

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 11/29/2021 5:14 PM
Reviewed By: R. Walker
Case #21CV387173
Envelope: 7750183**

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

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; 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



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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

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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



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

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

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

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

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



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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 25. At all relevant times, Defendants failed to issue to Plaintiff and all of the other
2 Class Members complete and accurate wage statements that state all hours worked at the correct
3 rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the
4 wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
5 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
6 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
7 earned, all rest break premium wages earned, net wages earned, gross wages earned, all hourly
8 rates, all hours work at each rate of pay, and related information.

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

11 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

25
26 30. In relevant part, California Labor Code § 512 states:

27
28 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
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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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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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(213) 725-9094 Tel
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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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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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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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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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(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:



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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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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- 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

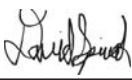
By  _____
DAVID SPIVAK,
MAYA CHEAITANI, Attorneys for Plaintiff,
FELIS A. PEREZ, and all others similarly
situated

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

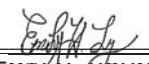
David K. Crockett, Esq.
HOLLAND & HART LLP
222 South Main Street, Ste 2200
Salt Lake City, UT 84101
DKCrockett@hollandhart.com

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