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

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12 **(UNLIMITED JURISDICTION)**

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

16 *Plaintiff(s),*

17 vs.

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

22 *Defendant(s).*
23

Case No. 21CV387173

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

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



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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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FELIS A. PEREZ, and all others similarly situated



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Felis A. Perez (“Plaintiff”) in his lawsuit against Defendants
6 NxEdge MH, LLC, NxEdge San Carlos, LLC, And NxEdge CSL, LLC (collectively “NxEdge”
or “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”

7 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
8 herein and, if called as a witness, could and would competently testify thereto under oath.

9 3. The First Amended Joint Stipulation of Class Action Settlement and Release of
10 Claims (the “First Amended Settlement”) is attached hereto as **Exhibit 15**. It includes the
11 amended notice of settlement intended for distribution to the class as Exhibit A. True and correct
12 copies of redline versions of the First Amended Joint Stipulation of Class Action Settlement and
13 Release of Claims, and its attached notice of settlement are also presented collectively as **Exhibit**
14 **16** to the declaration. Exhibit 16 reveals the red line revisions to the settlement agreement and
15 noticed the settlement.

16 4. In my experience, settlement administration costs can rise following distribution
17 of the notice of settlement to Class Members due to circumstances unforeseen at the time the
18 parties negotiated the settlement agreement. Thus, in an abundance of caution, the parties request
19 that the Court allow them to advise the class that Settlement Administration fees will be no more
20 than \$17,500. In the event that Settlement Administration fees do not change following
21 preliminary court approval of the settlement, no more than \$7,300 will be subtracted from the
22 Grove Settlement Amount to cover Settlement Administrator fees. So long as Settlement
23 Administration fees are no more than \$17,500, the class notice will adequately notify the class
24 of the possibility of such a fee, which the Parties submit is reasonable for a class settlement of
this kind.

25 5. In accordance with Code of Civil Procedure section 384, subdivision (b), the
26 parties selected Legal Aid at Work over other potential recipients considered because it is a
27 nonprofit organization which has provided high-quality civil legal services to the indigent for



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1 more than four decades and has devoted its resources to protecting the rights of California low-
2 wage workers.

3 6. To the best of my knowledge, there exists no relationship between Legal Aid at
4 Work and (1) any class representative or other party, (2) any officer, director, or manager
5 of any party, or (3) any attorney or law firm for any party. I conducted my due diligence in
6 determining whether there is any such relationship through having my office verify with Legal
7 Aid at Work and with Defense Counsel, in determining whether any such relationship exists. To
8 the best of my knowledge, there exists no relationship between Legal Aid at Work and (1) any
9 class representative or other party, (2) any officer, director, or manager of any party, or (3) any
10 attorney or law firm for any party. I conducted my due diligence in determining whether there is
11 any such relationship through having my office verify with Legal Aid at Work and with Defense
12 Counsel, in determining whether any such relationship exists.

13 7. Pursuant to Lab. Code § 2699(l)(2), Plaintiff Felis A. Perez submitted a copy of
14 the First Amended Settlement with the Labor and Workforce Development Agency (“LWDA”)
15 at the same time Plaintiff’s supplemental briefing is being filed with the Court. A true and correct
16 copy of Plaintiff’s submission to the LWDA and a confirmation email is attached as **Exhibit 17**.

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

19 Executed on Friday, March 17, 2023 at Los Angeles, California.

20 

21 DAVID SPIVAK,
22 Declarant



24 SPIVAK LAW
25 EMPLOYEE RIGHTS

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EXHIBIT 15

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

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12 **(UNLIMITED JURISDICTION)**

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

16 *Plaintiff(s),*

17 vs.
18

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

22 *Defendant(s).*
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Case No. 21CV387173

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

Action filed: September 29, 2021
Dept: 19, The Honorable
Theodore C. Zayner

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

1 This First Amended Joint Stipulation of Class Action Settlement and Release of Claims
2 (“Settlement Agreement” or “Agreement”) is made and entered into by and between Plaintiff
3 Felis A. Perez (“Plaintiff” or “Class Representative”), individually and on behalf of all putative
4 class members, on the one hand, and Defendants NxEdge MH LLC, NxEdge San Carlos, LLC,
5 and NxEdge CSL, LLC (collectively “Defendants”). Plaintiff and Defendants are collectively
6 referred to herein as the “Parties.”
7

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)*.”
17

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.
22

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

27 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
28

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

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

22
23 **H. “Court**” shall mean the Superior Court for the County of Santa Clara, Downtown
24 Superior Court, 191 North First Street, San Jose, CA 95113.

25 **I. “Defense Counsel**” shall mean the attorneys representing Defendants in the
26 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);
- 7
- 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.
6

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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15
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.

7
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.

