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

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

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

25 Plaintiff,

26 vs.

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

28 Defendants.

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

Hon. Joel R. Wohlfeil

**MESSIHA DECLARATION IN SUPPORT
OF JOINT MOTION FOR APPROVAL
OF PAGA SETTLEMENT;
APPLICATION FOR ATTORNEYS'
FEES, COSTS**

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

DECLARATION OF DOMINIC J. MESSIHA, ESQ.

1. I am counsel for Plaintiff Emmanuelli Adzoh in this action, and am over the age of 18 years. I have personal knowledge of the facts set forth in this Declaration. If called upon, I can and will testify competently as to the truth of these facts.
2. I am licensed to practice before this Court, and have been admitted to practice law in the state of California since 1999. I have been practicing law for 25 years, exclusively in the field of Employment Law.
3. I graduated from Loyola Law School in 1999 as a member of the St. Thomas More Law Honor Society. Prior to that, I obtained my Bachelor's Degree from UCLA in 1995.
4. Prior to launching the Law Office of Dominic J. Messiha, PC in January of 2018, I was employed by Littler Mendelson, PC, at that time the largest law firm in the country representing employers in employment law disputes. I practiced at Littler Mendelson for approximately 18 years, the last 12 years as a partner/shareholder. I was an equity partner at Littler Mendelson for the last 9 years of my tenure. While at Littler Mendelson, my practice was dedicated to the litigation of wage and hour class actions.
5. I was named a California Super Lawyer "Rising Star" for 2013 and 2014 and was subsequently named a California Super Lawyer each year from 2018-2025 in the field of Employment Law.
6. Throughout my career, I have frequently spoken and presented on employment law issues, specifically including wage and hour topics including but not limited to compliance with Labor Code §§ 226(e), 226.7 and 512 concerning meal and rest periods, pay stub compliance and arbitration issues. I have also spoken at Pepperdine University Law School on the topic of class and representative action mediation and settlement.
7. I have extensive employment law litigation experience in state and federal courts throughout California. I have litigated employment cases (specifically including class cases) at virtually all levels, including the California Courts of Appeal and the California Supreme Court, as

1 well as the Ninth Circuit Court of Appeals.

2 8. In the course of my career, I have appeared as counsel of record in more than 30 wage and
3 hour class actions in California Superior Courts and California federal district courts
4 combined. Some of these cases resulted in early settlements, others proceeded through class
5 certification, decertification, and/or were otherwise litigated in the courts of appeal.
6 Numerous of these cases settled on a class and/or representative basis following mediations
7 and extended negotiations.

8 9. Litigating large employment representative actions is neither appealing to, nor realistic for
9 many lawyers and law firms. The law is constantly changing and a single ruling or
10 legislative change can devastate a case. Plaintiffs' lawyers undertake the obligation to
11 finance the litigation and bear significant risk in the event of an unsuccessful outcome,
12 whether at trial or otherwise.

13 10. This case was taken on a contingency basis with the real possibility that Plaintiffs' counsel
14 would receive no compensation whatsoever for our efforts. Further, the potential costs that
15 must be advanced in wage and hour class and representative actions like this one are
16 substantial. Representing employees in class and representative actions also requires
17 specialized skill and the willingness (as well as the resources) to assume the
18 aforementioned risks.

19 11. Based on my experience, I am well familiar with the market value of representative action
20 settlements and the reasonable range of settlements in various wage and hour matters. I am
21 also familiar with litigating and settling actions under the California Private Attorneys
22 General Act.

23 12. My co-counsel and I are of the opinion that the Settlement is fair, adequate and reasonable.

24 13. This Settlement was the product of good-faith, arms'-length negotiations, facilitated by a
25 highly-regarded, professional mediator, Mike Young, Esq. The Settlement was ultimately
26 the product of not one, but two mediator's proposals by Mr. Young. Despite both parties
27 accepting that second proposal following mediation, the parties continued actively
28 negotiating the other terms of the Settlement for literally months after the mediation.

1 14. The settlement before the Court is favorable to the Aggrieved Employees and was obtained
2 by virtue of the substantial amount of factual investigation, legal analysis, and advocacy by
3 counsel.

4 **Prior Pleadings and Orders**

5 15. For the Court's reference, this Declaration attaches the following exhibits:

6 **Exhibit A:** A true and correct copy of the Settlement

7 **Exhibit B:** A true and correct copy of Plaintiff's Adzoh's Notice to the Labor and
8 Workforce Development Department

9 **Exhibit C:** A true and correct copy of UFC's response to Plaintiff Adzoh's Notice to
10 the Labor and Workforce Development Department

11 **Plaintiff's Counsel's Attorneys' Fees Request Should Be Approved**

12 16. Here, the Settlement provides for payment of attorneys' fees to Plaintiffs' counsel
13 in the amount of 33.33% of the total settlement amount, which is estimated to be \$80,000.00, and
14 actual costs incurred in the amount of less than \$15,000.00.

