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20 **U GYM, LLC dba UFC GYM**

21 **(additional counsel listed on following page)**

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SAN DIEGO**

24 SEPHER FLORES, et al, on behalf of himself
25 and all others similarly situated,

26 Plaintiff,

27 vs.

28 U GYM, LLC (DBA UFC GYM) et al.,

Defendants.

CASE NO. 37-2023-00053984-CU-OE-CTL

Hon. Joel R. Wohlfeil

**NOTICE OF JOINT MOTION AND
JOINT MOTION FOR APPROVAL OF
PAGA SETTLEMENT; APPLICATION
FOR ATTORNEYS' FEES AND COSTS**

DATE: April 18, 2025
TIME: 9:00 a.m.
PLACE: Dept. 73

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11 **Attorneys for Plaintiffs Sepher Flores and Miguel Sy Qui**

1 **TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2
3 **NOTICE IS HEREBY GIVEN** that on April 18, 2025 at 9:00 a.m., in Department SD-73 of the
4 Superior Court for the County of San Diego, located at the Hall of Justice, 330 West Broadway,
5 San Diego, California, 92101 Plaintiffs Sepher Flores, Miguel Sy Qui, and Emmanuelli Adzoh
6 ("Plaintiffs"), jointly with Defendant U Gym, LLC, will move for an order approving the
7 proposed PAGA settlement on the terms and conditions set forth in the Parties' Global PAGA
8 Settlement Agreement ("Settlement Agreement") between Plaintiffs and Defendant. A copy of
9 the Settlement Agreement is attached as Exhibit A to the Declaration of Dominic J. Messiha, Esq.
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11 This Motion is based on the following grounds: (1) the Settlement is fair, adequate, and
12 reasonable; (2) the Settlement satisfies the requirements of PAGA and benefits the State of
13 California and aggrieved employees; and (3) the proposed allocation of penalties aligns with the
14 statutory scheme.

15 This Motion is based upon this Notice of Motion, the attached Memorandum of Points
16 and Authorities, the Declarations of Dominic J. Messiha, Esq., Nicholas Ferraro, Esq., Miguel Sy
17 Qui, and Sefer Flores, the Settlement Agreement, all pleadings and papers on file in this action,
18 and such further evidence and argument as may be presented at or before the hearing.
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21 DATED: March 24, 2025

Respectfully Submitted,
EMPOWER LAW, PC

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25 _____
Dominic J. Messiha
26 Attorneys for Plaintiff
Emmanuelli Adzoh, on behalf of
27 himself and all others similarly
28 situated

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3
4 Plaintiffs Miguel Sy Qui, Sepher Flores, and Emmanuelli Adzoh submit this Motion for
5 Approval of Settlement of claims brought under the Private Attorneys General Act (“PAGA”)
6 pursuant to Labor Code section 2699(1)(2). The parties have reached a Settlement that provides
7 significant relief to the State of California and affected employees. Court approval is required
8 before the Settlement can be finalized. For the reasons set forth below, Plaintiff respectfully
9 requests that the Court grant approval of the Settlement.
10

11 This PAGA action is brought on behalf of all current and former non-exempt California
12 employees of Defendant UFC Gym (“UFC”) who were employed between March 30, 2022, and
13 November 8, 2024.

14 The following Joint Motion for PAGA Settlement Approval respectfully requests this
15 Court’s approval of the Settlement of the consolidated action presently pending before this Court.
16 The named Plaintiffs are Sepher Flores, Miguel Sy Qui, and Emmanuelli Adzoh. Each of the
17 Plaintiff is a former non-exempt UFC employee who alleges wage and hour violations against
18 Defendant. The claims of all three Plaintiffs have been consolidated before this Court as a result
19 of the global Settlement, and in anticipation of settlement approval.
20

