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8 Class

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 (UNLIMITED JURISDICTION)

12
13 DAROL SMITH and JOSEPH
RODRIGUES, on behalf of themselves and
14 all others similarly situated,

15 Plaintiffs,

16 v.

17 SHORENSTEIN HAYS-NEDERLANDER
THEATRES LLC, a California limited
18 liability company, NEDERLANDER OF
SAN FRANCISCO ASSOCIATES, a
19 corporation; NEDERLANDER OF SAN
FRANCISCO ASSOCIATES, a
20 partnership; CSH THEATRES LLC, a
California limited liability company;
21 ROBERT NEDERLANDER, individually
and as a partner of NEDERLANDER OF
22 SAN FRANCISCO ASSOCIATES;
CAROLE SHORENSTEIN HAYS;
23 JEFFREY HAYS; GREG HOLLAND; and
DOES 1 to 20, inclusive,

24 Defendants.
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ENDORSED
FILED
San Francisco County Superior Court
OCT 18 2016
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Deputy Clerk
DE LA VEGA-NAVARRO, Rosemary

CGC 16-554905
Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF: (1) FAILURE
TO PROVIDE REST PERIODS; (2)
FAILURE TO PROVIDE MEAL
BREAKS; (3) FAILURE TO PAY
STATE MINIMUM WAGE; (4)
FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS; (5) FAILURE
TO PAY OVERTIME
COMPENSATION; (6) WAITING
TIME PENALTIES; (7) FAILURE TO
COMPLY WITH SAN FRANCISCO
PAID SICK LEAVE ORDINANCE; (8)
FAILURE TO PROVIDE SUITABLE
SEATING; (9) FAILURE TO
PROVIDE AND MAINTAIN
REQUIRED UNIFORMS; (10)
CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT; (11)
UNFAIR BUSINESS PRACTICES;
(12) INJUNCTIVE RELIEF; AND (13)
DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 Plaintiffs DAROL SMITH (“SMITH”) and JOSEPH RODRIGUES
2 (“RODRIGUES”), by and through their attorneys, Rosen Bien Galvan & Grunfeld LLP,
3 bring this class action on behalf of themselves and all others similarly situated against
4 Defendants SHORENSTEIN HAYS-NEDERLANDER THEATRES LLC (“SHN”),
5 NEDERLANDER OF SAN FRANCISCO ASSOCIATES (“NEDERLANDER SF”); CSH
6 THEATRES LLC (“CSH”), ROBERT NEDERLANDER, CAROLE SHORENSTEIN
7 HAYS, JEFFREY HAYS, GREG HOLLAND, and DOES 1-20 (collectively,
8 “Defendants”), and complain and allege as follows:

9 **INTRODUCTION**

10 1. SHN promotes itself as “the preeminent theatrical entertainment company in
11 the Bay Area.” SHN presents a year-round season of plays and musicals featuring world
12 premieres, pre-Broadway engagements, limited West Coast-only runs of productions
13 starring the original Broadway casts, and national tours at its two theaters, the Golden Gate
14 and the Orpheum. At these theaters and previously at the Curran as well, SHN has hosted
15 such shows as Wicked, Mama Mia, A Chorus Line, Legally Blond the Musical, the Lion
16 King, and Les Miserables. Some of these blockbuster hits ran for a year or more. In the
17 Spring of 2017, SHN is hosting the highly successful Broadway phenomenon, Hamilton.

18 2. SHN’s theaters are located in the Tenderloin-mid-Market area of
19 San Francisco, which has historically had among the highest crime rates in the city. For
20 example, during the time period between January 2012 and October 2016, there were
21 3,343 incidents of reported crime on the block near the Golden Gate Theatre, including
22 612 assaults. The block near the Orpheum Theatre has an even higher crime rate, with
23 4,079 incidents reported over the same time period, 434 of which were assaults. That is an
24 average of 13 incidents per week at the Golden Gate, and 16 incidents per week at the
25 Orpheum.

26 3. To attract customers and ensure the safety of its patrons at these long-
27 running, highly profitable shows, SHN employs a cadre of security guards, mostly retired
28 police and probation officers, who are relegated to part time, on-call status. Wearing

1 mandatory bright orange jackets, SHN’s security staff patrols the area near the theaters
2 before and after the shows, as late as one o’clock a.m., while productions are running.
3 SHN’s security guards are required to face danger, endure cold or hot weather, and stand
4 for long hours, particularly during the “load in/load out” of productions. Notwithstanding
5 these conditions, SHN and its owners and managers repeatedly skirt the applicable wage
6 and hour laws.

7 4. Plaintiffs and Class Members are approximately forty (45) current and
8 former security guards who worked and work for Defendant SHN at its theaters in
9 San Francisco, California. SHN and the other Defendants fail to pay their guards all wages
10 to which they are owed, fail to provide them with mandatory overtime pay, deny them
11 meal and rest breaks, fail to provide them with their right to sick leave and suitable seating,
12 and fail to reimburse them for the cost of their mandatory uniforms. Plaintiffs and Class
13 Members work tirelessly to protect SHN’s patrons and physical assets, often putting their
14 own safety at risk, while Defendants shortchange them at every step of the way by
15 ignoring their obligations under state and local law.

16 **JURISDICTION & VENUE**

17 5. This Court has original subject matter jurisdiction over the action pursuant to
18 Article VI, section 10 of the California Constitution.

19 6. This Court has personal jurisdiction over Defendants pursuant to California
20 Code of Civil Procedure section 410.10.

21 7. Venue is proper pursuant to California Code of Civil Procedure
22 section 395.5, because the County of San Francisco is where Defendants’ obligations and
23 liability arise and where Defendant SHN has its principal place of business.

24 **NATURE OF THE ACTION**

25 8. This lawsuit seeks to recover compensation for Defendants’ failure to pay
26 overtime and to provide required meal and rest breaks, sick leave, suitable seating, and
27 uniform allowances for Plaintiffs and their similarly situated co-workers who have worked
28 as security guards for Defendant SHN in the State of California and the City and County of

1 San Francisco.

2 9. Plaintiffs bring this action on behalf of themselves and all other similarly
3 situated current and former SHN security guards who worked in California at any time
4 within the four years prior to the date of the filing of the initial Complaint through the final
5 disposition of this action (the “Class Period”), and who were, are, or will be unlawfully
6 deprived of overtime premium pay, meal and rest periods, sick leave rights, and proper
7 seating during downtime under California and local law (the “Class Members”).

8 10. Defendants operate two theaters in San Francisco, California: the Golden
9 Gate Theatre, located at 1 Taylor St., San Francisco, California 94102, and the Orpheum
10 Theatre, located at 1182 Market St., San Francisco, California 94102. Upon information
11 and belief, from the start of the Class Period until December 2014, Defendants also
12 operated a third theater, the Curran Theatre, located at 445 Geary St, San Francisco,
13 California 94102.

14 11. Defendants regularly require their security guards to work in excess of eight
15 (8) hours per workday. Further, on some occasions, Defendants require their security
16 guards to work in excess of twelve (12) hours per workday and in excess of forty (40)
17 hours per workweek. However, Defendants’ long-standing policy and practice has been to
18 fail to pay their security guards daily or weekly overtime compensation.

19 12. Defendants do not use a time stamp system, or any other reliable
20 contemporaneous mechanism to record the hours Class Members work accurately.

21 13. On information and belief, in approximately 2014, a security guard
22 complained about the lack of overtime pay, and Defendants began to provide some
23 overtime pay on an ad hoc basis. However, Defendants’ policy and practice continues to
24 be that they deny overtime pay to security guards unless specifically requested, in violation
25 of the California Labor Code.

26 14. Defendants also have a policy and practice of not providing security guards
27 with meal and rest breaks to which they are entitled, and do not pay them an hour of
28 compensation at their regular rate of pay for each workday that a meal or rest break is not

1 provided. Moreover, Defendants deny security guards mandatory paid sick leave and
2 concomitant rights under local law, fail to provide suitable seating to guards during
3 downtime from active duties, and fail to reimburse their mandatory uniform costs.

4 15. By the conduct described in this Class Action Complaint, Defendants have
5 violated California law, including California Labor Code sections 201, 202, 203, 204b,
6 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198; California Industrial Welfare
7 Commission (“IWC”) Order 10-2001; the San Francisco Paid Sick Leave Ordinance (San
8 Francisco Administrative Code Chapter 12W); and California Business and Professions
9 Code §§ 17200 et seq., (collectively, the “California Wage and Hour Laws”).

10 16. In order to remedy Defendants’ violations of the California Wage and Hour
11 Laws, Plaintiffs bring this action pursuant to California Code of Civil Procedure section
12 382.

13 THE PARTIES

14 Plaintiff Darol Smith

15 17. Plaintiff SMITH is an adult individual who is a resident of Napa, California.