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

20 18. Furthermore, all Plaintiff's counsel in this matter took on the case on a contingent
21 fee basis. This meant assuming significant financial risks as well as advancing substantial costs
22 on behalf of the Plaintiffs. This included the cost of private mediation, which was significant.
23 While counsel strongly believe in the merits of these cases, they risked recovering nothing had
24 the case been unsuccessful.

25 19. As mentioned above, I have twenty-five (25) years of experience as an attorney
26 admitted to practice in the State of California. According to the Adjusted Laffey Matrix, this places
27
28

1 my hourly rate at \$1141 per hour.

2 20. Adjusting this hourly rate for local market conditions based on hourly rates charged
3 by practitioners of comparable experience in the greater San Diego area market yields a prevailing
4 market rate of \$650 per hour, which I believe is more than reasonable under the circumstances.

5 21. Counsel strongly believes that the Settlement we have obtained for the aggrieved
6 employees in this matter represents a fair and reasonable resolution to a case fraught with risk.
7 Further, the requested attorneys' fees of 33.33% are reasonable and proportional. Indeed, those
8 fees represent *substantially less* than what the lodestar calculation would indicate. More
9 specifically, I alone expended more than 150 hours on this matter, which at my reduced market
10 rate of \$650 per hour would readily exceed the \$80,000.00 in attorneys' fees sought in this case.
11

12 22. Additionally, Plaintiff's counsel Nicholas Ferraro, Esq. expended 33 hours on the
13 case, not including administrative and support staff time. My partner, Ariel D. Weindling, Esq.
14 likewise expended approximately 40 hours investigating this case, preparing for and attending the
15 mediation in this matter, and ultimately negotiating the Settlement. Based on counsels' hourly
16 market rates, this generates a lodestar in excess of \$125,000.00, which is substantially more than
17 the amount of attorneys' fees being sought here.
18

19 23. Class Counsel's rate compares favorably to amounts judicially awarded to other
20 plaintiff's firms as far back as 2013. *See e.g. Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS
21 91636, *24 (C.D. Cal. 12 June 28, 2013) (approving hourly rates of \$650-\$800 for senior attorneys
22 in consumer class action); *Laffitte v. Robert Half International, Inc.*, 231 Cal.App.4th 860 (2014)
23 (approving hourly rates of up to \$750 in wage and hour class action); *Nguyen v. Wells Fargo &*
24 *Company*, 2015 WL 7878 (2015) 15 (approving rate of \$650 in wage and hour class action); *Heyen*
25 *v. Safeway, Inc.*, 2014 WL 2154676 16 (2014) (approving rates of up to \$1000/hr. in wage and hour
26 class action).
27
28

24. Multiplying the 150-plus hours I reasonably spent litigating this case to conclusion times \$650 per hour yields at least \$97,500.00.

I declare and state under the laws of the State of California and the United States of America that the foregoing is true and correct.

DATED: March 24, 2025

AKR

Dominic J. Messiha

GLOBAL PAGA SETTLEMENT AGREEMENT

Emmanueli Adzoh v. U GYM LLC (PAGA)

Orange County Superior Court, Case No. 30-2023-01305371-CU-OE-CXC

Sepher Flores v. U GYM LLC (PAGA)

San Diego County Superior Court, Case No. 37-2023-00053984-CU-OE-CTL

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Emmanueli Adzoh, Sepher Flores and Miguel Sy Qui (collectively, “Plaintiffs”) and Defendant U Gym LLC dba UFC Gym (“UGYM” or “Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Actions” mean a) Plaintiff Emmanueli Adzoh’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Emmanueli Adzoh v. U GYM LLC, et al.*, filed in the Superior Court of the State of California, County of Orange, Case No. 30-2023-01305371-CU-OE-CXC, with its operative First Amended Complaint; b) Plaintiff Sepher Flores’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Sepher Flores v. U GYM LLC*, with its operative original Complaint; and c) the consolidated complaint that will hereafter be filed in the Superior Court of the State of California, County of Orange, inclusive of all Plaintiffs’ collective claims in the post-settlement process.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means as all current and former hourly-paid or non-exempt employees of Defendant in California employed between March 30, 2022 through November 8, 2024.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s full name, last-known mailing address, last known email address, Social Security number, and number of PAGA Pay Periods (as defined below).
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

