

1 **SCHEPPACH BAUER PC**
JOHN M. SCHEPPACH (BAR NO. 240633)
2 Email: jmscheppach@sbpc.law
THOREY M. BAUER (BAR NO. 234813)
3 Email: tbauer@sbpc.law
23181 Verdugo Drive, Suite 105-A
4 Laguna Hills, CA 92653
Phone: (949) 209-8880
5 Fax: (949) 358-7884

6 Attorneys for Plaintiff
CAMERON CHAMBERS
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 CAMERON CHAMBERS, an individual,

12 Plaintiff,

13 vs.

14 USA CINEMA SERVICES LLC, a
limited liability company; CALIFORNIA
15 CINEMA INVESTMENTS LLC, a limited
liability company; USA CINEMA
16 INVESTMENTS HOLDING INC., a
corporation; and DOES 1 through 10,
17 inclusive,

18 Defendants.
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Case No. 21STCV09204

Assigned: Judge Barbara Meiers

FIRST AMENDED COMPLAINT FOR:

- (1) Unpaid Wages
- (2) Failure To Provide Meal Periods
- (3) Failure To Provide Rest Breaks
- (4) Unreimbursed Expenses
- (5) Failure To Provide Accurate Itemized Wage Statements
- (6) Failure To Pay All Wages Due Upon Separation From Employment
- (7) Unfair Or Unlawful Business Practices
- (8) Representative Action Under PAGA

DEMAND FOR JURY TRIAL

1 Plaintiff Cameron Chambers brings this civil action and, on information and belief,
2 alleges as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff Cameron Chambers ("Plaintiff" or "Chambers") is an individual and
5 a resident of California.

6 2. Defendant USA Cinema Services LLC is a limited liability company.
7 Defendant California Cinema Investments LLC is a limited liability company.
8 Defendant USA Cinema Investments Holding Inc. is a corporation, and is the sole managing
9 member of the aforementioned limited liability companies. These named defendants
10 collectively operate a theater enterprise which does business under the branding of
11 "Cinépolis," a self-described "leading world-class cinema exhibitor." (cinepolisusa.com.)
12 Together and under common control these named defendants operate "Cinépolis Luxury
13 Cinemas" and "Cinépolis" theaters at several locations in California, including in Los
14 Angeles County. All named defendants share the same business address and are alleged to
15 be responsible for the claims asserted herein. All named defendants will be collectively
16 referred to herein as the "Theater Company" or "Defendants."

17 3. Plaintiff, a former employee, worked for the Theater Company in California.
18 During his employment, Plaintiff held various positions. By way of this Complaint, Plaintiff
19 seeks unpaid wages, penalties, and other monetary relief that render this matter an
20 "unlimited" civil case within the meaning of California law. This Complaint invokes all
21 forms of applicable tolling, including, without limitation, the tolling provided by the Judicial
22 Council's emergency rules. Plaintiff has exhausted his administrative remedies with the
23 California Labor & Workforce Development Agency, and this Complaint asserts civil
24 penalty claims under the Private Attorneys General Act of 2004 ("PAGA").

25 4. The true names and capacities of the Doe Defendants (Does 1 through 10,
26 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
27 they are in some way liable for the illegal conduct, injury, and damages alleged herein. The
28 Doe Defendants are believed to be responsible individuals (e.g., executives) or affiliated

1 entities in the "Cinépolis" family of businesses, joint employers, or otherwise liable for the
2 conduct complained of herein, whether because of alter-ego status, agency principles, aider
3 and abettor (or co-conspirator) status, statutorily-imposed responsibility (*e.g.*, Labor Code
4 section 558.1), or otherwise.

5 5. The Court has personal jurisdiction over Defendants because they do business
6 in this State on a reoccurring basis, and they otherwise have minimum contacts with this
7 State. The Court has personal jurisdiction over Plaintiff because he is a resident of California
8 and has sufficient minimum contacts with this State. Venue is proper in Los Angeles County
9 inasmuch as the Theater Company conducts business in Los Angeles County, Plaintiff has
10 performed work for the Theater Company in Los Angeles County, and alleged unlawful
11 conduct and/or its effects have occurred, in whole or in part, in Los Angeles County.

12 **GENERAL ALLEGATIONS**

13 6. The Company subjected Plaintiff and other employees to wage-and-hour
14 violations. They are discussed below in the various causes of action in this Complaint.

15 **FIRST CAUSE OF ACTION**

16 Unpaid Wages

17 (Against The Theater Company, And Does 1 Through 10, Inclusive)

18 7. Plaintiff re-alleges and incorporates by reference herein the allegations set
19 forth in Paragraphs 1 through 6 inclusive.

