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DANIEL MENDEZ

SUPERIOR COURT OF CALIFORNIA

IN AND FOR LOS ANGELES

DANIEL MENDEZ, as an individual and on
all others similarly situated and aggrieved,

Plaintiff,

vs.

LIVE NATION WORLDWIDE, INC., a
Delaware Corporation; LIVE NATION
ENTERTAINMENT, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

CASE NO.

20STCV37796

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff DANIEL MENDEZ, an individual on behalf of himself and all other aggrieved
2 employees similarly situated, hereby files this Complaint against Defendant LIVE NATION
3 WORLDWIDE, INC., a Delaware Corporation; Defendant LIVE NATION ENTERTAINMENT,
4 INC., a Delaware Corporation; and DOES 1 to 100, inclusive (collectively referred to herein as
5 “Defendants”). Plaintiff is informed and believes, and on the basis of that information and belief,
6 allege as follows:

7 THE PARTIES

8 1. Plaintiff DANIEL MENDEZ is, and at relevant times was, an individual domiciled in the
9 State of California and a citizen of the State of California who worked as a non-exempt field opts
10 installer for Defendants in the State of California.

11 2. Defendant LIVE NATION WORLDWIDE, INC. is a Delaware Corporation that, at all
12 relevant times, was authorized to do business within the State of California and is doing business
13 in the State of California.

14 3. Defendant LIVE NATION ENTERTAINMENT, INC. is a Delaware Corporation that, at
15 all relevant times, was authorized to do business within the State of California and is doing
16 business in the State of California.

17 4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
18 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by
19 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
20 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
21 reflect the true names and capacities of the Doe Defendants when such identities become known.

22 5. Live Nation is an American events promoter and venue operator based in Beverly Hills,
23 California. Formed in 1996 as SFX Entertainment, the company's business was built around
24 consolidating concert promoters into a national company. In 2000, the company was sold to Clear
25 Channel Communications for \$4.4 billion, and operated as Clear Channel Entertainment until
26 2005, when it was spun off as Live Nation. In 2010, Live Nation merged with the ticketing
27 company Ticketmaster, forming the larger conglomerate Live Nation Entertainment.

28 6. Plaintiff is further informed and believes that, at all relevant times, each Defendant

1 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
2 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
3 interest of some or all of the other Defendants, and was engaged with some or all of the other
4 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
5 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
6 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant
7 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
8 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
9 controlled, aided and abetted the conduct of all other Defendants.

10 7. At all relevant times, Defendants were and are legally responsible for all of the unlawful
11 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
12 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
13 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
14 times undertaken as employees of Defendants, acting within the scope of their employment or
15 authority in all of the unlawful activities described herein.

16 JURISDICTION AND VENUE

17 8. This court possesses original subject matter jurisdiction over this matter. Venue is proper
18 in Los Angeles, California, because Defendants do business in Los Angeles, California, and some
19 of the complained of conduct occurred in this judicial district.

20 FACTUAL ALLEGATIONS

21 9. During the one-year and sixty-five day period preceding filing of this complaint, Plaintiff
22 and each of the similarly situated aggrieved employees were hourly paid, non-exempt employees
23 who worked as "security" or a similarly situated position/job classification for Defendants in the
24 State of California. Defendants at all times exercised control over Plaintiff and each of the
25 similarly situated aggrieved employees, and suffered and/or permitted them to work.

26 10. Plaintiff began working for Defendant as a non-exempt, hourly paid "security" employee
27 in April 2018, and continued working in that continued working in that capacity until December
28 20, 2019. During his employment, Plaintiff was classified as a non-exempt employee and with the

1 job classification of “security” at all times.

2 11. Plaintiff typically worked as security for anywhere from 1 to 5 events per week, with
3 some shifts lasting from 3-4 hours but a majority of works lasting over 8 and 12 hours.

4 12. Plaintiff was required to work through his meal and rest periods, or they would be
5 interrupted/cut short, due to the nature and job duties of Plaintiff as security, as well as the lack of
6 relievers, for the events held, managed or operated by Defendants. For example, Plaintiff would
7 be required to continue patrol the parking lots of events in a golf cart during his meal and rest
8 periods, and would consistently be required to work through meal and rest breaks because no
9 relievers were available or provided whatsoever at the event. Plaintiff on numerous occasions was
10 unable to take timely first meal breaks and first and second rest periods due to the nature and
11 constraints of the job.