- 1.7. "Court" means the Superior Court of California, County of San Diego.
- 1.8. "Defense Counsel" means Lonnie D. Giamela and Areen Babajanian of Fisher & Phillips LLP.
- 1.9. "Effective Date" means the earliest date, following entry by the Court of the Judgment, upon which one of the following has occurred: (i) expiration of all potential appeal periods without a filing a notice of appeal of the Judgment; (ii) final affirmance of the Judgment by an appellate court as a result of any appeal(s); or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the Judgment is no longer subject to further judicial review.
- 1.10. "Gross Settlement Amount" means \$240,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Order Approving the PAGA Settlement.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means Dominic J. Messiha and Ariel D. Weindling of Empower Law, PC, as well as Nicholas J. Ferraro and Lauren N. Vega of Ferraro Vega, the attorneys and law firms representing the Plaintiffs in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

- 1.18. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.19. “PAGA Period” means the period from March 30, 2022 to November 8, 2024, inclusive.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. “PAGA Notice” means Plaintiff Adzoh’s March 30, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), which subsumes and fully covers the subsequent notices provided to the LWDA by Plaintiff Flores on September 21, 2023 and Plaintiff Qui on April 26, 2024 (collectively, “PAGA Notices”).
- 1.22. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to LWDA, in settlement of PAGA claims.
- 1.23. “Plaintiffs” means Emmanuel Adzoh, Sepher Flores and Miguel Sy Qui, the named plaintiffs in the Action.
- 1.24. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, or affiliates.
- 1.27. “Settlement” means the disposition of the Action affected by this Agreement and the Judgment.

2. RECITALS.

- 2.1. On February 2, 2023, Plaintiff Adzoh commenced this Action by filing a putative class action Complaint alleging causes of action against Defendant for failure to compensate all wages earned (California Labor Code Section 204); failure to pay overtime wages (California Labor Code Section 510, 1194(a), and 1198); failure to provide accurate, itemized wage statements (California Labor Code Section 226(a)), failure to provide meal periods (California Labor Code Section 226.7 and 512(a)); failure to provide rest breaks (California Labor Code Section 226.7); failure to maintain records (California Labor Codes Section 1174(d)); failure to reimburse business expenses (California Labor Code Section 2802); failure to pay all wages upon termination (California Labor Codes

Sections 201-203); unfair business practices (California Business & Professions Code Section 17200, *et seq.*) On June 6, 2023, Plaintiff filed a First Amended Complaint adding an additional cause of action against Defendant for violation of PAGA, Labor Code, § 2698, *et seq.* Defendant then moved to compel arbitration and strike the class claims. The court granted the motion to compel arbitration of Adzoh's individual claims, and to strike the class allegations. Defendant asserted certain counterclaims against Adzoh in arbitration (JAMS Reference # 5200000893). Those counterclaims had previously been the subject of a separate lawsuit Defendant filed against Adzoh in Orange County Superior Court captioned *U Gym LLC v. Emmanuelli Adzoh*, Case No. 30-2023-01327768-CL-BC-CJC, which was subsequently dismissed. The First Amended Complaint is the operative complaint in the *Adzoh* PAGA Action (the "FAC"), which proceeds only on a PAGA basis.

On December 12, 2023, Plaintiff Sepher Flores commenced her PAGA only complaint against U Gym, LLC. In the context of the settlement approval process, Plaintiffs' Counsel agree to dismiss the *Adzoh* Action and further amend the FAC in the Flores Action to plead all named Plaintiffs and the full extent of claims under PAGA to be released in line with this Release in Section 5, *infra*, in the form of the Operative Complaint ("Operative Complaint" is attached as Exhibit A hereto.) Defendant expressly agrees to the filing of Exhibit A, waives any arguments contrary thereto, and will in good faith make its best efforts to ensure that such amendment is accepted by the Court, including but not limited to the execution of a mutually-agreeable stipulation to that effect. However, Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action and underlying Labor Code violations alleged. Defendant specifically denies that Plaintiffs are able to bring any class action-based claims pursuant to the enforceable arbitration agreements signed by all which waive any class-based claims.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the subject PAGA Notices.
- 2.3. On February 6, 2024, certain of the Parties participated in an all-day mediation conducted by experienced mediator Mike Young, Esq., which after further negotiations led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiffs obtained, through informal discovery, anonymized copies of the payroll register for all Aggrieved Employees for the PAGA Period. Plaintiffs also obtained time entries for all Aggrieved Employees during the PAGA Period. These enabled Plaintiffs to engage an expert to analyze the time and payroll records in support of a successful settlement.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any further pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$240,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$80,000.00 and PAGA Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiffs and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from how the PAGA Counsel Fees Payment is to be split amongst the attorneys. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
 - 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$3,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$3,500.00, the Administrator will retain the remainder in the Net Settlement Amount.
 - 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties to be paid from the Net Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.
 - 3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all

Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- 3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 2,095 Aggrieved Employees who worked a total of 38,000 PAGA Pay Periods from March 30, 2022 through February 28, 2024.
- 4.2. Aggrieved Employee Data. Within 30 calendar days, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator by within 14 calendar days after the Effective Date or by February 1, 2025, whichever date is later.
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients'

mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns, the LWDA and the State of California, generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to all claims for civil penalties under the California Labor Code's Private Attorneys General Act ("PAGA") that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiffs' Release"), as based upon all underlying wage and hour claims under state, federal, or local law, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the Operative Complaint for, but not limited to all underlying wage and hour claims which arise out of the claims expressly pleaded in the Action, and all other claims that *could* have been asserted based on the facts pleaded in the Action for, but not limited to California Labor Code sections 98.6, 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226 et. Seq., 226.3, 226.7, 227.3, 233, 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698 et seq., 2699, 2802, 2804, and 2810.5. Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the

PAGA Period. Plaintiffs also release their individual wage claims pursuant to their individual settlement agreements, incorporated herein by this reference. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. In line with the holding of *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), because Plaintiff's action under PAGA functions as a substitute for an action by the government itself, any judgment will be binding not only on the Plaintiff 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 the same violations).

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to all underlying wage and hour claims which arise out of the claims expressly pleaded in the Action, and all other claims that *could* have been asserted based on the facts pleaded in the Action for, but not limited to California Labor Code sections 98.6, 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226 et. Seq., 226.3, 226.7, 227.3, 233, 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12, 1193, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698 et seq., 2699, 2802, 2804, and 2810.5. In particular, and in line with the holding of *Arias v. Superior Court*, 46 Cal.4th 969 (2009), because Plaintiffs' action under PAGA functions as a substitute for an action by the government itself, any judgment will be binding not 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).

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and/or any further Amended PAGA Notice.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firms attesting to their timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator. PAGA Counsel are also responsible for filing an updated Operative Complaint in line with the release in Paragraph 5, *supra*.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of

Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE**

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are about 2,095 Aggrieved Employees who worked approximately 38,000 Pay Periods in the period from March 30, 2022 through February 28, 2024 (“Representation Period”). Should the qualifying pay periods in the Representation Period increase beyond 10% worked by the Aggrieved Employees during the aforementioned period (i.e., by more than 3,800 pay periods), this shall trigger the escalator clause, by which Defendant shall increase the Total Settlement Amount on a pro-rata basis equivalent to the percentage increase in the number of pay periods worked by the Aggrieved Employees in the Representation Period above the ten percent (10%) threshold, meaning Defendant will increase the Total Settlement Amount by the percentage amount above ten percent (10%) (e.g., if the number of pay periods in the Representation increases by 11% to 4,180 pay periods, the Total Settlement Amount will increase by one percent (1%)).

9. **CONTINUING JURISDICTION OF THE COURT**. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the PAGA Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party. To note, Plaintiffs are also parties to separate individual agreements to resolve their individual wage claims, which together with the instant PAGA Settlement constitute a global release by Plaintiffs of all claims against Defendant.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 10.6 No Tax Advice. Neither Plaintiffs, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of Aggrieved Employees' Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in

connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Dominic J. Messiha (dominic@empower.law)
Ariel D. Weindling (ariel@empower.law)
Empower Law PC
1639 11th Street, Suite 204

Santa Monica, CA 90404

Nicholas J. Ferraro (nick@ferrarovega.com)
Lauren N. Vega (lauren@ferrarovega.com)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, CA 92108

To Defendants:

Lonnie D. Giamela (lgiamela@fisherphillips.com)
Areen Babajanian (ababajanian@fisherphillips.com)
Fisher & Phillips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____, 2024

PLAINTIFF

Emmanueli Adzoh

Dated: 11/26/2024, 2024

PLAINTIFF

Sepher flores

Sepher Flores

Dated: 11/29/24, 2024

PLAINTIFF

Carlos Miguel Sy Qui

Miguel Sy Qui

Dated: _____, 2024

EMPOWER LAW

Dominic Messiha
Attorneys for Plaintiff Adzoh

Dated: November 26, 2024

FERRARO VEGA EMPLOYMENT
LAWYERS, INC.

