

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
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

CAMERON CHAMBERS, an individual,

Plaintiff,

vs.

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

Defendants.

Case No. 21STCV09204

Assigned For All Purposes To:
Judge Barbara A. Meiers, Department 12

**NOTICE OF UNOPPOSED *EX PARTE*
APPLICATION FOR APPROVAL OF
PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: August 11, 2022
Time: 8:30 a.m.
Dept.: 12

Complaint filed: March 9, 2021
Trial date: None set

1 TO ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on August 11, 2022, at 8:30 a.m. or as soon thereafter
3 as the matter may be heard, in Department 12 of the above-entitled Court, located at 111 N.
4 Hill Street, Los Angeles, California 90012, Plaintiff Cameron Chambers ("Plaintiff") will
5 apply *ex parte* for an order approving the PAGA settlement in accordance with Labor Code
6 § 2699(l) or, in the alternative, for an order shortening time for a noticed motion to be heard
7 ("Application").

8 Defendants USA Cinema Services, LLC, California Cinema Investments LLC, USA
9 Cinema Investments Holding Inc. do not oppose this Application and have stipulated to
10 Plaintiff seeking the requested relief on an *ex parte* basis.

11 This *ex parte* Application is based on this Notice, the attached Memorandum of Points
12 and Authorities, the Declarations of Thorey M. Bauer and John M. Scheppach, the Joint
13 Stipulation to Apply *Ex Parte* for PAGA Settlement Approval (attached as Exhibit 1 to the
14 Bauer Declaration), the pleadings and other papers on file in this action, and on such further
15 argument or evidence as may be considered by the Court at or before the hearing on this
16 Application.

17 Dated: August 9, 2022

SCHEPPACH BAUER PC

18 By: 
19 _____

20 THOREY M. BAUER
21 Attorneys for Plaintiff
22 CAMERON CHAMBERS
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF AGGRIEVED EMPLOYEE HEADCOUNTS AND PAY PERIODS WORKED DURING THE PAGA PERIOD.	2
III.	CLAIMS AND PROCEDURAL HISTORY.	2
IV.	TERMS OF THE PAGA SETTLEMENT.	5
	A. The Parties Settled the PAGA Claim.	5
	B. Payment Terms.....	5
	C. Release of Claims	6
V.	THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIMS	9
	A. The PAGA Formalities Were Followed.....	9
	B. The PAGA Settlement Was A Result Of Arms-Length Bargaining And Informed Decision-Making By Experienced Counsel.....	10
	C. In This Small, Eight-Person PAGA Case, The Settlement Amount Is Fair Consideration For The Release Provided.	12
	1. Courts Have Broad Discretion To Reduce PAGA Penalties.....	12
	2. The Settlement Amount Is Fair In Light Of All Risks.....	13
	D. The Remaining Settlement Terms Are Fair And Reasonable	15
	1. The Attorneys' Fees Award Is Reasonable.	15
	2. The Requested Costs Are Reasonable.....	16
	3. The Settlement Administration Fees Are Reasonable.	17
VI.	CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<i>569 East County Blvd LLC v. Backcountry Against The Dump, Inc.</i> , 6 Cal. App. 5th 426 (2016).....	16
<i>Abelar v. American Residential Services, LLC</i> (C.D. Cal. 2019) 2019 WL 6054607	11, 17
<i>Basiliali v. Allegiant Air, LLC</i> (C.D. Cal. 2019) 2019 WL 8107885	9
<i>Brinker v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012).....	15
<i>Calderon v. Wolf Firm</i> , 2018 WL 6843725 (C.D. Cal. 2018).....	10
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 WL 379413 *3 (C.D. Cal. 2011)	14
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	12
<i>D'Amato v. Deutsche Bank</i> (2nd Cir. 2001) 236 F.3d 78	10
<i>Fleming v. Covidien</i> , 2011 WL 7563047 (C.D. Cal. 2011).....	12
<i>Hartley v. On My Own, Inc.</i> , 2020 WL 5017608, *4 (E.D. Cal. 2020).....	4
<i>Hollis v. Union Pac. R.R. Co.</i> , 2018 WL 6267342 (C.D. Cal. 2018).....	11
<i>Hollis v. Weatherford US LP</i> , 2017 WL 131994 (E.D. Cal. 2017)	9, 10
<i>In re Taco Bell Wage & Hour Actions</i> , 2016 WL 2755938 (E.D. Cal. Apr. 8, 2016)	12
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348, 381 (2014)	1
<i>Jordan v. NCI Group, Inc.</i> (C.D. Cal. 2018) 2018 WL 1409590	9
<i>Kaanaana v. Barret Bus. Serv., Inc.</i> , 29 Cal. App. 5th 778 (2018)	12
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5th 480	15, 16
<i>Mancini v. Western and Southern Life Insurance Co.</i> (S.D. Cal. 2018) 2018 WL 4489590	9
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56, 76 (2021).....	8, 9, 14
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523	11
<i>Wagner v. City of Inyo</i> (E.D. Cal. 2018) 2018 WL 5099761	11
<i>Williams v. Superior Court</i> , 3 Cal.5th 531, 549 (2017)	8
<i>ZB, N.A. v. Superior Court</i> , 8 Cal. 5th 175 (2019)	1, 5, 6, 9