21 Plaintiffs, on their own behalf and on behalf of other aggrieved employees, have alleged a
22 number of distinct Labor Code violations as against Defendant. Following a formal private
23 mediation, months of further negotiations, and the second of two mediator’s proposals, the parties
24 reached an agreement to resolve this matter entirely. The parties now respectfully request that the
25 Court approve their Settlement.
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II. FACTUAL AND PROCEDURAL HISTORY

A. Plaintiffs Exhausted Their Administrative Remedies And Initiated Their Lawsuits

On March 30, 2023, Plaintiff Emmanuelli Adzoh exhausted his PAGA claims with the California LWDA. Defendant UFC submitted a response to the LWDA arguing that Plaintiff's letter failed to contain sufficient facts to put UFC on notice of his claims. See Declaration of Dominic J. Messiha, Ex. C. The LWDA did not respond within the statutory time frame (or at all). A copy of the operative PAGA Notice is attached hereto as Exhibit B.

Plaintiff Adzoh thus filed his Complaint in Orange County Superior Court as a putative class and PAGA action. Defendants moved to compel arbitration under a pre-dispute arbitration agreement with Plaintiff Adzoh. The Court ordered that Plaintiff's individual claims would be resolved in arbitration, and the PAGA claim would then be resolved in Court.

On September 21, 2023, Plaintiff Flores submitted written notice to the Labor and Workforce Development Agency asserting claims for civil penalties under the Private Attorneys General Act using the LWDA's online filing system. A true copy of the PAGA Notice is on file with the Court, attached as Exhibit 1 to the operative Complaint.

On April 26, 2024, Plaintiff Sy Qui submitted written notice to the Labor and Workforce Development Agency asserting claims for civil penalties under the Private Attorneys General Act using the LWDA's online filing system. A true copy of the PAGA Notice is on file with the Court, attached as Exhibit 2 to the operative Complaint.

On December 12, 2023, after more than sixty-five days passed without notice from the Defendant or involvement from LWDA, Plaintiff Flores filed his complaint in this action before this Court.

On January 23, 2025, that complaint was amended to include Plaintiffs Miguel Sy Qui and Emmanuelli Adzoh. UFC filed its answer on or about February 24, 2025. The operative Complaint asserts the following claims on their behalf and on behalf of all aggrieved employees:

1. Failure to Pay All Wages Earned (California Labor Code Section 204);
2. Failure to Pay Overtime Wages (California Labor Code Sections 510, 1194(a), and 1198);
3. Failure to Provide Accurate, Itemized Wage Statements (California Labor Code Section 226(a));
4. Failure to Provide Meal Periods (California Labor Code Sections 226.7 and 512(a));
5. Failure to Provide Rest Breaks (California Labor Code Section 226.7);
6. Failure to Maintain Records (California Labor Code Section 1174(d));
7. Failure to Reimburse Business Expenses (California Labor Code Section 2802);
8. Failure to Pay All Wages Upon Termination (California Labor Code Sections 201-203);
9. Unfair Business Practice (California Business & Professions Code Section 17200, et seq.); and
10. Labor Code Private Attorneys General Act (California Labor Code Section 2698 et seq.)

Furthermore, the operative Complaint includes an allegation that UFC failed to correctly calculate the regular rate of pay for the purposes of overtime compensation, thus triggering a number of other potential violations.

In each of the cases, written discovery and documents were exchanged. In the *Adzoh* matter, the parties agreed to exchange to exchange further information within the framework of a private mediation.

B. TERMS OF THE SETTLEMENT

1 The Settlement is attached hereto as Exhibit A to the Messiha Declaration. It covers
2 approximately 3,095 current and former employees of UFC. Again, the relevant time period is
3 from March 30, 2024 to November 8, 2024. The key settlement terms are as follows:

4 The Gross Settlement Amount is \$240,000.00. This will be used to pay Individual PAGA
5 payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation
6 Expenses Payment, and the Administrator's Expenses Payment (which are not to exceed
7 \$3,500.00.)
8

9 Next, administrator expenses are not to exceed \$3,500.00.

10 Further, aggrieved employees do not need to submit a claim as a condition of payment and
11 no part of the Gross Settlement Amount will revert to Defendant.

