

**ENDORSED
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ALAMEDA COUNTY**

SEP 01 2020

CLERK OF THE SUPERIOR COURT

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11
12 **RICKARY PERSONS**, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
14 employees,

15 **Plaintiff,**

16 **vs.**

17 **AMERICAN MULTI-CINEMA, INC.**, a
Missouri corporation; **AMC**
18 **ENTERTAINMENT HOLDINGS, INC.**, a
Delaware corporation; and **DOES 1 through**
19 **10, inclusive,**

20 **Defendants.**
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Case No.: **RG 20073108**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

27 **BY FAX**
28

1 Plaintiff Rickary Persons, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on April 17, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ persons in this
3 county and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Rickary Persons is a resident of Oakland, in Alameda County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Crew Member from
12 approximately July 2019 to September 2019. Plaintiff worked for Defendants at their AMC
13 Bay Street 16 location in Emeryville, California. During his employment, Plaintiff typically
14 worked five (5) to seven (7) hours or more per day and five (5) days per week. At the time his
15 employment ended, Plaintiff earned approximately \$16.30 per hour. His job duties included,
16 without limitation, ushering; greeting customers; cleaning the premises; processing ticket
17 sales and payments in the box office; and assisting with concession stand duties, such as
18 taking and fulfilling customer orders.

19 7. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
21 their hire or during their employment. On further information and belief, Defendants’ dispute
22 resolution policy and/or arbitration agreement was and is both procedurally and substantively
23 unconscionable. Specifically, Defendants presented new hires with an “Agreement to
24 Arbitrate” (“Arbitration Agreement”) during the onboarding process, which had to be
25 reviewed and signed immediately. In fact, upon information and belief, this Arbitration
26 Agreement was one of several documents presented to new employees for signature during the
27 orientation process, including the Crew Policy Handbook Associate Acknowledgement, Rest
28 and Meal Period Acknowledgment, and Wage Theft Act Notice, among other documents.

1 Also, employees did not have a meaningful opportunity to negotiate the terms of the
2 Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on
3 a take-it or leave-it basis at the time they were hired, along with all of the other on-boarding
4 documents. Further, Defendants did not set forth in the agreement or otherwise provide
5 employees with the rules which will govern the arbitration, instead forcing employees to seek
6 this information out on their own ("Arbitration will be conducted according to the *Judicial*
7 *Arbitration and Mediation Service (JAMS) Employment Arbitration Rules & Procedures*
8 (available at www.jamsadr.com or in AMC's Human Resources Department) or, if you and
9 AMC agree, pursuant to other rules and procedures.").

10 8. AMERICAN MULTI-CINEMA, INC. was and is, upon information and belief,
11 a Missouri corporation, and at all times hereinafter mentioned, an employer whose employees
12 are engaged throughout this county and the State of California.

13 9. AMC ENTERTAINMENT HOLDINGS, INC. was and is, upon information
14 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
15 employees are engaged throughout this county and the State of California.

16 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
17 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
18 amend the complaint and serve such fictitiously named Defendants once their names and
19 capacities become known.

20 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
21 were the partners, agents, owners, or managers of AMERICAN MULTI-CINEMA, INC. and
22 AMC ENTERTAINMENT HOLDINGS, INC. at all relevant times.

23 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
24 acts and omissions alleged herein was performed by, or is attributable to, AMERICAN
25 MULTI-CINEMA, INC.; AMC ENTERTAINMENT HOLDINGS, INC.; and/or DOES 1
26 through 10 (collectively, "Defendants" or "AMC"), each acting as the agent, employee, alter
27 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
28 was acting within the course and scope of such agency, employment, joint venture, or

1 concerted activity with legal authority to act on the others' behalf. The acts of any and all
2 Defendants were in accordance with, and represent, the official policy of Defendants.

3 13. At all relevant times, Defendants, and each of them, ratified each and every act
4 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
5 and abetted the acts and omissions of each and all the other Defendants in proximately causing
6 the damages herein alleged.

7 14. Plaintiff is informed and believes, and thereon alleges, that each of said
8 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
9 omissions, occurrences, and transactions alleged herein.

10 15. Under California law, Defendants are jointly and severally liable as employers
11 for the violations alleged herein because they have each exercised sufficient control over the
12 wages, hours, working conditions, and employment status of Plaintiff and other non-party
13 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
14 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
15 of employment, determined their rate of pay, and maintained their employment records.
16 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
17 and/or "engaged" Plaintiff and other non-party Aggrieved Employees so as to create a
18 common-law employment relationship. As joint employers of Plaintiff and other non-party
19 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
20 available to Plaintiff and other non-party Aggrieved Employees under the law.

21 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
22 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
23 non-party Aggrieved Employees because Defendants have:

- 24 (a) jointly exercised meaningful control over the work performed by
25 Plaintiff and other non-party Aggrieved Employees;
26 (b) jointly exercised meaningful control over Plaintiff's and other non-party
27 Aggrieved Employees' wages, hours, and working conditions, including
28 the quantity, quality standards, speed, scheduling, and operative details

1 of the tasks performed by Plaintiff and other non-party Aggrieved
2 Employees;

- 3 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
4 perform work which is an integral part of Defendants' businesses; and
5 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
6 Employees as a matter of economic reality in that Plaintiff and other
7 non-party Aggrieved Employees were dependent on Defendants, who
8 shared the power to set the wages of Plaintiff and other non-party
9 Aggrieved Employees and determined their working conditions, and
10 who jointly reaped the benefits from the underpayment of their wages
11 and noncompliance with other statutory provisions governing their
12 employment.

13 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
14 there has existed a unity of interest and ownership between Defendants such that any
15 individuality and separateness between the entities has ceased.

16 18. AMERICAN MULTI-CINEMA, INC.; AMC ENTERTAINMENT
17 HOLDINGS, INC.; and DOES 1 through 10 are therefore alter egos of each other.

18 19. Adherence to the fiction of the separate existence of Defendants would permit
19 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
20 from liability for the wrongful acts committed by them under the name AMC.

21 20. Plaintiff further alleges, upon information and belief, that Defendants
22 AMERICAN MULTI-CINEMA, INC. and AMC ENTERTAINMENT HOLDINGS, INC. are
23 alter egos of each other for the following reasons:

- 24 (a) According to AMC ENTERTAINMENT HOLDINGS, INC.'s SEC 10-
25 K filing for 2019, AMERICAN MULTI-CINEMA, INC. is a wholly
26 owned subsidiary of AMC ENTERTAINMENT HOLDINGS, INC.;¹

27
28 ¹ 10-K Annual Report 2/28/2020, "SEC FILINGS | AMC Theatres,"
<http://investor.amctheatres.com/sec-filings> (last accessed August 27, 2020).

- 1 (b) According to information filed with the California Secretary of State,
2 AMERICAN MULTI-CINEMA, INC. and AMC ENTERTAINMENT
3 HOLDINGS, INC., share the same officers, including Adam M. Aron,
4 who serves as Chief Executive Officer of both entities, and Kevin M.
5 Connor, who serves as Secretary of both entities;
- 6 (c) On the California Secretary of State’s website
7 (<https://businesssearch.sos.ca.gov/>), AMERICAN MULTI-CINEMA,
8 INC. and AMC ENTERTAINMENT HOLDINGS, INC. share the same
9 entity address and mailing address, “11500 ASH STREET, LEAWOOD
10 KS 66211;”
- 11 (d) On information and belief, AMERICAN MULTI-CINEMA, INC. and
12 AMC ENTERTAINMENT HOLDINGS, INC. share the same agent for
13 service of process, “CORPORATE CREATIONS NETWORK INC.
14 (C2250455);” and
- 15 (e) On information and belief, AMERICAN MULTI-CINEMA, INC. and
16 AMC ENTERTAINMENT HOLDINGS, INC. utilize the same
17 standardized employment forms and issue the same employment
18 policies.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 21. Defendants are the largest movie exhibition company in the world and operate
21 approximately 636 theatres in the United States, including 54 movie theatres in California.
22 Upon information and belief, Defendants maintain a single, centralized Human Resources
23 (“HR”) department at their corporate headquarters in Leawood, Kansas, which is responsible
24 for the recruiting and hiring of new employees, and communicating and implementing
25 Defendants’ company-wide policies, including timekeeping policies and meal and rest period
26 policies, to employees throughout California.