1	<u>Statutes</u>	
2	Cal. Labor Code § 2699(g)(1)	1
3	Labor Code § 2699(l)(2).....	5
4	Labor Code, § 2699.3(a).....	9
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is an unopposed *ex parte* application for approval of a settlement that resolves
4 claims under California’s Private Attorneys General Act of 2004 (“PAGA”). Plaintiff
5 Cameron Chambers (“Plaintiff”) reached a settlement of the PAGA claim he brought on
6 behalf of aggrieved employees against Defendants USA Cinema Services LLC, California
7 Cinema Investments LLC, and USA Cinema Investments Holding Inc. (collectively,
8 “Defendants”) (Plaintiff and Defendants together, the “Parties”). In accordance with
9 California Labor Code § 2699(l), Plaintiff now asks this Court to review and approve the
10 settlement of Plaintiff’s PAGA claim (the “Settlement”).¹

11 The Parties have agreed to settle the PAGA claim for \$15,000.00 on behalf of the
12 eight (8) aggrieved employees, who cumulatively worked 174.42 pay periods. This is only
13 a settlement of the PAGA claim for civil penalties and is not a class settlement and does
14 not release the individual wage claims, if any, of the affected employees.² Cal. Labor Code
15 § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
16 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under
17 PAGA). Aggrieved employees are not required to supply a claim form, and the non-
18 reversionary nature of the settlement precludes Defendants from recapturing any of the
19 settlement funds.

20 The PAGA settlement is set forth in the Parties’ Private Attorneys General Act
21 Settlement Agreement and Release of Claims (“PAGA Settlement Agreement”). A true
22 and correct copy of the PAGA Settlement Agreement which sets forth the terms for the
23 settlement of the PAGA claim is attached as Exhibit #2 to the Declaration of Thorey M.
24 Bauer (“Bauer Decl.”), filed herewith. Capitalized terms in this brief shall have the same
25
26

27 ¹ Section 2699(l)(2) provides as follows: “The superior court shall review and approve any
28 settlement of any civil action pursuant to this part.”

² Plaintiff settled his individual non-PAGA claims in a separate individual settlement agreement
that includes a general release.

1 meaning as defined in the PAGA Settlement Agreement. The LWDA received notice of
2 this Settlement and this motion as set forth in the Bauer Declaration.

3 Based on the strong public policy favoring private settlements of complex matters,
4 the risks and uncertainty in going forward with this matter, and the benefits generated by
5 the Parties' Settlement, Plaintiff respectfully submits that the Settlement is fair to all
6 concerned, court approval should be granted, and this matter should be concluded. A
7 proposed order confirming review and approval of the PAGA settlement is submitted
8 herewith.

9 **II. SUMMARY OF AGGRIEVED EMPLOYEE HEADCOUNTS AND PAY**
10 **PERIODS WORKED DURING THE PAGA PERIOD.**

11 Plaintiff alleges he provided services to Defendants as a commissioned salesperson
12 who worked from home in California during at least part of the PAGA Period of September
13 13, 2019, through and including December 31, 2020. Plaintiff seeks to represent Aggrieved
14 Employees who worked in California during the PAGA Period on a commissioned basis
15 ("Commissioned Aggrieved Employees") and/or those who worked from home and were not
16 allegedly reimbursed for home internet and office supplies ("Telecommute Aggrieved
17 Employees").

18 This settlement is on behalf of a small PAGA group. There are a total of eight (8)
19 Aggrieved Employees who cumulatively worked 174.42 pay periods. (Bauer Decl. ¶ 30.)
20 Five (5) employees (Plaintiff included) are both Commissioned Aggrieved Employees and
21 Telecommute Aggrieved Employees, all of whom terminated employment by December 31,
22 2020 and who worked a cumulative 72.63 pay periods. (*Id.*) Three (3) are solely
23 Telecommute Aggrieved Employees, who allege a single Labor Code violation (Labor Code
24 section 2802) and who worked a cumulative 101.79 pay periods. (*Id.*)

25 **III. CLAIMS AND PROCEDURAL HISTORY.**

26 On March 9, 2021, Plaintiff, on behalf of himself and on behalf of other "Aggrieved
27 Employees," including the Commissioned Aggrieved Employees and the Telecommute
28 Aggrieved Employees, submitted a notice to the LWDA asserting claims against Defendants

1 for alleged violations of the California Labor Code, including claims that (i) the Defendants
2 did not timely pay Plaintiff and Commissioned Aggrieved employees all wages and
3 commissions, (ii) failed to pay overtime wages, (iii) did not provide Plaintiff and the
4 Commissioned Aggrieved Employees with any opportunity to take compliant meal periods
5 or rest breaks, (iv) did not provide Plaintiff and the Commissioned Aggrieved Employees
6 with written commission agreements, (v) did not maintain accurate time or payroll records
7 for Plaintiff and the Commissioned Aggrieved Employees and failed to provide them with
8 accurate itemized wage statements, (vi) did not pay all wages due upon separation from
9 employment to Plaintiff and the Commissioned Aggrieved Employees; (vii) did not
10 reimburse Plaintiff and all Aggrieved Employees for expenses incurred in the discharge of
11 their work-related duties or where carrying to the direction of their employers, all in alleged
12 violation of California Labor Code Sections 201, 202, 203, 204, 208, 210, 223, 226, 226(a),
13 (e), 226.3, 226.7, 226.7 (b), (c), (d), 248.5, 256, 510, 512(a), 558, 1174(d), 1174.5, 1197.1,
14 1198, 2751, 2802, 2802(a)-(c), and the applicable Industrial Welfare Commission Orders
15 including Order No. 10-2001. (LWDA Case No. 824872-21.) (Bauer Decl., Exhibit 3.)

