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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

LAWRENCE WEINBERGER, LAURIE
WEINBERGER, SERITA STEVENS,
HENRY TARLOW, JASON DONALDSON,
BRETT GOODLIN, *and* LEE
HARRINGTON, *individually and on behalf*
of all others similarly situated,

Plaintiffs,

– against –

MOVIEPASS INC. *and* HELIOS AND
MATHESON ANALYTICS INC.,

Defendants.

Case No. 1:19-cv-01039-DAB

**AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiffs Lawrence Weinberger, Laurie Weinberger, Serita Stevens, Henry Tarlow, Jason Donaldson, Brett Goodlin, and Lee Harrington (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated (the “Class,” as defined below), by and through their undersigned counsel, bring this Class Action Complaint against MoviePass Inc. and Helios and Matheson Analytics Inc. (“MoviePass” or “Defendants”) for injunctive and equitable relief and respectfully allege as follows. Plaintiffs base the allegations herein on personal knowledge as to matters related to, and known to, Plaintiffs. As to all other matters, Plaintiffs base the allegations on information and belief, through investigation of Plaintiffs’ counsel.

NATURE OF THE ACTION

1. This is a proposed class action against MoviePass, a discount movie ticket service, for engaging in a deceptive and unfair bait-and-switch scheme. MoviePass led consumers to purchase subscriptions (the “MoviePass Subscriptions” or “Subscriptions”) that it claimed would allow the consumers to have “unlimited” access to tickets to movies playing in theaters, or would allow the consumers to purchase a ticket to “any movie” in “any theater” on “any day,” up to one movie per day. Defendants’ representations about the Subscriptions were false and misleading, however, because the Subscriptions did not provide “unlimited” access to movie tickets and did not provide access to tickets to “any movie” in “any theater” on “any day.” Instead, Subscription purchasers routinely could not use their Subscriptions to obtain tickets to any movies, were faced with only a limited selection of movies, showtimes, and theaters, or otherwise experienced significant difficulty in obtaining movie tickets through their Subscriptions.

2. Plaintiffs bring this action individually and on behalf of the Class members to stop Defendants’ unlawful practices, seeking injunctive relief and equitable relief, including, but not limited to restitution, and such further equitable relief as the Court may deem just and proper.

PARTIES

Plaintiff Lawrence Weinberger

3. Plaintiff Lawrence Weinberger resides in Sea Cliff, New York, and he has no intention of changing his residence.

4. On or about March 31, 2018, Mr. Weinberger purchased a one year MoviePass Subscription for \$105.35. Mr. Weinberger paid for the full year at the time of purchase.

5. After Mr. Weinberger purchased a Subscription, MoviePass sent him a card that is similar to a debit card or credit card (the “MoviePass Card”), which he could use to purchase movie tickets that were paid for through his MoviePass Subscription at theaters.

6. Mr. Weinberger also downloaded and installed the MoviePass application (the “MoviePass App” or the “App”) on his smartphone.

7. Mr. Weinberger used the MoviePass App to search for movie tickets that he could purchase through his MoviePass Subscription.

8. Prior to purchasing a MoviePass Subscription, Mr. Weinberger visited MoviePass’s homepage, on which he saw Defendants’ representation that its Subscription service would provide access to tickets to “any movie” in “any theater” on “any day.”

9. Prior to purchasing a MoviePass Subscription, Mr. Weinberger also saw Defendants’ representation that a MoviePass Subscription would provide him with “unlimited” access to tickets to movies in theaters.

10. Prior to purchasing a Subscription, Mr. Weinberger believed that a Subscription would provide him access to tickets to “any movie” in “any theater” on “any day,” up to one movie per day. He believed he could use the Subscription to obtain “unlimited” tickets to movies in theaters, up to one movie per day.

11. Mr. Weinberger relied upon Defendants' "any theater, any movie, any day" representation and its "unlimited" representation in making his decision to purchase a full year MoviePass Subscription for \$105.35, and he would not have purchased the Subscription had he known that, in fact, the Subscription would not provide him with access to "any movie" in "any theater" on "any day" and would not provide him with "unlimited" access to tickets, and that, instead, he would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

12. Mr. Weinberger paid for a MoviePass Subscription that provided access to "any movie" in "any theater" on "any day" and provided "unlimited" access to tickets, but he received a Subscription that did not provide him access to "any movie" in "any theater" on "any day" or "unlimited" access to tickets. Rather, the Subscription Mr. Weinberger received routinely failed to provide him access to tickets to any movie playing in a theater.

13. The MoviePass Subscription that Mr. Weinberger received was worth less than the Subscription for which he paid. Mr. Weinberger was injured in fact and lost money as a result of Defendants' improper conduct.

14. As of February 1, 2019, Mr. Weinberger has seen a total of three movies using his MoviePass Subscription: one in May 2018, one in July 2018, and one in October 2018.

15. On numerous occasions, Mr. Weinberger was unable to see any movie using MoviePass, although he tried to do so. When he searched for tickets using the MoviePass App, the App would require Mr. Weinberger to select potential theaters. After he had selected theaters, the App would state that "there are no more screenings at this theater today," even when Mr. Weinberger had selected up to four potential theaters. The MoviePass App routinely gave Mr. Weinberger the message "there are no more screenings at this theater today" in response to his

searches at various times throughout the day, including early morning, mid-morning, afternoon, and evening.

16. Mr. Weinberger could not obtain a refund if he attempted to cancel his Subscription prior to the end of the one year period because MoviePass does not offer pro-rated refunds to annual subscribers.

17. Mr. Weinberger would purchase another “unlimited” MoviePass Subscription in the future, if it were true that the Subscription would provide him with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day. At present, however, Mr. Weinberger cannot be confident that a MoviePass Subscription would provide him with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

Plaintiff Laurie Weinberger

18. Plaintiff Laurie Weinberger resides in Sea Cliff, New York, and she has no intention of changing her residence.

19. On or about March 31, 2018, Mrs. Weinberger also purchased a one year MoviePass Subscription for \$105.35. Mrs. Weinberger paid for the full year at the time of purchase.

20. After Mrs. Weinberger purchased a Subscription, MoviePass sent her a MoviePass Card.

21. Mrs. Weinberger downloaded and installed the MoviePass App on her smartphone.

22. Mrs. Weinberger used the MoviePass App to search for movie tickets that she could purchase through her MoviePass Subscription.

23. Prior to purchasing a MoviePass Subscription, Mrs. Weinberger visited

MoviePass's homepage, on which she saw Defendants' representation that its Subscription service would provide access to tickets to "any movie" in "any theater" on "any day."

24. Prior to purchasing a MoviePass Subscription, Mrs. Weinberger also saw Defendants' representation that a MoviePass Subscription would provide her with "unlimited" access to tickets to movies in theaters.

25. Prior to purchasing a Subscription, Mrs. Weinberger believed that a Subscription would provide her access to tickets to "any movie" in "any theater" on "any day," up to one movie per day. She believed she could use the Subscription to obtain "unlimited" tickets to movies in theaters, up to one movie per day.

26. Mrs. Weinberger relied upon Defendants' "any theater, any movie, any day" representation and its "unlimited" representation in making her decision to purchase a full year MoviePass Subscription for \$105.35, and she would not have purchased the Subscription had she known that, in fact, the Subscription would not provide her with access to "any movie" in "any theater" on "any day" and would not provide her with "unlimited" access to tickets, and that, instead, she would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

27. Mrs. Weinberger paid for a MoviePass Subscription that provided access to "any movie" in "any theater" on "any day" and provided "unlimited" access to tickets, but she received a Subscription that did not provide her access to "any movie" in "any theater" on "any day" or "unlimited" access to tickets. Rather, the Subscription Mrs. Weinberger received routinely failed to provide her access to tickets to any movie playing in a theater.

28. The MoviePass Subscription that Mrs. Weinberger received was worth less than the Subscription for which she paid. Mrs. Weinberger was injured in fact and lost money as a result

of Defendants' improper conduct.

29. As of February 1, 2019, Mrs. Weinberger has seen a total of three movies using her MoviePass Subscription: one in May 2018, one in July 2018, and one in October 2018.

30. On numerous occasions, Mrs. Weinberger was unable to see any movie using MoviePass, although she tried to do so. When she searched for tickets using the MoviePass App, the App would require Mrs. Weinberger to select potential theaters. After she had selected theaters, the App would state that "there are no more screenings at this theater today," even when Mrs. Weinberger had selected up to four potential theaters. The MoviePass App routinely gave Mrs. Weinberger the message "there are no more screenings at this theater today" in response to her searches at various times throughout the day, including early morning, mid-morning, afternoon, and evening.

31. Mrs. Weinberger could not obtain a refund if she attempted to cancel her Subscription prior to the end of the one year period because MoviePass does not offer pro-rated refunds to annual subscribers.

32. Mrs. Weinberger would purchase another "unlimited" MoviePass Subscription in the future, if it were true that the Subscription would provide her with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day. At present, however, Mrs. Weinberger cannot be confident that a MoviePass Subscription would provide her with "unlimited" access to tickets to movies in theaters or with the ability to purchase tickets to "any movie" in "any theater" on "any day."

Plaintiff Serita Stevens

33. Plaintiff Serita Stevens resides in Sylmar, California.

34. In May 2018, Mrs. Stevens purchased an annual MoviePass Subscription for

approximately \$89. Mrs. Stevens paid for the full year at the time of purchase.

35. After Mrs. Stevens purchased a Subscription, MoviePass sent her a MoviePass Card.

36. Mrs. Stevens downloaded and installed the MoviePass App on her smartphone.

37. Mrs. Stevens used the MoviePass App to search for movie tickets that she could purchase through her MoviePass Subscription.

38. Prior to purchasing a MoviePass Subscription, Mrs. Stevens visited MoviePass's website, on which she saw Defendants' representations that its Subscription service would provide access to tickets to "any movie" in "any theater" on "any day" and would provide her with "unlimited" access to tickets to movies in theaters.

39. Prior to purchasing a Subscription, Mrs. Stevens believed that a Subscription would provide her access to tickets to "any movie" in "any theater" on "any day," up to one movie per day. She believed she could use the Subscription to obtain "unlimited" tickets to movies in theaters, up to one movie per day.

40. Mrs. Stevens relied upon Defendants' "any theater, any movie, any day" representation and its "unlimited" representation in making her decision to purchase a full year MoviePass Subscription, and she would not have purchased the Subscription had she known that, in fact, the Subscription would not provide her with access to "any movie" in "any theater" on "any day" and would not provide her with "unlimited" access to tickets, and that, instead, she would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

41. Mrs. Stevens paid for a MoviePass Subscription that provided access to "any movie" in "any theater" on "any day" and provided "unlimited" access to tickets, but she received

a Subscription that did not provide her access to “any movie” in “any theater” on “any day” or “unlimited” access to tickets. Rather, the Subscription Mrs. Stevens received routinely failed to provide her access to tickets to any movie playing in a theater.

42. The MoviePass Subscription that Mrs. Stevens received was worth less than the Subscription for which she paid. Mrs. Stevens was injured in fact and lost money as a result of Defendants’ improper conduct.

43. As of March 1, 2019, Mrs. Stevens has seen one movie using her MoviePass Subscription, in July 2018.

44. On numerous occasions, Mrs. Stevens was unable to see any movie using MoviePass, although she tried to do so. When she searched for tickets using the MoviePass App, the App would indicate that “there are no more screenings at this theater today” in any theater within 20 miles of where Mrs. Stevens was located. Or, alternatively, the App would indicate that showings were available, but the showings would be at inconvenient times, and the few movies listed—at inconvenient times—were older ones that Mrs. Stevens did not wish to see and would not have paid for.

45. Mrs. Stevens has contacted MoviePass customer support in writing several times to complain. Each time, MoviePass claimed they were fixing the problems MoviePass Subscription holders, including Mrs. Stevens, were having finding available movies. MoviePass, however, did not fix the problems.

46. Mrs. Stevens has asked MoviePass several times for a refund, but MoviePass refused to provide one. MoviePass does not offer pro-rated refunds to annual subscribers.

47. Mrs. Stevens would purchase another “unlimited” MoviePass Subscription in the future, but only if she was 100% confident that the Subscription would provide her, as promised,

with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day. At present, however, Mrs. Stevens cannot be confident that a MoviePass Subscription would provide her with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

Plaintiff Henry Tarlow

48. Plaintiff Henry Tarlow resides in Sylmar, California.

49. In May 2018, Mr. Tarlow purchased an annual MoviePass Subscription for \$89.

Mr. Tarlow paid for the full year at the time of purchase.

50. After Mr. Tarlow purchased a Subscription, MoviePass sent him a MoviePass Card.

51. Mr. Tarlow downloaded and installed the MoviePass App on his smartphone.

52. Mr. Tarlow used the MoviePass App to search for movie tickets that he could purchase through his MoviePass Subscription.

53. Prior to purchasing a MoviePass Subscription, Mr. Tarlow visited MoviePass’s website, on which he saw Defendants’ representations that its Subscription service would provide access to tickets to “any movie” in “any theater” on “any day” and would provide him with “unlimited” access to tickets to movies in theaters.

54. Prior to purchasing a Subscription, Mr. Tarlow believed that a Subscription would provide him access to tickets to “any movie” in “any theater” on “any day,” up to one movie per day. He believed he could use the Subscription to obtain “unlimited” tickets to movies in theaters, up to one movie per day.

55. Mr. Tarlow relied upon Defendants’ “any theater, any movie, any day” representation and its “unlimited” representation in making his decision to purchase a full year MoviePass Subscription, and he would not have purchased the Subscription had he known that, in

fact, the Subscription would not provide him with access to “any movie” in “any theater” on “any day” and would not provide him with “unlimited” access to tickets, and that, instead, he would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

56. Mr. Tarlow paid for a MoviePass Subscription that provided access to “any movie” in “any theater” on “any day” and provided “unlimited” access to tickets, but he received a Subscription that did not provide him access to “any movie” in “any theater” on “any day” or “unlimited” access to tickets. Rather, the Subscription Mr. Tarlow received routinely failed to provide him access to tickets to any movie playing in a theater.

57. The MoviePass Subscription that Mr. Tarlow received was worth less than the Subscription for which he paid. Mr. Tarlow was injured in fact and lost money as a result of Defendants’ improper conduct.

58. As of March 1, 2019, Mr. Tarlow has seen a total of two movies using his MoviePass Subscription, in July 2018.

59. On numerous occasions, Mr. Tarlow was unable to see any movie using MoviePass, although he tried to do so. When he searched for tickets using the MoviePass App, the App would indicate that “there are no more screenings at this theater today” in any theater within 20 miles of where Mr. Tarlow was located; or, alternatively, the App would indicate that showings were available, but the showings would be at inconvenient times.

60. Mr. Tarlow has contacted MoviePass customer support several times to complain. Each time, MoviePass claimed they were fixing the problems MoviePass Subscription holders, including Mr. Tarlow, were having finding available movies. MoviePass, however, did not fix the problems.

61. Mr. Tarlow has asked MoviePass several times for a refund, but MoviePass refused

to provide one. MoviePass does not offer pro-rated refunds to annual subscribers.

62. Mr. Tarlow would purchase another “unlimited” MoviePass Subscription in the future, but only if he was 100% confident that the Subscription would provide him, as promised, with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day. At present, however, Mr. Tarlow cannot be confident that a MoviePass Subscription would provide him with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

Plaintiff Jason Donaldson

63. Plaintiff Jason Donaldson resides in Walnut Creek, California.

64. On or about March 23, 2018, Mr. Donaldson purchased an annual MoviePass Subscription for approximately \$89.95. Mr. Donaldson paid for the full year at the time of purchase.

65. After Mr. Donaldson purchased a Subscription, MoviePass sent him a MoviePass Card.

66. Mr. Donaldson downloaded and installed the MoviePass App on his smartphone.

67. Mr. Donaldson used the MoviePass App to search for movie tickets that he could purchase through his MoviePass Subscription.

68. Prior to purchasing a MoviePass Subscription, Mr. Donaldson visited MoviePass’s homepage, on which he saw Defendants’ representations that its Subscription service would provide access to tickets to “any movie” in “any theater” on “any day” and would provide him with “unlimited” access to tickets to movies in theaters.

69. Prior to purchasing a Subscription, Mr. Donaldson believed that a Subscription would provide him access to tickets to “any movie” in “any theater” on “any day,” up to one movie

per day. He believed he could use the Subscription to obtain “unlimited” tickets to movies in theaters, up to one movie per day.