16 18. Plaintiff SMITH was employed by Defendant SHN in San Francisco,
17 California from approximately 1979 to approximately 2009 as a Security Guard and the
18 Assistant Director of Security, and from approximately 2009 to May 2016 as the Director
19 of Security.

20 19. At all relevant times, Plaintiff SMITH was a covered employee within the
21 meaning of the California Labor Code and all applicable IWC Orders, and was nonexempt
22 and paid hourly.

23 20. Plaintiff SMITH regularly worked shifts as long as thirteen (13) hours in a
24 day.

25 Plaintiff Joseph Rodrigues

26 21. Plaintiff RODRIGUES is an adult individual who is a resident of San Pablo,
27 California.

28 22. Plaintiff RODRIGUES has been employed by Defendant SHN as a Security

1 Guard in San Francisco from approximately 2008 until the present.

2 23. At all relevant times, Plaintiff RODRIGUES was a covered employee within
3 the meaning of the California Labor Code and all applicable IWC Orders, and was
4 nonexempt and paid hourly.

5 24. Plaintiff RODRIGUES regularly worked shifts as long as thirteen (13) hours
6 in a workday.

7 **Defendant SHN**

8 25. Defendant SHN is a Delaware limited liability company authorized to do
9 business in, and in fact doing business in, California. SHN is a resident of the State of
10 California and the City and County of San Francisco, and committed the acts and
11 omissions alleged in this complaint in the City and County of San Francisco.

12 26. At all relevant times, SHN has been an employer within the meaning of the
13 California Labor Code and all applicable IWC Orders.

14 27. SHN operates theaters which provide venue for plays and live performances
15 in San Francisco, California.

16 28. At all relevant times, SHN operated the Golden Gate Theatre in San
17 Francisco, California.

18 29. At all relevant times, SHN operated the Orpheum Theatre in San Francisco,
19 California.

20 30. From the beginning of the Class Period until approximately December 2014,
21 SHN operated the Curran Theatre in San Francisco, California.

22 31. SHN employed Plaintiff SMITH and Plaintiff RODRIGUES, and has
23 employed, will employ, or continues to employ each Class Member, as described in
24 paragraph 9, *supra*.

25 32. At all times relevant herein, SHN maintained control, oversight, and
26 direction over Plaintiffs and Class Members, including over the timekeeping, payroll, and
27 other employment practices that applied to them.

28 33. SHN is the entity listed on Plaintiffs' paystubs and W-2s.

1 **Defendant NEDERLANDER OF SAN FRANCISCO ASSOCIATES**

2 34. Defendant NEDERLANDER SF is a business entity doing business in
3 California. On information and belief, NEDERLANDER SF is a corporation and/or a
4 partnership, and Defendant NEDERLANDER is a partner of NEDERLANDER SF or is
5 engaged in business as a sole proprietor doing business as NEDERLANDER of SAN
6 FRANCISCO ASSOCIATES. On information and belief, NEDERLANDER SF is a
7 resident of the State of New York, but committed the acts and omissions alleged in this
8 complaint in the City and County of San Francisco.

9 35. On information and belief, at all relevant times, NEDERLANDER SF has
10 been a fifty-percent owner of SHN, and therefore is liable as an employer within the
11 meaning of the California Labor Code and all applicable IWC Orders.

12 36. NEDERLANDER SF operates theaters through its membership in SHN
13 which provide venue for plays and live performances in San Francisco, California.

14 37. At all relevant times, NEDERLANDER SF operated the Golden Gate
15 Theatre in San Francisco, California through its membership in SHN.

16 38. At all relevant times, NEDERLANDER SF operated the Orpheum Theatre in
17 San Francisco, California through its membership in SHN.

18 39. From the beginning of the Class Period until approximately December 2014,
19 NEDERLANDER SF operated the Curran Theatre in San Francisco, California through its
20 membership in SHN.

21 40. NEDERLANDER SF employed Plaintiff SMITH and Plaintiff
22 RODRIGUES through its ownership of SHN, and has employed, will employ, or continues
23 to employ each Class Member, as described in paragraph 9, *supra*.

24 41. At all times relevant herein, NEDERLANDER SF, through its membership
25 in SHN, maintained control, oversight, and direction over Plaintiffs and Class Members,
26 including over the timekeeping, payroll, and other employment practices that applied to
27 them.

28

1 **Defendant CSH THEATRES**

2 42. Defendant CSH THEATRES is a Delaware limited liability company
3 authorized to do business in, and in fact doing business in, California. CSH is a resident of
4 the State of California and the City and County of San Francisco, and committed the acts
5 and omissions alleged in this complaint in the City and County of San Francisco.

6 43. On information and belief, at all relevant times, CSH has been a fifty-percent
7 owner of SHN, and therefore is liable as an employer within the meaning of the California
8 Labor Code and all applicable IWC Orders.

9 44. CSH operates theaters through its membership in SHN which provide venue
10 for plays and live performances in San Francisco, California.

11 45. At all relevant times, CSH operated the Golden Gate Theatre in San
12 Francisco, California through its membership in SHN.

13 46. At all relevant times, CSH operated the Orpheum Theatre in San Francisco,
14 California through its membership in SHN.

15 47. From the beginning of the Class Period until approximately December 2014,
16 CSH operated the Curran Theatre in San Francisco, California through its membership in
17 SHN.

18 48. CSH employed Plaintiff SMITH and Plaintiff RODRIGUES through its
19 ownership of SHN, and has employed, will employ, or continues to employ each Class
20 Member, as described in paragraph 9, *supra*.

21 49. At all times relevant herein, CSH, through its membership in SHN,
22 maintained control, oversight, and direction over Plaintiffs and Class Members, including
23 over the timekeeping, payroll, and other employment practices that applied to them.

24 **Defendant ROBERT NEDERLANDER**

25 50. Defendant ROBERT NEDERLANDER is an adult individual who, on
26 information and belief, is a resident of New York, New York.

27 51. At all relevant times, Defendant NEDERLANDER has been an owner,
28 director, and/or officer of SHN and NEDERLANDER SF, and therefore is liable as a

1 person acting on behalf of an employer pursuant to California Labor Code section 558.1.

2 52. On information and belief Defendant NEDERLANDER is engaged in
3 business as a sole proprietor doing business as NEDERLANDER of SAN FRANCISCO
4 ASSOCIATES.

5 **Defendant CAROLE SHORENSTEIN HAYS**

6 53. Defendant CAROLE SHORENSTEIN HAYS is an adult individual who is a
7 resident of San Francisco, California.

8 54. On information and belief, at all relevant times, and at least from the
9 beginning of the Class Period until approximately August 2014, Defendant
10 SHORENSTEIN HAYS was an owner, director, and/or officer of SHN and CSH, and
11 therefore is liable as a person acting on behalf of an employer pursuant to California Labor
12 Code section 558.1.

13 **Defendant JEFFREY HAYS**

14 55. Defendant JEFFREY HAYS is an adult individual who is a resident of San
15 Francisco, California.

16 56. On information and belief, at all relevant times, and at least from
17 approximately August 2014 until the present, Defendant HAYS was a director and/or
18 officer of SHN, and therefore is liable as a person acting on behalf of an employer
19 pursuant to California Labor Code section 558.1.

20 **Defendant GREG HOLLAND**

21 57. Defendant GREG HOLLAND is an adult individual who is a resident of San
22 Francisco, California.

23 58. At all relevant times, Defendant HOLLAND was a director and/or officer of
24 SHN, and therefore is liable as a person acting on behalf of an employer pursuant to
25 California Labor Code section 558.1.

26 **Defendants DOES 1 through 20**

27 59. Plaintiffs do not know the true names and capacities of those Defendants
28 sued herein as DOES 1 through 20, inclusive, and therefore sue those Defendants by such

1 fictitious names.

2 60. Plaintiffs will amend this Complaint to allege the true names and capacities
3 of the Defendants sued herein as DOES 1 through 20 whenever they are ascertained.

4 61. Plaintiffs are informed and believe, and on that basis allege, that each of the
5 Defendants sued herein as DOES 1 through 20, inclusive, is in some manner legally
6 responsible for the wrongful acts and/or omissions alleged herein.

7 62. Plaintiffs are informed and believe, and on that basis allege, that each of the
8 Defendants acted in concert with each and every other Defendant, intended to and did
9 participate in the events, acts, practices and courses of conduct alleged herein, and
10 proximately caused damage and injury thereby to Plaintiffs as alleged herein.

11 63. At all times herein mentioned, each of Defendants, including DOES 1
12 through 20, were agents, employees, supervisors, employers, alter egos, and/or joint
13 venturers of these Defendants, and were acting both individually and in the course and
14 scope of such relationship, and/or as integrated enterprises and/or joint employers, with
15 knowledge and/or consent of the remaining Defendants.