16 Also on March 9, 2021, Plaintiff filed an action against Defendants in the Superior
17 Court of Los Angeles County, Case No. 21STCV09204, alleging his own individual non-
18 PAGA wage-and-hour violations. On May 14, 2021, after the PAGA administrative
19 exhaustion period expired, Plaintiff filed a first amended complaint, which added the PAGA
20 claim to the case (Bauer Decl. ¶ 22.)

21 Before becoming entrenched in protracted litigation, Plaintiff and Defendants agreed
22 to mediate the action with Henry Bongiovi, Esq. an experienced wage and hour and PAGA
23 action mediator. Prior to the mediation, in order to evaluate the potential value of the claims,
24 the Parties engaged in significant efforts to obtain evidence regarding the claims asserted,
25 including the exchange of statistical data regarding pay periods, headcounts, and weeks
26 worked by Plaintiff and the Aggrieved Employees, the production of documents, including
27 commission agreements, wage-and-hour policies, and a sample of payroll records, and
28 interviews of former employees. Based on this discovery, Plaintiff was able to perform

1 damages calculations and assess claims relevant to Defendants' defenses. (Bauer Decl. ¶¶
2 24-25.)

3 Thereafter, on January 25, 2022, the Parties appeared at and engaged in a full-day
4 mediation with Mr. Bongiovi. (Bauer Decl. ¶ 27). Prior to mediation, Defendants
5 estimated that there were a total of three (3) Aggrieved Employees in a PAGA period that
6 extended one year prior to the action's filing date. (*Id.*) During mediation, Plaintiff's
7 counsel argued to extend the PAGA Period to including the tolling that was provided by
8 Judicial Council Emergency Rule No. 9. This would increase the PAGA Period to
9 September 13, 2019 through December 31, 2020, the date that Defendants records reflected
10 the last Commissioned Aggrieved Employee worked in California. (PAGA Settlement
11 Agreement at § 1(u); Bauer Decl. ¶ 27.) The day ended in a mediator's proposal for global
12 settlement of the entire action, including Plaintiff's individual non-PAGA claims and the
13 PAGA claim, which both sides took under submission. On February 15, 2022, both sides
14 agreed to the mediator's proposal and the matter settled in principle.

15 The Parties then engaged in negotiations over the terms of their settlement and
16 further discovery and informal exchange of information in order to confirm the exact
17 number of aggrieved employees and their pay period information. (Bauer Decl ¶ 29.)
18 Ultimately, the extended PAGA Period increased the headcount of Aggrieved Employees
19 to eight (including Plaintiff) and increased the total pay periods at issue to 174.42. (Bauer
20 Decl. ¶ 30.) With crystalized headcount and pay period information in hand, the Parties
21 finalized an agreement to settle the PAGA claim for \$15,000.00, which is approximately
22 \$86 gross penalties per pay period, and further results in Aggrieved Employee receiving no
23 less than a net \$145, and up to a net \$356, as his or her Employee Settlement Share. This is
24 an excellent result for the Aggrieved Employees. *Hartley v. On My Own, Inc.*, 2020 WL
25 5017608, *4 (E.D. Cal. 2020) (approving a PAGA settlement where the estimated average
26 settlement payment to Aggrieved Employees was "\$61.18," and citing another case which
27 approved a PAGA settlement where the average settlement amount was "roughly \$30 per
28 aggrieved employee".)

1 The settlement was negotiated in light of all known facts and circumstances and the
2 uncertainty associated with litigation—including the merits of Defendants’ potential
3 defenses and the significant delay and potential appellate issues inherent to litigation—and
4 was reached after extensive arm’s length negotiations, with the assistance of Mr. Bongiovi.

5 **IV. TERMS OF THE PAGA SETTLEMENT.**

6 **A. The Parties Settled the PAGA Claim.**

7 The claim before this Court is a representative claim under PAGA on behalf of the
8 State of California for civil penalties pursuant to PAGA. The parties have agreed to settle
9 the PAGA claims in their entirety after significant informal discovery, and an arm’s length
10 mediation. The settlement is intended to fully and finally resolve the Released Claims
11 asserted by Plaintiff on behalf of the State of California. This is a settlement only of the
12 PAGA claim for civil penalties and is not a class settlement and does not release the
13 individual claims, if any, of the Aggrieved Employees. This settlement does not release
14 any claim that is not a PAGA claim,³ nor does it release any PAGA claim that may have
15 arisen after the PAGA Period.

16 **B. Payment Terms**

17 The PAGA settlement is subject to Court approval consistent with Labor Code §
18 2699(l)(2). The PAGA Settlement Agreement negotiated by the Parties provides for a
19 “Settlement Sum” payment in the amount of \$15,000.00 to resolve the PAGA claim
20 (hereinafter referred to as the “PAGA Settlement”). (PAGA Settlement Agreement, at §
21 1(z).) From this PAGA Settlement of \$15,000, there is a deduction of attorneys’ fees in the
22 amount of \$5,000.00 (which is one-third of the PAGA Settlement), reimbursement of out-
23 of-pocket costs in an amount not to exceed \$1,662.60 (the actual costs incurred and
24 estimated future filing fees), and Settlement Administration Costs, which will not exceed
25 \$1,000. (PAGA Settlement Agreement at § 3(b)-(d).) In order to maximize the payments
26

27 _____
28 ³ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 to Aggrieved Employees, Plaintiff is not seeking a service award for his time, effort, and
2 duties in representing the Aggrieved Employees.