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

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21 **II. RECITALS**

22 **A.** On or about September 10, 2021, Plaintiff, through his attorneys, sent a letter to
23 the Labor Workforce Development Agency (“LWDA”) alleging the following against Defendant
24 NxEdge MH LLC: failure to pay all wages for all hours worked, unauthorized and unlawful wage
25 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.
9

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."
18

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:

7 **1. To Plaintiff.**

8 **(a) Class Representative Payment.** In addition to his Settlement
9 Share, Plaintiff will apply to the Court for an award of not more than Fifty Thousand Dollars and
10 Zero Cents (\$50,000.00) as his Class Representative Payment. Defendants will not oppose a
11 Class Representative Payment of not more than \$50,000.00. Plaintiff will receive no other
12 payment other than his Settlement Share and Class Representative Payment, and acknowledges
13 that he is aware of no other facts or circumstances related to his employment with Defendants
14 that could give rise to any additional entitlement to any further payments. The Settlement
15 Administrator will pay the Class Representative Payment approved by the Court out of the Gross
16 Settlement Amount. Payroll taxes, withholdings, and deductions will not be taken from the Class
17 Representative Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that
18 payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes due
19 on the Class Representative Payment. The Class Representative Payment is in exchange for the
20 release of Released Claims against the Released Parties, the general Release of Claims by
21 Plaintiff, and for Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any
22 adjustments made by the Court to the requested Class Representative Payment shall not be
23 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.

6
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.

18
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).

23
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.
9

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:
16

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).
21

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
27
28

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.

13 **IV. PROCEDURES FOR APPROVING SETTLEMENT**

14
15 **A. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel
16 will move the Court for an order granting Preliminary Approval of the Settlement (the "Motion
17 for Preliminary Approval"), setting a date for the Final Approval Hearing. Any disagreement
18 among the Parties concerning the Class Notice or other documents necessary to implement the
19 Settlement will be referred to the Court.

20
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
26 **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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26 ///
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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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28

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 Legal Aid At Work.
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
23

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
27
28

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
26
27
28

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: 03 / 14 / 2023

By:



FELIS A. PEREZ

Dated: _____

By: _____

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

THE SPIVAK LAW FIRM

Dated: 03 / 17 / 2023

By:



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

UNITED EMPLOYEES LAW GROUP

Dated: _____

By: _____

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

HOLLAND & HART LLP

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: _____

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

17
18 UNITED EMPLOYEES LAW GROUP

19 Dated: March 14, 2023

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: _____

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

11
12
13 THE SPIVAK LAW FIRM

14 Dated: _____

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

17 UNITED EMPLOYEES LAW GROUP

18 Dated: _____

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

22 HOLLAND & HART LLP

23 Dated: 3/14/23 _____

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 Parties estimate that the Net Settlement Amount available for distribution among class members is \$720,500.00 and that the average Settlement Share from the Net Settlement Amount will be \$2,176.74.
- 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.
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.
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.
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 (either in person or via your individual counsel, in the courtroom or by telephone via CourtCall as explained further below).

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

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

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

2. What is the Action about?

In the Action, Felis A. Perez (“Plaintiff”) alleged violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: 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, unfair competition under California’s Business & Professions Code, and claims for civil penalties for violations of the PAGA.

3. Why is there a settlement?

1 The parties disagree on the probable outcome of the case with respect to liability, damages, and
2 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
3 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
4 Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
5 and disruption associated with continued litigation and they have therefore chosen to resolve their
6 differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet
7 Class Members are still entitled to receive payments if they comply with the instructions in this
8 Class Notice. The parties entered into this settlement after arms-length negotiations while using
9 the services of an experienced and neutral mediator. The Plaintiff and Class Counsel believe that
10 the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

11 4. What is a class action settlement?

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

17 5. What should I do?

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

23 6. How much will my payment be?

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

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

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

If you wish to dispute the number of Pay Periods worked credited to you or anything else about your employment status, you must write to the Settlement Administrator indicating what you believe is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S.

1 Mail with proof of the submission date (such as a postmark or delivery service date stamp). Your
2 correspondence must be mailed to the address below:

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

4 c/o _____

5 _____
6 _____

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

15 **7. When would I get my payment?**

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

22 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
23 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
24 all uncashed funds will be paid to Legal Aid at Work.