20 8. Labor Code section 1198 makes it unlawful for an employer to employ any
21 person under conditions of employment that violate the Wage Orders.

22 9. Section 2(K) of the IWC Wage Orders define "hours worked" as the "time
23 during which an employee is subject to the control of the employer, and includes all the time
24 the employee is suffered or permitted to work, whether or not required to do so."

25 10. Labor Code sections 1194 and 1197, and Section 4 of the IWC Wage Orders,
26 require employers to pay their non-exempt employees at least the California minimum wage
27 for all time worked.

28 11. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,

1 require employers to pay overtime wages to their non-exempt employees at no less than one
2 and one-half times their regular rates of pay for all hours worked in excess of eight hours in
3 one workday, all hours worked in excess of forty hours in one workweek, and for the first
4 eight hours worked on a seventh consecutive workday.

5 12. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
6 also require employers to pay overtime wages to their non-exempt employees at no less than
7 two times their regular rates of pay (i.e., double-time) for all hours worked in excess of
8 twelve hours in one workday, and for all hours worked in excess of eight hours on a seventh
9 consecutive workday.

10 13. Labor Code sections 204 and 218 require employers to pay the earned wages
11 of their employees on a timely and periodic basis. Labor Code section 1174(d) also requires
12 employees to keep accurate records of hours worked by employees.

13 14. For part of his employment, the Theater Company classified Chambers as an
14 hourly non-exempt employee. During this time, Chambers was not paid for all hours
15 worked. Among other things, if Chambers was unable to make a shift for which he was
16 scheduled, Chambers was required (off-the-clock) to find and secure a replacement for his
17 shift. Thus, from time to time, Chambers had to work off-the-clock as a shift scheduler. In
18 addition, whether as a result of time-rounding, time adjustments by the Theater Company,
19 or other similar practices, Chambers did not receive pay for all hours worked.

20 15. For part of his employment at the Theater Company, Chambers worked as a
21 commissioned employee and, during this time, the Theater Company misclassified
22 Chambers as exempt. Chambers did not receive commissions every pay period. In those
23 pay periods where Chambers did not receive commission pay, he could not have been, and
24 was not, exempt as a commissioned salesperson. (*Peabody v. Time Warner Cable, Inc.*
25 (2014) 59 Cal.4th 662.) Moreover, Chambers did not meet the test for any exemption at any
26 time. During the time period that Chambers was misclassified as exempt, the Theater
27 Company did not pay Chambers by the hour, and Chambers worked overtime and double-
28 time hours without receiving overtime and double-time compensation. Moreover, the

1 Theater Company did not pay Chambers all the commissions to which he was entitled.
2 Chambers earned commissions for his work. Yet the Theater Company changed midstream,
3 and without Chambers' consent, the terms of its commission plan. The unilateral changes to
4 the commission plan worked to Chambers' detriment and the Theater Company's benefit.

5 16. Plaintiff is entitled to the unpaid balance of all forms of unpaid wages he is
6 owed including straight-time pay, minimum wage, overtime (including double-time), and
7 commissions. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the
8 unpaid balance of the full amount of California minimum wages owed, including interest
9 thereon, reasonable attorney's fees, and costs of suit. Furthermore, under Labor Code section
10 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the
11 California minimum wages unlawfully unpaid and interest thereon. Plaintiff is entitled to
12 recover all damages, penalties and other remedies available for a violation of Labor Code
13 section 1197 and the General Minimum Wage Order.

14 **SECOND CAUSE OF ACTION**

15 Failure To Provide Compliant Meal Periods

16 (Against The Theater Company, And Does 1 Through 10, Inclusive)

17 17. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 16
18 inclusive as though fully set forth herein.

19 18. Under California law, all non-exempt employees who work more than five (5)
20 hours in a day are entitled to take a full 30-minute duty-free meal period. Any meal period
21 must be started no later than after five (5) hours of work. (Labor Code, § 512, subd. (a);
22 IWC Wage Orders § 11.)

23 19. Under California law, all non-exempt employees who work more than ten (10)
24 hours in a day are entitled to take a second duty-free meal period of thirty (30) minutes. Any
25 second meal period must be started no later than after ten (10) hours of work. (Labor Code,
26 § 512, subd. (a); IWC Wage Orders, § 11.)

27 20. Under California law, employers are forbidden from requiring employees to
28 work during a meal period mandated pursuant to California statutory law or mandated by

1 the IWC Wage Orders. (Labor Code, § 226.7(a).)

