

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ALEXANDER ATKINS, an individual,

Plaintiff,

vs.

VCE THEATERS, LLC d/b/a Studio One  
Theaters, an Oregon limited liability company;  
KYLE MARKS, an individual; and JASON  
LENSCH, an individual,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT – Class and collective claims for  
tip theft violations; and individual claims for  
unpaid wages, penalty wages, discrimination and  
retaliation.

Damages estimated at \$999,999.99

JURY TRIAL REQUESTED

NOT SUBJECT TO MANDATORY  
ARBITRATION

FILING FEE: \$594.00  
(ORS § 21.160(1)(c))

**INDIVIDUAL, CLASS AND COLLECTIVE ACTION COMPLAINT**

1.

Alexander Atkins (hereinafter “Plaintiff”) complains as follows against VCE Theaters, LLC d/b/a/ Studio One Theaters, an Oregon limited liability company (hereinafter “Defendant Studio One”) on behalf of himself and other similarly situated employees of Defendant Studio One. Additionally, Plaintiff brings claims on behalf of himself individually against individuals, Kyle Marks (hereinafter “Defendant Marks”) and Jason Lensch (hereinafter “Defendant Lensch”) (hereinafter, collectively “the individual Defendants”) for discrimination and retaliation (all defendants are referred to collectively hereinafter as “Defendants”).

2.

This is a class and collective action under state and federal wage and hour law for certain present and former employees of Defendant Studio One to recover stolen tips, liquidated and other damages, punitive damages (on motion), and attorney fees, costs, and disbursements (and pre- and post-judgment interest thereon), as well as declaratory relief, pertaining to Defendant Studio One's longstanding policy of illegally distributing line-level service employees' tips to management. Additionally, Defendant Studio One failed to timely provide time punch records or a tip pooling and distribution accounting despite Plaintiff's multiple requests to managers to provide tipping records prior to his termination and a file request by Plaintiff's lawyer for his complete personnel record and for all of his time and pay records. All allegations herein are made to the best of Plaintiff's and his counsel's good-faith knowledge, information, and belief, based upon the evidence adduced to date, and Plaintiff reserves the right to amend the complaint upon the discovery of additional facts.

3.

This is also an individual action under Oregon law on behalf of Mr. Atkins individually, for discrimination and retaliation for opposing tip theft violations (against Defendants Lensch and Studio One) and on the basis of sex (against Defendants Marks and Studio One).

## **PARTIES**

4.

At all material times, Plaintiff and the class and collective members were and/or are tipped hourly employees of Defendant Studio One.

5.

Defendant VCE Theaters, LLC d/b/a/ Studio One Theaters, is an Oregon limited liability company operating a seven-screen luxury movie theater in Portland, Oregon on Powell Boulevard. Defendant Studio One employed the Plaintiff and other class and collective members at this

1 location in Oregon. Multnomah County is the proper venue pursuant to ORS 14.080, and this Court  
2 has jurisdiction under ORS Chapter 14.

3 **COMMON FACTS CONSTITUTING CLAIMS FOR RELIEF**

4 6.

5 Throughout the relevant time period, Defendant Studio One distributed line-level service  
6 employees' tips to its managers, supervisors and/or other statutory employers.

7 7.

8 Defendant Studio One's theft of line-level staff members' tips in pay periods during which  
9 Plaintiff and other class and collective members performed work as described above was willful.

10 **FACTS PERTAINING ONLY TO INDIVIDUAL CLAIMS**

11 8.

12 Plaintiff's job with Defendant Studio One was advertised as paying \$15.00 to \$18.00 per  
13 hour. When Plaintiff was hired, he was promised \$15.00 per hour. However, throughout his  
14 employment with Defendant Studio One, Plaintiff was only paid \$14.75 per hour. Defendant  
15 Studio One willfully failed to pay Plaintiff all wages promised and has yet to pay the difference.

16 9.

17 During his employment with Defendant Studio One, Plaintiff engaged in a consensual  
18 sexual relationship with his manager at Defendant Studio One, Defendant Marks. After Plaintiff  
19 ended the relationship, Defendant Marks became unreceptive to Plaintiff's requests with regard  
20 directing Plaintiff's work, providing shift support, providing scheduling support and flexibility,  
21 providing relief for rest breaks and meal periods, providing complementary meals, and adjusting  
22 the timing of meal periods, relative to how such working conditions been addressed during their  
23 intimate relationship.

24 10.