12 13. Plaintiff was never afforded a second meal period or a third rest period on shifts in excess
13 of 10 hours

14 14. Plaintiff was regularly required to remain on-duty during his meal and rest breaks in order
15 to perform his job duties. For example, Plaintiff was required to continue monitoring his
16 communication device(s) for emergency/urgent occurrences and other times when security
17 assistance was necessary, which frequently occurred, and required Plaintiff to cut short his meal
18 and rest breaks. Plaintiff was also required to remain on the premises and thus on-duty during
19 both his meal and rest breaks.

20 15. Plaintiff never received premium pay for missed, late or shortened meal periods and rest
21 periods.

22 16. Plaintiff was required by Defendants to perform some of his work “off-the-clock.” For
23 example, Defendant required Plaintiff to clock in and out for meal breaks using the company
24 computers, which were located in the administrative offices. Plaintiff would have his meal period
25 interrupted after clocking out, but would be unable to clock back in because he was in the field
26 without the ability go return to the administrative office to use the computers. Plaintiff was also
27 not paid for the time spent walking back and forth to the administrative office to clock in and out
28 for meal periods and at the end of his shifts.

1 17. Defendants paid Plaintiff multiple rates of pay in certain pay periods which were not
2 properly blended and/or incorporated into the regular rate for purposes of calculating overtime
3 and double time, resulting in an underpayment of overtime and double time wages to Plaintiff.
4 Defendants also failed to properly incorporate additional non-discretionary renumerations into
5 Plaintiff's overtime and double time pay, including but not limited to "Incentive Bonus" and
6 "Stay Bonus".

7 18. Plaintiff was required to be on his feet all day and was not provided any suitable seating
8 by Defendants, even though his position would have permitted it.

9 19. Defendants failed to reimburse Plaintiff for all necessary business-related expenditures
10 incurred by Plaintiff in direct discharge of his duties, including but not limited to cell phone
11 expenses. Plaintiff was regularly required to use his personal cell phone to perform his job duties,
12 including but not limited to coordinating with staff and supervisors during events, and scheduling
13 prior to events.

14 20. Defendants also failed to pay all sick leave pay benefits owed under the law to Plaintiff.
15 Specifically, Defendants failed to incorporate non-discretionary renumerations paid to Plaintiff,
16 including but not limited to additional rates of pay/shift differentials and bonuses/incentive pays,
17 into the regular rate of pay for purposes of calculating the sick leave pay rate. Accordingly,
18 Defendants failure resulted in an underpayment of sick leave pay to Plaintiff.

19 21. During his employment, Plaintiff failed to receive accurate wage statements in compliance
20 with Labor Code section 226. Among other things, Plaintiff's paystubs did not include: (1) the
21 correct total hours that Plaintiff worked during each pay period: (2) the correct overtime and
22 double time rate; and (3) the correct total net wages.

23 22. Defendant failed to pay Plaintiff for all hours worked during his employment and upon the
24 separation of employment, including failing to pay Plaintiff for the "off-the-clock" work he
25 performed and properly calculating his overtime and double time by incorporating non-
26 discretionary renumerations into the regular rate of pay. Defendant also did not compensate
27 Plaintiff his final wages until the end of the pay period rather than on the date of his pay day
28 worked, as required under California law. Plaintiff's last day worked was December 20, 2019 yet

1 he was not compensated his wage statements have a final pay date of December 27, 2019.

2 23. Plaintiff is informed and believes that Defendant engaged in these same unlawful
3 practices with regard to all of the class members.

4 24. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor
5 Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of
6 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
7 employed by Defendants in the State of California as a non-exempt employee. This action is
8 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

9 25. During the period beginning one-year period preceding the filing of the required PAGA
10 notice with the Labor Workforce and Development Agency, and continuing through the present, as
11 alleged herein, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 216, 218.5,
12 225.5, 226, 226.3, 226.7, 233. 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
13 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all
14 relevant sections of the applicable Wage Orders as to Plaintiff and all other similarly aggrieved
15 employees employed by Defendants who worked as “security” or a similarly situated position/job
16 classification however titled. These violations subject Defendants to civil penalties as set forth
17 in the foregoing statutes as well as other provisions of the Labor Code, including without
18 limitation Labor Code sections 203, 256, 210, 1174.5, 1197.1 and 2699.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
21 **LABOR CODE SECTIONS 2698, ET SEQ.**

22
23 26. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

24 27. California law provides employees in California must be paid for all hours worked, up to
25 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As
26 alleged herein, Plaintiff and the class members regularly worked hours for which they were not
27 compensated by Defendants as required by California law. They were were required to perform
28 off-the-clock work and were occasionally interrupted during their meal periods and asked to do

1 work for which they were not compensated. They were also required to walk long distances
2 across events to clock in and out for their shifts and meal periods without being compensated for
3 this time spent walking. Defendant owes Plaintiff and class members at least minimum wage for
4 this time hours worked, resulting in unpaid wages.