16 **STATEMENT OF FACTS**

17 64. Plaintiffs re-allege and incorporate by reference herein all allegations
18 previously made in paragraphs 1 through 63, above. Plaintiffs and Class Members provide
19 security for Defendants' two theaters in San Francisco, the Orpheum and the Golden Gate.
20 Until approximately December 2014, Plaintiffs and Class Members also provided security
21 for the Curran Theatre, then operated by Defendants.

22 65. Throughout their employment with Defendants, Plaintiffs and Class
23 Members are or were paid on an hourly basis.

24 66. Defendants required and require Plaintiffs and Class Members to provide
25 security services and perform other tasks. At each theater, guards are posted in the theater
26 lobby, at the stage door, and at key street entrances before, during, and after performances.
27 In addition, there is a "Market Street Detail," in which security guards must patrol the
28 dangerous Market Street area in the vicinity of Defendants' theaters to safeguard the area

1 for theater patrons. Defendants also post a guard in the lobby of Defendant SHN’s
2 business office, at 1182 Market Street in San Francisco, daily, and overnight at the same
3 location. There are also shifts called “load in/load out” shifts, which require five guards at
4 the Orpheum Theatre and three guards at the Golden Gate Theatre. For these shifts, guards
5 stand at the theater exits while equipment and sets are loaded in and out, either before or
6 after a show run. These shifts often occur at night. Finally, guards must sometimes work
7 miscellaneous shifts to provide additional security when a public figure appears at one of
8 the theaters, for example.

9 67. Plaintiffs’ and Class Members’ work is difficult, physically exhausting, and
10 often dangerous. Plaintiffs and Class Members often work at night, outside, and in a
11 dangerous neighborhood of San Francisco. Generally, they are on their feet during the vast
12 majority of their working time. When they work during theater performances, they are
13 responsible for checking hundreds, if not thousands, of bags, and bear the burden of
14 keeping a large theater full of audience members, crew, staff, and actors safe. During the
15 load in/load out shifts, Plaintiffs and Class Members must stand guard for the entire
16 duration of the loading process, and cannot leave their posts lest the expensive theater
17 equipment get stolen, even while the workers doing the loading—who are represented by
18 the Teamsters Union—receive meal and rest breaks. Defendants require Plaintiffs and
19 Class Members to wear an orange jacket even on very hot days while they stand in direct
20 sunlight for a full shift. Because Defendants do not allow Plaintiffs and Class Members to
21 take rest breaks, they are not able to drink water and on hot days can quickly become
22 drenched in sweat.

23 68. Throughout their employment with Defendants, Plaintiffs and Class
24 Members regularly work or worked more than eight (8) hours per workday. On occasion,
25 Plaintiffs and Class Members work or worked more than twelve (12) hours per workday
26 and more than forty (40) hours per week.

27 69. For example, Defendants frequently require Plaintiffs and Class Members to
28 work more than one shift per day at different locations, often resulting in Class Members

1 working in excess of eight (8) hours in a workday, even though the scheduled time at each
2 location is less than eight (8) hours. Moreover, Defendants often require Plaintiffs and
3 Class Members to work shifts scheduled to last more than eight (8) hours in a workday at a
4 single location, and in other cases require Plaintiffs and Class Members to continue to
5 work after the end of their scheduled shifts if the work is not completed.

6 70. Defendants were and are aware that Plaintiffs and Class Members regularly
7 work or worked more than eight (8) hours per workday, yet Defendants fail to pay them
8 overtime compensation for hours worked over eight (8) in a workday or forty (40) in a
9 workweek.

10 71. On information and belief, beginning in approximately 2014, after a security
11 guard complained about not receiving overtime pay, Defendants began to pay some
12 overtime to class members on an ad hoc basis, and only upon request. As a matter of
13 policy and practice, Defendants continue to deny overtime pay to class members unless
14 specifically requested.

15 72. Defendants do not keep accurate records of hours worked by Plaintiffs and
16 Class Members. Class Members' hours are not accurately recorded on pay stubs. Class
17 Members are not required to sign in or out, or to record their time contemporaneously, and
18 Defendants do not keep any contemporaneous records of hours worked.

19 73. Plaintiffs and Class Members are paid weekly. Plaintiffs and Class Members
20 frequently do not receive payment for all hours they have worked in the relevant pay
21 period on their paychecks. Defendants' policy and practice is to pay these missing wages
22 only upon specific request by a security guard. Defendants do not have a mechanism to
23 correct paycheck discrepancies systematically and accurately account for all hours worked
24 by Class Members.

25 74. Plaintiffs and Class Members regularly work or worked two separately
26 scheduled shifts in the same workday, for example when there are both matinee and
27 evening performances of a show at an SHN theater. On these occasions, Defendants
28 mandate that Plaintiffs and Class Members remain on theater premises, or in immediate

1 proximity thereto, without relief of duty between these separately scheduled shifts in the
2 same workday. Defendants do not pay Plaintiffs and Class Members for the time between
3 two separately scheduled shifts.

4 75. Plaintiffs and Class Members regularly work or worked in excess of five-
5 hour shifts for Defendants, without being afforded at least a half-hour meal break in which
6 they are relieved of all work duties, and work or worked ten-hour shifts for Defendants,
7 without being afforded a second half-hour meal break in which they are relieved of all
8 work duties. Defendants' policy and practice is to deny meal periods to Plaintiffs and
9 Class Members or to require them to remain on duty during their meal breaks.

10 Defendants' Procedures state: "You are NEVER to leave your post unless relieved or
11 approved by Shift Supervisor." The procedures also state: "NO eating while at your post."
12 Class Members have not signed an agreement with Defendants allowing for on-duty meal
13 breaks.

14 76. Plaintiffs and Class Members regularly work or worked for Defendants
15 without being afforded at least one ten-minute rest break, in which they were relieved of
16 all duty, per four (4) hours of work performed (or major fraction thereof). In fact, upon
17 information and belief, Defendants tell Class Members that they are not allowed to take a
18 break unless they are going to the restroom, in which case they must return to their post
19 immediately.

20 77. Defendants did not and do not pay Plaintiffs and Class Members at least one
21 (1) hour of compensation at their regular rate of pay for each workday for which a meal or
22 rest period was not provided.

23 78. Defendants do not provide paid sick leave to Plaintiffs and Class Members,
24 nor do Defendants provide notice of the availability of sick leave to Plaintiffs and Class
25 Members. Defendants do not post notice in a conspicuous place at any of the worksites
26 where Plaintiffs and Class Members work for Defendants, or otherwise inform Plaintiffs
27 and Class Members of the availability of paid sick leave.

28 79. This lack of paid sick leave has caused and continues to cause significant

1 harm to Plaintiffs and Class Members. For example, during the Class Period, a class
2 member was forced to take regular leaves of absence to care for his minor child, who has a
3 disability. None of the hours of work the class member missed were compensated.

4 80. Defendants do not provide suitable seating to Plaintiffs and Class Members
5 for those times when Plaintiffs and Class Members are not engaged in the active duties of
6 their employment, even when the use of seats would not interfere with the performance of
7 their duties. For example, during shows, Class Members' active work is before and after
8 the show when audience members are coming and going, and during the intermission, but
9 guards are not actively working while the performance is in progress. Yet, Defendants do
10 not provide seating for guards to use during this downtime. Moreover, Defendants do not
11 provide designated break rooms for Plaintiffs and Class Members to use during mandatory
12 rest breaks.

13 81. Defendants mandate that Plaintiffs and Class Members wear specific
14 clothing during their shifts, which Plaintiffs and Class Members must purchase: black
15 shoes, black pants, and a black shirt or turtleneck. Wearing these items is a condition of
16 employment for Class Members. Until approximately one year ago, Defendants did not
17 reimburse Plaintiffs and Class Members for the costs of any part of this mandatory
18 uniform. Approximately one year ago, Defendants started to provide the shirt to Plaintiffs
19 and Class Members, but Defendants still do not provide any reimbursement for the pants
20 or shoes.

21 82. Plaintiffs and Class Members have been and continue to be afraid to
22 complain to Defendants about their illegal practices for fear of retaliation. Defendants
23 maintain a climate of fear in the workplace by keeping all security guards in part-time, on-
24 call status, so Plaintiffs and Class Members are afraid that if they complain about
25 Defendants' violations of wage and hour laws, they will not be called back to work for
26 additional shifts.

27 83. On August 22, 2016, Plaintiff SMITH sent a letter (attached hereto as
28 **Exhibit A** and incorporated herein by reference) to the California Labor Workforce

1 Development Agency (“LWDA”) and Defendant SHN informing them that SHN had
2 violated provisions of the California Labor Code, making it liable for penalties under the
3 California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698-
4 2699.5 (“PAGA”).