12 The Release by the Aggrieved Employees is narrowly tailored to the claims litigated:

13
14 All Aggrieved Employees are deemed to release, on behalf of themselves and their
15 respective former and present representatives, agents, attorneys, heirs, administrators,
16 successors, and assigns, the Released Parties from all claims for PAGA penalties that
17 were alleged, or reasonably could have been alleged, based on the PAGA Period facts
18 stated in the Operative Complaint and the PAGA Notice, including but not limited to
19 all underlying wage and hour claims which arise out of the claims expressly pleaded
20 in the Action, and all other claims that could have been asserted based on the facts
21 pleaded in the Action for, but not limited to California Labor Code sections 98.6,
22 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226 et. Seq., 226.3, 226.7, 227.3, 233,
23 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193,
24 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698 et seq., 2699, 2802,
25 2804, and 2810.5. In particular, and in line with the holding of *Arias v. Superior*
26 *Court*, 46 Cal.4th 969 (2009), because Plaintiffs' action under PAGA functions as a
27 substitute for an action by the government itself, any judgment will be binding not
28 only on the Plaintiffs but also on government agencies and any other Aggrieved
Employee not a party to the proceeding. Thus, nonparty employees who are
Aggrieved Employees cannot sue to recover additional civil penalties for the same
Labor Code violations released (but may sue for damages or other remedies for those
same violations).

26 C. MEDIATION AND DATA ANALYSIS

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1 In late 2023, the Parties to the *Adzoh v. U Gym, LLC* action, which was then pending in
2 Orange County Superior Court as well as in arbitration, agreed to a private mediation to take
3 place in February 2024. Prior to mediation, Plaintiffs obtained, through informal discovery,
4 anonymized copies of the payroll register for all Aggrieved Employees for the PAGA Period.
5 Plaintiffs also obtained time entries for all Aggrieved Employees during the PAGA Period. These
6 enabled Plaintiffs to engage an expert to analyze the time and payroll records and evaluate the
7 merits of the claims as well as the potential monetary recovery.

9 Plaintiffs retained an expert data analyst to analyze the payroll records provided by UFC
10 during preparations for mediation. Plaintiffs' counsel also conducted their own analysis of the
11 data provided. In summary, while the data provides insight into potential wage and hour
12 violations, it does not conclusively establish liability without additional facts. Moreover, UFC has
13 raised potentially valid defenses.

15 For example, Plaintiffs allege that they were denied off duty, uninterrupted 30-minute
16 meal periods during their employment. The data provided by UFC contains evidence of potential
17 meal period violations. To the extent the records are true and accurate, additional information is
18 necessary to confirm whether a violation occurred. For example, was a meal period authorized
19 and permitted by the employer on that occasion, but the employee simply clocked out late for
20 their meal, or clock back in early? If the employer did not authorize and permit a meal period, did
21 it pay the employee for the additional time worked? Also, did the employer issue payment of a
22 premium under Labor Code section 226.7?

24 Litigating rest period claims presents the same challenges, except that unlike meal
25 periods, rest periods are paid and are on the clock. Thus, because employees do not clock out for
26 rest periods, they are not recorded.

1 Another set of claims that falls within this category is for unpaid wages due to off-the-
2 clock work. Plaintiffs allege that they were required to work hours for the benefit of UFC that
3 were not paid timely, or at all. More specifically, Plaintiff Adzoh asserted in his operative FAC
4 that although he was employed as an Instructor, he was required to participate in an Ultimate
5 Fighting competition over a weekend. Adzoh alleged that UFC did not pay him for that time, nor
6 permit him to record the hours for payment. Again, because no records of off-the-clock time
7 worked exist by definition, determination of this claim will require witness testimony.

9 To the extent any instances of the above alleged violations are demonstrated by Plaintiffs,
10 they would necessarily have resulted in the employees in question receiving inaccurate wage
11 statements. Because these claims are derivative in nature, however, they are contingent on an
12 underlying violation.

