8 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

9
10
11 **DATE**

11 **THE HONORABLE PATRICIA M. LUCAS,**
12 **SUPERIOR COURT JUDGE**

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 10, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Felis A. Perez / NxEdge

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., Felis A. Perez (hereafter “Perez” or “Complainant”) provides notice that NxEdge MH, LLC, a Delaware limited liability company, and related entities (collectively “the NxEdge Employers” or “the Employers”) violated his rights and those of all other individuals the NxEdge Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the NxEdge Employers and their agents and representatives.

At all relevant times, the NxEdge Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 25, 2019, the NxEdge Employers began to employ Perez in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. The NxEdge Employers continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

At all relevant times, the NxEdge Employers issued wages to Perez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the NxEdge Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Perez and all of the other Aggrieved Employees worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. They also worked in excess of eight hours on the seventh day of the workweek. The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods.

The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

The NxEdge Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The NxEdge Employers failed to maintain accurate employee records of Perez and all of the other Aggrieved Employees.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to provide them with one or more meal periods as required by law;
- (e) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NxEdge Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NxEdge Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with complete and accurate wage statements;
- (h) The NxEdge Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NxEdge Employers and when their employment ended; and
- (i) The NxEdge Employers failed to maintain accurate employment records pertaining to Perez and all of the other Aggrieved Employees.

Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the NxEdge Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NxEdge "Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the NxEdge Employers operated, and Perez, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the NxEdge Employers, Perez and all of the other Aggrieved Employees earned bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the NxEdge Employers, Perez failed to pay to Perez and all of the other Aggrieved Employees bonuses, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, rest period premium wages, and meal period premium wages.

At all relevant times during the applicable limitations period, the NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on

duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The NxEdge Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Furthermore, the NxEdge Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NxEdge Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Moreover, the NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NxEdge Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NxEdge Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. Accordingly, Perez seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the NxEdge Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to

his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the NxEdge Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perez seeks civil penalties from the NxEdge Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. As a result, the NxEdge Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Felis A. Perez will seek both reasonable attorneys' fees and costs under Labor Code

section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Felis A. Perez
Walter L. Haines Esq.

NxEdge MH, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

EXHIBIT 3

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com

3 MAYA CHEAITANI (SBN 335777)
4 maya@spivaklaw.com

5 THE SPIVAK LAW FIRM
6 16530 Ventura Blvd., Suite 203
7 Encino, CA 91436
8 Telephone (213) 725-9094
9 Facsimile (213) 634-2485

10 Attorneys for Plaintiff,
11 FELIS A. PEREZ, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SANTA CLARA**
14 **(UNLIMITED JURISDICTION)**

15 FELIS A. PEREZ, on behalf of himself, all
16 others similarly situated, and the general public,

17 *Plaintiff,*

18 vs.

19 NXEDGE MH, LLC, a Delaware limited
20 liability company; and DOES 1–50, inclusive,

21 *Defendants.*

Case No.: **21CV387173**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203); and
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff, FELIS A. PEREZ (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant NXEDGE MH, LLC, a
5 Delaware limited liability company, and DOES 1–50, inclusive (collectively “Defendants”) for
6 alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 9–
2001 (hereafter “the Wage Order”), and the Business and Professions Code.

7 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
8 him and other similarly situated current and former employees in California for unpaid wages and
9 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all
10 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
11 worked at the correct rates of pay, (3) Provide accurate and complete itemized written wage
12 statements, (4) Timely pay all final wages upon termination of employment, and (5) Fairly
13 compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this
14 class action.

15 **PARTIES**

16 3. Plaintiff FELIS A. PEREZ is a resident of California.

17 4. Defendant NXEDGE MH, LLC, is a limited liability company organized and
18 existing under the laws of Delaware and a citizen of California based on Plaintiff’s information
and belief.

19 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
20 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
21 is informed and believes and thereon alleges that said Defendants are legally responsible for the
22 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
23 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

24 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
25 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
26 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
27 and scope of such agency or employment and with the approval and ratification of each of the
28 other Defendants.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
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(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

7. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

8. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

9. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

10. **Class Definition:** The Class is defined as follows: All individuals Defendants have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

12. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

13. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:



1 A. Whether Defendants failed to provide the Class Members with all meal and
2 rest periods in compliance with California law;

3 B. Whether Defendants weekly failed to pay all wages earned to the Class
4 Members for all hours worked at the correct rates of pay;

5 C. Whether Defendants knowingly and intentionally failed to provide the
6 Class Members with accurate written wage statements;

7 D. Whether Defendants willfully failed to provide the Class Members with
8 timely final wages upon termination of employment;

9 E. Whether Defendants engaged in unfair competition within the meaning of
10 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

11 F. Whether Class Members are entitled to restitution of money or property
12 that Defendants may have acquired from them through alleged Labor Code violations.

13 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
14 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
15 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
16 Code, the Wage Order, and the Business and Professions Code.

17 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
18 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
19 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
20 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
21 Members.

22 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
23 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
24 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
25 Plaintiff and absent Class Members.

26 17. **Superiority:** A class action is vastly superior to other available means for fair and
27 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
28 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
and efficiently prosecute their common claims in a single forum without the unnecessary
duplication of effort and expense that numerous individual actions would entail. In addition, the
monetary amounts due to many individual Class Members are likely to be relatively small and



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 would thus make it difficult, if not impossible, for individual Class Members to both seek and
2 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
3 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
4 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

5 **STATEMENT OF FACTS**

6 18. On approximately November 25, 2019, Defendants began to employ Plaintiff in
7 Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package
8 handler. Defendants continuously employed him in these capacities until on or about July 9, 2021
9 when his employment ended.

10 19. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class
11 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
12 times, Defendants classified Plaintiff and all of the other Class Members as non-exempt
13 employees entitled to the protections of the Labor Code and the Wage Order.

14 20. Plaintiff and all of the other Class Members worked in excess of eight hours per
15 day, 12 hours per day, and 40 hours per week. The also worked in excess of eight hours on the
16 seventh day of the workweek. Defendants failed to compensate Plaintiff and all of the other Class
17 Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week,
18 and for the first eight hours of the seventh day of the workweek. Defendants failed to pay Plaintiff
19 and the Class Members overtime wages of 1 1/2 times their regular rate of pay on quarterly
20 production bonuses.

21 21. Defendants failed to compensate Plaintiff and all of the other Class Members at
22 the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
23 seventh day of the workweek. Additionally, Defendants failed to pay Plaintiff and the Class
24 Members doubletime wages of two times their regular rate of pay on quarterly production
25 bonuses.

26 22. At all relevant times, Defendants failed to provide Plaintiff and all of the other
27 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff
28 and the Class Members to work through their meal periods without pay within the first five hours
of work and only provided them with a duty-free meal period after they have already worked in
excess of five hours. Also, Defendants failed to pay Plaintiff and the Class Members missed meal
period premium wages at their regular rate of pay, taking quarterly production bonuses into



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1 consideration. Defendants also failed to pay premium wages for days on which they failed to
2 provide Plaintiff and all of the other Class Members with meal periods as required by law.

3 23. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
4 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
5 or major portion thereof. Defendants failed to pay Plaintiff and the Class Members missed rest
6 period premium wages at their regular rate of pay, taking quarterly production bonuses into
7 consideration. Defendants also failed to pay premium wages for days on which they failed to
8 authorize and permit Plaintiff and all of the other Class Members to take rest breaks as required
9 by law.

10 24. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
11 Class Members complete and accurate wage statements that state all hours worked at the correct
12 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
13 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
14 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
15 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
16 earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly
17 rates, all hours work at each rate of pay, and related information.

18 25. Defendants also failed to timely pay Plaintiff and all of the other Class Members
19 all earned wages as described above during and at the conclusion of employment.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

22 **(Lab. Code §§ 226.7, 512, and 1198)**

23 **(By Plaintiff and the Class against all Defendants)**

24 26. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 27. At all relevant times during the applicable limitations period, Plaintiff and the
26 Class Members have been employees of Defendants and entitled to the benefits and protections
27 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

28 28. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor
fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or



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under conditions of labor prohibited by the order is unlawful.

29. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

30. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

31. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be



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1 waived by mutual consent of the employee and the employee.
2 Unless the employee is relieved of all duty during a 30-minute
3 meal period, the meal period shall be considered an 'on duty' meal
4 period and counted as time worked. An 'on duty' meal period shall
5 be permitted only when the nature of the work prevents an
6 employee from being relieved of all duty and when by written
7 agreement between the parties an on-the-job paid meal period is
8 agreed to. The written agreement shall state that the employee
9 may, in writing, revoke the agreement at any time."

10 (B) If an employer fails to provide an employee a meal period
11 in accordance with the applicable provisions of this Order, the
12 employer shall pay the employee one (1) hour of pay at the
13 employee's regular rate of compensation for each work day that
14 the meal period is not provided."

15 32. In relevant part, California Labor Code § 226.7 states:

16 (b) An employer shall not require an employee to work during
17 a meal or rest period mandated pursuant to an applicable statute,
18 or applicable regulation, standard, or order of the Industrial
19 Welfare Commission, the Occupational Safety and Health
20 Standards Board, or the Division of Occupational Safety and
21 Health.

22 (c) If an employer fails to provide an employee a meal period
23 or rest period in accordance with a state law, including, but not
24 limited to, an applicable statute or applicable regulation, standard,
25 or order of the Industrial Welfare Commission, the Occupational
26 Safety and Health Standards Board, or the Division of
27 Occupational Safety and Health, the employer shall pay the
28 employee one additional hour of pay at the employee's regular rate
of compensation for each work day that the meal or rest period is
not provided.

33. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
to a second 30-minute meal period when they worked more than 10 hours in a workday.

34. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
fraction thereof.

35. Defendants intentionally failed to provide Plaintiff and the Class Members with



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1 all required 30-minute duty-free meal periods and 10-minute rest periods free from any work
2 duties in accordance with the Wage Order.

3 36. At all relevant times, Defendants failed to provide Plaintiff and all of the other
4 Class Members with all timely meal periods. Defendants denied Plaintiff and all of the other Class
5 Members their 30-minute off-duty meal period within the first five hours of work. Defendants
6 required Plaintiff and the Class Members to work through their meal periods without pay within
7 the first five hours of work and only provided them with a duty-free meal period after they have
8 already worked in excess of five hours. Also, Defendants failed to pay Plaintiff and the Class
9 Members missed meal period premium wages at their regular rate of pay, taking quarterly
10 production bonuses into consideration. Furthermore, Defendants failed to pay premium wages for
11 days on which they failed to provide Plaintiff and all of the other Class Members with timely
12 meal periods.

13 37. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
14 the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked
15 or major fraction thereof. Defendants did not seek an exemption from the rest period protections
16 of the Wage Order from the California Division of Labor Standards Enforcement. Defendants
17 failed to pay Plaintiff and the Class Members missed rest period premium wages at their regular
18 rate of pay, taking quarterly production bonuses into consideration. Moreover, Defendants failed
19 to pay Plaintiff and all of the other Class Members premium wages on workdays Defendants
20 failed to provide Plaintiff and all of the other Class Members with 10-minute rest periods every
21 four hours worked or major fraction thereof.

22 38. Plaintiff is informed and believes and thereon alleges that, at all relevant times
23 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
25 breaks required by California law.

26 39. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
27 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
28 wages owed for all meal periods and rest breaks not provided to them.

40. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
the Class Members are entitled to premium wages for workdays in which one or more off-duty
meal periods were not provided to them, and for workdays in which one or more rest breaks were



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

41. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

42. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

43. § 2(H) of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

44. § 2(M) of the Wage Order defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

45. § 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on



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(213) 725-9094 Tel
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1 the seventh (7th) consecutive day of work in a workweek.

2 (c) The overtime rate of compensation required to be paid to a nonexempt full-
3 time salaried employee shall be computed by using the employee's regular hourly
4 salary as one-fortieth (1/40) of the employee's weekly salary.

5 46. § 4(B) of the Wage Order requires an employer to pay non-exempt employees at
6 least the minimum wage set forth therein for all hours worked, which consists of all hours that an
7 employer has actual or constructive knowledge that employees are working.

8 47. Labor Code § 510 states:

9 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
10 in one workday and any work in excess of 40 hours in any one workweek and the
11 first eight hours worked on the seventh day of work in any one workweek shall
12 be compensated at the rate of no less than one and one-half times the regular rate
13 of pay for an employee. Any work in excess of 12 hours in one day shall be
14 compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the regular rate
17 of pay of an employee. Nothing in this § requires an employer to combine more
18 than one rate of overtime compensation in order to calculate the amount to be paid
19 to an employee for any hour of overtime work.

20 48. Labor Code § 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum wage required under the applicable Wage Order.

22 49. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
23 than the minimum wage required under the applicable Wage Order for all hours worked during a
24 payroll period.

25 50. Labor Code § 1198 makes it unlawful for an employer to employ an employee
26 under conditions that violate the Wage Order.

27 51. In conjunction, these provisions of the Labor Code require employers to pay non-
28 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

52. At all relevant times during the applicable limitations period, Defendants failed to
pay Plaintiff and the Class Members overtime wages of 1 1/2 times their regular rate of pay on
quarterly production bonuses. Additionally, Defendants failed to pay Plaintiff and the Class



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Encino, CA 91436
(213) 725-9094 Tel
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Members doubletime wages of two times their regular rate of pay on quarterly production bonuses.

53. With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

54. At all relevant times during their work for Defendants, Plaintiff and all of the other Class Members earned non-discretionary, productivity bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, Defendants failed include the productivity bonuses in the regular rates of pay when calculating the rest period premium wages, meal period premium wages, overtime and double time premium, thereby resulting in wage underpayments to Plaintiff and the Class Members.

55. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay.

56. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to compensate Plaintiff and the other Class Members for all hours worked as required by California law.

57. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

58. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts subject to proof.



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(By Plaintiff and the Class against all Defendants)

62. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period



1 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
3 is entitled to an award of costs and reasonable attorneys' fees.

4 63. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
6 injury if the employer fails to provide accurate and complete information as required by California
7 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
8 statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code § 226(a);

12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
16 address of the legal entity that secured the services of the employer during the pay period; and

17 D. The name of the employee and only the last four digits of his or her social
18 security number or an employee identification number other than a social security number.

19 64. "Promptly and easily determine," as stated in California Labor Code § 226(e),
20 means a reasonable person would be able to readily ascertain the information without reference
21 to other documents or information.

22 65. As alleged herein, Defendants failed to provide Plaintiff and the other Class
23 Members with all meal and rest periods in compliance with California law. They also failed to
24 provide them with premium wages on workdays they failed to provide them with one or more
25 meal and/or rest periods in compliance with California law. Further, Defendants failed to
26 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
27 the wages earned and hours worked, described above, on the wage statements they issued to
28 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
the other Class Members' gross and net wages earned, total hours worked, hourly rate of pay, the
corresponding number of hours worked at each hourly rate, and other requirements of California
Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.



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1 66. Defendants' failure to provide Plaintiff and the other Class Members with accurate
2 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
3 the other Class Members with accurate wage statements but intentionally provided wage
4 statements that Defendants knew were not accurate.

5 67. As a result of being provided with inaccurate wage statements by Defendants,
6 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
7 wage statements were violated and they were misled about the amount of wages they had actually
8 earned and were owed. In addition, the absence of accurate information on their wage statements
9 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
10 and mathematical computations to determine the amounts of wages owed, has caused difficulty
11 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
12 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
13 and the other Class Members were not able to ascertain from the wage statements whether
14 Defendants complied with their obligations under California Labor Code § 226(a).

15 68. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
16 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
17 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
18 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
19 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
20 also entitled to an award of costs and reasonable attorneys' fees.

21 69. Accordingly, with respect to this cause of action, on behalf of himself and the other
22 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
23 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
24 proof.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff and the Class against all Defendants)

25 70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 71. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class have been non-exempt employees of Defendants and entitled to the benefits and
28



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1 protections of California Labor Code §§ 201–203, and the Wage Order.

2 72. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 73. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at
7 least 72-hours notice before quitting are due and payable within 72 hours.

8 74. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
9 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
10 § 201 or § 202.

11 75. Plaintiff is informed and believes that Defendants' failures to timely pay all final
12 wages to her and the Class Members have been willful in that Defendants have the ability to pay
13 final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
14 policies or practice that are incompatible with those requirements.

15 76. Labor Code § 203 provides that the wages of an employee continue on a daily
16 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
17 unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

18 77. Defendants failed to pay Plaintiff and the Class Members whose employment
19 ended all of the earned, but unpaid wages described above by the conclusion of their employment,
20 including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided
21 meal period premium wages and related compensation. Additionally, Defendants failed to issue
22 to Plaintiff and all of the other Class Members whose employment ended their final paychecks
23 until the next regular pay day following the termination.

24 78. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
25 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
26 Defendants have deliberately maintained policies and practices that violate the requirements of
27 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
28 to comply with those legal requirements.

79. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
for each Class Member.



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 **FIFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, et seq.)**

4 **(By Plaintiff and the Class against all Defendants)**

5 80. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

6 81. At all relevant times during the applicable limitations period, Plaintiff and the
7 other Class Members have been employees of Defendants and entitled to the benefits and
8 protections of the Business and Professions Code §§ 17200, et seq.

9 82. The unlawful conduct of Defendants alleged herein amounts to and constitutes
10 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
11 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
12 unfairly gained a competitive advantage over other comparable companies doing business in
13 California that comply with their legal obligations to, among other things, pay their employees
14 premium wages for workdays in which they did not provide employees with one or more meal
15 and rest periods, reimburse their employees for reasonable expenses incurred during the course
16 of performing their duties, and pay them all earned wages for all regular and overtime hours
17 worked.