27 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
28 information and belief, received the same standardized documents and/or written policies.

1 Upon information and belief, the usage of standardized documents and/or written policies,
2 including new-hire documents, indicate that Defendants dictated policies at the corporate level
3 and implemented them company-wide, regardless of their employees' assigned locations or
4 positions. Upon information and belief, Defendants set forth uniform policies and procedures
5 in several documents provided at an employee's time of hire.

6 23. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their corporate headquarters in Leawood, Kansas, which processes payroll for
8 all non-exempt, hourly paid employees working for Defendants at their various locations and
9 jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
10 upon information and belief, Defendants issue the same formatted wage statements to all non-
11 exempt, hourly paid employees in California, irrespective of their work locations. Upon
12 information and belief, Defendants process payroll for departing employees in the same
13 manner throughout the State of California, regardless of the manner in which each employee's
14 employment ends.

15 24. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

17 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
19 and advisors knowledgeable about California labor and wage law, employment and personnel
20 practices, and about the requirements of California law.

21 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
22 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
23 were not recorded.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
27 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
28 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were

1 not provided with all meal periods or payment of one (1) additional hour of pay at their
2 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
3 period.

4 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
7 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
8 and permitted to take a compliant rest period. In violation of the California Labor Code,
9 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
10 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
11 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
12 they were not authorized and permitted to take a compliant rest period.

13 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that other non-party Aggrieved Employees were entitled to receive certain
15 wages for overtime compensation and that they were not receiving certain wages for overtime
16 compensation.

17 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive at least minimum wages for compensation and that they were not receiving at least
20 minimum wages for work that was required to be done off-the-clock. In violation of the
21 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
22 least minimum wages for work done off-the-clock.

23 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive complete and accurate wage statements in accordance with California law. In
26 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
27 were not provided complete and accurate wage statements.

28 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of all wages earned upon termination of employment. In violation of the
7 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
8 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
9 reporting time pay, and/or meal and rest period premiums, within permissible time periods.

10 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of wages during their employment. In violation of the California Labor Code,
13 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
14 including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or
15 meal and rest period premiums, within permissible time periods.

16 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that they were prohibited from issuing instruments for the payment of
18 wages that were not payable in cash on demand, without discount and with authorization, but
19 did so, in violation of the California Labor Code.

20 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

23 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 payment of wages as designated by statute. In violation of the California Labor Code,
26 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages that
27 required by statute while purporting to pay them proper wages.

28 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that other non-party Aggrieved Employees were entitled to suitable
2 seating and/or were entitled to sit when it did not interfere with the performance of their duties
3 and also have seats nearby to use during a lull in tasks that do require moving about or
4 standing.

5 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 be paid reporting time pay when they reported to work for their scheduled shift but were put to
8 work for less than half of the regular schedule. In violation of the California Labor Code,
9 Defendants did not pay Plaintiff and other non-party Aggrieved Employees all reporting time
10 pay due.

11 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive reimbursement for all business-related expenses and costs they incurred during the
14 course and scope of their employment and that they did not receive reimbursement of
15 applicable business-related expenses and costs incurred.

16 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants knew or should have known that they had a duty to compensate
18 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
19 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
20 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
21 that they were properly denied wages, all in order to increase Defendants' profits.

22 42. At all times herein set forth, PAGA provides that any provision of law under
23 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
24 assessed and collected by the LWDA for violations of the California Labor Code and
25 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
26 civil action brought on behalf of themselves and other current or former employees pursuant
27 to procedures outlined in California Labor Code section 2699.3.

28 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any

1 person who was employed by the alleged violator and against whom one or more of the
2 alleged violations was committed.”

3 44. Plaintiff and other current and former employees of Defendants are “aggrieved
4 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
5 or former employees and one or more of the alleged violations were committed against them.

6 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
7 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
8 following requirements have been met:

- 9 (a) The aggrieved employee shall give written notice by online filing
10 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
11 to the employer of the specific provisions of the California Labor Code
12 alleged to have been violated, including the facts and theories to support
13 the alleged violations.
- 14 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
15 2699.3(a) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
18 employer and the aggrieved employee by certified mail that it does not
19 intend to investigate the alleged violation within sixty (60) calendar
20 days of the postmark date of the Employee’s Notice. Upon receipt of
21 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
22 five (65) calendar days of the postmark date of the Employee’s Notice,
23 the aggrieved employee may commence a civil action pursuant to
24 California Labor Code section 2699 to recover civil penalties in addition
25 to any other penalties to which the employee may be entitled.

26 46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
27 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
28 provision other than those listed in Section 2699.5 after the following requirements have been

met:

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

47. On April 17, 2020, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-783483-20. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 17, 2020, is attached hereto as "Exhibit 1."

48. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to

1 investigate Plaintiff's claims, and Defendants have not cured the violations.

2 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
3 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
4 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224,
5 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

6 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
7 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the Industrial Welfare
9 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
10 dollars (\$50) for each underpaid employee for each pay period for which the employee was
11 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
12 underpaid employee for each pay period for which the employee was underpaid" Labor
13 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
14 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
15 as a private attorney general, seeks assessment and collection of civil penalties under Labor
16 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
17 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
18 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
19 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
20 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
21 IWC wage order.

22 51. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
24 Employees' rights by violating various sections of the California Labor Code as set forth
25 above.

26 52. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

55. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

56. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (b) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below:

- 1 (c) Violation of Labor Code sections 510, 1198, and the applicable IWC
2 wage order for Defendants' failure to compensate other non-party
3 Aggrieved Employees with all required overtime pay, as set forth
4 below;
- 5 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
6 applicable IWC wage order for Defendants' failure to compensate
7 Plaintiff and other non-party Aggrieved Employees with at least
8 minimum wages for all hours worked as set forth below;
- 9 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
10 wage order for failure to provide accurate and complete wage statements
11 to Plaintiff and other non-party Aggrieved Employees, as set forth
12 below;
- 13 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
14 IWC wage order for failure to maintain payroll records as set forth
15 below;
- 16 (g) Violation of Labor Code section 204 for failure to pay all earned wages
17 during employment as set forth below;
- 18 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
19 earned wages upon termination as set forth below;
- 20 (i) Violation of Labor Code sections 212 and 213 for issuing instruments
21 for the payment of wages that were not payable in cash on demand,
22 without discount, and with prior authorization as set forth below;
- 23 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting
24 a portion of wages previously paid to Plaintiff and other non-party
25 Aggrieved Employees, as set forth below;
- 26 (k) Violation of Labor Code section 223 for secretly paying Plaintiff and
27 other non-party Aggrieved Employees lower wages than required by
28 statute, while purporting to pay the proper wages, as set forth below;

- 1 (l) Violation of Labor Code section 1198 for failing to provide suitable
2 seating to other non-party Aggrieved Employees, as set forth below;
- 3 (m) Violation of Labor Code section 1198 and the applicable IWC wage
4 order for failure to pay reporting time pay when Plaintiff and other non-
5 party Aggrieved Employees were put to work for less than half of their
6 regular scheduled shifts, as set forth below;
- 7 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
8 and other non-party Aggrieved Employees for all business expenses
9 necessarily incurred, as set forth below.

10 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

11 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

12 57. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
13 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
14 non-party Aggrieved Employees' employment by Defendants.