14 The same is true of Plaintiffs' claim under Labor Code section 1174.5 for failure to
15 maintain accurate records.

16 Finally, Plaintiffs assert a claim for failure to reimburse business expenses. While
17 Plaintiffs assert that UFC's policy regarding expense reimbursement is silent on certain key issues
18 (such as mileage and cell phone reimbursement), UFC contends that policy was clear and lawful.
19 UFC also asserts that, had certain alleged expenses been submitted, they would have been paid.

21 On February 6, 2024, certain of the Parties participated in an all-day mediation conducted
22 by experienced mediator Mike Young, Esq. The case did not settle at the mediation. However, the
23 parties remained engaged in active negotiations until the issuance of a mediator's proposal by Mr.
24 Young. On May 20, 2024, Mr. Young confirmed that the parties had reached a deal in principle to
25 settle the matter.

26 By this point, all the parties to the *Adzoh* matter as well as Mediator Young were aware
27 that *Flores* and *Qui* matters had been pending in San Diego Superior Court, and their counsel was
28

1 consulted during the settlement discussions to ensure that their claims were included in any
2 settlement.

3 4 **III. ARGUMENT**

5 **A. LEGAL STANDARD FOR PAGA SETTLEMENT APPROVAL**

6 A PAGA settlement must be reviewed and approved by the Court to ensure fairness. Lab.
7 Code, § 2699(1)(2). Courts consider whether the settlement is: (1) fair, reasonable, and adequate
8 in light of the purposes of PAGA, and (2) consistent with public policy favoring enforcement of
9 labor laws. *See Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 548.

10 "The superior court shall review and approve any settlement of any civil action filed
11 pursuant to this part." (CCP § 2699(1)(2).) "Because many of the factors used to evaluate class
12 action settlements bear on a settlement's fairness—including the strength of the plaintiff's case,
13 the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and
14 the settlement amount—these factors can be useful in evaluating the fairness of a PAGA
15 settlement." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

17 **1. The Settlement Is Fair, Reasonable, and Adequate And Should Be Approved**

18 The Settlement represents a fair, adequate, and reasonable compromise of disputed claims.
19 As detailed in the attached Declarations of Dominic Messiha, Esq. and Nicholas Ferraro, Esq.
20 (counsel for the aggrieved employees), the compromise amount is very much in line with
21 comparable settlements reached in similar cases.
22

23 As detailed above, the litigation presented numerous challenges from the Plaintiffs'
24 perspective, including the existence of an arbitration agreement between the Parties that
25 ultimately resulted in Plaintiff Adzoh's individual claim being compelled to arbitration before his
26 PAGA claims could even be litigated in court. This presented not only an additional hurdle, but a
27 significant delay in reaching final adjudication of the claims.
28

1 Furthermore, UFC asserted numerous other defenses to the merits of the claims, including
2 many which would rebut evidence of potential wage and hour violations as contained within the
3 employee time records received as part of mediation.

4 Ultimately, Plaintiffs accepted a deal which counsel strongly believes is in the best
5 interests of the aggrieved employees, and provides them with guaranteed recovery now, as
6 opposed to possible benefits later.

7 Finally, as set forth in further detail below, the attorneys' fees sought here are modest,
8 representing less than half the lodestar.

9
10 **B. The Settlement Is Consistent With Public Policy Favoring Enforcement Of**
11 **Labor Laws**

12 This Settlement also satisfies the second factor for settlement approval in that it is
13 consistent with public policy favoring enforcement of labor laws.

14 First, the Settlement deters future violations and encourages others to come forth to
15 vindicate their claims. Second, the allocation of settlement funds, which directs 75% to the state
16 and 25% to the employees fulfills the fundamental purpose of PAGA, which is to deputize
17 individuals to enforce the Labor Code when the Labor and Workforce Development Department
18 ("LWDA") does not have the means to do so. The 75/25 allocation also provides much-needed
19 funding for the LWDA.