2 21. Under California law, employers must provide an employee with an additional
3 hour of pay for each workday that an employee is not provided with a meal period "in
4 accordance with" California statutory law or the IWC Wage Orders. (Labor Code, §
5 226.7(c).)

6 22. Plaintiff regularly worked more than (5) hours in a shift for the Theater
7 Company and was entitled to meal periods that conformed with California law. At all
8 relevant times, Plaintiff did not waive his legally-mandated meal periods.

9 23. The Theater Company failed to provide Plaintiff with timely uninterrupted
10 meal periods of at least thirty (30) minutes when Plaintiff worked more than five (5) hours.
11 The Theater Company lacked sufficient meal period infrastructure leading to meal period
12 violations. Among other deficiencies, Plaintiff's meal periods were frequently cut short or
13 Plaintiff could not take them. Moreover, when Plaintiff was misclassified as exempt, the
14 Theater Company did not provide Plaintiff with his legally-mandated meal periods, and no
15 meal periods were recorded.

16 24. The Theater Company failed to provide Plaintiff with a second timely
17 uninterrupted meal period of at least thirty (30) minutes when Plaintiff worked more than
18 ten (10) hours. This occurred, among other occasions, during the period when Plaintiff was
19 misclassified as exempt by the Theater Company, as no regard was paid the Theater
20 Company to such meal periods.

21 25. The Theater Company failed to pay Plaintiff all the required meal period
22 premium pay to which he was entitled as a result of all the meal period violations.

23 26. The Theater Company's non-provision of compliant meal periods, and its non-
24 payment of the requisite meal period premiums, violated and is actionable under Labor Code
25 section 512, subdivision (a), and Labor Code sections 226.7, subdivisions (b) & (c).

26 27. As a result of the Theater Company's violation of California's meal period
27 rules, Plaintiff is entitled to, among other things, one (1) hour of pay at his regular rate of
28 pay for each workday in which a meal period violation occurred.

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1 one (1) hour of pay for each workday that an employee is not provided with a rest period "in
2 accordance with" California statutory law or IWC Wage Orders. (Labor Code, § 226.7(c).)

3 33. Plaintiff regularly worked 3.5 hours or more in a shift for the Theater Company
4 and was entitled to rest breaks that conformed with California law. At all relevant times,
5 Plaintiff did not waive his legally-mandated rest breaks.

6 34. The Theater Company failed to provide Plaintiff with timely uninterrupted rest
7 periods of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof.
8 The Theater Company failed to provide Plaintiff with first, second, or third rest breaks that
9 complied with California law. The Theater Company lacked sufficient rest period
10 infrastructure leading to rest period violations. Among other deficiencies, Plaintiff could
11 not take timely rest breaks, or rest breaks at all, when the theater was busy. Moreover,
12 employees were required to ask to take a rest break, as opposed to rest breaks being
13 authorized and permitted by the Theater Company in the first instance. In addition, rest
14 breaks were not a net 10 minutes, as they started when the employee left their work area, as
15 opposed to starting when the employee reached the breakroom or other area suitable for rest.
16 When Plaintiff was misclassified by the Theater Company as exempt, he was not provided
17 with his legally-mandated rest breaks.

18 35. The Theater Company failed to pay Plaintiff all the required rest period
19 premium pay for all the rest period violations.

20 36. The Theater Company's non-provision of compliant rest periods, and the
21 Theater Company's non-payment of the requisite rest period premiums, violated and is
22 actionable under Labor Code sections 226.7 subdivisions (b) & (c).

23 37. As a result of the Theater Company's violation of California's rest period rules,
24 Plaintiff is entitled to, among other things, one (1) hour of pay at his regular rate of pay for
25 each workday in which a rest period violation occurred.

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1 **FOURTH CAUSE OF ACTION**

2 Unreimbursed Expenses

3 (Against The Theater Company, And Does 1 Through 10, Inclusive)

4 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37
5 inclusive as though fully set forth herein.

6 39. At all relevant times, Labor Code section 2802 required and continues to
7 require employers to fully reimburse employees for expenses incurred in the discharge of
8 their work-related duties or while carrying out the directions of their employer.

9 40. Plaintiff and other employees were required by the Theater Company to utilize
10 their personal cell phones for work-related communications and were not properly
11 reimbursed or issued allowance pay for their cell-phone usage, in violation of Labor Code
12 section 2802(a)-(c). (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137
13 [reimbursement owed under Labor Code section 2802 for required use of personal cell
14 phones].) Plaintiff and others were required by the Theater Company to download an
15 application (HotSchedules) on their personal devices and utilize it for work-related
16 communications. Plaintiff was required to utilize his personal cell phone to find
17 replacements for his shifts when he was unable to work them. Plaintiff was not reimbursed
18 for the Company-required usage of his personal cell phone.

