

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release of Claims (the "Agreement") is made and entered by and between Plaintiff Pedro Gutierrez ("Plaintiff") and Defendants Prime Healthcare Paradise Valley LLC ("PVH") and Prime Healthcare Services, Inc. ("PHS," and together with PVH, "Defendants") (Plaintiff and the Defendants are hereinafter collectively referred to as the "Parties").

RECITALS

A. WHEREAS, Plaintiff was employed by PVH from approximately June 2008 to February 24, 2016;

B. WHEREAS, Defendant PHS denies that it employed Plaintiff or any of the non-exempt employees of PVH, as Plaintiff and those non-exempt employees were employed by PVH;

C. WHEREAS, on or about April 13, 2016, Plaintiff filed a complaint against the Defendants PVH and PHS in the Superior Court for the County of San Diego, Case No.37-2016-00012222-CU-OE-CTL, alleging the following causes of action brought as a representative action under the Labor Code Private Attorneys General Act ("PAGA") on behalf of himself and non-exempt employees at PVH: (1) violations of the Labor Code governing meal and rest periods (Lab. Code §§ 226.7(b), 512(a)); (2) violations of the Labor Code governing minimum wages (Labor Code § 1197); (3) violations of the Labor Code governing overtime (Lab. Code § 510); (4) violations of the Labor Code governing wage statements (Labor Code § 226); (5) violations of Labor Code governing the reimbursement business expenses (Labor Code § 2802); and (6) violations of the Labor Code governing the payment of wages upon termination (Labor Code § 203) (the "Action");

D. WHEREAS, on or about September 23, 2016, Plaintiff filed a First Amended Complaint ("FAC") asserting the same causes of action, and which is the operative complaint in this Action;

E. WHEREAS, in April 2014, plaintiff Stephanie Ortega filed a putative class action entitled *Ortega v. Prime Healthcare Paradise Valley LLC*, case number 37-2014-00011240-CU-OE-CTL ("*Ortega*"). On June 20, 2014, Ortega filed a first amended complaint adding claims under PAGA for unpaid overtime, overtime/regular rate, meal and rest periods, waiting time penalties, and wage statement violations on behalf of non-exempt employees at PVH, which overlaps the PAGA claims in this Action. In November 2014, the Hon. Joan Lewis granted a motion to compel arbitration in *Ortega* and stayed the action's representative PAGA claims. The *Ortega* parties proceeded to arbitration before the Hon. Nancy Wieben Stock (Ret.) of JAMS, and recently resolved their disputes and intend to return to court to obtain approval of their PAGA settlement. The settled PAGA claims of PVH's non-exempt employees in *Ortega* overlap the PAGA claims and non-exempt employees in this Action, and the Parties agree that the settlement of PAGA claims in the *Ortega* action will resolve the PAGA claims of Plaintiff and the non-exempt employees in this Action;

F. WHEREAS, Defendants deny each and every one of Plaintiff's assertions in their entirety and deny that they have violated any law or legal or equitable obligation to Plaintiff or the non-exempt employees at PVH;

G. WHEREAS, through this Agreement, the Parties desire to settle fully and finally all known or unknown claims by Plaintiff individually, including but in no way limited to, those claims asserted in this Action, as well as any unasserted claims; and

H. WHEREAS, the Parties desire that the PAGA claims of the other non-exempt employees at issue in this Action will be resolved by the *Ortega* action.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the promises, covenants, and undertakings described below, and for other good and sufficient consideration, the Parties agree as follows:

1. Non-admission of Liability: The Parties agree that this Agreement and the fact that it was offered shall not in any way be construed as an admission by Defendants of any liability or any wrongdoing whatsoever.