18 83. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
19 other Class Members have suffered injuries in fact and lost money or property. Defendants
20 deprived Plaintiff and the other Class Members of minimum, overtime, doubletime, and premium
21 wages during the course of performing their duties.

22 84. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
23 other Class Members are entitled to restitution of all monies rightfully belonging to them that
24 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
25 and unfair business practices.

26 85. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
27 connection with their unfair competition claims pursuant to California Code of Civil Procedure
28 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

29 **PRAYER FOR RELIEF**

30 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
31 relief and judgment against Defendants as follows:



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- 1 A. An order that the action be certified as a class action;
2 B. An order that Plaintiff be appointed class representative;
3 C. An order that counsel for Plaintiff be appointed class counsel;
4 D. Unpaid Wages;
5 E. Actual Damages;
6 F. Statutory Damages;
7 G. Liquidated Damages;
8 H. Restitution;
9 I. Declaratory and injunctive relief;
10 J. Equitable relief;
11 K. Pre-judgment interest;
12 L. Statutory penalties;
13 M. Costs of suit;
14 N. Interest;
15 O. Reasonable attorneys' fees; and
16 P. Such other relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
19 on all issues so triable.

20 Respectfully submitted,

21 THE SPIVAK LAW FIRM

22 Dated: September 29, 2021

23 By 
24 DAVID SPIVAK,
25 MAYA CHEAITANI, Attorneys for Plaintiff,
26 FELIS A. PEREZ, and all others similarly
27 situated
28



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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EXHIBIT 4

**Electronically Filed
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Envelope: 7750183**

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 MAYA CHEAITANI (SBN 335777)
4 maya@spivaklaw.com
5 THE SPIVAK LAW FIRM
6 16530 Ventura Blvd., Suite 203
7 Encino, CA 91436
8 Telephone (213) 725-9094
9 Facsimile (213) 634-2485

10 Attorneys for Plaintiff,
11 FELIS A. PEREZ, and all others similarly situated
12 (Additional attorneys for Plaintiff on following page)

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

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

Plaintiff,

vs.

NXEDGE MH, LLC, a Delaware limited
liability company; and DOES 1–50, inclusive,

Defendants.

Case No.: 21CV387173

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave, #301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff, FELIS A. PEREZ (hereafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class action and representative against Defendant NXEDGE
5 MH, LLC, a Delaware limited liability company, and DOES 1–50, inclusive (collectively
6 "Defendants") for alleged violations of the California Labor Code, Industrial Welfare
7 Commission Order No. 9–2001 (hereafter "the Wage Order"), and the Business and Professions
8 Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants' alleged failures to: (1) Provide all
12 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
13 worked at the correct rates of pay, (3) Provide accurate and complete itemized written wage
14 statements, (4) Timely pay all final wages upon termination of employment, and (5) Fairly
15 compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this
16 class and representative action.

17 PARTIES

18 3. Plaintiff FELIS A. PEREZ is a resident of California. On approximately
19 November 25, 2019, Defendants began to employ Plaintiff in Morgan Hill (Santa Clara County)
20 in the position of hourly, nonexempt metal detail and package handler. Defendants continuously
21 employed him in these capacities until on or about July 9, 2021 when his employment ended.

22 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
23 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
24 Labor Code § 2699(c).

25 5. Defendant NXEDGE MH, LLC, is a limited liability company organized and
26 existing under the laws of Delaware and a citizen of California based on Plaintiff's information
27 and belief.

28 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
2 is informed and believes and thereon alleges that said Defendants are legally responsible for the
3 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
4 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
5 when ascertained.

6 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
7 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
8 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
9 and scope of such agency or employment and with the approval and ratification of each of the
10 other Defendants.

11 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
12 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
13 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
14 described class in accordance with applicable laws as alleged herein.

15 9. Plaintiff is informed and believes and thereon alleges that each and every one of
16 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
17 each acting as agents and/or employees, and/or under the direction and control of each of the other
18 Defendants, and that said acts and failures to act were within the course and scope of said agency,
19 employment, and/or direction and control.

20 CLASS ALLEGATIONS

21 10. This action has been brought and may be maintained as a class action pursuant to
22 California Code of Civil Procedure § 382 because there is a well-defined community of interest
23 among the persons who comprise the readily ascertainable class defined below and because
24 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
25 action.

26 11. **Class Definition:** The Class is defined as follows: All individuals Defendants have
27 employed or otherwise contracted with in California as hourly, non-exempt workers, including
28 metal detail workers and package handlers, individuals performing work comparable to the



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 aforementioned, and individuals in similar positions at any time during the period beginning four
2 years prior to the filing of this action and ending on the date that final judgment is entered in this
3 action (“Class” or “Class Members”).

4 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
5 right to amend or modify the class definition with greater specificity, by further division into
6 subclasses and/or by limitation to particular issues.

7 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
8 each individual Class Member is impractical. While Plaintiff does not currently know the exact
9 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
10 minimum required for numerosity under California laws.

11 14. **Commonality and Predominance:** Common questions of law and fact exist as to
12 all Class Members and predominate over any questions which affect only individual Class
13 Members. These questions include, but are not limited to:

14 A. Whether Defendants failed to provide the Class Members with all meal and
15 rest periods in compliance with California law;

16 B. Whether Defendants weekly failed to pay all wages earned to the Class
17 Members for all hours worked at the correct rates of pay;

18 C. Whether Defendants knowingly and intentionally failed to provide the
19 Class Members with accurate written wage statements;

20 D. Whether Defendants willfully failed to provide the Class Members with
21 timely final wages upon termination of employment;

22 E. Whether Defendants engaged in unfair competition within the meaning of
23 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

24 F. Whether Class Members are entitled to restitution of money or property
25 that Defendants may have acquired from them through alleged Labor Code violations.

26 15. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
27 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
28 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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Code, the Wage Order, and the Business and Professions Code.

16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

18. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

19. On approximately November 25, 2019, Defendants began to employ Plaintiff in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. Defendants continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

20. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, Defendants classified Plaintiff and all of the other Class Members as non-exempt



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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employees entitled to the protections of the Labor Code and the Wage Order.

21. Plaintiff and all of the other Class Members worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. The also worked in excess of eight hours on the seventh day of the workweek. Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. Defendants failed to pay Plaintiff and the Class Members overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

22. Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, Defendants failed to pay Plaintiff and the Class Members doubletime wages of two times their regular rate of pay on quarterly production bonuses.

23. At all relevant times, Defendants failed to provide Plaintiff and all of the other Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff and the Class Members to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, Defendants failed to pay Plaintiff and the Class Members missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff and all of the other Class Members with meal periods as required by law.

24. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Defendants failed to pay Plaintiff and the Class Members missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Defendants also failed to pay premium wages for days on which they failed to authorize and permit Plaintiff and all of the other Class Members to take rest breaks as required by law.



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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25. At all relevant times, Defendants failed to issue to Plaintiff and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

26. Defendants also failed to timely pay Plaintiff and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

27. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

29. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

30. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
Snivaklaw.com

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more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

31. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in

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accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

32. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

1 33. In relevant part, California Labor Code § 226.7 states:

2
3 (b) An employer shall not require an employee to work during
4 a meal or rest period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial
6 Welfare Commission, the Occupational Safety and Health
7 Standards Board, or the Division of Occupational Safety and
8 Health.

9
10 (c) If an employer fails to provide an employee a meal period
11 or rest period in accordance with a state law, including, but not
12 limited to, an applicable statute or applicable regulation, standard,
13 or order of the Industrial Welfare Commission, the Occupational
14 Safety and Health Standards Board, or the Division of
15 Occupational Safety and Health, the employer shall pay the
16 employee one additional hour of pay at the employee's regular rate
17 of compensation for each work day that the meal or rest period is
18 not provided.

19
20 34. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
21 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
22 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
23 to a second 30-minute meal period when they worked more than 10 hours in a workday.

24 35. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
25 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
26 fraction thereof.

27 36. Defendants intentionally failed to provide Plaintiff and the Class Members with
28 all required 30-minute duty-free meal periods and 10-minute rest periods free from any work



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 duties in accordance with the Wage Order.

2 37. At all relevant times, Defendants failed to provide Plaintiff and all of the other
3 Class Members with all timely meal periods. Defendants denied Plaintiff and all of the other Class
4 Members their 30-minute off-duty meal period within the first five hours of work. Defendants
5 required Plaintiff and the Class Members to work through their meal periods without pay within
6 the first five hours of work and only provided them with a duty-free meal period after they have
7 already worked in excess of five hours. Also, Defendants failed to pay Plaintiff and the Class
8 Members missed meal period premium wages at their regular rate of pay, taking quarterly
9 production bonuses into consideration. Furthermore, Defendants failed to pay premium wages for
10 days on which they failed to provide Plaintiff and all of the other Class Members with timely
11 meal periods.

12 38. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
13 the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked
14 or major fraction thereof. Defendants did not seek an exemption from the rest period protections
15 of the Wage Order from the California Division of Labor Standards Enforcement. Defendants
16 failed to pay Plaintiff and the Class Members missed rest period premium wages at their regular
17 rate of pay, taking quarterly production bonuses into consideration. Moreover, Defendants failed
18 to pay Plaintiff and all of the other Class Members premium wages on workdays Defendants
19 failed to provide Plaintiff and all of the other Class Members with 10-minute rest periods every
20 four hours worked or major fraction thereof.

21 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times
22 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
23 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
24 breaks required by California law.

25 40. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
26 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
27 wages owed for all meal periods and rest breaks not provided to them.

28 41. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 the Class Members are entitled to premium wages for workdays in which one or more off-duty
2 meal periods were not provided to them, and for workdays in which one or more rest breaks were
3 not provided to them.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

6 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

7 **(By Plaintiff and the Class against Defendants)**

8 42. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

9 43. At all relevant times, Plaintiff and the other Class Members have been non-exempt
10 employees of Defendants and entitled to the benefits and protections of California Labor Code
11 §§ 510, 1194, 1197, and 1198 and the Wage Order.

12 44. § 2(H) of the Wage Order defines “hours worked” as “the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so.”

15 45. § 2(M) of the Wage Order defines a “Shift” as “designated hours of work by an
16 employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2
17 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the
18 employer, other than bona fide rest or meal periods.”

19 46. § 3 of the Wage Order states:

20 (A) Daily Overtime - General Provisions

21
22 (1) The following overtime provisions are applicable to employees 18 years of
23 age or over and to employees 16 or 17 years of age who are not required by law
24 to attend school and are not otherwise prohibited by law from engaging in the
25 subject work. Such employees shall not be employed more than eight (8) hours in
26 any workday or more than 40 hours in any workweek unless the employee
27 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
28 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 a day's work. Employment beyond eight (8) hours in any workday or more than
2 six (6) days in any workweek is permissible provided the employee is
3 compensated for such overtime at not less than:

4
5 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
6 worked in excess of eight (8) hours up to and including 12 hours in any workday,
7 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
8 work in a workweek.

9
10 (b) Double the employee's regular rate of pay for all hours worked in excess of
11 12 hours in any workday and for all hours worked in excess of eight (8) hours on
12 the seventh (7th) consecutive day of work in a workweek.

13
14 (c) The overtime rate of compensation required to be paid to a nonexempt full-
15 time salaried employee shall be computed by using the employee's regular hourly
16 salary as one-fortieth (1/40) of the employee's weekly salary.

17
18 47. § 4(B) of the Wage Order requires an employer to pay non-exempt employees at
19 least the minimum wage set forth therein for all hours worked, which consists of all hours that an
20 employer has actual or constructive knowledge that employees are working.

21 48. Labor Code § 510 states:

22 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
23 in one workday and any work in excess of 40 hours in any one workweek and the
24 first eight hours worked on the seventh day of work in any one workweek shall
25 be compensated at the rate of no less than one and one-half times the regular rate
26 of pay for an employee. Any work in excess of 12 hours in one day shall be
27 compensated at the rate of no less than twice the regular rate of pay for an
28 employee. In addition, any work in excess of eight hours on any seventh day of a



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 workweek shall be compensated at the rate of no less than twice the regular rate
2 of pay of an employee. Nothing in this § requires an employer to combine more
3 than one rate of overtime compensation in order to calculate the amount to be paid
4 to an employee for any hour of overtime work.

5
6 49. Labor Code § 1194 invalidates any agreement between an employer and an
7 employee to work for less than the minimum wage required under the applicable Wage Order.

8 50. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
9 than the minimum wage required under the applicable Wage Order for all hours worked during a
10 payroll period.

11 51. Labor Code § 1198 makes it unlawful for an employer to employ an employee
12 under conditions that violate the Wage Order.

13 52. In conjunction, these provisions of the Labor Code require employers to pay non-
14 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
15 worked, including unrecorded hours when the employer knew or reasonably should have known
16 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
17 Cal.4th 575, 585.)

18 53. At all relevant times during the applicable limitations period, Defendants failed to
19 pay Plaintiff and the Class Members overtime wages of 1 1/2 times their regular rate of pay on
20 quarterly production bonuses. Additionally, Defendants failed to pay Plaintiff and the Class
21 Members doubletime wages of two times their regular rate of pay on quarterly production
22 bonuses.

23 54. With respect to overtime wages, the regular rate of pay under California law must
24 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
25 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
26 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
27 must be included in the regular rate whether they are the sole source of the employee’s
28 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,



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(213) 725-9094 Tel
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1 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

2 55. At all relevant times during their work for Defendants, Plaintiff and all of the other
3 Class Members earned non-discretionary, productivity bonuses, rest period premium wages, and
4 meal period premium wages during pay periods in which they worked hours qualifying for
5 overtime and/or double time premium pay rates. However, Defendants failed include the
6 productivity bonuses in the regular rates of pay when calculating the rest period premium wages,
7 meal period premium wages, overtime and double time premium, thereby resulting in wage
8 underpayments to Plaintiff and the Class Members.

9 56. At all relevant times during the applicable limitations period, Defendants failed to
10 compensate Plaintiff and all of the other Class Members for all hours worked, including, but not
11 limited to overtime and doubletime wages for all hours they worked at the correct rates of pay.

12 57. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
13 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
14 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
15 California law.

16 58. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
17 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
18 the full amount of wages earned during each pay period during the applicable limitations period,
19 including minimum and overtime wages.

20 59. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,
21 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
22 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
23 to proof.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

26 **(Lab. Code § 226)**

27 **(By Plaintiff and the Class against all Defendants)**

28 60. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 61. At all relevant times during the applicable limitations period, Plaintiff and the
2 other Class Members have been employees of Defendants and entitled to the benefits and
3 protections of California Labor Code § 226.

4 62. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
5 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized
6 statement showing:

- 7 (1) Gross wages earned,
- 8 (2) Total hours worked by the employee, except for any employee whose
9 compensation is solely based on a salary and who is exempt from payment of overtime under
10 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- 11 (3) The number of piece rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis,
- 13 (4) All deductions, provided that all deductions made on written orders of the
14 employee may be aggregated and shown as one item,
- 15 (5) Net wages earned,
- 16 (6) The inclusive dates of the period for which the employee is paid,
- 17 (7) The name of the employee and his or her social security number, except
18 that by January 1, 2008, only the last four digits of his or her social security number or an
19 employee identification number other than a social security number may be shown on the itemized
20 statement,
- 21 (8) The name and address of the legal entity that is the employer, and
- 22 (9) All applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 63. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
25 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
26 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
27 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
28 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 is entitled to an award of costs and reasonable attorneys' fees.

2 64. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
3 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
4 injury if the employer fails to provide accurate and complete information as required by California
5 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
6 statement alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
14 address of the legal entity that secured the services of the employer during the pay period; and

15 D. The name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number.

17 65. "Promptly and easily determine," as stated in California Labor Code § 226(e),
18 means a reasonable person would be able to readily ascertain the information without reference
19 to other documents or information.

20 66. As alleged herein, Defendants failed to provide Plaintiff and the other Class
21 Members with all meal and rest periods in compliance with California law. They also failed to
22 provide them with premium wages on workdays they failed to provide them with one or more
23 meal and/or rest periods in compliance with California law. Further, Defendants failed to
24 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
25 the wages earned and hours worked, described above, on the wage statements they issued to
26 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
27 the other Class Members' gross and net wages earned, total hours worked, hourly rate of pay, the
28 corresponding number of hours worked at each hourly rate, and other requirements of California



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

2 67. Defendants' failure to provide Plaintiff and the other Class Members with accurate
3 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
4 the other Class Members with accurate wage statements but intentionally provided wage
5 statements that Defendants knew were not accurate.

6 68. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
8 wage statements were violated and they were misled about the amount of wages they had actually
9 earned and were owed. In addition, the absence of accurate information on their wage statements
10 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
11 and mathematical computations to determine the amounts of wages owed, has caused difficulty
12 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
13 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
14 and the other Class Members were not able to ascertain from the wage statements whether
15 Defendants complied with their obligations under California Labor Code § 226(a).

16 69. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
17 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
18 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
19 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
20 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
21 also entitled to an award of costs and reasonable attorneys' fees.

22 70. Accordingly, with respect to this cause of action, on behalf of himself and the other
23 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
24 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
25 proof.