70. Mr. Donaldson relied upon Defendants’ “any theater, any movie, any day” representation and its “unlimited” representation in making his decision to purchase a full year MoviePass Subscription for approximately \$89.95, and he would not have purchased the Subscription had he known that, in fact, the Subscription would not provide him with access to “any movie” in “any theater” on “any day” and would not provide him with “unlimited” access to tickets, and that, instead, he would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

71. Mr. Donaldson paid for a MoviePass Subscription that provided access to “any movie” in “any theater” on “any day” and provided “unlimited” access to tickets, but he received a Subscription that did not provide him access to “any movie” in “any theater” on “any day” or “unlimited” access to tickets. Rather, the Subscription Mr. Donaldson received routinely failed to provide him access to tickets to any movie playing in a theater.

72. The MoviePass Subscription that Mr. Donaldson received was worth less than the Subscription for which he paid. Mr. Donaldson was injured in fact and lost money as a result of Defendants’ improper conduct.

73. As of March 8, 2019, Mr. Donaldson has seen approximately 25 or 30 movies using his MoviePass Subscription. Mr. Donaldson saw the majority of these movies during the first four months of his subscription.

74. On numerous occasions, Mr. Donaldson was unable to see any movie using MoviePass, although he tried to do so. When he searched for tickets using the MoviePass App, the App would provide him with a selection of no movies or a minimal number of movies (i.e., two or

three movies at most). The showing times that the App would offer were inconvenient and unreasonable. Furthermore, earlier in the day, the App would indicate showings were available for movies later in the day, yet when Mr. Donaldson tried to access the same showings later in the day (for example, when he arrived at the theater), the App would no longer be offering them; this was problematic because MoviePass Subscription holders have to purchase the actual movie tickets at the theater using the MoviePass Card.

75. Mr. Donaldson sought a refund from MoviePass, but MoviePass refused to provide one. MoviePass does not offer pro-rated refunds to annual subscribers.

76. Mr. Donaldson would purchase another “unlimited” MoviePass Subscription in the future, if it were true that the Subscription would provide him—for the entire duration of the Subscription period—with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day, as promised at the time of purchase. At present, however, Mr. Donaldson cannot be confident that a MoviePass Subscription would provide him with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

Plaintiff Brett Goodlin

77. Plaintiff Brett Goodlin resides in Colorado Springs, Colorado.

78. On or about January 4, 2018, Mr. Goodlin purchased an annual MoviePass Subscription for approximately \$89.99 through Costco. Mr. Goodlin paid for the full year at the time of purchase.

79. After Mr. Goodlin purchased a Subscription, MoviePass sent him a MoviePass Card.

80. Mr. Goodlin downloaded and installed the MoviePass App on his smartphone.

81. Mr. Goodlin used the MoviePass App to search for movie tickets that he could purchase through his MoviePass Subscription.

82. Prior to purchasing a MoviePass Subscription, Mr. Goodlin visited MoviePass's website, on which he saw Defendants' representation that its Subscription service would provide access to tickets to "any movie" in "any theater" on "any day," with "no blackouts." Mr. Goodlin also used an online theater look-up tool on MoviePass's website, which verified that he could use his MoviePass Subscription in theaters near him.

83. Prior to purchasing a Subscription, Mr. Goodlin believed that a Subscription would provide him access to tickets to "any movie" in "any theater" on "any day," up to one movie per day. He believed he could use the Subscription to obtain unlimited tickets to movies in theaters, up to one movie per day.

84. Mr. Goodlin relied upon Defendants' "any theater, any movie, any day" representation in making his decision to purchase a full year MoviePass Subscription, and he would not have purchased the Subscription had he known that, in fact, the Subscription would not provide him with access to "any movie" in "any theater" on "any day," and that, instead, he would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

85. Mr. Goodlin paid for a MoviePass Subscription that provided access to "any movie" in "any theater" on "any day," but he received a Subscription that did not provide him access to "any movie" in "any theater" on "any day." Rather, the Subscription Mr. Goodlin received routinely failed to provide him access to tickets to any movie playing in a theater.

86. The MoviePass Subscription that Mr. Goodlin received was worth less than the Subscription for which he paid. Mr. Goodlin was injured in fact and lost money as a result of Defendants' improper conduct.

87. As of March 1, 2019, Mr. Goodlin estimates that he has seen around 20 movies using his MoviePass Subscription in the last year.

88. In April 2018, MoviePass unilaterally, and without Mr. Goodlin's knowledge or consent, prevented Mr. Goodlin from seeing any movie he had previously seen; the MoviePass App blacked out movies that Mr. Goodlin had already seen, making them unavailable.

89. On numerous occasions, Mr. Goodlin was unable to see any movie using MoviePass, although he tried to do so. When he searched for tickets using the MoviePass App, the App would offer a selection of no movies or only a minimal selection of movies, and the showing times that the App would offer were routinely inconvenient and unreasonable.

Plaintiff Lee Harrington

90. Plaintiff Lee Harrington resides in Clearwater, Florida.

91. In or about December 2017, Mr. Harrington purchased an annual MoviePass Subscription for around \$89.95. Mr. Harrington paid for the full year at the time of purchase.

92. MoviePass sent Mr. Harrington a MoviePass Card.

93. Mr. Harrington downloaded and installed the MoviePass App on his smartphone.

94. Mr. Harrington used the MoviePass App to search for movie tickets that he could purchase through his MoviePass Subscription.

95. Prior to purchasing a MoviePass Subscription, Mr. Harrington visited MoviePass's homepage, on which he saw Defendants' representation that its Subscription service would provide him with "unlimited" access to tickets to movies in theaters and with access to tickets to "any movie" in "any theater" on "any day."

96. Prior to purchasing a Subscription, Mr. Harrington believed that a Subscription would provide him access to tickets to "any movie" in "any theater" on "any day," up to one 2D

movie per day. He believed he could use the Subscription to obtain “unlimited” tickets to movies in theaters, up to one 2D movie per day.

97. Mr. Harrington relied upon Defendants’ “any theater, any movie, any day” representation and its “unlimited” representation in making his decision to purchase a full year MoviePass Subscription, and he would not have purchased the Subscription had he known that, in fact, the Subscription would not provide him with access to “any movie” in “any theater” on “any day” and would not provide him with “unlimited” access to tickets, and that, instead, he would routinely be unable to obtain access to Subscription-based tickets to any movie playing in a theater.

98. Mr. Harrington paid for a MoviePass Subscription that provided access to “any movie” in “any theater” on “any day” and provided “unlimited” access to tickets, but he received a Subscription that did not provide him access to “any movie” in “any theater” on “any day” or “unlimited” access to tickets. Rather, the Subscription Mr. Harrington received routinely failed to provide him access to tickets to any movie playing in a theater.

99. The MoviePass Subscription that Mr. Harrington received was worth less than the Subscription for which he paid. Mr. Harrington was injured in fact and lost money as a result of Defendants’ improper conduct.

100. In April 2018, MoviePass unilaterally, and without Mr. Harrington’s knowledge or consent, prevented Mr. Harrington from seeing any movie he had previously seen.

101. MoviePass subsequently restricted the movies that Mr. Harrington was allowed to choose from to movies that MoviePass had selected, rather than the “unlimited” selection that MoviePass originally promised.

102. On numerous occasions, Mr. Harrington was unable to see any movie using MoviePass, although he tried to do so. When he searched for tickets using the MoviePass App, the

selection of theaters the App would provide included only one theater near Mr. Harrington. Furthermore, when he searched for tickets using the App, it would provide a selection of no movies (stating for each theater Mr. Harrington selected, “there are no more screenings at this theater today”) or only a minimal selection of movies. Or, the MoviePass App would indicate that a showing was available, but when Mr. Harrington traveled to the theater, the showing was no longer available when he arrived. Similarly, in the early part of the day, the App would routinely indicate a selection of movies showing later in the day was available, but by the evening (when Mr. Harrington was able to go to the theater), the App would indicate there were no showings available.

103. On or about June 23, 2018, MoviePass sent an email to Mr. Harrington in which it stated, in part, as follows:

In the spirit of innovation and growth, we are now announcing the next phase in the evolution of our product: **Demand Pricing**.

* * * * *

Peak Pricing: MoviePass is committed to maintaining our low monthly price as we continue to grow rapidly. Rather than raise our prices or limit viewings, our plan has been to develop a new variable pricing system based on the demand for particular showtimes. Under this plan, if the combination of demand for a title, date or part of day is higher, subscribers may be asked to pay a small additional fee depending on the level of demand. You can avoid this peak surcharge by choosing an alternative date or film. We will also soon give subscribers one “peak pass” per month, allowing them to waive a Peak Price surcharge once per month. Annual and Quarterly subscribers will not incur peak pricing until their current subscription term ends and then renews.

104. On or about July 5, 2018, MoviePass sent an email to Mr. Harrington in which it stated that the Peak Pricing “evolution” of its Subscription product that it had first announced in June was beginning to roll out on July 5, 2018 and would continue to roll out “gradually over the next several weeks.” MoviePass did not specify a particular surcharge for any ticket subject to Peak Pricing and, instead, noted that “the actual Peak Pricing surcharge will vary based on

showtime and movie title.”

105. On or about July 28, 2018, Mr. Harrington sent MoviePass customer service a message complaining about its “recent censorship of new releases” and stating that MoviePass’s Subscription service “now only gives me the old movies at inopportune times unless I go to the dinner theater that is out of the way for me.”

106. On or about July 31, 2018, MoviePass sent Mr. Harrington an email that stated:

Dear MoviePass Members,

First and foremost, I want to personally apologize to each of you for the inconsistencies and unreliability of our service over the past few days. Additionally, I regret our lack of proactive communication with you during this time; we are working hard to improve the communications to our community moving forward.

Over the last several days, we’ve begun making changes to our service that will help us continue to offer our members a high-value, low-cost, in-theater movie experience.

We believe that the company we have built — the fastest growing subscription company in history with more than 3 million members — has revolutionized the movie industry in the U.S. The first half of 2018 saw the total box office grow by almost 10 percent compared to last year, and we know MoviePass is responsible for a significant portion of that unprecedented growth.

In order to continue growing our service and maintaining a high level of financial discipline, we need to make some modifications:

- We must reduce availability for big new-release titles, such as *Mission: Impossible - Fallout* and other popular new releases, at least for a while as we adjust the business model. We are working on making this more clear in the app so you know which titles are available.
- Showtimes that are offered through our service will vary from day to day, and every showtime may not be available. We encourage you to check the MoviePass app for showtimes before you leave for the theater.
- While our customer service team has made great strides of late, we still have a long way to go to provide the most responsive customer service experience for you. In the meantime, access to immediate support may become limited. However, we are working to prioritize the requests of members who are at the theater and introduce more self-help tools, as well as focus our resources on

fixing glitches and bugs in the app.

Finally, we want to be as transparent as we can with these changes and any future changes. We are committed to giving you the best experience. We count on your support and loyalty while we implement these necessary steps for the company you've grown to love.

Thank you for your understanding and patience, and we'll be in touch with more updates as we have them.

Mitch Lowe, CEO of MoviePass

107. On or about August 6, 2018, MoviePass sent an email to Mr. Harrington in which it announced a new service plan in which Subscription holders would only be able to purchase tickets to up to three movies per month through their Subscriptions. The email claimed that “[q]uarterly and annual subscribers will not be impacted until their renewal date.” The full email stated:

Dear MoviePass Member,

On August 15, 2018, we will hit the one-year anniversary of MoviePass' revolutionary price point of \$9.95 a month. We've experienced tremendous growth, and we know that at times, the frequent changes to our service have been frustrating to you. But through it all, one thing is clear: we've gotten people excited about going to the movies again.

Over the last year, we have tried different things and we've discovered what our members love about our service — the low price point and the ability to go to more than 91 percent of theaters nationwide. We've also learned what people don't like about the service — features including Peak Pricing and Ticket Verification.

So now, with almost a full year of learnings under our belt, we're introducing a new pricing plan that retains the features you love the most and removes the ones you don't. Most importantly, this new plan will ensure that we can run a sustainable business and continue providing you with an amazing deal to go see movies in theaters.

Here are the details:

- Under our new plan, MoviePass members will be able to see up to **three** standard movies a month for **\$9.95**, and be given up to a **\$5.00** discount to any additional movie tickets purchased. Today, 85 percent of MoviePass members

go to three movies or less per month, so these changes cater to the majority of our movie-going community.

- The new plan will include many major studio first-run films, however there will be some exceptions (note that theaters with e-ticketing will include all movies and showtimes with no restrictions).
- We will be suspending Peak Pricing and Ticket Verification requirements for all members in the new plan described above.
- Over the coming days, MoviePass members with a monthly subscription renewing on or after August 15th will be given the option in the MoviePass app to transition to the new plan. Quarterly and annual subscribers will not be impacted until their renewal date.

The truth is, disruption and innovation require staying flexible and having an open mind. We genuinely strive to offer you a service that is a great deal, and we believe that the new plan we're introducing will be attractive to the majority of our members.

It's been an exciting journey so far, and MoviePass is here to stay. Your endless support, understanding and enthusiasm are greatly appreciated.

Thank you,
Mitch Lowe

108. On or about August 24, 2018—well in advance of the renewal date of Mr. Harrington's annual Subscription—MoviePass sent Mr. Harrington an email in which it unilaterally, without Mr. Harrington's knowledge or consent, converted Mr. Harrington's annual MoviePass Subscription to an annual Subscription that limited Mr. Harrington to a maximum of three movies per month, despite MoviePass's representation in its email of August 6, 2018, that "[q]uarterly and annual subscribers will not be impacted until their renewal date." The conversion was retroactive to August 3, 2018, i.e., the MoviePass App showed, incorrectly, that Mr. Harrington had been on a monthly Subscription since August 3, 2018. At the same time, MoviePass offered Mr. Harrington a prorated refund of an unspecified amount if he elected to cancel his subscription within 7 days. The email stated, in part:

Hi Lee,

We want to thank you for being a loyal member of our annual MoviePass plan. Your commitment to MoviePass has contributed to making our vision for an accessible and affordable moviegoing experience a reality. After experimenting with different models and options, we believe that our current monthly plan captures the need of our community — keeping prices low while continually striving to offer a wider selection of films.

As of today, aligned with Section 2.4 of our Terms of Use, your annual subscription plan will now allow you to **see 3 movies a month** instead of the previous unlimited offering, and you'll receive up to a \$5.00 discount on any additional movie tickets purchased. This is the current standard plan now in effect for all current and new subscribers. Unless you choose to cancel your subscription prematurely, your plan will continue within these guidelines through the end of your annual [sic] contract. Additionally, in making these adjustments to our annual plans, we intend to expand our offering of blockbuster and independent films so you can discover a wider variety of movies.

If this new plan no longer aligns with your viewing preferences, we completely understand and would be happy to offer you a refund for the remainder of your annual subscription. **If you choose to cancel, please make sure to press the cancelation button below.** By doing so you will receive a prorated refund and your annual subscription will be canceled. Cancellation will also prevent you from signing up for MoviePass again for the **next 9 months.** Please note that you have until 8/31/2018 to complete this process.

109. Mr. Harrington subsequently contacted MoviePass and requested a refund of the money he paid for an unlimited annual Subscription (which MoviePass had unilaterally converted to a restricted Subscription as set forth above), and MoviePass refused, stating that “we do not offer a pro-rated refund at this time.”

110. In November 2018, MoviePass canceled its contract with the only e-ticketing theater near Mr. Harrington, restricting his ability to see movies even further.

111. Mr. Harrington would purchase another “unlimited” MoviePass Subscription in the future, if he could be confident that the Subscription would provide him with unlimited access to tickets to movies in theaters, i.e., access to tickets to any movie in any theater on any day. At present, however, Mr. Harrington cannot be confident that a MoviePass Subscription would

provide him with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

Defendant MoviePass Inc.

112. MoviePass Inc. is a corporation organized under the laws of Delaware.

113. MoviePass Inc.’s principal executive office is located at 175 Varick Street, 6th Floor, New York, New York, 10014.

Defendant Helios and Matheson Analytics Inc.

114. Helios and Matheson Analytics Inc. is a corporation organized under the laws of Delaware.

115. Helios and Matheson Analytics Inc.’s principal executive office is located at Empire State Building, 350 Fifth Avenue, New York, New York 10118.