5 84. On October 10, 2016, Plaintiffs SMITH and RODRIGUES sent an amended
6 letter (attached hereto as **Exhibit B** and incorporated herein by reference) to the LWDA
7 and all Defendants informing them that Defendants had violated provisions of PAGA.

8 CLASS ACTION ALLEGATIONS

9 85. Plaintiffs re-allege and incorporated by reference herein all allegations
10 previously made in paragraphs 1 through 84, above.

11 86. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated. Plaintiffs seek class certification pursuant to California Code of Civil Procedure
13 section 382 and/or certification of a representative action pursuant to California Business
14 and Professions Code sections 17200 et seq. Such a representative action is necessary to
15 prevent and remedy the unlawful and unfair practices described herein.

16 87. Plaintiffs bring the claims articulated herein on behalf of all Class Members,
17 all of whom have been damaged by the conduct of Defendants described herein.

18 88. Pursuant to the requirements of California Code of Civil Procedure section
19 382, there is a well-defined community of interest in the questions of law and fact involved
20 affecting the Plaintiffs and Class Members, and the proposed class is easily ascertainable.

21 89. Numerosity: The potential Class Members as defined are sufficiently
22 numerous that joinder of all Class Members is impractical and unfeasible. While the
23 precise membership of the proposed class is undetermined at this time, Plaintiffs are
24 informed and believe that the proposed class is comprised of at least 45 members and the
25 identity of such members should be easily ascertainable through inspection of Defendants’
26 employment records.

27 90. Commonality: Common questions of law and fact exist as to all Class
28 Members that predominate over any questions affecting individual members, including,

1 but not limited to, the following:

2 a. Whether and to what extent Defendants violated IWC Wage Order
3 No. 10-2001 and Labor Code section 226.7 by failing to afford Plaintiffs and Class
4 Members proper rest periods and by encouraging and/or coercing Plaintiffs and Class
5 Members to forego taking their rest periods.

6 b. Whether and to what extent Defendants violated Wage Order No. 10-
7 2001 and Labor Code sections 226.7 and 512 by failing to provide proper off-duty meal
8 periods and encouraging and/or coercing Plaintiffs and Class Members to forego taking
9 their meal periods.

10 c. Whether and to what extent Defendants violated Wage Order No. 10-
11 2001 and Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 by failing to
12 pay Plaintiffs and Class Members at least California minimum wage for all hours worked
13 and by failing to pay Plaintiffs and Class Members for the time they spend on theater
14 premises, or in immediate proximity thereto, without relief of duty between separately
15 scheduled shifts on the same workday.

16 d. Whether and to what extent Defendants violated Wage Order No. 10-
17 2001 and California Labor Code section 226(a) by failing to furnish required accurate
18 payroll records of Plaintiffs and Class Members.

19 e. Whether and to what extent Defendants violated Wage Order No. 10-
20 2001 and California Labor Code sections 510 and 1198 by failing to pay Plaintiffs and
21 Class Members applicable overtime compensation for work done in excess of eight (8)
22 hours per workday and/or twelve (12) hours per workday.

23 f. Whether and to what extent Defendants violated Wage Order No. 10-
24 2001 and California Labor Code section 1198 by failing to provide suitable seating to
25 Plaintiffs and Class Members.

26 g. Whether and to what extent Defendants violated the San Francisco
27 Sick Leave Ordinance, Chapter 12W of the San Francisco Administrative Code, by failing
28 to provide paid sick leave and by failing to post notice of the availability of paid sick leave

1 conspicuously to Plaintiffs and Class Members.

2 h. Whether and to what extent Defendants violated Wage Order No. 10-
3 2001 by failing to provide and maintain the uniforms they required Plaintiffs and Class
4 Members to wear while working.

5 i. Whether Defendants violated California Business and Professions
6 Code sections 17200 et seq. by engaging in the conduct described hereinabove as to the
7 Class Members, including, but not limited to, by failing to afford proper rest periods; by
8 failing to provide proper meal periods; by failing to furnish accurate pay records; by failing
9 to pay overtime compensation; by failing to pay minimum wage compensation for all
10 hours worked; by failing to provide suitable seating; and by failing to comply with the San
11 Francisco Sick Leave Ordinance.

12 j. Whether and to what extent Defendants are subject to injunctive relief
13 necessary to prevent the violations described herein.

14 k. Whether and to what extent Defendants must compensate Plaintiffs
15 and Class Members with restitution and damages to compensate for the violations alleged
16 herein.

17 91. Typicality: The claims of the named Plaintiffs are typical of the claims of
18 the Class Members. Plaintiffs and Class Members sustained similar injuries and damages
19 arising out of and caused by Defendants' common course of conduct in violation of law as
20 alleged herein.

21 92. Adequacy of Representation: Plaintiffs are Class Members and will fairly
22 and adequately represent and protect the interests of the putative class members because
23 they have no disabling conflict(s) of interest that would be antagonistic to those of the
24 other class members. Plaintiffs have retained counsel who are competent and experienced
25 in complex class action and wage and hour litigation.

26 93. Superiority of Class Action: There is no plain, speedy, or adequate remedy
27 other than by maintenance of this class action because Plaintiffs and Class Members
28 suffered similar treatment and harm as a result of systematic policies and practices, and

1 because, absent a class action, Defendants’ unlawful conduct will likely continue un-
2 remedied and unabated given that the damages suffered by individual class members are
3 small compared to the expense and burden of individual litigation. Class certification is
4 also superior because it will obviate the need for unduly duplicative litigation which might
5 result in inconsistent judgments about Defendants’ practices. Consequently, there would
6 be a failure of justice but for the maintenance of the present class action.

7 **FIRST CAUSE OF ACTION**
8 ***Failure to Provide Rest Periods***
9 **(Cal. Lab. Code §§ 226.7, 1198 and ICW Order No. 10-2001)**
10 **On Behalf of Plaintiffs and Class Members Against All Defendants**

11 94. Plaintiff re-alleges and incorporates by reference herein all allegations
12 previously made in paragraphs 1 through 93, above.

13 95. California Labor Code section 226.7(a) prohibits an employer from requiring
14 an employee to work during any rest period mandated by an applicable Industrial Wage
15 Order. IWC Wage Order No. 10-2001 section 12(A) requires employers to permit
16 employees to take a paid rest period of at least ten (10) minutes for every four (4) hours
17 worked or major fraction thereof. Under both California Labor Code section 226.7(b) and
18 IWC Wage Order No. 10-2001 section 12(B), if an employer fails to provide an employee
19 a rest period as required, the employer must pay the employee one hour of pay at the
20 employee’s regular rate of compensation for each workday that a rest period is not
21 provided as required.

22 96. California Labor Code section 1198 makes unlawful the employment of an
23 employee under conditions the IWC prohibits.

24 97. Defendants have a policy or practice of failing to authorize and permit
25 Plaintiffs and Class Members to take, on time or at all, the rest periods required by
26 California Labor Code section 226.7 and IWC Wage Order No. 10-2001 section 12.

27 98. Defendants also have a policy and practice of failing to pay each of their
28 employees who was not provided with a rest period as required an additional one hour of
compensation at each employee’s regular rate of pay.

1 99. As a direct and proximate result of Defendants' unlawful conduct as alleged
2 herein, Plaintiffs and Class Members have sustained economic damages, including but not
3 limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
4 entitled to recover economic and statutory damages and other appropriate relief from
5 Defendants' violations of the California Labor Code and IWC Wage Order No. 10-2001.

6 WHEREFORE, Plaintiffs and the Class Members request relief as described below.

7 **SECOND CAUSE OF ACTION**
8 ***Failure to Provide Meal Breaks***
9 **(Cal. Lab. Code §§ 226.7, 512, 1198 and IWC Order 10-2001)**
10 **On Behalf of Plaintiffs and Class Members Against All Defendants**

11 100. Plaintiff re-alleges and incorporates by reference herein all allegations
12 previously made in paragraphs 1 through 99, above.

13 101. California Labor Code section 226.7(a) prohibits an employer from requiring
14 an employee to work during any meal period mandated by an applicable IWC Wage Order.
15 IWC Wage Order No. 10-2001 section 11(A) prohibits employers from employing a
16 worker for more than five (5) hours without a meal period of at least thirty (30) minutes.
17 IWC Wage Order No. 10-2001 section 11(B) also prohibits employers from employing a
18 worker for more than ten (10) hours without a second meal period of at least thirty (30)
19 minutes. Under California Labor Code section 226.7(b) and IWC Wage Order No. 10-
20 2001 section 11(D), if an employer fails to provide an employee a meal period as required,
21 the employer must pay the employee one hour of pay at the employee's regular rate of
22 compensation for each workday that the meal period is not provided as required.