5 28. As a result, Defendants failed to pay Plaintiff and similarly aggrieved employees for all
6 hours worked at a rate no less than the prevailing minimum wage, thereby violating California
7 minimum wage laws. These minimum wage violations subject Plaintiff and the aggrieved
8 employees to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Section 20 of all
9 applicable wage orders. Each violation of each Labor Code section and Wage Order provision
10 results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which
11 the referenced statutes and Wage Order provisions were violated.

12 29. California law provides employees in California must be paid overtime, equal to 1.5 times
13 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day,
14 and must be paid double wages for all hours worked in excess of 12 per day, unless they are
15 exempt. As alleged herein, Plaintiff and the Class Members worked overtime hours for which
16 they were not compensated by Defendants as required by California law. They were were
17 required to perform off-the-clock work, such as walking long distances to clock in and out for
18 their shifts and meal periods, and were at times interrupted during their meal periods and asked to
19 do work for which they were not compensated. They were not paid at the proper overtime and
20 double time rate of pay as a result of Defendants failure to properly blend multiple rates of pay
21 and/or incorporate all non-discretionary pay renumerations into the regular rate for purposes of
22 calculating overtime and double time. Defendant owes Plaintiff and class members overtime
23 wages for this work where the addition of such hours would require payment at an overtime rate.

24 30. Defendants' violations with respect to minimum wages and/or overtime wages, as alleged
25 herein, result in separate violations of Labor Code sections 1198 and 1199, and subject
26 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
27 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
28 for each aggrieved employee, results in a separate civil penalty.

1 31. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
2 Plaintiff and the class members with one 30-minute meal break free from all duties for all shifts
3 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer
4 than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an
5 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
6 required meal period may be waived by mutual consent of the employer and employee, and (2) if
7 an employee's total work period in a day is over ten (10) hours but no more than twelve (12)
8 hours, the required second meal period may be waived by mutual consent of the employer and
9 employee, but only if the first meal period was not waived. Employers covered by the Wage
10 Orders have an obligation to both (1) relieve their employees for at least one meal period for
11 shifts over five hours (see above), and (2) to record having done so. If the employer fails to
12 properly record a valid meal period, it is presumed no meal period was provided.

13 32. Plaintiff and class members regularly worked periods of more than five and ten hours in a
14 workday without being provided proper mandatory thirty-minute, duty-free meal periods. Upon
15 information and belief, Defendant failed to maintain a company meal period policy compliant
16 with California law. Plaintiff and class members were regularly unable to take timely, thirty-
17 minute uninterrupted first meal periods, and were never provided with second meal periods. They
18 were unable to avail themselves of such breaks for various reasons, including, the pressures from
19 their workloads and the lack of relief workers available, commentary from superiors or no breaks
20 at all. Defendants regularly and routinely failed to provide Plaintiff and other class members with
21 a second meal period regardless of the number of hours they worked. Per Defendant's illegal
22 meal period policy/practice, Plaintiff and class members were not always relieved of their duties
23 or permitted to leave the premises for purposes of taking meal periods. Defendant also failed to
24 pay Plaintiff and class members an additional hour of wages at their regular rates of pay for each
25 workday a meal period was not provided.

26 33. Defendant failed to provide Plaintiff and the class members with all required meal
27 periods, or with compensation in lieu thereof. In failing to provide all required and fully
28 compliant meal periods and/or failing to compensate for missed/non-compliant meal periods at

1 the correct regular rate of compensation, Defendants violated Labor Code sections 226.7, 512,
2 and 1198-1199, and Wage Order 5-2001 (and all applicable wage orders), sections 11(A) and (C).
3 These violations subject Defendants to civil penalties under Labor Code section 2699, and Wage
4 Order 5-2001 (and all applicable wage orders), section 20. Each violation of each Labor Code
5 section and Wage Order provision, for each aggrieved employee, results in a separate civil
6 penalty.

