

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

CINEMEX USA REAL ESTATE  
HOLDINGS, INC., CINEMEX  
HOLDINGS USA, INC., and CB  
THEATER EXPERIENCE LLC,

Debtors.

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Chapter 11

Case No. 20-14695-LMI

(Jointly Administered)

**DECLARATION OF JOSE LEONARDO MARTÍ IN SUPPORT OF**  
**CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Jose Leonardo Martí, submit this declaration pursuant to 28 U.S.C. § 1746 (“Declaration”) in support of the Chapter 11 Petitions and First Day Motions for Cinemex USA Real Estate Holdings, Inc. (“Cinemex Real Estate”), Cinemex Holdings USA, Inc. (“Cinemex Holdings”), and CB Theater Experience LLC (“CB Theater” and, together with Cinemex Real Estate and Cinemex Holdings, “Debtors” or “Cinemex”), and state as follows:

1. I am the President of each of the Debtors and currently the Chief Development Officer (“CDO”) of Cinemex Holdings. From December 2017 until August 2019, I was also the CEO of Cinemex Holdings. I assumed the CDO position so that I could focus on Cinemex’s growth strategy, including through the acquisition of existing theaters or construction of brand new buildings to house our theaters.

2. I hold an undergraduate degree in Economics from the Instituto Tecnológico Autónomo de México and a master’s degree in Business Administration from the University of Chicago. I served as CEO of Grupo Cinemex S.A. de C.V. (“Grupo Cinemex”), the Mexican parent company of Cinemex Holdings, from December 2012 to September 2018.

3. On April 25, 2020, Cinemex Real Estate and Cinemex Holdings filed for bankruptcy under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in this Court (“Chapter 11 Petitions”). The next day, April 26, CB Theater also filed for Chapter 11 bankruptcy in this Court. I refer to all three cases as the “Chapter 11 Cases” and the two petition dates (April 25 and April 26) as the “Petition Dates.”

4. Cinemex intends to operate its business and manage its assets as a debtor-in-possession as defined under the Bankruptcy Code.

5. To minimize the adverse effects of the Chapter 11 Cases, Cinemex has prepared and filed, with the assistance of its bankruptcy counsel, motions and applications discussed in this Declaration seeking “first day” relief (collectively, “First Day Motions”). Through the First Day Motions, Cinemex seeks authority from the Court to allow it to continue to do certain things, such as use its existing bank accounts and maintain insurance policy coverage by paying premiums, that are necessary to ongoing operations and to enable Cinemex to fulfill its duties as a debtor-in-possession.

6. I am familiar with the contents of the First Day Motions and, to the best of my knowledge after reasonable inquiry, believe that the relief sought in each First Day Motion: (i) is necessary to enable Cinemex to transition smoothly into Chapter 11 with minimal disruption; (ii) is critical to Cinemex’s efforts to preserve its value and maximize creditor and stakeholder recoveries; and (iii) best serves Cinemex’s estate and the interests of its employees, creditors and stakeholders. Further, it is my belief that the relief sought in the First Day Motions is tailored and necessary to achieve the goals of the Chapter 11 Cases.

7. Except as otherwise indicated, the facts set forth in this Declaration are based upon (i) my personal knowledge of Cinemex’s business operations; (ii) my review of relevant

Cinemex business records; and (iii) my review of other information provided to me or verified by other executives or employees of Cinemex under my direction and control. Unless otherwise indicated, the financial information contained in this Declaration is unaudited and, due to the exigent circumstances facing Cinemex and the urgent need to file these Chapter 11 Cases, certain of the information contained in this Declaration is subject to change. Notwithstanding, I am not aware of any information contained in this Declaration that is inaccurate.

8. I submit this Declaration in support of Cinemex’s (i) Chapter 11 Petitions; and (ii) the First Day Motions. I am personally knowledgeable about, and familiar with, the business and financial affairs of Cinemex and am authorized to submit this Declaration on behalf of Cinemex. If called upon to testify, I would testify that the facts set forth in this Declaration are true and correct.

#### **PRELIMINARY STATEMENT**

9. Cinemex is in the movie theater business. In terms of organizational structure, Cinemex Holdings (which was incorporated in Delaware in 2014) is the entity that holds Cinemex Real Estate (incorporated in Delaware in 2014) and CB Theater (incorporated in Delaware in 2017). Cinemex is based in Miami.

10. Specifically, Cinemex operates 41 movie theaters in dozens of cities in 12 states, including Florida (with multiple theaters in South Florida), Alabama, Colorado, Georgia, Illinois, Maryland, Minnesota, New Jersey, New York, North Carolina, Ohio and Virginia. The theaters operate under the brand name “CMX Cinemas.”

11. Since mid-March 2020, the unprecedented worldwide pandemic resulting from the spread of the Coronavirus (COVID-19) has substantially and adversely affected Cinemex and its operations along with the rest of the movie theater industry as well as traditional “brick and

mortar” retail operations.