23 102. California Labor Code section 1198 makes unlawful the employment of an
24 employee under conditions the IWC prohibits.

25 103. Defendants have a policy or practice of failing to authorize and permit
26 Plaintiffs and Class Members to take the meal periods required by California Labor Code
27 sections 226.7, 512 and IWC Wage Order No. 10-2001, section 11.

28 104. Defendants also have a policy and practice of failing to pay each of their
employees who was not provided with a meal period as required, an additional one hour of

1 compensation at each employee's regular rate of pay.

2 105. As a direct and proximate result of Defendants' unlawful conduct as alleged
3 herein, Plaintiffs and Class Members have sustained economic damages, including but not
4 limited to unpaid wages and lost interest, in an amount to be established at trial, and are
5 entitled to recover economic and statutory damages, as well as interest, costs and
6 reasonable attorney's fees and costs pursuant to statute and other appropriate relief from
7 Defendants' violations of the California Labor Code and IWC Wage Order No. 10-2001.

8 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.

9 **THIRD CAUSE OF ACTION**
10 ***Failure to Pay State Minimum Wage***
11 **(Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198**
12 **and ICW Order 10-2001)**
13 **On Behalf of Plaintiffs and Class Members Against All Defendants**

14 106. Plaintiffs re-allege and incorporate by reference herein all allegations
15 previously made in paragraphs 1 through 105, above.

16 107. California Labor Code sections 1182.12 and 1197, and IWC Wage Order No.
17 10-2001 section 4, require Defendants to pay Plaintiffs and Class Members at or above the
18 legal minimum wage for every hour Defendants suffer or permit those employees to work.

19 108. California Labor Code section 1198 makes unlawful the employment of an
20 employee under conditions the IWC prohibits.

21 109. California Labor Code sections 1194(a) and 1194.2(a) provide that an
22 employer that has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the unpaid balance of the unpaid wages as well as liquidated damages in
24 an amount equal to the wages unpaid and interest thereon. Under California Labor Code
25 section 1197.1, Defendants are also liable for civil penalties, for failure to pay minimum
26 wage as follows: (1) for any initial violation, one hundred dollars (\$100) for each Plaintiff
27 or Class Member for each pay period for which he or she was not paid minimum wage,
28 and (2) for each subsequent violation, two hundred fifty dollars (\$250) for each Plaintiff or
Class Member for each pay period for which he or she was not paid minimum wage.
Defendants have a policy or practice of failing to pay Plaintiffs and Class Members at or

1 above the legal minimum wage for many hours worked by Plaintiffs and Class Members,
2 including mandatory time spent on theater premises, or in immediate proximity thereto,
3 without relief of duty for the duration between separately scheduled shifts on the same
4 workday.

5 110. As a direct and proximate result of Defendants' unlawful conduct as alleged
6 herein, Plaintiffs and Class Members have sustained economic damages, including but not
7 limited to unpaid minimum wages and lost interest, in an amount to be established at trial,
8 and are entitled to recover economic and statutory damages, penalties, pre-judgment
9 interest and other appropriate relief from Defendants' violations of the California Labor
10 Code and IWC Wage Order No. 10-2001, including reasonable attorney's fees and costs.

11 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.

12 **FOURTH CAUSE OF ACTION**
13 ***Failure to Furnish Accurate Wage Statements***
14 **(Cal. Lab. Code § 226)**
15 **On Behalf of Plaintiffs and Class Members Against All Defendants**

16 111. Plaintiffs re-allege and incorporate by reference herein all allegations
17 previously made in paragraphs 1 through 110, above.

18 112. California Labor Code section 226(a) requires employers to accurately report
19 total hours worked by Plaintiffs and Class Members. Defendants failed to comply with
20 Labor Code section 226(a) on wage statements provided to Plaintiffs and Class Members
21 for hours worked, but not compensated, and overtime hours worked but not paid at
22 applicable overtime rates. Pursuant to Defendants' policy or practice, Defendants have
23 willfully failed and continue to willfully fail to accurately report total hours worked on
24 wage statements in violation of California Labor Code section 226(a).

25 113. Plaintiffs and Class Members have suffered and will continue to suffer actual
26 economic harm resulting from these violations, as they have been, and will continue to be,
27 precluded from accurately monitoring the wages to which they are entitled, have been
28 required to retain counsel and other experts and consultants to evaluate and calculate
unpaid wages, and have suffered delays in receiving the wages and interest that are due

1 and owed to them. Defendants' ongoing violations of this mandatory recordkeeping law
2 has caused, and will continue to cause, irreparable harm to Plaintiffs and Class Members,
3 among other reasons because as long as Defendants fail to maintain the required records,
4 Plaintiffs and Class Members will be unable to determine or demonstrate the precise
5 number of hours actually worked, or the wages and penalties owed to them for the long
6 hours that Defendants have required them to work.

7 114. By willfully failing to maintain the accurate and complete records required
8 by California Labor Code section 226(a), Defendants are also liable for civil penalties
9 pursuant to California Labor Code sections 226(e) and 226.3. Pursuant to 226(e), (1) for
10 any initial violation, fifty dollars (\$50) for each Plaintiff or Class Member for each pay
11 period, and (2) for each subsequent violation, one hundred dollars (\$100) for each Plaintiff
12 or Class Member for each pay period, not exceeding an aggregate penalty of four thousand
13 dollars (\$4,000), and also pursuant to this section, Plaintiffs are entitled to an award of
14 costs and reasonable attorney's fees. Pursuant to section 226.3, (1) two hundred fifty
15 dollars (\$250) per employee per violation in an initial citation and (2) one thousand dollars
16 (\$1,000) per employee for each violation in a subsequent citation, for which the employer
17 fails to keep the records required by section 226(a).

18 115. California Labor Code section 226(h) authorizes an employee to bring an
19 action for injunctive relief to ensure compliance with Labor Code section 226 and to
20 recover costs and reasonable attorney's fees. Plaintiffs and Class Members are entitled to
21 injunctive relief under the governing legal standards, and are entitled to an order requiring
22 Defendants to provide Plaintiffs and Class Members all of the information required by
23 California Labor Code section 226(a).

24 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.

25 **FIFTH CAUSE OF ACTION**
26 ***Failure to Pay Overtime Compensation***
27 **(Cal. Lab. Code §§ 510, 1194 and ICW Order 10-2001)**
28 **On Behalf of Plaintiffs and Class Members Against All Defendants**

116. Plaintiffs re-allege and incorporate by reference herein all allegations

1 previously made in paragraphs 1 through 115, above.

2 117. California law requires employers, such as Defendants, to pay overtime
3 compensation to all nonexempt employees for all hours worked over forty (40) per
4 workweek, or over eight (8) per workday, at a rate of one and one-half time the regular rate
5 of pay per hour. California law also requires employers, including Defendant, to pay
6 double time compensation to all nonexempt employees for all hours worked over twelve
7 (12) in a workday.

8 118. Plaintiffs and Class Members have been misclassified as exempt employees
9 when in fact they are nonexempt employees, or otherwise have been deprived of
10 appropriate overtime compensation, and are entitled to be paid overtime compensation for
11 all overtime hours worked.

12 119. Throughout the Class Period, and continuing through the present, Plaintiffs
13 and Class Members worked in excess of eight (8) hours per workday and/or forty (40)
14 hours per workweek. On some occasions, Plaintiffs and some Class Members also worked
15 in excess of twelve (12) hours per workday.

16 120. During the Class Period, Defendants misclassified Plaintiffs and Class
17 Members as exempt from overtime pay premiums, or otherwise failed and refused to pay
18 them overtime premium pay for all overtime hours worked.

19 121. As a direct and proximate result of Defendants' violations of the overtime
20 compensation provisions as alleged herein, Plaintiffs and Class Members have sustained
21 economic damages, including but not limited to unpaid wages and lost interest, in an
22 amount to be established at trial. Plaintiffs and Class Members are entitled to damages,
23 including overtime wages, prejudgment interest, and costs and attorneys' fees, pursuant to
24 statute and other applicable law.

25 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.
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27
28

1 **SIXTH CAUSE OF ACTION**
2 ***Waiting Time Penalties***
3 **(Cal. Lab. Code §§ 201, 202, & 203)**
4 **On Behalf of Plaintiffs and Class Members Against All Defendants**

5 122. Plaintiffs re-allege and incorporate by reference herein all allegations
6 previously made in paragraphs 1 through 121, above.

7 123. California Labor Code sections 201 and 202 require Defendants to pay its
8 employees all wages due within time specified by law.

9 124. California Labor Code section 203 provides that if an employer willfully
10 fails to timely pay such wages, the employer must continue to pay the subject employees'
11 wages until the back wages are paid in full or an action is commenced, up to a maximum
12 of thirty days of wages.