26 **FOURTH CAUSE OF ACTION**

27 **WAITING TIME PENALTIES**

28 **(Lab. Code §§ 201, 202, and 203)**



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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(By Plaintiff and the Class against all Defendants)

71. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

72. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

73. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

74. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

75. By failing to pay earned minimum and premium wages to Plaintiff and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

76. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

77. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

78. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, Defendants failed to issue to Plaintiff and all of the other Class Members whose employment ended their final paychecks until the next regular pay day following the termination.

79. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff



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1 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
2 Defendants have deliberately maintained policies and practices that violate the requirements of
3 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
4 to comply with those legal requirements.

5 80. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
6 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
7 for each Class Member.

8 **FIFTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Bus. & Prof. Code §§ 17200, et seq.)**

11 **(By Plaintiff and the Class against all Defendants)**

12 81. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 82. At all relevant times during the applicable limitations period, Plaintiff and the
14 other Class Members have been employees of Defendants and entitled to the benefits and
15 protections of the Business and Professions Code §§ 17200, et seq.

16 83. The unlawful conduct of Defendants alleged herein amounts to and constitutes
17 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
18 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
19 unfairly gained a competitive advantage over other comparable companies doing business in
20 California that comply with their legal obligations to, among other things, pay their employees
21 premium wages for workdays in which they did not provide employees with one or more meal
22 and rest periods, reimburse their employees for reasonable expenses incurred during the course
23 of performing their duties, and pay them all earned wages for all regular and overtime hours
24 worked.

25 84. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
26 other Class Members have suffered injuries in fact and lost money or property. Defendants
27 deprived Plaintiff and the other Class Members of minimum, overtime, doubletime, and premium
28 wages during the course of performing their duties.



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85. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful and unfair business practices.

86. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

88. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 10, 2020, and ending on the date that final judgment is entered in this action.

89. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.



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1 (2) An employer is in compliance with the requirements of subdivision (a) of
2 Section 226 relating to total hours worked by the employee, if hours worked in
3 excess of the normal work period during the current pay period are itemized as
4 corrections on the paystub for the next regular pay period. Any corrections set
5 out in a subsequently issued paystub shall state the inclusive dates of the pay
6 period for which the employer is correcting its initial report of hours worked.

7
8 (c) However, when employees are covered by a collective bargaining
9 agreement that provides different pay arrangements, those arrangements shall
10 apply to the covered employees.

11
12 (d) The requirements of this section shall be deemed satisfied by the payment
13 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
14 more than seven calendar days following the close of the payroll period.

15
16 90. Defendants paid wages to employees on regular intervals. Defendants, however,
17 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
18 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
19 Employees on such intervals for all wages earned and all hours worked.

20 91. During the applicable time period, Defendants violated California Labor Code §§
21 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

22 92. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
23 behalf of themselves and other current or former employees, to bring a civil action to recover
24 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

25 93. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
26 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
27 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable
28 limitations period in the following amounts:



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1 A. For violations of California Labor Code § 204, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
3 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
4 (penalty amounts established by California Labor Code § 210).

5 B. For violations of California Labor Code § 226(a), two hundred fifty
6 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
7 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
8 established by California Labor Code § 226.3).

9 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
11 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
12 established by California Labor Code § 558).

13 D. For violations of California Labor Code § 1174, five hundred dollars
14 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
15 amounts established by Labor Code § 1174.5).

16 E. For violations of California Labor Code § 1197, one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
18 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
19 pay period (regardless of whether the initial violations were intentionally committed) (penalty
20 amounts established by California Labor Code § 1197.1).

21 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
22 and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
23 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
24 for each subsequent violation (penalty amounts established by California Labor Code §
25 2699(f)(2)).

26 94. Plaintiff has complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letter dated September 10, 2021, Plaintiff filed written
28 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written



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(213) 725-9094 Tel
(213) 634-2485 Fax
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1 notice by certified mail to Defendants of the specific provisions of the California Labor Code
2 alleged to have been violated, including the facts and theories to support the alleged violations.
3 A true and correct copy of the notice to the LWDA dated September 10, 2021 is attached as
4 Exhibit A. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The
5 LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff's
6 notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing
7 him that it does not intend to investigate these allegations.

8 95. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
9 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
10 connection with their claims for civil penalties.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
13 relief and judgment against Defendants as follows:

- 14 A. An order that the action be certified as a class action;
- 15 B. An order that Plaintiff be appointed class representative;
- 16 C. An order that counsel for Plaintiff be appointed class counsel;
- 17 D. Unpaid Wages;
- 18 E. Actual Damages;
- 19 F. Statutory Damages;
- 20 G. Liquidated Damages;
- 21 H. Civil Penalties;
- 22 I. Restitution;
- 23 J. Declaratory and injunctive relief;
- 24 K. Equitable relief;
- 25 L. Pre-judgment interest;
- 26 M. Statutory penalties;
- 27 N. Costs of suit;
- 28 O. Interest;



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(213) 725-9094 Tel
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- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: November 29, 2021

By 

DAVID SPIVAK,
MAYA CHEAITANI, Attorneys for Plaintiff,
FELIS A. PEREZ, and all others similarly
situated

EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 10, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Felis A. Perez / NxEdge

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., Felis A. Perez (hereafter “Perez” or “Complainant”) provides notice that NxEdge MH, LLC, a Delaware limited liability company, and related entities (collectively “the NxEdge Employers” or “the Employers”) violated his rights and those of all other individuals the NxEdge Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the NxEdge Employers and their agents and representatives.

At all relevant times, the NxEdge Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 25, 2019, the NxEdge Employers began to employ Perez in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. The NxEdge Employers continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

At all relevant times, the NxEdge Employers issued wages to Perez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the NxEdge Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Perez and all of the other Aggrieved Employees worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. They also worked in excess of eight hours on the seventh day of the workweek. The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods.

The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

The NxEdge Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The NxEdge Employers failed to maintain accurate employee records of Perez and all of the other Aggrieved Employees.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to provide them with one or more meal periods as required by law;
- (e) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NxEdge Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NxEdge Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with complete and accurate wage statements;
- (h) The NxEdge Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NxEdge Employers and when their employment ended; and
- (i) The NxEdge Employers failed to maintain accurate employment records pertaining to Perez and all of the other Aggrieved Employees.

Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the NxEdge Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NxEdge "Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the NxEdge Employers operated, and Perez, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the NxEdge Employers, Perez and all of the other Aggrieved Employees earned bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the NxEdge Employers, Perez failed to pay to Perez and all of the other Aggrieved Employees bonuses, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, rest period premium wages, and meal period premium wages.

At all relevant times during the applicable limitations period, the NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on

duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The NxEdge Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Furthermore, the NxEdge Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NxEdge Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Moreover, the NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NxEdge Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NxEdge Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. Accordingly, Perez seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the NxEdge Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to

his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the NxEdge Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perez seeks civil penalties from the NxEdge Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. As a result, the NxEdge Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Felis A. Perez will seek both reasonable attorneys' fees and costs under Labor Code

section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Felis A. Perez
Walter L. Haines Esq.

NxEdge MH, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Monday, November 29, 2021, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed as follows:

Dora Lane Esq.
Sarah J. Walsh, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com
sjwalsh@hollandhart.com

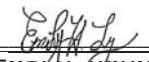
David K. Crockett, Esq.
HOLLAND & HART LLP
222 South Main Street, Ste 2200
Salt Lake City, UT 84101
DKCrockett@hollandhart.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

EXECUTED on Monday, November 29, 2021, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



EMILY HOUNG LY

EXHIBIT 5

HOLLAND & HART LLP
DORA V. LANE (SBN 235113)
dlane@hollandhart.com
S. JORDAN WALSH (SBN 296860)
sjwalsh@hollandhart.com
David K. Crockett (SBN 317816)
5441 KIETZKE LANE, SUITE 200
RENO, NV 89511-2094
Telephone: 775.327.3000
Facsimile: 775.786.6179

*Attorneys for Defendant
NxEdge MH, LLC*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FELIS A. PEREZ, on behalf of himself, all
other similarly situated, and the general public,

Plaintiffs,

v.

NXEDGE MH, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 3:21-cv-10036-WHO

**ANSWER TO FIRST AMENDED
COMPLAINT**

Demand for Jury Trial: Yes

Judge: Hon. William H. Orrick

Defendant NxEDGE MH, LLC (“NxEdge”), by and through their counsel of record, Holland & Hart LLP, in its answer to the First Amended Complaint brought by Plaintiff FELIS A. PEREZ (“Plaintiff” or “Perez”), responds as follows:

ANSWER

Defendant answers each allegation of the First Amended Complaint (“Complaint”) in the form therein presented as follows:

INTRODUCTION

1. Answering Paragraph 1 of the Complaint, Defendant lacks sufficient knowledge to either admit or deny the allegations contained in this paragraph regarding the current residence of

1 each of any Doe Defendant. Defendant admits that it is a Delaware limited liability company.

2 2. Answering Paragraph 2 of the Complaint, Defendant denies the allegations
3 contained in this paragraph.

4 **PARTIES**

5 3. Answering Paragraph 3 of the Complaint, Defendant lacks sufficient knowledge to
6 either admit or deny the allegations contained in this paragraph regarding Plaintiff's current
7 residence, and on this basis, denies the same. Defendant admits the remaining allegations of
8 Paragraph 3.

9 4. Answering Paragraph 4 of the Complaint, this paragraph states legal conclusions to
10 which no response is required. To the extent that a response is required, Defendant the allegations
11 contained in this paragraph.

12 5. Answering Paragraph 5 of the Complaint, Defendant admits that it is a limited
13 liability company organized and existing under the laws of Delaware. Defendant denies all other
14 allegations in Paragraph 5.

15 6. Answering Paragraph 6 of the Complaint, this paragraph states legal conclusions to
16 which no response is required. To the extent that a response is required, Defendant denies all
17 allegations in this paragraph.

18 7. Answering Paragraph 7 of the Complaint, this paragraph contains legal conclusions
19 to which no response is required. To the extent that a response is required, Defendant denies
20 allegations in this paragraph.

21 8. Answering Paragraph 8 of the Complaint, Defendant denies the allegations in this
22 paragraph.

23 9. Answering Paragraph 9 of the Complaint, this paragraph states legal conclusions to
24 which no response is required. To the extent that a response is required, Defendant denies all
25 allegations in this paragraph.

26 **CLASS ALLEGATIONS**

27 10. Answering Paragraph 10 of the Complaint this paragraph states legal conclusions
28 to which no response is required. To the extent that a response is required, Defendant denies all

1 allegations in this paragraph.

2 11. Answering Paragraph 11 of the Complaint, this paragraph states legal conclusions
3 to which no response is required. To the extent that a response is required, Defendant denies all
4 allegations in this paragraph.

5 12. Answering Paragraph 12 of the Complaint, this paragraph states legal conclusions
6 to which no response is required. To the extent that a response is required, Defendant denies all
7 allegations in this paragraph.

8 13. Answering Paragraph 13 of the Complaint, this paragraph states legal conclusions
9 to which no response is required. To the extent that a response is required, Defendant denies all
10 allegations in this paragraph.

11 14. Answering Paragraph 14 of the Complaint, this paragraph states legal conclusions
12 to which no response is required. To the extent that a response is required, Defendant denies all
13 allegations in this paragraph.

14 15. Answering Paragraph 15 of the Complaint, this paragraph states legal conclusions
15 to which no response is required. To the extent that a response is required, Defendant denies all
16 allegations in this paragraph.

17 16. Answering Paragraph 16 of the Complaint, this paragraph states legal conclusions
18 to which no response is required. To the extent that a response is required, Defendant denies all
19 allegations in this paragraph.

20 17. Answering Paragraph 17 of the Complaint, this paragraph states legal conclusions
21 to which no response is required. To the extent that a response is required, Defendant denies all
22 allegations in this paragraph.

23 18. Answering Paragraph 18 of the Complaint, this paragraph states legal conclusions
24 to which no response is required. To the extent that a response is required, Defendant denies all
25 allegations in this paragraph.

26 **STATEMENT OF FACTS**

27 19. Answering Paragraph 19 of the Complaint, Defendant admits the allegations in this
28 paragraph.

20. Answering Paragraph 20 of the Complaint, Defendant admits that it issued wages to Plaintiff on a biweekly (26 paychecks/year) basis and paid him by the hour. Defendant also admits that it classified Plaintiff as a non-exempt employee, and that Defendant pays its non-exempt employees on an hourly basis. As for the other claims contained in Paragraph 20 of the Complaint, this paragraph states legal conclusions to which no response is required. To the extent that a response is required, Defendant denies all allegations in this paragraph.

21. Answering Paragraph 21 of the Complaint, this paragraph, Defendant denies the allegations in this paragraph.

22. Answering Paragraph 22 of the Complaint, Defendant denies the allegations in this paragraph.

23. Answering Paragraph 23 of the Complaint, Defendant denies the allegations in this paragraph.

24. Answering Paragraph 24 of the Complaint, Defendant denies the allegations in this paragraph.

25. Answering Paragraph 25 of the Complaint, Defendant denies the allegations in this paragraph.

26. Answering Paragraph 26 of the Complaint, Defendant denies the allegations in this paragraph.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

27. In response to Paragraph 27 of the Complaint, Defendant repeats and realleges its responses set forth above as if set forth fully herein.

28. Answering Paragraph 28 of the Complaint, Defendant admits that during the applicable limitations period Plaintiff was an employee of Defendant. As for the other allegations in Paragraph 28 of the Complaint, this paragraph states legal conclusions to which no response is required. To the extent that a response is required, Defendant denies all allegations in this

1 paragraph.

2 29. Answering Paragraph 29 of the Complaint, Defendant admits that California Labor
3 Code § 1198 reads as noted in Paragraph 29. As for the other claims contained in Paragraph 29 of
4 the Complaint, this paragraph states legal conclusions to which no response is required. To the
5 extent that a response is required, Defendant denies all allegations in this paragraph.

6 30. Answering Paragraph 30 of the Complaint, Defendant admits that California Labor
7 Code § 512 reads as noted in Paragraph 30. As for the other claims contained in Paragraph 30 of
8 the Complaint, this paragraph states legal conclusions to which no response is required. To the
9 extent that a response is required, Defendant denies all allegations in this paragraph.

10 31. Answering Paragraph 31 of the Complaint, Defendant admits that California Wage
11 Order No. 1, § 12 reads as noted in Paragraph 31. As for the other claims contained in Paragraph
12 31 of the Complaint, this paragraph states legal conclusions to which no response is required. To
13 the extent that a response is required, Defendant denies all allegations in this paragraph.

14 32. Answering Paragraph 32 of the Complaint, Defendant admits that California Wage
15 Order No. 1, § 11 reads as noted in Paragraph 32. As for the other claims contained in Paragraph
16 32 of the Complaint, this paragraph states legal conclusions to which no response is required. To
17 the extent that a response is required, Defendant denies all allegations in this paragraph.

18 33. Answering Paragraph 33 of the Complaint, Defendant admits that California Labor
19 Code § 226.7 reads as noted in Paragraph 33. As for the other claims contained in Paragraph 33
20 of the Complaint, this paragraph states legal conclusions to which no response is required. To the
21 extent that a response is required, Defendant denies all allegations in this paragraph.

22 34. Answering Paragraph 34 of the Complaint, this paragraph states legal conclusions
23 to which no response is required. To the extent that a response is required, Defendant denies all
24 allegations in this paragraph.

25 35. Answering Paragraph 35 of the Complaint, this paragraph states legal conclusions
26 to which no response is required. To the extent that a response is required, Defendant denies all
27 allegations in this paragraph.

28 36. Answering Paragraph 36 of the Complaint, Defendant denies all allegations in this

1 paragraph.

2 37. Answering Paragraph 37 of the Complaint, Defendant denies all allegations in this
3 paragraph.

4 38. Answering Paragraph 38 of the Complaint, Defendant denies all allegations in this
5 paragraph.

6 39. Answering Paragraph 39 of the Complaint, Defendant denies all allegations in this
7 paragraph.

8 40. Answering Paragraph 40 of the Complaint, Defendant denies all allegations in this
9 paragraph.

10 41. Answering Paragraph 41 of the Complaint, Defendant denies all allegations in this
11 paragraph.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

14 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

15 **(By Plaintiff and the Class against Defendants)**

16 42. In response to Paragraph 42 of the Complaint, Defendant repeats and realleges its
17 responses set forth above as if set forth fully herein.

18 43. Answering Paragraph 43 of the Complaint, Defendant admits that, at all relevant
19 times, Plaintiff was a non-exempt employee of Defendant. As for the other claims contained in
20 Paragraph 43 of the First Amended Complaint, this paragraph states legal conclusions to which no
21 response is required. To the extent that a response is required, Defendant denies all allegations in
22 this paragraph.

23 44. Answering Paragraph 44 of the Complaint, this paragraph states legal conclusions
24 to which no response is required. To the extent that a response is required, Defendant denies all
25 allegations in this paragraph.

26 45. Answering Paragraph 45, Defendant admits that California Wage Order Number 1,
27 § 2 defines the terms “Shift” and “Split Shift” as indicated in Paragraph 45. As for the other claims
28 contained in Paragraph 45 of the Complaint, this paragraph states legal conclusions to which no

1 response is required. To the extent that a response is required, Defendant denies all allegations in
2 this paragraph.

3 46. Answering Paragraph 46 of the Complaint, Defendant admits that California Wage
4 Order Number 1, § 3 reads as noted in Paragraph 46. As for the other claims contained in Paragraph
5 46 of the Complaint, this paragraph states legal conclusions to which no response is required. To
6 the extent that a response is required, Defendant denies all allegations in this paragraph.