15 58. At all relevant times herein set forth, California Labor Code section 512(a)
16 provides that an employer may not require, cause, or permit an employee to work for a period
17 of more than five (5) hours per day without providing the employee with a meal period of not
18 less than thirty (30) minutes, except that if the total work period per day of the employee is
19 not more than six (6) hours, the meal period may be waived by mutual consent of both the
20 employer and the employee. Under California law, first meal periods must start after no more
21 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
22 2012).

23 59. At all relevant times herein set forth, California Labor Code section 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 60. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
27 and the applicable IWC Wage Order also require employers to provide a second meal period
28 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay

1 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
2 total hours worked is no more than twelve (12) hours, the second meal period may be waived
3 by mutual consent of the employer and the employee only if the first meal period was not
4 waived.

5 61. During the relevant time period, on information and belief, Defendants had a
6 company-wide policy of staffing their theatres strictly based on the labor hours allocated by
7 corporate for each location. Defendants' uniform use of labor budgets resulted in chronic
8 understaffing such that there were too few employees on duty to handle the workload and
9 provide uninterrupted meal period coverage. In addition, Defendants, on a company-wide
10 basis, had a practice of failing to schedule meal periods, which further caused Plaintiff and
11 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
12 periods.

13 62. Moreover, Defendants also had a company-wide policy and/or practice of
14 requiring Plaintiff and other non-party Aggrieved Employees to carry company-issued radios
15 and respond to any calls at all times during their shifts. Defendants required that Plaintiff and
16 other non-party Aggrieved Employees be available via radio at all times, including during
17 their unpaid meal periods. As a result of these policies and/or practices, Plaintiff and other
18 non-party Aggrieved Employees were expected to clock out and work through and/or to return
19 early from meal periods, in order to complete their assigned tasks such as cleaning up the
20 theatres. Thus, Plaintiff and other non-party Aggrieved Employees would be forced to work
21 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
22 and/or had to forgo their meal periods altogether. For example, approximately 2-3 times per
23 week, Plaintiff would have his meal periods interrupted by co-workers or supervisors who
24 would contact him via radio to ask him to clean the theatres. However, Plaintiff and other
25 non-party Aggrieved Employees did not sign valid meal period waivers on days that they were
26 entitled to meal periods and were not relieved of all duties.

27 63. Defendants knew or should have known that as a result of their company-wide
28 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not

1 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
2 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
3 Employees meal period premium wages when meal periods were missed, late, short, and/or
4 interrupted.

5 64. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying meal period premiums owed when compliant meal periods are not provided. Because
7 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
8 received premium pay for missed, interrupted, or late meal periods.

9 65. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
10 Employees compliant meal periods and failed to pay the full meal period premiums due.
11 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
12 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
13 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
14 (g).

15 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
16 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

17 66. At all relevant times herein set forth, the applicable IWC Wage Order and
18 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
19 non-party Aggrieved Employees' employment by Defendants.

20 67. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period" and that the "rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
24 hours or major fraction thereof" unless the total daily work time is less than three and one-half
25 (3½) hours.

26 68. At all relevant times, California Labor Code section 226.7 provides that no
27 employer shall require an employee to work during any rest period mandated by an applicable
28 order of the California IWC. To comply with its obligation to authorize and permit rest

1 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
2 employer must “relinquish any control over how employees spend their break time, and
3 relieve their employees of all duties—including the obligation that an employee remain on
4 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
5 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

6 69. Pursuant to the applicable IWC Wage Order and California Labor Code section
7 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
8 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
9 required rest period was not authorized and permitted.

10 70. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
12 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
13 Defendants’ systematic use of labor budgets and resultant understaffing, prevented Plaintiff
14 and other non-party Aggrieved Employees from being relieved of all duty to take their rest
15 periods. Additionally, Defendants failed to schedule rest periods, which, coupled with
16 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and other
17 non-party Aggrieved Employees not being authorized and permitted to take compliant rest
18 periods. Moreover, as described above, Plaintiff and other non-party Aggrieved Employees
19 were assigned company-issued radios and were expected to carry and keep them on while
20 clocked in for their shifts, including during rest periods.

21 71. Furthermore, upon information and belief, Defendants maintained and
22 implemented a company-wide practice and/or policy requiring that Plaintiff and other non-
23 party Aggrieved Employees remain on Defendants’ premises during their rest periods.
24 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving
25 Defendants’ premises during rest periods, they were denied the ability to use their rest periods
26 freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff
27 and other non-party Aggrieved Employees during rest periods, and, as a result of this rest
28 period policy, Defendants did not relinquish control over Plaintiff and other non-party

1 Aggrieved Employees during rest periods.

2 72. As a result of Defendants' practices and policies, Plaintiff and other non-party
3 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
4 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
5 entitled. For example, Plaintiff was, at times, only authorized and permitted by Defendants to
6 take one (1) 10-minute rest period in a six (6) or more hour shift. Other times, Plaintiff had
7 his rest periods interrupted, due to Defendants' understaffing and resultant lack of rest period
8 coverage, which forced him to continue to perform his work duties.

9 73. Defendants also have engaged in a company-wide practice and/or policy of not
10 paying all rest period premiums owed when compliant rest periods are not authorized or
11 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
12 Employees have not received premium pay for all missed rest periods.

13 74. Defendants' conduct violates the applicable IWC Wage Order and California
14 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
15 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
16 558 and/or 2699(a), (f), and (g).

17 **FAILURE TO PAY OVERTIME**

18 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

19 75. Labor Code section 1198 makes it illegal to employ an employee under
20 conditions of labor that are prohibited by the applicable wage order. California Labor Code
21 section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall
22 be the . . . standard conditions of labor for employees. The employment of any employee . . .
23 under conditions of labor prohibited by the order is unlawful."

24 76. California Labor Code section 1198 and the applicable IWC Wage Order
25 provide that it is unlawful to employ persons without compensating them at a rate of pay
26 either time-and-one-half or two-times that person's regular rate of pay, depending on the
27 number of hours worked by the person on a daily or weekly basis.

28 77. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay other non-party Aggrieved Employees working more than eight (8) hours
2 in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for
3 all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
4 workweek.

5 78. The applicable IWC Wage Order further provides that Defendants are and were
6 required to pay other non-party Aggrieved Employees working more than twelve (12) hours in
7 a day, overtime compensation at a rate of two (2) times their regular rate of pay. An
8 employee's regular rate of pay includes all remuneration for employment paid to, or on behalf
9 of, the employee, including nondiscretionary bonuses and incentive pay.

10 79. California Labor Code section 510 codifies the right to overtime compensation
11 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
13 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
14 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
15 in a day on the seventh (7th) day of work.

16 80. During the relevant time period, Defendants willfully failed to pay all overtime
17 wages owed to other non-party Aggrieved Employees. During the relevant time period, other
18 non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
19 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in
20 excess of forty (40) hours in a week, because all hours worked were not recorded.

21 81. During the relevant period, as stated, Defendants' systemic understaffing
22 arising from their company-wide use of labor budgets created a lack of adequate meal period
23 coverage. This lack of meal period coverage, coupled with Defendants' practice of failing to
24 schedule meal periods, prevented other non-party Aggrieved Employees from taking
25 compliant meal periods and caused them to work off-the-clock without that time being
26 recorded. Moreover, as stated, other non-party Aggrieved Employees were assigned
27 company-issued radios and were expected to carry and keep them on while on Defendants'
28 premises, including during unpaid meal periods.

1 82. Defendants knew or should have known that, as a result of these company-wide
2 practices and/or policies, other non-party Aggrieved Employees were performing their
3 assigned duties during their meal periods and performing work off-the-clock before or after
4 their shifts, and were suffered or permitted to perform work for which they were not paid.
5 Because other non-party Aggrieved Employees regularly worked shifts of eight (8) hours a
6 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
7 overtime premium pay. Therefore, other non-party Aggrieved Employees were not paid
8 overtime wages for all of the overtime hours they actually worked.