116. Helios and Matheson Analytics Inc. is the parent company of MoviePass Inc.

JURISDICTION AND VENUE

Jurisdiction

117. This Court has personal jurisdiction over Defendants for reasons including but not limited to the following: Plaintiffs’ claims arise out of Defendants’ conduct within New York, including Defendants’ conduct of disseminating in New York false and misleading representations that MoviePass Subscriptions would provide “unlimited” access to tickets to movies in theaters and that Subscriptions would provide tickets to “any movie” in “any theater” on “any day.”

118. This Court has original subject matter jurisdiction over this proposed class action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the *United States Code*), under 28 U.S.C. § 1332(d), which provides for the original jurisdiction of the federal district courts over “any civil action in which

the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and [that] is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Because Plaintiffs bring claims on behalf of a nationwide class and Defendants are both citizens of both Delaware and New York, at least one member of the plaintiff class is a citizen of a State different from Defendants. Further, Plaintiffs allege the matter in controversy is well in excess of \$5,000,000 in the aggregate, exclusive of interest and costs. Finally, Plaintiffs allege “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

119. Additionally, Defendant’s Terms of Use deem this Court to have exclusive jurisdiction. As stated in Defendant’s Terms of Use:

For purposes of seeking injunctive or equitable relief...any legal suit...shall be instituted exclusively in the federal or state courts located in the State of New York...located in the City of New York and County of New York.

Venue

120. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because both Defendants reside in New York and in this District. Additionally, as stated above, Defendant’s Terms of Use state that any “legal suit....shall be instituted exclusively in the federal or state courts located in the State of New York in each case located in the City of New York and County of New York. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.”

ALLEGATIONS COMMON TO ALL CLAIMS

121. Film marketing executive and producer Stacy Spikes co-founded MoviePass, a subscription-based discount movie ticket service, with entrepreneur Hamet Watt in 2011.

122. To obtain a MoviePass Subscription, a consumer must create an account on MoviePass's homepage, www.moviepass.com, and provide information including a name and address. Within around 5 to 7 business days, MoviePass will then mail the consumer a MoviePass Card, which looks like a credit or debit card.

123. To use the Subscription, the consumer must activate the MoviePass Card and download the MoviePass App on their smartphone or other electronic device. The consumer may then browse available theaters, movies, and showtimes on the App. If the consumer finds a theater, movie, and showtime on the App, the consumer then travels to the theater, checks in to the showtime on the App, and uses the MoviePass Card to purchase a ticket. The consumer may also, alternatively, purchase an electronic ticket (e-ticket).

124. MoviePass has offered at least three types of recurring Subscriptions: month-to-month, quarterly, and annual.

125. Generally, MoviePass has billed consumers when they obtain their Subscriptions and subsequently on a recurring basis until either MoviePass or the consumer terminates the Subscription.

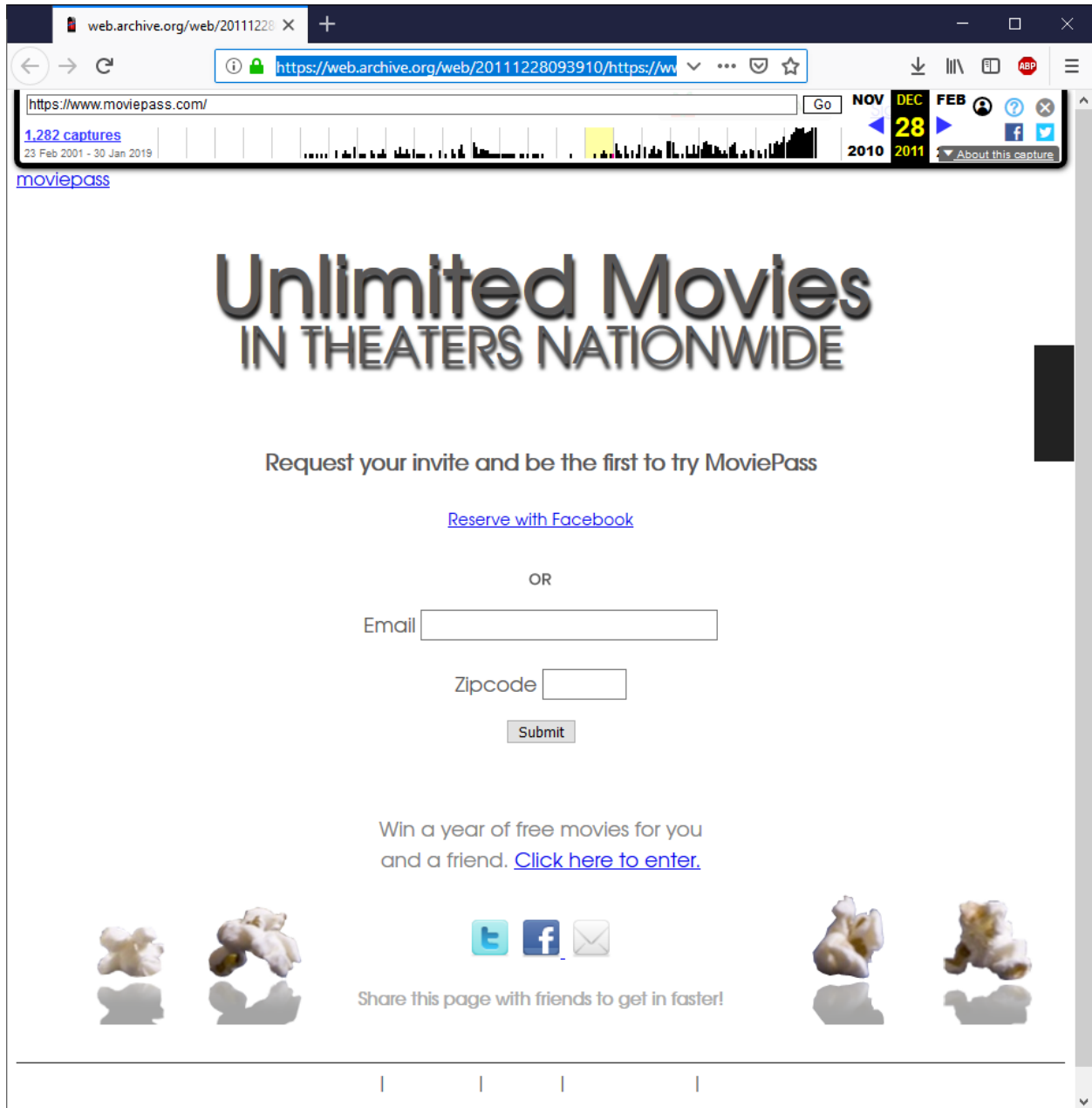
126. If a consumer cancels a Subscription prior to the end of the billing period, MoviePass does not refund the consumer any portion of the money for that billing period, even in the case of subscribers who prepaid for a full quarter or a full year.

**MoviePass Advertises and Markets the Subscriptions
as Providing “Unlimited” Access to Tickets to Movies in Theaters
and as Allowing Consumers to Purchase Tickets to
“Any Movie” in “Any Theater” on “Any Day”**

127. During the period from February 1, 2013, to August 5, 2018, MoviePass systematically marketed and advertised the MoviePass Subscriptions throughout the United States as providing consumers with “unlimited” access to tickets to movies playing in theaters, or with the ability to purchase a ticket to “any movie” in “any theater” on “any day,” such that any United States consumer who purchased a MoviePass Subscription was exposed to MoviePass’s claim that the MoviePass Subscriptions provide unlimited access to tickets to movies playing in theaters, on any day.

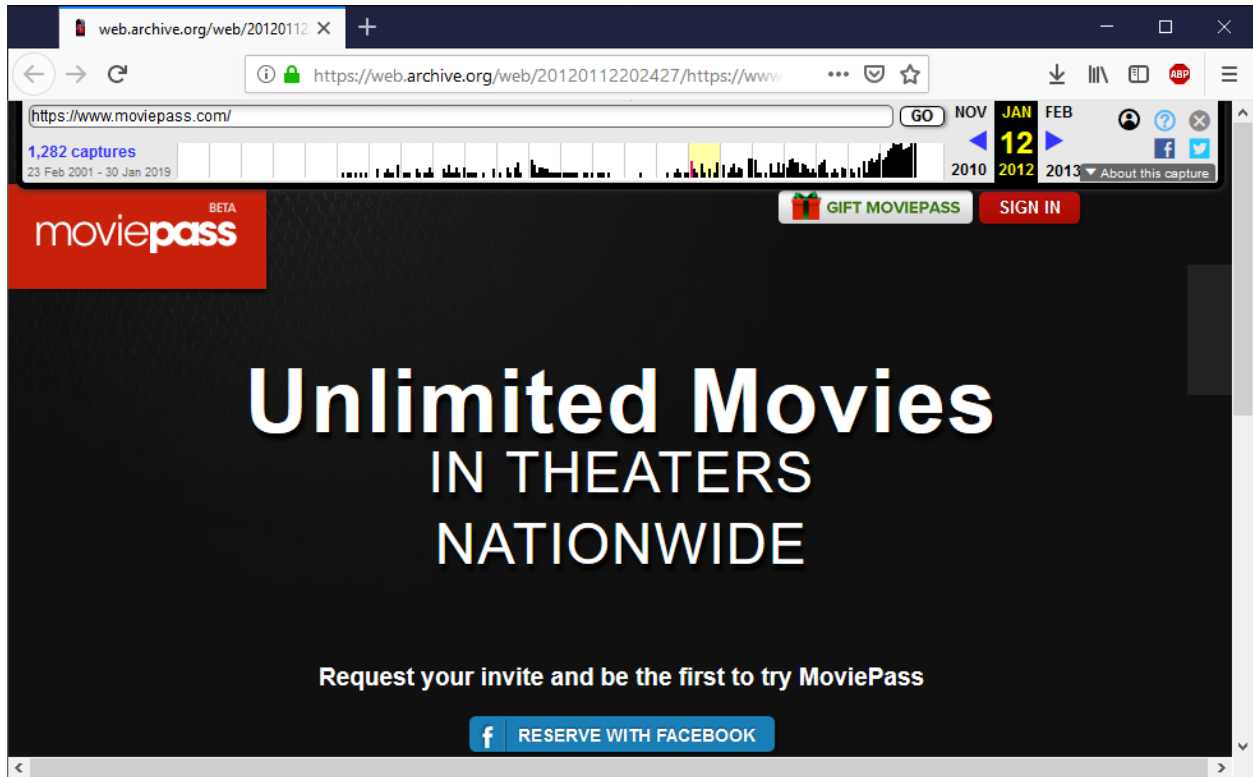
128. Indeed, from 2011, the year MoviePass Inc. was founded, until August 5, 2018, MoviePass Inc. advertised that its Subscriptions provide “unlimited” access to tickets to movies in theaters or that the Subscriptions would allow consumers to purchase tickets to “any movie” in “any theater” on “any day.”

129. As the screenshot below from the Internet Archive WayBack Machine shows, on December 28, 2011, the MoviePass homepage stated that the company provided access to “Unlimited Movies IN THEATERS NATIONWIDE.”



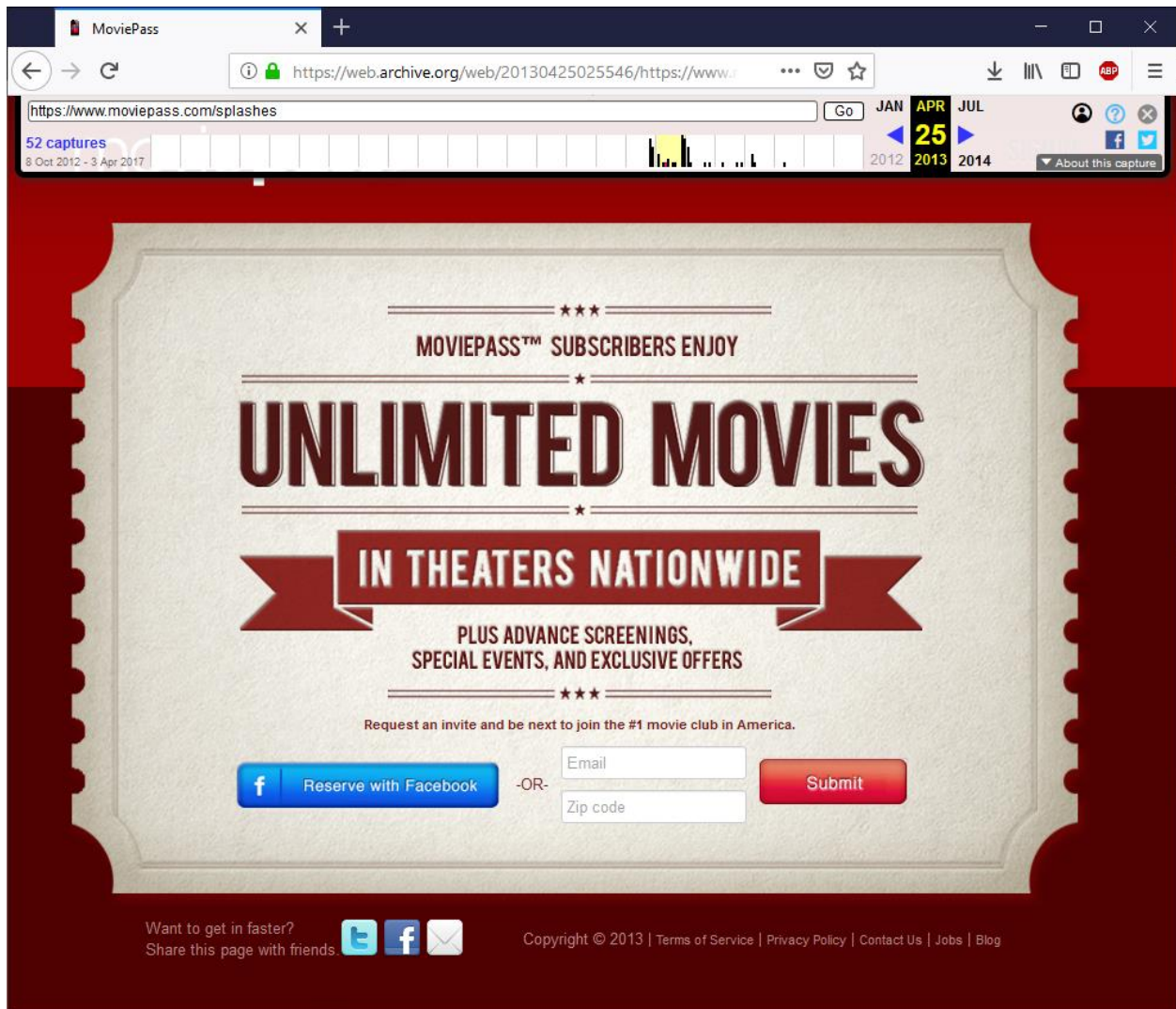
Internet Archive WayBack Machine, www.moviepass.com (Dec. 28, 2011), https://goo.gl/nB6h8P.

130. As the screenshot below shows, MoviePass continued to represent that its Subscriptions provided “unlimited” access to movies in theaters in 2012.