12. Cinemex’s entire operations have ground to a halt. At present, and for the immediate foreseeable future, all 41 theaters are shut down, all but approximately 30 of Cinemex’s 2,500 employees have been laid off, and Cinemex has not received any revenues from movie sales since on or around March 20, 2020. Because the duration of the COVID-19 pandemic is presently unknown, Cinemex, as with all other movie theater operators, expects demand to remain very weak to non-existent for the indefinite future. Even if Cinemex is able to reopen some of its theaters this summer, it is very uncertain as to whether customers will start going out again to see movies.

13. Cinemex has been, and is making, immediate and significant changes to its operations in order to adjust to the precipitous decline in revenue. Cinemex is also taking action to reduce operating expenses and try to improve cash flow. As part of these measures, Cinemex has filed the Chapter 11 Cases in order to preserve its assets for the benefit of all stakeholders, including employees, creditors and equity.

14. Even prior to the onset of the pandemic and nationwide shutdown in the United States – which has completely cut off all revenue streams – Cinemex was generating limited revenues in view of its obligations to pay high fixed costs. In particular, the biggest share of revenues were being paid to landlords for rent and film studios for licensing fees. In particular, Cinemex was spending approximately 30% of its annual revenues on lease-related expenses and having to pay fees to film studios that were close to 60% of each movie ticket sold.

15. Specifically, as to fees, Cinemex typically pays film studios a set percentage of box office sales on a weekly basis pursuant to master licensing agreements (“MLA[s]”) as well as further negotiated terms for particular films issued by each studio. For example, if Cinemex

sells \$100,000 worth of tickets in a week for a particular film and the arrangement is that the film studio gets 60% of sales, Cinemex must pay \$60,000 to the studio for that week.

16. Through the Chapter 11 proceeding, Cinemex will (i) identify which theaters simply are not profitable, which ones are profitable and which ones can be profitable; and (ii) seek to renegotiate leases with landlords and revenue-sharing agreements with studios and, in turn, rebalance what has become economically untenable for companies in the movie theater industry. Specifically, the current economic arrangements disproportionately benefit the studios and landlords at the expense of the theater companies. With the filing of the Chapter 11 Petitions, Cinemex aims to restructure its business while protecting its employees and emerging in a strong and viable long-term financial condition to continue to serve its customers across the United States.

17. Cinemex has the support of Grupo Cinemex, the parent company of Cinemex Holdings (which, in turn, is the holding company of Cinemex Real Estate and CB Theaters), in the form of emergency debtor-in-possession financing that will enable it to satisfy its obligations during the Chapter 11 proceeding.

18. To familiarize the Court with Cinemex and the relief sought in the First Day Motions, this Declaration is organized into four parts as follows: Part I describes the history of Cinemex, its corporate structure and business operations; Part II provides an overview of Cinemex's assets, liabilities and financial condition; Part III provides a description of the circumstances leading to the commencement of these Chapter 11 Cases; and Part IV provides an overview of the relief requested in the First Day Motions and sets forth the relevant facts in connection with each.

## **I. OVERVIEW OF CINEMEX'S HISTORY AND BUSINESS OPERATIONS**

### **A. Corporate History and Structure**

19. Cinemex Holdings, which was incorporated in Delaware in February 2014, is the holding company for five U.S. entities: (i) Cinemex Real Estate; (ii) CB Theater; (iii) Cinemex USA Enterprises, LLC ("Cinemex Enterprises"); (iv) Cinemex MD, LLC ("Cinemex MD"); and (v) Cinemex AD, LLC (collectively with Cinemex Holdings, "Cinemex USA"). Cinemex Enterprises, Cinemex MD and Cinemex AD have not filed Chapter 11 Petitions (collectively, "Non-Debtors").

20. Cinemex Holdings is jointly owned by Grupo Cinemex and Operadora de Cinemas S.A. de C.V. ("Operadora de Cinemas"), both Mexican corporations. Grupo Cinemex has a 66% ownership stake while Operadora de Cinemas has a 33% ownership stake. Grupo Cinemex owns 99.99% of Operadora de Cinemas.