25 **8. What am I releasing?**

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

28 The Parties agree that it is their intent that the resolution set forth in this Settlement will
release and discharge the Released Claims by way of any further attempt, by lawsuit,
administrative claim or action, arbitration, demand, or other action of any kind by each
and all of the Settlement Class Members (including participation to any extent in any
representative or collective action) against the Released Parties. This release will not take
effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
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

1 that are alleged, or reasonably could have been alleged based on the facts and claims
2 during the period of September 29, 2017 through the earlier of the date of the Court's
3 preliminary approval order and the latest date before the Class exceeds 22,604 pay periods
4 worked as asserted in the Operative Complaint and/or in the letter(s) sent by Plaintiff to
5 the LWDA concerning Defendants and the other Released Parties, whether sounding in
6 law or equity, tort, contract, statute, or other applicable federal, state or local law or
7 regulation, including but not limited to the following claims: failure to pay all wages for
8 all hours worked, unauthorized and unlawful wage deductions, failure to provide meal
9 periods, failure to authorize and permit rest periods, failure to compensate employees at
10 one hour's pay at employees' regular rate of pay for each day on which employees did
11 not receive one or more meal or rest periods, failure to issue proper wage statements,
12 failure to timely pay wages, failure to maintain required payroll records, unfair business
13 practices that could have been premised on the claims, causes of action or legal theories
14 of relief described above or any of the claims, causes of action or legal theories of relief
15 pleaded in the Action, all claims under PAGA or for civil penalties that could have been
16 premised on the claims, causes of action or legal theories described above or any of the
17 claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's
18 letter(s) to the LWDA, including but not limited to the California Code of Regulations
19 and to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7,
20 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, and 2699;
21 and any and all damages, restitution, disgorgement, civil penalties, statutory penalties,
22 taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not
23 apply to claims for workers' compensation benefits, unemployment insurance benefits,
24 or any other claim or right that as a matter of law cannot be waived or released. The
25 Parties acknowledge that Released Claims includes any claims for penalties by a PAGA
26 Member resulting from any LWDA investigation. The Parties will meet and confer in
27 good faith if the Court requires changes to the scope of the Released Claims.

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

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

26 9. How can I opt out of this settlement?

27 You can opt out of this settlement and retain your rights. To do so, you must send a letter by mail
28 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

1 will not receive money from the settlement of my individual claims.” You will have **60 days**
2 from the date of mailing of this Class Notice to do so. Your Opt-Out request must be in writing
3 and mailed to the Settlement Administrator, Simpluris, Inc., <<settlement administrator mailing
4 address>> and be postmarked no later than <<response deadline>>, or it will not be considered
5 and you will be bound by the settlement. You must include your full name (and former names, if
6 any), address, telephone number, and the last four digits of your Social Security number in your
7 request and you must sign the written request. If the Settlement Administrator re-mailed your
8 Class Notice to a new address, you will have additional 15 days from the date of the re-mailed
9 Class Notice to opt out. However, you cannot opt-out of the PAGA Released Claims and will
10 receive your pro rate share of the PAGA Penalties whether or not you opt of out of the settlement.

11 **10. Do I have a lawyer in this case?**

12 The Court has appointed David G. Spivak of the Spivak Law Firm, 8605 Santa Monica Bl, PMB
13 42554, West Hollywood, CA 90069, Telephone: (213) 725-9094, david@spivaklaw.com, and
14 Walter L. Haines of United Employees Law Group to represent you and other Class Members in
15 the Action. These lawyers are called Class Counsel. They will be compensated from the Gross
16 Settlement Amount as discussed in this Class Notice. If you want to be represented by your own
17 lawyer, you may hire one at your own expense.

18 **11. How will the lawyers be paid?**

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

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

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

28 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.

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 object. Class Members may
3 appear at the final approval hearing to be heard on their objections, even if they have not
4 previously served a written objection.

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

6 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
7 hearing time>> .m in Department 19 at the Santa Clara County Superior Court, Downtown
8 Superior Court, 191 North First Street, San Jose, CA 95113 (The Honorable Theodore C. Zayner
9 presiding). At this hearing, the Court will consider whether the settlement is fair, reasonable, and
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.

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

12 No. Class Counsel will answer any questions that the Court may have. But, you are welcome to
13 come at your own expense. If you sent an objection, you do not have to come to Court to talk
14 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.

15 You may appear at the final approval hearing either in person (or via your individual counsel) in
16 the courtroom or by telephone via CourtCall. Class members who wish to appear by CourtCall
17 should contact Class Counsel at least three days before the hearing, if possible, to arrange a
telephonic appearance. Any CourtCall fees for an appearance by an objecting Class member will
be paid by Class Counsel.

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

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

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

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

24 **GETTING MORE INFORMATION**

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

1 You can also access the Santa Clara County Superior Court's Online Services at
2 https://www.____, or by visiting the Clerk's Office at the Santa Clara County
3 Superior Court, Downtown Superior Court, 191 North First Street, San Jose, CA 95113), between
4 __:0 a.m. and __:0 p.m., Monday through Friday, excluding Court holidays.