9 83. Defendants' failure to pay other non-party Aggrieved Employees the balance of
10 overtime compensation as required by California law, violates the provisions of California
11 Labor Code sections 510 and 1198. Other non-party Aggrieved Employees are entitled to
12 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

14 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

15 84. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
17 to be paid to employees, and the payment of a wage less than the minimum so fixed is
18 unlawful. Compensable work time is defined by the applicable wage order as "the time
19 during which an employee is subject to the control of an employer, and includes all the time
20 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
21 Regs. tit. 8, § 11100(2)(H) (defining "Hours Worked").

22 85. As set forth above, during the relevant time period, as a result of Defendants'
23 policy and/or practice of understaffing their theatres and failure to schedule meal periods,
24 Plaintiff and other non-party Aggrieved Employees were forced to forego meal periods, have
25 their meal periods interrupted, and/or were otherwise not relieved of all duties during meal
26 periods. Additionally, Plaintiff and other non-party Aggrieved Employees were required to
27 carry radios on their persons at all times while on Defendants' premises, including during
28 unpaid meal periods.

1 86. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
2 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
3 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
4 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
5 1194, 1197, and 1198.

6 87. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
11 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

12 88. At all relevant times herein, California Labor Code section 226(a) provides that
13 every employer shall furnish each of his or her employees an accurate and complete itemized
14 wage statement in writing, including, but not limited to, the name and address of the legal
15 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
16 applicable rates of pay.

17 89. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
19 inaccurate wage statements. For example, Defendants issued uniform wage statements to
20 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
21 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
22 the pay period, including overtime rates of pay, and the corresponding number of hours
23 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
24 226(a)(5), and 226(a)(9).

25 90. Because Defendants did not record the time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
27 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
28 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to

1 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
2 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of
3 pay in effect during the pay period and corresponding accurate number of work hours worked
4 at each hourly rate in violation of section 226(a)(9).

5 91. The wage statement deficiencies also include, without limitation, failing to list
6 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
7 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
8 only the last four digits of his or her social security number or an employee identification
9 number other than a social security number; failing to list the name and address of the legal
10 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
11 employees were paid; and/or failing to state all hours worked as a result of not recording or
12 stating hours worked off-the-clock.

13 92. California Labor Code section 1198 provides that the maximum hours of work
14 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
15 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
16 employment of any employees for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
18 Wage Order, employers are required to keep accurate time records showing when the
19 employee begins and ends each work period and meal period. During the relevant time
20 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
21 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
22 in violation of section 1198.

23 93. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or establishments

1 ...” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
2 willfully failed to maintain accurate payroll records for Plaintiff and other non-party
3 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
4 result of failing to record the off-the-clock hours that they worked.

5 94. Because Defendants’ violations of 226(a) and 1174(d) were committed against
6 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
7 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
8 1174.5, and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 95. At all relevant times herein set forth, California Labor Code section 204
12 requires that all wages earned by any person in any employment between the 1st and the 15th
13 days, inclusive, of any calendar month, other than those wages due upon termination of an
14 employee, are due and payable between the 16th and the 26th day of the month during which
15 the labor was performed. Labor Code section 204 further provides that all wages earned by
16 any person in any employment between the 16th and the last day, inclusive, of any calendar
17 month, other than those wages due upon termination of an employee, are due and payable
18 between the 1st and the 10th day of the following month.

19 96. At all relevant times herein, California Labor Code section 204 also requires
20 that all wages earned for labor in excess of the normal work period shall be paid no later than
21 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
22 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
23 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven (7) calendar days following the close of the payroll period.

25 97. During the relevant time period, Defendants willfully failed to pay Plaintiff and
26 other non-party Aggrieved Employees all wages due to them within any time period specified
27 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
28 wages, reporting time pay, and/or meal and rest period premium wages.

1 98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY WAGES UPON TERMINATION**

4 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

5 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
6 that if an employer discharges an employee, the wages earned and unpaid at the time of
7 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
8 her employment, his or her wages shall become due and payable not later than seventy-two
9 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
10 his or her intention to quit, in which case the employee is entitled to his or her wages at the
11 time of quitting.

12 100. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
13 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
14 above, including but not limited to, overtime wages, minimum wages, reporting time pay,
15 and/or meal and rest period premium wages, either at the time of discharge, or within seventy-
16 two (72) hours of their leaving Defendants' employ.

17 101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
18 who are no longer employed by Defendants their wages earned and unpaid at the time of
19 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
20 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
21 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
22 2699(a), (f), and (g).

23 **UNLAWFUL DISCOUNT OF WAGES**

24 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

25 102. California Labor Code section 212 prohibits employers from issuing any
26 instruments for the payment of wages unless such instruments are negotiable and payable in
27 cash on demand and without discount, at some established place of business in the state, the
28 name and address of which must appear on the instrument. California Labor Code section 212

1 further prohibits employers from issuing payment of wages due in the form of any scrip,
2 coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or
3 redeemable otherwise than in money.

4 103. California Labor Code section 213 permits employers to pay employees via
5 direct deposit so long as the employee authorizes payment via direct deposit.

6 104. Under California law, employers are permitted to fulfill their wage payment
7 obligations to employees by using payroll debit cards, but only so long as the employee is
8 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
9 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
10 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
11 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
12 relied heavily on:

13 . . . [T]he fact that the pay programs were optional, thereby
14 allowing an employee to either participate in the program or
15 receive his or her pay in some other way, such as direct deposit.
16 Specifically, the DLSE opined that “[t]he success of the
17 described procedure, in practice, will of course require that . . . it
18 is presented as an *alternative* method for wage payment for
19 which [the employees’] participation is optional.” The DLSE
also stated, “[i]t is significant that the program does not
mandate employee participation in the Money Network Service
and that it is designed to provide an alternative for employees
receiving their wage payment. Employees are also given the
option of having their pay direct deposited into an account of
their choosing . . .” (internal citations omitted).

20 105. In addition, California law only permits employers to utilize payroll debit card
21 programs if they provide employees with effective access to their wages without discount.
22 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
23 payroll debit cards where the following requirements are satisfied:

24 . . . (1) [T]he “wages [are] payable at some established place of
25 business in the state and there be at least 30 days of sufficient
26 funds for payment,”; (2) the employees are “fully informed of
27 the service and procedures and that it is represented as an
28 alternative method for wage payment for which their
participation is optional,”; (3) the employees receive “an
itemized wage statement,”; and (4) “at least one transaction per
pay period [is] without fee.”

1 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL
2 6202298 at 3.

3 106. Further, the DLSE notes that the Labor Code manifests:

4 . . . [A] strong public policy that prohibits an employer (or its
5 agent) from imposing conditions or obstacles which interfere
6 with or prevent an employee's (*sic*) from promptly receiving
7 their due wages *in full*. The imposition of a fee in order to
8 readily *access* one's earned and paid wage under a payroll card
9 program which is designed to discharge the employer's wage
payment obligations could impermissibly interfere with an
employee's receipt of *page* wages by creating a financial
condition which would have the *effect* of reducing or discounting
wages because such fee would be charged against the same
account in which wages are deposited." (Emphases in original)

10 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
11 providers "effectively act as *agents* of the client employers in discharging the employer's
12 wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the
13 Labor Code does not purport to regulate the specific arrangements between employers and
14 payroll service providers, both an employer and, under the express language in Labor Code
15 § 212- their *agent*, must comply with its requirements." *DLSE opinion letter* 2008.07.07.2.

