

CONFIDENTIAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT

This Confidential Settlement And Release Of All Claims Agreement (the “Agreement”) is entered into by Jesus Gamboa-Acosta (“Gamboa”), on the one hand, and PVH Retail Stores LLC (“PVH” or the “Company”), on the other hand. Gamboa and PVH are sometimes collectively referred to as the “Parties” in this Agreement.

RECITALS

A. Gamboa worked for PVH as a Sales Associate in a retail store in San Ysidro (San Diego) for approximately nine years, until Plaintiff resigned from his employment in November 2021.

B. On May 2, 2022, Gamboa instituted a civil action in San Diego Superior Court entitled *Jesus Gamboa-Acosta v. PVH Retail Stores LLC*, Case No. 37-2022-00016377-CU-OE-CTL. On June 3, 2022, PVH removed the action to the U.S. District Court for the Southern District of California, Case No. 22-cv-0818-LAB-WVG (the “Action”), where it remains pending. Gamboa’s complaint in the Action asserted class and representative claims on behalf of himself and all nonexempt current and former employees of PVH in California within the prior four years, for: (1) recovery of allegedly unpaid minimum wages and liquidated damages, (2) failure to provide meal periods or compensation in lieu thereof, (3) failure to provide accurate wage statements, (4) waiting time penalties, (5) violation of unfair competition law (Bus. & Prof. Code § 17200), and (6) violation of Private Attorneys General Act (PAGA), Labor Code §§ 2698 et seq.

C. PVH denied and continues to deny all of Gamboa’s allegations in the Action. Among other reasons, PVH asserted that Gamboa’s class and PAGA claims are baseless and cannot be maintained for multiple reasons, including but not limited to PVH’s contention that its wage and hour practices are fully compliant with California law, and the claims in the Action are barred in large part by a prior class/PAGA settlement in which Gamboa participated, entitled *Alysha Freeze v. PVH Retail Stores LLC*.

D. On August 26, 2022, the Parties participated in an early neutral evaluation conference (ENE) with Magistrate Judge Gallo. The Court continued the ENE to October 3, 2022 and ordered the Parties to provide time and pay records for Gamboa and to share their respective expert findings regarding Gamboa’s individual time and pay records. Following this exchange of information, the Parties engaged in settlement negotiations and have now agreed to resolve any and all claims Gamboa may have against the Released Parties defined herein, including those that arise out of or are in any way related to his employment with the Company or that otherwise relate to the Action. For that reason, the Parties enter into this Agreement.

AGREEMENT

In consideration of the recitals listed above, and the mutual promises contained in this Agreement, and for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. The Parties' Responsibilities

a. Dismissal of Action and Approval of PAGA Settlement: As ordered by the Court (ECF Dkt No. 16) following the filing by the Parties of the Joint Notice of Settlement (ECF Dkt No. 15), the Parties shall file a joint motion to dismiss the Action in its entirety. The joint motion shall request that the Court (i) approve the terms of this Agreement with respect to the dismissal of the PAGA claims in the Action only and (ii) dismiss Gamboa's PAGA claims and claims under the California Labor Code and the UCL, with prejudice as to Gamboa and without prejudice as to the Labor and Workforce Development Agency (LWDA) or any other potentially aggrieved employees or putative class members as defined in the operative complaint. At the time the Parties file their joint motion, they shall lodge this Agreement for the Court's review. Further, on or around the same day that the Parties file their joint motion, PVH shall provide to the LWDA a redacted copy of the documents submitted to the Court, and such documents shall be redacted to preserve confidentiality and redact terms unrelated to PAGA, in compliance with California Labor Code § 2699(l)(2). Within a reasonable period of time not to exceed 20 calendar days after the Court enters an Order approving the Parties' Agreement and dismissing the Action in its entirety, PVH shall submit a copy of the Court's Order to the LWDA in compliance with California Labor Code § 2699(l)(3).

b. W-9 Forms. Promptly after signing this Agreement, Gamboa and his counsel each shall provide to PVH's counsel a completed W-9 form.