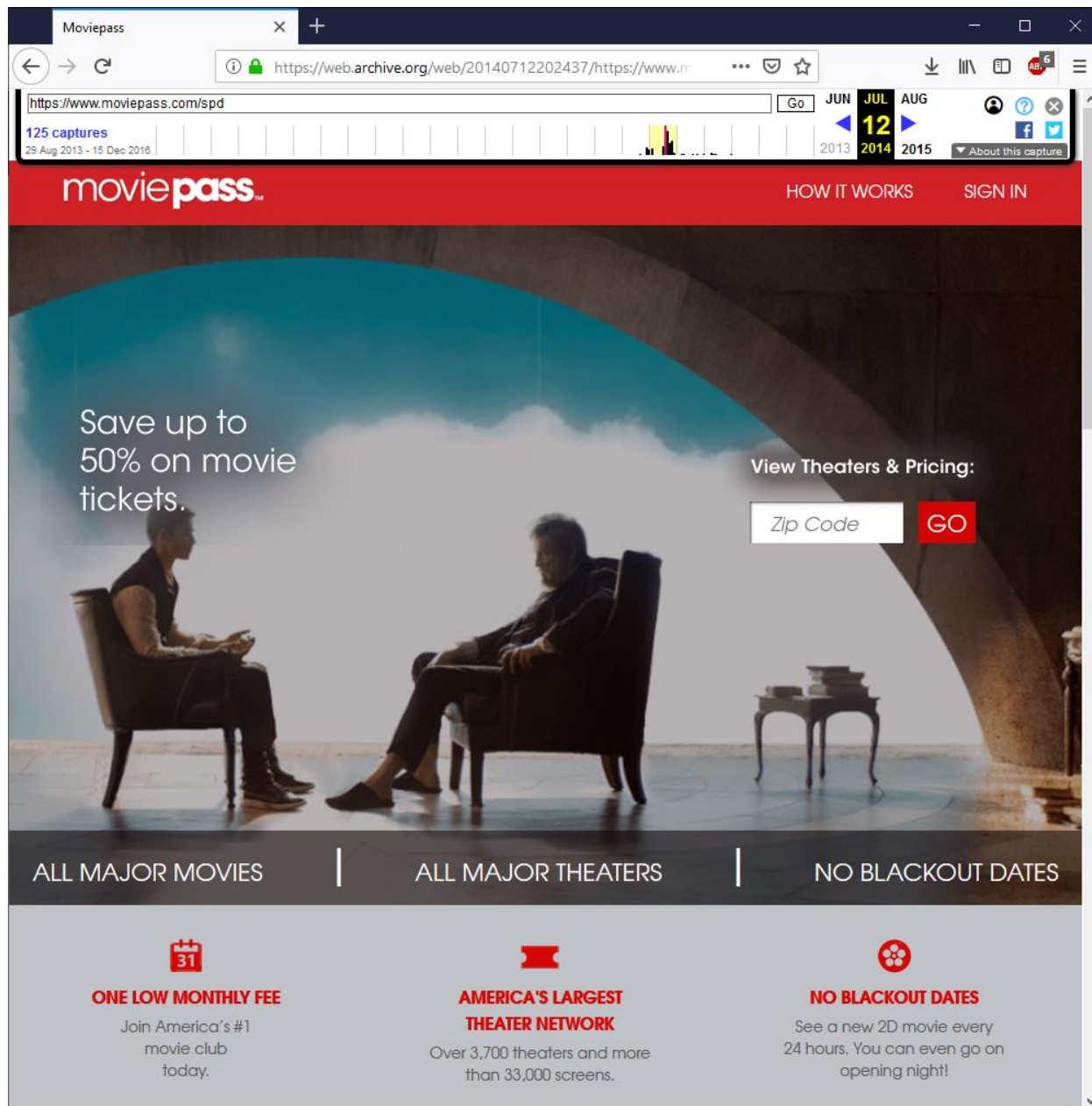
Internet Archive WayBack Machine, www.moviepass.com (Jan. 12, 2012), <https://goo.gl/m4fJCr>; *see also* Internet Archive WayBack Machine, www.moviepass.com (May 2, 2012), <https://goo.gl/Q1jurr>.

131. In 2013, MoviePass continued to claim that MoviePass subscribers enjoy “UNLIMITED” movies in theaters nationwide, as shown below.



Internet Archive WayBack Machine, www.moviepass.com/splashes (Apr. 25, 2013), <https://goo.gl/uq9BZT> (redirected from www.moviepass.com); *see also* Internet Archive WayBack Machine, www.moviepass.com/spd (Aug. 29, 2013), <https://goo.gl/5RHpwc> (redirected from www.moviepass.com).

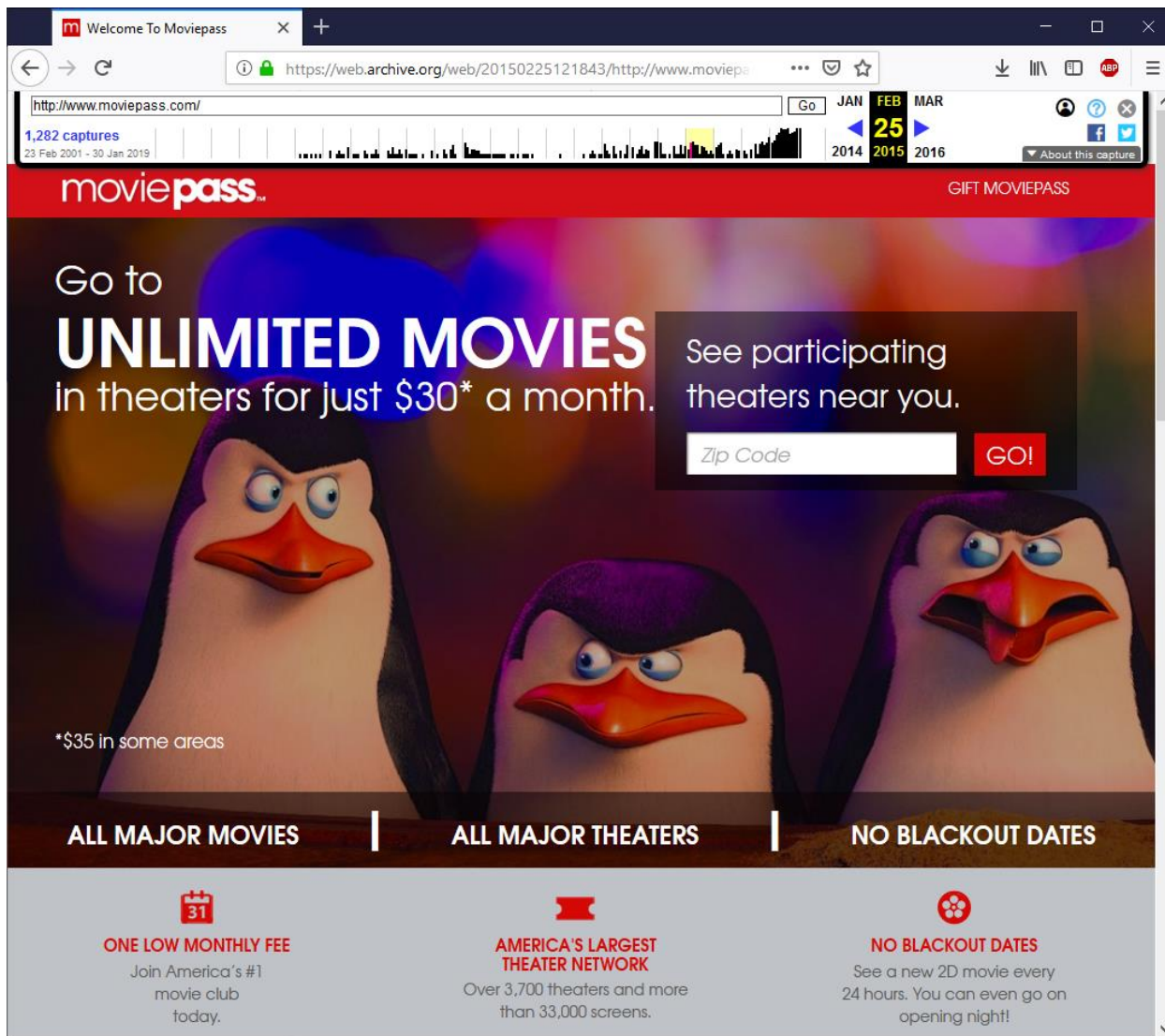
132. On July 12, 2014, MoviePass’s homepage indicated its Subscriptions allow access to tickets to “ALL MAJOR MOVIES” in “ALL MAJOR THEATERS” with “NO BLACKOUT DATES” and stated that consumers could “[s]ee a new 2D movie every 24 hours” and could “even go on opening night!”, as shown in the screenshot below.



Internet Archive WayBack Machine, www.moviepass.com (July 12, 2014), <https://goo.gl/t4jT9A>; see also Internet Archive WayBack Machine, www.moviepass.com (Oct. 6, 2014),

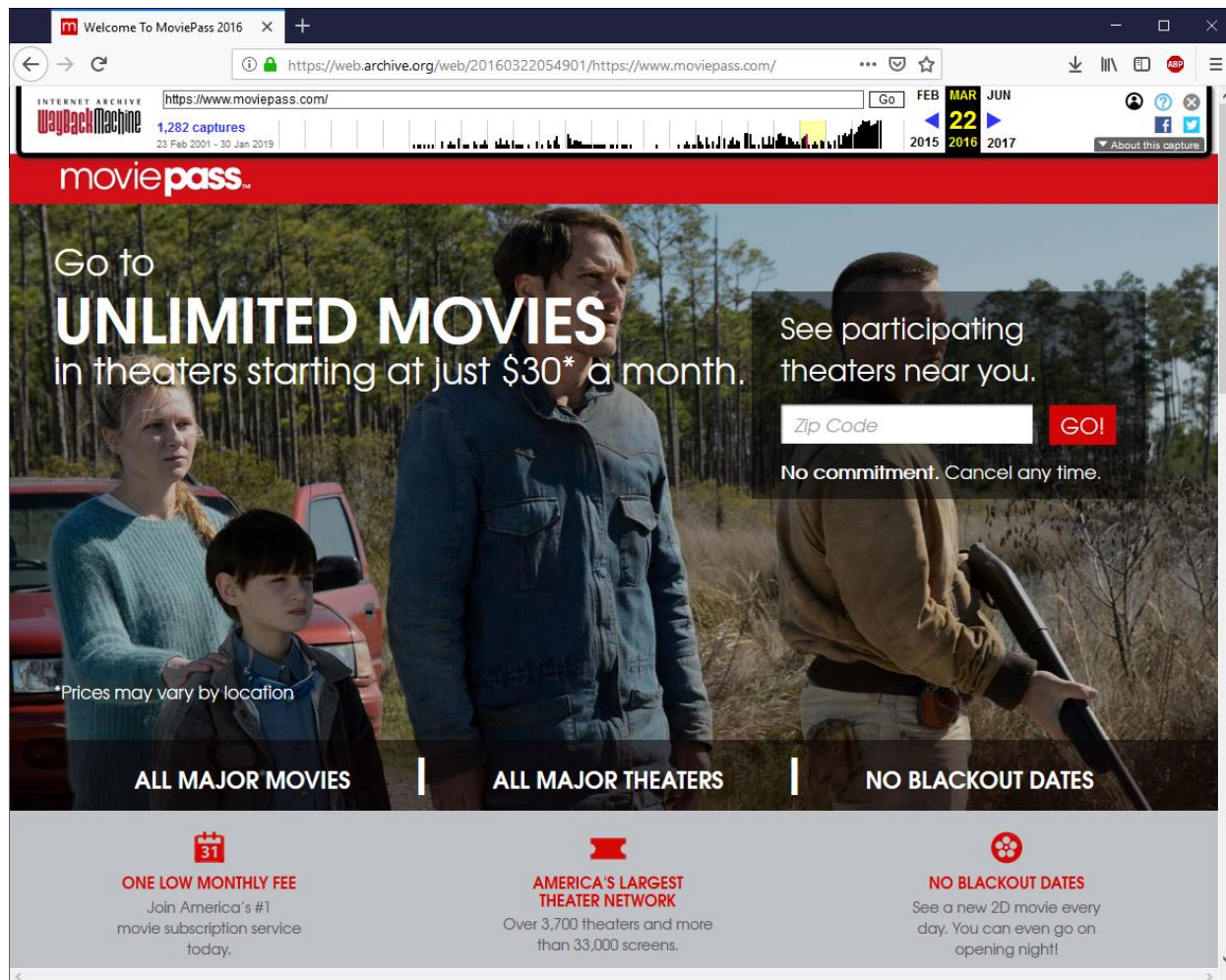
<https://goo.gl/WAmuxJ> (also indicating Subscriptions allow access to “Unlimited” movies in theaters nationwide for “[o]ne low monthly fee”).

133. On February 25, 2015, MoviePass’s homepage again claimed its Subscriptions allowed access to “UNLIMITED” movies in theaters.



Internet Archive WayBack Machine, www.moviepass.com (Feb. 25, 2015), <https://goo.gl/eevUA5>; *see also* Internet Archive WayBack Machine, www.moviepass.com (Nov. 21, 2015), <https://goo.gl/ge2KwS>.

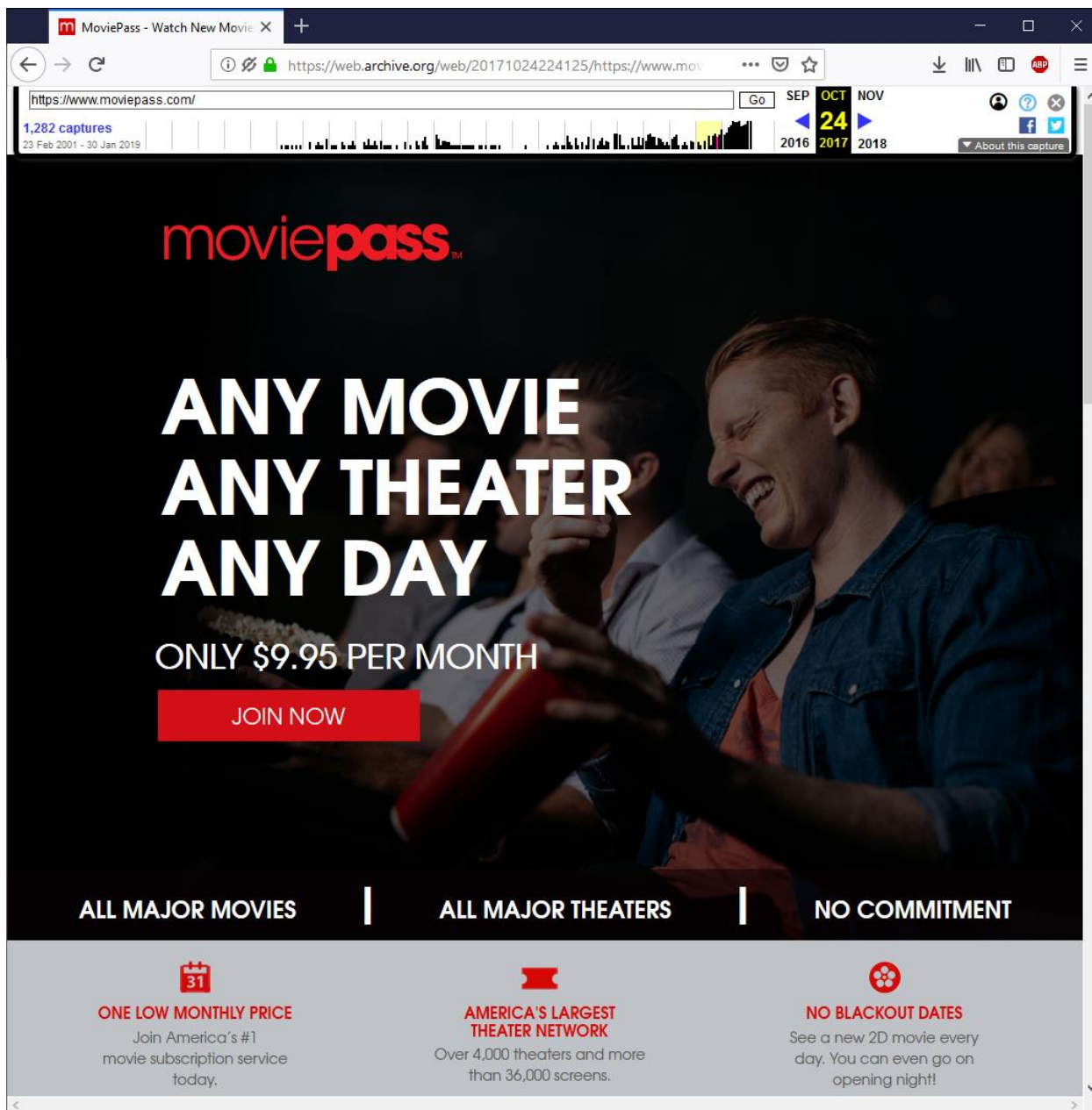
134. MoviePass made the same claims in 2016:



Internet Archive WayBack Machine, www.moviepass.com (Mar. 22, 2016), <https://goo.gl/AfZi9q>; *see also* Internet Archive WayBack Machine, www.moviepass.com (Nov. 23, 2016), <https://goo.gl/HAofy7>.

135. MoviePass continued to make the same claims in 2017 as well. Internet Archive WayBack Machine, www.moviepass.com (July 3, 2017), <https://goo.gl/RCeXin>.