25 During his employment with Defendant Studio One, Plaintiff became aware that managers  
26

1 were taking a portion of the tips he and other line-level employees had earned. Plaintiff reported  
2 to Defendant Studio One that managers taking a share violated the law and opposed this practice.  
3 Plaintiff also asked several management-level employees for an accounting of the tip distributions  
4 applicable to himself and other employees, requesting the same from managers, including but not  
5 limited to, Defendant Marks, Defendant Lensch, Rudyard Coltman, Sharon Andersen and Shelly  
6 Stevens. Plaintiff never received the requested accounting.

7 11.

8 On or about February 8, 2023, Plaintiff reported to Defendant Lensch that Plaintiff in good  
9 faith believed requiring a coworker to contribute to a tip pool without that same coworker's consent  
10 violated the law. In response, Defendant Lensch fired Plaintiff on the spot, using words to the  
11 effect of "get the hell out," and "all you do is complain."

12 12.

13 Plaintiff opposed Defendant Studio One's illegal wage-and-hour policies, by complaining  
14 about the tip pool to Defendants Lensch and Studio One, by raising its illegality, and by requesting  
15 an accounting of the tip distributions. Plaintiff was terminated in retaliation for this protected  
16 reporting of, and opposition to what he understood to be unlawful employment practices.

17 13.

18 Defendants' actions directly and proximately caused Plaintiff to suffer emotional distress  
19 and Plaintiff requests an award of noneconomic compensatory damages in an amount to be  
20 determined by a jury at the time of trial, not to exceed \$175,000.

21 14.

22 Defendants' actions directly and proximately caused Plaintiff to suffer loss of earnings and  
23 other employment benefits and Plaintiff requests an award of economic compensatory damages  
24 including back pay, front pay, lost benefits and penalty wages in an amount to be determined by a  
25 jury at the time of trial, not to exceed \$75,000.

15.

Plaintiff seeks equitable relief including declaratory relief and any other relief the Court deems appropriate.

16.

Plaintiff also seeks reasonable attorney fees and costs in an amount to be proven at trial pursuant to ORS 652.200(2), ORS 659A.885(1) and/or ORS 20.107.

17.

Plaintiff places Defendants on notice of his intent to move the Court to amend this Complaint to seek punitive damages and to seek discovery of all relevant financial documents.

### **CLASS ACTION ALLEGATIONS**

18.

Defendant Studio One engaged in acts and practices that violated Plaintiff's and other class members' rights under Oregon law. This action is brought on behalf of a class consisting of all current and former employees of Defendant Studio One who received a paycheck for a pay period in which they were required to participate in a tip pool that included managers, supervisors, or other statutory employers on or after June 27, 2017 for work performed in Oregon.

#### **Numerosity**

19.

The class is so numerous that joinder of all members is impracticable, consisting of approximately 50 persons (given known staffing levels, and observed and estimated turnover).

#### **Commonality**

20.

There are questions of law and fact common to the class, which predominate over any issues involving only individual class members. The principal questions are:

- a. Whether Defendant Studio One's policies and procedures regarding tip pools violate

Oregon and/or federal law;

- b. Whether Defendant Studio One's payment of managers from the tip pool constitutes a common-law violation of Oregon law as conversion, breach of duty of good faith and fair dealing, unjust enrichment, and money had and received;
- c. Whether such violations were willful; and
- d. What remedies are available for the above-listed violations.

### **Typicality**

21.

Plaintiff's claims are typical of those of the other class members because:

- a. Plaintiff is a member of the class;
- b. Plaintiff's claims stem from the same practice or course of conduct that forms the basis for the class claims;
- c. All of the class members' claims are based on the same facts and legal theories; and
- d. There is no antagonism between the interests of Plaintiff and the class members, because their claims are for damages provided to each class member separately by statute or the common law.

### **Adequacy of Representation by Plaintiff**

22.

Plaintiff will fairly and adequately protect the interests of the class because:

- a. There is no conflict between Plaintiff's claims and those of the other class members;
- b. Plaintiff has retained counsel experienced in handling cases involving wage and hour law, who will vigorously prosecute this litigation. Plaintiff's counsel has already committed substantial time and resources toward this case and remains willing and able to devote whatever additional future time and resources are necessary to pursue this litigation to completion; and

- 1 c. Plaintiff's claims are typical of the claims of the class members in that his claims stem  
2 from the same practice and course of conduct that forms the basis of the class claims.

3 **Compliance with ORCP 32 H**

4 23.