7 47. Answering Paragraph 47 of the Complaint, Defendant admits that California Wage
8 Order Number 1, § 4 requires an employer to pay non-exempt employees at least the minimum
9 wage set forth within the Wage Order for all hours worked. As for the other claims contained in
10 Paragraph 47 of the Complaint, this paragraph states legal conclusions to which no response is
11 required. To the extent that a response is required, Defendant denies all allegations in this
12 paragraph.

13 48. Answering Paragraph 48 of the Complaint, Defendant admits that California Labor
14 Code § 510 reads as noted in Paragraph 48. As for the other claims contained in Paragraph 48 of
15 the Complaint, this paragraph states legal conclusions to which no response is required. To the
16 extent that a response is required, Defendant denies all allegations in this paragraph.

17 49. Answering Paragraph 49 of the Complaint, Defendant admits that California Labor
18 Code § 1194 prohibits employers and employees from entering an agreement where the employee
19 would work for less than minimum wage. As for the other claims contained in Paragraph 49 of
20 the Complaint, this paragraph states legal conclusions to which no response is required. To the
21 extent that a response is required, Defendant denies all allegations in this paragraph.

22 50. Answering Paragraph 50 of the Complaint, Defendant admits that California Labor
23 Code § 1197 prohibits employers to employees less than minimum wage for all hours worked in a
24 pay period. As for the other claims contained in Paragraph 50 of the Complaint, this paragraph
25 states legal conclusions to which no response is required. To the extent that a response is required,
26 Defendant denies all allegations in this paragraph.

27 51. Answering Paragraph 51 of the Complaint, Defendant admits that California Labor
28 Code § 1198 prohibits employers from employing employees under conditions that violate

1 California Wage Order Number 1.

2 52. Answering Paragraph 52 of the Complaint, this paragraph states legal conclusions
3 to which no response is required. To the extent that a response is required, Defendant denies all
4 allegations in this paragraph.

5 53. Answering Paragraph 53 of the Complaint, Defendant denies all allegations in this
6 paragraph.

7 54. Answering Paragraph 54 of the Complaint, this paragraph states legal conclusions
8 to which no response is required. To the extent that a response is required, Defendant denies all
9 allegations in this paragraph.

10 55. Answering Paragraph 55 of the Complaint, Defendant denies all allegations in this
11 paragraph.

12 56. Answering Paragraph 56 of the Complaint, Defendant denies all allegations in this
13 paragraph.

14 57. Answering Paragraph 57 of the Complaint, Defendant denies all allegations in this
15 paragraph.

16 58. Answering Paragraph 58 of the Complaint, Defendant denies all allegations in this
17 paragraph.

18 59. Answering Paragraph 59 of the Complaint, this paragraph states legal conclusions
19 to which no response is required. To the extent that a response is required, Defendant denies all
20 allegations in this paragraph.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

23 **(Lab. Code § 226)**

24 **(By Plaintiff and the Class against all Defendants)**

25 60. In response to Paragraph 60 of the Complaint, Defendant repeats and realleges its
26 responses set forth above as if set forth fully herein.

27 61. Answering Paragraph 61 of the Complaint, Defendant admits that during the
28 applicable limitations period Plaintiff was employed by Defendant. As for the other alleged

1 employees, Defendant lacks sufficient knowledge to either admit or deny the allegations in
2 Paragraph 61 of the Complaint, and on this basis denies the same. Defendant also asserts that
3 Paragraph 61 states legal conclusions regarding the application of California Labor Code § 226, to
4 which no response is required. To the extent that a response is required, Defendant denies all
5 allegations in this paragraph.

6 62. Answering Paragraph 62, Defendant admits that during the applicable limitations
7 period Plaintiff was entitled to receive wage statements in compliance with California Labor Code
8 § 226(a). As for the other alleged employees, Defendant lacks sufficient knowledge to either admit
9 or deny the allegations in Paragraph 62 of the Complaint, and on this basis denies the same.
10 Defendant also asserts that Paragraph 62 states legal conclusions regarding the application of
11 California Labor Code § 226(a), to which no response is required. To the extent that a response is
12 required, Defendant denies all allegations in this paragraph.

13 63. Answering Paragraph 63 of the Complaint, this paragraph contains legal
14 conclusions to which no response is required. To the extent response is required, Defendant denies
15 all allegation in this paragraph.

16 64. Answering Paragraph 64 of the Complaint, this paragraph states legal conclusions
17 to which no response is required. To the extent that a response is required, Defendant denies all
18 allegations in this paragraph.

19 65. Answering Paragraph 65 of the Complaint, this paragraph states legal conclusions
20 to which no response is required. To the extent that a response is required, Defendant denies all
21 allegations in this paragraph.

22 66. Answering Paragraph 66 of the Complaint, Defendant denies all allegations in this
23 paragraph.

24 67. Answering Paragraph 67 of the Complaint, Defendant denies all allegations in this
25 paragraph.

26 68. Answering Paragraph 68 of the Complaint, Defendant denies all allegations in this
27 paragraph.

28 69. Answering Paragraph 69 of the Complaint, Defendant denies all allegations in this

1 paragraph.

2 70. Answering Paragraph 70 of the Complaint, this paragraph states legal conclusions
3 to which no response is required. To the extent that a response is required, Defendant denies all
4 allegations in this paragraph.

5 **FOURTH CAUSE OF ACTION**

6 **WAITING TIME PENALTIES**

7 **(Lab. Code §§ 201, 202, and 203)**

8 **(By Plaintiff and the Class against all Defendants)**

9 71. In response to Paragraph 71 of the Complaint, Defendant repeats and realleges its
10 responses set forth above as if set forth fully herein.

11 72. Answering Paragraph 72 of the Complaint, Defendant admits that during the
12 applicable limitations period Plaintiff was employed as a non-exempt employee by Defendant. As
13 for the other alleged employees, Defendant lacks sufficient knowledge to either admit or deny the
14 allegations in Paragraph 72 of the Complaint, and on this basis denies the same. Defendant asserts
15 that Paragraph 72 also states legal conclusions, to which no response is required. To the extent that
16 a response is required, Defendant denies all allegations in this paragraph.

17 73. Answering Paragraph 73 of the Complaint, this paragraph states legal conclusions
18 to which no response is required. To the extent that a response is required, Defendant denies all
19 allegations in this paragraph.

20 74. Answering Paragraph 74 of the Complaint, this paragraph states legal conclusions
21 to which no response is required. To the extent that a response is required, Defendant denies all
22 allegations in this paragraph.

23 75. Answering Paragraph 75 of the Complaint, Defendant denies all allegations in this
24 paragraph.

25 76. Answering Paragraph 76 of the Complaint, Defendant denies all allegations in this
26 paragraph.

27 77. Answering Paragraph 77 of the Complaint, this paragraph states legal conclusions
28 to which no response is required. To the extent that a response is required, Defendant denies all

1 allegations in this paragraph.

2 78. Answering Paragraph 78 of the Complaint, Defendant denies all allegations in this
3 paragraph.

4 79. Answering Paragraph 79 of the Complaint, Defendant denies all allegations in this
5 paragraph.

6 80. Answering Paragraph 80 of the Complaint, this paragraph states legal conclusions
7 to which no response is required. To the extent that a response is required, Defendant denies all
8 allegations in this paragraph.

9 **FIFTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Bus. & Prof. Code §§ 17200, et seq.)**

12 **(By Plaintiff and the Class against all Defendants)**

13 81. In response to Paragraph 81 of the Complaint, Defendant repeats and realleges its
14 responses set forth above as if set forth fully herein.

15 82. Answering Paragraph 82 of the Complaint, Defendant admits that during the
16 applicable limitations period Plaintiff was employed by Defendant. As for the other alleged
17 employees, Defendant lacks sufficient knowledge to either admit or deny the allegations in
18 Paragraph 82 of the Complaint, and on this basis denies the same. Defendant asserts that Paragraph
19 82 also states legal conclusions to which no response is required. To the extent that a response is
20 required, Defendant denies all allegations in this paragraph.

21 83 Answering Paragraph 83 of the Complaint, Defendant denies all allegations in this
22 paragraph.

23 84. Answering Paragraph 84 of the Complaint, Defendant denies all allegations in this
24 paragraph.

25 85. Answering Paragraph 85 of the Complaint, Defendant denies all allegations in this
26 paragraph.

27 86. Answering Paragraph 86 of the Complaint, Defendant denies all allegations in this
28 paragraph.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

87. In response to Paragraph 87 of the Complaint, Defendant repeats and realleges its responses set forth above as if set forth fully herein.

88. Answering Paragraph 88 of the Complaint, this paragraph states legal conclusions, to which no response is required. To the extent that a response is required, Defendant denies all allegations in this paragraph.

89. Answering Paragraph 89, Defendant admits that California Labor Code § 226.7204 reads as noted in Paragraph 89. As for the other claims contained in Paragraph 89 of the Complaint, Defendant asserts that Paragraph 89 states legal conclusions to which no response is required. To the extent that a response is required, Defendant denies all allegations in this paragraph.

90. Answering Paragraph 90 of the Complaint, Defendant admits that it pays its employees on regular intervals. Defendant denies all other allegations in this paragraph.

91. Answering Paragraph 91, Defendant denies all allegations in this paragraph.

92. Answering Paragraph 92, Defendant admits that California Labor Code § 2699(a) and (g) authorize aggrieved employees to bring civil actions to recover civil penalties pursuant to California Labor Code § 2699.3. As for the other claims contained in Paragraph 92 of the Complaint, Defendant asserts that Paragraph 92 states legal conclusions to which no response is required. To the extent that a response is required, Defendant denies all allegations in this paragraph.

93. Answering Paragraph 93, Defendant denies all allegations in this paragraph.

94. Answering Paragraph 94, this paragraph states legal conclusions to which no response is required. To the extent that a response is required, Defendant denies all allegations in this paragraph.

95. Answering Paragraph 95 of the Complaint, Defendant denies all allegations in this paragraph.

Any and all other allegations that have not been specifically admitted are expressly denied.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof except where required by law, and without waiver of its right to seek leave or stipulation to assert additional affirmative defenses, Defendant further asserts the following affirmative defenses.

The term “Named Plaintiff” refers to the named Plaintiff in this action, Felis A. Perez. The term “Plaintiffs” includes Named Plaintiff and any member of any putative class or representative group on whose behalf he seeks to bring the claims in the Complaint. If the Court certifies a class in this case and/or allows claims to proceed on a representative or collective basis, to which Defendant objects, Defendant asserts the affirmative defenses set forth herein as to each and every member of any such class and/or representative or collective group.

1. Named Plaintiffs’ Complaint, and each and every cause of action therein, is barred by the applicable statute(s) of limitation, including but not limited to: Code of Civil Procedure sections 338(a), 340(a); and Business & Professions Code section 17208.

2. Plaintiffs’ claims are barred on the ground that the Complaint, and all causes of action therein, fail to state a claim upon which relief may be granted against Defendant.

3. Named Plaintiff’s allegations are barred as a matter of law because Named Plaintiff lacks standing, and thus, cannot represent the interests of the Plaintiffs as to each purported cause of action in the Complaint.

4. Named Plaintiff’s Complaint, and each and every cause of action alleged therein, is barred on the ground that at least some Plaintiffs have executed and/or are subject to a legally enforceable compromise and/or release of claims asserted in the Complaint.

5. Plaintiffs’ claims are barred by Named Plaintiff’s failure to exhaust internal, contractual, statutory, regulatory, and administrative grievance procedures, including but not limited to the procedures required by Cal. Labor Code section 2699.3.

6. Plaintiffs are estopped by their conduct from recovering any relief sought in the Complaint, or in any purported cause of action alleged therein.

7. By their words and/or conduct, Plaintiffs have waived any right to recover any relief

1 sought in the Complaint, or in any purported cause of action alleged therein.

2 8. Plaintiffs' claims are barred by the doctrine of unclean hands.

3 9. Plaintiffs' claims are barred by the doctrines of accord and satisfaction.

4 10. Plaintiffs' claims are barred by the doctrine of avoidable consequences.

5 11. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs knowingly
6 submitted to, consented to, and acquiesced in the actions alleged in the Complaint.

7 12. If the injuries and/or alleged damages in the Complaint occurred at all, such injuries
8 and/or alleged damages were caused by and/or contributed to by Plaintiffs' own acts, omissions
9 and/or failures to act.

10 13. The harm allegedly suffered by Plaintiffs was proximately caused by persons or
11 entities other than Defendant.

12 14. This suit may not be properly maintained as a class action because Named Plaintiff
13 has failed to plead, and cannot establish, *inter alia*, (1) an ascertainable class; (2) that a class action
14 is the superior or an appropriate method for fair and efficient adjudication of the claims in the
15 Complaint; (3) that common issues of fact and/or law predominate; (4) that Named Plaintiff's
16 claims are representative or typical of the claims of the putative class; (5) that Named Plaintiff is
17 a proper class representative; (6) that Named Plaintiff and his counsel will adequately represent
18 the interests of the class; (7) that there is a well-defined community of interest in the questions of
19 law or fact affecting Named Plaintiff and the members of the putative class; and/or (8) that the
20 class is sufficiently numerous for class treatment and/or such that joinder is impractical.
21 Additionally, certification is improper because there are conflicting interests among members of
22 the putative class.

23 15. Plaintiff's representative claims are barred because such claims are unmanageable,
24 including due to a prevalence of individualized factual and legal issues and because they would
25 require the testimony at trial of, and individualized evidence as to, each of the persons on whose
26 behalf civil penalties and other relief is sought, in order for there to be recovery of penalties and
27 other relief on any such persons' behalf.

28

1 16. Plaintiff's purported PAGA cause of action is barred to the extent Plaintiff seeks
2 penalties beyond the "initial" violation described in California Labor Code § 2699 and/or any other
3 applicable California Labor Code provision.

4 17. Named Plaintiff does not and cannot fairly and adequately protect the interests of
5 the putative class and/or other representative and collective groups alleged in the Complaint.

6 18. Named Plaintiff is not a proper or adequate representative with respect to the claims
7 and relief sought pursuant to California Labor Code §§ 2698, et seq. (California Labor Code
8 Private Attorneys General Act of 2004).

9 19. Named Plaintiff's claims pursuant to the California Labor Code Private Attorneys
10 General Act of 2004 cannot proceed on a representative basis because Named Plaintiff is not an
11 "aggrieved employee."

12 20. As to any penalties available to Plaintiffs under the California Labor Code Private
13 Attorneys General Act of 2004, the Court should exercise its discretion in imposing such penalties,
14 pursuant to Cal. Lab. Code § 2699(e)(1), including by declining to impose them.

15 21. Any penalties available to Plaintiffs under the California Labor Code Private
16 Attorneys General Act of 2004 are subject to reduction pursuant to Cal. Lab. Code § 2699(e)(2),
17 on the grounds that awarding the maximum available penalty would be unjust, arbitrary and
18 oppressive, and confiscatory.

19 22. The penalties sought by Named Plaintiff pursuant to PAGA are barred to the extent
20 PAGA is unconstitutional, in that it violates, among other things, Defendant's constitutional rights
21 under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States
22 Constitution.

23 23. Adjudication of Plaintiffs' claims through generalized class-wide or representative
24 proof would violate Defendant's rights to due process and trial by jury, guaranteed by the United
25 States and California Constitutions.

26 24. To the extent the Court declines (in whole or in part) to certify a class, the
27 maintenance of non-certified claims or derivative claims related thereto as "representative" actions
28 would violate the Due Process Clauses of the United States and California Constitutions by

1 authorizing actions to be brought on a collective/representative basis without the requirements for
2 class certification having been met.

3 25. The acts and/or omissions of the unnamed “Doe” defendants of which Named
4 Plaintiff complains were all undertaken outside the scope of such defendants’ agency and/or
5 employment with this answering Defendant, and were undertaken without the knowledge or
6 consent of this answering Defendant, and this answering Defendant may not be held liable for such
7 acts and/or omissions.

8 26. Plaintiffs were paid all wages due to them on a timely basis.

9 27. Defendant has not willfully failed to pay any wages or monies claimed due, and
10 there is a good faith dispute regarding Defendant’s obligation to pay any sum that may be alleged
11 to be due.

12 28. Defendant’s alleged conduct toward Plaintiffs, including but not limited to with
13 regard to compensation, provision of meal and rest periods, and furnishing of wage statements, for
14 which Defendant expressly denies liability, was at all times justified and undertaken in a good faith
15 belief that Defendant was in full compliance with the law.

16 29. Named Plaintiff’s causes of action, and the causes of action on behalf of putatively
17 represented individuals, are barred because the alleged acts and/or omissions that triggered such
18 liability, if any, were not authorized, suffered, or permitted by Defendant and/or occurred without
19 Defendant’s knowledge, consent, or control.

20 30. Any recovery on Named Plaintiff’s Complaint or any cause of action therein related
21 (directly or indirectly as a derivative claim) to unpaid time worked, including overtime, is barred
22 on the ground that any such time worked was unauthorized by Defendant, was performed without
23 Defendant’s consent, and was performed without Defendant’s actual or constructive knowledge.

24 31. Pursuant to applicable law, the time Plaintiffs claim was not paid is excludable from
25 compensable time worked.

26 32. Plaintiffs’ claims are barred, in whole or in part, by their failure to properly report
27 or document their time worked.

28 33. Plaintiffs did not suffer any injury as a result of a knowing and intentional failure

1 to comply with Cal. Lab. Code § 226(a).

2 34. Plaintiffs' claims pursuant to Cal. Lab. Code § 226 are barred on the ground that
3 any violations of such statute by Defendant were not knowing and/or intentional.