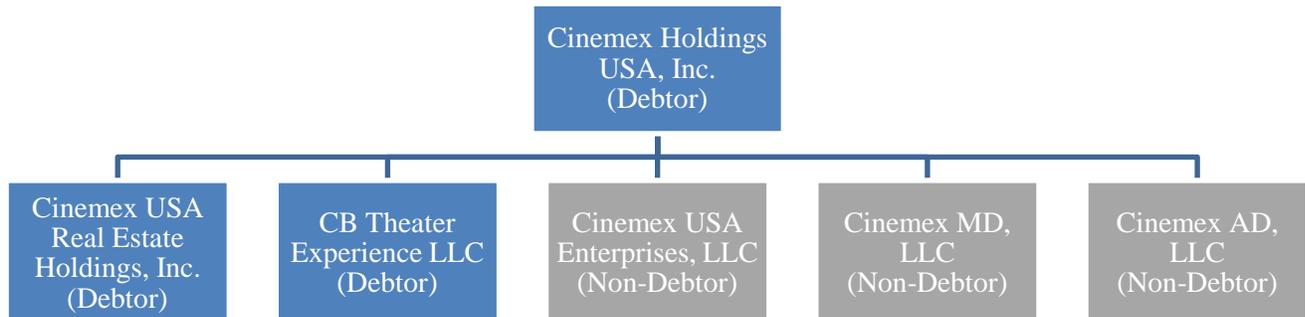
21. Cinemex Holdings is the holding company for the other U.S. entities and is the party that is the counterparty to MLAs with most of the film studios whose films are shown in Cinemex theaters.

22. CB Theater is the entity that holds all but four of the leases for the premises that Cinemex USA leases. As to the remaining four leases, Cinemex Holdings and Cinemex Real Estate hold the lease for the premises located at Brickell City Center in Miami and in Wellington, Florida, respectively, while Cinemex MD and Cinemex AD hold the lease for premises in Maryland and New Jersey, respectively. The premises in New Jersey, located in the "American Dream" entertainment and retail complex in East Rutherford, New Jersey, is still under construction. Cinemex MD and Cinemex AD have no assets other than these leases.

23. Cinemex Enterprises is the entity that employs personnel and is responsible for payroll, benefits (such as insurance) and employee-related obligations (such as payroll tax) for all Cinemex USA employees. Prior to filing for Chapter 11, Cinemex Holdings and CB Theater paid the expenses due by Cinemex Enterprises for payroll, payroll taxes and insurance. They have done so through intercompany transfers to Cinemex Enterprises.

24. **Figure 1** below depicts the corporate structure of Cinemex USA.

**Figure 1: Cinemex USA Corporate Structure**



#### **B. Cinemex’s Business**

25. Cinemex’s core business is within a niche market of the movie theater industry called “dining theaters.” The concept behind Cinemex is to provide guests with an all-inclusive going-out experience: guests can dine, drink and attend a movie by going to a single location. Cinemex thus has fine dining restaurants and bars on site as well as offers guests the opportunity to order food and drinks from their seats during the movie. Grupo Cinemex has dining theaters in Mexico and thus the strategy was for Cinemex to replicate that model in the United States.

26. Furthermore, Cinemex offers state-of-the-art technology such as IMAX, 3D and surround sound and amenities such as full reclining seats. Most of the theaters are located in

shopping malls, while less than 10 are housed in standalone buildings.

27. Cinemex's long-term strategic objective is to expand the CMX Cinemas brand across the United States and become the leading "dining theater" company. This is because it will likely become more difficult for the traditional industry model – which is to watch a movie with just the option of snacks and drinks, such as sodas and water – to compete with streaming services, which are less expensive and offer the convenience of watching films at any time and from any location. In order to incentivize guests to watch movies in a theater, Cinemex has focused on creating high-quality restaurants and bars on site and offering luxury amenities such as in-seat dining.

28. The first Cinemex theater opened in Miami (at Brickell City Center) in April 2017. In September 2017, Cinemex acquired four additional theaters from Paragon Entertainment located in Florida, Illinois and Minnesota. In December 2017 and through its acquisition of Cobb Theatres and CinéBistro, it acquired 25 additional theaters, located in Florida, Alabama, Georgia, Ohio and Virginia (among others).

29. As part of its long-term strategy, Cinemex has invested heavily in the past year in building new theaters ("New Theaters"). These include theaters in Atlanta, Georgia, Naples, Florida, East Rutherford, New Jersey, and Chicago, Illinois, which are under construction and at different phases of completion. Cinemex is also seeking to build new theaters in Raleigh, North Carolina and Middletown, New Jersey. For these projects, Cinemex has identified the theater location and secured leases but construction has not yet started, including because of the COVID-19 pandemic.

**C. Cinemex's Management Team**

30. Apart from myself, Cinemex's senior management team has deep experience and expertise in the movie theater industry.

31. Rogelio Velez is the current CEO of Cinemex Holdings, a position that he assumed in August 2019 when I stepped down from the position to become CDO. Mr. Velez is also the current CEO of Grupo Cinemex, a position that he assumed in September 2018.

32. Luis Castelazo is the Chief Financial Officer ("CFO") of Cinemex Holdings and the Secretary of the Board of each Cinemex USA entity. He joined the company in March 2017 after working as a consultant at McKinsey & Company for two years. Mr. Castelazo received a bachelor's degree in industrial engineering from Universidad Anáhuac, a diploma in Corporate Finance from ITAM and a master's degree in Business Administration from the University of Chicago Booth School of Business.