5 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE**
6 **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: 19, The Honorable
Theodore C. Zayner

1 The Motion of Plaintiff Felis A. Perez (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable Theodore C. Zayner presiding. The Court having considered the Motion, the
4 Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

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

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

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

23 4. The Court hereby preliminarily finds that the Settlement was the product of
24 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
25 making this preliminary finding, the Court considered the nature of the claims set forth in the
26 pleadings, the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the
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1 allocation of Settlement proceeds to the Settlement Class, and the fact that the Settlement
2 represents a compromise of the Parties' respective positions. The Court further preliminarily
3 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
4 preferential treatment to any individual Class Member. Accordingly, the Court preliminarily
5 finds that the Settlement was entered into in good faith.
6

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

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

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

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

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

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

19 i. **Request for Exclusion from Settlement.** A Class Member may
20 request to be excluded from the effect of this Agreement, though not
21 the PAGA Released Claims, and any payment of amounts under this
22 Agreement, though not the PAGA Payment, by timely mailing a letter
23 to the Settlement Administrator stating that the Class Member wants
24 to be excluded from this Action. This letter must include the Class
25 Member's name, address, telephone number, last four digits of the
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1 Class Member's Social Security number, and signature. To be valid
2 and timely, the request to be excluded must be postmarked by the date
3 specified in the Class Notice (sixty (60) days from the initial mailing
4 of the Class Notice by the Settlement Administrator). A Class
5 Member who properly submits a valid and timely request to be
6 excluded from the Action shall not receive any payment of any kind
7 in connection with this Agreement or this Action, shall not be bound
8 by or receive any benefit of this Agreement, and shall have no
9 standing to object to the Settlement. A request for exclusion must be
10 mailed to the Settlement Administrator at the address provided on the
11 Class Notice. The Settlement Administrator shall transmit the request
12 for exclusion to counsel for the Parties as follows:
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15
16 *To Class Counsel:*

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

To Defense Counsel:

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

- 21 ii. **Objections to Settlement.** The Class Notice will provide that any
22 Class Member who does not request exclusion from the Action and
23 who wishes to object to the Settlement should submit an objection in
24 writing to the Settlement Administrator by sixty 60 days after the
25 Settlement Administrator mails the Class Notice, a written objection
26 to the Settlement which sets forth the grounds for the objection and
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1 the other information required by this paragraph. The objection
2 should be mailed to the Settlement Administrator at the address
3 provided on the Class Notice. The Settlement Administrator shall
4 transmit the objections to counsel for the Parties as follows:

6 *To Class Counsel:*

7 David G. Spivak, Esq.
8 The Spivak Law Firm
9 8605 Santa Monica Bl
10 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

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

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

22 If the objecting Class Member does not formally intervene in the action
23 and/or the Court rejects the Class Member's objection, the Class
24 Member may still be bound by the terms of this Agreement.
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1 f. **Report.** Not later than fourteen (14) days after the deadline for submission
2 of requests for exclusion, the Settlement Administrator will provide the
3 Parties with a complete and accurate list of all Class Members who sent
4 timely requests to be excluded from the Action and all Class Members who
5 objected to the settlement.
6

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

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

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

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

14 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
15 costs subject to final review by the Court.
16

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

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

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

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

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

14 **IT IS SO ORDERED.**

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19 **DATE**

20 **THE HONORABLE THEODORE C.**
21 **ZAYNER**
22 **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: 19, The Honorable
Theodore C. Zayner

1 This matter came on for hearing on _____ at _____.m. in
2 Department 19 of the above-captioned court on Plaintiff's Motion for Final Approval of a Class
3 Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint
4 Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith
5 which provides for a Gross Settlement Amount ("GSA") of up to \$1,242,000.00 in compromise
6 of all disputed claims on behalf of all hourly, non-exempt employees (current and former) in
7 California at any time during the period from September 29, 2017 through the earlier of the date
8 of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay
9 periods worked ("Settlement Class Period"). All capitalized terms used herein shall have the
10 same meaning as defined in the Settlement.
11

12 In accordance with the Court's prior Order Granting Preliminary Approval of Class
13 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
14 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
15 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
16 and the evidence and argument received by the Court in conjunction with the motions for
17 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
18 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
19 DETERMINATIONS¹:
20

21 1. The Court has jurisdiction over the subject matter of the Action and over all
22 Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting
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 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
2 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
3 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
4 right to request exclusion, their right to comment upon or object to the Settlement, and their right
5 to appear in person or by counsel at the final approval hearing and be heard regarding final
6 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
7
8 No member of the Settlement Class presented written objections to the proposed Settlement as
9 part of this notice process, stated an intention to appear, or actually appeared at the final approval
10 hearing.