20 Second, as demonstrated above, the scope of the release is narrowly-tailored to the claims
21 pled.

22
23 **C. Application For Payment Of Attorneys' Fees And Costs**

24 Attorneys' fees are a critical component of a PAGA settlement, ensuring that employees
25 can effectively enforce California labor laws without bearing the financial burden of litigation.
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1 The statutory framework of PAGA explicitly provides for reasonable attorneys' fees, recognizing
2 the role of private enforcement in supplementing the state's oversight of labor violations. Courts
3 consistently award attorneys' fees in PAGA settlements to compensate for the substantial legal
4 work required to achieve meaningful relief for aggrieved employees and the public.

5 California Labor Code § 2699(g)(1) explicitly provides that employees who prevail in PAGA
6 actions are entitled to reasonable attorneys' fees and costs. This provision ensures that attorneys
7 have the financial incentive to take on complex labor cases, which often involve significant time
8 and resources.

10 PAGA is designed to serve the public interest by enforcing labor laws in cases where state
11 agencies lack sufficient resources. Awarding attorneys' fees ensures that legal professionals can
12 take on these cases, thereby promoting compliance with labor laws and deterring future
13 violations. Here, the Settlement provides for the payment of attorneys' fees to Plaintiffs' counsel
14 in the amount of 33.33% of the total settlement amount, which is estimated to be \$80,000.00, and
15 actual costs incurred in the amount of less than \$15,000.00.

17 Here, Plaintiff's counsel has engaged in substantial legal work, including extensive pre-
18 filing and post-filing investigation, litigating a motion to compel arbitration, defending a separate
19 individual claim filed by Defendants against Plaintiff Adzoh, preparing for and participating in
20 mediation, analyzing extensive amounts of employee data, and evaluating both potential liability
21 and penalties to reach this Settlement. See *Messiha Decl.*, par. 17.

23 Furthermore, all Plaintiff's counsel in this matter took on the case on a contingent fee
24 basis. This meant assuming significant financial risks as well as advancing substantial costs on
25 behalf of the Plaintiffs. This included the cost of private mediation, which was substantial. While
26 counsel strongly believed in the merits of these cases, they risked recovering nothing had the case
27 been unsuccessful. See *Ferraro Decl.*, par. 10; *Messiha Decl.* par. 18.

1 Counsel strongly believes that the Settlement they have obtained for the aggrieved
2 employees in this matter represents a fair and reasonable resolution to a case fraught with risk.
3 Further, the requested attorneys' fees of 33.33% are reasonable and proportional. Indeed, those
4 fees represent *substantially less* than what the lodestar calculation would indicate. More
5 specifically, Plaintiff's counsel Dominic J. Messiha has expended more than 150 hours on this
6 matter, which at his market hourly rate of \$650 per hour would alone exceed \$100,000.00 in
7 attorneys' fees sought in this case. See Declaration of Dominic J. Messiha, Esq.

9 Further, Plaintiff's counsel Nicholas Ferraro, Esq. expended an additional 33 hours on the
10 case, not including administrative and support staff time. See Ferraro Decl. par. 12. Ariel D.
11 Weindling, Esq. likewise expended approximately 40 hours investigating this case, preparing for
12 and attending the mediation in this matter, and ultimately negotiating the Settlement. Based on
13 counsels' hourly market rates, this generates a lodestar in excess of \$125,000.00, which is
14 substantially more than the amount of attorneys' fees being sought here.

16 IV. CONCLUSION

17 This Settlement represents a fair, arms-length compromise of the claims at issue. The
18 release is narrowly-tailored, and the attorneys' fees sought are a fraction of the lodestar. The
19 parties respectfully request that the Settlement be approved.

21 DATED: March 24, 2025

Respectfully Submitted,
EMPOWER LAW, PC



25 Dominic J. Messiha
26 Attorneys for Plaintiff
27 Emmanuelli Adzoh, on behalf of
28 himself and all others similarly
situated