3 After these deductions, the amount remaining is the “Net Settlement Amount,”
4 which is estimated to be \$7,337.40, of which seventy-five percent (75%) will be paid to the
5 LWDA, and the remaining twenty-five percent (25%) will be paid to the Aggrieved
6 Employees. (PAGA Settlement Agreement at § 3(e)-(f).)⁴ This 75/25 allocation is required
7 by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).
8 The individual PAGA payment for each Aggrieved Employee shall be based on the number
9 of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage
10 of the total pay periods worked by all Aggrieved Employees during the PAGA Period.
11 (Settlement Agreement at § 7(b).) The PAGA Period is the time period of September 13,
12 2019 through and including December 31, 2020. (Settlement Agreement at § 1(u); Bauer
13 Decl. ¶ 27.) Based on this allocation, individual payments to Aggrieved Employees are
14 estimated to range from \$145.03 to \$356.84. (Bauer Decl. ¶ 46.)

15 In the event Aggrieved Employee payment checks have not been cashed within one
16 hundred and eighty (180) days, all funds represented by such uncashed checks shall be
17 transmitted to the Controller of the State of California, Unclaimed Property Division, to be
18 held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the
19 names corresponding Aggrieved Employee. (PAGA Settlement Agreement at § 7(e).) The
20 individual PAGA payments are 100% penalties and will be reported using IRS tax form
21 1099. (PAGA Settlement Agreement § 7(c).)

22 C. Release of Claims

23 Upon entry of Judgment and funding in full of the PAGA Settlement by Defendants,
24 the Released Parties shall be entitled to a release from the State of California and Plaintiff
25 as follows:

26
27
28 ⁴ “Aggrieved Employees” means all current and former employees of Defendants who worked for
Defendants in California during the PAGA Period and who received commission pay and/or
worked from home. (PAGA Settlement Agreement at § 1(c).)

1 “Upon entry of the Approval Order by the Court approving payment of the PAGA
2 penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and
3 the State of California shall be deemed to have fully, finally, and forever released,
4 relinquished, and discharged each and all of the Released Parties from any and all
5 claims, demands, rights, liabilities, and/or causes of action for penalties under
6 PAGA that accrued during the PAGA Period and that were asserted in Plaintiff’s
7 LWDA notice letter or the Action as well as those that could have been alleged in
8 the Action based on the facts contained therein, including, without limitation, Labor
9 Code Sections 201, 202, 203, 204, 208, 210, 218, 218.5, 223, 226, 226(a), (e), 226.3,
10 226.7, 226.7(a), (b), (c), (d), (e)(1), 248.5, 256, 510, 512(a), 558, 558.1, 1174(d), 1174.5,
11 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2751, 2802, 2802(a)-(c), 3287, 3289, and the
12 applicable Industrial Welfare Commission Orders including, but not limited to,
13 Order No. 10-2001. Plaintiff and the Aggrieved Employees shall be deemed to have
14 acknowledged and agreed that their claims in this Action are disputed, and that the
15 payments to them set forth in this Agreement constitute payment of all sums
16 allegedly due to them arising from the PAGA Claims and constitute settlement of all
17 PAGA Claims.

18
19 “Nothing in this Agreement is intended to or shall preclude Plaintiff and Aggrieved
20 Employees from filing a complaint and/or charge with any appropriate federal, state,
21 or local government agency and/or cooperating with said agency in its investigation.
22 Plaintiff and Aggrieved Employees retain the right to file a charge with, and to
23 participate in an investigation conducted by, any appropriate government agency
24 charged with enforcement of any law and the right to engage in concerted activity
25 granted by Section 7 of the National Labor Relations Act. Plaintiff and Aggrieved
26 Employees, however, shall not be entitled to receive any civil penalties for the
27 PAGA Claims in connection with any complaint or charge brought against any
28

Released Party for claims arising on or before the date Plaintiff executes this Agreement, without regard as to who brought said complaint or charge.” (PAGA Settlement Agreement § 12.)

The Settlement Sum shall be due by Defendants to the Settlement Administrator no later than fifteen (15) calendar days after the “Effective Date”).⁵ (PAGA Settlement Agreement §§ 1(j), 6.) Defendants will provide the necessary information about the Aggrieved Employees to the Settlement Administrator (Simpluris) no later than fifteen (15) calendar days of the Effective Date. (PAGA Settlement Agreement § 5(a).) The Settlement Administrator will mail the individual Aggrieved Employee payments by regular First-Class U.S. Mail to the Aggrieved Employees’ last known mailing address no later than thirty (30) calendar days after the Effective Date. (PAGA Settlement Agreement § 5(b).)

Pursuant to California Labor Code Section 2699(l), Plaintiff is providing a copy of the PAGA Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval as set forth in the accompanying proof of service in compliance with Labor Code section 2699(l). In addition, Plaintiff will submit to the LWDA a copy of the Court’s judgment and order approving the PAGA Settlement Agreement within ten (10) days after entry of judgment or order. (Bauer Decl. ¶ 36.)