33. Javier Ezquerro is the Chief Operating Officer ("COO") of Cinemex Holdings and the Treasurer of the Board of each Cinemex USA entity. He joined the company in May 2019 after working at Grupo Cinemex in Mexico City for approximately seven years.

**D. Employees**

34. Currently, Cinemex USA (through Cinemex Enterprises) employs approximately 30 full- and part-time employees, including executive- and manager-level personnel working in accounting, finance, operations, human resources and information technology ("Retained Staff").

35. Prior to the shutdown of the theaters beginning in mid-March 2020, Cinemex Enterprises employed approximately 2,500 employees, including the Retained Staff and sales clerks, restaurant and bar personnel (e.g., chefs, waiters, bartenders), theater technicians and maintenance staff. Apart from the Retained Staff, the remaining employees (including hourly

theater employees, salaried theater employees and corporate employees) were laid off beginning on or around March 16 (“Separated Staff”). With the exception of general managers and corporate employees on whose behalf we continue to pay medical insurance, the approximately 2,470 Separated Staff have not received any wages or benefits since they were laid off.

## **II. CINEMEX’S CAPITAL STRUCTURE AND MAJOR LEASES**

### **A. Assets, Liabilities and Revenues<sup>1</sup>**

36. As of March 31, 2020, Cinemex, on a consolidated basis, had (i) current assets (e.g., bank accounts, food and beverage in inventory) of approximately \$7.5 million; (ii) other assets in the form of theater leases, equipment, furniture and intangibles of approximately \$353 million; and (iii) liabilities of approximately \$114.5 million.

37. In Q1 2020 (through March 31, 2020), Cinemex, on a consolidated basis, had gross revenues of approximately \$36.3 million comprising (i) \$18.2 million in box office ticket sales; (ii) \$15.8 million in food and beverage sales; and (iii) \$2.3 million from other sources (e.g., advertisement sales on movie screens).

38. During the same period, monthly expenditures in Q1 2020 for Cinemex, on a consolidated basis, exceeded \$16 million and comprised, among other things, costs for licensing fees to film studios, food and beverage costs, leases and payroll (“Expenses”). While payroll, employee benefits and payroll taxes are owed by Cinemex Enterprises (which is the only entity with employees), those costs were paid by Cinemex Holdings or CB Theater through intercompany transfers, including until prior to the Petition Dates. For example, between November 2019 and April 2020 (prior to the Petition Dates), Cinemex Holdings or CB Theater made intercompany transfers to Cinemex Enterprises for payroll and employee expenses totaling

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<sup>1</sup> Unless otherwise indicated, the consolidated figures in this section are for the three Debtors only (Cinemex Holdings, Cinemex Real Estate and CB Theater) and exclude the Non-Debtors.

over \$13.5 million.

39. For the year ending December 31, 2019, Cinemex, on a consolidated basis, generated approximately \$208.5 million in gross revenues, comprising (i) \$110.2 million in box office ticket sales; (ii) \$91.6 million in food and beverage sales; and (iii) \$6.7 million from other sources (e.g., advertisement sales on movie screens). The average monthly net revenues were thus approximately \$17.4 million.

40. In 2019, the total amount of Expenses that Cinemex (on a consolidated basis) incurred was approximately \$227 million. The net difference between approximate gross revenues (\$208.5 million) and Expenses (\$227 million) was therefore more than \$18 million.

41. Apart from ordinary operating expenses, lease payments and payments to film studios, Cinemex also owes approximately \$15 million in construction-related costs to various vendors in connection with the New Theaters.

**B. Secured and Unsecured Liabilities**

42. CB Theater is aware of one secured claim for computer equipment from Dell Financial Services, Inc. The approximate value of the collateral securing this claim is unknown. Cinemex Holdings and Cinemex Real Estate are not aware of any secured claims, other than potential setoff rights or statutory liens not yet filed. Cinemex conducted UCC-1 filing searches with the Delaware Secretary of State, which revealed no UCC-1 filings.

43. Cinemex's unsecured obligations consist of, among other things, payments still due under leases that have not been terminated, payments due to film studios in licensing fees, and taxes that accrued before the Petition Dates but were not paid.

44. As of the Petition Dates, Cinemex estimates that its collective outstanding unsecured obligations totaled approximately \$137.4 million ("Estimated Unsecured Claim

Amount”), which includes loans from (i) Grupo Cinemex in the amount of approximately \$33 million; and (ii) Operadora de Cinemas in the amount of approximately \$30 million.

### **III. EVENTS LEADING UP TO THE CHAPTER 11 CASES**

#### **A. Pre-COVID-19<sup>2</sup>**

45. Prior to the onset of the pandemic and nationwide shutdown, Cinemex was generating limited revenues in view of its obligations to pay high fixed costs in the form of rent to landlords and fees to film studios. In particular, Cinemex was spending approximately 30% of its annual revenues on lease-related expenses and paying fees to film studios that were close to 60% of each movie ticket that they sold. For example, in 2019, Cinemex (on a consolidated basis) had over \$123 million in expenditures relating to leases and payments to film studios. These two expense items represented close to 55% of the total amount of Expenses. Similarly, in Q1 2020, Cinemex (on a consolidated basis) spent over \$25 million in rent and fees to studios, which represented over 52% of the total amount of Expenses it paid during that period.