Nicholas J Ferraro

Nicholas Ferraro
Attorneys for Plaintiffs Flores and Qui

Dated: 12/23, 2024

DEFENDANT

DocuSigned by
U GYM LLC

U GYM LLC
On behalf of Defendant

Dated: _____, 2024

FISHER & PHILLIPS LLP

Lonnie D. Giamela
Areen Babajanian
Attorneys for Defendant

Dated: 11/26/2024, 2024

PLAINTIFF

Sepher flores

Sepher Flores

Dated: 11/29/24, 2024

PLAINTIFF

Carlos Miguel Sy Qui

Miguel Sy Qui

Dated: 12/3/2024, 2024

EMPOWER LAW

Dominic Messilha
Attorneys for Plaintiff Adzoh

Dated: November 26, 2024

FERRARO VEGA EMPLOYMENT
LAWYERS, INC.

Nicholas Ferraro

Nicholas Ferraro
Attorneys for Plaintiffs Flores and Qui

Dated: 12/23, 2024

DEFENDANT

Designated by

U GYM LLC

U GYM LLC

On behalf of Defendant

Dated: Jan 3, 2025, 2024

FISHER & PHILLIPS LLP

Areen Babajanian

Lonnie D. Giamela
Areen Babajanian
Attorneys for Defendant

20241122 - Global PAGA Settlement (Final) signed(53355981.1)

Final Audit Report

2025-01-03

Created:	2025-01-03
By:	Natalie Larios (nlarios@fisherphillips.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5QCCE-wALBYeK966LWr3gmMLiVM86XxG

"20241122 - Global PAGA Settlement (Final) signed(53355981.1)" History

-  Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)
2024-12-23 - 10:55:40 PM GMT
-  Document created by Natalie Larios (nlarios@fisherphillips.com)
2025-01-03 - 8:38:27 PM GMT
-  Document emailed to Areen Babajanian (ababajanian@fisherphillips.com) for signature
2025-01-03 - 8:39:11 PM GMT
-  Email viewed by Areen Babajanian (ababajanian@fisherphillips.com)
2025-01-03 - 8:50:28 PM GMT
-  Document e-signed by Areen Babajanian (ababajanian@fisherphillips.com)
Signature Date: 2025-01-03 - 8:50:46 PM GMT - Time Source: server
-  Agreement completed.
2025-01-03 - 8:50:46 PM GMT

March 30, 2023

Filed Online

California LWDA
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

U Gym LLC
c/o CSC
2710 Gateway Oaks Drive
Suite 150
Sacramento CA 95833

UFC Gym LLC
U Gym LLC
c/o Lonnie D. Giamela
Areen Babajanian
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500

Re: Violations of California Labor Code And Private Attorneys General Act ("PAGA")
California Labor Code §§ 2699 et seq.

To Whom It May Concern,

This office represents Mr. Emanueli Adzoh, a former employee of UFC Gym and U Gym LLC ("Defendants"). Please direct all future correspondence regarding this matter to the undersigned.

The purpose of this Notice is to comply with the statutory exhaustion requirements of Labor Code § 2699.3 prior to commencing an action pursuant to Labor Code § 2699, et seq. alleging violations of, *inter alia*, Labor Code §§ 201-204 inclusive, 226(a), 226.7, 510, 512(a), 1174(d), 1194(a), 1198, and 2802 as well as any additional Labor Code or regulatory violations that are like or reasonably related to these violations and/or which may be uncovered through future discovery and investigation.

Empower Law PC
11601 Wilshire Boulevard, Suite 500
Los Angeles, CA 90025

Tel: 310.235.1447
www.empower.law

Factual Statement

Defendants operate one or more fitness centers which sell retail memberships to individuals to receive coaching, personal training and/or other exercise services, including but not limited to boxing and mixed martial arts.

Defendants hired Emmanuelli Adzoh (“Plaintiff”) in or about October 2021 to provide training and coaching to their clients at their location in Costa Mesa, California. Plaintiff worked as Personal Trainer and Mixed Martial Arts Coach. However, Defendants manipulated the schedule as well as Plaintiff’s time records so that Plaintiff would not receive payment for time worked.

Defendants required Plaintiff to obtain his coaching certification at the outset of his employment. This entailed traveling to the UFC Gym location in La Mirada, California, for a week to attend the courses. While Defendants paid Plaintiff for the time he spent on-site at La Mirada, they did not pay him for the additional travel time nor the excess mileage.

Further, Defendants’ place of business in Costa Mesa was chronically understaffed, which resulted in Plaintiff routinely working shifts longer than 8 hours per day without receiving legally-required overtime compensation. Defendants altered Plaintiff’s timecards to make it appear as though the hours were worked on different days to avoid paying overtime. This was untruthful and inaccurate.