5 Plaintiff has complied with the requirements of ORCP 32 H because his counsel mailed a  
6 prelitigation notice and demand to Defendant Studio One for each class and/or collective claim for  
7 relief and cause of action at least 30 days before the commencement of this action.

8 **Superiority of Class Action**

9 24.

10 Class resolution of this case is superior to other available methods for its fair and efficient  
11 adjudication, for at least the following reasons:

- 12 a. The prosecution of separate actions by the class members could both result in  
13 inconsistent adjudications establishing incompatible pay practices and, as a practical  
14 matter, dispose of the legal claims of class members who are not parties to such separate  
15 adjudications or impede their ability to protect their interests;
- 16 b. The common questions of law and fact described above predominate over questions  
17 affecting only individual members, and the questions affecting individuals primarily  
18 involve only calculations of individual damages;
- 19 c. Individual class members would have little interest in controlling the litigation due to  
20 the relatively small size of most claims, the relatively unsettled nature of this area of  
21 the law, the complexity of the claims, the expense of the litigation, and because the  
22 named Plaintiff and his counsel have already invested significant resources in the case  
23 and will continue to vigorously pursue the claims on behalf of the class members;
- 24 d. To Plaintiff and his counsel's knowledge, no other similar litigation has been  
25 commenced, but if commenced, it could be coordinated under ORCP 32 K; and  
26

1 e. This is a desirable forum because Defendant Studio One does business in Oregon and  
2 this County and most class members likely reside here.

3 **COLLECTIVE ALLEGATIONS**

4 25.

5 Defendant Studio One engaged in acts and practices that violated the collective members'  
6 rights under the federal Fair Labor Standards Act. In addition to bringing this action individually  
7 on behalf of himself, therefore, Plaintiff also brings this action on behalf of all current and former  
8 employees who are similarly situated.

9 **FIRST CLAIM FOR RELIEF**

10 **Collective Claim / FLSA Tip Theft / Defendant Studio One**

11 26.

12 All previous paragraphs are incorporated by reference herein.

13 27.

14 Pursuant to 29 USC § 203(m)(2)(B) and 29 C.F.R. § 531 (D) Defendant Studio One was  
15 required to pay Plaintiff and the collective members all of their tips; or if a tip pool was mandatory,  
16 was required to ensure that no managers, supervisors, or other statutory employers take part in  
17 such tip pool. It did not do so.

18 28.

19 Plaintiff and the collective members are entitled to collect the difference between the tips  
20 received and the tips due in an amount to be proven at trial, in addition to liquidated damages in  
21 the same amount, together with attorney fees and costs of the action pursuant to 29 USC § 216(b).

22 **SECOND CLAIM FOR RELIEF**

23 **Class Claim / Conversion / Defendant Studio One**

24 29.

25 All previous paragraphs are incorporated by reference herein.



1 30.

2 By misappropriating the tip pool funds entrusted to it, Defendant Studio One exercised  
3 unlawful dominion and control over the property, which completely interfered with the employees'  
4 right to control it, so that Defendant Studio One may justly be required to repay the full value of  
5 the property. This breach of bailment contract and of trust and of fiduciary responsibilities qualifies  
6 as, and is enforceable as, conversion.

7 31.

8 Plaintiff and the class members are entitled to recover the value of the property tortiously  
9 converted, in addition to pre- and post-judgment interest and (on motion) punitive damages.

10 **THIRD CLAIM FOR RELIEF**

11 **Class Claim / Tortious Breach of Duty of Good Faith and Fair Dealing /**

12 **Defendant Studio One**

13 32.

14 All previous paragraphs are incorporated by reference herein.

15 33.

16 Because Defendant Studio One collected all tips and gratuities from the customers for the  
17 purpose of redistributing them to the employees, it had a special bailor/fiduciary/trustee  
18 relationship with the intended recipients, involving a heightened duty of care beyond and  
19 independent from that of a simple employment contract. Thus, Defendant Studio One's intentional  
20 action to deprive Plaintiff and the class members of their expected contractual benefits was a  
21 tortious breach of the duty of good faith and fair dealing, and of Defendant Studio One's fiduciary  
22 obligations, which proximately caused Plaintiff and the class members economic and  
23 noneconomic damage.

24 34.

25 Plaintiff and the class members are therefore entitled to economic and noneconomic  
26

1 damages, as well as pre-judgment interest and (upon motion) punitive damages.

2 **SECOND CLAIM FOR RELIEF**

3 **Class Claim / Accounting / Defendant Studio One**

4 35.