4 35. The claims in the Complaint are barred by Plaintiffs' failure to mitigate damages
5 and/or losses.

6 36. Plaintiffs cannot establish any right to monetary relief, or, if any, the monetary
7 relief available is *de minimis* and therefore not actionable.

8 37. Any amounts that Named Plaintiff claims are owed to him and/or other Plaintiffs
9 are offset to the extent there are amounts owed to Defendant by any of the Plaintiffs.

10 38. To the extent that Plaintiffs were paid compensation beyond that to which they were
11 entitled, such additional compensation would satisfy, in whole or in part, any alleged claim for
12 unpaid overtime or other monetary relief.

13 39. Plaintiffs' claims for "waiting time" penalties pursuant to § 203 of the California
14 Labor Code are barred because the wages Named Plaintiff claims were not paid upon separation
15 from employment were subject to a good faith dispute of fact or law as to whether such wages
16 were owed.

17 40. Plaintiffs' claims for liquidated damages, including pursuant to Cal. Lab. Code §
18 1194, are barred because at all times Defendant was acting in good faith and had reasonable
19 grounds for believing that its acts and/or omissions were lawful, and were not violations of any
20 provision of the Labor Code, or of any applicable order of the California Industrial Welfare
21 Commission, including with regard to minimum wage.

22 41. The standard of liability under Cal. Bus. & Prof. Code §§ 17200 (Unfair
23 Competition Law) is vague and subjective, and permits retroactive, random, arbitrary, and
24 capricious punishment that serves no legitimate governmental interest.

25 42. Plaintiffs' claims for relief pursuant to Cal. Bus. & Prof. Code §§ 17200 (Unfair
26 Competition Law) are barred as to any and all alleged violations that have discontinued, ceased,
27 and are not likely to reoccur.

28 43. Plaintiffs' claims for restitution pursuant to Cal. Bus. & Prof. Code §§ 17200

1 (Unfair Competition Law) are a disguised and impermissible form of damages.

2 44. Recovery by Plaintiffs of any amounts sought in this action would constitute unjust
3 enrichment.

4 45. Plaintiffs' claims for restitution pursuant to Cal. Bus. & Prof. Code §§ 17200
5 (Unfair Competition Law) are barred on the ground that Defendant has not been unjustly enriched
6 as a result of any of the alleged acts and/or omissions in the Complaint.

7 46. Plaintiffs' claims for restitution under Cal. Bus. & Prof. Code §§ 17200, et seq.
8 (Unfair Competition Law) are barred by the "excessive fines" clauses of the Eighth Amendment
9 to the United States Constitution and Article I, Section 17 of the California Constitution.

10 47. Plaintiffs' claims for penalties must comport with the due process requirements of
11 *State Farm v. Campbell*, 538 U.S. 408 (2003) and subsequent/related case law.

12 48. Plaintiffs' claims for penalties are barred by the due process clauses of the
13 Fourteenth Amendment to the United States Constitution and Article I, Section 15 of the California
14 Constitution.

15 49. Even if actionable violations of the Labor Code and other laws occurred as alleged
16 (which they did not), neither Named Plaintiff nor the putatively represented individuals are entitled
17 to all forms and amounts of relief that Plaintiffs seek.

18 50. Defendant reserves the right to seek contribution or indemnification from other
19 parties whose actions contributed to or caused the harm allegedly suffered by Plaintiffs, which
20 harm is specifically denied.

21 51. Defendant alleges that the Complaint and each purported cause of action alleged
22 therein should be abated in the Court's discretion, and Plaintiffs should be forced to pursue their
23 claims with the California Division of Labor Standards Enforcement, which has primary
24 jurisdiction over Plaintiffs' claims. This defense is asserted without any admission or waiver as to
25 Defendant's defenses, asserted elsewhere in this answer.

26 52. Defendant alleges that the Complaint and each purported cause of action alleged
27 therein should be abated in the Court's discretion, and Plaintiffs should be forced to pursue their
28 administrative remedies with the California Division of Labor Standards Enforcement, which has

1 primary jurisdiction over Plaintiffs' claims. This defense is asserted without any admission or
2 waiver as to Defendant's defenses, asserted elsewhere in this answer.

3 Defendant expressly reserves the right to seek leave to amend this answer and to assert
4 additional defenses, and to supplement, alter, or change this answer and defenses upon revelation
5 of more definitive facts by Plaintiffs and upon Defendant's undertaking of discovery and
6 investigation of this matter. Accordingly, the right to assert additional defenses, if and to the extent
7 that such defenses are applicable, is hereby reserved.

8 **WHEREFORE**, this answering Defendant prays as follows:

- 9 1. That Plaintiff take nothing by his complaint for damages and/or penalties;
10 2. That Plaintiff's complaint herein be dismissed in its entirety with prejudice;
11 3. That Defendant recover its costs of suit herein, including its reasonable attorneys'
12 fees incurred in defense of this action pursuant to Labor Code section 218.5, as permitted by law,
13 and/or other applicable statutes; and
14 4. That the Court award such other and further relief as it deems appropriate.

15
16 Dated: January 3, 2022

HOLLAND & HART LLP

17
18
19 By:



Dora V. Lane

20
21 *Attorneys for Defendant*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2022, I caused to be served a true and correct copy of the foregoing by electronic transmission to the parties on electronic file and/or depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

David G. Spivak
Maya Cheaitani
The Spivak Law Firm
16530 Ventura Blvd., STE 203
Encino, CA 91436
Phone: (213) 725-9094
Fax: (213) 634-2485
david@spivaklaw.com
maya@spivaklaw.com
emily@spivaklaw.com
perezvnxedgeincZ9779250@projects.fileenv.com

Walter Haines (SBN 71075)
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave, #301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256—1006
whaines@uelglaw.com

Attorneys for Plaintiff

/s/ Amanda Sanchez

Amanda Sanchez, Holland & Hart, LLP

18011286_v2

EXHIBIT 6

Envelope: 9041215

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Blvd., PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Filed
May 23, 2022
Clerk of the Court
Superior Court of CA
County of Santa Clara
21CV387173
By: rwalker

Attorneys for Plaintiff,
FELIS A. PEREZ, and all others similarly situated
(Additional attorneys for Plaintiff on following page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

FELIS A. PEREZ, on behalf of himself, all
others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
employees" under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

NXEDGE MH, LLC, a Delaware limited
liability company; NXEDGE SAN CARLOS,
LLC, a Delaware limited liability company;
NXEDGE CSL, LLC, a Nevada limited
liability company; and DOES 3-50, inclusive,

Defendants.

Case No.: 21CV387173

CLASS ACTION

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave, #301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Plaintiff, FELIS A. PEREZ (hereafter "Plaintiff"), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class action and representative against Defendant NXEDGE
5 MH, LLC, a Delaware limited liability company, NXEDGE SAN CARLOS, LLC, a Delaware
6 limited liability company (formerly Doe Defendant 1), NXEDGE CSL, LLC, a Nevada limited
7 liability company (formerly Doe Defendant 2), and DOES 3-50, inclusive (collectively
8 "Defendants") for alleged violations of the California Labor Code, Industrial Welfare
9 Commission Order No. 9-2001 (hereafter "the Wage Order"), and the Business and Professions
10 Code.

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated current and former employees in California for unpaid wages and
13 other related relief. These claims are based on Defendants' alleged failures to: (1) Provide all
14 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
15 worked at the correct rates of pay, (3) Provide accurate and complete itemized written wage
16 statements, (4) Timely pay all final wages upon termination of employment, and (5) Fairly
17 compete. Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this
18 class and representative action.

19 PARTIES

20 3. Plaintiff FELIS A. PEREZ is a resident of California. On approximately
21 November 25, 2019, Defendants began to employ Plaintiff in Morgan Hill (Santa Clara County)
22 in the position of hourly, nonexempt metal detail and package handler. Defendants continuously
23 employed him in these capacities until on or about July 9, 2021 when his employment ended.

24 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
25 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
26 Labor Code § 2699(c).

27 5. Defendant NXEDGE MH, LLC, is a limited liability company organized and
28 existing under the laws of Delaware and a citizen of California based on Plaintiff's information



1 and belief.

2 6. Defendant NXEDGE SAN CARLOS, LLC, is a limited liability company
3 organized and existing under the laws of Delaware and a citizen of California based on Plaintiff's
4 information and belief.

5 7. Upon the filing of the Complaint and First Amended Complaint, the Plaintiff,
6 being ignorant of the true name of the defendants and having designated the defendant in the
7 complaint by the fictitious name of "DOE 1" and having discovered the true name of the defendant
8 to be "NXEDGE SAN CARLOS, LLC, a Delaware limited liability company" amends the
9 complaint by substituting the true name for the fictitious name wherever it appears in the First
10 Amended Complaint

11 8. Defendant NXEDGE CSL, LLC, is a limited liability company organized and
12 existing under the laws of Nevada and a citizen of California based on Plaintiff's information and
13 belief.

14 9. Upon the filing of the Complaint and First Amended Complaint, the Plaintiff,
15 being ignorant of the true name of the defendants and having designated the defendant in the
16 complaint by the fictitious name of "DOE 2" and having discovered the true name of the defendant
17 to be "NXEDGE CSL, LLC, a Nevada limited liability company" amends the complaint by
18 substituting the true name for the fictitious name wherever it appears in the First Amended
19 Complaint.

20 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
21 participation in the conduct alleged herein of the Defendants sued as DOES 3–50, inclusive, but
22 is informed and believes and thereon alleges that said Defendants are legally responsible for the
23 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
24 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
25 when ascertained.

26 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
27 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
28 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course



1 and scope of such agency or employment and with the approval and ratification of each of the
2 other Defendants.

3 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
4 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
5 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
6 described class in accordance with applicable laws as alleged herein.

7 13. Plaintiff is informed and believes and thereon alleges that each and every one of
8 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
9 each acting as agents and/or employees, and/or under the direction and control of each of the other
10 Defendants, and that said acts and failures to act were within the course and scope of said agency,
11 employment, and/or direction and control.

12 **CLASS ALLEGATIONS**

13 14. This action has been brought and may be maintained as a class action pursuant to
14 California Code of Civil Procedure § 382 because there is a well-defined community of interest
15 among the persons who comprise the readily ascertainable class defined below and because
16 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
17 action.

18 15. **Class Definition:** The Class is defined as follows: All individuals Defendants have
19 employed or otherwise contracted with in California as hourly, non-exempt workers, including
20 metal detail workers and package handlers, individuals performing work comparable to the
21 aforementioned, and individuals in similar positions at any time during the period beginning four
22 years prior to the filing of this action and ending on the date that final judgment is entered in this
23 action (“Class” or “Class Members”).

24 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
25 right to amend or modify the class definition with greater specificity, by further division into
26 subclasses and/or by limitation to particular issues.

27 17. **Numerosity:** The Class Members are so numerous that the individual joinder of
28 each individual Class Member is impractical. While Plaintiff does not currently know the exact



1 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
2 minimum required for numerosity under California laws.

3 18. **Commonality and Predominance:** Common questions of law and fact exist as to
4 all Class Members and predominate over any questions which affect only individual Class
5 Members. These questions include, but are not limited to:

6 A. Whether Defendants failed to provide the Class Members with all meal and
7 rest periods in compliance with California law;

8 B. Whether Defendants weekly failed to pay all wages earned to the Class
9 Members for all hours worked at the correct rates of pay;

10 C. Whether Defendants knowingly and intentionally failed to provide the
11 Class Members with accurate written wage statements;

12 D. Whether Defendants willfully failed to provide the Class Members with
13 timely final wages upon termination of employment;

14 E. Whether Defendants engaged in unfair competition within the meaning of
15 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

16 F. Whether Class Members are entitled to restitution of money or property
17 that Defendants may have acquired from them through alleged Labor Code violations.

18 19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
19 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
20 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
21 Code, the Wage Order, and the Business and Professions Code.

22 20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
23 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
24 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
25 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
26 Members.

27 21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
28 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Ill
Ste 900
Sherman Oaks, CA 91403

1 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
2 Plaintiff and absent Class Members.

3 22. **Superiority:** A class action is vastly superior to other available means for fair and
4 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
5 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
6 and efficiently prosecute their common claims in a single forum without the unnecessary
7 duplication of effort and expense that numerous individual actions would entail. In addition, the
8 monetary amounts due to many individual Class Members are likely to be relatively small and
9 would thus make it difficult, if not impossible, for individual Class Members to both seek and
10 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
11 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
12 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

13 **STATEMENT OF FACTS**

14 23. On approximately November 25, 2019, Defendants began to employ Plaintiff in
15 Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package
16 handler. Defendants continuously employed him in these capacities until on or about July 9, 2021
17 when his employment ended.

18 24. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class
19 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
20 times, Defendants classified Plaintiff and all of the other Class Members as non-exempt
21 employees entitled to the protections of the Labor Code and the Wage Order.

22 25. Plaintiff and all of the other Class Members worked in excess of eight hours per
23 day, 12 hours per day, and 40 hours per week. The also worked in excess of eight hours on the
24 seventh day of the workweek. Defendants failed to compensate Plaintiff and all of the other Class
25 Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week,
26 and for the first eight hours of the seventh day of the workweek. Defendants failed to pay Plaintiff
27 and the Class Members overtime wages of 1 1/2 times their regular rate of pay on quarterly
28 production bonuses.



1 26. Defendants failed to compensate Plaintiff and all of the other Class Members at
2 the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the
3 seventh day of the workweek. Additionally, Defendants failed to pay Plaintiff and the Class
4 Members doubletime wages of two times their regular rate of pay on quarterly production
5 bonuses.

6 27. At all relevant times, Defendants failed to provide Plaintiff and all of the other
7 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff
8 and the Class Members to work through their meal periods without pay within the first five hours
9 of work and only provided them with a duty-free meal period after they have already worked in
10 excess of five hours. Also, Defendants failed to pay Plaintiff and the Class Members missed meal
11 period premium wages at their regular rate of pay, taking quarterly production bonuses into
12 consideration. Defendants also failed to pay premium wages for days on which they failed to
13 provide Plaintiff and all of the other Class Members with meal periods as required by law.

14 28. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
15 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
16 or major portion thereof. Defendants failed to pay Plaintiff and the Class Members missed rest
17 period premium wages at their regular rate of pay, taking quarterly production bonuses into
18 consideration. Defendants also failed to pay premium wages for days on which they failed to
19 authorize and permit Plaintiff and all of the other Class Members to take rest breaks as required
20 by law.

21 29. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
22 Class Members complete and accurate wage statements that state all hours worked at the correct
23 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
24 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
25 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
26 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
27 earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly
28 rates, all hours work at each rate of pay, and related information.



30. Defendants also failed to timely pay Plaintiff and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

32. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

33. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

34. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with



1 a second meal period of not less than 30 minutes, except that if the
2 total hours worked is no more than 12 hours, the second meal
3 period may be waived by mutual consent of the employer and the
4 employee only if the first meal period was not waived.

5
6 35. In relevant part, § 12 of the Wage Order states:

7
8 **Rest Periods**

9
10 (A) "Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the
12 middle of each work period. The authorized rest period time shall
13 be based on the total hours worked daily at the rate of ten (10)
14 minutes net rest time per four (4) hours or major fraction thereof.
15 However, a rest period need not be authorized for employees
16 whose total daily work time is less than three and one-half (3 1/2)
17 hours. Authorized rest period time shall be counted as hours
18 worked for which there shall be no deduction from wages."

19
20 (B) If an employer fails to provide an employee a rest period in
21 accordance with the applicable provisions of this Order, the
22 employer shall pay the employee one (1) hour of pay at the
23 employee's regular rate of compensation for each work day that
24 the rest period is not provided."

25 36. In relevant part, § 11 of the Wage Order states:

26
27 **Meal Periods**



1 (A) "No employer shall employ any person for a work period
2 of more than five (5) hours without a meal period of not less than
3 30 minutes, except that when a work period of not more than six
4 (6) hours will complete the day's work the meal period may be
5 waived by mutual consent of the employee and the employer.
6 Unless the employee is relieved of all duty during a 30-minute
7 meal period, the meal period shall be considered an 'on duty' meal
8 period and counted as time worked. An 'on duty' meal period shall
9 be permitted only when the nature of the work prevents an
10 employee from being relieved of all duty and when by written
11 agreement between the parties an on-the-job paid meal period is
12 agreed to. The written agreement shall state that the employee
13 may, in writing, revoke the agreement at any time."

14
15 (B) If an employer fails to provide an employee a meal period
16 in accordance with the applicable provisions of this Order, the
17 employer shall pay the employee one (1) hour of pay at the
18 employee's regular rate of compensation for each work day that
19 the meal period is not provided."

20
21 37. In relevant part, California Labor Code § 226.7 states:

22
23 (b) An employer shall not require an employee to work during
24 a meal or rest period mandated pursuant to an applicable statute,
25 or applicable regulation, standard, or order of the Industrial
26 Welfare Commission, the Occupational Safety and Health
27 Standards Board, or the Division of Occupational Safety and
28 Health.



(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

38. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

39. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

40. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

41. At all relevant times, Defendants failed to provide Plaintiff and all of the other Class Members with all timely meal periods. Defendants denied Plaintiff and all of the other Class Members their 30-minute off-duty meal period within the first five hours of work. Defendants required Plaintiff and the Class Members to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, Defendants failed to pay Plaintiff and the Class Members missed meal period premium wages at their regular rate of pay, taking quarterly



1 production bonuses into consideration. Furthermore, Defendants failed to pay premium wages for
2 days on which they failed to provide Plaintiff and all of the other Class Members with timely
3 meal periods.