19 41. In addition, when Plaintiff had to drive on errands for the Theater Company,
20 he was not provided with mileage reimbursement or other appropriate expense
21 reimbursement.

22 42. In addition, when Plaintiff had to work from home for the Company, Plaintiff
23 incurred utility expenses that were not reimbursed in any fashion.

24 43. In addition to other appropriate relief, Plaintiff is entitled to full
25 reimbursement of all expenses owed, plus interest, attorney's fees and costs, as provided for
26 in Labor Code section 2802.

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1 **FIFTH CAUSE OF ACTION**

2 Failure To Provide Accurate Itemized Wage Statements

3 (Against The Theater Company, And Does 1 Through 10 Inclusive)

4 44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43
5 inclusive as though fully set forth herein.

6 45. Labor Code section 226(a) requires that employers furnish to their employees
7 semi-monthly or at the time of each payment of wages, an accurate itemized statement in
8 writing showing such matters as the name and address of the legal entity that is the employer,
9 the gross wages earned, the total hours worked, the net wages earned and all applicable
10 hourly rates and the corresponding hours worked at those rates during the pay period.

11 46. Labor Code section 226(a) applied to the Theater Company's employment of
12 Plaintiff.

13 47. Among other deficiencies, Plaintiff's wage statements failed to include the
14 accurate hours worked by Plaintiff each pay period, and his gross and net wages earned.
15 Plaintiff had hours worked that were not accounted for by the Theater Company in his pay
16 or wage statements.

17 48. Plaintiff has suffered the requisite "injury" as a result of the violations, and the
18 Theater Company's violation was "knowing and intentional," as those terms are used in
19 Labor Code section 226. Plaintiff is entitled to the greater of (i) all actual damages or (ii)
20 \$50 for the initial wage statement violation, and \$100 for each subsequent violation, not to
21 exceed an aggregate penalty of \$4,000 (Labor Code, § 226(e)(1)), in addition to attorney's
22 fees and costs.

23 **SIXTH CAUSE OF ACTION**

24 Failure To Pay All Wages Due Upon Separation From Employment

25 (Against The Theater Company, And Does 1 Through 10, Inclusive)

26 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48
27 inclusive as though fully set forth herein.

28 50. Labor Code sections 201 and 202 impose time requirements on tendering to a

1 discharged or quitting employee their final wages. At all relevant times, Labor Code section
2 201 provided that, if an employer discharged an employee, the employee's wages earned and
3 unpaid at the time of discharge are due and payable immediately. At all relevant times,
4 Labor Code section 202 provided that, if an employee quits without giving 72 hours advance
5 notice, all of his or her wages are due within 72 hours of quitting; if an employee quits and
6 provides 72 hours or more of advance notice, all of his or her wages are due at the time of
7 quitting. Plaintiff's employment at the Theater Company ended over thirty (30) days ago
8 and, to this day, he has not received all the wages due to him.

9 51. The Theater Company has willfully failed to pay Plaintiff all his wages due in
10 violation of Labor Code sections 201 and 202. Plaintiff's final pay from the Theater
11 Company did not include all the wages to which he was entitled, including, among others:
12 (i) pay for off-the-clock work, (ii) overtime for the period during which Plaintiff was paid
13 commissions and incorrectly classified as exempt, and (iii) unpaid commissions.

14 52. At all relevant times, Labor Code section 203 provided that, if employers (such
15 as the Theater Company) willfully fail to pay any wages of an employee who is discharged
16 or quits in the time required by Labor Code section 201 or 202, the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an
18 action therefor is commenced, but the wages shall not continue for more than thirty (30)
19 days. Accordingly, Plaintiff is entitled to receive statutory penalties up to a maximum of
20 thirty (30) days, as well as attorney's fees and costs, under Labor Code section 203.

21 **SEVENTH CAUSE OF ACTION**

22 Unfair Or Unlawful Business Practices

23 (Against The Theater Company, And Does 1 Through 10, Inclusive)

24 53. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 52
25 inclusive as though fully set forth herein.