136. On October 24, 2017, MoviePass's homepage indicated that a MoviePass Subscription allows access to tickets to "ANY MOVIE ANY THEATER ANY DAY":

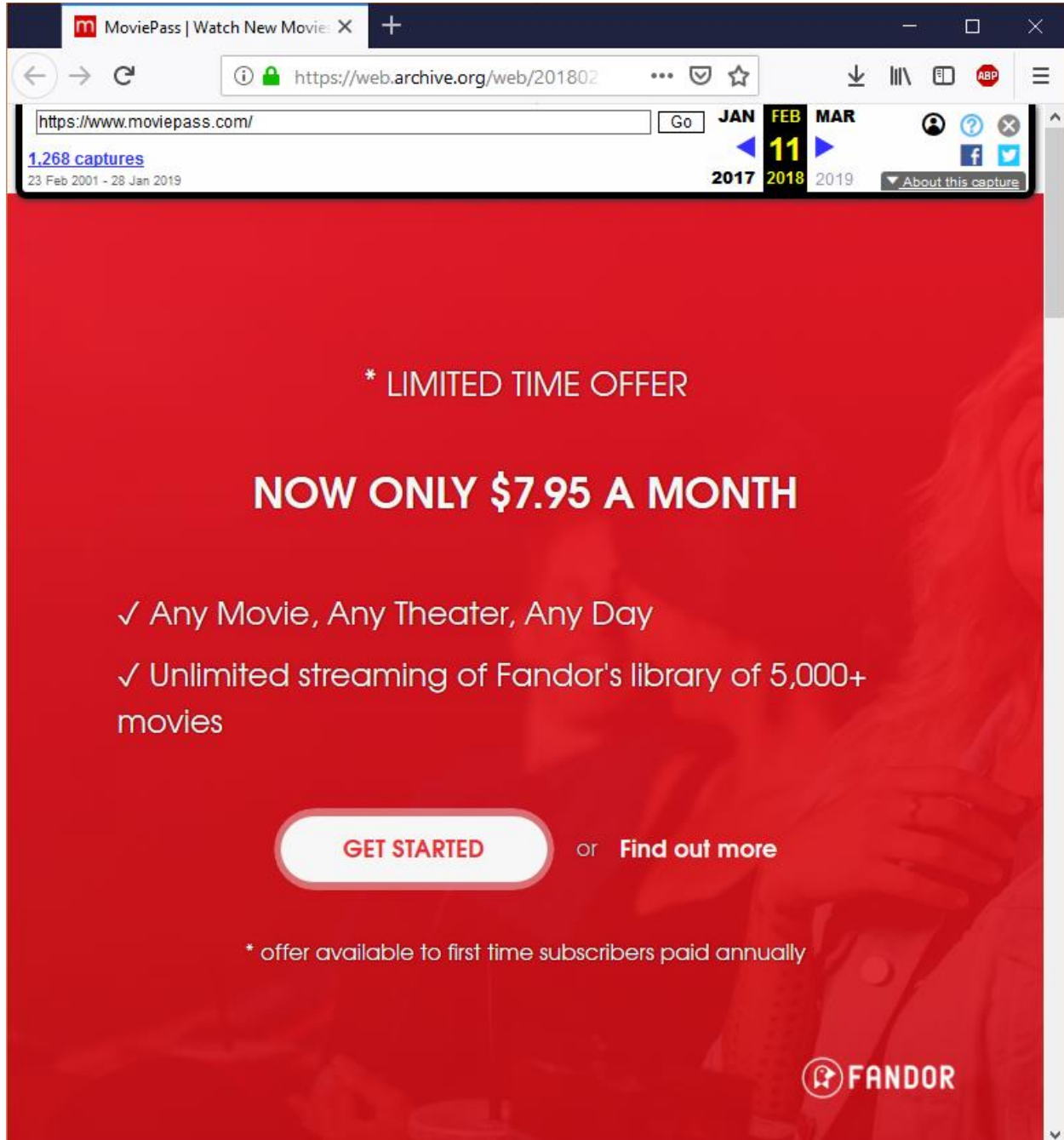


Internet Archive WayBack Machine, www.moviepass.com (Oct. 24, 2017), <https://goo.gl/Lc61AJ>.

137. Similarly, on January 1, 2018, MoviePass offered access to "Any Movie Any Theater Any Day." Internet Archive WayBack Machine, www.moviepass.com (Jan. 1, 2018), <https://goo.gl/Xq96sg>.

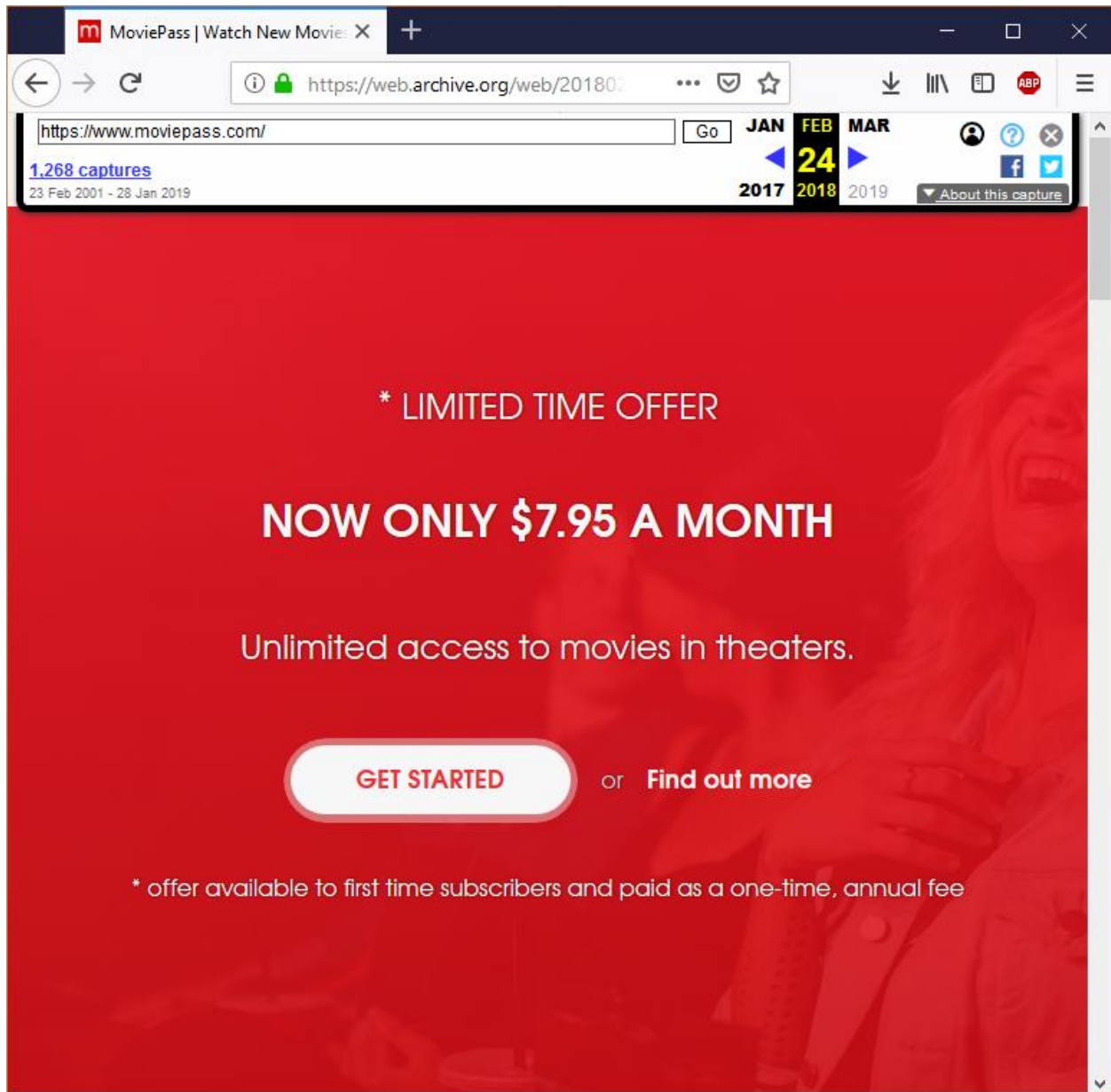
138. MoviePass made the same claims on February 3, 2018. Internet Archive WayBack Machine, www.moviepass.com (Feb. 3, 2018), <https://goo.gl/fqTM6y>.

139. As the screenshot below shows, as of February 11, 2018, MoviePass offered access to “Any Movie, Any Theater, Any Day,” as well as “Unlimited streaming of Fandor’s library of 5,000+ movies,” for \$7.95 per month to first time subscribers who paid for a full year.



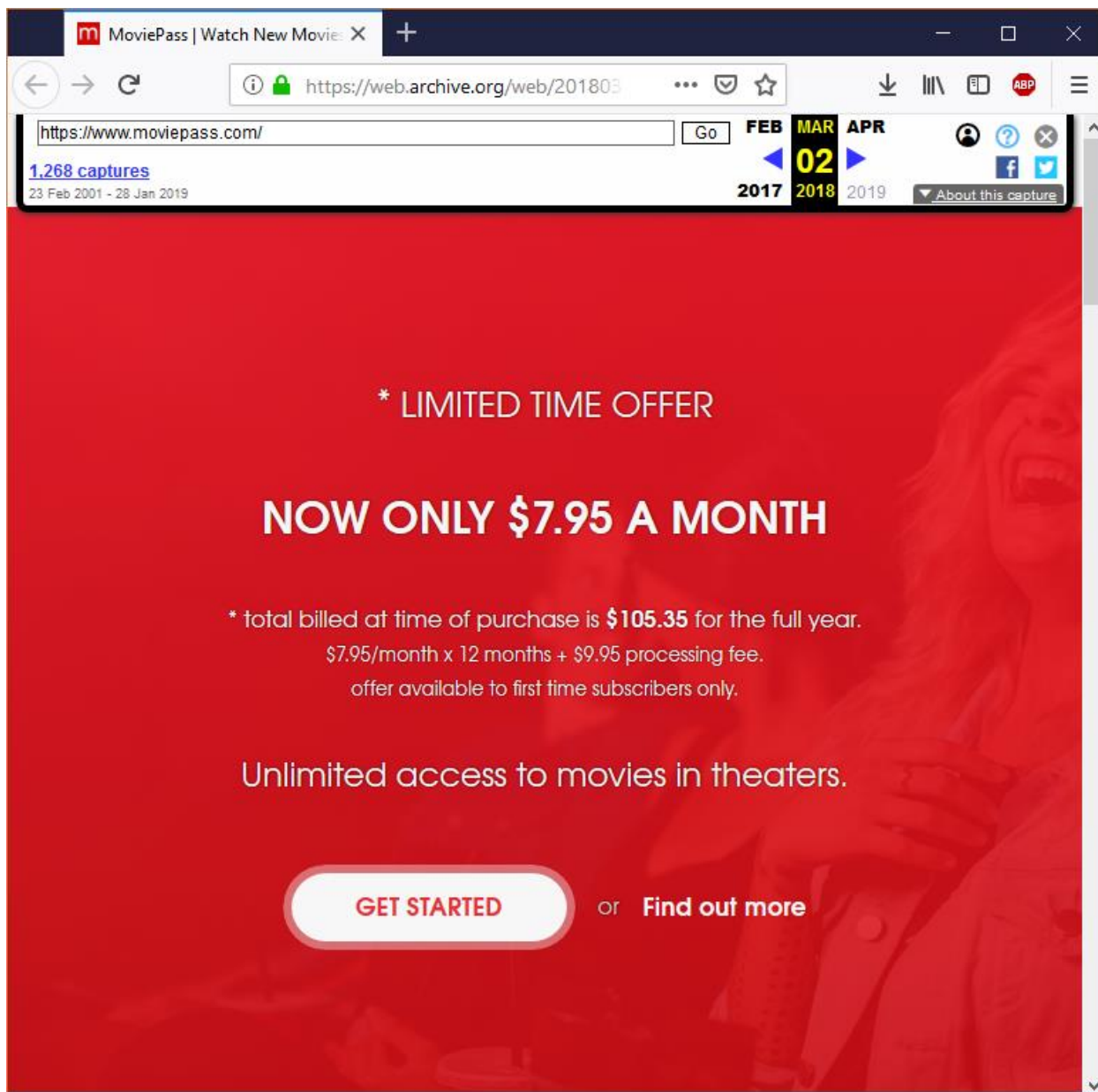
Internet Archive WayBack Machine, www.moviepass.com (Feb. 11, 2018), <https://goo.gl/vU6tqm>.

140. As shown below, on February 24, 2018, MoviePass offered “Unlimited” access to movies in theaters for \$7.95 per month to first time subscribers who purchased a year Subscription.



Internet Archive WayBack Machine, www.moviepass.com (Feb. 24, 2018), <https://goo.gl/bQzopk>.

141. By March 2, 2018, MoviePass had added a \$9.95 “processing fee” to its offer of “unlimited” access, for a total of \$105.35 at the time of purchase, as shown below.



Internet Archive WayBack Machine, www.moviepass.com (Mar. 2, 2018), <https://goo.gl/9d8Xmk>.

142. On August 6, 2018, MoviePass sent an email to MoviePass subscribers, including Plaintiffs, with the subject “Please Read: Updates to your MoviePass Plan,” in which it announced

a new service plan in which Subscription holders would only be able to purchase tickets to up to three movies per month through their Subscriptions. The email stated that “[q]uarterly and annual subscribers will not be impacted until their renewal date.”

143. As the foregoing paragraphs illustrate, MoviePass’s marketing and advertising of the MoviePass Subscriptions unequivocally demonstrate its intent to persuade consumers that the Subscriptions provide “unlimited” access to tickets to movies in theaters and that the Subscriptions allow consumers to purchase a ticket to “any movie” in “any theater” on “any day.”

144. The representation that a MoviePass Subscription provides “unlimited” access to tickets to movies in theaters is material to a reasonable consumer.

145. The representation that a MoviePass Subscription allows consumers to purchase a ticket to “any movie” in “any theater” on “any day” is material to a reasonable consumer.

146. MoviePass recognizes a consumer desire to see movies in theaters more often, at a discount price per ticket.

147. According to ConsumerAffairs, Defendant MoviePass Inc.’s Chief Executive Officer Mitch Lowe has stated:

“After years of studying and analysis, we found that people want to go to the movies more often, but the pricing keeps going up, and that prevents them from going more. We’re making it more affordable for people.”

Gary Guthrie, *MoviePass changes its subscription plan once again: Subscribers say they’re tired of the ‘bait and switch’*, WWW.CONSUMERAFFAIRS.COM (July 6, 2018), <https://goo.gl/5yvhy8>.

148. MoviePass is well aware that claims that a MoviePass Subscription provides “unlimited” access to tickets to movies in theaters are material to consumers.

149. MoviePass is well aware that claims that a MoviePass Subscription allows consumers to purchase a ticket to “any movie” in “any theater” on “any day” are material to

consumers.

150. MoviePass markets and advertises the MoviePass Subscriptions as providing “unlimited” access to tickets to movies in theaters, and as allowing consumers to purchase a ticket to “any movie” in “any theater” on “any day,” to increase Subscription sales.

MoviePass Did Not Provide “Unlimited” Access to Tickets to Movies in Theaters and Did Not Enable Consumers with MoviePass Subscriptions to Purchase Tickets to “Any Movie” in “Any Theater” on “Any Day”

151. MoviePass’s claims are false and misleading because MoviePass did not provide “unlimited” access to tickets to movies playing in theaters and it did not provide access to tickets to “any movie” in “any theater” on “any day.”

152. Rather, Plaintiffs and the Class members routinely were unable to access tickets to any movies playing in theaters; were prohibited from purchasing tickets to certain movies through their Subscriptions; were offered only limited movie selection, theater selection, and showtime selection; and otherwise experienced significant difficulties in obtaining access to tickets to movies through their Subscriptions.

153. When Subscription holders, including Plaintiffs and the Class members, search for movie tickets and theaters using the MoviePass App, the App routinely states that “there are no more screenings at this theater today,” regardless of the time of day at which the Subscription holder conducts the search.

154. The App also routinely limits the available movies, showtimes, and theaters for which Subscription holders can purchase tickets, making it difficult to take advantage of the Subscription service.

155. Additionally, in April 2018, MoviePass began prohibiting repeat viewings of the same movie, thereby introducing another limit to its Subscription service and falsifying for an

additional reason its promises to provide “unlimited” access to movie tickets and to provide access to “any movie” in “any theater” on “any day.”