4 42. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of
5 the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked
6 or major fraction thereof. Defendants did not seek an exemption from the rest period protections
7 of the Wage Order from the California Division of Labor Standards Enforcement. Defendants
8 failed to pay Plaintiff and the Class Members missed rest period premium wages at their regular
9 rate of pay, taking quarterly production bonuses into consideration. Moreover, Defendants failed
10 to pay Plaintiff and all of the other Class Members premium wages on workdays Defendants
11 failed to provide Plaintiff and all of the other Class Members with 10-minute rest periods every
12 four hours worked or major fraction thereof.

13 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
16 breaks required by California law.

17 44. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
18 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
19 wages owed for all meal periods and rest breaks not provided to them.

20 45. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
21 the Class Members are entitled to premium wages for workdays in which one or more off-duty
22 meal periods were not provided to them, and for workdays in which one or more rest breaks were
23 not provided to them.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

26 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

27 **(By Plaintiff and the Class against Defendants)**

28 46. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.



1 47. At all relevant times, Plaintiff and the other Class Members have been non-exempt
2 employees of Defendants and entitled to the benefits and protections of California Labor Code
3 §§ 510, 1194, 1197, and 1198 and the Wage Order.

4 48. § 2(H) of the Wage Order defines “hours worked” as “the time during which an
5 employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.”

7 49. § 2(M) of the Wage Order defines a “Shift” as “designated hours of work by an
8 employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2
9 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the
10 employer, other than bona fide rest or meal periods.”

11 50. § 3 of the Wage Order states:

12 (A) Daily Overtime - General Provisions

13
14 (1) The following overtime provisions are applicable to employees 18 years of
15 age or over and to employees 16 or 17 years of age who are not required by law
16 to attend school and are not otherwise prohibited by law from engaging in the
17 subject work. Such employees shall not be employed more than eight (8) hours in
18 any workday or more than 40 hours in any workweek unless the employee
19 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
20 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
21 a day’s work. Employment beyond eight (8) hours in any workday or more than
22 six (6) days in any workweek is permissible provided the employee is
23 compensated for such overtime at not less than:

24
25 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
26 worked in excess of eight (8) hours up to and including 12 hours in any workday,
27 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
28 work in a workweek.



(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

51. § 4(B) of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

52. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

53. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

54. Labor Code § 1197 makes it unlawful for an employer to pay an employee less



1 than the minimum wage required under the applicable Wage Order for all hours worked during a
2 payroll period.

3 55. Labor Code § 1198 makes it unlawful for an employer to employ an employee
4 under conditions that violate the Wage Order.

5 56. In conjunction, these provisions of the Labor Code require employers to pay non-
6 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
7 worked, including unrecorded hours when the employer knew or reasonably should have known
8 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
9 Cal.4th 575, 585.)

10 57. At all relevant times during the applicable limitations period, Defendants failed to
11 pay Plaintiff and the Class Members overtime wages of 1 1/2 times their regular rate of pay on
12 quarterly production bonuses. Additionally, Defendants failed to pay Plaintiff and the Class
13 Members doubletime wages of two times their regular rate of pay on quarterly production
14 bonuses.

15 58. With respect to overtime wages, the regular rate of pay under California law must
16 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
17 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
18 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
19 must be included in the regular rate whether they are the sole source of the employee’s
20 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
21 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

22 59. At all relevant times during their work for Defendants, Plaintiff and all of the other
23 Class Members earned non-discretionary, productivity bonuses, rest period premium wages, and
24 meal period premium wages during pay periods in which they worked hours qualifying for
25 overtime and/or double time premium pay rates. However, Defendants failed include the
26 productivity bonuses in the regular rates of pay when calculating the rest period premium wages,
27 meal period premium wages, overtime and double time premium, thereby resulting in wage
28 underpayments to Plaintiff and the Class Members.



60. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay.

61. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked as required by California law.

62. As a result of Defendants' unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

63. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

64. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

65. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

66. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

(1) Gross wages earned,

(2) Total hours worked by the employee, except for any employee whose



1 compensation is solely based on a salary and who is exempt from payment of overtime under
2 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

3 (3) The number of piece rate units earned and any applicable piece rate if the
4 employee is paid on a piece-rate basis,

5 (4) All deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item,

7 (5) Net wages earned,

8 (6) The inclusive dates of the period for which the employee is paid,

9 (7) The name of the employee and his or her social security number, except
10 that by January 1, 2008, only the last four digits of his or her social security number or an
11 employee identification number other than a social security number may be shown on the itemized
12 statement,

13 (8) The name and address of the legal entity that is the employer, and

14 (9) All applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 67. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
17 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
18 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
19 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
20 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
21 is entitled to an award of costs and reasonable attorneys' fees.

22 68. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
23 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
24 injury if the employer fails to provide accurate and complete information as required by California
25 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
26 statement alone one or more of the following:

27 A. The amount of the gross wages or net wages paid to the employee during
28 the pay period or any of the other information required to be provided on the itemized wage

1 statement pursuant to California Labor Code § 226(a);

2 B. Which deductions the employer made from gross wages to determine the
3 net wages paid to the employee during the pay period;

4 C. The name and address of the employer and, if the employer is a farm labor
5 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
6 address of the legal entity that secured the services of the employer during the pay period; and

7 D. The name of the employee and only the last four digits of his or her social
8 security number or an employee identification number other than a social security number.

9 69. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
10 means a reasonable person would be able to readily ascertain the information without reference
11 to other documents or information.

12 70. As alleged herein, Defendants failed to provide Plaintiff and the other Class
13 Members with all meal and rest periods in compliance with California law. They also failed to
14 provide them with premium wages on workdays they failed to provide them with one or more
15 meal and/or rest periods in compliance with California law. Further, Defendants failed to
16 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
17 the wages earned and hours worked, described above, on the wage statements they issued to
18 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
19 the other Class Members’ gross and net wages earned, total hours worked, hourly rate of pay, the
20 corresponding number of hours worked at each hourly rate, and other requirements of California
21 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

22 71. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
23 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
24 the other Class Members with accurate wage statements but intentionally provided wage
25 statements that Defendants knew were not accurate.

26 72. As a result of being provided with inaccurate wage statements by Defendants,
27 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
28 wage statements were violated and they were misled about the amount of wages they had actually



Office:
15303 Ventura III
Ste 900
Sherman Oaks, CA 91403

1 earned and were owed. In addition, the absence of accurate information on their wage statements
2 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
3 and mathematical computations to determine the amounts of wages owed, has caused difficulty
4 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
5 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
6 and the other Class Members were not able to ascertain from the wage statements whether
7 Defendants complied with their obligations under California Labor Code § 226(a).

8 73. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
9 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
10 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
11 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
12 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
13 also entitled to an award of costs and reasonable attorneys' fees.

14 74. Accordingly, with respect to this cause of action, on behalf of himself and the other
15 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
16 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
17 proof.

18 **FOURTH CAUSE OF ACTION**

19 **WAITING TIME PENALTIES**

20 **(Lab. Code §§ 201, 202, and 203)**

21 **(By Plaintiff and the Class against all Defendants)**

22 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 76. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class have been non-exempt employees of Defendants and entitled to the benefits and
25 protections of California Labor Code §§ 201–203, and the Wage Order.

26 77. Labor Code § 201 provides that all earned and unpaid wages of an employee who
27 is discharged are due and payable immediately at the time of discharge.

28 78. Labor Code § 202 provides that all earned and unpaid wages of an employee who



1 quits after providing at least 72-hours notice before quitting are due and payable at the time of
2 quitting and that all earned and unpaid wages of an employee who quits without providing at
3 least 72-hours notice before quitting are due and payable within 72 hours.

4 79. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
5 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
6 § 201 or § 202.

7 80. Plaintiff is informed and believes that Defendants' failures to timely pay all final
8 wages to her and the Class Members have been willful in that Defendants have the ability to pay
9 final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
10 policies or practice that are incompatible with those requirements.

11 81. Labor Code § 203 provides that the wages of an employee continue on a daily
12 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
13 unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

14 82. Defendants failed to pay Plaintiff and the Class Members whose employment
15 ended all of the earned, but unpaid wages described above by the conclusion of their employment,
16 including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided
17 meal period premium wages and related compensation. Additionally, Defendants failed to issue
18 to Plaintiff and all of the other Class Members whose employment ended their final paychecks
19 until the next regular pay day following the termination.

20 83. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
21 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
22 Defendants have deliberately maintained policies and practices that violate the requirements of
23 the Labor Code and the Wage Order, even though at all relevant times, they have had the ability
24 to comply with those legal requirements.

25 84. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
26 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
27 for each Class Member.

28 ///



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura III
Ste 900
Sherman Oaks, CA 91403

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

85. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

86. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

87. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked.

88. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, doubletime, and premium wages during the course of performing their duties.

89. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful and unfair business practices.

90. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.



SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

92. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning September 10, 2020, and ending on the date that final judgment is entered in this action.

93. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.



(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

94. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

95. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

96. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

97. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts



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15303 Ventura Blvd.
Ste 900
Sherman Oaks, CA 91403

1 established by California Labor Code § 226.3).

2 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
3 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
4 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
5 established by California Labor Code § 558).

6 D. For violations of California Labor Code § 1174, five hundred dollars
7 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
8 amounts established by Labor Code § 1174.5).

9 E. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
11 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
12 pay period (regardless of whether the initial violations were intentionally committed) (penalty
13 amounts established by California Labor Code § 1197.1).

14 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
15 and 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each
16 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
17 for each subsequent violation (penalty amounts established by California Labor Code §
18 2699(f)(2)).

19 98. Plaintiff has complied with the procedures for bringing suit specified in
20 California Labor Code § 2699.3. By letters dated September 10, 2021, and May 20, 2022,
21 Plaintiff filed written notice online with the Labor and Workforce Development Agency
22 (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of
23 the California Labor Code alleged to have been violated, including the facts and theories to
24 support the alleged violations. A true and correct copy of the notices to the LWDA dated
25 September 10, 2021 and May 20, 2022, are attached as Exhibit A and Exhibit B. Plaintiff
26 accompanied his LWDA notices with a fee in the amount of \$75.00. The LWDA has failed to
27 take action in response within 65 calendar days of the date of Plaintiff’s notices, but Plaintiff
28 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not



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15303 Ventura III
Ste 900
Sherman Oaks, CA 91403

1 intend to investigate these allegations.

2 99. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
3 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
4 connection with their claims for civil penalties.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
7 relief and judgment against Defendants as follows:

- 8 A. An order that the action be certified as a class action;
9 B. An order that Plaintiff be appointed class representative;
10 C. An order that counsel for Plaintiff be appointed class counsel;
11 D. Unpaid Wages;
12 E. Actual Damages;
13 F. Statutory Damages;
14 G. Liquidated Damages;
15 H. Civil Penalties;
16 I. Restitution;
17 J. Declaratory and injunctive relief;
18 K. Equitable relief;
19 L. Pre-judgment interest;
20 M. Statutory penalties;
21 N. Costs of suit;
22 O. Interest;
23 P. Reasonable attorneys' fees; and
24 Q. Such other relief as the Court deems just and proper.

25 ///

26 ///

27 ///

28 ///



Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
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Ste 900
Sherman Oaks, CA 91403

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: May 20, 2022

By: 
DAVID SPIVAK,
MAYA CHEAITANI, Attorneys for Plaintiff,
FELIS A. PEREZ, and all others similarly
situated



SPIVAK LAW
Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 10, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Felis A. Perez / NxEdge

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., Felis A. Perez (hereafter “Perez” or “Complainant”) provides notice that NxEdge MH, LLC, a Delaware limited liability company, and related entities (collectively “the NxEdge Employers” or “the Employers”) violated his rights and those of all other individuals the NxEdge Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the NxEdge Employers and their agents and representatives.

At all relevant times, the NxEdge Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 25, 2019, the NxEdge Employers began to employ Perez in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. The NxEdge Employers continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

At all relevant times, the NxEdge Employers issued wages to Perez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the NxEdge Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Perez and all of the other Aggrieved Employees worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. They also worked in excess of eight hours on the seventh day of the workweek. The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods.

The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

The NxEdge Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The NxEdge Employers failed to maintain accurate employee records of Perez and all of the other Aggrieved Employees.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to provide them with one or more meal periods as required by law;
- (e) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NxEdge Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NxEdge Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with complete and accurate wage statements;
- (h) The NxEdge Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NxEdge Employers and when their employment ended; and
- (i) The NxEdge Employers failed to maintain accurate employment records pertaining to Perez and all of the other Aggrieved Employees.

Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the NxEdge Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NxEdge "Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the NxEdge Employers operated, and Perez, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the NxEdge Employers, Perez and all of the other Aggrieved Employees earned bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the NxEdge Employers, Perez failed to pay to Perez and all of the other Aggrieved Employees bonuses, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, rest period premium wages, and meal period premium wages.

At all relevant times during the applicable limitations period, the NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on

duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The NxEdge Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Furthermore, the NxEdge Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NxEdge Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Moreover, the NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NxEdge Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NxEdge Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. Accordingly, Perez seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the NxEdge Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to

his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the NxEdge Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perez seeks civil penalties from the NxEdge Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. As a result, the NxEdge Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Felis A. Perez will seek both reasonable attorneys' fees and costs under Labor Code

section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Felis A. Perez
Walter L. Haines Esq.

NxEdge MH, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

EXHIBIT B



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 20, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Felis A. Perez / NxEdge

To Whom It May Concern:

This is a supplemental notice regarding the matter of *Felis A. Perez / NxEdge*. The original notice (“Original Notice”) dated September 10, 2021, is enclosed herewith and incorporated by reference.

In addition to the employer-defendants named in the Original Notice, the following employers were named as defendants in the Plaintiff’s Second Amended Complaint:

1. NxEdge San Carlos, LLC, a Delaware limited liability company
2. NxEdge CSL, LLC, a Nevada limited liability company

The facts and theories stated in the Original Notice apply with equal force and effect to NxEdge San Carlos, LLC, and NxEdge CSL, LLC.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Felis A. Perez (hereafter “Perez” or “Complainant”) provides notice that NxEdge MH, LLC, a Delaware limited liability company, and related entities (collectively “the NxEdge Employers” or “the Employers”) violated his rights and those of all other individuals the NxEdge Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other

Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the NxEdge Employers and their agents and representatives.

At all relevant times, the NxEdge Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 25, 2019, the NxEdge Employers began to employ Perez in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. The NxEdge Employers continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

At all relevant times, the NxEdge Employers issued wages to Perez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the NxEdge Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Perez and all of the other Aggrieved Employees worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. They also worked in excess of eight hours on the seventh day of the workweek. The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

The NxEdge Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The NxEdge Employers failed to maintain accurate employee records of Perez and all of the other Aggrieved Employees.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to provide them with one or more meal periods as required by law;
- (e) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NxEdge Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The NxEdge Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with complete and accurate wage statements;
- (h) The NxEdge Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NxEdge Employers and when their employment ended; and

- (i) The NxEdge Employers failed to maintain accurate employment records pertaining to Perez and all of the other Aggrieved Employees.

Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the NxEdge Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NxEdge "Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the NxEdge Employers operated, and Perez, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay (Lab. Code §§ 510, 1194, and 1198)

In relevant part, section 2(H) of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-

time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the NxEdge Employers, Perez and all of the other Aggrieved Employees earned bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the NxEdge Employers, Perez failed to pay to Perez and all of the other Aggrieved Employees bonuses, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, rest period premium wages, and meal period premium wages.

At all relevant times during the applicable limitations period, the NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they

worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The NxEdge Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Furthermore, the

NxEdge Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NxEdge Employers did not seek an exemption

from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Moreover, the NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NxEdge Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NxEdge Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. Accordingly, Perez seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the NxEdge Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute

the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the NxEdge Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perez seeks civil penalties from the NxEdge Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. As a result, the NxEdge Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Felis A. Perez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Felis A. Perez
Walter L. Haines Esq.

NxEdge MH, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

NxEdge San Carlos, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

NxEdge CSL, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

September 10, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Felis A. Perez / NxEdge

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, et seq., Felis A. Perez (hereafter “Perez” or “Complainant”) provides notice that NxEdge MH, LLC, a Delaware limited liability company, and related entities (collectively “the NxEdge Employers” or “the Employers”) violated his rights and those of all other individuals the NxEdge Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including metal detail workers and package handlers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Perez hereby provides this notice to the Labor & Workforce Development Agency and the NxEdge Employers and their agents and representatives.

At all relevant times, the NxEdge Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Perez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately November 25, 2019, the NxEdge Employers began to employ Perez in Morgan Hill (Santa Clara County) in the position of hourly, nonexempt metal detail and package handler. The NxEdge Employers continuously employed him in these capacities until on or about July 9, 2021 when his employment ended.

At all relevant times, the NxEdge Employers issued wages to Perez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the NxEdge Employers classified Perez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

Perez and all of the other Aggrieved Employees worked in excess of eight hours per day, 12 hours per day, and 40 hours per week. They also worked in excess of eight hours on the seventh day of the workweek. The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods.

The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to provide Perez and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. The NxEdge Employers also failed to pay premium wages for days on which it failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information.

The NxEdge Employers also failed to timely pay Perez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The NxEdge Employers failed to maintain accurate employee records of Perez and all of the other Aggrieved Employees.