16 107. During the relevant time period, Defendants had an agreement with a payroll
17 service provider for the issuance of payroll cards to employees, including Plaintiff and other
18 non-party Aggrieved Employees, to discharge their wage payment obligations to their
19 employees. Under Defendants' payroll debit card program, employees could use their payroll
20 cards to: 1) make a signature-based purchase using the card; 2) make a PIN-based purchase
21 using the card; 3) make ATM withdrawals; or 4) make teller-assisted withdrawals. Under
22 Defendants' payroll debit program, Plaintiff and other non-party Aggrieved Employees did
23 not have easy access to the entirety of their wages without incurring a fee.

24 108. For example, Plaintiff and other non-party Aggrieved Employees were unable
25 to withdraw the entirety of their wages in one transaction without incurring a fee.
26 Specifically, if Plaintiff and other non-party Aggrieved Employees initially utilized an ATM
27 to try to withdraw their wages, they could not obtain the entire amount because ATMs only
28 disburse cash in limited denominations and do not dispense exact change. Any subsequent

1 withdrawals made through PIN-based purchases, ATMs, or teller-assisted withdrawals were
2 subject to fees of \$0.50, \$1.50, and \$5.00 for each transaction, respectively.

3 109. While obtaining a teller-assisted withdrawal may have been another option
4 available to employees under Defendants' payroll card program, Plaintiff and other non-party
5 Aggrieved Employees had to abide by the business hours of specific bank chains in the payroll
6 service provider's network, which have limited locations. In sum, Defendants' payroll debit
7 card program presented a number of obstacles and hurdles that combined, made it difficult for
8 Plaintiff and other non-party Aggrieved Employees to access their entire wages without
9 discount and without delay. Thus, Defendants' payroll debit card program did not give
10 Plaintiff and other non-party Aggrieved Employees easy access to the entirety of their wages
11 without delay.

12 110. California courts recognize a policy favoring the full and prompt payment of
13 wages to employees. Defendants' payroll card program is inconsistent with this policy and for
14 the reasons alleged herein violates California Labor Code sections 212 and 213. Plaintiff and
15 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
16 to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

17 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

18 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

19 111. At all times relevant herein, California Labor Code section 221 provides that it
20 shall be unlawful for any employer to collect or receive from an employee any part of wages
21 theretofore paid by said employer to said employee. California Labor Code section 224 also
22 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
23 deduction is expressly authorized in writing by the employee."

24 112. During the relevant time period, Defendants unlawfully deducted a portion of
25 wages previously paid to Plaintiff and other non-party Aggrieved Employees in violations of
26 California Labor Code section 221. Defendants systematically, and on a company-wide basis,
27 provided Plaintiff and other non-party Aggrieved Employees with payroll debit cards as
28 payment of their wages. Under Defendants' payroll debit card program, Plaintiff and other

1 non-party Aggrieved Employees were assessed various fees in connection with their use of the
2 payroll debit cards. Plaintiff and other non-party Aggrieved Employees were required to pay
3 per-transaction fees, ATM fees, in person teller fees, and/or other fees to obtain and/or spend
4 their earned and due wages. The fees charged to Plaintiff and other non-party Aggrieved
5 Employees resulted in a discount of their wages.

6 113. Defendants' payroll debit card program, which resulted in a discount of wages
7 to employees, is tantamount to taking deductions from Plaintiff's and other non-party
8 Aggrieved Employees' paychecks without their written authorization and therefore constitutes
9 an unlawful deduction of wages, in violation of Labor Code sections 221 and 224.

10 114. Defendants' conduct as alleged herein violates California Labor Code sections
11 221 and 224. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
12 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

13 **SECRET PAYMENT OF A LOWER WAGE**

14 **VIOLATION OF LABOR CODE SECTION 223**

15 115. At all times, California Labor Code section 223 makes it unlawful for an
16 employer to secretly pay wages lower than required by statute while purporting to pay legal
17 wages.

18 116. During the relevant time period, Defendants willfully and systematically issued
19 payroll debit cards to Plaintiff and other non-party Aggrieved Employees that discounted their
20 wages by charging various fees in connection with the use of the payroll debit cards.

21 Defendants' payroll debit card program resulted in the payment of less than statutorily
22 required wages to Plaintiff and other non-party Aggrieved Employees. In doing so,
23 Defendants acted with the intent to deprive Plaintiff and other non-party Aggrieved
24 Employees of statutory wages, including, but not limited to, overtime wages and/or minimum
25 wages, to which they were entitled to under California law. Thus, Defendants paid Plaintiff
26 and other non-party Aggrieved Employees lower wages than those they were entitled to while
27 purporting that Plaintiff and other non-party Aggrieved Employees were properly paid.

28 117. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees

1 the correct designated wage, while purporting to pay legal wages, is a violation of California
2 Labor Code section 223. Plaintiff and other non-party Aggrieved Employees are therefore
3 entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE SUITABLE SEATING**

5 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
6 **REGULATIONS, TITLE 8, SECTION 11100(14)(A)**

7 118. At all relevant times herein, California Labor Code section 1198 makes it
8 illegal to employ an employee under conditions of labor that are prohibited by the applicable
9 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
10 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
11 The employment of any employee . . . under conditions of labor prohibited by the order is
12 unlawful.”

13 119. California Code of Regulations, Title 8, section 11100(14)(A) provides that
14 “[a]ll working employees shall be provided with suitable seats when the nature of the work
15 reasonably permits the use of seats.”

16 120. Plaintiff alleges that Defendants’ movie theatres are generally similar in their
17 layout and design and there was, and continues to be, space behind concession stands, ticket
18 taker/usher booths, and/or box offices to allow for the presence and use of a seat or stool by
19 other non-party Aggrieved Employees (with reasonable or no modification to these work
20 areas) during the performance of their work duties. Defendants could have provided other
21 non-party Aggrieved Employees with a seat or stool at their concession stands, ticket
22 taker/usher booths, and/or box offices, but instead denied them seating and forced other non-
23 party Aggrieved Employees to stand throughout the day.

24 121. Other non-party Aggrieved Employees spent a substantial portion of their day
25 behind or at these concession stands, ticket taker/usher booths, and/or box offices. The nature
26 of the work of an employee performing cashier, ticket issuance, and ticket taking duties at
27 concession stands, ticket taker/usher booths, and/or box offices can reasonably be
28 accomplished from a seated position. However, Defendants systematically, and on a

1 company-wide basis, did not provide seats or stools at or near the concession stands, ticket
2 taker/usher booths, and/or box offices, forcing other non-party Aggrieved Employees to stand
3 throughout their work shifts.

4 122. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11100(14)(A), because other
6 non-party Aggrieved Employees were not allowed to sit, even when it would not have
7 interfered with the performance of their duties, nor were they provided with suitable seats.
8 Other non-party Aggrieved Employees could have performed their cashier, ticket issuance,
9 and ticket taking duties at concession stands, ticket taker/usher booths, and/or box offices,
10 while seated, without interference to their ability to complete these duties.

11 123. Defendants could have placed seats or stools at their concession stands, ticket
12 taker/usher booths, and/or box offices for use by other non-party Aggrieved Employees with
13 reasonable or no modification to these work areas. However, on a company-wide basis,
14 Defendants did not provide seats or stools at the concession stands, ticket taker/usher booths,
15 and/or box offices. Defendants' management did not inform other non-party Aggrieved
16 Employees that they were allowed to sit down, provide any means for them to sit down, or
17 mention any policy regarding sitting.

18 124. As a result of Defendants' company-wide policy and/or practice of prohibiting
19 employees from sitting during their shifts and company-wide failure to provide suitable
20 seating, other non-party Aggrieved Employees were forced to stand during shifts and denied
21 seats. Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
22 violated and continues to violate California Labor Code section 1198 and IWC Wage Order
23 10-2001, Section 14(A).