⁵ “‘Effective Date’ means the later of the following: (a) if no one intervenes to object to the Settlement, then the Effective Date shall be the date the Court grants approval of this Agreement by signing the [Proposed] Order for Judicial Approval of the Parties’ Private Attorneys General Act Settlement Agreement and Release of Claims (which includes, without limitation, a dismissal with prejudice of the PAGA Claims)(the ‘Order’) in accordance with the terms and conditions of this Agreement; (b) if someone intervenes to object to the Settlement, then all of Defendant’s obligations under this Agreement shall be stayed until the time for seeking appeal from, review of, or writ relating to the objection has passed, which date shall then be the Effective date if no appeal, review or writ is sought; or (c) if an appeal, review or writ is sought, the date by which the final decision is made in any appeal, review or writ and the Order is no longer subject to further appellate challenges or procedures.” (PAGA Settlement Agreement § 1(j).)

1 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
2 **SETTLEMENT OF THE PAGA CLAIMS**

3 Labor Code § 2699(l) requires that the Court “shall review and approve any
4 settlement of any civil [PAGA] action filed pursuant to this part.” As the California
5 Supreme Court has observed, “PAGA settlements are subject to trial court review and
6 approval, ensuring that any negotiated resolution is fair to those affected.” *Williams v.*
7 *Superior Court*, 3 Cal. 5th 531, 549 (2017). Under this approval process, the trial court
8 determines “whether a PAGA settlement is fair and reasonable.” *Moniz v. Adecco USA,*
9 *Inc.*, 72 Cal.App.5th 56, 76 (2021).

10 Trial courts have assessed PAGA settlements by examining several factors,
11 including: (i) whether the PAGA formalities have been followed, (ii) the circumstances
12 surrounding the settlement, and (iii) the defendant’s potential exposure and the amount of
13 the settlement. *Jordan v. NCI Group, Inc.*, 2018 WL 1409590, *3 (C.D. Cal. 2018);
14 *Mancini v. Western and Southern Life Insurance Co.*, 2018 WL 4489590, *2 (S.D. Cal.
15 2018); *Hollis v. Weatherford US LP*, 2017 WL 131994, *2 (E.D. Cal. 2017); *Moniz*, 72
16 Cal. App. 5th at 77.)

17 As discussed below, all of these factors support approval of the Settlement.

18 **A. The PAGA Formalities Were Followed.**

19 PAGA has three separate statutory formalities, and all three have been followed here.
20 First, prior to initiating a PAGA action in court, the plaintiff must file a PAGA notice with
21 the LWDA which identifies the Labor Code provisions allegedly violated, and describes the
22 supporting facts and theories. Cal. Labor Code, § 2699.3(a). A copy must be served on the
23 employer. *Id.* The named plaintiff must then wait 65 days before filing suit. *Id.* Here,
24 Plaintiff satisfied this formality, providing a detailed PAGA Notice to the LWDA and
25 Defendants on the same day as filing his individual complaint, then waited the requisite 65
26 days before filing a First Amended Complaint to add the PAGA cause of action. (Bauer
27 Decl. ¶ 34 & Exhibit 3.)
28

1 Second, a PAGA settlement must allocate the net recovery in such a manner that the
2 LWDA receives its 75 percent statutory share, and the aggrieved employees receive their 25
3 percent statutory share. *ZB, N.A.*, 8 Cal. 5th at 175; *Basilioli v. Allegiant Air, LLC* 2019
4 WL 8107885, *4 (C.D. Cal. 2019). Here, the Settlement specifically provides for this
5 allocation. (PAGA Settlement Agreement, § 2(e).)

6 Third and finally, the LWDA must be provided with a copy of the settlement. (Cal.
7 Labor Code, § 2699, subd. (d)(2) [“The proposed settlement shall be submitted to the
8 agency at the same time that it is submitted to the court”]; *Basilioli*, 2019 WL 8107885,
9 *3.) Here, Plaintiff has provided a copy of the Settlement to the LWDA at the same time
10 as Plaintiff filed this motion. (Bauer Decl. ¶ 36.) Accordingly, all the PAGA formalities
11 have been followed.

12 **B. The PAGA Settlement Was A Result Of Arms-Length Bargaining And**
13 **Informed Decision-Making By Experienced Counsel.**

14 In addition to following all the procedural PAGA formalities, the circumstances
15 surrounding the Settlement also support its approval. First, the Settlement is the result of
16 arms-length bargaining between represented parties. Indeed, the Settlement here was
17 reached following an extensive mediation process with an experienced wage-and-hour and
18 PAGA mediator. The mediation process included a full-day mediation session, extensive
19 mediation briefing, and post-mediation discussions between the mediator and Parties.
20 Ultimately, the process culminated in a mediator-proposed resolution, which the Parties
21 accepted after more than two weeks of consideration.