7 34. California law requires an employer to authorize or permit an employee to take a rest
8 period of ten minutes for every four hours worked, or major fraction thereof, and such rest
9 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
10 to provide any required rest periods, or fails to provide a fully compliant rest break of 10 minutes
11 wherein the employee is fully relieved of all duties and all employer control, the employer must
12 pay the employee one hour of pay at the employee's regular rate of compensation for each
13 workday the employer did not provide a legally required and/or fully compliant rest period.

14 35. Defendant employed policies and procedures that ensured Plaintiff and other class
15 members would not receive all legally required rest periods, as Defendants did not authorize and
16 permit all required rest periods in strict accordance to, and in compliance with, the timing
17 requirements of all applicable Wage Orders. Defendant similarly employed policies and
18 procedures that rendered rest periods non-compliant with the requirements of California law by,
19 inter alia, only providing Plaintiff and class members with a maximum of two rest breaks per shift
20 regardless of the number of hours worked, and failing to relieve Plaintiff and class members of all
21 duties and all employer control. Plaintiff and class members regularly worked enough hours to be
22 entitled to three rest breaks in a shift but Defendants only provided Plaintiff and class members
23 with one or two rest breaks regardless of the number of hours they worked. Similar to meal
24 breaks, Plaintiff and the class members were not always able to avail themselves of their rest
25 breaks for various reasons, including, the pressures from their workloads and the lack of relief
26 workers available, commentary from superiors or no breaks at all. Per Defendant's illegal meal
27 period policy/practice, Plaintiff and class members were not always relieved of their duties or
28 permitted to leave the premises for purposes of taking rest periods. Defendants further employed

1 policies and procedures ensuring Plaintiff and class members did not receive premium wages to
2 compensate them for workdays they did not receive all legally required and fully compliant rest
3 periods.

4 36. In failing to provide all required and fully compliant rest breaks and/or failing to
5 compensate for missed/non-compliant rest breaks at the correct regular rate of compensation,
6 Defendants have violated Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 5-
7 2001 (and all applicable wage orders), section 12(A). These violations subject Defendants to civil
8 penalties under Labor Code section 2699, and Wage Order 5-2001 (and all applicable wage
9 orders), section 20. Each violation of each Labor Code section and Wage Order provision, for
10 each aggrieved employee, results in a separate civil penalty.

11 37. Labor Code § 2802 requires employers to indemnify employees for all necessary
12 expenditures incurred by employees in the discharge of their duties.

13 38. Defendants required Plaintiff and the class members to use personal cell phones to for
14 scheduling, coordination and communication throughout their shifts and/or prior to the start or
15 after the close of their shifts. Defendants did not reimburse Plaintiff or the class members for
16 using personal cell phones for work. In failing indemnify all business-related expenses incurred
17 by Plaintiff and the aggrieved employees, Defendants have violated Labor Code section 2802.
18 This violation subjects Defendants to civil penalties under Labor Code sections 2802, 558, 558.1
19 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
20 aggrieved employee, results in a separate civil penalty.

21 39. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly or
22 at the time of each payment of wages, shall furnish to his or her employee, either as a detachable
23 part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid
24 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
25 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive
26 dates of the period for which the employee is paid . . . , (8) the name and address of the legal
27 entity that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and
28 the corresponding number of hours worked at each hourly rate by the employee”

1 40. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
2 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
4 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
5 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
6 an award of costs and reasonable attorney’s fees.

7 41. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of
8 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
9 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
10 for each violation in a subsequent citation, for which the employer fails to provide the employee a
11 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

12 42. Defendant knowingly and intentionally failed to provide Plaintiff and other class members
13 with proper, itemized wage statements as the wage statements provided by Defendants do not
14 accurately reflect, inter alia, gross wages earned, total hours worked, net wages earned, all
15 applicable hourly rates in effect during each pay period, all hours worked at each applicable
16 hourly rate.

17 43. Accordingly, Defendants have violated Labor Code sections 226(a) and/or 226(e) as
18 Plaintiff and all similarly aggrieved employees. These violations subject Defendants to civil
19 penalties under the Labor Code, including without limitation Labor Code sections 226, 226.3 and
20 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
21 employee, results in a separate civil penalty.

