

Mark Crabtree, OSB #015070  
[mark.crabtree@jacksonlewis.com](mailto:mark.crabtree@jacksonlewis.com)  
Kevin Coles, OSB #170926  
[kevin.coles@jacksonlewis.com](mailto:kevin.coles@jacksonlewis.com)  
JACKSON LEWIS P.C.  
200 SW Market St., Ste. 540  
Portland, Oregon 97201  
Telephone: (503) 229-0404  
Facsimile: (503) 229-0405  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ALEXANDER ATKINS,

Plaintiff,

vs.

VCE THEATERS, LLC dba Studio One  
Theaters, an Oregon limited liability company;  
KYLE MARKS, an individual; and JASON  
LENSCH, an individual,

Defendants.

Case No.: 3:23-cv-01332-SB

**DEFENDANTS VCE THEATERS, LLC  
AND JASON LENSCH'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT**

Defendants VCE Theaters, LLC dba Studio One Theaters ("VCE") and Jason Lensch  
(collectively "Defendants") answer Plaintiff's Complaint as follows:

1.

Paragraph 1 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any assertion that they violated any legal obligation to Plaintiff or to the putative class or collective members or that they are responsible for any loss or harm incurred by Plaintiff or the putative class or collective members.

2.

Paragraph 2 of the Complaint fails to set forth allegations of fact requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any assertion that they violated any legal obligation to Plaintiff or to the putative class or collective members or that they are responsible for any loss or harm incurred by Plaintiff or the putative class or collective members.

3.

Paragraph 3 of the Complaint fails to set forth allegations of fact requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any implied assertions.

4.

In response to paragraph 4 of the Complaint, Defendants admit Plaintiff previously worked for VCE Theaters in an hourly, tip-eligible position. Given the vague nature of the remaining allegations, Defendants are without sufficient knowledge, information or belief to admit or deny the allegations and on that basis deny each and every other allegation contained therein, including any implied assertion that Plaintiff's allegations are appropriate for class or collective treatment.

5.

In response to paragraph 5 of the Complaint, Defendants admit that VCE operates a seven-screen theater in Portland, Oregon, on Powell Boulevard. Defendants further admit that VCE

employed Plaintiff. Defendants also admit venue and jurisdiction are appropriate in this Court. Given the vague nature of the remaining allegations, Defendants are without sufficient knowledge, information or belief to admit or deny the allegations and on that basis deny each and every other allegation contained therein.

6.

In response to paragraph 6 of the Complaint, Defendants deny each and every allegation contained therein.

7.

In response to paragraph 7 of the Complaint, Defendants deny each and every allegation contained therein.

8.

In response to paragraph 8 of the Complaint, Defendants admit Plaintiff's hourly rate was \$14.75. Defendants deny each and every other allegation contained therein.

9.

In response to paragraph 9 of the Complaint, Defendants are without sufficient knowledge, information or belief to admit or deny the alleged relationship between Plaintiff and Mr. Marks and on that basis deny the alleged relationship. Defendants deny each and every other allegation contained therein.

10.

In response to paragraph 10 of the Complaint, Defendants deny that managers received or took any portion of Plaintiff's tips. Defendants further deny that Plaintiff reported or otherwise opposed perceived violations of laws pertaining to tips. Defendants also deny that Plaintiff ever asked for an accounting of his tips. Defendants are without sufficient knowledge, information or belief to admit or deny the remaining allegations and on that basis deny each and every other allegation contained therein.

11.

In response to paragraph 11 of the Complaint, Defendants deny each and every allegation contained therein.

12.

In response to paragraph 12 of the Complaint, Defendants deny each and every allegation contained therein.

13.

In response to paragraph 13 of the Complaint, Defendants deny each and every allegation contained therein.

14.

In response to paragraph 14 of the Complaint, Defendants deny each and every allegation contained therein.

15.

Paragraph 15 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any implied assertion that they violated any legal obligation to Plaintiff or that they are responsible for any loss or harm incurred by Plaintiff.

16.

Paragraph 16 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any implied assertion that they violated any legal obligation to Plaintiff or that they are responsible for any loss or harm incurred by Plaintiff.

17.

Paragraph 17 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny each and every allegation contained therein, including any

implied assertion that they violated any legal obligation to Plaintiff or that they are responsible for any loss or harm incurred by Plaintiff.

18.

In response to paragraph 18 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertion that Plaintiff's allegations are appropriate for class or collective treatment.

19.

Given the vague description of the putative class, Defendants are without sufficient knowledge, information or belief to admit or deny the allegations and on that basis deny each and every allegation contained therein.

