

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.

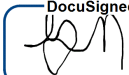
17. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles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

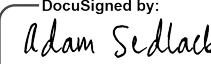
20. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated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

Dated: 8/16/2021

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Giovanni Manzares, PGA Representative

Dated: 8/10/2021

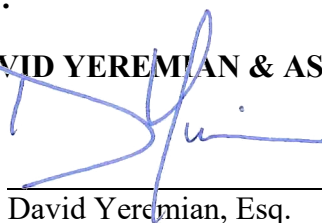
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U Gym, LLC
 By: Adam Sedlack
 Its: CEO

APPROVED AS TO FORM AND CONTENT:

Dated: 8/16, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

A handwritten signature in blue ink, appearing to read 'David Yeremian', is written over a horizontal line.

David Yeremian, Esq.
Attorneys for Plaintiff Giovanni Manzares

Dated: August 12, 2021

FISHER & PHILLIPS, LLP

A handwritten signature in black ink, appearing to read 'Lonnie D. Giamela', is written over a horizontal line.

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*