22 44. Labor Code section 204 requires that all earned wages must be paid to employees twice
23 during each calendar month. Defendants violated this section by failing to pay Plaintiff and
24 aggrieved employees an additional hour of pay for meal and rest periods not provided/valid, by
25 failing to compensate employees for all hours worked, including overtime hours worked, and by
26 failing to pay proper premium wage rates for all hours worked. These violations subject
27 Defendants to civil penalties under Labor Code section 210. Each violation results in a separate
28 civil penalty, for each aggrieved employee for each pay period during which the statute

1 provisions were violated.

2 45. Defendant failed to pay Plaintiff and the class members all wages that were due and owing
3 during their employment; and, failed to Plaintiff and the class members who are former
4 employees all wages that were due and owing upon termination or resignation. Among other
5 things, Plaintiff and the class members were not paid for the off the clock resulting, inter alia,
6 from Defendants' thirty minute meal break auto-deduction and further under-reporting of Plaintiff
7 and the class members' actual hours worked. Defendant also systematically pays final wages at
8 the end of the final pay period rather than on the final day of work or the statutorily mandated
9 time to pay final wages under California law.

10 46. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
11 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
12 respect to employees who resign. For all aggrieved employees no longer employed by
13 Defendants, including Plaintiff, Defendants still have not paid such aggrieved employees all
14 wages earned and unpaid at the time of discharge as alleged herein. These violations subject
15 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
16 sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each aggrieved
17 employee for each pay period during which the statutory provisions were violated.

18 47. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
19 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
20 section by failing to pay Plaintiff and aggrieved employees for all hours worked at the proper
21 wage rate and by failing to pay Plaintiff and aggrieved employees an additional hour of pay for
22 each meal/rest period not provided/that was invalid. These violations subject Defendants to civil
23 penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
24 each aggrieved employee, for each pay period during which the statute provisions were violated.

25 48. California Labor Code section 223 makes it unlawful for an employer to secretly pay
26 wages lower than required by statute while purporting to pay legal wages. As described above,
27 Defendants willfully and systematically denied Plaintiff and other aggrieved employees minimum
28 wage compensation for all hours worked which resulted in the payment of less than statutorily

1 required wages to them. Defendants acted with the intent to deprive them of statutory wages,
2 including, but not limited to, overtime wages and minimum wages, to which they were entitled to
3 under California law.

4 49. Thus, Defendants paid Plaintiff and other aggrieved employees lower wages than those
5 they were entitled to while purporting that Plaintiff and other aggrieved employees were properly
6 paid. California law requires employers to keep “accurate and complete” payroll records showing,
7 among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 5-
8 2001, section 7, similarly requires employers to keep time records showing, inter alia, when the
9 employees begin and end each work period.

10 50. At all relevant times, Defendants have failed, and continues to fail, to keep the required
11 time records, as Defendants did not provide and/or record all of Plaintiff’s and other similarly
12 aggrieved employees hours worked as alleged herein. Defendants’ failure to keep “accurate and
13 complete” payroll records for Plaintiff and other similarly aggrieved employees violates Labor
14 Code sections 1174, 1198-99, and Wage Order 5- 2001, section 7. These violations subject
15 Defendants to civil penalties under the Labor Code, including without limitation sections 1174.5
16 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
17 aggrieved employee, results in a separate civil penalty.

18 51. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
19 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
20 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
21 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants’ violations with
22 respect to meal periods, rest periods, recordkeeping provisions, and minimum wages and/or
23 overtime wages, as alleged herein, result in separate violations of Labor Code sections 1198 and
24 1199, and subject Defendants to civil penalties under the Labor Code, including without
25 limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code section and
26 Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

27 52. The California Labor Code provides that employees shall be provided with suitable seats
28 when the nature of the work reasonably permits the use of seats and when they are not engaged in

1 the active work duties that would not permit them to be seated. Defendants' failure, inter alia, to
2 provide any seating for Plaintiff and similarly aggrieved employees constitutes violations of set
3 the Labor Code and Wage Orders.

4 53. At all relevant times, Defendants have failed, and continues to fail, to provide Plaintiff and
5 similarly situated aggrieved employees with suitable seating in compliance with the statutory
6 requirements in violations of Labor Code sections 1198-99, and Wage Order 5-2001, section 14.
7 These violations subject Defendants to civil penalties under the Labor Code, including without
8 limitation sections 1174.5 and 2699. Each violation of each Labor Code section and Wage Order
9 provision, for each aggrieved employee, results in a separate civil penalty.