26 54. At all relevant times, the Theater Company's practices, as alleged above, have
27 been unfair, unlawful, deceptive, and harmful to Plaintiff, others similarly situated, and the
28 general public. The Theater Company's illegal practices, as alleged in this Complaint,

1 constitute violations of Business and Professions Code sections 17200 *et seq.* A practice
2 that violates any state law or regulation may constitute the basis of an unlawful business
3 practice prohibited by Business and Professions Code sections 17200 *et seq.*

4 55. In light of all the above-mentioned violations, pursuant to Business and
5 Professions Code sections 17200 *et seq.*, Plaintiff is entitled to restitution of wages and other
6 property held by the Theater Company and/or other relief requiring the Theater Company to
7 pay all wages and other sums due to Plaintiff and to disgorge profits obtained through the
8 unlawful, unfair, or deceptive business practices. The Theater Company has been unjustly
9 enriched as result of its unlawful, unfair or deceptive business practices.

10 56. In addition to the above-alleged violations, the Theater Company has
11 committed other illegal, unfair, and/or deceptive business acts and practices as set forth
12 below.

13 57. Under Labor Code section 226.7(d), rest periods "shall be counted as hours
14 worked, for which there shall be no deduction from wages." (See also IWC Wage Orders, §
15 12 ["rest period time shall be counted as hours worked for which there shall be no deduction
16 from wages"]). When Plaintiff was misclassified as exempt by the Theater Company, what
17 should have otherwise been compensated rest break time was not separately paid, in
18 violation of Labor Code section 226.7(d) and the corresponding IWC regulation.

19 58. Under Labor Code section 2751, when an employee is to be paid in
20 commissions, the employer must enter into a commission agreement in writing with the
21 employee, the contract must set forth the method by which commissions shall be computed
22 and paid, the employer must give a signed copy of the contract to the employee, and the
23 employer must obtain a signed receipt for the contract from each employee who is to be paid
24 commissions. The Theater Company failed to abide by these requirements with respect to
25 Plaintiff and other employees. The Theater Company made unilateral changes to its
26 commission pay to lessen its commission payouts, all to the detriment of Plaintiff and other
27 employees, and without following the formalities imposed by Labor Code section 2751. The
28 Theater Company's unilateral changes to its commission pay also violated Labor Code

1 section 223.

2 59. Plaintiff is entitled to restitution for the Theater Company's actions, the
3 equitable remedy of disgorgement, and reasonable attorney's fees and costs.

4 60. Plaintiff meets the standing requirements for seeking relief pursuant to
5 Business and Professions Code section 17203, in that he has suffered injury in fact and has
6 lost money as a result of the Company's actions, as more fully set forth in this pleading.

7 **EIGHTH CAUSE OF ACTION**

8 **Representative Action Under PAGA**

9 (Against The Theater Company, And Does 1 Through 10, Inclusive)

10 61. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 60
11 inclusive as though fully set forth herein.

12 62. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all
13 other aggrieved employees identified in **Exhibit A** to this Complaint (which is incorporated
14 herein by reference), brings this action as a non-class, representative action under PAGA for
15 civil penalties based on violations of the California Labor Code and the applicable IWC
16 Wage Order(s) as set forth in **Exhibit A** and repeated herein.

17 63. Plaintiff has timely and adequately exhausted his administrative remedies.
18 Plaintiff submitted his PAGA Notice to the California Labor & Workforce Development
19 Agency on March 9, 2021, provided a copy of the same to Defendants via certified mail, and
20 waited the requisite 65-day time-period before filing this PAGA cause of action in court.

21 64. During the applicable limitations period, as alleged in **Exhibit A**, Defendants
22 are responsible for numerous violations of California's wage-and-hour laws with respect to
23 its employees, including the following:

24 (a) Misclassifying commissioned employees as exempt and failing to pay
25 them the overtime and double-time pay to which they were entitled (Labor Code, §§ 204,
26 510, 1198), failing to provide them with meal periods and rest breaks (Labor Code, §§
27 226.7(b)-(c), 512(a), failing to provide them with separate pay for compensable rest break
28 time (Labor Code, § 226.7(d)), failing to keep accurate records of their hours worked and

1 associated wages (Labor Code, § 1174(d)), failing to pay them all the commissions they
2 were owed and changing their commissions plans without following the requisite formalities
3 (Labor Code, §§ 204, 2751), failing to provide them with accurate itemized wage statements
4 (Labor Code, § 226), and failing to pay them all their wages owed upon separation from
5 employment (Labor Code, §§ 201, 202, 203, 208, 226(a), and 226.3).

6 (b) Failing to provide expense reimbursement to teleworking employees
7 (Labor Code, § 2802).

8 65. Plaintiff has experienced one or more of the alleged violations identified
9 herein and in **Exhibit A**.

10 66. Violations of the applicable IWC Wage Order(s) are actionable under PAGA
11 through Labor Code sections 558 and 1198, among others.