c. Settlement Payment. Within 45 days following the Effective Date of this Agreement, and on the condition that Gamboa comply with the terms of this Agreement (which includes delivering the W-9 form identified in Section 1(b)), and on the condition that the Court enters the orders approving this Agreement and dismissing the Action in its entirety as specified in Section 1(a), PVH shall pay to Gamboa the total gross amount of [REDACTED] (the “Settlement Payment”), which will be subject to withholdings pursuant to the allocation detailed in Section 1(d), below.

d. **Allocation of Settlement Payment.** The Parties agree that

50.00 of the Non-Wage Allocation to be allocated for satisfaction of Gamboa's PAGA claim (the "PAGA Allocation"). Pursuant to the PAGA, 75% of the PAGA Allocation (\$37.50) will be paid to the LWDA ("LWDA Payment") and 25% (\$12.50) will be paid to Gamboa. PVH will remit the LWDA Payment directly to the LWDA.

[REDACTED] Gamboa and his counsel acknowledge that PVH will not withhold any taxes from the Non-Wage Allocation or the Fee Allocation, shall issue a Form 1099 or other appropriate tax form consistent with the classification of that portion of the Settlement Payment, and shall issue such additional forms as any federal, state, or local taxing authority shall subsequently require. Gamboa agrees that PVH and its counsel have made no representations regarding the proper tax treatment of the Settlement Payment or any of the allocations of the Settlement Payment. Gamboa further acknowledges that some or all of the Settlement Payment may be reclassified as taxable income by federal, state, or other taxing authorities, notwithstanding the terms of this Agreement. Accordingly, Gamboa agrees that he shall be solely responsible for paying any taxes and penalties attributable to Gamboa that may be payable on the Settlement Payment. Additionally, Gamboa agrees that he shall defend, indemnify, and hold PVH and the Released Parties, (defined below) harmless from any claims, demands, actions, causes of action, losses, costs, attorneys' fees, penalties, or expenses arising from any reclassification of the Settlement Payment as taxable income; provided, however, that PVH shall notify Gamboa of any such reclassification within a reasonable period of time.

e. The Parties agree that the payment of the Settlement Payment, together with the promises contained in this Agreement, shall fully compensate Gamboa for any claims he has or has ever had against PVH and any of the Released Parties. The Parties further agree that, except as expressly set forth herein, they shall bear their own costs and attorneys' fees with respect to the Claims (defined below) encompassed by this Agreement.

2. Release and Covenant Not to Sue.

a. Gamboa, for himself and for his heirs, assignees, executors, administrators, agents, and successors, past and present (collectively, the "Gamboa Affiliates"), fully and without limitation releases, covenants not to sue, and forever discharges PVH and its respective assignees, parent corporations, subsidiaries, divisions, affiliated corporations, affiliated partnerships, trustees, directors, officers, employees, shareholders, partners, agents, attorneys, consultants, insurance carriers, plan administrators, assignees, executors, administrators, predecessors and successors, past and present (collectively, the "Released Parties"), both individually and collectively from any rights, claims, demands, liabilities, actions, causes of action, and grievances whether in law or in equity, suits, damages, losses, attorneys' fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected ("Claims"), that Gamboa or the Gamboa Affiliates now have, or may ever have had, against PVH, or the Released Parties that arise out of, or are in any way related to: (i) Gamboa's employment by PVH, including his separation from PVH; (ii) all of the facts, claims, contentions, and allegations asserted by Gamboa in the Action, including in the complaint Gamboa has filed in the Action and the notice Gamboa submitted to the LWDA; and (iii) any acts or omissions by PVH or any of the Released Parties occurring before Gamboa executes this Agreement.