20.

In response to paragraph 20 of the Complaint and each of its subparts, Defendants deny each and every allegation contained therein, including any assertion that Plaintiff's allegations are appropriate for class or collective treatment.

21.

In response to paragraph 21 of the Complaint and each of its subparts, Defendants deny each and every allegation contained therein, including any assertion that Plaintiff's allegations are appropriate for class or collective treatment.

22.

In response to paragraph 22 of the Complaint and each of its subparts, Defendants deny each and every allegation contained therein, including any assertion that Plaintiff's allegations are appropriate for class or collective treatment.

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23.

In response to paragraph 23 of the Complaint, Defendants admit the allegation therein. Answering further, in response to Plaintiff's ORCP 32H notice, Plaintiff was put on notice that Defendant would seek to recover its costs and attorney fees.

24.

In response to paragraph 24 of the Complaint and each of its subparts, Defendants deny each and every allegation contained therein.

25.

In response to paragraph 25 of the Complaint, Defendants deny each and every allegation contained therein, including any assertion that Plaintiff's allegations are appropriate for class or collective treatment.

#### FIRST CLAIM FOR RELIEF

##### Collective Claim / FLSA Tip Theft / Defendant Studio One

26.

In response to paragraph 26 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 25 as if fully set forth herein.

27.

In response to paragraph 27 of the Complaint, Defendants deny each and every allegation contained therein.

28.

In response to paragraph 28 of the Complaint, Defendants deny each and every allegation contained therein.

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SECOND CLAIM FOR RELIEF

Class Claim / Conversion / Defendant Studio One

29.

In response to paragraph 29 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 28 as if fully set forth herein.

30.

In response to paragraph 30 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

31.

In response to paragraph 31 of the Complaint, Defendants deny each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

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

Defendant Studio One

32.

In response to paragraph 32 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 31 as if fully set forth herein.

33.

In response to paragraph 33 of the Complaint, Defendants deny each and every allegation contained therein.

34.

In response to paragraph 34 of the Complaint, Defendants deny each and every allegation contained therein.

SECOND CLAIM FOR RELIEF [sic]

Class Claim / Accounting / Defendant Studio One

35.

In response to paragraph 35 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 34 as if fully set forth herein.

36.

In response to paragraph 36 of the Complaint, Defendants deny each and every allegation contained therein.

37.

In response to paragraph 37 of the Complaint, Defendants deny each and every allegation contained therein.

THIRD CLAIM FOR RELIEF [sic]

Class Claim / Unjust Enrichment / Defendant Studio One

38.

In response to paragraph 38 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 37 as if fully set forth herein.

39.

In response to paragraph 39 of the Complaint, Defendants deny each and every allegation contained therein.

40.

In response to paragraph 40 of the Complaint, Defendants deny each and every allegation contained therein.

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FOURTH CLAIM FOR RELIEF [sic]

Class Claim / Money Had and Received / Defendant Studio One

41.

In response to paragraph 41 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 40 as if fully set forth herein.

42.

In response to paragraph 42 of the Complaint, Defendants deny each and every allegation contained therein.

43.

In response to paragraph 43 of the Complaint, Defendants deny each and every allegation contained therein.

FIFTH CLAIM FOR RELIEF [sic]

Individual Claim / Wrongful Discharge / Defendants Studio One & Lensch

44.

In response to paragraph 44 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 43 as if fully set forth herein.

45.

Paragraph 45 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny that they violated any legal obligation to Plaintiff or that they are responsible for any loss or harm incurred by Plaintiff.

46.

Paragraph 46 of the Complaint fails to allege facts requiring a response. To the extent a response is required, Defendants deny that they violated any legal obligation to Plaintiff or that they are responsible for any loss or harm incurred by Plaintiff.

47.

In response to paragraph 47 of the Complaint, Defendants deny each and every allegation contained therein.

48.

In response to paragraph 48 of the Complaint, Defendants deny each and every allegation contained therein.

49.

In response to paragraph 49 of the Complaint, Defendants deny each and every allegation contained therein.

#### EIGHTH CLAIM FOR RELIEF

Individual Claim / Abetting or Inciting / Individual Defendants

50.

In response to paragraph 50 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 49 as if fully set forth herein.

51.

In response to paragraph 51 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

52.

In response to paragraph 52 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

53.

In response to paragraph 53 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

54.

In response to paragraph 54 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

55.

In response to paragraph 55 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

56.

In response to paragraph 56 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

SIXTH CLAIM FOR RELIEF [sic]

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

57.

In response to paragraph 57 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 56 as if fully set forth herein.