22 Throughout the mediation process, both sides were represented by legal counsel who
23 vigorously defended their respective positions. After the mediation, the Parties negotiated
24 the terms of their long-form Settlement Agreement for several weeks. (Bauer Decl. ¶ 37.)
25 Considering these circumstances, the executed Settlement Agreement is undoubtedly the
26 result of arms-length bargaining. *See Chavez*, 162 Cal. App.4th at 543 (holding a settlement
27 agreement was the product of “arms-length bargaining” where the parties participated in
28 “mediation” and post-mediation “negotiations” regarding settlement terms); *D’Amato v.*

1 *Deutsche Bank*, 236 F.3d 78, 85 (2nd Cir. 2001) (the participation of a neutral mediator
2 “helps to ensure that the proceedings were free from collusion and undue pressure”); *Hollis*,
3 2017 WL 131994, *2 (the “arms-length negotiations” over their PAGA settlement “support
4 approval of the settlement”); *Jordan*, 2018 WL 1409590, *3 (same).

5 Second, the Settlement is the product of informed decision-making after both formal
6 and informal discovery. “Discovery can be both formal and informal.” *Calderon v. Wolf*
7 *Firm*, 2018 WL 6843725 *24 (C.D. Cal. 2018). Here, prior to mediation, Defendants
8 provided Plaintiff’s Counsel with informal discovery of documents and information relating
9 to the claims, including wage statements and pertinent headcount information for Aggrieved
10 Employees. (Bauer Decl. ¶ 38.) In addition, Plaintiff’s Counsel had also obtained Plaintiff’s
11 own personnel file and employment records, and Plaintiff’s Counsel also spoke with other
12 Aggrieved Employees prior to mediation. (*Id.*) Plaintiff’s Counsel requested further formal
13 discovery after mediation, which Defendants provided informally. (*Id.*)

14 All this information was more than sufficient to make an informed decision about
15 settlement. *See Wagner v. City of Inyo*, 2018 WL 5099761, *3 (E.D. Cal. 2018) (concluding
16 that the parties had “sufficient information to make an informed decision regarding
17 settlement” where the “parties engaged in informal discovery over a period of months, which
18 included an exchange of time and payroll data to evaluate the potential range of recovery”);
19 *Hollis v. Union Pac. R.R. Co.*, 2018 WL 6267342, *17-18 (C.D. Cal. 2018) (concluding that
20 the parties had sufficient information to make an informed decision regarding settlement
21 where the “parties participated in informal discovery and exchange of information” prior to
22 the settlement, including defendant’s providing of class statistics, a “sample” of wage
23 documents, Plaintiff’s personnel file, and correspondence regarding defendant’s legal
24 position); *Abelar v. American Residential Services, LLC*, 2019 WL 6054607, *4 (C.D. Cal.
25 2019) (PAGA settlement approved where the employer provided policy documents and a
26 “sampling of electronic time and payroll records” in advance of the mediation, noting that
27 “for wage-and-hour actions, such an exchange of information is sufficient to inform a
28 reasoned settlement process”)

1 Third and finally, Plaintiff's Counsel is well-versed in wage-and-hour/PAGA
2 litigation. Counsel has been licensed in California since 2004 and has been practicing
3 employment law, including wage-and-hour matters, for over fifteen (15) years. Plaintiff's
4 Counsel has served as counsel of record, and been staffed on, numerous wage-and-hour
5 class and PAGA actions throughout California. Moreover, Plaintiff's Counsel has
6 participated in numerous wage-and-hour class action and PAGA mediations and settlement
7 processes. (Bauer Decl. ¶ 13.) In Plaintiff's Counsel's view, the Settlement reached in
8 this matter is fair. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528
9 (C.D. Cal. 2004) ("Great weight is accorded to the recommendation of counsel, who are
10 most closely acquainted with the facts of the underlying litigation"); *Abelar*, 2019 WL
11 6054607, *5 (approving of a PAGA settlement where "[e]xperienced counsel participated
12 in the settlement process and concurred in the outcome").

13 C. **In This Small, Eight-Person PAGA Case, The Settlement Amount Is Fair**
14 **Consideration For The Release Provided.**

15 Finally, in addition to the fact that the PAGA formalities were followed and the
16 circumstances attendant to the Settlement demonstrate that it was the result of arms-length
17 bargaining and informed decision-making, the Settlement amount itself is also fair
18 consideration for the release provided.

19 1. **Courts Have Broad Discretion To Reduce PAGA Penalties**

20 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount
21 than the maximum civil penalty if, based on the facts and circumstances, to do otherwise
22 would result in an award that is "unjust, arbitrary and oppressive or confiscatory." Under
23 this provision of PAGA, courts have considerable discretion to reduce the penalty award.
24 In *Fleming v. Covidien*, 2011 WL 7563047 *4 (C.D. Cal. 2011), a federal court reduced
25 PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found
26 maximum penalties "unjust" because the employees had suffered no injuries. *See also*
27 *Kaanaana v. Barret Bus. Serv., Inc.*, 29 Cal. App. 5th 778, 788 (2018) (awarding 13% of
28 total penalties available). Some trial courts have actually awarded no civil penalties, even

when Labor Code violations are established. *See, e.g., In re Taco Bell Wage & Hour Actions*, 2016 WL 2755938 (E.D. Cal. Apr. 8, 2016) (PAGA penalties denied after trial).