24 125. Other non-party Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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28 //

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11100(14)(B)

126. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

127. California Code of Regulations, Title 8, section 11100(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

128. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(14)(B), because other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

129. Defendants did not provide other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other non-party Aggrieved Employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby when they were not engaged in those duties. Even though the layout of Defendants’ workplaces could accommodate seats or stools with reasonable or no modification to these work areas, Defendants have, on a company-wide basis, denied other non-party Aggrieved Employees suitable seating altogether.

130. As a result of Defendants’ company-wide policy and/or practice prohibiting

1 employees from sitting at any time, even when they were not engaged in active duties
2 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
3 work areas, other non-party Aggrieved Employees were forced to stand during shifts and
4 denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved
5 Employees violated and continues to violate California Labor Code section 1198 and IWC
6 Wage Order 10-2001, Section 14(B).

7 131. Other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PAY REPORTING TIME PAY**

10 **VIOLATION OF LABOR CODE SECTION 1198**

11 132. California Labor Code section 1198 makes it illegal to employ an employee
12 under conditions of labor that are prohibited by the applicable wage order. California Labor
13 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
14 shall be the . . . standard conditions of labor for employees. The employment of any employee
15 . . . under conditions of labor prohibited by the order is unlawful.”

16 133. California Code of Regulations, Title 8, section 11100(5)(A) provides that
17 “[e]ach workday an employee is required to report for work and does report, but is not put to
18 work or is furnished less than half said employee’s usual or scheduled day’s work, the
19 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
20 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
21 shall not be less than the minimum wage.” The “primary purpose of the reporting time
22 regulation” is “to guarantee at least partial compensation for employees who report to work
23 expecting to work a specified number of hours, and who are deprived of that amount because
24 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
25 *Cellular*, 209 Cal. App. 4th 556 (2012)

26 134. During the relevant time period, Defendants violated California Labor Code
27 section 1198 and California Code of Regulations, Title 8, section 11100(5), because
28 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time

1 pay when they reported to work for their scheduled shift but were put to work for less than
2 half of the regularly scheduled day's work.

3 135. Defendants had a company-wide practice of sending Plaintiff and other non-
4 party Aggrieved Employees home early from their shifts, but did not pay Plaintiff and other
5 non-party Aggrieved Employees for half of their scheduled shift. Although Plaintiff and other
6 non-party Aggrieved Employees would report to work based on the schedule that Defendants
7 provided to them, Defendants would send them home before they had worked at least half of
8 their scheduled shifts without giving them all reporting time pay owed. Accordingly, Plaintiff
9 and other non-party Aggrieved Employees were not properly compensated with reporting time
10 pay in violation of California Labor Code section 1198.

11 136. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
12 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

13 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

14 **VIOLATION OF LABOR CODE SECTION 2802**

15 137. At all times herein set forth, California Labor Code section 2802 provides that
16 an employer must reimburse employees for all necessary expenditures and losses incurred by
17 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
18 to prevent employers from passing off their cost of doing business and operating expenses on
19 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
20 (2014). The applicable wage order, IWC Wage Order 10-2001, provides that: "[w]hen the
21 employer requires the use of tools or equipment or they are necessary to the performance of a
22 job, such tools and equipment shall be provided and maintained by the employer, except that
23 an employee whose wages are at least two (2) times the minimum wage may provide and
24 maintain hand tools and equipment customarily required by the particular trade or craft."

25 138. First, during the relevant time period, on a company-wide basis, expected
26 Plaintiff and other non-party Aggrieved Employees to report to work in clean and presentable
27 uniforms, including uniform shirts, which forced Plaintiff and other non-party Aggrieved
28 Employees to wash their shirts more frequently than they would otherwise do laundry and

1 incur expenses for doing so. For example, Plaintiff was only provided three (3) uniform
2 shirts, but was scheduled to work five (5) days in a week, and thus incurred laundry expenses
3 for the upkeep of his uniform.

4 139. Second, Defendants, on a company-wide basis, required Plaintiff and other
5 non-party Aggrieved Employees to utilize their own personal cellular phones and cellular data
6 to carry out their job duties, but Defendants failed to fully reimburse them for the costs of
7 their work-related cellular phone expenses. For example, Plaintiff was required to use his
8 personal cellular phone to complete his job duties, such as communicating with his
9 supervisors, and to take and send photographs of garbage cans at the end of closing shifts to
10 management. Although Defendants required Plaintiff and other non-party Aggrieved
11 Employees to utilize their personal cellular phones to carry out their work-related
12 responsibilities, Defendants failed to fully reimburse them for this cost.

13 140. Defendants could have provided Plaintiff and other non-party Aggrieved
14 Employees with the actual tools for use on the job, such as company phones, and an adequate
15 number of uniform shirts or access to a cleaning service. Or, Defendants could have
16 reimbursed employees for their cellular phone, laundry, or uniform expenses. Instead,
17 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
18 Employees. At all relevant times, Plaintiff and other non-party Aggrieved Employees did not
19 earn at least two (2) times the minimum wage.

20 141. Defendants' company-wide policy and/or practice of passing on their operating
21 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
22 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
23 other non-party Aggrieved Employees for necessary business-related expenses and costs.

24 142. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
25 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **REQUEST FOR JURY TRIAL**

27 Plaintiff requests a trial by jury.

28 //

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
3 judgment against Defendants, jointly and severally, as follows:

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

6 **As to the First Cause of Action**

7 2. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
9 Employees: 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and
10 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all
11 overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum
12 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
14 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
15 employment); 212 and 213 (by failing to make earned wages accessible without discount);
16 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying
17 wages lower than required by statute); 1198 (by failing to provide suitable seating); 1198 (by
18 failing to pay reporting time pay); and 2802 (by failing to reimburse business expenses).

19 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
20 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
21 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
22 1182.12, 1194, 1197, 1198, and 2802;

23 4. For attorneys' fees and costs pursuant to California Labor Code section
24 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
25 Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a),
26 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

27 5. For pre-judgment and post-judgment interest as provided by law; and

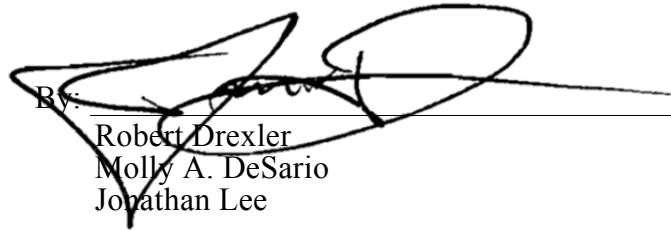
28 //

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: August 31, 2020

Respectfully submitted,

Capstone Law APC

6
7  By: _____
8 Robert Drexler
9 Molly A. DeSario
Jonathan Lee

Attorneys for Plaintiff Rickary Persons

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 17, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Rickary Persons v. American Multi-Cinema, Inc., et al.*

Dear PAGA Administrator:

This office represents Rickary Persons in connection with his claims under the California Labor Code. Mr. Persons was an employee of AMERICAN MULTI-CINEMA, INC. and/or AMC ENTERTAINMENT HOLDINGS, INC. For the purpose of this letter, Mr. Persons refers to these entities as “AMC.”

The employers may be contacted directly at the addresses below:

AMERICAN MULTI-CINEMA, INC.
11500 ASH STREET
LEAWOOD KS 66211

AMC ENTERTAINMENT HOLDINGS, INC.
ONE AMC WAY, 11500 ASH STREET
LEAWOOD KS 66211

Mr. Persons intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Persons seeks relief on behalf of himself, the State of California, and other persons who are or were employed by AMC in California as a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

AMC employed Mr. Persons as a non-exempt, hourly paid Crew Member from approximately July 2019 to September 2019. Mr. Persons worked for AMC at its AMC Bay Street 16 location in Emeryville, California. During his employment, Mr. Persons typically worked five (5) to seven (7) hours or more per day, five (5) days per week. Mr. Persons’s primary job duties included, without limitation, ushering; greeting customers; cleaning the premises; processing ticket sales and payments

in the box office; and assisting with concession stand duties, such as taking and fulfilling customer orders.