12 67. Labor Code section 2699(f)(2) provides that the civil penalties recoverable
13 under PAGA are “one hundred dollars (\$100) for each aggrieved employee per pay period
14 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
15 period for each subsequent violation,” except where the Labor Code specifically provides
16 for another civil penalty.

17 68. For all the above-specified Labor Code violations and those set forth in
18 **Exhibit A**, Plaintiff seeks all available civil penalties that California law allows, including
19 the default civil penalties provided by PAGA, and any civil penalties specifically provided
20 by statute for the alleged Labor Code violations (including, without limitation, Labor Code
21 §§ 210, 226.3, 248.5, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA.

22 69. In addition to civil penalties, Plaintiff seeks attorney's fees and costs, as
23 authorized under PAGA.

24 **Future Amendment**

25 70. Plaintiff reserves the right to amend this Complaint to include additional
26 causes of action which are presently unknown but which are uncovered in the discovery
27 process.

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1 **PRAYER**

2 WHEREFORE, Plaintiff requests judgment as follows:

3 **On The First Cause Of Action**

4 1. For all recoverable damages and unpaid wages, including unpaid minimum
5 wages, straight-time pay, and overtime wages;

6 2. For liquidated damages pursuant to Labor Code § 1194.2;

7 **On The Second Cause Of Action**

8 3. For premium pay for meal period violations under Labor Code § 226.7;

9 **On The Third Cause Of Action**

10 4. For premium pay for rest period violations under Labor Code § 226.7;

11 **On The Fourth Cause Of Action**

12 5. For the full reimbursement of expenses owed, including interest thereon, under
13 Labor Code § 2802;

14 **On The Fifth Cause Of Action**

15 6. For statutory penalties under Labor Code § 226, or actual damages incurred as
16 a result of the Theater Company issuing inaccurate wage statements, according to proof;

17 **On The Sixth Cause of Action**

18 7. For statutory penalties under Labor Code § 203, up to the statutory maximum;

19 **On The Seventh Cause Of Action**

20 8. For restitution of all unpaid wages, straight-time, overtime, minimum wages,
21 premium pay, commission pay, and other monies withheld from Plaintiff together with the
22 disgorgement of any profits received as a result of the Theater Company's unlawful or unfair
23 business practices;

24 **On The Eight Cause Of Action**

25 9. For all forms of relief and civil penalties recoverable under PAGA;

26 **On All Causes Of Action**

27 10. For attorney's fees and costs pursuant to Civil Code § 1021.5, all provisions of
28 the Labor Code that authorize attorney's fees and costs (including, e.g., Labor Code §§ 218.5,

1 226, 203, 1194(a), 1194.3, 2699, 2802, 3287, and 3289), the "catalyst" theory, and/or any
2 other applicable theory or doctrine;

3 11. For prejudgment interest on all amounts owing, commencing from the date
4 such amounts were due; and

5 12. For all such other relief as the Court deems just and proper.

6 Dated: May 14, 2021

SCHEPPACH BAUER PC

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8 By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiff
CAMERON CHAMBERS

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12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all claims and causes of action so triable.

14 Dated: May 14, 2021

SCHEPPACH BAUER PC

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16 By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiff
CAMERON CHAMBERS

EXHIBIT A

PAGA NOTICE

March 9, 2021

VIA CERTIFIED MAIL

USA Cinema Services LLC

CSC – Lawyers Incorporating Service
Agent For Service of Process For
USA Cinema Services LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA CERTIFIED MAIL

California Cinema Investments LLC

CSC – Lawyers Incorporating Service
Agent For Service of Process For
California Cinema Investments LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA CERTIFIED MAIL

USA Cinema Investments Holding Inc.

USA Cinema Investments Holding Inc.
14951 N. Dallas Pkwy, Ste 300
Dallas, TX, 75254

VIA ONLINE SUBMISSION

**State Of California, Labor & Workforce
Development Agency ("LWDA")**

[http://www.dir.ca.gov/Private-Attorneys-
General-Act/Private-Attorneys-General-
Act.html](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)

Re: *Cameron Chambers, et al. v. USA Cinema Services LLC, et al.*
PAGA Notice

Dear Employers and the LWDA:

Cameron Chambers ("Chambers") on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by USA Cinema Services LLC, California Cinema Investments LLC, and USA Cinema Investments Holding Inc. Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice. This PAGA Notice invokes any and all applicable tolling that might apply to the allegations herein asserted.