In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of **\$5.00** per pay period. Here, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's best-case-scenario calculation, even had Plaintiff prevailed on the PAGA claim. Multiplying each of the seven violations that Plaintiff identified by the number of Pay Periods (174.42 pay periods x 7 violations) renders a total of 1,220.94 violations. If the Court were to award **\$5.00** per violation, the resulting total potential liability would be **\$6,104.70**. Further, if the Court were to disallow "stacking," i.e., multiple penalties for the same pay period, the total potential violations would be cut to 174.42 and, multiplying those violations by **\$5**, results in a total potential liability of **\$872.35**.

Therefore, even assuming Plaintiff would have prevailed on all of his claims at trial, the result obtained by Plaintiff in the Settlement far exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. (Bauer Decl. ¶ 46.)

2. The Settlement Amount Is Fair In Light Of All Risks.

Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Total Penalties
226.7 and 512 (Failure to Provide Meal Periods and Rest Breaks)	5 Aggrieved Employees	\$100	72.63	\$7,263.00
204 (Failure to Pay Wages Timely)	5 Aggrieved Employees	\$100	72.63	\$7,263.00

510 (Failure to Pay Overtime)	5 Aggrieved Employees	\$100	72.63	\$7,263.00
2751 (Failure to Provide Written Commission Agreement)	5 Aggrieved Employees	\$100	72.63	\$7,263.00
203 (Waiting Time Penalties)	5 Aggrieved Employees	\$5,760 (Labor Code § 256, penalty is 30-days wages) ⁶	5 (the final pay period of each former aggrieved employee)	\$28,800.00
226 (Wage Statement Violations)	5 Aggrieved Employees	\$250 (Labor code § 226.3) ⁷	72.63	\$18,157.50
2802 (Failure to Reimburse)	8 Aggrieved Employees	\$100	174.42	\$17,447.00

Thus, at the time of mediation, Plaintiff's Counsel estimated Defendants' maximum liability exposure at \$93,456.50. Consequently, the PAGA Settlement amount of \$15,000 is 16% of Defendants' maximum liability exposure – before any reduction. (Bauer Decl. ¶¶ 48-49.) In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 *3 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the Defendants.”). Here, Plaintiff would

⁶ Average hourly rate estimated at time of mediation was \$24.00. \$24.00 x 8 hours x 30 days = \$5,760.00

⁷ The Court may also have awarded the standard PAGA Penalty of \$100 per pay period, which would have reduced the overall exposure to \$82,562.50. *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021). The PAGA Settlement amount of \$15,000 is 18% of the maximum exposure under this model.

1 need to prove that each Aggrieved Employee suffered a violation for each period the
2 employee worked in relation to meal or rest period violations, failure to pay minimum or
3 overtime wages, and failure to provide accurate itemized wage statements.

4 During mediation, Defendants set forth arguments as to why Plaintiff and other
5 commissioned employees fit under the commissioned employee exemption and other
6 recognized exemptions, that Commissioned Aggrieved Employees (all of whom worked
7 from home) were provided meal and rest breaks (*Brinker v. Super. Ct.*, 53 Cal.4th 1004
8 (2012)), and that Commissioned Aggrieved Employees did not work overtime in many, if
9 not most, of the pay periods. Moreover, Defendants argued that the expense-reimbursement
10 claim was meager, affecting only a handful of pay periods and resulting in, arguably, zero
11 actual losses to Plaintiff and the other Telecommute Aggrieved Employees. For these and
12 other reasons, Defendants argued that, even were liability established, they would not be
13 subject to the maximum penalties under PAGA.

14 Based on Plaintiff's investigation, analysis and discounts for risk factors (including
15 Defendants' defenses), Plaintiff adequately represented the interests of both the State and
16 the public in resolving this action and reaching the proposed PAGA Settlement. Plaintiff's
17 diligent and efficient litigation of this action resulted in the creation of an ascertainable
18 Settlement Sum of \$15,000 that will substantially benefit the State of California and the
19 Aggrieved Employees. (Bauer Decl. ¶ 31.)

20 **D. The Remaining Settlement Terms Are Fair And Reasonable**

21 **1. The Attorneys' Fees Award Is Reasonable.**

22 Under California law, when a common fund settlement has been created, a court can
23 award attorney's fees out of the common fund based on a percentage of that fund. This
24 approach, often referred to as the "percentage method," is well-established. *Laffitte v.*
25 *Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016) (discussing the benefits of the
26 percentage method, including the "ease of calculation"). Under the percentage method,
27 California courts routinely award attorneys' fees in the amount of 1/3 of the common fund,
28 or 33.33 percent. *Id.* at 506 (approving fee award of one-third of the gross settlement

1 amount in a wage-and-hour class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
2 n. 11 (2008) (“Empirical studies show that . . . fee awards in class actions average around
3 one-third of the recovery”). Accordingly, Plaintiff’s Counsel’s request of one-third of the
4 Settlement Sum is consistent with the prevailing standards of reasonableness and should be
5 approved. *Basiliari*, 2019 WL 8107885, *4 (approving attorney’s fees of 1/3 the common
6 fund in a PAGA settlement).⁸

7 Although the requested attorneys’ fees in this matter are justified under the
8 percentage method standing alone, a lodestar cross-check also confirms the reasonableness
9 of the requested fees. *Laffitte*, 1 Cal. 5th at p. 506 (“trial courts have discretion to conduct
10 a lodestar cross-check on a percentage fee...they also retain the discretion to forego a
11 lodestar cross-check”).⁹ Here, Plaintiff’s Counsel has submitted a detailed declaration
12 explaining the tasks performed in this case and the corresponding hours expended, and the
13 reasonably hourly rate for the community for similar work. (See Bauer Decl. ¶¶ 51-58.)