While working these extended shifts, which were in excess of ten (10) hours in duration, Defendants failed to provide Plaintiff with either first and/or second off-duty, uninterrupted 30-minute meal periods. Plaintiff was routinely required to work through his meal periods and/or to remain on-site.

Similarly, Defendants did not provide with Plaintiff with his off-duty rest periods as required by law.

Defendants also required Plaintiff to be present at its fighting competitions, and/or to compete in those events, without compensation.

In addition to his coaching duties, Defendants required Plaintiff to meet certain sales quotas for UFC merchandise sold on-premises. If Plaintiff was unable to sell the required amounts, he was pressured by Defendants to purchase the merchandise himself at his own expense. Defendants also promised to pay Plaintiff commissions for signing up new members, but they failed to do this as well.

Furthermore, Defendants failed to reimburse Plaintiff for necessary equipment to perform his job duties, including use of his personal cellular telephone.

Finally, Defendants did not pay Plaintiff for all wages due and owing at the time of his termination of employment.

Legal Contentions

Plaintiff is informed and believes, and thereon alleges that his experience is typical of all similarly situated employees working for Defendants in California during the relevant statutory time period beginning one year prior to the filing of his pending civil complaint against Defendants, Orange County Superior Court case number 30-2023-01305371-CU-OE-CXC.

Defendants' unlawful conduct includes, but is not limited to:

- Failing to pay for all hours worked at either their regular rate of pay or the applicable minimum wage in violation of California Labor Code §§ 201, 202, 203, and 204;
- Failing to pay mandatory overtime, and/or double time wages in violation of California Labor Code §§ 510, 1194(a), and 1198;
- Failing to provide employees with mandatory meal periods in violation of California Labor Code §§ 226.7 and 512(a);
- Failing to provide employees with mandatory rest breaks in violation of California Labor Code § 226.7;
- Failing to pay one (1) hour of wages to employees who are not provided with legally compliant meal periods and rest breaks;
- Failing to provide employees with accurate and complete wage statements in violation of California Labor Code section 226(a);
- Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of all hours worked in violation of California Labor Code § 1174(d);
- Failing to reimburse employees for necessary business expenses incurred in direct consequence of the discharge of their job duties in violation of California Labor Code § 2802; and
- Failing to pay all wages due at termination in violation of California Labor §§ 201, 202, and 203.

Based on the above, Plaintiff hereby puts Defendants on Notice, and hereby exhausts his administrative requirements under the California Private Attorneys Act, Labor Code §§ 2699

et seq., with regard to the above legal claims, both on his behalf and on behalf of all other aggrieved employees.

By this letter, Plaintiff notifies the California Labor and Workforce Development Agency of the above violations. Plaintiff reserves the right to bring any legal claims not specifically identified within this letter, but arising from the facts stated herein.

Sincerely,

A handwritten signature in dark ink, appearing to read 'D. Messiha', written in a cursive style.

Dominic J. Messiha, Esq.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, over the age of eighteen years, and not a party of the within action. My business address is: 11601 Wilshire Blvd., Suite 500 Los Angeles, CA 90025

On March 30, 2023, I served the foregoing documents described as:

PLAINTIFF'S LWDA NOTICE UNDER LABOR CODE SECTION 2699 et seq.

On the interested parties in this action as follows:

Lonnie D. Giamela E-Mail: lgiamela@fisherphillips.com Areen Babajanian E-Mail: ababajanian@fisherphillips.com FISHER & PHILLIPS LLP 444 South Flower Street, Suite 1500 Los Angeles, California 90071 COUNSEL FOR UFC GYM and U GYM LLC	
---	--

 X BY EMAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the documents to be sent from the email address Dominic@MessihaLegal.com to the persons at the email addresses listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 30, 2023 at Los Angeles, California



Dominic J. Messiha



fisherphillips.com

May 2, 2023

Los Angeles
444 South Flower Street
Suite 1500
Los Angeles, CA 90071

(213) 330-4500 Tel
(213) 330-4494 Fax

Writer's Direct Dial:
213-402-9577

Writer's E-mail:
ababajian@fisherphillips.com

VIA ONLINE SUBMISSION TO LWDA

California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue
San Francisco, California 94102

Re: *Notice Letter of Emmanuelli Adzoh;*
LWDA Case No.: LWDA-CM-945409-23

Dear PAGA Administrator and Counselor:

Please be advised that Fisher & Phillips LLP represents U Gym LLC dba UFC Gym (the "Company") with respect to the above-captioned matter. Please direct all further correspondence regarding this matter to our attention.