I. BACKGROUND

USA Cinema Investments Holding Inc. is the managing member of USA Cinema Services LLC and California Cinema Investments LLC. Together these entities own, operate, manage, and control, among other things, at least 10 movie theater locations in California which are marketed under the banner of "Cinépolis." These entities shall be referred to herein collectively as the "Theater Company," and all of these entities, acting under common control, are alleged to be responsible for the asserted violations in this PAGA Notice.

Chambers worked for the Theater Company in California in various positions. During his employment at the Theater Company, Chambers was paid, among other things, commissions. During part of his employment for the Theater Company, Chambers had to work from home.

PAGA Groups

This PAGA Notice is alleged on behalf of, and contains, two PAGA groups. Chambers is a member of both groups.

The first group is all current and former employees of the Theater Company who worked for the Theater Company in California at any time during the applicable limitations period and who received commission pay (collectively, the "Aggrieved Commissioned Employees").

The second group is all current and former employees of the Theater Company who worked for the Theater Company at home in California at any time during the applicable limitations period (collectively, the "Aggrieved Teleworker Employees").

II. ALLEGED LABOR CODE VIOLATIONS

Chambers and the aggrieved employees have experienced a variety of Labor Code violations.

A. Violations As To The Aggrieved Commissioned Employees

The Theater Company provided some employees, Chambers included, with commissions. The Theater Company incorrectly classified the Aggrieved Commissioned Employees as exempt. They, however, did not meet any applicable test for exempt status, including the inside salesperson exemption. (*Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662.)

Unpaid Wages (Overtime)

While the Aggrieved Commissioned Employees were misclassified as exempt, they worked sufficient hours to be entitled to overtime and double-time pay, which they did not receive. The Theater Company's failure to pay overtime and/or double-time wages to the Aggrieved Commissioned Employees was a violation of, and is actionable under, Labor Code §§ 510, 1198

and 204. The underpayment of overtime wages has also violated § 3(A) of the applicable IWC Wage Order.

Meal Periods & Rest Breaks

While the Aggrieved Commissioned Employees were incorrectly classified as exempt, the Theater Company failed to provide them with the legally-compliant meal periods (first and second) and rest breaks (first, second, and third) to which they were entitled. The Theater Company incorrectly believed that meal periods and rest breaks were not required by law for these employees, and, as a result, repeated violations of the meal period and rest break rules occurred. There are no meal period records as to the Aggrieved Commissioned Employees, giving rise to a presumption of meal period infractions.

No valid waiver exists to excuse the meal period violations. The Theater Company did not properly pay the aggrieved employees the required premium wages owed for the first and second meal period violations. The Theater Company's non-provision of compliant meal periods, and the Theater's Company's non-payment of the required meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

Likewise, no valid waiver exists to excuse the rest period violations. The Theater Company did not properly pay aggrieved employees the required premium wages owed for the rest period violations. The Theater Company's non-provision of compliant rest periods, and the Theater Company's non-payment of the required rest period premiums, violated and is actionable under Labor Code sections 226.7(b) and (c). The Theater's Company's failure to provide legally-compliant rest periods also violated regulatory law. (IWC Wage Orders, § 12 [rest period requirements].)

No Separate Pay For Rest Periods

The Theater Company did not separately pay the Aggrieved Commissioned Employees for compensable rest break time (*Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98), in violation of Labor Code section 226.7(d) and IWC Wage Orders, § 12 ["rest period time shall be counted as hours worked for which there shall be no deduction from wages"].

Lack Of Time Records

While the Aggrieved Commissioned Employees were incorrectly classified as exempt, they were not paid by the hour and the Theater Company failed to keep an accurate record of their hours worked and their associated wages, in violation of Labor Code section 1174(d).

Illegalities As To Commissions

The Theater Company did not pay the Aggrieved Commissioned Employees all the commissions to which they were entitled. These employees earned commissions for their work. Yet the Theater Company changed midstream, and without their consent, the terms of its commission plan. The unilateral changes to the commission plan worked to the detriment of the

Aggrieved Commissioned Employees and to the benefit of the Theater Company, causing less commissions to be paid out than were owed and violating Labor Code section 204. Under California Labor Code section 2751, when an employee is to be paid in commissions, the employer must enter into a commission agreement in writing with the employee, the contract must set forth the method by which commissions shall be computed and paid, the employer must give a signed copy of the contract to the employee, and the employer must obtain a signed receipt for the contract from each employee who is to be paid commissions. The Theater Company failed to abide by all of these requirements with respect to the Aggrieved Commissioned Employees. Among other things, the writings supplied by the Theater Company did not contain the requisite information regarding the method of calculation and pay for the commissions, and, moreover, the Theater Company unilaterally changed the commissions without following the formalities required by Labor Code section 2751(a) & (b).