5 All previous paragraphs are incorporated by reference herein.

6 36.

7 By collecting all tips and gratuities of all employees for the purpose of redistributing them,  
8 Defendant Studio One became the bailor, fiduciary and trustee of those funds, holding them in  
9 trust for the proper recipients. As such, Defendant Studio One owes Plaintiff and the class members  
10 a duty to render an account showing in detail the items taken in and expended, when, to whom,  
11 and for what purpose, and that the account rendered and expenditures claimed were correct, just  
12 and necessary.

13 37.

14 Plaintiff and the class members are therefore entitled to a full accounting of the tips and  
15 gratuities received and/or paid out by Defendant Studio One, and to an equitable award of any  
16 amounts to which such accounting demonstrates that they are entitled.

17 **THIRD CLAIM FOR RELIEF**

18 **Class Claim / Unjust Enrichment / Defendant Studio One**

19 38.

20 All previous paragraphs are incorporated by reference herein.

21 39.

22 Defendant Studio One has failed to pay to Plaintiff and the class members tip pool money  
23 to which they are rightfully entitled, and Defendant Studio One has been directly and indirectly  
24 unjustly enriched and benefitted thereby, and equity and good conscience demand that Plaintiff  
25 and the class members' money be returned.  
26

1 40.

2 Plaintiff and the class members are entitled to recover in restitution the money unlawfully  
3 taken from them, in an amount to be proven at trial, in addition to pre- and post-judgment interest.

4 **FOURTH CLAIM FOR RELIEF**

5 **Class Claim / Money Had and Received / Defendant Studio One**

6 41.

7 All previous paragraphs are incorporated by reference herein.

8 42.

9 Defendant Studio One has failed to pay to Plaintiff and the class members tip pool money  
10 to which *ex aequo et bono* they are rightfully entitled, and equity and good conscience demand  
11 that Plaintiff and the class members' money be returned to them by Defendant Studio One.

12 43.

13 Plaintiff and the class members are entitled to the money unlawfully withheld from them,  
14 in an amount to be proven at trial, in addition to pre- and post-judgment interest and (on motion)  
15 punitive damages.

16 **FIFTH CLAIM FOR RELIEF**

17 **Individual Claim / Wrongful Discharge / Defendants Studio One & Lensch**

18 44.

19 All previous paragraphs are incorporated by reference herein.

20 45.

21 At all material times, the public policy of Oregon prohibited an employer from retaliating  
22 against an employee for reporting in good-faith that an employer's wage and hour policies are  
23 illegal; or discussing, complaining about and opposing those policies.

24 46.

25 This public policy is embodied in the common law, statutes, and regulations of the State of  
26

1 Oregon and the United States including, but not limited to, ORS 652.355 and ORS 659A.199.

2 47.

3 Defendant Studio One, acting through its agents and/or employees, violated the above  
4 public policies by retaliating against Plaintiff because of his reporting in good faith that one or  
5 more wage-and-hour policies are illegal; and/or discussing, complaining about and opposing one  
6 or more such policies.

7 48.

8 Defendant Studio One's discharge of Plaintiff was taken in retaliation for Plaintiff's pursuit  
9 and exercise of Plaintiff's rights related to his employment rights, which are of important public  
10 interest.

11 49.

12 Plaintiff requests an award of damages, equitable relief, costs, and attorney fees as  
13 alleged in Paragraphs 13 through 17 inclusive, *supra*.

14 **EIGHTH CLAIM FOR RELIEF**

15 **Individual Claim / Abetting or Inciting / Individual Defendants**

16 50.

17 All previous paragraphs are incorporated by reference herein.

18 51.

19 As set forth in detail above, Defendants Marks and Lensch aided, abetted and/or incited  
20 unlawful retaliation against Plaintiff.

21 52.

22 Specifically, Defendants Marks and Lensch incited and/or carried out Defendants'  
23 unlawful conduct and adverse employment actions against Plaintiff. Defendants Marks and Lensch  
24 did so knowing that their conduct was unlawful.

1 53.

2 Defendants Marks and Lensch also aided and/or abetted Defendants' unlawful conduct and  
3 adverse employment actions against Plaintiff while knowing that their conduct was unlawful.

4 54.

5 Defendants Marks and Lensch acted in a concerted and coordinated effort with Defendant  
6 Studio One in the commission of these knowingly unlawful acts.

7 55.

8 Defendants violated Oregon Revised Statute 659A.030(1)(g) by aiding, abetting and/or  
9 inciting unlawful discrimination and retaliation, causing Plaintiff to suffer damages.