13 125. Defendants willfully failed to pay Plaintiff SMITH and Class Members who
14 are no longer employed by Defendants compensation due upon termination as required by
15 California Labor Code §§ 201 and 202. As a result, Defendants are liable to Plaintiff and
16 former employee Class Members waiting time penalties as provided under California
17 Labor Code § 203, as well as reasonable attorneys' fees and costs of suit.

18 **SEVENTH CAUSE OF ACTION**
19 ***Failure to Comply with San Francisco Paid Sick Leave Ordinance***
20 **(San Francisco Administrative Code, Ch. 12W)**
21 **On Behalf of Plaintiffs and Class Members Against All Defendants**

22 126. Plaintiffs re-allege and incorporate by reference herein all allegations
23 previously made in paragraphs 1 through 125, above.

24 127. The San Francisco Sick Leave Ordinance, contained in Chapter 12W of the
25 San Francisco Administrative Code, states that all employers must provide paid sick leave
26 to each employee (including temporary and part-time employees) who work within the
27 City of San Francisco. It further provides that one (1) hour of sick leave must be provided
28 for every thirty (30) hours work performed, up to a maximum of seventy-two (72) hours of
paid sick leave accrued.

128. Defendants, at all relevant times, were employers subject to San Francisco

1 Administrative Code Chapter 12W, which includes provisions requiring Defendants to
2 provide paid sick leave to their employees.

3 129. Plaintiffs and Class Members, at all relevant times have been “Covered
4 Employees,” entitled to benefits under the San Francisco Paid Sick Leave Ordinance.

5 130. Plaintiffs and Class Members worked sufficient hours in the course of their
6 employment to reach the seventy-two (72) hour maximum of sick-leave accrued.

7 131. Upon information and belief, Defendants do not post notice in a conspicuous
8 place at any of the worksites where Plaintiffs and Class Members work for Defendants, or
9 otherwise inform Plaintiffs and Class Members of the availability of paid sick leave.

10 132. Upon information and belief, Defendants’ policy and practice is to deny
11 employees sick leave accrued under the San Francisco Paid Sick Leave Ordinance.
12 Defendants also fail to inform employees that they may take paid leave to aid or care for a
13 family member or designated person when they are ill, injured, or receiving medical care,
14 treatment or diagnosis.

15 133. Upon information and belief, Defendants have unlawfully withheld paid sick
16 leave.

17 134. As Plaintiffs were unlawfully denied sick leave in accordance with the San
18 Francisco Administrative Code, they are entitled to relief including, but not limited to,
19 back pay, the payment of any sick leave unlawfully withheld, the payment of an additional
20 sum as liquidated damages in the amount of \$50.00 to each employee or person whose
21 rights under San Francisco Administrative Code Chapter 12W were violated for each hour
22 or portion thereof that the violation occurred or continued, plus, where the employer has
23 unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave
24 withheld from the employee multiplied by three; or \$250.00, whichever amount is greater;
25 and reinstatement in employment and/or injunctive relief; and, further, an award of
26 reasonable attorneys' fees and costs, according to proof.

27 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.
28

1 **EIGHTH CAUSE OF ACTION**
2 ***Failure to Provide Suitable Seating***
3 **(Cal. Lab. Code § 1198 and IWC Order 10-2001)**
4 **On Behalf of Plaintiffs and Class Members Against All Defendants**

5 135. Plaintiffs re-allege and incorporate by reference herein all allegations
6 previously made in paragraphs 1 through 134, above.

7 136. California Labor Code section 1198 makes unlawful the employment of an
8 employee under conditions the IWC prohibits.

9 137. IWC Wage Order No. 10-2001 section 14 requires Defendants to provide
10 Plaintiffs and Class Members with an adequate number of suitable seats placed in
11 reasonable proximity to the work area and permit Plaintiffs and Class Members to use such
12 seats when Plaintiffs and Class Members are not engaged in active duties and when it does
13 not interfere with the performance of their duties.

14 138. At all relevant times, Defendants have failed to provide such suitable seating
15 to Plaintiffs and Class Members, including when Plaintiffs and Class Members are not
16 engaged in the active duties of their employment.

17 139. Plaintiffs and Class Members are entitled to recover all remedies available
18 for violations of California Labor Code section 1198 and IWC Wage Order No. 10-2001,
19 section 14.

20 WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.

21 **NINTH CAUSE OF ACTION**
22 **Failure to Provide and Maintain Required Uniforms**
23 **(Cal. Lab. Code § 1198 and IWC Order 10-2001)**

24 140. Plaintiffs re-allege and incorporate by reference herein all allegations
25 previously made in paragraphs 1 through 139, above.

26 141. California Labor Code section 1198 makes unlawful the employment of an
27 employee under conditions the IWC prohibits.

28 142. IWC Wage Order No. 10-2001 section 9(A) requires an employer to provide
and maintain any uniform that it mandates employees wear as a condition of their

1 employment, including “apparel and accessories of distinctive design or color.”

2 143. At all relevant times, Defendants have required Plaintiffs and Class Members
3 to wear black pants, black shoes, and black shirts or turtlenecks while they are working, as
4 a condition of their employment.

5 144. At all relevant times, Defendants have failed to provide and maintain the
6 mandatory black pants and black shoes.

7 145. Until approximately one year ago, Defendants also failed to provide and
8 maintain the mandatory black shirts or turtlenecks.

9 146. Plaintiffs and Class Members are entitled to recover all remedies available
10 for violations of California Labor Code section 1198 and IWC Wage Order No. 10-2001,
11 section 9(A).

12 **WHEREFORE, Plaintiffs and Class Members seek relief as set forth below.**

13 **TENTH CAUSE OF ACTION**
14 ***California Private Attorneys General Act***
15 **(Cal. Lab. Code § 2698 et seq.)**

16 **On Behalf of Plaintiffs and Class Members Against All Defendants**

17 147. Plaintiffs, on behalf of themselves and Class Members, as well as the general
18 public of the State of California, re-allege and incorporate by reference herein all
19 allegations previously made in paragraphs 1 through 146, above.

20 148. Under the PAGA, any aggrieved employee may bring a representative action
21 as a private attorney general on behalf of the general public, including all other aggrieved
22 employees, to recover civil penalties for their employers’ violations of the California
23 Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
24 relief available under the California Labor Code, and must be allocated 75% to the State of
25 California’s Labor and Workforce Development Agency and 25% to the aggrieved
26 workers, pursuant to California Labor Code section 2699.

27 149. As set forth above, Defendants have committed numerous violations for
28 which the Labor Code entitles Plaintiffs, as private attorneys general, to recover the
applicable statutory civil penalties on their own behalf, on behalf of all aggrieved

1 employees, and on behalf of the general public, including violations of sections 201, 202,
2 203, 204b, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198 and violations of IWC
3 Wage Order No. 10-2001.

4 150. California Labor Code section 2699(a), which is part of PAGA, provides in
5 pertinent part:

6 Notwithstanding any other provision of law, any provision of this
7 code that provides for a civil penalty to be assessed and collected by the
8 Labor and Workforce Development Agency or any of its departments,
9 divisions, commissions, boards, agencies, or employees, for a violation of
10 this code, may, as an alternative, be recovered through a civil action brought
11 by an aggrieved employee on behalf of himself or herself and other current
12 or former employees pursuant to the procedures specified in Section 2699.3

13 151. California Labor Code section 2699(f), which is part of PAGA, provides in
14 pertinent part:

15 For all provisions of this code except those for which a civil penalty is
16 specifically provided, there is established a civil penalty for a violation of
17 these provisions as follows:...

18 (2) If, at the time of the alleged violation, the person employs one or
19 more employees, the civil penalty is one hundred dollars (\$100) for each
20 aggrieved employee per pay period for the initial violation and two hundred
21 dollars (\$200) for each aggrieved employee per pay period for each
22 subsequent violation.

23 152. Pursuant to California Labor Code section 2699(a), Plaintiffs are entitled to
24 civil penalties, to be paid by Defendants, for Defendants' violations of the California
25 Labor Code and IWC Wage Orders for which a civil penalty is already specifically
26 provided by law; and pursuant to California Labor Code section 2699(f), Plaintiffs are
27 entitled to civil penalties, to be paid by Defendants and allocated as PAGA requires, for
28 Defendants' violations of the California Labor Code and IWC Wage Orders for which
violations a civil penalty is not already specifically provided.

153. Under PAGA, Plaintiffs and the State of California are entitled to recover the
maximum civil penalties permitted by law for the violations of the California Labor Code
and IWC Wage Order 10-2001 that are alleged in this Complaint.

WHEREFORE, Plaintiffs and Class Members request relief as described below.