Inaccurate Wage Statements & Recordkeeping

While the Aggrieved Commissioned Employees were inaccurately classified as exempt, they were not paid by the hour and the Theater Company failed to keep an accurate record of their hours worked. The Aggrieved Commissioned Employees had hours worked that were not accounted for by the Theater Company. The Aggrieved Commissioned Employees received wage statements that did not accurately reflect their hours worked (violating Labor Code section 226(a)(2)). Insofar as the failure to pay overtime wages and commission wages owed can create liability under Labor Code section 226, such failures by the Theater Company caused the wage statements of the Aggrieved Commissioned Employees to inaccurately reflect their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). One or more of the above-identified wage statement deficiencies were present in the final wage statements of the Aggrieved Commissioned Employees. The Theater Company's non-compliance with California's wage statement requirements violated and is actionable under Labor Code §§ 226(a) and 226.3.

The Theater Company was required to maintain, at a centralized location and for three years, a copy of accurate itemized wage statements for its Aggrieved Commissioned Employees containing all the informational items required by law, and the Theater Company failed to satisfy this requirement because of the inaccuracies identified above, all in violation of Labor Code section 226(a).

Failure To Pay All Wages Due Upon Separation

As a result of the Theater Company's failure to pay overtime wages to Aggrieved Commissioned Employees and its failure to pay them all the commissions they were owed, the Theater Company did not provide separated employees (Chambers included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Theater Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

B. Violations As To The Aggrieved Teleworker Employees

During part of his employment, Chambers had to work from home.

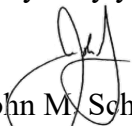
Unreimbursed Expenses

Labor Code section 2802 requires employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. The Aggrieved Teleworker Employees were required to work from home, but they did not receive reimbursement for their utility expenses. The Theater Company's failure to properly pay the expenses of the Aggrieved Teleworker Employees violates and is actionable under Labor Code § 2802(a)-(c).

III. CIVIL PENALTIES SOUGHT

For all the above-specified Labor Code violations, Chambers, on behalf of himself and all the other Aggrieved Commissioned Employees and the Aggrieved Teleworker Employees, seek all available civil penalties against the Theater Company that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including Labor Code §§ 210, 226.3, 248.5, 256, 558, 1174.5, and 1197.1) which are recoverable under PAGA. Chambers, on behalf of himself and all other aggrieved employees, also reserves the right to assert claims for Labor Code violations and associated civil penalties that are uncovered in the discovery process but which are presently unknown.

Very truly yours,


John M. Scheppach
Scheppach Bauer PC

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed
3 in Los Angeles County, State of California, in the office of a member of the bar of this Court, at
4 whose direction the service was made. I am over the age of eighteen years and not a party to the
5 within action.

6 On June 9, 2021, I served the following documents in the manner described below:

7 **JOINT STIPULATION, STATUS REPORT, AND REQUEST TO**
8 **CONTINUE THE CASE MANAGEMENT CONFERENCE [PROPOSED]**
9 **ORDER THEREON**

- 10 ☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of
11 Clark Hill LLP for collection and processing of correspondence for mailing with the
12 United States Parcel Service, and I caused such envelope(s) with postage thereon fully
13 prepaid to be placed in the United States Postal Service at Los Angeles, California.
- 14 ☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized
15 courier and/or process server for hand delivery on this date.
- 16 ☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of
17 Clark Hill LLP for collection and processing of document(s) to be transmitted by
18 facsimile and I caused such document(s) on this date to be transmitted by facsimile to
19 the offices of addressee(s) at the numbers listed below.
- 20 ☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
21 practice of Clark Hill LLP for collection and processing of correspondence for
22 overnight delivery, and I caused such document(s) described herein to be deposited
23 for delivery to a facility regularly maintained by Federal Express for overnight
24 delivery.
- 25 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy
26 through Clark Hill LLP's electronic mail system from RMckim@ClarkHill.com to the
27 email addresses set forth below.
- 28 ☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the
offices of each addressee below.

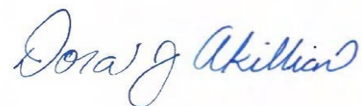
On the following part(ies) in this action:

John M. Scheppach
Thorey M. Bauers
Scheppach Bauer PC
23181 Verdugo Drive, Suite 105-A
Laguna Hills, CA 92653
Email: jmscheppach@sbpc.law
tbauer@sbpc.law

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

///

Executed on June 9, 2021, at Los Angeles, California.



Dora Akillian