This responds to the March 30, 2023, Notice Letter which Empower Law PC submitted to the LWDA regarding Emmanuelli Adzoh ("Claimant") and his intention to pursue penalties against the Company under California's Private Attorney General Act ("PAGA") codified in Labor Code sections 2699 *et. seq.*, against the Company for its purported failure to comply with California's wage and hour laws. A copy of the March 30, 2023 Letter is attached hereto as **Exhibit "A."**

The ostensible purpose of the March 30, 2023 Letter was to satisfy administrative requirements of PAGA so that Claimant can pursue a claim against the Company and attempt to recover penalties authorized under PAGA. Claimant's March 30, 2023 Letter fails to satisfy the administrative requirements of PAGA, which are set forth in California Labor Code section 2699.3(a). Pursuant to section 2699.3(a), a plaintiff must provide both the employer and the LWDA "the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Emphasis added.) In interpreting this provision, courts have explained that "the Ninth Circuit requires an exceedingly detailed level of specificity for Section 2699.3(a)(1) to be satisfied." *Soto v. Castlerock Farming and Transport, Inc.*, No. CIV-F-09-0701, 2012 WL 1292519 at *8 (E.D. Cal. Apr. 16, 2012) (citing *Archila v. KFC U.S. Props., Inc.*, 420 Fed. Appx. 667, 699 (9th Cir. 2011)). In both *Soto* and *Archila*, the courts noted that LWDA letters lacking specific factual allegations are insufficient to exhaust the administrative requirements of PAGA because such letters do not adequately describe the "facts and theories" that serve as the basis of the purported PAGA violation. See *Soto*, 2012 WL 1292519 at *8.

Fisher & Phillips LLP

Atlanta • Baltimore • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Detroit • Fort Lauderdale • Gulfport • Houston
Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • Nashville • New Jersey • New Orleans • New York • Orlando • Philadelphia
Phoenix • Pittsburgh • Portland • Sacramento • San Diego • San Francisco • Seattle • Tampa • Washington, DC • Woodland Hills

California Labor & Workforce Development Agency
PAGA Administrator
May 2, 2023

Here, Claimant's March 30, 2023 Letter fails to identify sufficient facts to allow the Company to conduct an investigation into their claims and cure any alleged violations of wage and hour laws. Among other deficiencies, Claimant fails to include sufficient information to enable the Company to identify the other allegedly "aggrieved employees." Claimant generally alludes to "aggrieved employees," but fails to define them and instead merely states that he has exhausted his administrative requirements "with regard to the above legal claims, both on his behalf and on behalf of all other aggrieved employees." This ambiguous, unspecific language precludes the Company from curing, investigating, or responding to Claimant's allegations.

Moreover, Claimant has not stated the number of potential violations, the dates and times of the violations, or any other information that would allow the Company to calculate an amount for which it could resolve any alleged deficiencies. There is no allegation as to how any alleged aggrieved employee's experience are similar to that of Claimant. Furthermore, Claimant has not identified the number of days he or other allegedly aggrieved employees were purportedly not properly paid all amounts earned or how many days they had to wait after alleged discharge until they received their earned wages, which would enable the Company to calculate the amount of waiting time penalties Claimant is seeking. Even more, Claimant has not identified the alleged paystub or record-keeping deficiencies in a meaningful way. Claimant even fails to define the relevant time period, adding to the Company's inability to investigate these allegations.

Based on the Claimant's failure to comply with the administrative requirements of PAGA, we submit this letter to request that the LWDA notify Claimant and his counsel that Claimant lacks standing to pursue a representative action against the Company. Alternatively, we submit this letter to request that the LWDA require Claimant to provide additional information to support his administrative complaint and to preserve the Company's defenses in any subsequent civil complaint that may be filed.

Please do not hesitate to contact us with any questions you may have.

Very Truly Yours,



Areen Babajanian
For FISHER & PHILLIPS LLP

AB:nl
Attachment

cc: Dominic J. Messiha, Esq. (dominic@messihalegal.com)
Ariel D. Weindling (ariel@empower.law)

EXHIBIT A

March 30, 2023

Filed Online

California LWDA
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

U Gym LLC
c/o CSC
2710 Gateway Oaks Drive
Suite 150
Sacramento CA 95833

UFC Gym LLC
U Gym LLC
c/o Lonnie D. Giamela
Areen Babajanian
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500

Re: Violations of California Labor Code And Private Attorneys General Act ("PAGA")
California Labor Code §§ 2699 et seq.

To Whom It May Concern,

This office represents Mr. Emanueli Adzoh, a former employee of UFC Gym and U Gym LLC ("Defendants"). Please direct all future correspondence regarding this matter to the undersigned.