46. In addition, in 2019, Cinemex generated (on a consolidated basis) gross revenues of approximately \$208.5 million but had Expenses totaling approximately over \$227 million, which meant that it had approximately \$18.5 million in losses. Cinemex made up this shortfall by borrowing money from Grupo Cinemex and Operadora de Cinemas. Cinemex Holdings has outstanding loans totaling approximately \$66 million from Grupo Cinemex and Operadora de Cinemas.

#### **B. Effect of COVID-19 on Cinemex and the Movie Theater Industry Generally**

47. As a result of the pandemic stemming from the COVID-19 outbreak and subsequent local, state and U.S. federal restrictions on social and in-restaurant dining activities,

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<sup>2</sup> *Id.*

all 41 CMX Cinemas have been shut down for 7 weeks and will continue to be shut down for an indefinite period of time. Specifically, to protect the health and safety of its employees and customers, Cinemex closed its first theaters on March 16. By March 19, it had shut down all of its theaters across 12 states.

48. Therefore, between March 20 (the first day that the theaters were all closed) and through the present, Cinemex has not shown a single movie, sold any tickets or sold any food or beverages in its theaters. While the restrictions on social activities exclude restaurants that provide carry-out and delivery services, we determined that offering such services would be far too expensive. This is because the costs of keeping the theaters open (where the restaurants are located) substantially outweighed any potential revenues from offering carry-out and delivery food options. In addition, since March 20, Cinemex USA (through Cinemex Enterprises) has had to lay off all but approximately 30 of its 2,500 employees.

49. On March 16, the U.S. federal government issued guidelines from the Centers for Disease Control aimed at trying to slow the spread of COVID-19 (“Spread Guidelines”). These include avoiding (i) eating or drinking in restaurants and bars; and (ii) discretionary travel, shopping trips and social visits. Within less than a week of the issuance of the Spread Guidelines, the Governors of states in which Cinemex operates theaters began imposing strict “stay-at-home” or “lockdown” orders. The stay-at-home orders direct people to remain in their homes except for “essential” activities. Movie theaters are not deemed “essential” activities.

50. By April 4, all 12 of the states in which Cinemex operates had issued stay-at-home orders. At this time, the duration of these states' stay-at-home orders is unknown. Certain of them have expired or may soon expire but they are likely to be extended given that the outbreak remains actively ongoing. For example, the order from Virginia, which became effective on March 25, is not set to expire until June 10.

51. Even assuming that certain states begin to lift the stay-at-home orders, there is significant uncertainty whether and when people will begin to return to engaging in social activities that involve being in public places and prolonged contact with others. Multiple public opinion polls in recent weeks have consistently revealed that the vast majority of people remain strongly concerned about the public health effects of COVID-19, with others revealing that an overwhelming majority will not return to work or social activities even if stay-at-home orders are no longer in place.<sup>3</sup> For example, in a poll conducted by ABC News / Ipsos from April 29-30, only 24% of those polled stated that they would likely to return to movie theaters if orders and other general guidelines on social distancing were lifted.<sup>4</sup>

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<sup>3</sup> See Kaiser Family Foundation, "KFF Health Tracking Poll - Late April 2020: Coronavirus, Social Distancing, and Contact Tracing" (April 24, 2020) (80% of polled persons stating that strict social distancing and stay-at-home orders are "worth it" in order to protect people and prevent the spread of COVID-19) (poll of 1,202 persons conducted between April 15-20, 2020), <https://www.kff.org/global-health-policy/issue-brief/kff-health-tracking-poll-late-april-2020/>; The Associated Press / NORC Center for Public Affairs Research, "AP-NORC poll: Few Americans support easing virus protections" (April 22, 2020) (76% of polled persons favoring restriction that restaurants and bars be closed, 80% favoring stay-at-home restrictions and 82% favoring restrictions that gatherings be limited to 10 or fewer persons) (poll of 1,057 persons conducted between April 16-20, 2020), <http://www.apnorc.org/projects/Pages/Is-America-Ready-to-Re-Open-.aspx>; Quinnipiac Poll, "April 22, 2020 - 72% Of Florida Voters Think Social Distancing Should Continue Into May, Quinnipiac University Poll Finds; Biden Vs. Trump: It's Close" (April 22, 2020) (63% of polled Floridians stating they would be "uncomfortable" returning to work "if social distancing rules are loosened" and "if widespread testing for the coronavirus wasn't available" and 72% of polled Floridians stating that "social distancing" rules should not be loosened after April 30, 2020) (poll of 1,385 persons conducted between April 16-20, 2020), <https://poll.qu.edu/florida/release-detail?ReleaseID=3659>.

<sup>4</sup> See Ipsos, "Most Americans Not Ready to Return to Public Activities" (May 1, 2020) (poll of 518 persons between April 29-30, 2020), <https://www.ipsos.com/en-us/news-polls/abc-news-coronavirus-poll>.

52. In summary, Cinemex has been unable to generate revenues over the past 7 weeks and likely will not generate them for an undetermined amount of time. In order to help manage costs, Cinemex attempted to but was unable to renegotiate any of its leases prior to the Petition Dates despite numerous good faith attempts.

53. Cinemex has very limited cash assets remaining. As of March 31, 2020, Cinemex had current assets (such as cash in bank accounts and food and beverages in inventory) totaling approximately \$7.5 million. Of that amount, approximately \$1.7 million comprised cash in bank accounts.

54. As of the Petition Dates, Cinemex had cash totaling approximately \$94,300. This is because Cinemex has not been able to generate revenues from ticket and food and beverage sales since March 20 but, at the same time, continued to accrue and pay certain obligations in the form of monthly rent due to landlords (even though its 41 theaters were shut down and non-operational) and other ongoing operational expenses. Because of the lack of liquidity, Cinemex has not been able to pay other obligations that accrued before the Petition Dates, such as taxes due to local authorities (approximately \$808,000) and utilities bills (approximately \$625,000).

**C. Litigation in U.S. District Court in Texas**

55. In late 2019, Star Cinema Grill (“SCG”), a Houston-based dine-in movie theater company owned by Omar Khan, began seeking bidders to acquire movie theaters located in Texas and Illinois (“SCG Theaters”). After submitting a letter of interest in mid-January 2020, on or around March 3, 2020, Cinemex Real Estate submitted a formal offer to purchase the SCG Theaters. The same day, the parties began negotiating two equity purchase agreements (together, “EPA”) and executed them on March 10. Cinemex Real Estate and Cinemex Holdings (as the parent guarantor of Cinemex Real Estate) executed the EPA.

56. On March 24, 2020, following the imposition of the Spread Guidelines and stay-at-home orders by several states (including Illinois), Cinemex Real Estate informed SCG that closing could not proceed because certain conditions required for closing had not been satisfied, including (i) its inspection of, among other things, the SCG Theaters in Texas and Illinois; and (ii) its ability to meet with SCG's Corporate Employees, including those managing the SCG Theaters. On March 26, 2020, Cinemex Real Estate further explained to SCG that two critical terms of the EPA had not been, and could not be, satisfied given the effect of government shutdown orders.

57. On April 2, 2020, Mr. Khan and SCG filed a complaint against Cinemex Real Estate and Cinemex Holdings in the U.S. District Court for the Southern District of Texas, asserting a breach of contract claim. Mr. Khan and SCG sought, among other things, (i) an order against Cinemex Real Estate and Cinemex Holdings to specifically perform their obligations under the EPA and proceed to closing; and (ii) preliminary and permanent injunctive relief requiring Cinemex Real Estate and Cinemex Holdings to close the deal.

58. On April 8, 2020, Mr. Khan and SCG filed a motion for expedited injunctive relief and specific performance. On April 10, 2020, the U.S. District Court in Texas scheduled a preliminary injunction hearing for the week of April 27 and, following a status conference on April 21, confirmed it for April 27. During the hearing on April 27, the U.S. District Court recognized the automatic stay triggered by Cinemex's filing for Chapter 11 and adjourned it.

#### **IV. FIRST DAY MOTIONS AND APPLICATIONS**

##### **A. Overview**

59. Contemporaneously with the filing of this Declaration, Cinemex has filed or expects to file a number of First Day Motions seeking orders from the Court for various relief

intended to (i) stabilize Cinemex's business; (ii) facilitate the efficient administration of these Chapter 11 Cases; (iii) lessen the impact of the Chapter 11 Cases on Cinemex's day-to-day operations and employees; and (iv) facilitate a successful reorganization of Cinemex.

60. I have reviewed the First Day Motions and confirm that the facts set forth therein are true and correct to the best of my knowledge, information and belief. I believe that this Court's approval of the relief requested in the First Day Motions is essential to avoid immediate and irreparable harm to Cinemex.

**B. Cash Management Motion**

61. Pursuant to the Cash Management Motion,<sup>5</sup> Cinemex requests approval to maintain and continue the use of its Bank Accounts and Cash Management System, as defined in the Cash Management Motion.

62. Prior to the Petition Dates, in the ordinary course of its business, Cinemex used its Cash Management System to efficiently collect, transfer and disburse funds generated by its business operations. The Cash Management System consists of six Bank Accounts held by Cinemex Holdings, CB Theater and Non-Debtor Cinemex Enterprises and that are maintained at BBVA USA ("BBVA").

63. I believe that Cinemex's continued use of the Bank Accounts with the same account numbers and same checks is necessary for a smooth and orderly transition into Chapter 11, with minimal interference with continuing operations. Requiring Cinemex to open new bank accounts and obtain new checks for those accounts will cause delay and disruption to its business. Cinemex believes that its transition to Chapter 11 will be more orderly and result in a

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<sup>5</sup> See Debtors' Emergency Motion Pursuant to Sections 105, 345, 364, 363, 503, 1107 and 1108, Authorizing (i) Maintenance of Existing Bank Accounts; (ii) Continuance of Existing Cash Management System, Bank Accounts and Checks and Related Forms; (iii) Continued Performance of Intercompany Transactions; (iv) Limited Waiver of Section 345(b) Deposit and Investment Requirements; and (v) Granting Related Relief ("Cash Management Motion") [ECF No. 40].

minimum of harm to operations if all of the Bank Accounts are maintained.

64. By preserving business continuity and avoiding the disruption and delay that would result from closing the Bank Accounts and opening new accounts, all parties in interest, including employees and vendors, will be best served. The benefit to Cinemex, its business operations and all parties in interest will be considerable, while the confusion that would result if the Court did not grant the relief would adversely impact Cinemex's rehabilitative efforts. The Bank Accounts are in a financially stable institution that is insured by the Federal Deposit Insurance Corporation up to the applicable limit. Moreover, Cinemex will work with BBVA to ensure that no obligations that accrued before Cinemex filed for Chapter 11 are paid from any of the Bank Accounts unless authorized by the Court.

65. In addition, I believe that Cinemex's Cash Management System constitutes an ordinary course, essential business practice that provides significant benefits to Cinemex including, among other things, the ability to (i) control funds; (ii) ensure the availability of funds when necessary; and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information.

66. I believe that any disruption of the Cash Management System would have a severe and adverse impact on Cinemex's reorganization efforts. The relief requested in the Cash Management Motion is vital to ensuring Cinemex's seamless transition into bankruptcy. I believe that authorizing Cinemex to maintain the Cash Management System will avoid many of the possible disruptions and distractions that could divert Cinemex's attention from more pressing matters during the initial days and weeks of the Chapter 11 Cases.

67. In addition, given the unprecedented global recession that has been caused by the COVID-19 pandemic (which has shut down the movie theater industry across the United States),

Cinemex seeks a permitted deviation from the U.S. Trustee Guidelines (“Trustee Guidelines”) to the extent that the requirements of any guidelines otherwise conflict with (i) Cinemex continuing to use its existing Bank Accounts and the existing practices under the Cash Management System; or (ii) any action taken by Cinemex in accordance with any order granting the Cash Management Motion or other order entered in the Chapter 11 Cases. I believe the use of the Cash Management System is an ordinary course, customary and essential business practice. Requiring Cinemex to alter its current practices to comply with the Trustee Guidelines would risk disruption to Cinemex’s business at this precarious time and be inefficient.

68. I believe that the relief requested in the Cash Management Motion is in the best interests of Cinemex’s estates, its creditors and all other parties in interest, and will enable Cinemex to continue to operate its business without interruption during the Chapter 11 proceedings.

**C. Tax Motion**

69. Pursuant to the Tax Motion,<sup>6</sup> Cinemex requests approval to pay, in its sole discretion, certain sales, property and other taxes and similar obligations, as detailed in the Tax Motion, in the ordinary course of Cinemex’s business, without regard to whether such obligations accrued or arose before or after the Petition Dates.

70. In the ordinary course of operating its business, Cinemex collects and remits a variety of taxes and fees, including sales and use taxes (collectively, “Taxes and Fees”). The Taxes and Fees include certain “trust fund” taxes, which Cinemex is required to collect from its customers and hold in trust for payment to various federal, state and local tax, licensing and other governmental authorities (collectively, “Authorities”). Cinemex remits the Taxes and Fees to the

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<sup>6</sup> See Debtors’ Emergency Motion Pursuant to Sections 105(a), 507(a)(8) and 541(d) of the Bankruptcy Code for an Order Authorizing the Payment of Pre-Petition Sales Taxes, Franchise Taxes and Similar Taxes and Fees (“Tax Motion”) [ECF No. 39].

Authorities on a periodic basis.

71. As of the Petition Date, Cinemex estimates that it owes Authorities an amount equal to approximately \$808,000 in pre-petition Taxes and Fees as detailed in the Tax Motion. Through the Tax Motion, Cinemex seeks only the authorization to pay the Authorities the Taxes and Fees when they become due in the ordinary course and subject, in certain instances, to the receipt of monies from third parties. For example, Cinemex expects to collect certain such Taxes and Fees from its customers when it is able to reopen its theaters.

72. It is my understanding that Cinemex's failure to pay the Taxes and Fees could adversely affect its business operations because Authorities could assert penalties or interest on past-due taxes, or possibly bring personal liability actions against directors and officers of Cinemex for non-payment. This would be to the severe detriment of Cinemex's reorganization efforts because those directors and officers (including myself) are integral to driving Cinemex's reorganization and its success. In addition, I understand that Cinemex will need to pay the Taxes and Fees under any plan of reorganization that is filed and confirmed by the Court.

#### **D. Utilities Motion**

73. Pursuant to the Utilities Motion,<sup>7</sup> Cinemex seeks an order from this Court relating to the continued maintenance of services from Utility Providers (as defined in the Utilities Motion). This includes an order prohibiting the Utility Providers from, among other things, changing, discontinuing or refusing to provide Cinemex with key services (such as electricity and water) because Cinemex was not able to pay their bills prior to the Petition Dates.

74. In connection with the operation of the movie theaters, Cinemex needs electric,

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<sup>7</sup> See Debtors' Emergency Motion for Interim and Final Orders (i) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services; (ii) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Services; (iii) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests; and (iv) Granting Related Relief ("Utilities Motion") [ECF No. 42].

telephone, waste / sewer and other services on a daily basis. Even though normal operations have shut down, Cinemex still has employees working full or part time and depends upon uninterrupted services in order to continue minimal operations.

75. Even though the theaters have been shut down for 7 weeks, utility services are critical to the maintenance and security of each theater and, overall, Cinemex's existing and future business operations. This is especially so if Cinemex is ultimately able to re-open some of its theaters as stay-at-home orders are lifted over the next few months. It is critical that utility services remain uninterrupted in order to ensure the success of Cinemex's Chapter 11 Cases. I believe that interrupted or even modified services will jeopardize the reorganization efforts.

76. Cinemex intends to fully pay all obligations that accrue and are owed to the Utility Providers in a timely manner. Cinemex expects to have sufficient cash during the Chapter 11 proceeding to pay for these utility obligations.

77. However, out of an abundance of caution, Cinemex proposes to provide a deposit to any Utility Provider who requests one in writing. This Adequate Assurance Deposit (which is defined in the Utility Motion) would be equal to two weeks of services based on a historical average over the past year. I believe that the Adequate Assurance Deposit, combined with Cinemex's prior history of payment of utility bills and availability of cash during the Chapter 11 proceeding, will provide sufficient assurance to the Utility Providers.

#### **E. Insurance Motion**

78. Pursuant to the Insurance Motion,<sup>8</sup> Cinemex requests approval from this Court to continue maintaining Insurance Policies (defined in the Insurance Motion) that are necessary to

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<sup>8</sup> See Debtors' Emergency Motion for Authorization to (I) Continue to Administer All Insurance Policies and Related Agreements; (II) Continue Certain Related Premium Financing Agreements; and (III) Honor Certain Obligations In Respect Thereof ("Insurance Motion") [ECF No. 41].

its business operations. This includes paying premiums that will come due during the pendency of the Chapter 11 Cases.

79. Specifically, Cinemex maintains Insurance Policies that provide coverage for, among other things, Cinemex's property (including all of the theaters and Cinemex's offices in Miami), general liability and workers compensation. While the specific amount of each Insurance Policy varies year-by-year, on average, the total amount of premiums that Cinemex pays for the Insurance Policies is approximately \$2 million.

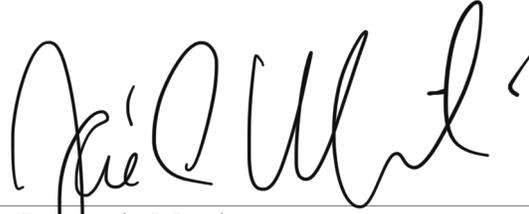
80. During the next 30 days, Cinemex is responsible for payment of premiums and related charges for general liability and workers compensation insurance. Before the Chapter 11 Petitions were filed, Cinemex was unable to pay a down payment on these two Insurance Policies (due to Hartford Insurance Company) and the next payment is due on May 15, 2020. In total, the amount of these unpaid premiums – which would ensure coverage for the period March 1, 2020 to March 1, 2021 – is approximately \$903,000.

81. It is essential for Cinemex to maintain its Insurance Policies, which provide a comprehensive range of coverage for Cinemex and its business. If these Insurance Policies were allowed to lapse, Cinemex would be exposed to substantial liability for any damages resulting to persons or property of Cinemex and others.

**28 U.S.C. § 1746 Declaration**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on May 1, 2020, in Mexico City, Mexico.

A handwritten signature in black ink, appearing to read 'Jose Leonardo Martí', written over a horizontal line.

Jose Leonardo Martí  
President and Chief Development Officer,  
Cinemex Holdings USA, Inc.; President,  
Cinemex USA Real Estate Holdings, Inc.;  
President, CB Theater Experience, LLC