ELEVENTH CAUSE OF ACTION
Unfair Business Practices
(Cal. Bus. & Prof. Code §§ 17200 et seq.)
On Behalf of Plaintiffs and Class Members Against All Defendants

154. Plaintiffs re-allege and incorporate by reference herein all allegations previously made in Paragraphs 1 through 153, above.

155. California Business and Professions Code sections 17200 et seq., prohibit acts of unfair competition, which include, but are not limited to, any unlawful business practice or act.

156. The policies, acts and practices described herein were and are an unlawful business act or practice because Defendants' failure to pay overtime and minimum wages, failure to provide meal and rest periods, failure to maintain and furnish accurate timekeeping records, failure to provide suitable seating, and failure to provide paid sick leave violate the California Labor Code, including, but not limited to, sections 201, 202, 203, 204b, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198, applicable Wage Orders of the IWC, other provisions of California common and/or statutory law, and the San Francisco Administrative Code.

157. The policies, acts or practices described herein were, and are, an unfair business act or practice because any justifications for Defendants' unlawful and unfair conduct were, and are, vastly outweighed by the harm such conduct caused to Plaintiffs and all Class Members.

158. Plaintiffs are informed and believe, and based upon such information and belief allege, that by engaging in the unfair and unlawful business practices complained of hereinabove, Defendants were able to lower their labor costs and thereby to obtain a competitive advantage over law-abiding employers with which they compete, in violation of California Business and Professions Code section 17200 et seq. and California Labor Code section 90.5(a), which sets forth the public policy of California to vigorously enforce minimum labor standards to ensure that employees are not required or permitted to work under substandard and unlawful conditions and to protect law-abiding employers and their

1 employees from competitors that lower their costs by failing to comply with minimum
2 labor standards.

3 159. As a direct and proximate result of Defendants' unfair and unlawful conduct
4 as alleged herein, Plaintiffs and Class Members have sustained injury and damages,
5 including unpaid wages and lost interest, in an amount to be established at trial. Plaintiffs
6 and Class Members seek restitution of all unpaid wages owed to them, disgorgement of all
7 profits that Defendants have enjoyed as a result of their unfair and unlawful business
8 practices, penalties, and injunctive relief.

9 WHEREFORE, Plaintiffs and Class Members request relief as described below.

10 **TWELFTH CAUSE OF ACTION**
11 ***Injunctive Relief***
12 **On Behalf of Plaintiffs and Class Members Against All Defendants**

13 160. Plaintiffs re-allege and incorporate by reference herein all allegations
14 previously made in Paragraphs 1 through 159, above.

15 161. An actual controversy has arisen between Plaintiffs and Class Members, on
16 the one hand, and Defendants, on the other hand, as to their respective rights, remedies and
17 obligations. Specifically, Plaintiffs contend and Defendants deny, that:

18 162. Defendants failed and continue to fail to pay minimum wage and overtime
19 wages to Plaintiffs and Class Members that were duly owed them for all time worked;

20 163. Defendants failed and continue to fail to provide Plaintiffs and Class
21 Members lawful meal and rest periods;

22 164. Defendants failed and continue to fail to provide Plaintiffs and Class
23 Members accurate wage and hours statements showing all hours worked;

24 165. Defendants failed and continue to fail to provide Plaintiffs and Class
25 Members with paid sick leave and notice of the availability of paid sick leave, resulting in
26 Plaintiffs and Class Members being unable to take leave when they or their family
27 members are sick;

28 166. Defendants failed and continue to fail to provide Plaintiffs and Class
Members with suitable seating; and

1 167. These practices are causing irreparable harm to Plaintiffs and Class Members
2 who are being denied the benefits and protections of the California Labor Code, including,
3 but not limited to, sections 201, 202, 203, 204b, 226(a), 226.7, 510, 512, 1194, 1197,
4 1197.1 and 1198, applicable Wage Orders of the IWC, other provisions of California
5 common and/or statutory law, and the San Francisco Administrative Code.

6 168. Accordingly, Plaintiffs seek an injunction against Defendants to prohibit
7 Defendants from continuing their unlawful practices as hereinabove alleged.

8 WHEREFORE, Plaintiffs and Class Members request relief as described below.

9 **THIRTEENTH CAUSE OF ACTION**

10 ***Declaratory Relief***

11 **On Behalf of Plaintiffs and Class Members Against All Defendants**

12 169. Plaintiffs re-allege and incorporate by reference herein all allegations
13 previously made in Paragraphs 1 through 168, above.

14 170. An actual controversy has arisen between Plaintiffs and Class Members, on
15 the one hand, and Defendants, on the other hand, as to their respective rights, remedies and
16 obligations. Specifically, Plaintiffs contend and Defendants deny, that:

17 171. Defendants failed and continue to fail to pay minimum wage and overtime
18 wages to Plaintiffs and Class Members that were duly owed them for all time worked;

19 172. Defendants failed and continue to fail to provide Plaintiffs and Class
20 Members lawful meal and rest periods;

21 173. Defendants failed and continue to fail to provide Plaintiffs and Class
22 Members accurate wage and hours statements showing all hours worked;

23 174. Defendants failed and continue to fail to provide Plaintiffs and Class
24 Members with paid sick leave and notice of the availability of paid sick leave;

25 175. Defendants failed and continue to fail to provide Plaintiffs and Class
26 Members with suitable seating; and

27 176. Plaintiffs further allege that Class Members are entitled to recover earned
28 wages, liquidated damages, and penalties as hereinabove alleged.

177. Plaintiffs have incurred and, during the pendency of this action, will incur

1 expenses for attorney's fees, expenses, and costs herein. Such attorney's fees, expenses,
2 and costs are necessary for the prosecution of this action and will result in a benefit to each
3 of the members of the class.

4 178. Accordingly, Plaintiffs and class members seek a declaration as to the
5 respective rights, remedies, and obligations of the parties.

6 WHEREFORE, Plaintiffs and Class Members request relief as described below.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs DAROL SMITH and JOSEPH RODRIGUES, on behalf
9 of themselves and all others similarly situated, pray for judgment against Defendants
10 SHORENSTEIN HAYS-NEDERLANDER THEATRES LLC, NEDERLANDER OF
11 SAN FRANCISCO ASSOCIATES; CSH THEATRES LLC, ROBERT NEDERLANDER,
12 CAROLE SHORENSTEIN HAYS, JEFFREY HAYS, GREG HOLLAND, and DOES 1-
13 20, inclusive, and each of them, as follows:

14 1. Certification of this case as a class action pursuant to California Code of
15 Civil Procedure section 382 and/or certification of a representative action pursuant to
16 California Business and Professions Code sections 17200 et seq.;

17 2. Designation of Plaintiffs as Representatives of the Class;

18 3. Designation of Plaintiffs' counsel of record as Class Counsel;

19 4. A declaratory judgment that the practices complained of herein are unlawful
20 under California law;

21 5. An injunction against Defendants from engaging in the unlawful policies and
22 practices set forth herein;

23 6. An award of damages, liquidated damages, and restitution to be paid by
24 Defendants according to proof;

25 7. Appropriate statutory penalties;

26 8. Pre-judgment and post-judgment interest as provided by law;

27 9. A reasonable incentive award to compensate each Plaintiff for time spent
28 attempting to recover wages on behalf of Class Members and for the risks undertaken in

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doing so;

10. Reasonable attorneys' fees and costs of suit, including expert fees and costs;

and

11. For such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: October 18 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: 
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

Exhibit A



50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Gay Crosthwait Grunfeld
Email: ggrunfeld@rbgg.com

August 22, 2016

**VIA E-MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

California Labor & Workforce
Development Agency
Attention: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

Robert Nederlander
Co-Owner
Shorenstein Hays-Nederlander Theatres, LLC
1182 Market Street, Suite 200
San Francisco, CA 94102

Greg Holland
CEO
Shorenstein Hays-Nederlander Theatres, LLC
1182 Market Street, Suite 200
San Francisco, CA 94102

Carole Shorenstein Hays
Co-Owner
Shorenstein Hays-Nederlander Theatres, LLC
235 Montgomery Street, 16th Floor
San Francisco, CA 94104

Re: PAGA Notice Pursuant to California Labor Code § 2699.3
Our File No. 1401-1

Dear Sir or Madam:

Please take notice that, pursuant to the procedures specified in California Labor Code section 2699.3, Darol Smith (hereinafter “EMPLOYEE”) claims that Shorenstein Hays-Nederlander Theatres, LLC (hereinafter “EMPLOYER”) has violated and continues to violate California Labor Code sections 201, 202, 203, 204b, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198 and California Industrial Welfare Commission (“IWC”) Wage Order No. 10-2001, as described herein. EMPLOYEE is a former security guard for EMPLOYER.

Labor Code Section 201: EMPLOYER has failed, and continues to fail, to immediately pay wages earned by and unpaid to EMPLOYEE at time of discharge.