For the reasons stated herein, Perez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including overtime and doubletime wages;
- (b) The NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to provide them with one or more meal periods as required by law;
- (e) The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the NxEdge Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The NxEdge Employers failed to indemnify Perez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (g) The NxEdge Employers knowingly and intentionally failed to provide Perez and all of the other Aggrieved Employees with complete and accurate wage statements;
- (h) The NxEdge Employers willfully failed to timely pay Perez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the NxEdge Employers and when their employment ended; and
- (i) The NxEdge Employers failed to maintain accurate employment records pertaining to Perez and all of the other Aggrieved Employees.

Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the NxEdge Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the NxEdge "Employers, Perez, and all of the Aggrieved Employees were covered by the Wage Order because the NxEdge Employers operated, and Perez, and all of the Aggrieved Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Perez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The NxEdge Employers failed to pay Perez and the Aggrieved Employees overtime wages of 1 1/2 times their regular rate of pay on quarterly production bonuses. Additionally, the NxEdge Employers failed to pay Perez and the Aggrieved Employees doubletime wages of two times their regular rate of pay on quarterly production bonuses.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the NxEdge Employers, Perez and all of the other Aggrieved Employees earned bonuses, rest period premium wages, and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the NxEdge Employers, Perez failed to pay to Perez and all of the other Aggrieved Employees bonuses, rest period premium wages, meal period premium wages overtime and double time premium pay on such bonuses, rest period premium wages, and meal period premium wages.

At all relevant times during the applicable limitations period, the NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked, including, but not limited to overtime and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Perez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on

duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with all timely meal periods. The NxEdge Employers denied Perez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The NxEdge Employers required Perez and the Aggrieved Employees to work through their meal periods without pay within the first five hours of work and only provided them with a duty-free meal period after they have already worked in excess of five hours. Also, the NxEdge Employers failed to pay Perez and the Aggrieved Employees missed meal period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Furthermore, the NxEdge Employers failed to pay premium wages for days on which they failed to provide Perez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The NxEdge Employers failed to authorize and permit Perez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The NxEdge Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The NxEdge Employers failed to pay Perez and the Aggrieved Employees missed rest period premium wages at their regular rate of pay, taking quarterly production bonuses into consideration. Moreover, the NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees premium wages on workdays the NxEdge Employers failed to provide Perez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Perez now seeks civil penalties for these Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the NxEdge Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The NxEdge Employers failed to state in the wage statements they issued to Perez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The NxEdge Employers knowingly and intentionally failed to state on the wage statements they issued to Perez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. Accordingly, Perez seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment

(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for wages earned, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the NxEdge Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Perez now seeks civil penalties for the Labor Code violations that the NxEdge Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to

his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The NxEdge Employers failed to pay Perez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Perez, including overtime wages, doubletime wages, unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the NxEdge Employers failed to issue to Perez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Perez and all of the other Aggrieved Employees as set forth above at the end of employment, the NxEdge Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Perez seeks civil penalties from the NxEdge Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which

subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The NxEdge Employers failed to compensate Perez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly rates, all hours work at each rate of pay, and related information. As a result, the NxEdge Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Perez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Perez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Felis A. Perez will seek both reasonable attorneys' fees and costs under Labor Code

section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Felis A. Perez
Walter L. Haines Esq.

NxEdge MH, LLC
c/o Dora Lane Esq.
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 15303 Ventura Blvd., Suite 900, Sherman Oaks, CA 91403.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Friday, May 20, 2022, I served the foregoing document described as **[PROPOSED] SECOND AMENDED COMPLAINT** on interested parties by electronic mail, addressed as follows:

Dora Lane Esq.
Sarah J. Walsh, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
DLane@hollandhart.com
sjwalsh@hollandhart.com

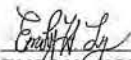
David K. Crockett, Esq.
HOLLAND & HART LLP
222 South Main Street, Ste 2200
Salt Lake City, UT 84101
DKCrockett@hollandhart.com

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

EXECUTED on Friday, May 20, 2022, at Los Angeles, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



EMILY HOUNG LY

EXHIBIT 7

1 HOLLAND & HART LLP
2 DORA V. LANE (SBN 235113)
3 dlane@hollandhart.com
4 S. JORDAN WALSH (SBN 296860)
5 sjwalsh@hollandhart.com
6 DAVID K. CROCKETT (SBN 317816)
7 dkcrockett@hollandhart.com
8 5441 KIETZKE LANE, SUITE 200
9 RENO, NV 89511-2094
10 Telephone: 775.327.3000
11 Facsimile: 775.786.6179

12 *Attorneys for Defendants*
13 *NxEdge MH, LLC, NXEDGE SAN*
14 *CARLOS, LLC and NXEDGE CSL, LLC*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA CLARA
17 (UNLIMITED JURISDICTION)

18 FELIS A. PEREZ, on behalf of himself, all
19 other similarly situated, and as an “aggrieved
20 employee” on behalf of other “aggrieved
21 employees” under the Labor Code Private
22 Attorneys General Act of 2004,

23 Plaintiff,

24 v.

25 NXEDGE MH, LLC, a Delaware limited
26 liability company; NXEDGE SAN CARLOS,
27 LLC, a Delaware limited liability company;
28 NXEDGE CSL, LLC, a Nevada limited liability
company; and DOES 3-50, inclusive,

Defendants.

Case No. 21CV387173

HRG 8/24/22
ANSWER TO SECOND AMENDED
COMPLAINT

Demand for Jury Trial: Yes

Defendants NxEDGE MH, LLC, NXEDGE SAN CARLOS, LLC and NXEDGE CSL, LLC, collectively, (“Defendants”), by and through their counsel of record, Holland & Hart LLP, answer the Second Amended Complaint brought by Plaintiff FELIS A. PEREZ (“Plaintiff” or “Perez”), responds as follows:

1 **ANSWER**

2 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d), Defendants
3 (and each and every one of them) generally deny each and every allegation and cause of action in
4 Named Plaintiff Felis Perez' unverified Second Amended Complaint.

5 **AFFIRMATIVE DEFENSES**

6 Without assuming the burden of proof except where required by law, and without waiver
7 of its right to seek leave or stipulation to assert additional affirmative defenses, Defendants
8 further assert the following affirmative defenses.

9 The term "Named Plaintiff" refers to the named Plaintiff in this action, Felis A. Perez. The
10 term "Plaintiffs" includes Named Plaintiff and any member of any putative class or representative
11 group on whose behalf he seeks to bring the claims in the Complaint. If the Court certifies a class
12 in this case and/or allows claims to proceed on a representative or collective basis, to which
13 Defendants objects, Defendants assert the affirmative defenses set forth herein as to each and every
14 member of any such class and/or representative or collective group.

15 1. Named Plaintiffs' Complaint, and each and every cause of action therein, is barred
16 by the applicable statute(s) of limitation, including but not limited to: Code of Civil Procedure
17 sections 338(a), 340(a); and Business & Professions Code section 17208.

18 2. Plaintiffs' claims are barred on the ground that the Complaint, and all causes of
19 action therein, fail to state a claim upon which relief may be granted against Defendants.

20 3. Named Plaintiff's allegations are barred as a matter of law because Named Plaintiff
21 lacks standing, and thus, cannot represent the interests of the Plaintiffs as to each purported cause
22 of action in the Complaint.

23 4. Named Plaintiff's Complaint, and each and every cause of action alleged therein,
24 is barred on the ground that at least some Plaintiffs have executed and/or are subject to a legally
25 enforceable compromise and/or release of claims asserted in the Complaint.

26 5. Plaintiffs' claims are barred by Named Plaintiff's failure to exhaust internal,
27 contractual, statutory, regulatory, and administrative grievance procedures, including but not
28 limited to the procedures required by Cal. Labor Code section 2699.3.

1 6. Plaintiffs are estopped by their conduct from recovering any relief sought in the
2 Complaint, or in any purported cause of action alleged therein.

3 7. By their words and/or conduct, Plaintiffs have waived any right to recover any relief
4 sought in the Complaint, or in any purported cause of action alleged therein.

5 8. Plaintiffs' claims are barred by the doctrine of unclean hands.

6 9. Plaintiffs' claims are barred by the doctrines of accord and satisfaction.

7 10. Plaintiffs' claims are barred by the doctrine of avoidable consequences.

8 11. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs knowingly
9 submitted to, consented to, and acquiesced in the actions alleged in the Complaint.

10 12. If the injuries and/or alleged damages in the Complaint occurred at all, such injuries
11 and/or alleged damages were caused by and/or contributed to by Plaintiffs' own acts, omissions
12 and/or failures to act.

13 13. The harm allegedly suffered by Plaintiffs was proximately caused by persons or
14 entities other than Defendant.

15 14. This suit may not be properly maintained as a class action because Named Plaintiff
16 has failed to plead, and cannot establish, *inter alia*, (1) an ascertainable class; (2) that a class action
17 is the superior or an appropriate method for fair and efficient adjudication of the claims in the
18 Complaint; (3) that common issues of fact and/or law predominate; (4) that Named Plaintiff's
19 claims are representative or typical of the claims of the putative class; (5) that Named Plaintiff is
20 a proper class representative; (6) that Named Plaintiff and his counsel will adequately represent
21 the interests of the class; (7) that there is a well-defined community of interest in the questions of
22 law or fact affecting Named Plaintiff and the members of the putative class; and/or (8) that the
23 class is sufficiently numerous for class treatment and/or such that joinder is impractical.
24 Additionally, certification is improper because there are conflicting interests among members of
25 the putative class.

26 15. Plaintiff's representative claims are barred because such claims are unmanageable,
27 including due to a prevalence of individualized factual and legal issues and because they would
28 require the testimony at trial of, and individualized evidence as to, each of the persons on whose

1 behalf civil penalties and other relief is sought, in order for there to be recovery of penalties and
2 other relief on any such persons' behalf.

3 16. Plaintiff's purported PAGA cause of action is barred to the extent Plaintiff seeks
4 penalties beyond the "initial" violation described in California Labor Code § 2699 and/or any other
5 applicable California Labor Code provision.

6 17. Named Plaintiff does not and cannot fairly and adequately protect the interests of
7 the putative class and/or other representative and collective groups alleged in the Complaint.

8 18. Named Plaintiff is not a proper or adequate representative with respect to the claims
9 and relief sought pursuant to California Labor Code §§ 2698, et seq. (California Labor Code
10 Private Attorneys General Act of 2004).

11 19. Named Plaintiff's claims pursuant to the California Labor Code Private Attorneys
12 General Act of 2004 cannot proceed on a representative basis because Named Plaintiff is not an
13 "aggrieved employee."

14 20. As to any penalties available to Plaintiffs under the California Labor Code Private
15 Attorneys General Act of 2004, the Court should exercise its discretion in imposing such penalties,
16 pursuant to Cal. Lab. Code § 2699(e)(1), including by declining to impose them.

17 21. Any penalties available to Plaintiffs under the California Labor Code Private
18 Attorneys General Act of 2004 are subject to reduction pursuant to Cal. Lab. Code § 2699(e)(2),
19 on the grounds that awarding the maximum available penalty would be unjust, arbitrary and
20 oppressive, and confiscatory.

21 22. The penalties sought by Named Plaintiff pursuant to PAGA are barred to the extent
22 PAGA is unconstitutional, in that it violates, among other things, Defendant's constitutional rights
23 under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States
24 Constitution.

25 23. Adjudication of Plaintiffs' claims through generalized class-wide or representative
26 proof would violate Defendant's rights to due process and trial by jury, guaranteed by the United
27 States and California Constitutions.

28 24. To the extent the Court declines (in whole or in part) to certify a class, the

1 maintenance of non-certified claims or derivative claims related thereto as “representative” actions
2 would violate the Due Process Clauses of the United States and California Constitutions by
3 authorizing actions to be brought on a collective/representative basis without the requirements for
4 class certification having been met.

5 25. The acts and/or omissions of the unnamed “Doe” defendants of which Named
6 Plaintiff complains were all undertaken outside the scope of such defendants’ agency and/or
7 employment with these answering Defendants, and were undertaken without the knowledge or
8 consent of these answering Defendants, and these answering Defendants may not be held liable
9 for such acts and/or omissions.

10 26. Plaintiffs were paid all wages due to them on a timely basis.

11 27. Defendants have not willfully failed to pay any wages or monies claimed due, and
12 there is a good faith dispute regarding Defendants’ obligation to pay any sum that may be alleged
13 to be due.

14 28. Defendants’ alleged conduct toward Plaintiffs, including but not limited to with
15 regard to compensation, provision of meal and rest periods, and furnishing of wage statements, for
16 which Defendants expressly deny liability, was at all times justified and undertaken in a good faith
17 belief that Defendant was in full compliance with the law.

18 29. Named Plaintiff’s causes of action, and the causes of action on behalf of putatively
19 represented individuals, are barred because the alleged acts and/or omissions that triggered such
20 liability, if any, were not authorized, suffered, or permitted by Defendants and/or occurred without
21 Defendants’ knowledge, consent, or control.

22 30. Any recovery on Named Plaintiff’s Complaint or any cause of action therein related
23 (directly or indirectly as a derivative claim) to unpaid time worked, including overtime, is barred
24 on the ground that any such time worked was unauthorized by Defendants, was performed without
25 Defendants’ consent, and was performed without Defendants’ actual or constructive knowledge.

26 31. Pursuant to applicable law, the time Plaintiffs claim was not paid is excludable from
27 compensable time worked.

28 32. Plaintiffs’ claims are barred, in whole or in part, by their failure to properly report

1 or document their time worked.

2 33. Plaintiffs did not suffer any injury as a result of a knowing and intentional failure
3 to comply with Cal. Lab. Code § 226(a).

4 34. Plaintiffs' claims pursuant to Cal. Lab. Code § 226 are barred on the ground that
5 any violations of such statute by Defendants were not knowing and/or intentional.

6 35. The claims in the Complaint are barred by Plaintiffs' failure to mitigate damages
7 and/or losses.

8 36. Plaintiffs cannot establish any right to monetary relief, or, if any, the monetary
9 relief available is *de minimis* and therefore not actionable.

10 37. Any amounts that Named Plaintiff claims are owed to him and/or other Plaintiffs
11 are offset to the extent there are amounts owed to Defendants by any of the Plaintiffs.

12 38. To the extent that Plaintiffs were paid compensation beyond that to which they were
13 entitled, such additional compensation would satisfy, in whole or in part, any alleged claim for
14 unpaid overtime or other monetary relief.

15 39. Plaintiffs' claims for "waiting time" penalties pursuant to § 203 of the California
16 Labor Code are barred because the wages Named Plaintiff claims were not paid upon separation
17 from employment were subject to a good faith dispute of fact or law as to whether such wages
18 were owed.

19 40. Plaintiffs' claims for liquidated damages, including pursuant to Cal. Lab. Code §
20 1194, are barred because at all times Defendants were acting in good faith and had reasonable
21 grounds for believing that their acts and/or omissions were lawful, and were not violations of any
22 provision of the Labor Code, or of any applicable order of the California Industrial Welfare
23 Commission, including with regard to minimum wage.

24 41. The standard of liability under Cal. Bus. & Prof. Code §§ 17200 (Unfair
25 Competition Law) is vague and subjective, and permits retroactive, random, arbitrary, and
26 capricious punishment that serves no legitimate governmental interest.

27 42. Plaintiffs' claims for relief pursuant to Cal. Bus. & Prof. Code §§ 17200 (Unfair
28 Competition Law) are barred as to any and all alleged violations that have discontinued, ceased,

1 and are not likely to reoccur.

2 43. Plaintiffs' claims for restitution pursuant to Cal. Bus. & Prof. Code §§ 17200
3 (Unfair Competition Law) are a disguised and impermissible form of damages.

4 44. Recovery by Plaintiffs of any amounts sought in this action would constitute unjust
5 enrichment.

6 45. Plaintiffs' claims for restitution pursuant to Cal. Bus. & Prof. Code §§ 17200
7 (Unfair Competition Law) are barred on the ground that Defendants have not been unjustly
8 enriched as a result of any of the alleged acts and/or omissions in the Complaint.

9 46. Plaintiffs' claims for restitution under Cal. Bus. & Prof. Code §§ 17200, et seq.
10 (Unfair Competition Law) are barred by the "excessive fines" clauses of the Eighth Amendment
11 to the United States Constitution and Article I, Section 17 of the California Constitution.

12 47. Plaintiffs' claims for penalties must comport with the due process requirements of
13 *State Farm v. Campbell*, 538 U.S. 408 (2003) and subsequent/related case law.

14 48. Plaintiffs' claims for penalties are barred by the due process clauses of the
15 Fourteenth Amendment to the United States Constitution and Article I, Section 15 of the California
16 Constitution.

17 49. Even if actionable violations of the Labor Code and other laws occurred as alleged
18 (which they did not), neither Named Plaintiff nor the putatively represented individuals are entitled
19 to all forms and amounts of relief that Plaintiffs seek.

20 50. Defendants reserve the right to seek contribution or indemnification from other
21 parties whose actions contributed to or caused the harm allegedly suffered by Plaintiffs, which
22 harm is specifically denied.

23 51. Defendants allege that the Complaint and each purported cause of action alleged
24 therein should be abated in the Court's discretion, and Plaintiffs should be forced to pursue their
25 claims with the California Division of Labor Standards Enforcement, which has primary
26 jurisdiction over Plaintiffs' claims. This defense is asserted without any admission or waiver as to
27 Defendants' defenses, asserted elsewhere in this answer.

28 Defendants expressly reserve the right to seek leave to amend this Answer and to assert

1 additional defenses, and to supplement, alter, or change this answer and defenses upon revelation
2 of more definitive facts by Plaintiffs and upon Defendants' undertaking of discovery and
3 investigation of this matter. Accordingly, the right to assert additional defenses, if and to the extent
4 that such defenses are applicable, is hereby reserved.