156. In July 2018, Defendant MoviePass Inc.’s CEO Mitch Lowe admitted that “certain movies may not always be available in every theater on our platform.” Gary Guthrie, *MoviePass borrows an emergency \$5 million to keep its service alive: The company continues to add caveats to its all-you-can-watch model*, WWW.CONSUMERAFFAIRS.COM (July 30, 2018), <https://goo.gl/wkXXvk>.

157. In July 2018, ConsumerAffairs reported that MoviePass “continue[d] to add caveats to its all-you-can-watch model,” including surge pricing and the company declining to allow Subscription holders to purchase tickets to the new Tom Cruise movie (“Mission: Impossible – Fallout”) through their Subscriptions, and that Subscription holders were having to deal with MoviePass Card outages due to MoviePass’s failure to pay its card payment processors. *Id.*

158. On July 30, 2018, Business Insider reported that MoviePass would be blocking members from using its Subscription service to see major upcoming releases, including “Christopher Robin” and “The Meg.” Jason Guerrasio, *MoviePass CEO announces in all-hands meeting that tickets to big upcoming movies will not be available on the app*, WWW.BUSINESSINSIDER.COM (July 30, 2018, 5:15 PM), <https://goo.gl/GHsaap>. According to Business Insider:

A source familiar with the matter told Business Insider that during an all-hands meeting on [July 30, 2018], MoviePass CEO Mitch Lowe said the app would not make “Christopher Robin” and “The Meg” — the two major releases hitting theaters in the next two weeks — available to its subscribers, and he implied that the practice of not offering tickets to major movies would continue for the foreseeable future.

Id.

159. In August 2018, MoviePass CEO Mitch Lowe wrote an email to Subscription

holders that admitted, “We know that at times, the frequent changes to our service have been frustrating to you.” Gary Guthrie, *MoviePass decides on a plan that should solve its woes: The big questions are whether the plan is sustainable and if consumers will stay onboard*, WWW.CONSUMERAFFAIRS.COM (Aug. 7, 2018), <https://goo.gl/63qWRe>.

160. In the August 2018 email, Mr. Lowe stated that 85 percent of Subscription holders only saw three movies or less per month. *Id.*

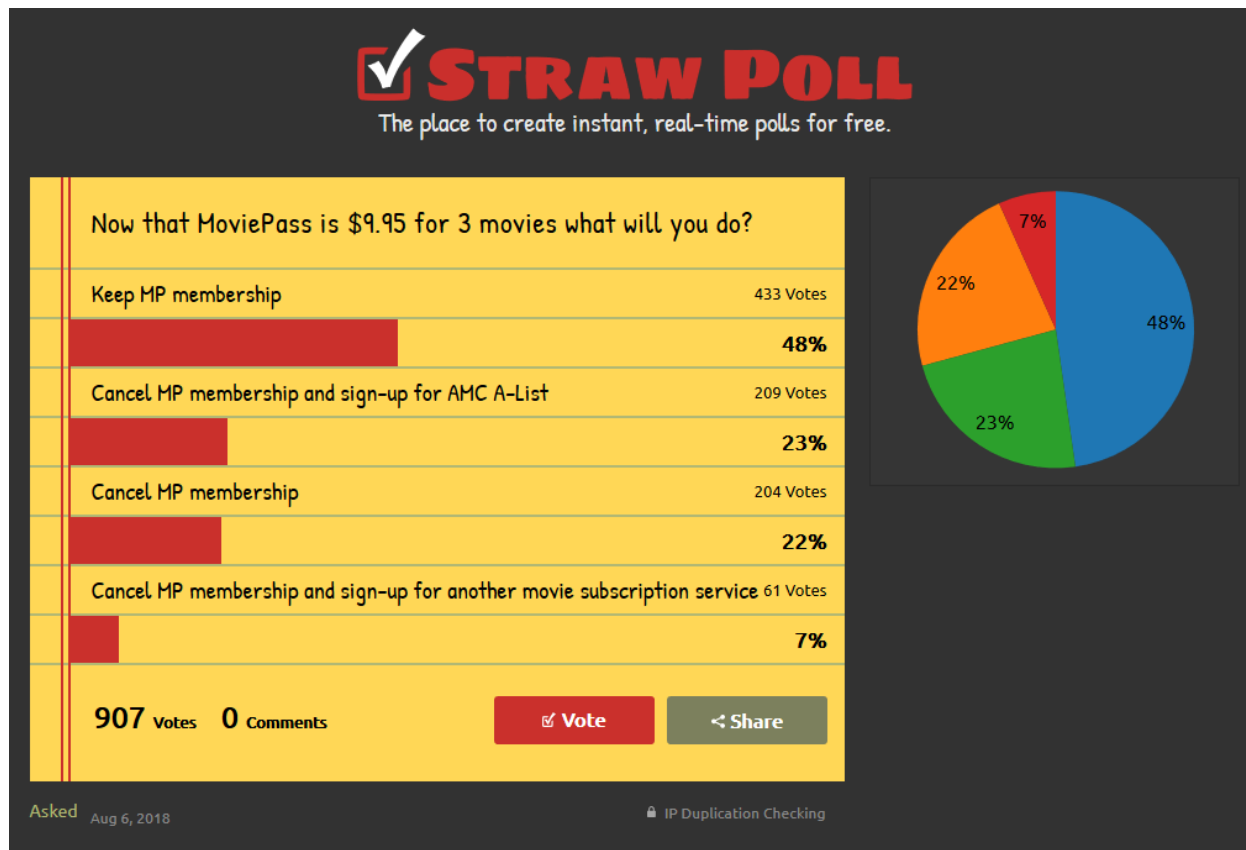
161. While in the August 2018 email, Defendant MoviePass Inc.’s CEO interpreted the 85 percent figure as indicating that Subscription holders do not want to see more than three movies per month, *id.*, Plaintiffs believe the truth is that most MoviePass Subscription holders, like all of the named Plaintiffs, were not able to find tickets to more than three movies per month using the MoviePass App due to routine messages that “there are no more screenings at this theater today” and due to limitations on movie selection, showtime selection, and theater selection.

162. In August 2018, ConsumerAffairs reported the complaints of one Subscription holder as follows:

“This is why I canceled #MoviePass. The constant spin & utter lack of accountability for ANYTHING. You offered an impossible deal, people took advantage of it, now it’s ‘unfair’ that they did so. I’m happy over at AMC A-List, which MoviePass mocked, now offering 4x the movies,” tweeted film critic Dan Murrell.

Gary Guthrie, *MoviePass decides on a plan that should solve its woes: The big questions are whether the plan is sustainable and if consumers will stay onboard*, WWW.CONSUMERAFFAIRS.COM (Aug. 7, 2018), <https://goo.gl/63qWRe>.

163. An August 6, 2018, online poll indicated that 52% of consumers planned to cancel their Subscriptions after MoviePass announced (on the same day) that Subscriptions would only provide access to tickets to three movies per month instead of the “unlimited” access that MoviePass previously promised; the screenshot below shows the results.



Now that MoviePass is \$9.95 for 3 movies what will you do?, WWW.STRAWPOLL.ME (Aug. 6, 2018), <https://www.strawpoll.me/16224012/r>.

164. On August 10, 2018, the New York Post reported that MoviePass had limited its Subscription movie selection to a mere two movies per day, a far cry from the “unlimited” access it had promised. Nicolas Vega, *MoviePass now forcing users to choose between two movies a day*, NYPost.com (Aug. 10, 2018), <https://goo.gl/H3SDX9>.

165. In the same article, the New York Post also reported that the MoviePass

Subscription service had crashed for three weekends in a row, that the quality of one of the two movies then offered was poor, and that one of the showtimes then offered was inconvenient. *Id.* (“The app crash came just hours after the company quietly rolled out its latest ploy to keep users from heading to the theaters: forcing them to choose between a terrible film and a terrible showtime.”).

166. Consumers have complained online about MoviePass’s failure to adhere to its “unlimited” and “any theater, any movie, any day” representations. For example, one unhappy consumer wrote in an online forum concerning MoviePass:

MOVIEPASS! No Movie - No Theater - Every Day

Hi! so I’m trying to figure out (if at all) how I can actually use the service I had subscribed for? I had signed up for the yearly enrollment which was advertised as unlimited movies with restriction of one movie per day and no special screenings. This soon turned into “We want you to explore different movies” ie. one movie once which I had no issue with . . . then you guys asked to upload ticket stubs which I adhered to. Then you guys started marking international movies as premier and excluding those even though they were the exact same price as any other movie in the same theater around the same time . . . this did not make sense to me. Now recently you said no blockbuster movies just so you can keep the cost down and blocking most of the newly released movies which kind of beats the purpose of what Moviepass was set out to be . . . but fine. I really don’t mind waiting a week or two watch the movie hence didn’t have a issue with this too but now it’s at a point where by the time I get out of work on weekdays, all the theaters near my house don’t have any screening for any movies. On weekends the only way to get a ticket is to go to the theater early afternoon else it’s the same case “No screening for the rest of the day” So I’m just trying to figure out how do you expect me to use the service? Sure your CEO can send communication out saying you are trying to be transparent but can you guys include the fact that user can’t really reserve any shows for any movies by evening everyday? or as your automated system responds asking to stick to theaters that support e-ticketing and not the large number of theater the service had initially advertised? Just trying to figure out what the expectation is just so I don’t feel let down yet again when I open your app! Thanks!

MOVIEPASS! No Movie - No Theater - Every Day, WWW.REDDIT.COM/R/MOVIEPASS (Aug. 9, 2018), <https://goo.gl/SyZi1P>.

167. For all of these reasons, MoviePass misled, deceived, and confused reasonable

consumers, including Plaintiffs and the Class members, by portraying the MoviePass Subscriptions as allowing “unlimited” access to tickets to movies playing in theaters and as providing access to tickets to “any movie” in “any theater” on “any day,” when, in truth, the Subscriptions did not provide “unlimited” access to tickets to movies playing in theaters and did not provide access to tickets to “any movie” in “any theater” on “any day.”

168. MoviePass’s conduct harmed consumers by inducing them to purchase MoviePass Subscriptions on the false premise that the Subscriptions would allow them “unlimited” access to tickets to movies playing in theaters, and the false premise that the Subscriptions would allow them to purchase tickets to “any movie” in “any theater” on “any day,” when the consumers would not have otherwise purchased the Subscriptions, and by inducing consumers to pay a higher price for the Subscriptions than they otherwise would have been willing to pay.

169. MoviePass refuses to provide pro-rated refunds to Subscription holders who cancel their Subscriptions prior to the end of the Subscription period, regardless of whether the Subscription is a monthly Subscription, a quarterly Subscription, or a yearly Subscription.

170. Furthermore, on September 28, 2018, MoviePass sent the email quoted below to a “select” group of former customers who had allowed their Subscriptions to lapse and who, as a result, were no longer paying MoviePass subscribers:

In August 2018, we announced a new offering for three movies a month for \$9.95, giving subscribers the ability to opt-in to this plan if they wanted to continue as a MoviePass subscriber. However, our records show that you have not yet taken any action on the new plan, and because of that your subscription was suspended and your monthly subscription charges have stopped.

Because we really hope you begin enjoying your MoviePass subscription again, we have chosen you to be a part of a select test group, who beginning Friday, October 5th will be restored to unlimited movies (up to one new movie title per day based on existing inventory) – the same subscription that you signed up for and you previously enjoyed. If you decide that you do not want this you must “opt out” before Thursday, October 4th at 9:00PM ET.

To be clear, unless you opt out, your unlimited subscription will be restored and you will begin enjoying unlimited movies again (up to 1 movie per day, based on existing inventory) at \$9.95 per month, and your credit card on file will be charged on a monthly basis beginning Friday, October 5th, 2018.

If you do opt out of the restoration of your subscription to the unlimited plan, your subscription will be canceled and no longer held in a “suspended” status, and you will not be able to re-join until 9 months have passed.

In other words, if the former customers, who had allowed their Subscriptions to lapse, did not want to be charged again on a recurring basis, MoviePass demanded they proactively opt out of the plan that MoviePass had enrolled them in *without* their consent, within less than a week. Nick Statt, *MoviePass is now forcing former users to opt out of new plan or risk being charged*, WWW.THEVERGE.COM (Sept. 28, 2018, 7:27pm EDT), <https://goo.gl/Y3RbEr>; *see also* Gary Guthrie, *MoviePass tries to ‘restore’ users’ accounts without permission*, WWW.CONSUMERAFFAIRS.COM (Oct. 2, 2018), <https://goo.gl/2BVfMP>.

Plaintiffs and the Class Members Reasonably Relied on MoviePass’s Misrepresentations

171. Plaintiffs and the Class members reasonably relied to their detriment on MoviePass’s false and misleading “unlimited” and “any movie, any theater, any day” representations and omissions.

172. MoviePass’s misleading affirmative statements that the Subscriptions would provide “unlimited” access to tickets to movies in theaters and that the Subscriptions would allow consumers to purchase tickets to “any movie” in “any theater” on “any day” obscured the material facts that MoviePass failed to disclose, i.e., that the Subscriptions would not in fact provide Plaintiffs and the Class members with “unlimited” access to tickets to movies in theaters or with the ability to purchase tickets to “any movie” in “any theater” on “any day.”

173. MoviePass’s false and misleading representations and omissions are likely to

deceive and mislead reasonable consumers and the general public again in the future, as they have already deceived and misled Plaintiff and the Class members.

MoviePass's Wrongful Conduct Caused Plaintiffs' and the Class Members' Injuries

174. As an immediate, direct, and proximate result of MoviePass's false and misleading representations and omissions, MoviePass injured Plaintiffs and the Class members in that they:

- a. paid a sum of money for Subscriptions that were not what MoviePass represented;
- b. were deprived of the benefit of the bargain because the Subscriptions they purchased were different from what MoviePass promised;
- c. were deprived of the benefit of the bargain because the Subscriptions they purchased had less value than what MoviePass represented;
- d. did not receive Subscriptions that measured up to their expectations, which MoviePass created; and
- e. were denied the benefit of the "unlimited" discount movie tickets, on "any day" to "any movie" in "any theater," which MoviePass promised.

175. Had MoviePass not made the false and misleading representations and omissions, Plaintiffs and the Class members would not have been willing to pay the same amount for the Subscriptions they purchased, and, consequently, Plaintiffs and the Class members would not have been willing to purchase the Subscriptions.

176. Plaintiffs and the Class members paid for Subscriptions that allowed "unlimited" access to tickets to movies in theaters and that would allow them to purchase tickets to "any movie" in "any theater" on "any day" but received Subscriptions that did not in fact allow them "unlimited" access to tickets to movies in theaters and that did not in fact allow them to purchase tickets to "any movie" in "any theater" on "any day." The Subscriptions Plaintiffs and the Class members received were worth less than the Subscriptions for which they paid.

177. Based on MoviePass's false and misleading representations, MoviePass was able

to, and did, charge Plaintiffs and the Class members a higher price for the Subscriptions than MoviePass would have otherwise been able to charge had MoviePass not made the “unlimited” and “any movie, any theater, any day” representations.

178. Plaintiffs and the Class members all paid money for the MoviePass Subscriptions. However, Plaintiffs and the Class members did not obtain the full value of the advertised Subscriptions due to MoviePass’s false and misleading representations. Plaintiffs and the Class members purchased more of, or paid more for, the Subscriptions than they would have had they known the truth about the Subscriptions. Consequently, Plaintiffs and the Class members have suffered injury in fact and lost money or property as a result of MoviePass’s wrongful conduct.

CLASS ACTION ALLEGATIONS

179. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiffs brings this action on behalf of themselves and a proposed class defined as follows:

The Injunctive Relief Class. All persons who purchased a MoviePass Subscription from MoviePass during the period from February 1, 2013, to the date of class certification.

Plaintiffs ask the Court to adjudicate only liability, declaratory relief, and injunctive relief through the Injunctive Relief Class. The Injunctive Relief Class does not seek any form of monetary relief.

Excluded from the Injunctive Relief Class are: (a) Defendants, Defendants’ board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

180. Additionally, pursuant to Rule 23(a), (b)(2) and (b)(3), Plaintiffs bring this action on behalf of themselves and a proposed class defined as follows:

181.

The Equitable Relief Class. All persons who purchased a MoviePass Subscription from MoviePass during the period from February 1, 2013, to the date of class certification.