10 54. Defendants failed to provide paid sick leave to Plaintiff and similarly aggrieved
11 employees, further failing to put them on notice of their paid sick leave rights—or thereby putting
12 their entitlement to sick leave in a Labor Code Section 2810.5 notice. In addition, Defendants
13 failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the
14 employee throughout the relevant time period. Notably, where an employer compensates an
15 employee with non-discretionary bonus pay (as Defendants did here), any sick leave/sick pay
16 calculation must incorporate the value of the non-discretionary bonuses; upon information and
17 belief, Defendants' sick leave/sick pay calculation did not. Additionally, Defendants failed to
18 provide notice of the correct sick leave amount balance left for Plaintiff and aggrieved employees,
19 and thus affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiff
20 and similarly aggrieved employees would have used their paid sick leave at least prior to their
21 respective separation, for as on several occasions thereafter, he or she would have been entitled to
22 use the banked sick leave and earn appropriate compensation. This illegal retention of paid sick
23 leave is unlawful and Plaintiff seeks all forms of injunctive relief, restitution, and declaratory
24 relief as permitted by California law, on behalf of herself and all aggrieved employees.

25 55. An Employer is required to provide paid sick days in accordance to Labor Code Section
26 245 through 248.5. Defendants failed to maintain accurate records documenting the hours worked
27 and paid sick days accrued and used by employees in violation of Labor Code Section 247.5,
28 permitting the presumption that Plaintiff was entitled to the maximum number of hours accruable

1 under this article at the time of her termination. Moreover, by not incorporating the additional
2 rates of pay/non-discretionary remunerations, including but not limited to additional rates of
3 pay/shift differentials and bonuses/incentive pays, into the sick leave rates of pay, Defendants
4 unlawfully retained and continue to retain paid sick leave that should have been paid and wasn't.
5 On information and belief, Plaintiff alleges that all of these practices were experienced and
6 continue to be experienced by other similarly aggrieved employees. Plaintiff requests all
7 appropriate relief under the PAGA and these statutes, including but not limited to the restitution
8 of earned paid sick leave pay that was not paid to the aggrieved employees due to Defendants'
9 sole failure to incorporate all non-discretionary remunerations/rates of pay into the regular rate for
10 calculating sick leave pay benefits as required by California law.

11 56. Accordingly, Defendants has violated Labor Code sections 233 and 234 as to Plaintiff and
12 all similarly aggrieved employees. These violations subject Defendants to civil penalties under
13 the Labor Code, including without limitation Labor Code Section 233 and 234 and 2699. Each
14 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
15 results in a separate civil penalty.

16 57. Under the provisions of PAGA and Labor Code sections 201, 202, 203, 204, 210, 216,
17 218.5, 225.5, 226, 226.3, 226.7, 233, 234, 245, 246, 247, 247.5, 248, 248.5, 510, 512, 558, 558.1,
18 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, 2810.5 and all
19 applicable Wage Orders, as well as all interpretations of these laws by California Courts and
20 administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are
21 liable for all statutorily-specified penalties recoverable under PAGA as enumerated in the
22 relevant California Labor Code provisions listed herein, or for default PAGA penalties under
23 Labor Code Section 2699(f) for any violation of a Labor Code section without a specified civil
24 penalty.

25 58. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
26 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
27 Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov on July 10,
28 2020, and to Defendants via certified mail on July 10, 2020, of the specific provisions of the

1 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
2 alleged violations.

3 59. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
4 to the parties it intends to investigate the alleged violations within 65 days of the date of
5 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has
6 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
7 State of California and other similarly aggrieved employees. As of the filing of this Complaint,
8 Defendants have not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly,
9 Plaintiff has exhausted all administrative remedies required by law.

10 60. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiff
11 is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in an
12 amount to be proved.

13
14 **PRAYER**

15 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
16 as follows:

- 17 1. For civil penalties according to proof;
18 2 For reasonable attorney's fees and costs of suit; and
19 3. For such other and further relief as the Court deems just and proper.

20
21 Dated: September 30, 2020

CROSNER LEGAL, P.C.

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23 Michael Crosner
24 Zachary Crosner
25 Blake Jones
26 Attorneys for Plaintiff DANIEL MENDEZ
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DEMAND FOR JURY TRIAL

Plaintiff JADE FINDLEY demands a trial by jury on all claims so triable.

Dated: September 30, 2020

CROSNER LEGAL, P.C.



Michael Crosner

Blake Jones

Zachary Crosner

Attorneys for Plaintiff DANIEL MENDEZ