AMC has committed one or more of the following Labor Code violations against Mr. Persons, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

AMC’s Company-Wide and Uniform Payroll and HR Practices

AMERICAN MULTI-CINEMA, INC. and AMC ENTERTAINMENT HOLDINGS, INC. are Missouri and Delaware corporations, respectively. AMC is the largest movie exhibition company in the world and operates approximately 636 theatres in the United States, including 54 theatres in California. Upon information and belief, AMC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Leawood, Kansas, for all non-exempt, hourly paid employees working for AMC in California, including Mr. Persons and other aggrieved employees. At all relevant times, AMC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Persons and other aggrieved employees, regardless of their location or position.

Upon information and belief, AMC maintains a centralized Payroll department at its corporate headquarters in Leawood, Kansas, which processes payroll for all non-exempt, hourly paid employees working for AMC in California, including Mr. Persons and other aggrieved employees. Further, AMC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Persons and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, AMC utilized the same methods and formulas when calculating wages due to Mr. Persons and other aggrieved employees in California.

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and

¹ These facts, theories, and claims are based on Mr. Persons’s experience and counsel’s review of those records currently available relating to Mr. Persons’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Persons reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, on information and belief, AMC had a company-wide policy of staffing its theatres strictly based on the labor hours allocated by corporate for each location. AMC's uniform use of labor budgets resulted in chronic understaffing such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. In addition, AMC, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Persons and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Moreover, AMC also had a company-wide policy and/or practice of requiring Mr. Persons and other aggrieved employees to carry company-issued radios and respond to any calls at all times during their shifts. AMC required that Mr. Persons and other aggrieved employees be available via radio at all times, including during their unpaid meal periods. As a result of these policies and/or practices, Mr. Persons and other aggrieved employees were expected to clock out and work through and/or to return early from meal periods, in order to complete their assigned tasks such as cleaning up the theatres. Thus, Mr. Persons and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, approximately 2-3 times per week, Mr. Persons would have his meal periods interrupted by co-workers or supervisors who would contact him via radio to ask him to clean theatres. However, Mr. Persons and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

AMC knew or should have known that as a result of its policies, Mr. Persons and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. AMC further knew or should have known that it did not pay Mr. Persons and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

AMC also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Persons and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that AMC did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. In addition to an hourly wage, AMC paid other aggrieved employees incentive pay and/or nondiscretionary bonuses. However, in violation of the California Labor Code, because AMC did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, AMC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Persons and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, AMC regularly failed to authorize and permit Mr. Persons and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, AMC’s systematic use of labor budgets and resultant understaffing, prevented Mr. Persons and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, AMC failed to schedule rest periods, which, coupled with AMC’s failure to provide adequate rest period coverage, further led to Mr. Persons and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Persons and other aggrieved employees were assigned company-issued radios and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Furthermore, upon information and belief, AMC maintained and implemented a company-wide practice and/or policy requiring that Mr. Persons and other aggrieved employees remain on AMC’s premises during their rest periods. Because Mr. Persons and other aggrieved employees were restricted from leaving AMC’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, AMC effectively maintained control over Mr. Persons and other aggrieved employees during rest periods, and, as a result of this rest period policy, AMC did not relinquish control over Mr. Persons and other aggrieved employees during rest periods.

As a result of AMC’s practices and policies, Mr. Persons and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Persons was, at times, only authorized and permitted by AMC to take one (1) 10-minute rest period in a six (6) or more hour shift. Other times, Mr. Persons had his rest periods interrupted, due to AMC’s understaffing and resultant lack of rest period coverage, which forced him to continue to perform his duties.

AMC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Persons and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that AMC did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because AMC did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation,

such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, AMC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Persons and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

AMC willfully failed to pay all overtime wages owed to other aggrieved employees. During the relevant time period, other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, as stated, AMC's systemic understaffing arising from their company-wide use of labor budgets created a lack of adequate meal period coverage. This lack of meal period coverage, coupled with AMC's practice of failing to schedule meal periods, prevented other aggrieved employees from taking compliant meal periods and caused them to work off-the-clock without that time being recorded. Moreover, as stated, other aggrieved employees were assigned company-issued radios and were expected to carry and keep them on while on AMC's premises, including during unpaid meal periods.

AMC knew or should have known that, as a result of these company-wide practices and/or policies, other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. AMC also knew, or should have known, that it did not compensate other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. AMC's failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, AMC did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, AMC paid other aggrieved

employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, AMC failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, AMC failed to pay all overtime wages by paying a lower overtime rate than required.

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 10 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining "Hours Worked").

As set forth above, during the relevant time period, as a result of AMC's policy and/or practice of understaffing its theatres and failure to schedule meal periods, Mr. Persons and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, Mr. Persons and other aggrieved employees were required to carry radios on their persons at all times while on AMC's premises, including during unpaid meal periods.

Thus, AMC did not pay minimum wages for all hours worked by Mr. Persons and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, AMC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, AMC regularly failed to pay at least minimum wages to Mr. Persons and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Persons and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. AMC has not provided Mr. Persons and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any

employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, AMC has knowingly and intentionally provided Mr. Persons and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AMC issued uniform wage statements to Mr. Persons and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, AMC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because AMC did not record the time Mr. Persons and other aggrieved employees spent working off-the-clock, AMC did not list the correct amount of gross wages and net wages earned by Mr. Persons and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, AMC failed to accurately list the total number of the hours worked by Mr. Persons and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because AMC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, AMC did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). AMC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), AMC willfully failed to maintain accurate payroll records for Mr. Persons and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, AMC failed to keep accurate records of work period and meal period start and end times for Mr. Persons and other aggrieved employees.

Because AMC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Persons and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Persons and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, AMC failed to pay Mr. Persons and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-

two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

AMC willfully failed to pay Mr. Persons and other aggrieved employees who are no longer employed by AMC all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving AMC's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing" (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he "wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,"
- (2) the employees are "fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,"

- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, AMC had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Mr. Persons and other aggrieved employees, to discharge its wage payment obligations to its employees. Under AMC’s payroll debit card program, employees could use their payroll cards to: 1) make a signature-based purchase using the card; 2) make a PIN-based purchase using the card; 3) make ATM withdrawals; or 4) make teller-assisted withdrawals. Under AMC’s payroll debit program, Mr. Persons and other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee.

For example, Mr. Persons and other aggrieved employees were unable to withdraw the entirety of their wages in one transaction without incurring a fee. Specifically, if Mr. Persons and other aggrieved employees initially utilized an ATM to try to withdraw their wages, they could not obtain the entire amount because ATMs only disburse cash in limited denominations. Any subsequent withdrawals made through PIN-based purchases, ATMs, or teller-assisted withdrawals were subject to fees of \$0.50, \$1.50, and \$5.00 for each transaction, respectively.

Even if AMC’s payroll debit program provided for initial free withdrawals from certain ATMs, Mr. Persons and other aggrieved employees were not able to withdraw their entire wages in one transaction via an ATM because ATMs only disburse cash in limited denominations and do not dispense exact change. While obtaining a teller-assisted withdrawal may have been another option available to employees under AMC’s payroll card program, Mr. Persons and other aggrieved employees had to abide by the business hours of specific bank chains in the payroll service provider’s network, which have limited locations. In sum, AMC’s payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for Mr. Persons and other aggrieved employees to access their entire wages without discount and without delay. Thus,

AMC's payroll debit card program did not give Mr. Persons and other aggrieved employees easy access to the entirety of their wages without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. AMC's payroll card program is inconsistent with this policy. Because AMC's company-wide payroll debit card program denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Persons and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, AMC unlawfully deducted a portion of wages previously paid to Mr. Persons and other aggrieved employees in violation of California Labor Code section 221.