14 In the final tally, Plaintiff’s Counsel spent well over 50 hours on this PAGA matter.
15 (Bauer Decl. ¶ 52.) Multiplying the hours reasonably expended (50) by counsel’s reasonably
16 hourly rate (at least \$300/hr) yields a lodestar of \$15,000, which is *triple* what the percentage
17 method yields. (Bauer Decl. ¶ 56.) Thus, the lodestar cross-check amply confirms the
18 reasonableness of the requested attorney’s fees (\$5,000.00).

19 **2. The Requested Costs Are Reasonable.**

20 The Settlement provides that Plaintiff’s Counsel may apply to the Court for
21 reimbursement from the Settlement Sum for expenses incurred up to \$1,800.00. (PAGA
22

23 ⁸ Moreover, awarding the standard percentage (33.33%) is also reasonable in light of the great
24 results achieved by counsel, the risks involved in this matter, and the contingent nature of the
work. *Laffitte*, 1 Cal. 5th at 504.

25 ⁹ When conducting a lodestar cross-check, “the lodestar is calculated by multiplying the
reasonable hours expended by a reasonable hourly rate.” *Wershba*, 91 Cal. App. 4th at 254.)
26 Courts may rely upon time estimates provided by counsel as to time expended, and matrices
such as the Laffey Matrix and the USAO Matrix as to hourly rate, among other things. *Laffitte*, 1
27 Cal. 5th at 505 (“counsel declarations summarizing overall time spent” are sufficient, “daily time
sheets” are not required, and the “hours documented by counsel need not be exhaustively
scrutinized”); *569 East County Blvd LLC v. Backcountry Against The Dump, Inc.*, 6 Cal. App.
28 5th 426, 437 (2016) (hourly rates based on declarations of counsel, official indices, the difficulty
or complexity of the litigation, and rate determinations in other cases).

1 Settlement Agreement, § 3(c).) Under the common fund doctrine, reasonable costs are also
2 awarded out of the common fund. *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977) .

3 Plaintiff's Counsel has submitted a declaration delineating the out-of-pocket costs
4 (including filing fees, mediation fees, expert costs, etc.) in this PAGA matter, amounting to
5 \$1,580.98. (Bauer Decl. ¶¶ 58-59.) This conservative figure is less than the amount
6 authorized by the Settlement (\$1,800).

7 The total amount requested in reimbursement is reasonable, and the items for which
8 reimbursement is sought are commonly approved in wage-and-hour class and PAGA
9 settlements. (Bauer Decl. ¶¶ 58-59); *Abelar*, 2019 WL 6054607, *6 (approving cost award
10 in PAGA settlement of \$7,410.21 consisting of mediation fees, expert costs, providing notice
11 to the LWDA, postage, copying, and travel expenses).

12 **3. The Settlement Administration Fees Are Reasonable.**

13 Finally, as with the rest of the disbursements, the Settlement provides that the costs
14 of the Settlement Administrator, Simpluris, Inc., shall be issued from the Settlement Sum.
15 (Settlement, § 3(d).) Simpluris agreed to a steeply discounted fee of \$1,000. This fee is
16 eminently reasonable, especially in light of all of its duties, responsibilities, and costs.
17 (Bauer Decl. ¶ 60.)

18 **VI. CONCLUSION**

19 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
20 Settlement as set forth in the Settlement Agreement and enter the proposed order and
21 judgment submitted herewith.

22
23 Dated: August 9, 2022

SCHEPPACH BAUER PC

24
25 By: 

26 THOREY M. BAUER
27 Attorneys for Plaintiff
28 CAMERON CHAMBERS

1 **PROOF OF SERVICE**

2 I am employed by Scheppach Bauer PC. I am over the age of eighteen (18) and am
3 not a party to this action. My business address is 23181 Verdugo Drive, Suite 105-A, Laguna
Hills, California 92653.

4 On August 9, 2022, I served the within document(s) described as:

5 **NOTICE OF UNOPPOSED *EX PARTE* APPLICATION FOR APPROVAL OF**
6 **PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**
IN SUPPORT THEREOF

7 on the interested parties in this action as stated below:

9 Beth Kahn, Esq.
10 bkahn@clarkhill.com
11 Ryan C. McKim, Esq.
12 rmckim@clarkhill.com
13 CLARK HILL LLP
1555 South Flower Street, Suite 2400
Los Angeles, California 90071

Attorneys for Defendants
USA CINEMA SERVICES LLC,
CALIFORNIA USA CINEMA
INVESTMENTS LLC, and
USA CINEMA INVESTMENTS
HOLDING INC.

14 ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on and in
15 accordance with a court order, emergency rule, or agreement of the parties to accept
16 service by e-mail or electronic transmission, I caused a true copy of the document to
17 be sent to the persons at the corresponding electronic address as indicated above on
18 the above-mentioned date. My electronic notification address is tbauer@sbpc.law.
I am readily familiar with this firm's Microsoft Outlook electronic mail system and
did not receive any electronic message or other indication that the transmission was
unsuccessful.

19 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on August 9, 2022.

20
21 Thorey M. Bauer
22 (Type or print name)

23
24
25
26
27
28

(Signature of Declarant)