Plaintiffs ask the Court to adjudicate all forms of equitable relief through the Equitable Relief Class.

Excluded from the Equitable Relief Class are: (a) Defendants, Defendants' board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

182. Additionally, pursuant to Rule 23(a), (b)(2) and (b)(3), Plaintiffs Lawrence Weinberger and Laurie Weinberger bring this action on behalf of themselves and a proposed subclass defined as follows:

The New York Subclass. All persons who purchased a MoviePass Subscription from MoviePass in New York during the period from February 1, 2013, to the date of class certification.

Plaintiffs ask the Court to adjudicate all forms of relief sought herein through the New York Subclass.

Excluded from the New York Subclass are: (a) Defendants, Defendants' board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

183. Additionally, pursuant to Rule 23(a), (b)(2) and (b)(3), Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this action on behalf of themselves and a proposed subclass defined as follows:

The California Subclass. All persons who purchased a MoviePass Subscription from MoviePass in California during the period from February 1, 2013, to the date of class certification.

Plaintiffs ask the Court to adjudicate all forms of relief sought herein through the California Subclass.

Excluded from the California Subclass are: (a) Defendants, Defendants' board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

184. Additionally, pursuant to Rule 23(a), (b)(2) and (b)(3), Plaintiff Brett Goodlin brings this action on behalf of himself and a proposed subclass defined as follows:

The Colorado Subclass. All persons who purchased a MoviePass Subscription from MoviePass in Colorado during the period from February 1, 2013, to the date of class certification.

Plaintiff asks the Court to adjudicate all forms of relief sought herein through the Colorado Subclass.

Excluded from the Colorado Subclass are: (a) Defendants, Defendants' board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

185. Additionally, pursuant to Rule 23(a), (b)(2) and (b)(3), Plaintiff Lee Harrington brings this action on behalf of himself and a proposed subclass defined as follows:

The Florida Subclass. All persons who purchased a MoviePass Subscription from MoviePass in Florida during the period from February 1, 2013, to the date of class certification.

Plaintiff asks the Court to adjudicate all forms of relief sought herein through the Florida Subclass.

Excluded from the Florida Subclass are: (a) Defendants, Defendants' board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and

properly excludes himself or herself from the Class in accordance with Court-approved procedures.

186. Collectively, the Injunctive Relief Class, the Equitable Relief Class, the New York Subclass, the California Subclass, and the Florida Subclass are the “Class.”

187. Plaintiffs reserve the right to alter the Class definitions as they deem necessary at any time to the full extent that the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, and applicable precedent allow.

188. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of the claims on a class-wide basis using the same evidence as individual Class members would use to prove those elements in individual actions alleging the same claims.

189. Numerosity; Rule 23(a)(1): The size of the Class is so large that joinder of all Class members is impracticable. Due to the nature of MoviePass’s business, Plaintiffs believe there are millions of Class members geographically dispersed throughout the United States.

190. Existence and Predominance of Common Questions of Law and Fact; Rule 23(a)(2), (b)(3): There are questions of law and fact common to the Class. These questions predominate over any questions that affect only individual Class members.

191. All Class members were exposed to MoviePass’s deceptive and misleading advertising and marketing claims that their MoviePass Subscriptions would provide them with “unlimited” access to tickets to movies in theaters and would allow them to purchase tickets to “any movie” in “any theater” on “any day.”

192. Furthermore, common legal and factual questions include but are not limited to:

- a. whether MoviePass engaged in the course of conduct alleged herein;

- b. whether MoviePass's conduct of marketing and advertising the MoviePass Subscriptions as providing "unlimited" access to tickets to movies in theaters and as allowing consumers to purchase tickets to "any movie" in "any theater" on "any day" is likely to deceive a reasonable consumer acting reasonably in the circumstances;
- c. whether MoviePass's conduct constitutes an unfair or deceptive act or practice;
- d. whether MoviePass violated the state consumer protection statutes set forth below;
- e. whether MoviePass breached its contracts with Plaintiff and the Class members by failing to provide them "unlimited" access to tickets to movies in theaters and by failing to allow them to purchase tickets to "any movie" in "any theater" on "any day";
- f. whether MoviePass breached the implied covenant of good faith and fair dealing by failing to provide Plaintiff and the Class members with "unlimited" access to tickets to movies in theaters and by failing to allow them to purchase tickets to "any movie" in "any theater" on "any day"; and
- g. whether Plaintiffs and the Class members are entitled to injunctive relief or equitable relief, including equitable restitution.

193. MoviePass engaged in a common course of conduct in contravention of the laws Plaintiffs seek to enforce individually and on behalf of the Class members. Similar or identical violations of law, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers that will materially advance the litigation.

194. Typicality; Rule 23(a)(3): Plaintiffs' claims are typical of the claims of the Class members because MoviePass injured all Class members through the uniform misconduct described herein; all Class members were subject to MoviePass's false, misleading, and unfair advertising and marketing practices and representations, including the false and misleading claims that the

MoviePass Subscriptions provided “unlimited” access to tickets to movies in theaters and that the Subscriptions would allow consumers to purchase tickets to “any movie” in “any theater” on “any day”; and Plaintiffs seek the same relief as the Class members.

195. Furthermore, there are no defenses available to MoviePass that are unique to Plaintiffs.

196. Adequacy of Representation; Rule 23(a)(4): Each Plaintiff is a fair and adequate representative of the Class because each Plaintiff’s interests do not conflict with the Class members’ interests.

197. Plaintiffs have selected competent counsel that are experienced in class action and other complex litigation.

198. Plaintiffs will prosecute this action vigorously and are highly motivated to seek redress against MoviePass. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the resources to do so.

199. Injunctive or Declaratory Relief; Rule 23(b)(2): The requirements for maintaining a class action pursuant to Rule 23(b)(2) are met, as MoviePass has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief or equitable relief with respect to the Class as a whole.

200. Superiority; Rule 23(b)(3): The class action mechanism is superior to other available means for the fair and efficient adjudication of this controversy for reasons including but not limited to the following:

- a. The amount of monies individual Class members lost are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address MoviePass’s conduct.
- b. It would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Even if Class members

themselves could afford such individual litigation, the court system could not. Individualized litigation would unnecessarily increase the delay and expense to all parties and to the court system and presents a potential for inconsistent or contradictory rulings and judgments. By contrast, the class action device presents far fewer management difficulties, allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

- c. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for MoviePass.
- d. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications or that would substantively impair or impede their ability to protect their interests.

201. Notice: Plaintiffs and their counsel anticipate that notice to the proposed Class will be effectuated through recognized, Court-approved notice dissemination methods, which may include United States mail, electronic mail, Internet postings, and/or published notice.

CLAIMS

FIRST CLAIM

**Violation of New York’s Consumer Protection from Deceptive Acts and Practices Act
N.Y. GEN. BUS. LAW § 349
By Plaintiffs on Behalf of the Class**

202. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

203. Plaintiffs bring this claim against Defendants on behalf of the Class for violation of New York General Business Law section 349.

204. Section 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York. N.Y. GEN. BUS. LAW § 349(a).

205. MoviePass’s marketing and advertising of the MoviePass Subscriptions, as alleged herein, constitute “deceptive” acts and practices, and such conduct would mislead a reasonable consumer acting reasonably in the circumstances. As discussed above, MoviePass’s marketing and advertising of the MoviePass Subscriptions misled Plaintiffs and the Class members as to whether the Subscriptions provided “unlimited” access to tickets to movies in theaters and as to whether the Subscriptions would allow Plaintiffs and the Class members to purchase tickets to “any movie” in “any theater” on “any day.”

206. In accordance with subsection (h) of section 349, Plaintiffs seek an order enjoining MoviePass from continuing the unlawful deceptive acts and practices discussed above. Absent enjoining the unlawful deceptive acts and practices, MoviePass will continue its false and misleading marketing of MoviePass Subscriptions and, in doing so, irreparably harm each of the Class members.

207. As a consequence of MoviePass’s deceptive acts and practices, Plaintiffs and the Class members suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs and the Class members seek restitution of the monies they paid.

208. Therefore, Plaintiffs pray for relief as set forth below.

SECOND CLAIM

**Violation of New York’s Consumer Protection from Deceptive Acts and Practices Act
N.Y. GEN. BUS. LAW § 350
By Plaintiffs on Behalf of the Class**

209. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

210. Plaintiffs bring this claim against Defendants on behalf of the Class for violation of New York General Business Law section 350.

211. Section 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service” in New York. N.Y. GEN. BUS. LAW § 350.

212. New York General Business Law section 350-a defines “false advertising” as “advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect.” N.Y. GEN. BUS. LAW § 350-a(1).

213. Section 350-a also provides that advertising can be false by omission, as it further states that “[i]n determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.” *Id.*

214. MoviePass’s marketing and advertising of the MoviePass Subscriptions, as alleged herein, are “misleading in a material respect,” and thus “false advertising,” as they falsely represent that the Subscriptions provide “unlimited” access to tickets to movies in theaters and that the Subscriptions allow Subscription holders to purchase tickets to “any movie” in “any theater” on “any day.” MoviePass’s marketing and advertising of the MoviePass Subscriptions, as alleged herein, would mislead a reasonable consumer acting reasonably in the circumstances.

215. Plaintiffs seek an order enjoining MoviePass from continuing this false advertising. Absent enjoining MoviePass’s false advertising of the MoviePass Subscriptions, MoviePass will be free to continue its false and misleading “unlimited” and “any theater, any movie, any day” representations.

216. As a direct and proximate result of MoviePass's violation of New York General Business Law section 350, Plaintiffs and the Class members have also suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs and the Class members seek restitution of the monies they paid.

217. Therefore, Plaintiffs pray for relief as set forth below.

THIRD CLAIM

Breach of Contract under New York Law By Plaintiffs on Behalf of the Class

218. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

219. Plaintiffs bring this claim against Defendants on behalf of the Class for breach of contract under New York common law.

220. Under New York law, the elements of a breach of contract claim are (1) the existence of an agreement; (2) adequate performance of the contract by the plaintiff; (3) breach of contract by the defendant; and (4) damages.

221. Plaintiffs and the Class members, on the one hand, and MoviePass, on the other, formed an agreement concerning the MoviePass Subscriptions when Plaintiffs and the Class members purchased the Subscriptions from MoviePass.

222. Plaintiffs and the Class members performed all acts, conditions, covenants, and promises to be performed on their part when they paid for the MoviePass Subscriptions.

223. MoviePass unjustifiably, inexcusably, intentionally, and materially breached the contract described above by failing to perform its obligation under the contract, i.e., MoviePass failed to provide Plaintiffs and the Class members with access to tickets to "any movie" in "any theater" on "any day" or with access to "unlimited" tickets to movies playing in theaters. Instead,

Plaintiffs and the Class members routinely were unable to find tickets using the MoviePass App, were offered only tickets to a limited selection of movies in a limited selection of theaters on a limited selection of days, or experienced significant difficulties obtaining movie tickets through their Subscriptions, as discussed above.

224. As a result of MoviePass's breach, Plaintiffs and the Class members were deprived of the benefit of the Subscription services for which they bargained and paid and, consequently, suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs and the Class members seek restitution of the monies they paid.

225. Therefore, Plaintiffs pray for relief as set forth below.

FOURTH CLAIM

Breach of the Implied Covenant of Good Faith and Fair Dealing under New York Law By Plaintiffs on Behalf of the Class In the Alternative to Plaintiffs' Third Claim

226. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

227. Plaintiffs bring this claim against Defendants on behalf of the Class for breach of the implied covenant of good faith and fair dealing under New York common law, in the alternative to their Third Claim set forth above.

228. Under New York law, the elements of a claim of breach of the implied covenant are (1) the existence of a duty, (2) breach of that duty, (3) causation, and (4) damages.

229. Under New York law, a covenant of good faith and fair dealing in the course of contract performance is implicit in all contracts.

230. The implied covenant of good faith and fair dealing obligates a promisor to fulfill any promises which a reasonable person in the position of the promisee would be justified in

understanding were included in the contract.

231. The implied covenant of good faith and fair dealing requires that neither party do anything which has the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

232. When a contract involves the exercise of discretion, the implied covenant of good faith and fair dealing prohibits the party with discretion from acting arbitrarily or irrationally in exercising that discretion.

233. Implicit within any agreement that Plaintiffs and the Class members may have entered into with respect to their MoviePass Subscriptions is a covenant by MoviePass to act in good faith and deal fairly with Plaintiffs and the Class members.

234. MoviePass breached this implied covenant of good faith and fair dealing by intentionally, knowingly, willfully, unreasonably, recklessly, arbitrarily, frivolously, and/or maliciously:

- a. promoting MoviePass Subscriptions as providing “unlimited” access to tickets to movies in theaters and as providing access to “any movie” in “any theater” on “any day,” but at the same time causing the MoviePass App to fail to provide such access to tickets;
- b. refusing to offer full or partial refunds to customers who cancelled their Subscriptions prior to the end of the Subscription term; and
- c. engaging in such other conduct to be disclosed in discovery.

235. As a result of MoviePass’s conduct as described herein, Plaintiffs and the other Class members have suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs and the Class members seek restitution.

236. Therefore, Plaintiffs pray for relief as set forth below.

FIFTH CLAIM

**Unjust Enrichment Under New York Law
By Plaintiffs on Behalf of the Class**

237. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

238. Plaintiffs bring this claim for unjust enrichment under New York law on behalf of the Class.

239. As a direct and proximate result of Defendant's acts set forth herein, Defendant has been unjustly enriched.

240. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits it received from Plaintiffs and the Class members. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs and the Class members for the monies paid to Defendant by Plaintiffs and the other Class members.

241. Plaintiffs and the Class members seek restitution of, disgorgement of, and/or the imposition of a constructive trust upon all profits, benefits, and compensation Defendant obtained from its improper conduct alleged herein.

242. Therefore, Plaintiffs pray for relief as set forth below.

SIXTH CLAIM

**Violation of California’s Consumers Legal Remedies Act, CAL. CIV. CODE § 1750 *et seq.*
By Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson
On Behalf of the California Subclass
Seeking Injunctive Relief Only**

243. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

244. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this claim against Defendants on behalf of the California Subclass for violation of California’s Consumers Legal Remedies Act, CAL. CIV. CODE § 1750 *et seq.* (the “CLRA”).

245. This claim is for injunctive relief only, pursuant to California Civil Code section 1782(d).

246. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members are “consumers” as the CLRA defines that term in California Civil Code section 1761(d).

247. Defendants sold MoviePass Subscriptions, which involve both “goods” and “services” within the meaning of California Civil Code section 1761, to Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members.

248. Defendants’ actions, representations, and conduct have violated, and continue to violate, the CLRA because they extend to transactions that are intended to result, or that have resulted, in the sale of goods and services to consumers.

249. Under section 1770(a) of the CLRA:

(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

* * * * *

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

* * * * *

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

* * * * *

(9) Advertising goods or services with intent not to sell them as advertised.

* * * * *

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

250. By engaging in the actions, misrepresentations, and misconduct set forth herein, Defendants have violated California Civil Code section 1770(a)(5), (7), (9), and (16).

251. MoviePass’s marketing and advertising of the MoviePass Subscriptions, as alleged herein, constitute deceptive acts and practices, and such conduct is likely to mislead a reasonable consumer acting reasonably in the circumstances. As discussed above, MoviePass’s marketing and advertising of the MoviePass Subscriptions misled Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members as to whether the Subscriptions provided “unlimited” access to tickets to movies in theaters and as to whether the Subscriptions would allow Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members to purchase tickets to “any movie” in “any theater” on “any day.”

252. Defendants violated the CLRA by representing through its Subscription marketing and advertisements the Subscriptions as described above when it knew, or should have known,

that the marketing and advertisements were deceptive.

253. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members believed Defendants' representations that the Subscriptions provided "unlimited" access to tickets to movies in theaters and the Subscriptions would allow them to purchase tickets to "any movie" in "any theater" on "any day." Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members would not have purchased the Subscriptions, but for Defendant's false and misleading "unlimited" and "any movie, any theater, any day" representations.

254. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members were injured in fact and lost money as a result of Defendants' conduct of improperly describing the Subscriptions using the "unlimited" and "any movie, any theater, any day" representations. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members paid for "unlimited" Subscriptions that would provide them access to "any movie, any theater, any day," but did not receive such Subscriptions.

255. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members request that this Court enjoin Defendants from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to California Civil Code section 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the future, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members will be harmed in that they will continue to be unable to rely on Defendants' "unlimited" and "any movie, any theater, any day" claims.

256. Therefore, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson pray for relief as set forth below.

SEVENTH CLAIM

**Violation of California’s False Advertising Law, CAL. BUS. & PROF. CODE § 17500 *et seq.*
By Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson
On Behalf of the California Subclass**

257. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

258. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this claim against Defendants on behalf of the California Subclass for violation of California’s False Advertising Law, CAL. BUS. & PROF. CODE § 17500 *et seq.* (the “FAL”).

259. MoviePass has engaged in a public advertising and marketing campaign representing that the Subscriptions provide “unlimited” access to tickets to movies in theaters and that the Subscriptions provide tickets to “any movie” in “any theater” on “any day.”

260. As set forth herein, Defendants’ “unlimited” and “any movie, any theater, any day” representations about the Subscriptions are false and misleading and are likely to deceive a reasonable consumer acting reasonably in the circumstances, as the Subscriptions were not in fact “unlimited” and did not in fact provide access to “any movie” in “any theater” on “any day.”

261. MoviePass engaged in its advertising and marketing campaign with intent to directly induce consumers, including Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members, to purchase the Subscriptions based on false and misleading claims.

262. In making and disseminating the statements alleged herein, Defendants knew or should have known that the statements were untrue or misleading.

263. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members believed Defendants’ representations that the Subscriptions provided

“unlimited” access to tickets to movies in theaters and the Subscriptions would allow them to purchase tickets to “any movie” in “any theater” on “any day.” Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members would not have purchased the Subscriptions, but for Defendant’s false and misleading “unlimited” and “any movie, any theater, any day” representations.

264. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members were injured in fact and lost money as a result of Defendants’ conduct of improperly describing the Subscriptions using the “unlimited” and “any movie, any theater, any day” representations. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members paid for “unlimited” Subscriptions that would provide them access to “any movie, any theater, any day,” but did not receive such Subscriptions.

265. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, and other equitable relief allowable under California Business and Professions Code section 17535.

266. Therefore, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson pray for relief as set forth below.

EIGHTH CLAIM

**Violation of California’s Unfair Competition Law, CAL. BUS. & PROF CODE § 17200 *et seq.*
By Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson
On Behalf of the California Subclass**

267. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

268. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this claim against Defendants on behalf of the California Subclass for violation of California’s Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.* (the “UCL”).

269. The circumstances giving rise to the allegations of Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members include Defendants’ corporate policies regarding the sale and marketing of the MoviePass Subscriptions.

270. Under the UCL, “unfair competition” means and includes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the FAL].” CAL. BUS. & PROF. CODE § 17200.

271. By engaging in the acts and practices described above, Defendants committed one or more acts of “unfair competition” as the UCL defines that term.

272. Defendants have committed “unlawful” business acts or practices by, among other things, violating the CLRA and FAL, as described above.

273. Defendants have committed “unfair” business acts or practices by, among other things:

- a. engaging in conduct for which the utility of the conduct, if any, is outweighed by the gravity of the consequences to Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members;
- b. engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs Serita Stevens, Henry Tarlow, and

Jason Donaldson and the California Subclass members; and

- c. engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Amended Complaint.

274. Defendant have committed unlawful, unfair, and/or fraudulent business acts or practices by, among other things, engaging in conduct Defendants knew or should have known was likely to and did deceive reasonable consumers, including Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members.

275. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members believed Defendants' representations that the Subscriptions provided "unlimited" access to tickets to movies in theaters and the Subscriptions would allow them to purchase tickets to "any movie" in "any theater" on "any day." Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members would not have purchased the Subscriptions, but for Defendant's false and misleading "unlimited" and "any movie, any theater, any day" representations.

276. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members were injured in fact and lost money as a result of Defendants' conduct of improperly describing the Subscriptions using the "unlimited" and "any movie, any theater, any day" representations. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members paid for "unlimited" Subscriptions that would provide them access to "any movie, any theater, any day," but did not receive such Subscriptions.

277. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, and other equitable relief allowable under California Business and Professions Code section 17203.

278. Therefore, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson pray for relief as set forth below.

EIGHTH CLAIM

**Breach of Contract under California Law
By Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson
On Behalf of the California Subclass**

279. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

280. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this claim against Defendants on behalf of the California Subclass for breach of contract under California common law.

281. Under California law, the elements of a breach of contract claim are (1) a contract, (2) the plaintiff's performance on the contract or excuse for not performing on the contract, (3) the defendant's breach of the contract, and (4) damages caused by the defendant's breach of the contract.

282. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members, on the one hand, and MoviePass, on the other, formed an agreement concerning the MoviePass Subscriptions when Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members purchased the Subscriptions from MoviePass.

283. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members performed all acts, conditions, covenants, and promises to be performed on their part when they paid for the MoviePass Subscriptions.

284. MoviePass unjustifiably, inexcusably, intentionally, and materially breached the contract described above by failing to perform its obligation under the contract, i.e., MoviePass

failed to provide Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members with access to tickets to “any movie” in “any theater” on “any day” or with access to “unlimited” tickets to movies playing in theaters. Instead, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members routinely were unable to find tickets using the MoviePass App, were offered only tickets to a limited selection of movies in a limited selection of theaters on a limited selection of days, or experienced significant difficulties obtaining movie tickets through their Subscriptions, as discussed above.

285. As a result of MoviePass’s breach, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members were deprived of the benefit of the Subscription services for which they bargained and paid and, consequently, suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members seek restitution.

286. Therefore, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson pray for relief as set forth below.

TENTH CLAIM

Breach of the Implied Covenant of Good Faith and Fair Dealing under California Law By Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson On Behalf of the California Subclass

287. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson repeat each and every allegation contained in the paragraphs above and incorporate such allegations by reference herein.

288. Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson bring this claim against Defendants on behalf of the California Subclass for breach of the implied covenant of good faith and fair dealing under California common law.

289. Under California law, the elements of a claim of breach of the implied covenant are

(1) the plaintiff and the defendant entered into a contract, (2) the plaintiff did all or substantially all of the things that the contract required him to do or that he was excused from having to do, (3) all conditions required for the defendant's performance had occurred, (4) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract, and (5) the defendant's conduct harmed the plaintiff.

290. Implicit within any agreement that Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members may have entered into with respect to their MoviePass Subscriptions is a covenant by MoviePass to act in good faith and deal fairly with Plaintiffs and the Class members.

291. MoviePass breached this implied covenant of good faith and fair dealing by intentionally, knowingly, willfully, unreasonably, recklessly, arbitrarily, frivolously, and/or maliciously:

- d. promoting MoviePass Subscriptions as providing "unlimited" access to tickets to movies in theaters and as providing access to "any movie" in "any theater" on "any day," but at the same time causing the MoviePass App to fail to provide such access to tickets;
- e. refusing to offer full or partial refunds to customers who cancelled their Subscriptions prior to the end of the Subscription term; and
- f. engaging in such other conduct to be disclosed in discovery.

292. As a result of MoviePass's conduct as described herein, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members have suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson and the California Subclass members seek restitution.

293. Therefore, Plaintiffs Serita Stevens, Henry Tarlow, and Jason Donaldson pray for relief as set forth below.

ELEVENTH CLAIM

**Violation of the Colorado' Consumer Protection Act, COLO. REV. STAT. § 6-1-105 *et seq.*
By Plaintiff Brett Goodlin on Behalf of the Colorado Subclass**

294. Plaintiff Brett Goodlin repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

295. Plaintiff Brett Goodlin brings this claim against Defendants on behalf of the Colorado Subclass for violation of Colorado's Consumer Protection Act, COLO. REV. STAT. § 6-1-105 *et seq.*

296. Defendants engaged in extensive marketing and advertising to promote and sell the Subscriptions using the "unlimited" and "any movie, any day, any theater" representations.

297. As set forth herein, Defendants' "unlimited" and "any movie, any theater, any day" representations about the Subscriptions are false and misleading and are likely to deceive a reasonable consumer acting reasonably in the circumstances, as the Subscriptions were not in fact "unlimited" and did not in fact provide access to "any movie" in "any theater" on "any day."

298. MoviePass engaged in its advertising and marketing campaign with intent to directly induce consumers, including Plaintiff Brett Goodlin and the Colorado Subclass members, to purchase the Subscriptions based on the false and misleading claims set forth herein.

299. In making and disseminating the statements alleged herein, Defendants knew or should have known that the statements were untrue or misleading.

300. Plaintiff Brett Goodlin and the Colorado Subclass members bring this claim pursuant to Colorado Revised Statutes section 6-1-105(1)(e), (g), (i), and (n), which provide as follows:

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

* * * * *

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

* * * * *

(g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

* * * * *

(i) Advertises goods, services, or property with intent not to sell them as advertised;

* * * * *

(n) Employs “bait and switch” advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:

(I) Refusal to show the goods or property advertised or to offer the services advertised;

(II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;

(III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;

(IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;

(V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;

(VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or

(VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor

301. As a result of Defendants' violations of Colorado's Consumer Protection Act, Plaintiff Brett Goodlin seeks, on behalf of the Colorado Subclass members, all available equitable remedies under Colorado's Consumer Protection Act, including declaratory, injunctive, and other equitable relief such as restitution, and pre-judgment interest, as well as reasonable attorneys' fees and costs.

302. Therefore, Plaintiff Brett Goodlin prays for relief as set forth below.

TWELVTH CLAIM

**Breach of Contract under Colorado Law
By Plaintiff Brett Goodlin on Behalf of the Colorado Subclass**

303. Plaintiff Brett Goodlin repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

304. Plaintiff Brett Goodlin brings this claim against Defendants on behalf of the Colorado Subclass for breach of contract under Colorado common law.

305. Under Colorado law, the elements of a breach of contract claim are (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff.

306. Plaintiff Brett Goodlin and the Colorado Subclass members, on the one hand, and MoviePass, on the other, formed an agreement concerning the MoviePass Subscriptions when Plaintiff Brett Goodlin and the Colorado Subclass members purchased the Subscriptions from MoviePass.

307. Plaintiff Brett Goodlin and the Colorado Subclass members performed all acts,

conditions, covenants, and promises to be performed on their part when they paid for the MoviePass Subscriptions.

308. MoviePass unjustifiably, inexcusably, intentionally, and materially breached the contract described above by failing to perform its obligation under the contract, i.e., MoviePass failed to provide Plaintiff Brett Goodlin and the Colorado Subclass members with access to tickets to “any movie” in “any theater” on “any day” or with access to “unlimited” tickets to movies playing in theaters. Instead, Plaintiff Brett Goodlin and the Colorado Subclass members routinely were unable to find tickets using the MoviePass App, were offered only tickets to a limited selection of movies in a limited selection of theaters on a limited selection of days, or experienced significant difficulties obtaining movie tickets through their Subscriptions, as discussed above.

309. As a result of MoviePass’s breach, Plaintiff Brett Goodlin and the Colorado Subclass members were deprived of the benefit of the Subscription services for which they bargained and paid and, consequently, suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiff Brett Goodlin and the Colorado Subclass members seek restitution.

310. Therefore, Plaintiff Brett Goodlin prays for relief as set forth below.

THIRTEENTH CLAIM

Violation of the Florida Deceptive and Unfair Trade Practices Act

FLA. STAT. § 501.201 *et seq.*

By Plaintiff Lee Harrington on Behalf of the Florida Subclass

311. Plaintiff Lee Harrington repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

312. Plaintiff Lee Harrington brings this claim against Defendants on behalf of the Florida Subclass for violation of the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. § 501.201 *et seq.* (“FDUTPA”).

313. Section 501.204(1) of the FDUTPA makes “unfair or deceptive acts or practices in the conduct or any trade or commerce” unlawful.

314. As set forth herein, Defendants’ “unlimited” and “any movie, any theater, any day” representations about the Subscriptions are false and misleading and are likely to deceive a reasonable consumer acting reasonably in the circumstances, as the Subscriptions were not in fact “unlimited” and did not in fact provide access to “any movie” in “any theater” on “any day.”

315. MoviePass engaged in its advertising and marketing campaign with intent to directly induce consumers, including Plaintiff Lee Harrington and the Florida Subclass members, to purchase the Subscriptions based on the false and misleading claims set forth herein.

316. In making and disseminating the statements alleged herein, Defendants knew or should have known that the statements were untrue or misleading.

317. Plaintiff Lee Harrington and the Florida Subclass members believed Defendants’ representations that the Subscriptions provided “unlimited” access to tickets to movies in theaters and the Subscriptions would allow them to purchase tickets to “any movie” in “any theater” on “any day.” Plaintiff Lee Harrington and the Florida Subclass members would not have purchased the Subscriptions, but for Defendant’s false and misleading “unlimited” and “any movie, any theater, any day” representations.

318. Plaintiff Lee Harrington and the Florida Subclass members were injured in fact and lost money as a result of Defendants’ conduct of improperly describing the Subscriptions using the “unlimited” and “any movie, any theater, any day” representations. Plaintiff Lee Harrington and the Florida Subclass members paid for “unlimited” Subscriptions that would provide them access to “any movie, any theater, any day,” but did not receive such Subscriptions.

319. Plaintiff Lee Harrington and the Florida Subclass members seek to enjoin such

unlawful acts and practices described above. Each of the Florida Subclass members will be irreparably harmed unless the unlawful actions of Defendants are enjoined in that they will continue to be unable to rely on the Defendants' "unlimited" and "any movie, any theater, any day" representations.

320. Plaintiff Lee Harrington and the Florida Subclass members seek declaratory relief, injunctive relief prohibiting Defendants from continuing to disseminate their false and misleading statements, restitution plus attorney's fees and court costs, and any other equitable relief allowable under the FDUTPA.

321. Therefore, Plaintiff Lee Harrington prays for relief as set forth below.

FOURTEENTH CLAIM

Breach of Contract under Florida Law By Plaintiff Lee Harrington on Behalf of the Florida Subclass

322. Plaintiff Lee Harrington repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

323. Plaintiff Lee Harrington brings this claim against Defendants on behalf of the Florida Subclass for breach of contract under Florida common law.

324. Under Florida law, the elements of a breach of contract claim are (1) the existence of a contract, (2) a material breach of that contract, and (3) damages resulting from the breach.

325. Plaintiff Lee Harrington and the Florida Subclass members, on the one hand, and MoviePass, on the other, formed an agreement concerning the MoviePass Subscriptions when Plaintiff Lee Harrington and the Florida Subclass members purchased the Subscriptions from MoviePass.

326. Plaintiff Lee Harrington and the Florida Subclass members performed all acts, conditions, covenants, and promises to be performed on their part when they paid for the

MoviePass Subscriptions.

327. MoviePass unjustifiably, inexcusably, intentionally, and materially breached the contract described above by failing to perform its obligation under the contract, i.e., MoviePass failed to provide Plaintiff Lee Harrington and the Florida Subclass members with access to tickets to “any movie” in “any theater” on “any day” or with access to “unlimited” tickets to movies playing in theaters. Instead, Plaintiff Lee Harrington and the Florida Subclass members routinely were unable to find tickets using the MoviePass App, were offered only tickets to a limited selection of movies in a limited selection of theaters on a limited selection of days, or experienced significant difficulties obtaining movie tickets through their Subscriptions, as discussed above.

328. As a result of MoviePass’s breach, Plaintiff Lee Harrington and the Florida Subclass members were deprived of the benefit of the Subscription services for which they bargained and paid and, consequently, suffered an ascertainable loss of monies. By reason of the foregoing, Plaintiff Lee Harrington and the Florida Subclass members seek restitution.

329. Therefore, Plaintiff Lee Harrington prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the Class, respectfully request that the Court enter an Order:

- A. certifying the proposed Class under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3), as set forth above;
- B. declaring that Defendants are financially responsible for notifying the Class members of the pendency of this suit;
- C. declaring that Defendants have committed the violations of law alleged herein;
- D. providing for any and all injunctive relief the Court deems appropriate;
- E. providing for any and all equitable monetary relief, including, but not limited to restitution;
- F. awarding Plaintiffs their costs and expenses of suit, including attorneys' fees;
- G. awarding pre- and post-judgment interest to the extent the law allows; and
- H. providing such further equitable relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury on all claims set forth above that are so triable.

Date: March 11, 2019

Respectfully submitted,

REESE LLP

By: /s/ Michael R. Reese

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