AMC systematically, and on a company-wide basis, provided Mr. Persons and other aggrieved employees with payroll debit cards as payment of their wages. Under AMC's payroll debit card program, Mr. Persons and other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. Mr. Persons and other aggrieved employees were required to pay per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Persons and other aggrieved employees resulted in a discount of their wages.

AMC's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Persons's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Persons and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, AMC willfully and systematically issued payroll debit cards to Mr. Persons and other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. AMC's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Persons and other aggrieved employees. In doing so, AMC acted with the intent to deprive Mr. Persons and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages to which they were entitled to under California law. Thus, AMC paid Mr. Persons and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Persons and other aggrieved employees were properly paid.

Mr. Persons and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11100(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

AMC’s California movie theatres are generally similar in their layout and design and there was, and continues to be, space behind concession stands, ticket taker/usher booths, and/or box offices to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. AMC could provide other aggrieved employees with a seat or stool at its concession stands, ticket taker/usher booths, and/or box offices, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these concession stands, ticket taker/usher booths, and/or box offices. The nature of the work of an employee performing cashier, ticket issuance, and ticket taking duties at concession stands, ticket taker/usher booths, and/or box offices can reasonably be accomplished from a seated position. However, as set forth herein, AMC systematically, and on a company-wide basis, does not provide seats or stools at or near the concession stands, ticket taker/usher booths, and/or box offices, forcing other aggrieved employees to stand throughout their work shifts.

AMC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. AMC’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of AMC's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. AMC's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 10-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring AMC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11100(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, AMC's California movie theatres are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. AMC could provide other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

AMC did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, AMC denied them the use of seats nearby during lulls in their work duties. Moreover, AMC did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of AMC's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. AMC's failure to provide suitable seating to other

aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 10-2001, Section 14(B).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring AMC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11100(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

AMC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(5), because AMC failed to pay Mr. Persons and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. AMC had a company-wide practice of sending Mr. Persons and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Persons and other aggrieved employees for half of their scheduled shift. Although Mr. Persons and other aggrieved employees would report to work based on the schedule that AMC provided to them, AMC would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Persons and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Persons and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be

provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, AMC, on a company-wide basis, expected Mr. Persons and other aggrieved employees to report to work in clean and presentable uniforms, including uniform shirts, which forced Mr. Persons and other aggrieved employees to wash their shirts more frequently than they would otherwise do laundry and incur expenses for doing so. For example, Mr. Persons was only provided three (3) uniform shirts, but was scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of his uniform.

AMC, on a company-wide basis, also required that Mr. Persons and other aggrieved employees utilize their own personal cellular phones to carry out their job duties, but AMC failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Persons was required to use his personal cellular phone in order to carry out his job duties, such as communicating with his supervisors and foremen, and to take and send photographs of garbage cans at the end of closing to management. Although AMC required Mr. Persons to regularly utilize his personal cellular phone to carry out work-related responsibilities, AMC failed to reimburse him for this cost.

AMC could have provided Mr. Persons and other aggrieved employees with company phones to be used for fulfilling work-related tasks, and an adequate number of shirts or access to a cleaning service. Or, AMC could have reimbursed employees for their cellular phone, laundry, or uniform expenses. Instead, AMC passed these operating costs off onto Mr. Persons and other aggrieved employees. At all relevant times, Mr. Persons did not earn at least two (2) times the minimum wage.

Thus, AMC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Persons and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” AMC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Persons’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Persons seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Persons, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the

State of California against AMC for violations of California Labor Code sections 201, 202, 203, 204, 213, 213, 221, 223, 224, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Persons seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Persons's reasonable attempt to settle his dispute with AMC prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform AMC of Mr. Persons's aforementioned grievances and the proposed remedies as detailed below, while affording AMC a reasonable opportunity to satisfy Mr. Persons's demands.

Demand is hereby made that AMC shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. AMC shall pay Mr. Persons and all other aggrieved employees employed by AMC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. AMC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. AMC shall conduct a survey or interview all current and former aggrieved employees in California who worked for AMC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone or uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. AMC shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. AMC also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. AMC shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for AMC's benefit, including, but not limited to, costs of cellular phone and uniform maintenance expenses, as required by Labor Code sections 2802.
6. AMC shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debit cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213), secret payment of lower wages (Labor Code section 223), and unlawful deductions (Labor Code sections 221 and 224).

7. AMC shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. AMC shall provide Mr. Persons and all aggrieved employees employed by AMC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. AMC shall implement and provide suitable seating to all aggrieved employees.
10. AMC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. AMC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 10-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

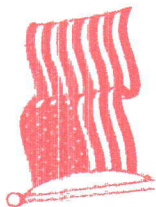
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: AMERICAN MULTI-CINEMA, INC. (via U.S. Certified Mail); AMC ENTERTAINMENT HOLDINGS, INC. (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AMERICAN MULTI-CINEMA, INC.
11500 ASH STREET
LEAWOOD KS 66211



9590 9403 0424 5163 3609 64

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0689

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail®
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL®



7015 0640 0006 1449 0689

AMERICAN MULTI-CINEMA, INC.
11500 ASH STREET
LEAWOOD KS 66211

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

AMERICAN MULTI-CINEMA, INC.
11500 ASH STREET
LEAWOOD KS 66211

Postmark
Here

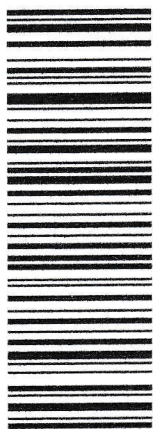
Persons v.
American Multi-
Cinema, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

tone
LAW APC
ury Park East, Ste 1000
es, CA 90067

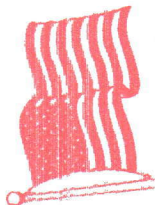
CERTIFIED MAIL®



7015 0640 0006 1449 0696

stone
LAW APC
Century Park East, Ste 1000
Fresno, CA 93721

AMC ENTERTAINMENT HOLDINGS, INC.
ONE AMC WAY, 11500 ASH STREET
LEAWOOD KS 66211



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AMC ENTERTAINMENT HOLDINGS, INC.
ONE AMC WAY, 11500 ASH STREET
LEAWOOD KS 66211



9590 9402 4882 9032 7433 90

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0696

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

AMC ENTERTAINMENT HOLDINGS, INC.
Street and Apt. No., or PO Box No.
ONE AMC WAY, 11500 ASH STREET
City, State, ZIP+4®
LEAWOOD KS 66211

Postmark
Here

Pearsons v. AMC
Entertainment
Holdings, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

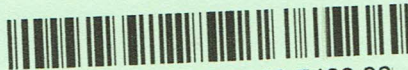
See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AMC ENTERTAINMENT BUILDINGS, INC.
ONE AMC WAY, 11500 ASH STREET
LEAWOOD KS 66211



9590 9402 4882 9032 7433 90

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0696

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

CM

☐ Agent

☐ Addressee

B. Received by (Printed Name)

1104 C-19

C. Date of Delivery

4/20/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted

Delivery

☐ Return Receipt for

Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation

Restricted Delivery

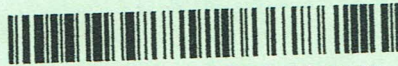
Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AMERICAN MULTI-CINEMA, INC.
11500 ASH STREET
LEAWOOD KS 66211



9590 9403 0424 5163 3609 64

2. Article Number (Transfer from service label)

7015 0640 0006 1449 0689

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

CM

☐ Agent

☒ Addressee

B. Received By (Printed Name)

1104C-17

C. Date of Delivery

4/20/20

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Return Receipt for Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt