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Attorneys for Plaintiff GIOVANNI MANZARES,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

GIOVANNI MANZARES, an individual,
on behalf of himself and all others similarly
situated,

Plaintiff,

vs.

U GYM, LLC, a Nevada corporation; UFC
GYM, a business entity of unknown form;
and DOES 1 through 50, inclusive

Defendants.

Case No.: 34-2020-00284868

REPRESENTATIVE ACTION

Assigned for All Purposes To:
Hon. Richard K. Sueyoshi
Dept.: 40

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION TO APPROVE
THE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT AND RELEASE
UNDER CALIFORNIA LABOR CODE §§
2698 *et. seq.***

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points and
Authorities; [Proposed] Order; and [Proposed]
Judgment]*

Reservation No. 2584100

Date: September 21, 2021
Time: 9:00 a.m.
Dept.: 54

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals.

3. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the aggrieved employees since the inception of this matter. I submit this Declaration in support of Plaintiff's Motion to Approve Settlement Agreement and Release of Private Attorneys General Act of 2004 ("PAGA") Claims under California Labor Code 2698 *et seq.*

4. On June 19, 2020, Plaintiff filed a claim notice online with the California Labor & Workforce Development Agency (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant. *See Exhibit 1*. The LWDA Letter alleged that Defendant failed to pay minimum wages, failed to pay wages and overtime, failed to provide lawful meal and rest breaks, failed to provide accurate itemized wage statements, failed to timely pay final wages upon termination or separation, and failed to reimburse necessary business expenses. The LWDA did not respond to the LWDA letter and did not notify Plaintiff or Defendant that it intended to investigate Plaintiff’s allegations.

5. On September 1, 2020, after 65 days from the mailing of the notice to the LWDA, Plaintiff filed a putative PAGA Complaint against Defendant in the Superior Court for the State of California, in Sacramento County, Case Number 34-2020-00284868, alleging Defendant must

1 pay penalties under PAGA for (1) failure to pay minimum wages; (2) failure to pay wages and
2 overtime; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to
3 furnish accurate itemized wage statements; (6) failure to timely pay final wages upon termination
4 or separation; and (7) failure to reimburse necessary business expenses.

5 6. Before filing the lawsuit, my firm investigated and researched the facts and
6 circumstances underlying the pertinent issues and the law applicable thereto. This required
7 thorough discussions and interviews between our firm and Plaintiff, as well as preliminary
8 research into the various legal issues involved in the case. After conducting our initial
9 investigation, we determined that Plaintiff's claims were well-suited for representative action
10 adjudication owing to what appeared to be a common course of conduct affecting a similarly
11 situated group of employees.

12 7. After filing the lawsuit, my firm conducted a thorough investigation of the facts and
13 claims giving rise to the action, including: (1) conducting informal discovery, and meeting and
14 conferring with defense counsel about same; (2) reviewing and analyzing time and pay records as
15 well as employment handbooks, Plaintiff's personnel files, relevant policies and other
16 documentation; (3) researching the applicable law and potential defenses; (4) constructing
17 damage models based on interpretations of California law; and (5) reviewing information
18 provided by Defendant at the mediation.

19 8. Defendant, for its part, vigorously contested liability, the amount of claimed damages.
20 In addition, informal discovery revealed that Plaintiff, as well as many other Aggrieved
21 Employees, signed an arbitration agreement during their employment with Defendant. The
22 arbitration agreement precludes Plaintiff, or any employee who signed the arbitration agreement,
23 from bringing class claims against Defendant.

24 9. Given the arbitration agreement signed by the Aggrieved Employees, Plaintiff
25 continued proceeding with the claims under Labor Code § 2699. After Plaintiff's Counsel
26 analyzed the relevant documents and other gathered data, Counsel believed that this case was
27 appropriate for resolution via mediation. With the discovery in hand, the parties were able to
28 engage in meaningful settlement discussions, in an attempt to resolve the claims remaining in the

1 Action.

2 **SETTLEMENT NEGOTIATIONS AND TERMS**

3 10. On March 29, 2021, the parties mediated this case with Steven Serratore, a respected
4 and highly experienced mediator in wage and hour class and PAGA actions. During mediation,
5 the parties discussed all aspects of the case, including the risks of litigation and exchanged further
6 information. The parties recognized that the issues presented in the Action are likely only to be
7 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
8 lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential
9 benefits of litigation. The parties took into account the risk and uncertainty of the outcome
10 inherent in any litigation.

11 11. As a result of the mediation, the parties agreed to settle the lawsuit according to the
12 terms set forth in the Private Attorney General Act Settlement Agreement and General
13 (“Settlement Agreement” or “Settlement”), attached hereto as **Exhibit 2**.

14 12. For purposes of the Settlement, Aggrieved Employees are defined as: “all individuals
15 who are or were employed by Defendant as non-exempt employees within the State of California
16 from June 19, 2019 through June 1, 2021” In this case, there are 1,318 Aggrieved Employees.

17 13. The Settlement Agreement requires Defendant to pay a total sum of One Hundred Five
18 Thousand Dollars and Zero Cents (\$105,000.00) (the “Gross Settlement Amount”) in exchange
19 for a release of Plaintiff’s Representative PAGA claims asserted in the PAGA Complaint. The
20 Gross Settlement Amount will be allocated as follows, pending Court approval:

- 21 a) Attorneys’ fees of up to 40% of the Gross Settlement Amount which is Forty
22 Two Thousand Dollars and Zero Cents (\$42,000.00) (“PAGA Counsel’s Fees”)
23 (see Exhibit 2, at ¶ 4(a)) and PAGA Counsel’s litigation costs incurred in this
24 matter which is Thirteen Thousand Four Hundred Twenty One Dollars and Two
25 Cents (\$13,421.02) (“PAGA Counsel’s Costs) (see Exhibit 2, at ¶ 4(a) and
26 Exhibit 3).
- 27 b) Administration costs of no more than Twelve Thousand Dollars and Zero Cents
28 (\$12,000.00) to be paid to the Settlement Administrator (“Administration

Costs”) for sending notices and for calculating settlement shares and preparing all checks and mailings (*see* Exhibit 2, ¶ at 4(b); Exhibit A to the settlement agreement);

- c) The remainder of the Gross Settlement Amount (the “PAGA Fund”) after deducting the above costs is approximately Thirty Seven Thousand Five Hundred Seventy Eight Dollars and Ninety Eight Cents (\$37,578.98) and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% of the PAGA Fund or the gross amount of Twenty Eight Thousand One Hundred Eighty Four Dollars and Twenty Three Cents (\$28,184.23) paid to the LWDA (the “LWDA PAGA Portion) and 25% of the PAGA Fund or the gross amount of Nine Thousand Three Hundred Ninety Four Dollars and Seventy Five Cents (\$9,394.75) paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis (*See* Exhibit 2 at ¶ 4(d)).

14. From PAGA Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel’s own prior litigation experience, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee’s claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm’s length between attorneys with substantial experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

THE STRENGTH OF PLAINTIFF’S CASE

IN LIGHT OF THE SETTLEMENT AMOUNT

15. Plaintiff alleges that Defendant violated various provisions of California law and seeks civil penalties for the foregoing violations pursuant to Labor Code § 2699 *et seq.*

1 16. Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees
2 were not paid all wages they were owed, including for all work performed and for all overtime
3 hours worked. Specifically, Aggrieved Employees were instructed by Defendant to clock out of
4 work but to continue working. For instance, Plaintiff would coach multiple classes each day and
5 Defendant would require Plaintiff to clock out when he was not coaching a class. However, while
6 he was clocked out, he was performing other tasks such as assisting existing customers with their
7 workout routines, attending to new customers, and cleaning up the facility. On top of these
8 violations, Plaintiff alleged that Aggrieved Employees often were not allowed to take meal and
9 rest breaks due to the demands of the job. Plaintiff alleged that to the extent they were able to take
10 a break, it was often interrupted. Additionally, Plaintiff alleged that Aggrieved Employees were
11 not reimbursed for their cellular phone expenses and internet usage despite incurring this expense
12 in the course of performing their required job duties for Defendant.

13 17. Plaintiff also contend that Defendant failed to provide their employees with accurate,
14 itemized wage statements, in writing, as required by California Labor Code § 226(a). Section
15 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized
16 statement in writing showing the gross and net earnings, total hours worked, and the
17 corresponding number of hours worked at each hourly rate. Labor Code § 226(a). These
18 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
19 serves to pay the employee's wages, or, if wages are paid by cash or personal check, these
20 statements may be given to the employee separately from the payment of wages. *Id.* In either case
21 the employer must give the employee these statements twice a month or each time wages are
22 paid. *Id.* As a direct and proximate cause of Defendant's alleged violation of Labor Code §
23 226(a), employees allegedly suffered injuries, including not being paid their wages and overtime,
24 confusion over whether they received all wages owed them, the difficulty and expense involved
25 in reconstructing pay records, and forcing them to make mathematical computations to analyze
26 whether the wages paid in fact compensated them for all hours worked. Specifically, the wage
27 statements allegedly failed to accurately account for unpaid wages and overtime due to the off the
28 clock work. Moreover, the wage statements allegedly failed to account for premium pay for

1 deficiently provided meal and rest periods. As a result, Defendant allegedly failed to provide
2 employees with accurate, itemized wage statements in writing, as required by the Labor Code.

3 18. By allegedly failing to pay the Plaintiff and Aggrieved Employees their minimum
4 wages, overtime wages, and premium pay for deficiently provided meal periods, all discussed
5 above, Plaintiff and formerly employed Aggrieved Employees would be due all wages at the time
6 of termination or within seventy-two (72) hours of resignation, as required under Labor Code §
7 203.

8 19. Regarding the alleged “off-the-clock” work, contends that Aggrieved Employees were
9 instructed to clock in before attending to any duties and to stop all work after clocking out.
10 Accordingly, Defendant contends that they paid for all reported hours worked, that Aggrieved
11 Employees were trained to record all hours worked, and that it paid proper overtime and
12 minimum wages to Employees. Defendant further contends that given its written policies and
13 practices, any unrecorded hours are likely subject to individualized inquiry and are not
14 manageable as a representative action. Finally, Defendant contends that Aggrieved Employees
15 were provided the opportunity to timely take their meal periods. Defendant further contends that
16 Aggrieved Employees were provided the opportunity to timely take 10-minute rest breaks for
17 every four hours worked. As a result of Defendant’s arguments Plaintiff’s Counsel had to apply
18 appropriate discounts in light of the facts and law as discussed above.

19 **PAGA Penalties**

20 20. The Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to
21 obtain civil penalties on behalf of herself and other aggrieved employees for Defendant’s
22 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
23 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
24 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
25 for each aggrieved employee per pay period for the initial violation and two hundred dollars
26 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
27 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
28 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)

1 percent allocated to the affected employees. The limitations period as for all penalties is one year
2 prior to the filing of the complaint. However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157,
3 1207-09 (2008) the Court held that a lower penalty amount of \$100 per violation applies in the
4 absence of a determination that a violation actually occurred.

5 21. Based on the foregoing facts and law, PAGA Class Counsel estimated Defendant's
6 maximum total exposure on the PAGA claim at approximately \$2,405,500. The provisions of the
7 Labor Code potentially triggering PAGA penalties in this case include but are not limited to
8 Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2,
9 1197, 1197.1, 1198, 1199, 2698, 2699, and 2802. Specifically, the total exposure on the PAGA
10 claim was calculated by multiplying the total number of pay periods (24,055) by 100 per
11 violation. Plaintiff's calculation of the total exposure on the PAGA claim is for one PAGA
12 penalty per pay period (*i.e.*, Plaintiff did not stack the penalties in their calculation). Plaintiff's
13 claims giving rise to the penalties include the following: (1) Defendant's alleged failure to pay
14 minimum wages and overtime due to off the clock work; (2) Defendant's alleged failure to
15 provide all the legally required unpaid, off-duty meal periods to the Aggrieved Employees; (3)
16 Defendant's alleged failure to provide all the legally required paid, off-duty rest periods; (4)
17 Defendant's alleged failure to provide accurate wage statements; (5) Defendant's alleged failure
18 to timely pay formerly employed Aggrieved Employees all wages due and certain at the time of
19 termination or within seventy-two hours of resignation as required by Labor Code §§ 201-203.;
20 and (6) Defendant's alleged failure to reimburse Aggrieved Employees for their alleged cellular
21 phone and internet expenses.

22 22. Case law supports the notion that it is inappropriate to "stack" penalties for multiple
23 violations, particularly when those violations all stem from the same alleged "injury" *Aguirre v.*
24 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
25 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief...The violation
26 of one primary right constitutes a single cause of action."; *Crowley v. Kattleman*, 8 Cal. 4th 666,
27 681-82) (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012)
28 ("There is no authority that "would permit double recovery of essentially the same penalties.")

23. Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing PAGA penalties by 30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000).). Defendant maintains that it would be unjust to award maximum PAGA penalties.

REQUEST FOR ATTORNEYS' FEES AND COSTS

24. Under the Settlement, the PAGA Counsel requests, without opposition from Defendant, an award of (1) attorneys fees of up to Forty Two Thousand Dollars and Zero Cents (\$42,000) ("PAGA Counsel's Fees) and (2) reimbursement of reasonable costs ("PAGA Counsel's Costs) of Thirteen Thousand Four Hundred Twenty One Dollars and Two Cents (\$13,421.02) (See Exhibit 2, at ¶4). Attached hereto and incorporated herein as **Exhibit 3** is my firm's cost log, showing total costs of \$13,421.02.

25. PAGA Counsel respectfully requests an order approving its attorneys' fees and costs pursuant to the Settlement Agreement.

26. This request is fair, reasonable, and adequate to compensate PAGA Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Counsel for all uncompensated

1 work that they have already done and for all the work they will continue to do in carrying out and
2 overseeing the notification to the Aggrieved Employees, communicating with Aggrieved
3 Employees regarding their claims, and assisting in the administration of the settlement if it is
4 approved.

5 27. My firm took this case on a contingent-fee basis against a business represented by a
6 reputable defense firm. When we take contingent cases, we must pay careful attention to the
7 economics involved or one bad case can destroy years of work. Accordingly, when we take
8 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
9 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
10 number of hours in a day is limited. Because of this, when we take on one particular matter, we
11 are unable to take on other matters. When my firm became involved in this case, we realized the
12 time commitment that it would entail and we were forced to turn down matters that we otherwise
13 should have been able to handle.

14 28. Contingent-fee cases present the very real risk of working hundreds if not thousands of
15 hours that may never be entirely compensated. Moreover, while the case is being litigated,
16 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases
17 pay the out-of-pocket expenses incurred on the plaintiff's behalf. And the prospect of a court-
18 awarded fee does not greatly reduce the risk posed by these cases. In many cases, the prospect is
19 nothing more than a potential that never materializes. First, you must win the case to get a court-
20 awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost.
21 Second, there are always the pitfalls and unforeseen obstacles that arise along the way, such as
22 settlement offers that the client may accept without ensuring that we receive a reasonable fee or
23 changes in the law that substantially affect the merits of the case, or other uncertainties involving
24 the client. Finally, there is the great risk inherent in advancing tens if not hundreds of thousands
25 of dollars in out-of-pocket expenses. If that money were to be invested in some sort of financial
26 investment, one would expect a reasonable rate of return on that investment. Here, however, the
27 best we can hope to recover is our money, and then only if we are substantially successful; if we
28 are not, all or part of this "investment" can be lost.

1 29. PAGA Counsel is well acquainted with the contingent-fee market throughout
2 California, particularly as it pertains to PAGA and class-action litigation. PAGA Counsel has
3 negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
4 representatives in class-action and PAGA suits. Many of those agreements required that counsel
5 receive a fee under certain scenarios that exceeds 40% of the recovery. PAGA Counsel's recent
6 attorneys' fees awards in similar wage-and-hour class and PAGA actions have been 40% of the
7 recovery.

8 30. Attorney's fees payable from this settlement amount to our office in no way
9 undermined our fiduciary duties to the putative class.

10 31. PAGA counsel in contingency-fee cases typically receive attorneys' fees equal to or
11 greater than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles
12 County Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney
13 fee request in an overtime-exemption class action; in *Bushnell v. Cremar, Inc.* (Orange County
14 Super. Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in
15 the amount of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super. Ct.,
16 November 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et*
17 *al.*, Alameda County Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in
18 *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan
19 Cannon awarded a 40% fee in a wage-and-hour class action which had not yet proceeded to the
20 class certification stage; in both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359
21 BTM (JMA) and *Barile v. Boston Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the
22 Honorable Judge Barry T. Moskowitz awarded a 40% fee to plaintiffs' counsel in wage-and-hour
23 class actions that had not proceeded to the class-certification stage.

24 32. Moreover, PAGA Counsel spent substantial time on this matter. Aside from drafting
25 the initial complaint, PAGA Counsel conducted informal discovery, reviewed and analyzed time
26 and pay records, employment handbooks, Plaintiff's personnel file, relevant policies and other
27 documentation, researched the applicable law and potential defenses, constructed damage models
28 based on interpretations of California law, reviewed information provided by Defendant at the

1 mediation, engaged in meet and confer efforts with Defendant, and ultimately drafted and revised
2 the settlement agreement. PAGA Counsel conservatively estimates that it invested over 90 hours
3 of attorney time in this matter. David Yeremian's billing rate is \$750.00 per hour (18 years out of
4 law school and is less than the Laffey Matrix rate of \$759.00), and he spent 32 hours on this
5 matter. Attached hereto as **Exhibit 4** is a true and correct copy of the detailed summary of the
6 hours I have invested in this matter. Natalie Haritoonian's billing rate is \$450.00 (4 years out of
7 law school and is less than the Laffey Matrix rate of \$465.00). See **Exhibit 5** attached hereto
8 (Laffey Matrix), and she spent 58 hours on this matter. The lodestar for Plaintiff's counsel is
9 \$50,100 (\$24,000 for David Yeremian's time on the case and \$26,100 for Natalie Haritoonian's
10 time on the case). The fee request of \$42,000 is actually less than the lodestar value of the hours
11 invested by PAGA Counsel and thus no multiplier is required

12 33. In light of the foregoing, the fee request in an amount equal to one-third of the
13 settlement in this case is well within the bounds that have been established by the above-cited
14 authority. Defendant has no objection to an award of fees in the amount requested.

15 **EXPERIENCE AND VIEWS OF COUNSEL**

16 34. I have been practicing law since 2003. During my career I have represented employees
17 in over 150 wage-and-hour class and/or representative actions as lead or co-lead counsel
18 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
19 obtained six and seven figure settlements against a range of defendants, including Fortune 500
20 companies.

21 35. My firm is well qualified because of our experience, knowledge, and resources to act as
22 counsel and represent Plaintiff and the Aggrieved Employees in this action. A substantial
23 percentage of our practice is devoted to litigating wage, hour, and working-conditions violations,
24 and the bulk of these cases are class and PAGA actions.

25 36. I am experienced in prosecuting employment matters, particularly class and
26 representative PAGA actions. In addition to the present case, I am also class or PAGA counsel for
27 other wage-and-hour class-action lawsuits pending in various counties throughout California
28 (including in federal courts). There follows a list of some of our recent class-action settlements

1 that have received preliminary or final approval: *Galavis v. Patina Restaurant Group, LLC*
2 (LASC BC375225; class size approx. 10,000; co-counsel); *Milford v. ADT Security Services, Inc.*
3 (CACD CV08-2236; class size approx. 2,000; lead counsel); *Carreon v. Wolfgang Puck Catering*
4 *and Events, LLC* (LASC BC398569; class size approx. 1,400; lead counsel); *Fluke v. RFG Oil,*
5 *Inc.* (LASC BC403354; class size approx. 1,400; lead counsel); *Urena v. Camachos Restaurant*
6 (LASC BC365913; class size approx. 887; lead counsel); *Smith v. Rio Rancho Pontiac GMC*
7 *Buick Inc.* (LASC BC391187; class size approx. 860; lead counsel); *Callela v. Dolce Group*
8 (LASC BC364711; class size approx. 600; lead counsel); *Vasquez v. The Hollywood Pig n*
9 *Whistle LP* (LASC BC335075; class size approx. 600; lead counsel); *Goldman v. Aorta*
10 *Restaurant Operating LP* (LASC BC379688; class size approx. 300; lead counsel); *Sink-Crilly v.*
11 *Centex Homes* (CACD CV09-2476; class size approx. 250; lead counsel); *Utley v. Cranbrook*
12 *Partners Inc.* (LASC BC392813; class size approx. 200; lead counsel); *Garcia v. California*
13 *Credits Group* (LASC BC353213; class size approx. 160; lead counsel); *Afanasyev v. Miller*
14 *Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead counsel); *Morris v. Gymboree, Inc.*
15 (LASC BC393270; class size approx. 150; lead counsel); *Ortega v. AJC Sandblasting, Inc.*
16 (LASC BC378806; class size approx. 140; lead counsel); *Lulejyan v. Jim Falk Motors of Beverly*
17 *Hills, Inc.* (LASC BC398459; class size approx. 72; lead counsel); *Rylko v. The Griddle Café,*
18 *Inc.* (LASC BC386126; class size approx. 70; lead counsel); *Healy v. Siemens IT Solutions and*
19 *Services, Inc.* (Santa Clara Superior Court 108CV113479; class size approx.. 60; lead counsel).

20 37. This experience is helpful in assessing the reasonableness of settlements such as the
21 one at issue here, and from this experience Plaintiff's Counsel concluded that this lawsuit could
22 not have been settled on better terms than provided under the present settlement agreement given
23 the financial limitations of Defendant.

24 38. In sum, Plaintiff's Counsel is experienced in employment class and PAGA action
25 litigation, and is adequate to represent the Aggrieved Employees in the instant action.

26 **SUMMARY**

27 39. If the Court approves each of the foregoing payments, approximately (\$37,578.98)
28 remains in the net settlement fund. Of that 75% (approximately \$28,184.23) must be paid to the

1 Labor and Workforce Development Agency per Labor Code § 2699 et seq. and 25%
2 (approximately \$9,394.75) shall be shared by the Aggrieved Employees.

3 40. Concurrently with the filing of the Settlement Agreement with this Court, Plaintiff's
4 counsel will submit the Stipulation to the LWDA.

5 41. Plaintiff has not served notice on the unnamed Aggrieved Employees and Plaintiff's
6 counsel is unaware of anyone who has relied upon the existence of this action in lieu of pursuit of
7 her individual or PAGA claims against Defendant.

8 42. On August __, 2021, my office submitted the proposed PAGA Settlement to the
9 LWDA in connection with the PAGA case opened by Plaintiff. Attached hereto as **Exhibit 6** is a
10 true and correct copy of the confirmatory email my office received from the LWDA after
11 submission of the PAGA Settlement.

12 43. I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed this 18th day of August, 2021, at Glendale, California.

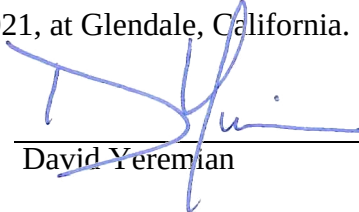
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EXHIBIT 1

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
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DAVID@YEREMIANLAW.COM;
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June 19, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

U Gym, LLC
1501 Quail Street, Suite 100
Newport Beach, CA 92660
Certified Mail Tracking Number: 7019 1640 0001 5877 1957

U Gym, LLC
CSC, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7019 164 001 5877 1964

UFC Gym
1501 Quail Street, Suite 100
Newport Beach, CA 92660
Certified Mail Tracking Number: 7019 1640 0001 5877 1971

**Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter
Giovanni Manzares, et al. v. UFC Gym, et al.**

Gentlepersons:

This office represents Plaintiff Giovanni Manzares (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, and 2802 *et seq.* provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, UFC Gym, U Gym LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, employee based out of Defendants’ facility in Corona, California. Aggrieved Employees include all non-exempt employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’

behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, and failing to reimburse for necessary business expenses, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Specifically, Plaintiff and Aggrieved Employees were instructed by Defendants to clock out of work but to continue working. For instance, Plaintiff would coach multiple classes each day and Defendants required Plaintiff to clock out when he was not coaching a class. However, while he was clocked out, he was performing other tasks such as assisting existing customers with their workout routines, attending to new customers, and cleaning up the facility.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods to Aggrieved Employees as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break. On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided. To the extent Defendants paid Aggrieved Employees premium pay, it was not paid at their regular rate of pay.

Moreover, Defendants failed to provide all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements failed to include the total hours worked by Aggrieved Employees. The wage statements did not provide a separate category calculating the total hours worked by Aggrieved Employees. Instead, the statements list the number of hours worked at the regular rate of pay and training pay. However, when added together, it does not sum up to the total hours worked by Aggrieved Employees which is misleading and confusing because Aggrieved Employees would need to refer to sources outside the paystub to accurately determine the total hours worked. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain at the time of his termination in compliance with Labor Code §§ 201-203. Instead, Defendants waited a couple of months to give Plaintiff his final check. Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked or required off the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Moreover, Aggrieved Employees were not paid for all hours worked because their gross wages were undervalued on their wage statements despite the fact that their hours were recorded, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis, including for the reasons addressed above, thus giving rise to ongoing violations of Labor Code § 204. Additionally, Defendants failed to timely pay Aggrieved Employees for their commissions. Instead, their commission for sales were paid on the subsequent pay period.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, namely, the cost of cellular telephone services which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay and were subject to unlawful rounding of hours. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

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Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees' lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of himself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages

paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely, the cost of cellular telephone services, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Plaintiff and Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Conclusion

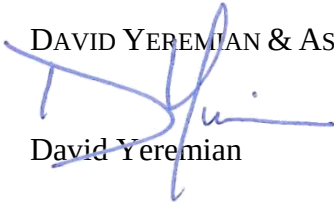
We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against UFC Gym and U Gym LLC. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail

EXHIBIT 2

**PRIVATE ATTORNEYS' GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Plaintiff Giovanni Manzares (“Plaintiff”), on behalf of the other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys’ General Act (“PAGA”) on the one hand, and Defendant U Gym LLC, (“Defendant”) on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees he represents, and Defendant subject to the approval of the Court.

WHEREAS, on June 19, 2020, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) of his intent to pursue a representative action pursuant to the Private Attorneys General Act of 2004, as codified in California Labor Code §2698 *et seq.* (“PAGA”), on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees (the “PAGA Notice”).

WHEREAS, on June 26, 2020, Plaintiff filed a Class Action Complaint in the Superior Court of California County of Sacramento entitled *Giovanni Manzares vs. U Gym, LLC, et al.*, Case No. 34-2020-00281182 alleging ten causes of action against Defendant for: (1) Failure to Pay Minimum Wages, (2) Failure to Pay Wages and Overtime Under Labor Code § 510, (3) Meal Period Liability Under Labor Code § 226.7, (4) Rest-Break Liability Under Labor Code § 226.7, (5) Violation of Labor Code §226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802, and (10) Violation of Business & Professions Code § 17200, *et seq.* (“Class Action”)

WHEREAS, on September 1, 2020, Plaintiff filed a representative action in the Superior Court of California County of Sacramento entitled *Giovanni Manzares vs. U Gym, LLC, et al.*, Case No. 34-2020-00284868 alleging penalties under PAGA for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §§ 226.7 and 512; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code §§ 226(a) and 1174; (6) Violation of Labor Code §§ 203 and 204; and (7) Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802. (“PAGA Action” or “Plaintiff’s Representative PAGA Claims”)

WHEREAS, the Parties have agreed to settle Plaintiff’s individual claims as well as the Plaintiff’s Representative PAGA Claims, and Plaintiff intends on filing a request for dismissal of the class claims without prejudice at the time the Court grants approval of the PAGA settlement.

WHEREAS, On March 29, 2021, the Parties attended an all-day mediation with experienced wage-and-hour mediator Steven Serratore. At the mediation, the Parties agreed to settle Plaintiff's Representative PAGA claims in light of all known facts and circumstances – including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, the financial condition of Defendant, and numerous potential appellate issues. The Parties also agreed to settle Plaintiff's individual claims separately.

WHEREAS, for purposes of this settlement, the Aggrieved Employees are defined as: "All individuals who are or were employed by Defendant as non-exempt employees within the State of California from June 19, 2019 through June 1, 2021."

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of Plaintiff's Representative PAGA Claims that Plaintiff and the Aggrieved Employees have against Defendant and Defendant's past or present parents, subsidiaries, and affiliates, and/or any officers, directors, employees, partners, agents, insurers, and/or any other individual or entity that could be liable for the acts of omissions of Defendant. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant of any wrongdoing or liability. Specifically, Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Complaint. Defendant, among other things, contends that it has complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of Plaintiff's Representative PAGA Claims, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendant and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances, including the financial condition of Defendant, and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff, David Yeremian of David Yeremian & Associates Inc. and Sahag Majarian II of Law Offices of Sahag Majarian II, believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claim, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters

pertaining thereto, to the full extent that each Party deems necessary, and (3) have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(I), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification.”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Agreement shall mean the following: (a) the date of service of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or, (b) sixty-one (61) days after the date of service of notice of entry of the settlement approval order if objections are filed and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement approval order is no longer subject to further judicial review.

2. Released Claims/Effect of Judgment on Aggrieved Employees and LWDA The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the California Labor & Workforce Development Agency (“LWDA”), including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against Defendant and its past or present parents, subsidiaries, and affiliates, officers, directors, employees, partners, agents, insurers, and/or any other individual or entity that could be liable for the acts or omissions of Defendant (“Released Parties”). It is expressly understood and agreed that this settlement only includes a full release of the PAGA claim for penalties the period of June 19, 2019 through June 1, 2021 for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, 2802 as well as the applicable provisions of the Industrial Wage Orders and for any other PAGA

violations that could have been asserted in the action based on the factual assertions and legal assertions in the Complaint. This settlement agreement shall not impact Aggrieved Employees ability to assert Labor Code claims other than PAGA claims specifically identified herein.

3. Notice to LWDA. Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. Total Settlement Amount. Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of One Hundred Five Thousand Dollars and Zero Cents (\$105,000.00) (the “Gross Settlement Amount”) in full settlement of the PAGA Action. The Gross Settlement Amount will be allocated as follows:

a. PAGA Counsel’s attorneys’ fees request of up to 40% of the Gross Settlement Amount which is Forty Two Thousand Dollars and Zero Cents (\$42,000.00) (“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) (“PAGA Counsel’s Costs”). Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that Plaintiff’s counsel requests, any reduced amount shall be allocated to the settlement fund for the Aggrieved Employees;

b. Administration costs of no more than Twelve Thousand Dollars and Zero Cents (\$12,000.00) to be paid to the Settlement Administrator (“Administration Costs”);

c. The remainder of the Gross Settlement Amount (the “PAGA Fund”) after deducting items (a) and (b) is approximately Thirty Six Thousand Dollars and Zero Cents (\$36,000), and shall be designated as “PAGA Penalties” to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% (\$27,000) paid to the LWDA (the “LWDA PAGA Portion”) and 25% (\$9,000) paid to the Aggrieved Employees (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis.

5. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. The allocation among the Aggrieved Employees shall be determined by dividing the entire Aggrieved Employees’ PAGA Portion (*i.e.* approximately \$9,000 by dividing the number of paychecks each individual Aggrieved Employee received during the applicable time period by the total number of paychecks received by all Aggrieved Employees during the applicable time period.) All Individual settlement payments made to Aggrieved Employees will be reported on an IRS Form 1099.

Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if applicable. Nothing in this settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that they have obtained no tax advice from Released Parties and that

neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the settlement amounts in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to Plaintiff counsel's fees and costs will be reflected in a Form 1099 to counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

6. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

7. PAGA Settlement Payment Procedures.

a. Within 30 days of the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator.

b. Within 10 business days of the Effective Date, Defendant shall also provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, and number of qualifying paystubs in the PAGA period. The Settlement Administrator shall run all the

addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information

Within 10 business days of Defendant depositing the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator shall:

i. Remit the Aggrieved Employees' PAGA Portion to the Aggrieved Employees to be distributed on a pro-rata basis (as set forth herein), along with the employee letter (attached hereto as **Exhibit A**). Aggrieved Employees shall not be required to make claims, but shall simply be delivered a check for their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. If Settlement Checks are returned to the administrator, either within 30 days from the mailing, or thereafter, the Settlement Administrator will attempt to locate an updated address for the Aggrieved Employee and re-mail the check if an updated address is located.

ii. Remit PAGA Counsel's Fees and PAGA Counsel's Costs, as approved by the Court.

c. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All uncashed settlement checks shall be sent to the State Controller's Office Unclaimed Property Fund.

d. Neither Defendant nor Plaintiff shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

8. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices and for calculating the pro-rata amount of the Aggrieved Employees' PAGA Portion to be paid to each Aggrieved Employee and preparing all checks and mailings and comply with all requirements set forth in Paragraph 9. The costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount. The Parties agree to use ILYM Group, Inc. as Settlement Administrator. Defendant is not responsible or liable for any errors in the calculation of paystubs or settlement amounts to be awarded to each Aggrieved Employee. Defendant is also not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

9. Duties of the Parties Prior to Approval. Promptly upon execution of this Agreement, Plaintiff shall apply to the Court for approval of the proposed settlement. Plaintiff shall apply to the Court for the entry of an order approving this Agreement as required by Labor Code section 2699(1). The Approval Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to Plaintiff's counsel, (3) final judgment, and (4) request dismissal of the PAGA Action claims with prejudice pursuant to California Rules of Court Rule 3.770. In conjunction with the Motion for Approval, Plaintiff shall submit a proposed Final Judgment requesting the entry of

judgment. Plaintiff will file a request for dismissal of the class claims without prejudice at the time the Court grants approval of the PAGA settlement.

10. Duties of the Parties After Approval. Promptly upon the Court's entry of an order approving this Agreement and dismissing the PAGA Action claims with prejudice, Plaintiff shall file a motion requesting dismissal of the Class Action without prejudice pursuant to California Rules of Court Rule 3.770.

11. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Class Action or PAGA Action or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Released Parties, Defendant, or Defendant's parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

12. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

13. Communications. All communications to be provided concerning this Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Defendant: Lonnie D. Giamela, Fisher & Phillips, LLP, 444 S. Flower Street, Suite 1500, Los Angeles, California 90071

To Plaintiff: David Yeremian, David Yeremian & Associates Inc., 535 N. Brand Blvd., Suite 705, Glendale, CA 91203.

14. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

15. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable. Notwithstanding the

foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

16. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

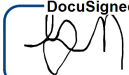
17. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

18. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

19. Enforcement of Settlement. This Agreement is admissible and subject to disclosure for purposes of enforcing this Agreement pursuant to California Code of Civil Procedure Section 664.6, or any other procedure permitted by law. The Parties agree that, under California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction to enforce the terms of this Agreement.

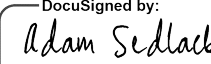
20. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: 8/16/2021

DocuSigned by:

 8CF8C15A55CA414...

Giovanni Manzares, PGA Representative

Dated: 8/10/2021

DocuSigned by:

 2B4B7ABBFAFD476...

U Gym, LLC
 By: Adam Sedlack
 Its: CEO

APPROVED AS TO FORM AND CONTENT:

Dated: 8/16, 2021

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian, Esq.
Attorneys for Plaintiff Giovanni Manzares

Dated: August 12, 2021

FISHER & PHILLIPS, LLP



Attorneys for Defendant U Gym LLC
Lonnie D. Giamela, Esq.

EXHIBIT A

Check

[DATE]

Dear [NAME]:

The enclosed check is your proportional share of the California Private Attorneys General Act ("PAGA") settlement payment in the case entitled *Manzares v. U Gym, LLC*, (Sacramento County Superior Court Case No. 34-2020-00281182a). As relevant to the enclosed check, the lawsuit alleged that U Gym, LLC failed to pay for all time worked, failed to pay all overtime wages, failed to provide appropriate meal and rest breaks, failed to provide accurate itemized wage statements, failed to timely pay upon termination, and failed to reimburse necessary business expenses. U Gym, LLC denied the allegations, but reached a settlement to avoid the expense and disruption of further litigation. You are receiving this check because you worked for U Gym, LLC as a non-exempt employee within the State of California at some point between June 19, 2019 and June 1, 2021. The settlement includes a full release of the PAGA claim for (1) violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, and 2802; and (2) as well as the applicable provisions of the Industrial Wage Orders. The only individual claims that have been released are those of Plaintiff Giovanni Manzares; no other individual claims are released.

Enclosed you will also find an IRS Form 1099 for 100% of this payment. U Gym, LLC will report this payment to the IRS through form 1099 and you are responsible for tax payments, if any, that result from this payment. Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date. If you have any questions about this payment, contact the Settlement Administrator at _____. Please note that the Settlement Administrator cannot provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Regards,

ILYM Group, Inc., Settlement Administrator for *Manzares v. U Gym, LLC*

EXHIBIT 3

Cost report for MANZARES v. U GYM, LLC (PAGA)

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
9/1/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee advanced	\$591.11	Filing
9/29/2020		Rapid Legal	PROCESS OF SERVICE - U GYM, LLC	\$80.54	SERVICE
10/1/2020		Rapid Legal	PROOF OF SERVICE OF SUMMONS	\$30.98	Filing
10/7/2020		Rapid Legal	PROCESS OF SERVICE - UFC GYM	\$80.54	SERVICE
3/1/2021		Serratore Law Mediatio	MEDIATION (3.29.21)	\$9,000.00	MEDIATION 4438
5/12/2021		BERGER CONSULTIN	EXPERT ANALYSIS	\$1,162.50	EXPERT ANALYSIS
8/18/2021		Courtcall	COMPLIANCE HRNG RE DISTRIBUTION OF FUNDS	\$94.00	COURTCALL
8/18/2021		Courtcall	HRNG ON MTN FOR PAGA APPROVAL	\$94.00	COURTCALL
8/18/2021		Rapid Legal	DEC RE DISTRIBUTION OF FUNDS - future filing	\$12.65	Filing
8/18/2021		Rapid Legal	NTC OF ENTRY OF ORDER AND JUDGMENT	\$12.65	Filing
8/18/2021		Rapid Legal	MTN FOR PAGA APPROVAL - mtn fee advanced	\$150.00	Filing

TOTAL COST **\$11,308.97**

Total Cost By Account

COURTCALL	\$188.00
EXPERT ANALYSIS	\$1,162.50
Filing	\$797.39
MEDIATION	\$9,000.00
SERVICE	\$161.08

Cost report for MANZARES v. U GYM, LLC

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
6/26/2020		Rapid Legal	SUMMONS & COMPLAINT - filing fee and complex fee advanced	\$1,579.73	Filing
7/13/2020		Rapid Legal	PROCESS OF SERVICE - U GYM, LLC	\$77.44	SERVICE
7/15/2020		Rapid Legal	POS OF SUMMONS (INVOICE NO. 3647963-04)	\$30.98	Filing
7/17/2020		Rapid Legal	PROCESS OF SERVICE - UFC GYM	\$77.44	SERVICE
8/18/2020		Rapid Legal	NTC OF COURT RULING RE COMPLEX DETERMINATION	\$67.11	Filing
9/3/2020		Rapid Legal	POS OF SUMMONS	\$30.98	Filing
9/17/2020		Rapid Legal	JOINT STIP RE TRANSFER OF CASE - stip fee advanced	\$118.74	Filing
2/17/2021		Rapid Legal	JOINT CMC STATEMENT (2.26.21)	\$10.33	Filing
5/26/2021		Rapid Legal	JOINT CMC STATEMENT (5.28.21)	\$12.65	Filing
5/27/2021		Courtcall	STATUS CONFERENCE (8.27.21)	\$94.00	COURTCALL
8/18/2021		Rapid Legal	CMS (8.27.21)	\$12.65	Filing
<i>TOTAL COST</i>				\$2,112.05	

Total Cost By Account

COURTCALL	\$94.00
Filing	\$1,863.17
SERVICE	\$154.88

EXHIBIT 4

Detailed Time and Task Summary – David Yeremian

Tasks Performed	Atty Hours Est.	Date range
<u>1. Pre-Filing and Investigation Tasks –</u> - Complaint research and research case law and other cases, and research Defendant and its operations and prior litigations. - Set up file and documents, including attorney client agreement, responsibilities of a class representative, and wage statements and personnel file documents. - Research California Secretary of State filings for Defendant. - Conduct factual and legal research into the merits of Plaintiff’s claims;	2	June 2020
<u>2. Drafting and Filing the Class Action Complaint</u> - Conduct further research regarding Defendant and its policies and practices and confer with client; - Review Class Action Complaint and allegations. - Review PAGA letter and complaint	4	June 2020
<u>3. Initial conferences and correspondence with Defendant’s counsel, Initial scheduling conference and case initiation requirements</u> - Review case initiation documents and conformed copies and review initial Case Management Conference order and draft notice of CMC. - Continue compiling case documents from client and case research regarding the applicable authorities and claims and Defendant’s policies and operations. - Conduct teleconferences and exchange correspondence regarding claims and Defendant’s operations and the case and claims.	2	July 2020-Sept 2020
<u>4. Potential ADR Discussions and formal and informal discovery requests</u> - Confer and correspond with Defendant and mediators regarding mediator selection and availability and scheduling. - Agree upon mediator and draft multiple e-mails and respond regarding scheduling. - Book mediation and begin preparation after finalizing scheduling based on parties and counsel schedules and availability and that of the mediator. - Confer with associate re: mediation scheduling, informal discovery and other case management issues. - Review discovery propounded.	3	Sept 2020 – Nov 2020

Detailed Time and Task Summary – David Yeremian

<u>5. Complete Initial Informal and Formal Discovery, Mediation Preparation, and Conduct Mediation and further discovery meet and confer –</u> • Draft correspondence with Defendant’s counsel and mediator regarding mediation and scheduling. • Review all production and file documents and policy documents and compile key exhibits and documents for mediation. • Confer and correspond with Defendant’s counsel regarding Class Member’s data and numbers agreed upon and extrapolated for mediation. • Review calculations of Defendant’s potential liability exposure and summarize defenses to each and alleged bases for reduction in calculated numbers. • Review mediation brief addressing background and procedure, discovery completed, and each of Plaintiffs’ claims, and the facts and law supporting them, and research and calculate potential estimated damages and penalties exposure. • Participate in full day mediation. • Complete conferences with defense counsel regarding Settlement and general terms.	15	Dec 2020 – March 2021
<u>6. Drafting Settlement Agreement and Terms –</u> • Review and revise Memorandum of Agreement. • Review stipulation to continue trial setting conference to complete Settlement Agreement and attend to filing. • Review and revise long form Settlement Agreement and conduct multiple conferences and correspondence with defense counsel regarding detailed terms and revisions. • Review Notice to Aggrieved Employees. • Review the final Settlement Agreement.	3	April 2021 – July 2021
<u>7. Motion for Approval, Hearing, and Begin Administration:</u> • Review and revise motion for approval of the Settlement and supporting documents and declarations.	3	September 2020 – October 2020
TOTAL:	32 Hrs.	

EXHIBIT 5

LAFFEY MATRIX

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[Case Law](#)
[Expert Opinions](#)
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<tr>

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389

6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 6