11 2. For purposes of this Final Order and Judgment, the Class Members are all persons
12 Defendants employed as regular full-time or part-time hourly, non-exempt employees (current
13 and former) in California during the Class Period at any time during the period of September 29,
14 2017 to the earlier of the date of the Court's preliminary approval order and the latest date before
15 the Class exceeds 22,604 pay periods worked ("Settlement Class Period").
16

17 3. The Court finds and determines that the notice procedure afforded adequate
18 protections to Class Members and provides the basis for the Court to make an informed decision
19 regarding final approval of the Settlement based on the responses of Class Members. The Court
20 finds and determines that the notice provided in this case was the best notice practicable, which
21 satisfied the requirements of law and due process as to all persons entitled to such notice.
22

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

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

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

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

13 a. Class Counsel fees & costs of \$413,999.00 in attorneys’ fees and
14 \$25,000.00 in litigation costs to Class Counsel;

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

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

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

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

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

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

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

11. The Parties shall file a final accounting report by _____. A non-appearance case review re submission of a final report is scheduled for _____ at _____ **m. in Department 19**. The Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds

1 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
2 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
3 If there are objections by any party or non-party, class counsel shall immediately notify the Court
4 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
5 stipulation and proposed order and separate amended judgment is scheduled for
6 _____ at _____.m. in Department 19.

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

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

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

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

18 16. The Settlement is not an admission by Defendants nor is this Final Order and
19 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
20 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
21 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
22 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
23 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
24 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
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1 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
2 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
3 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
4 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
5 and any other papers and records on file in the Action may be filed in this Court or in any other
6 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
7 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
8 the Released Claims.
9

10 17. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h).

12 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
13
14

15 _____
16 **DATE**

**THE HONORABLE THEODORE C. ZAYNER,
SUPERIOR COURT JUDGE**

EXHIBIT 16

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MAYA CHEAITANI (SBN 335777)
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3 [CHRISTINA J. PREJEAN \(SBN 314772\)](#)
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THE SPIVAK LAW FIRM
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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
17 employees” under the Labor Code Private
Attorneys General Act of 2004,

18 *Plaintiff(s),*

19 vs.

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
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Case No. 21CV387173

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

Action filed: September 29, 2021
Dept: [319](#), The Honorable [Patricia M. Lucas](#)
[Theodore C. Zayner](#)

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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

ATTORNEYS FOR DEFENDANT(S)

DORA LANE (SBN 235113)
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Reno, NV 89511
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Attorneys for Defendant(s),
NXEDGE MH LLC, NXEDGE SAN CARLOS, LLC, AND NXEDGE CSL, LLC

1 This [First Amended](#) Joint Stipulation of Class Action Settlement and Release of Claims
2 (“Settlement Agreement” or “Agreement”) is made and entered into by and between Plaintiff
3 Felis A. Perez (“Plaintiff” or “Class Representative”), individually and on behalf of all putative
4 class members, on the one hand, and Defendants NxEdge MH LLC, NxEdge San Carlos, LLC,
5 and NxEdge CSL, LLC (collectively “Defendants”). Plaintiff and Defendants are collectively
6 referred to herein as the “Parties.”
7

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)*.”
17

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.
22

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

27 **D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses**
28

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:
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- 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);
- 7
- 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.
6

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.
14

15
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.

7
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.

17
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**

22
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
27

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.
9

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."
18

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.

11
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
22 **B. Gross Settlement Amount.** Subject to the terms and conditions of this
23 Agreement, the Gross Settlement Amount of One Million Two Hundred Forty Two Thousand
24 Dollars and Zero Cents (\$1,242,000.00), plus Defendants' employer share of employer-side
25 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:

7
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.

6
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.

18
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).

23
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.
9

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:
16

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).
21

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:
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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

12 *To Defense Counsel:*

13 Dora Lane, Esq.
14 Holland & Hart LLP
15 5441 Kietzke Lane
16 Second Floor
17 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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1 *To Class Counsel:*

2 David G. Spivak, Esq.
3 The Spivak Law Firm
4 8605 Santa Monica Bl
5 PMB 42554
6 West Hollywood, CA 90069

To Defense Counsel:

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

7 Counsel will promptly file such objection with the Court.

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

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

20
21 **E. Report.** Not later than fourteen (14) days after the deadline for submission of
22 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
23 accurate list of all Class Members who sent timely requests to be excluded from the Action and
24 all Class Members who objected to the settlement.

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26 **F. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
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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.
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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.~~[Legal Aid At Work.](#)

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

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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.
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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.
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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

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: _____

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

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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 Parties estimate that the Net Settlement Amount available for distribution among class members is \$720,500.00 and that the average Settlement Share from the Net Settlement Amount will be \$2,176.74.
- 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 <u>PAGA Released Claims</u> .
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.
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.
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— <u>(either in person or via your individual counsel, in the courtroom or by telephone via CourtCall as explained further below)</u> .