The purpose of this Notice is to comply with the statutory exhaustion requirements of Labor Code § 2699.3 prior to commencing an action pursuant to Labor Code § 2699, et seq. alleging violations of, *inter alia*, Labor Code §§ 201-204 inclusive, 226(a), 226.7, 510, 512(a), 1174(d), 1194(a), 1198, and 2802 as well as any additional Labor Code or regulatory violations that are like or reasonably related to these violations and/or which may be uncovered through future discovery and investigation.

Empower Law PC
11601 Wilshire Boulevard, Suite 500
Los Angeles, CA 90025

Tel: 310.235.1447
www.empower.law

Factual Statement

Defendants operate one or more fitness centers which sell retail memberships to individuals to receive coaching, personal training and/or other exercise services, including but not limited to boxing and mixed martial arts.

Defendants hired Emmanuelli Adzoh (“Plaintiff”) in or about October 2021 to provide training and coaching to their clients at their location in Costa Mesa, California. Plaintiff worked as Personal Trainer and Mixed Martial Arts Coach. However, Defendants manipulated the schedule as well as Plaintiff’s time records so that Plaintiff would not receive payment for time worked.

Defendants required Plaintiff to obtain his coaching certification at the outset of his employment. This entailed traveling to the UFC Gym location in La Mirada, California, for a week to attend the courses. While Defendants paid Plaintiff for the time he spent on-site at La Mirada, they did not pay him for the additional travel time nor the excess mileage.

Further, Defendants’ place of business in Costa Mesa was chronically understaffed, which resulted in Plaintiff routinely working shifts longer than 8 hours per day without receiving legally-required overtime compensation. Defendants altered Plaintiff’s timecards to make it appear as though the hours were worked on different days to avoid paying overtime. This was untruthful and inaccurate.

While working these extended shifts, which were in excess of ten (10) hours in duration, Defendants failed to provide Plaintiff with either first and/or second off-duty, uninterrupted 30-minute meal periods. Plaintiff was routinely required to work through his meal periods and/or to remain on-site.

Similarly, Defendants did not provide with Plaintiff with his off-duty rest periods as required by law.

Defendants also required Plaintiff to be present at its fighting competitions, and/or to compete in those events, without compensation.

In addition to his coaching duties, Defendants required Plaintiff to meet certain sales quotas for UFC merchandise sold on-premises. If Plaintiff was unable to sell the required amounts, he was pressured by Defendants to purchase the merchandise himself at his own expense. Defendants also promised to pay Plaintiff commissions for signing up new members, but they failed to do this as well.

Furthermore, Defendants failed to reimburse Plaintiff for necessary equipment to perform his job duties, including use of his personal cellular telephone.

Finally, Defendants did not pay Plaintiff for all wages due and owing at the time of his termination of employment.

Legal Contentions

Plaintiff is informed and believes, and thereon alleges that his experience is typical of all similarly situated employees working for Defendants in California during the relevant statutory time period beginning one year prior to the filing of his pending civil complaint against Defendants, Orange County Superior Court case number 30-2023-01305371-CU-OE-CXC.

Defendants' unlawful conduct includes, but is not limited to:

- Failing to pay for all hours worked at either their regular rate of pay or the applicable minimum wage in violation of California Labor Code §§ 201, 202, 203, and 204;
- Failing to pay mandatory overtime, and/or double time wages in violation of California Labor Code §§ 510, 1194(a), and 1198;
- Failing to provide employees with mandatory meal periods in violation of California Labor Code §§ 226.7 and 512(a);
- Failing to provide employees with mandatory rest breaks in violation of California Labor Code § 226.7;
- Failing to pay one (1) hour of wages to employees who are not provided with legally compliant meal periods and rest breaks;
- Failing to provide employees with accurate and complete wage statements in violation of California Labor Code section 226(a);
- Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of all hours worked in violation of California Labor Code § 1174(d);
- Failing to reimburse employees for necessary business expenses incurred in direct consequence of the discharge of their job duties in violation of California Labor Code § 2802; and
- Failing to pay all wages due at termination in violation of California Labor §§ 201, 202, and 203.

Based on the above, Plaintiff hereby puts Defendants on Notice, and hereby exhausts his administrative requirements under the California Private Attorneys Act, Labor Code §§ 2699

et seq., with regard to the above legal claims, both on his behalf and on behalf of all other aggrieved employees.

By this letter, Plaintiff notifies the California Labor and Workforce Development Agency of the above violations. Plaintiff reserves the right to bring any legal claims not specifically identified within this letter, but arising from the facts stated herein.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Messiha". The signature is fluid and cursive, with a large initial "D" and a stylized "M" and "I" followed by a long horizontal stroke.

Dominic J. Messiha, Esq.