b. Without limiting the foregoing, Gamboa agrees that the foregoing release provisions waive Claims he may have under any federal or state employment discrimination law, including without limitation any Claims he may have under the California Fair Employment and Housing Act; the California Family Rights Act; the Family and Medical Leave Act; Title VII of

the Civil Rights Act of 1964; the Americans with Disabilities Act; the Age Discrimination in Employment Act; as well as Claims arising out of or related to violations of any other state or federal law, rule, or regulation including the California Labor Code (including without limitation any penalties or claims under PAGA, California Labor Code §§ 2698-2699.5), California's Wage Orders, the Employee Retirement Income Security Act and the California Business and Professions Code. The release of Claims also releases and waives Claims based on contract and any common law claims, including tort claims for intentional or negligent infliction of emotional distress, assault, battery or any other tort or unfair competition claim regardless of its nature.

c. Gamboa understands that by signing this Agreement and agreeing to the release of Claims, he is not waiving any right or claim that cannot be waived as a matter of law. Gamboa understands that the release of Claims does not prevent him from filing a charge with or participating in an investigation by a governmental administrative agency, including without limitation, the Equal Employment Opportunity Commission or comparable state or local agency; provided, however, that Gamboa hereby waives and right to receive any monetary award resulting from such a charge or investigation. Furthermore, nothing in this Agreement prohibits Gamboa from seeking and obtaining a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Exchange Act and nothing limits Gamboa's right to receive a statutory award for information provided to the SEC.

3. Release Provisions Applicable to Unknown Claims

Gamboa and his Affiliates acknowledge that they are aware of and familiar with the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party

Gamboa and his Affiliates waive any rights and benefits they may have under of California Civil Code section 1542, or the law of any other state or jurisdiction, or common law principle, to the same or similar effect.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Warranties and Representations

a. Gamboa represents and warrants that he has not assigned or transferred any interest in any Claim that he may have against any Defendant or any of the Released Parties. This provision may be pleaded as a defense, cross-complaint, counter-suit, cross-claim, or third-party complaint in any action involving any person or entity asserting that they received an assignment or transfer of any right related to any Claim from Gamboa, and does not require payment as a condition precedent to recovery by any Defendant or any of the Released Parties hereunder.

b. Gamboa and his counsel represent that no person or entity asserts any lien with respect to the Settlement Payment and that PVH shall not under any circumstances be obligated to make the Settlement Payment, or any portion thereof, payable to any other person, firm, or entity other than Gamboa, as provided in this Agreement.

c. Gamboa further represents, warrants and agrees that he has been paid all wages and he has been provided with all benefits that he contends are due and owing to him for services performed for any of the Released Parties through his separation from PVH, including any accrued, but unpaid vacation.

7. Successors and Assignees

This Agreement shall inure to the benefit of Gamboa's heirs, assignees, executors, administrators, and successors, and to the benefit of PVH and the Released Parties and their subsidiaries, divisions, and affiliated corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents, and employees, past and present.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Effective Date

The Effective Date of this Agreement is the date on which all of the following have occurred: (1) all Parties have signed it; (2) Gamboa has provided a completed W-9 form to PVH's counsel; and (3) the Court in the Action has issued an Order approving the PGA portion of this Agreement and dismissing the Action in its entirety as set forth in Section 1(a).

GAMBOA ACKNOWLEDGES THAT HE HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO ALL OF THE PROVISIONS IT CONTAINS. GAMBOA HEREBY EXECUTES THIS AGREEMENT VOLUNTARILY, WITH FULL UNDERSTANDING OF ITS CONSEQUENCES. GAMBOA FURTHER ACKNOWLEDGES AND UNDERSTANDS THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

The Parties have executed this Agreement on the dates indicated below.

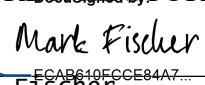
Dated: November , 2022
11 / 16 / 2022



JESUS GAMBOA-ACOSTA

Dated: November , 2022
11/17/2022 | 8:21 PM EST

PVH RETAIL STORES LLC

By: 
Mark Fischer

Agreed as to the confidentiality provision in
Section 5(a).

LAW OFFICES OF J. KIRK DONNELLY, APC

Dated: November 16 , 2022



J. Kirk Donnelly, Esq.