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

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

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

2. What is the Action about?

In the Action, Felis A. Perez (“Plaintiff”) alleged violations of the California Labor Code, the California Business & Professions Code, and PAGA, including causes of action for: 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, unfair competition under California’s Business & Professions Code, and claims for civil penalties for violations of the PAGA.

3. Why is there a settlement?

1 The parties disagree on the probable outcome of the case with respect to liability, damages, and
2 how much money could be recovered if the Plaintiff won at trial. Defendants believe the Plaintiff
3 would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or
4 Defendants. There has been no trial in this case. Instead, both sides recognize the risks, expenses,
5 and disruption associated with continued litigation and they have therefore chosen to resolve their
6 differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet
7 Class Members are still entitled to receive payments if they comply with the instructions in this
8 Class Notice. The parties entered into this settlement after arms-length negotiations while using
9 the services of an experienced and neutral mediator. The Plaintiff and Class Counsel believe that
10 the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

11 4. What is a class action settlement?

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

17 5. What should I do?

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

23 6. How much will my payment be?

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

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

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

If you wish to dispute the number of Pay Periods worked credited to you or anything else about your employment status, you must write to the Settlement Administrator indicating what you believe is incorrect and return it on or before <<date>> [60 days after initial mailing] via U.S.

1 Mail with proof of the submission date (such as a postmark or delivery service date stamp). Your
2 correspondence must be mailed to the address below:

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

4 c/o _____
5 _____
6 _____

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

15 **7. When would I get my payment?**

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

22 You will have 180 days to cash your settlement check. If a mailed individual settlement payment
23 is not cashed by <<check cashing deadline>> (within 180 days of the date printed on the check),
24 all uncashed funds will be paid to ~~the California State Controller's Office Unclaimed Property~~
25 ~~Fund with the identity of the Class Member to whom the funds belong, to be held for the Class~~
26 ~~Member.~~ Legal Aid at Work.

27 **8. What am I releasing?**

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

The Parties agree that it is their intent that the resolution set forth in this Settlement will
release and discharge the Released Claims by way of any further attempt, by lawsuit,
administrative claim or action, arbitration, demand, or other action of any kind by each
and all of the Settlement Class Members (including participation to any extent in any
representative or collective action) against the Released Parties. This release will not take
effect until Defendants have paid the Gross Settlement Amount in full per this Settlement
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.

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“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 law or equity, tort, contract, statute, or other applicable federal, state or local law or regulation, including but not limited to the following claims: 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, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the Action, all claims under PAGA or for civil penalties that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the Action or Plaintiff's letter(s) to the LWDA, including but not limited to the California Code of Regulations and to Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2698, and 2699; and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released. The Parties acknowledge that Released Claims includes any claims for penalties by a PAGA Member resulting from any LWDA investigation. The Parties will meet and confer in good faith if the Court requires changes to the scope of the Released Claims.

“Released Parties” shall mean Defendants, and any of their former and present agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers, consultants, subcontractors, joint employers, employee benefit plans and fiduciaries 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 of 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

1 state whether you intend to formally intervene and become a party of record in the action, and
2 upon formally intervening, appear and argue at the final approval hearing.

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

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

7 The Court will hold a fairness hearing on <<final approval hearing date>> at <<final approval
8 hearing time>> .m in Department [319](#) at the Santa Clara County Superior Court, Downtown
9 Superior Court, 191 North First Street, San Jose, CA 95113, (The Honorable ~~Patricia M.~~
10 [LucasTheodore C. Zayner](#) presiding). At this hearing, the Court will consider whether the
11 settlement is fair, reasonable, and adequate. If there are objections that were properly made, the
12 Court will consider them. The Court will listen to people who have asked to speak at the hearing.
13 The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court
14 will decide whether to approve the settlement. We do not know how long this decision will take.

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

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

16 You may appear at the final approval hearing either in person (or via your individual counsel) in
17 the courtroom or by telephone via CourtCall. Class members who wish to appear by CourtCall
18 should contact Class Counsel at least three days before the hearing, if possible, to arrange a
19 telephonic appearance. Any CourtCall fees for an appearance by an objecting Class member will
20 be paid by Class Counsel.

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

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

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

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

25 **GETTING MORE INFORMATION**

26 This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel
27 or the Settlement Administrator if you would like more information about the case. You may call
28

1 <<settlement administrator phone number>> or write the Settlement Administrator, Simpluris,
2 Inc., located at <<settlement administrator mailing address>>.

3 You can also access the Santa Clara County Superior Court's Online Services at
4 https://www._____, or by visiting the Clerk's Office at the Santa Clara County
5 Superior Court, Downtown Superior Court, 191 North First Street, San Jose, CA 95113), between
6 _:_0 a.m. and _:_0 p.m., Monday through Friday, excluding Court holidays.