58.

In response to paragraph 58 of the Complaint, Defendants deny each and every allegation contained therein.

59.

In response to paragraph 59 of the Complaint, Defendants deny each and every allegation contained therein.

60.

In response to paragraph 60 of the Complaint, Defendants deny each and every allegation contained therein.

TENTH CLAIM FOR RELIEF

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

61.

In response to paragraph 61 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 60 as if fully set forth herein.

62.

In response to paragraph 62 of the Complaint, Defendants deny each and every allegation contained therein, including any implied assertions.

63.

In response to paragraph 63 of the Complaint, Defendants deny each and every allegation contained therein.

64.

In response to paragraph 64 of the Complaint, Defendants deny each and every allegation contained therein.

SEVENTH CLAIM FOR RELIEF [sic]

Individual Claim / Sex Discrimination – Quid pro Quo /

Defendants Studio One and Marks

65.

In response to paragraph 65 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 64 as if fully set forth herein.

66.

In response to paragraph 66 of the Complaint, Defendants deny each and every allegation contained therein.

67.

In response to paragraph 67 of the Complaint, Defendants deny each and every allegation contained therein.

68.

In response to paragraph 68 of the Complaint, Defendants deny each and every allegation contained therein.

#### TWELFTH CLAIM FOR RELIEF

Individual Claim / Unpaid Wages / Defendant Studio One

69.

In response to paragraph 69 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 68 as if fully set forth herein.

70.

In response to paragraph 70 of the Complaint, Defendants deny each and every allegation contained therein.

71.

In response to paragraph 71 of the Complaint, Defendants deny each and every allegation contained therein.

#### THIRTEENTH CLAIM FOR RELIEF

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

72.

In response to paragraph 72 of the Complaint, Defendants incorporate by reference their responses to the allegations set forth in Paragraphs 1 through 71 as if fully set forth herein.

73.

In response to paragraph 73 of the Complaint, Defendants deny each and every allegation contained therein.

74.

In response to paragraph 74 of the Complaint, Defendants deny each and every allegation contained therein.

### **AFFIRMATIVE DEFENSES**

By way of further answer and without waiving any allegations previously denied, the following affirmative defenses are asserted:

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which monetary, equitable, or injunctive relief may be granted, either as to Plaintiff or as to those persons whom Plaintiff purports to represent.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Complaint, and each purported cause of action alleged therein, is barred in whole or in part by the applicable statutes of limitation. This defense also may apply to the claims of some or all of the class of putative class and collective members.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendants' actions have been in good faith and based upon reasonable grounds for believing that such actions were not in violation of the law, within the meaning of 29 U.S.C. § 260. Thus, even if Defendants are found to have violated the FLSA, Plaintiff is not entitled to liquidated damages under the FLSA.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff has and continues to have the ability and opportunity to mitigate his alleged damages and has failed or refused to mitigate those alleged damages.

#### **FIFTH AFFIRMATIVE DEFENSE**

Defendants' decisions made as to Plaintiff's employment were without consideration as to any protected category or conduct, but if it is determined that any protected category or conduct

was a motivating factor in any decision, then Defendants assert that they would have reached the same result, regardless of any protected category or conduct, based upon the facts and the circumstances of the case.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff and the putative class members take nothing by the Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. For cost of suit incurred herein, including reasonable attorney's fees pursuant to ORS 652.615 and 653.055; and
4. For such other and further relief as the Court deems just and equitable.

DATED: September 20, 2023.

Respectfully Submitted,  
JACKSON LEWIS P.C.

By: s/ Kevin Coles  
Mark Crabtree, OSB #015070  
[mark.crabtree@jacksonlewis.com](mailto:mark.crabtree@jacksonlewis.com)  
Kevin Coles, OSB #170926  
[kevin.coles@jacksonlewis.com](mailto:kevin.coles@jacksonlewis.com)  
Attorneys for Defendants

**DECLARATION OF SERVICE**

I hereby certify that I served the foregoing **DEFENDANTS VCE THEATERS, LLC AND JASON LENSCH'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT** via:

- ☐ Electronic Mail
- ☐ US Postal Service
- ☒ CM/ECF
- ☐ Facsimile Service
- ☐ Hand Delivery
- ☐ UPS

as follows on the date stated below:

Shanti Lewallen  
Lewallen Law, LLC  
735 SW First St., Ste. 300  
Portland, OR 97204  
shantilewallen@gmail.com

*Attorney for Plaintiff*

DATED this 20<sup>th</sup> day of September, 2023.

By: s/ Delores Petrich  
Delores Petrich

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