5 **WHEREFORE**, these answering Defendants pray as follows:

- 6 1. That Plaintiff take nothing by his complaint for damages and/or penalties;
7 2. That Plaintiff's complaint herein be dismissed in its entirety with prejudice;
8 3. That Defendants recover their costs of suit herein, including its reasonable
9 attorneys' fees incurred in defense of this action pursuant to Labor Code section 218.5, as
10 permitted by law, and/or other applicable statutes; and
11 4. That the Court award such other and further relief as it deems appropriate.

12
13 Dated: June 2, 2022

HOLLAND & HART LLP

14
15
16 By:



17 Dora V. Lane

18 *Attorneys for Defendants*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 2nd day of June, 2022, I caused to be served a true and
3 correct copy of the foregoing by electronic transmission to the parties on electronic file and/or
4 depositing same in the United States mail, first class postage fully prepaid to the persons and
5 addresses listed below:

6 David G. Spivak
7 Maya Cheaitani
8 The Spivak Law Firm
9 8605 Santa Monica Blvd, PMB 42554
10 West Hollywood, CA 90069
11 Phone: (213) 725-9094
12 Fax: (213) 634-2485
13 david@spivaklaw.com
14 maya@spivaklaw.com
15 emily@spivaklaw.com
16 perezvnxedgeincZ9779250@projects.fileenv.com

12 Walter Haines (SBN 71075)
13 UNITED EMPLOYEES LAW GROUP
14 4276 Katella Ave, #301
15 Los Alamitos, CA 90720
16 Telephone: (562) 256-1047
17 Facsimile: (562) 256—1006
18 whaines@uelglaw.com

16 *Attorneys for Plaintiff*

19 /s/ Amanda Sanchez

20 Amanda Sanchez, Holland & Hart, LLP

21 18982244_v1
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EXHIBIT 8

Confidential Settlement Communication

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Case title:	From Defendant	Felis A. Perez v. NxEdge MH, LLC
Case no.:	From Sample	21CV387173
Court:	Assumption	Santa Clara
Judge:		The Honorable Patricia M. Lucas, Dept. 3
Page subject:		Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, September 30, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, September 30, 2018
Lab.Code § 2699 (civil penalties) period begins:	Thursday, September 10, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, September 29, 2020
LWDA Notice:	Friday, September 10, 2021
Lawsuit:	Wednesday, September 29, 2021

Sample begin:	Monday, October 30, 2017
Sample end:	Thursday, March 17, 2022
Sample employees:	59
Sample employees who earned bonuses:	57
Sample paychecks with bonuses:	224
Sample average bonus:	\$ 857.44
Sample bonuses per pay period:	\$ 68.67
Sample total bonuses paid:	\$ 192,065.00
Sample bonuses paid per calendar month:	\$ 4,001.37

Sample calendar days:	1,599.00
Sample workdays:	25,003.00
Sample workweeks:	5,391.00
Sample paychecks:	2,797.00
Sample work months:	1,244.08
Sample work years:	103.67

Mediation:	Thursday, April 28, 2022
Anticipated Settlement Period end date:	Friday, August 26, 2022
Settlement Period to Sample Period:	112.01%
Entire class to sample class:	288%

Classes / Groups sizes

UCL Class Members:	Non-Releasees	170
UCL Workweeks:		22,936
UCL Wage Statements:		11,468
UCL Workdays:		106,423
UCL Calendar days:		1,671
UCL Months:		54.94

Waiting Time Penalties Class Members:	62
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PAGA Aggrieved Employees:		118
PAGA Wage Statements:		3,741
Wage Statement Class Members:	Non-Releasees	117
Wage Statement Class Wage Statements:	Non-Releasees	3,740
<u>Averages</u>		
Average Hourly Rate:	\$	26.66
Average Overtime Rate:	\$	39.99
Average Doubletime Rate:	\$	53.32
Average Work Hours Per Day:		8.47
Average Work Hours Per Week:		39.29
Average Workdays Per Week:		4.64
Workdays to Calendar Days (%):		66.29%
Paycycle:	biweekly (26 paychecks/year)	
Paychecks Per Year:		26

Confidential Settlement Communication

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Unpaid Overtime on Nondiscretionary compensation (bonuses)
Statutes:	Lab.Code §§ 510, 1194

Average Hourly Rate:	\$	26.66
Average Overtime Rate:	\$	39.99
Average Doubletime Rate:	\$	53.32
Average Work Hours Per Day:		8.47
Average Work Hours Per Week:		39.29
Average Workdays Per Week:		4.64
Monthly non-discretionary compensation:		
Pay period non-discretionary compensation:	\$	68.67
Weekly non-discretionary compensation:	\$	34.33
Workday non-discretionary compensation:	\$	7.40
Hourly non-discretionary compensation:	\$	0.19
Unpaid hourly non-discretionary overtime pay on nondiscretionary compensation:	\$	0.09
Average overtime hours per week:		2.18
UCL Workweeks:		22,936.00
Interest rate:		10%
Unpaid non-discretionary overtime pay on nondiscretionary compensation:	\$	5,181.10

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Unprovided Meal Periods
Statutes:	Lab.Code §§ 226.7, 512, and 1198

Actionable workdays:		106,423
>>Percentage qualifying for meal periods:		98.92%
Violation rate (%):		28.67%
Hourly rate:	\$	26.66
Meal period premium wages:	\$	804,651.09

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Unprovided Rest Periods
Statutes:	Lab.Code §§ 226.7 and 1198

Actionable workdays:		106,423
>>Percentage qualifying for rest periods:		99.69%
Violation rate (%):		100.00%
Hourly rate:	\$	26.66
Rest period premium wages:	\$	2,828,442.81

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Itemized Wage Statements
	Lab.Code § 226

Wage Statement Class Members:		117
Wage Statement Class Wage Statements:		3,740
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	368,150.00

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Waiting Time / Final Wages
Statutes:	Lab.Code § 203
Waiting Time Penalties Class Members:	62
Days waiting:	30
Average Hourly Rate:	\$ 26.66
Average Overtime Rate:	\$ 39.99
Average Doubletime Rate:	\$ 53.32
Average Work Hours Per Day:	8.47
Regular Hours Per Day:	8.00
Overtime Hours Per Day:	0.47
Doubletime Hours Per Day:	-
Waiting time penalties:	\$ 431,660.06

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	PAGA Civil Penalties
Statutes:	Lab.Code §§ 2698, <i>et seq.</i>

Labor Code violation	Labor Code Civil		Subsequent		Pay periods	Total
	Penalty Statute	Initial penalty	penalty			
Minimum wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	\$ 250.00	3,741	\$	374,100.00
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	3,741	\$	187,050.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	3,741	\$	187,050.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	3,741	\$	374,100.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 100.00	\$ 1,000.00	3,741	\$	374,100.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	3,741	\$	374,100.00
Total:					\$	1,870,500.00

Confidential Settlement Communication

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Case title:	Felis A. Perez v. NxEdge MH, LLC
Case no.:	21CV387173
Court:	Santa Clara
Judge:	The Honorable Patricia M. Lucas, Dept. 3
Page subject:	Totals
Statutes:	Various

Restitution		Reduction		Demand
Unpaid OT on nondiscretionary compensation:	\$ 5,181.10	5%	\$	4,922.04
Meal period premium wages:	\$ 804,651.09	5%	\$	764,418.54
Rest period premium wages:	\$ 2,828,442.81	5%	\$	2,687,020.67
Restitution subtotal:	\$ 3,638,275.00		\$	3,456,361.25
Penalties				
Statutory wage statement penalties:	\$ 368,150.00	95%	\$	18,407.50
Waiting time penalties:	\$ 431,660.06	95%	\$	21,583.00
Overtime wages (Lab.Code § 510):civil penalties:	\$ 187,050.00	95%	\$	9,352.50
Meal periods Lab.Code § 512):civil penalties:	\$ 187,050.00	95%	\$	9,352.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 374,100.00	95%	\$	18,705.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 374,100.00	95%	\$	18,705.00
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 374,100.00	95%	\$	18,705.00
Penalties subtotal:	\$ 2,296,210.06		\$	114,810.50
Grand total:	\$ 5,934,485.06		\$	3,571,171.75

EXHIBIT 9

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

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OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
10 (UNLIMITED JURISDICTION)

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class, and/or Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class, Overtime Class,**
6 **Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement**
7 **Class, Unauthorized Deduction Class, Former Employee Class, and/or**
8 **Indemnification Class.**

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

2 19. A class action is vastly superior to other available means for fair and efficient
3 adjudication of the class members' claims and would be beneficial to the parties and the Court.
4 Class action treatment will allow a number of similarly situated persons to simultaneously and
5 efficiently prosecute their common claims in a single forum without the unnecessary duplication
6 of effort and expense that numerous individual actions would entail. In addition, the monetary
7 amounts due to many individual class members are likely to be relatively small and would thus
8 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
9 Moreover, a class action will serve an important public interest by permitting class members to
10 effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the
11 potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 23. California Labor Code § 510(a) also requires employers to compensate
2 employees at two times their regular rates of pay for:

3 A. All hours worked in excess of twelve hours in one day; and,

4 B. All hours worked in excess of eight hours on a seventh consecutive
5 workday during a workweek.

6 24. During the applicable limitations period, Plaintiffs have worked more than eight
7 hours in one workday, more than forty hours in one workweek, and eight or more hours on a
8 seventh consecutive workday without being paid for all of those hours at the rates required
9 under California Labor Code § 510(a).

10 25. Plaintiffs are informed and believe and thereon allege that Defendants have
11 maintained a policy or practice of not compensating him and the other members of the **Wages**
12 **Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege
13 that Defendants have maintained a policy or practice of not compensating the other members of
14 the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code §
15 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of
16 forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked
17 hours in excess of eight hours on a seventh consecutive workday.

18 26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the
19 other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive
20 relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable
21 attorney's fees pursuant to California Labor Code § 1194(a).

22 **SECOND CLAIM FOR RELIEF**

23 **FAILURE TO PROVIDE REST AND MEAL PERIODS**

24 **(By Plaintiffs, the Rest Period Class, and the Meal Period Class)**

25 27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully
26 alleged herein.

27 28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and
Meal Period Class have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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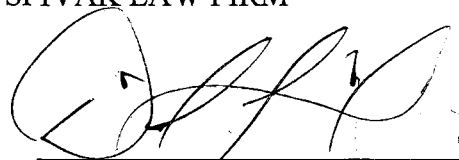
- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 10

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

PLAINTIFFS,

VS.

DEFENDANTS,

CASE NO. BC430633

CERTIFIED COPY

MONDAY, APRIL 23, 2012

FOR THE PLAINTIFFS:

LOUIS BENOWITZ,
ATTORNEY AT LAW

MICHAEL SABZEVAR,
ATTORNEY AT LAW

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 11



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	14862	Prepared By:	Mike Sutherland
Estimate Date:	5/9/2022	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

Attorney/Client: Plaintiff Attorney
David Spivak
Firm: Spivak Law
Email:

Attorney/Client: Defense Attorney
Firm:
Email:

Case Name: Perez v. NxEdge MH, LLC Opt Out Settlement

Anticipated Total Cost	\$7,730
Capped Fee*	\$7,300

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	331	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	10%
Mailing Document Language:	English	Redistribution:	No
Reminder Postcard:	No	State(s):	Single
Unclaimed Funds:	Cy Pres	Tax Years	Single

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case/Email Setup	\$125.00	4	\$500.00
Static Website Development & Maintenance	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$140.00	4	\$560.00
Total			\$1,310.00

Notification

Notice Packet: 8 pg Notice - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$1.00	331	\$331.00
Postage	\$0.58	331	\$191.98
NCOA/CASS/LACS	\$75.00	1	\$75.00
Undeliverable Processing	\$0.25	33	\$8.28
Skip Trace RUM	\$1.00	33	\$33.10
Remail Notice Packet	\$1.25	28	\$35.17
Remail Postage	\$0.58	28	\$16.32
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$740.84

Call Center

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	3	\$225.00
800 # Charges	\$0.10	180	\$18.00
Total			\$225.00



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Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	3	\$8.28
Opt Out Processing	\$2.00	3	\$6.62
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$639.90

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	3	\$420.00
Disbursement Manager - Data Validation	\$75.00	3	\$225.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$3.00	331	\$993.00
Postage	\$0.58	331	\$191.98
Process Returned Checks	\$0.50	3	\$1.66
Skip Trace Search Undeliverable Checks	\$5.00	3	\$16.55
Remail Checks (Includes Postage)	\$4.00	3	\$13.24
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	5	\$24.83
Postage	\$0.58	5	\$2.88
Disbursement Manager	\$125.00	4	\$500.00
Total			\$4,339.13



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc	\$50.00	2	\$100.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$475.00

Postage \$403.16 **Total Case Costs \$7,729.87**

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 12



November 2, 2022

CASE ASSUMPTIONS

Class Members	331
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	328
Subtotal Admin Only	\$9,517.75

Not-to-Exceed Total \$7,500.00

For 331 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation & Mailing Included

Case: Perez v. NxEdge MH, LLC, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: David G. Spivak

Firm: Thae Spivak Law Firm

Contact Number: (818) 582-3086

Email: david@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **331** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	38		\$76.13
NCOA (USPS)	\$82.75	1		\$82.75
Total				\$708.88

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Spanish Translation	\$800.00	1		\$800.00
Data Merge & Duplication Scrub	\$0.10	331		\$33.10
Notice Packet & Opt-Out Form	\$1.30	331		\$430.30
Estimated Postage (up to 2 oz.)*	\$0.73	331		\$241.63
Static Website	\$100.00	1		Included
Check Cashing Reminder Postcard	\$0.60	69		\$41.33
Postage Included				
Total				\$1,746.36

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	83		\$70.34
Remail Notice Packets	\$0.75	80		\$59.81
Estimated Postage	\$0.73	80		\$58.22
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$458.37

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	4		\$340.00
Total				\$1,205.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$1.10	328		\$360.80
Estimated Postage	\$0.53	328		\$173.84
Total				\$1,709.64

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	4		\$460.00
Remail Checks & Tax Forms (Postage Included)	\$1.50	73		\$109.50
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	4		\$340.00
Conclusion Reports	\$115.00	4		\$460.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	4		\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office Estimated 9 Total Class Members	\$300.00	1		\$300.00
Total				\$3,689.50

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,517.75



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 13



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.

Randi Martz

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

Fax Number: (949) 428-1074

Case Name: Perez v. NxEdge MH, LLC

Date: November 2, 2022

All-In Settlement

Requesting Attorney: **David Spivak**

* Class Members: **331**

Plaintiff or Defense: **Plaintiff**

** Opt-Out Rate: **1.5%**

Firm Name: **The Spivak Law Firm**

Opt-Outs Received: **5**

Telephone: **(818) 582-3086**

Postage Total: **\$597.28**

Email: david@spivaklaw.com

Grand Total: **\$13,053.89**

***** DISCOUNTED FLAT FEE: \$10,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 5 opt-out's filed. Any additional opt-out's filed above 5 will be billed at the rate of \$8.00 per member.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup / Spanish Translation / Static Website

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	3	\$285.00
System Programming/Data Base Setup	\$150.00	3	\$450.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
Total			\$2,735.00

* Up to 120 days after disbursement

Notification Procedures

National Change of Address (NCOA) / Notice, Opt-Out & Dispute Form in English & Spanish / Postage (up to 2 oz.)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.50	331	\$165.50
Mailing of Notice Pack	\$1.50	331	\$496.50
Estimated Postage (up to 2 oz.)*	\$0.78	331	\$258.18
Total			\$1,260.18

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail

Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.50	33	\$16.50
Skip Traces	\$1.25	28	\$35.00
Remail Packs	\$2.00	25	\$50.00
Estimated Postage (up to 2 oz.)	\$0.78	25	\$19.50
Clerical Staff	\$60.00	1	\$60.00
Total			\$181.00

Opt-Out Processing

Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$150.00	4	\$600.00
Opt-Out Processing	\$5.00	5	\$25.00
Clerical Staff	\$60.00	1	\$60.00
Deficiency/Dispute Letters	\$20.00	1	\$20.00
Estimated Postage (up to 1 oz.)	\$0.58	1	\$0.58
Project Manager	\$95.00	1	\$95.00
Call Center Support	\$3.00	67	\$201.00
Total			\$1,001.58

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	326	\$65.20
Total			\$500.20

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2 / Check Reminder Postcard

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	3	\$450.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$2.50	326	\$815.00
Estimated Postage (up to 1 oz.)	\$0.58	326	\$189.08
Check Reminder Postcard	\$0.30	281	\$84.41
Postage for Reminder Postcard	\$0.40	281	\$112.54
Total			\$3,191.03

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration / Uncashed Checks Sent to Cy Pres

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	4	\$20.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	26	\$32.50
Remail Undeliverable Checks	\$2.50	26	\$65.00
Estimated Postage (up to 1 oz.)	\$0.58	30	\$17.40
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	2	\$300.00
Project Manager - Acnt Files Sent to Atty	\$150.00	2	\$300.00
Project Supervisor - Final Declaration	\$150.00	2	\$300.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Uncashed Checks Sent to Cy Pres	Included	1	Included
Total			\$4,184.90

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement / Order / parties require(s) multiple state tax filings.

Grand Total: \$13,053.89

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **"Term"** means the term of the Agreement, as set forth in the Order.
- y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

- 2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

- 3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.

- 4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
- a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
- a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 14