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**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
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: [319](#), The Honorable [Patricia M. Lucas](#)
[Theodore C. Zayner](#)

1 The Motion of Plaintiff Felis A. Perez (hereafter referred to as “Plaintiff”) for
2 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
3 The Honorable ~~Patricia M. Lucas~~Theodore C. Zayner presiding. The Court having considered
4 the Motion, the Joint Stipulation of Class Action Settlement and Release of Claims
5 (“Settlement” or “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE
6 FOLLOWING:
7

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

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

24 4. The Court hereby preliminarily finds that the Settlement was the product of
25 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In
26 making this preliminary finding, the Court considered the nature of the claims set forth in the
27

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

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

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

b. **Mailing of Class Notice.** By Simpluris, Inc.

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

c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned Class Notice, search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel and Class Counsel to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable by the U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail;

1 performing address searches for all mail returned without a forwarding
2 address; and promptly re-mailing to Class Members for whom new addresses
3 are found. If the Class Notice is re-mailed, the Settlement Administrator will
4 note for its own records and notify Class Counsel and Defendants' Counsel
5 of the date and address of each such re-mailing as part of a weekly status
6 report provided to the Parties.
7

8 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
9 court days prior to the Final Approval Hearing, the Settlement Administrator
10 will provide the Parties for filing with the Court a declaration of due diligence
11 setting forth its compliance with its obligations under this Agreement. Prior
12 to the Final Approval Hearing, the Settlement Administrator will supplement
13 its declaration of due diligence if any material changes occur from the date
14 of the filing of its prior declaration.
15

16 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**
17 Class Members may submit requests to be excluded from the effect of the
18 Settlement, or objections to the Settlement, pursuant to the following
19 procedures:
20

21 i. **Request for Exclusion from Settlement.** A Class Member may
22 request to be excluded from the effect of this Agreement, though not
23 the PAGA Released Claims, and any payment of amounts under this
24 Agreement, though not the PAGA Payment, by timely mailing a letter
25 to the Settlement Administrator stating that the Class Member wants
26 to be excluded from this Action. This letter must include the Class
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28

1 Member's name, address, telephone number, last four digits of the
2 Class Member's Social Security number, and signature. To be valid
3 and timely, the request to be excluded must be postmarked by the date
4 specified in the Class Notice (, ~~or 60~~ sixty (60) days
5 from the initial mailing of the Class Notice by the Settlement
6 Administrator). A Class Member who properly submits a valid and
7 timely request to be excluded from the Action shall not receive any
8 payment of any kind in connection with this Agreement or this
9 Action, shall not be bound by or receive any benefit of this
10 Agreement, and shall have no standing to object to the Settlement. A
11 request for exclusion must be mailed to the Settlement Administrator
12 at the address provided on the Class Notice. The Settlement
13 Administrator shall transmit the request for exclusion to counsel for
14 the Parties as follows:
15
16

17
18 *To Class Counsel:*

19 David G. Spivak, Esq.
20 The Spivak Law Firm
21 8605 Santa Monica Bl
22 PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

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

- 23 ii. **Objections to Settlement.** The Class Notice will provide that any
24 Class Member who does not request exclusion from the Action and
25 who wishes to object to the Settlement should submit an objection in
26 writing to the Settlement Administrator by , ~~or sixty~~
27

1 60 days after the Settlement Administrator mails the Class Notice, a
2 written objection to the Settlement which sets forth the grounds for
3 the objection and the other information required by this paragraph.
4 The objection should be mailed to the Settlement Administrator at the
5 address provided on the Class Notice. The Settlement Administrator
6 shall transmit the objections to counsel for the Parties as follows:
7

8
9 *To Class Counsel:*

10 David G. Spivak, Esq.
11 The Spivak Law Firm
12 8605 Santa Monica Bl
13 PMB 42554
14 West Hollywood, CA 90069

To Defense Counsel:

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

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

26 If the objecting Class Member does not formally intervene in the action
27

1 and/or the Court rejects the Class Member's objection, the Class
2 Member may still be bound by the terms of this Agreement.

3 f. **Report.** Not later than fourteen (14) days after the deadline for submission
4 of requests for exclusion, the Settlement Administrator will provide the
5 Parties with a complete and accurate list of all Class Members who sent
6 timely requests to be excluded from the Action and all Class Members who
7 objected to the settlement.
8

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

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

13 8. The Court approves, for settlement purposes only, Felis A. Perez as the Class
14 Representative.
15

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

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

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

21 12. The Court preliminarily approves Plaintiff's Class Representative Payment
22 subject to final review by the Court.
23

24 13. A Final Approval Hearing shall be held on _____ at _____**.m.** in
25 Department [319](#) of the Superior Court for the State of California, County of Santa Clara, located
26 at the Downtown Superior Court, 191 North First Street, San Jose, CA 95113 to consider the
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1 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by
2 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys'
3 fees and costs and the Class Representative Payment to the Class Representative. The notice of
4 motion and all briefs and materials in support of the motion for final approval of class action
5 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
6 Court ~~on or~~ sixteen (16) Court days before _____. the Final Approval Hearing.