Labor Code Section 202: EMPLOYER has failed, and continues to fail, to immediately pay wages earned by and unpaid to EMPLOYEE at time of resignation.

Labor Code Section 203: EMPLOYER has willfully failed, and continues willfully to fail, to pay wages earned by and unpaid to EMPLOYEE at time of discharge and/or resignation.

Labor Code Section 204b: EMPLOYER has failed, and continues to fail, to pay all wages earned by and unpaid to EMPLOYEE not later than the regular weekly payday.

Labor Code Section 226(a): EMPLOYER has failed, and continues to fail, to accurately report the total hours worked by EMPLOYEE in wage statements provided to EMPLOYEE.

Labor Code Section 226.7: EMPLOYER has required, and continues to require, EMPLOYEE to work during rest and meal periods mandated by an applicable order of the IWC (Order No. 10-2001).

Labor Code Section 510: EMPLOYER has failed, and continues to fail, to pay EMPLOYEE the applicable legal overtime for all hours worked in excess of eight (8) hours in one workday or forty (40) hours in any one workweek.

Labor Code Section 512: EMPLOYER has employed, and continues to employ EMPLOYEE for more than five (5) hours without a meal period of at least thirty (30) minutes and for more than ten (10) hours with a second meal period of at least thirty (30) minutes.

Labor Code Section 1194: EMPLOYER has failed, and continues to fail, to pay EMPLOYEE at or above the legal minimum wage for all hours worked.

Labor Code Section 1194: EMPLOYER has failed, and continues to fail, to pay EMPLOYEE the applicable legal overtime compensation due to EMPLOYEE.

Labor Code Section 1197: EMPLOYER has failed, and continues to fail, to pay EMPLOYEE at or above the legal minimum wage for all hours worked.

Labor Code Section 1197.1: EMPLOYER has failed, and continues to fail, to pay EMPLOYEE at or above the legal minimum wage for all hours worked.

Labor Code Section 1198: EMPLOYER has employed, and continues to employ, EMPLOYEE under conditions the IWC prohibits, by requiring EMPLOYEE to work during meal and rest periods mandated by IWC Order No. 10-2001.

California Labor & Workforce Development Agency
Robert Nederlander
Greg Holland
Carole Shorenstein Hays
August 22, 2016
Page 3

Labor Code Section 1198: EMPLOYER has employed, and continues to employ, EMPLOYEE under conditions the IWC prohibits, by failing to pay EMPLOYEE the applicable legal overtime compensation due to them, as required by IWC Order No. 10-2001.

Labor Code Section 1198: EMPLOYER has employed, and continues to employ, EMPLOYEE under conditions the IWC prohibits, by failing to provide suitable seating for EMPLOYEE, as required by IWC Order No. 10-2001.

Labor Code Section 1198: EMPLOYER has employed, and continues to employ, EMPLOYEE under conditions the IWC prohibits, by failing to pay EMPLOYEE at or above the legal minimum wage for all hours worked by EMPLOYEE, as required by ICW Order No. 10-2001.

Labor Code Section 1198: EMPLOYER has employed, and continues to employ, EMPLOYEE under conditions the IWC prohibits, by failing to keep accurate time records of EMPLOYEE'S meal periods and total daily hours worked, as required by ICW Order No. 10-2001.

Please do not hesitate to contact the undersigned if you require any further information. Thank you for your attention to this matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:AGS:cg

Exhibit B



ROSEN BIEN
GALVAN & GRUNFELD LLP

50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
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www.rbgg.com

Gay Crosthwait Grunfeld
Email: ggrunfeld@rbgg.com

October 10, 2016

VIA E-MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

California Labor & Workforce
Development Agency
Attention: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
PAGAfiling@dir.ca.gov

Greg Holland
CEO
Shorenstein Hays-Nederlander Theatres, LLC
1182 Market Street, Suite 200
San Francisco, CA 94102

Robert Nederlander and Nederlander
Associates of San Francisco
Co-Owners
Shorenstein Hays-Nederlander Theatres, LLC
1182 Market Street, Suite 200
San Francisco, CA 94102

Carole Shorenstein Hays, Jeffrey Hays, and
CSH Theatres, LLC
Co-Owners and Board Member
Shorenstein Hays-Nederlander Theatres, LLC
235 Montgomery Street, 16th Floor
San Francisco, CA 94104

Re: Amended PAGA Notice Pursuant to California Labor Code § 2699.3
Our File No. 1401-1

Dear Sir or Madam:

Please take notice that, pursuant to the procedures specified in California Labor Code section 2699.3, Darol Smith and Joseph Rodrigues (hereinafter “EMPLOYEES”) claim that Shorenstein Hays-Nederlander Theatres, LLC, Nederlander Associates of San Francisco, and CSH Theatres, LLC (hereinafter “EMPLOYERS”) have violated and continue to violate California Labor Code sections 201, 202, 203, 204b, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198 and California Industrial Welfare Commission (“IWC”) Wage Order No. 10-2001, as described herein. Robert Nederlander, Carole Shorenstein Hays, Greg Holland, and Jeffrey Hays are owners, directors, officers, and/or managing agents of EMPLOYERS and are also responsible for the aforementioned violations. EMPLOYEES are a former (Smith) and a current (Rodrigues) security guard for EMPLOYERS.

Labor Code Section 201: EMPLOYERS have failed, and continue to fail, to immediately pay wages earned by and unpaid to EMPLOYEES at time of discharge.

Labor Code Section 202: EMPLOYERS have failed, and continue to fail, to immediately pay wages earned by and unpaid to EMPLOYEES at time of resignation.

Labor Code Section 203: EMPLOYERS have willfully failed, and continue willfully to fail, to pay wages earned by and unpaid to EMPLOYEES at time of discharge and/or resignation.

Labor Code Section 204b: EMPLOYERS have failed, and continue to fail, to pay all wages earned by and unpaid to EMPLOYEES not later than the regular weekly payday.

Labor Code Section 226(a): EMPLOYERS have failed, and continue to fail, to accurately report the total hours worked by EMPLOYEES in wage statements provided to EMPLOYEES.

Labor Code Section 226.7: EMPLOYERS have required, and continue to require, EMPLOYEES to work during rest and meal periods mandated by an applicable order of the IWC (Order No. 10-2001).

Labor Code Section 510: EMPLOYERS have failed, and continue to fail, to pay EMPLOYEES the applicable legal overtime for all hours worked in excess of eight (8) hours in one workday or forty (40) hours in any one workweek.

Labor Code Section 512: EMPLOYERS have employed, and continue to employ EMPLOYEES for more than five (5) hours without a meal period of at least thirty (30) minutes and for more than ten (10) hours with a second meal period of at least thirty (30) minutes.

Labor Code Section 1194: EMPLOYERS have failed, and continue to fail, to pay EMPLOYEES at or above the legal minimum wage for all hours worked.

Labor Code Section 1194: EMPLOYERS have failed, and continue to fail, to pay EMPLOYEES the applicable legal overtime compensation due to EMPLOYEES.

Labor Code Section 1197: EMPLOYERS have failed, and continue to fail, to pay EMPLOYEES at or above the legal minimum wage for all hours worked.

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Robert Nederlander
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Labor Code Section 1197.1: EMPLOYERS have failed, and continue to fail, to pay EMPLOYEES at or above the legal minimum wage for all hours worked.

Labor Code Section 1198: EMPLOYERS have employed, and continue to employ, EMPLOYEES under conditions the IWC prohibits, by requiring EMPLOYEES to work during meal and rest periods mandated by IWC Order No. 10-2001.

Labor Code Section 1198: EMPLOYERS have employed, and continue to employ, EMPLOYEES under conditions the IWC prohibits, by failing to pay EMPLOYEES the applicable legal overtime compensation due to them, as required by IWC Order No. 10-2001.

Labor Code Section 1198: EMPLOYERS have employed, and continue to employ, EMPLOYEES under conditions the IWC prohibits, by failing to provide suitable seating for EMPLOYEES, as required by IWC Order No. 10-2001.

Labor Code Section 1198: EMPLOYERS have employed, and continue to employ, EMPLOYEES under conditions the IWC prohibits, by failing to pay EMPLOYEES at or above the legal minimum wage for all hours worked by EMPLOYEES, as required by ICW Order No. 10-2001.

Labor Code Section 1198: EMPLOYERS have employed, and continue to employ, EMPLOYEES under conditions the IWC prohibits, by failing to keep accurate time records of EMPLOYEES' meal periods and total daily hours worked, as required by ICW Order No. 10-2001.

Please do not hesitate to contact the undersigned if you require any further information. Thank you for your attention to this matter.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Gay Crosthwait Grunfeld

By: Gay Crosthwait Grunfeld

GCG:AGS:cg