10 56.

11 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as  
12 alleged in Paragraphs 13 through 17, inclusive, *supra*.

13 **SIXTH CLAIM FOR RELIEF**

14 **Individual Claim / Retaliation ORS 659A.030(1)(f) / Defendants Studio One & Marks**

15 57.

16 All previous paragraphs are incorporated by reference herein.

17 58.

18 Plaintiff engaged in protected activity when he opposed and complained about conduct he  
19 reasonably believed constituted unlawful employment practices.

20 59.

21 Defendants Studio One and Marks, retaliated against Plaintiff in substantial part because  
22 of Plaintiff's oppositional conduct by creating a hostile work environment and terminating his  
23 employment, causing Plaintiff to suffer damages, in violation of ORS 659A.030(1)(f).

24 60.

25 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as  
26

1 alleged in paragraphs 13 through 17, inclusive, *supra*.

2 **TENTH CLAIM FOR RELIEF**

3 **Individual Claim / Retaliation ORS 659A.199 / All Defendants**

4 61.

5 All previous paragraphs are incorporated by reference herein.

6 62.

7 In perpetrating the actions described in the above paragraphs, Defendants subjected  
8 Plaintiff to retaliation for opposing and reporting in good faith information Plaintiff believed to be  
9 evidence of violations of state and federal laws, rules, and regulations.

10 63.

11 Defendants retaliated against Plaintiff by creating a hostile work environment and by  
12 terminating Plaintiff in violation of ORS 659A.199, causing Plaintiff to suffer damages.

13 64.

14 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as  
15 alleged in Paragraphs 13 through 17, inclusive, *supra*.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Individual Claim / Sex Discrimination – *Quid pro Quo* /**

18 **Defendants Studio One and Marks**

19 65.

20 All previous paragraphs are incorporated by reference herein.

21 66.

22 Defendants Marks and Studio One subjected Plaintiff to a hostile work environment and  
23 *quid pro quo* sexual harassment in violation of ORS 659A.030(1)(a) by subjecting Plaintiff to  
24 diminished working conditions and a hostile work environment when he cut off his intimate  
25 relationship with Defendant Marks as described above.

1 67.

2 Defendants Studio One and Marks' discrimination and retaliation against Plaintiff caused  
3 Plaintiff to suffer damages, as described above.

4 68.

5 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as  
6 alleged in Paragraphs 13 through 17, inclusive, *supra*.

7 **TWELFTH CLAIM FOR RELIEF**

8 **Individual Claim / Unpaid Wages / Defendant Studio One**

9 69.

10 All previous paragraphs are incorporated by reference herein.

11 70.

12 Pursuant to ORS 652.120, Defendant Studio One was required to pay Plaintiff all wages  
13 due, when those wages were due, but willfully failed to do so.

14 71.

15 Plaintiff is entitled to collect the wages due in an amount to be proven at trial, together with  
16 attorney fees, costs, and disbursements per ORS 652.200, as well as pre- and post-judgment  
17 interest.

18 **THIRTEENTH CLAIM FOR RELIEF**

19 **Individual Claim / Unpaid Wages Due Upon Termination / Defendant Studio One**

20 72.

21 All previous paragraphs are incorporated by reference herein.

22 73.

23 Pursuant to ORS 652.140, Defendant Studio One was required to pay Plaintiff all wages  
24 earned and unpaid by the statutory deadline upon termination of his employment but willfully  
25 failed to do so.

74.

Plaintiff is entitled to collect all wages remaining due, in an amount to be proven at trial together with attorney fees, costs, and disbursements per ORS 652.140, as well as pre- and post-judgment interest, and the 30 days of statutory penalty wages provided by ORS 652.150.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims for which it is available.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that the Court award him and the other class/collective members such actual, statutory, penalty, punitive (on motion), liquidated, and other damages as set forth above in amounts to be proven at trial; award the attorney fees, costs, and expenses of suit; award pre-judgment and post-judgment interest as provided by law; order an accounting; declare Defendant Studio One's violations as enumerated above; and order such further or alternative relief as the Court deems appropriate.

DATED this 27th day of June 2023.

LEWALLEN LAW, LLC


/s/Shanti Lewallen

Shanti Lewallen, OSB No. 143740  
shantilewallen@gmail.com

***Of Attorneys for Plaintiff***

I hereby consent in writing to join this case.

DATED this 27th day of June 2023.

  
Alexander Atkins