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

13 15. The Court expressly reserves the right to adjourn or continue the Final Approval
14 Hearing from time to time without further notice to members of the Class. The Plaintiff shall
15 give prompt notice of any continuance to Settlement Class Members who object to the
16 Settlement.
17

18 **IT IS SO ORDERED.**

19
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21 **DATE**

21 **THE HONORABLE PATRICIA M.**
22 **LUCAS THEODORE C. ZAYNER**
23 **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: [319](#), The Honorable [Patricia M. Lucas](#)
[Theodore C. Zayner](#)

1 This matter came on for hearing on _____ at _____.m. in
2 Department 319 of the above-captioned court on Plaintiff's Motion for Final Approval of a Class
3 Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the Joint
4 Stipulation of Class Action Settlement and Release of Claims (the "Settlement") filed herewith
5 which provides for a Gross Settlement Amount ("GSA") of up to \$1,242,000.00 in compromise
6 of all disputed claims on behalf of all hourly, non-exempt employees (current and former) in
7 California at any time during the period from September 29, 2017 through the earlier of the date
8 of the Court's preliminary approval order and the latest date before the Class exceeds 22,604 pay
9 periods worked ("Settlement Class Period"). All capitalized terms used herein shall have the
10 same meaning as defined in the Settlement.
11

12 In accordance with the Court's prior Order Granting Preliminary Approval of Class
13 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
14 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
15 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
16 and the evidence and argument received by the Court in conjunction with the motions for
17 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
18 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
19 DETERMINATIONS¹:
20

21 1. The Court has jurisdiction over the subject matter of the Action and over all
22 Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting
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 Preliminary Approval of Class Action Settlement of _____, the Class Notice was sent
2 to each Class Member by First Class U.S. mail. The Class Notice informed Class Members of
3 the terms of the Settlement, their right to receive their proportional share of the Settlement, their
4 right to request exclusion, their right to comment upon or object to the Settlement, and their right
5 to appear in person or by counsel at the final approval hearing and be heard regarding final
6 approval of the Settlement. Adequate periods of time were provided by each of these procedures.
7
8 No member of the Settlement Class presented written objections to the proposed Settlement as
9 part of this notice process, stated an intention to appear, or actually appeared at the final approval
10 hearing.

11 2. For purposes of this Final Order and Judgment, the Class Members are all persons
12 Defendants employed as regular full-time or part-time hourly, non-exempt employees (current
13 and former) in California during the Class Period at any time during the period of September 29,
14 2017 to the earlier of the date of the Court's preliminary approval order and the latest date before
15 the Class exceeds 22,604 pay periods worked ("Settlement Class Period").
16

17 3. The Court finds and determines that the notice procedure afforded adequate
18 protections to Class Members and provides the basis for the Court to make an informed decision
19 regarding final approval of the Settlement based on the responses of Class Members. The Court
20 finds and determines that the notice provided in this case was the best notice practicable, which
21 satisfied the requirements of law and due process as to all persons entitled to such notice.
22

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

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

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

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

13 a. Class Counsel fees & costs of \$413,999.00 in attorneys’ fees and
14 \$25,000.00 in litigation costs to Class Counsel;

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

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

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

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

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

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

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

11. The Parties shall file a final accounting report by _____. A non-appearance case review re submission of a final report is scheduled for _____ at _____**.m. in Department 319.** The Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds

1 to the non-party, the accrued interest on that sum. The stipulation shall be signed by counsel for
2 the class and defense counsel in accord with the proposed Amended Final Order and Judgment.
3 If there are objections by any party or non-party, class counsel shall immediately notify the Court
4 and the matter will be set for further hearing. A non-appearance hearing for the lodging of the
5 stipulation and proposed order and separate amended judgment is scheduled for
6 _____ at _____.m. in Department **319**.

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

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

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

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

18 16. The Settlement is not an admission by Defendants nor is this Final Order and
19 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
20 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
21 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
22 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
23 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
24 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
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1 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
2 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
3 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
4 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
5 and any other papers and records on file in the Action may be filed in this Court or in any other
6 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
7 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
8 the Released Claims.
9

10 17. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h).
12

13 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
14

15 _____
16 **DATE**

15 _____
16 **THE HONORABLE PATRICIA M. LUCAS THEODORE C. ZAYNER,**
17 **SUPERIOR COURT JUDGE**
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EXHIBIT 17