2. Consideration: In consideration for the General Release of Claims by Plaintiff described below, Defendants agree that by no later than December 22, 2017, and provided the Defendant's counsel has received the following by November 29, 2017:

- a) this Agreement executed by Plaintiff and approved as to form by Plaintiff's counsel;
- b) an executed Request for Dismissal with Prejudice for this Action; and
- c) a completed and signed IRS W-9 form from Plaintiff and from Plaintiff's counsel, Sullivan Law Group, APC

Defendants will send to Plaintiff's counsel a settlement payment in the total amount of One Hundred Thirty-Five Thousand U.S. Dollars and Zero Cents (\$135,000.00) ("Settlement Payment"), in the form of three (3) checks as follows:

- a) one check in the gross amount of Seventeen Thousand Five Hundred U.S. Dollars (\$17,500), less applicable tax withholdings and deductions, allocated to "Pedro Gutierrez" and made payable to "Sullivan Law Group, APC Client Trust Account" for Plaintiff's claims for wages including minimum wages, overtime pay, premium pay, or for unpaid business expenses. Defendants will expedite the processing of this check and make their best effort to deliver this check to Plaintiff's counsel on or before December 15, 2017;
- b) one check in the amount of Seventeen Thousand Five Hundred U.S. Dollars (\$17,500) allocated to "Pedro Gutierrez" and made payable to "Sullivan Law Group, APC Client Trust Account" representing compensation for alleged claims for statutory penalties or interest. Defendants will expedite the processing of this check and make their best effort to deliver this check to Plaintiff's counsel on or before December 15, 2017; and

- c) one check in the amount of One-Hundred Thousand U.S. Dollars (\$100,000) made payable to "Sullivan Law Group, APC" representing payment for attorneys' fees and costs incurred by Plaintiff in this Action,

which entire payment shall constitute consideration for full, final, and complete settlement of Plaintiff's claims including, but not limited to, any claims for unpaid regular, minimum, overtime, premium, or other wages, statutory penalties, liquidated damages, business expenses, retaliation, wrongful termination in violation of public policy, emotional distress, punitive damages, unfair competition, and any other claims for damages, interest, attorney's fees, expenses, and costs which Plaintiff and/or his attorneys may have incurred. No PAGA penalties are being paid to Plaintiff as part of this Agreement. These payments shall be contingent on the Court approving this settlement and the dismissal of this Action.

Defendants will issue to Plaintiff an IRS Form W-2 for the allocation to his claims for wages and an IRS Form 1099 for the allocation to his non-wage compensation. Defendants will also issue an IRS Form 1099 to Sullivan Law Group, APC for attorneys' fees and costs.

Defendants and their counsel have not offered any advice or representations regarding the tax consequences, if any, of the Settlement Payment. Plaintiff and his counsel are solely responsible for the payment of their respective, individual share of taxes which are due by them as a result of their receipt of the Settlement Payment pursuant to the terms of this Agreement. Plaintiff agrees to indemnify and hold Defendants harmless from and against any damage or penalty incurred by Defendants as a result of any taxing authority assessing any tax or penalty upon Defendants as a consequence of any other tax being due and unpaid on Plaintiff's portion of the Settlement Payment. Likewise, Plaintiff's counsel agrees to indemnify and hold Defendants harmless from and against any damage or penalty incurred by Defendants as a result of any taxing authority assessing any tax or penalty upon Defendants as a consequence of any other tax being due and unpaid on Plaintiff's counsel's portion of the Settlement Payment.

Except as set forth above, each side shall bear their own attorneys' fees and costs.

3. General Release of Claims by Plaintiff: In consideration of the Settlement Payment by Defendants to Plaintiff as set forth herein, Plaintiff, for himself, his representatives, heirs, assigns, and/or any other person or entity asserting any interest through him, unconditionally, irrevocably, and absolutely releases and discharges Defendants, including Prime Healthcare Paradise Valley LLC and Prime Healthcare Services, Inc., and their respective parent and subsidiary corporations, divisions and affiliated corporations, insurers, partnerships, or other affiliates, past and present, as well as its shareholders, owners, employees, officers, directors, agents, servants, insurers, re-insurers, attorneys, contractors, successors, and assigns, past or present (collectively, "Released Parties"), from all claims related in any way to all transactions or occurrences involving them from the beginning of time to the date of this Agreement, to the fullest extent permitted by law, including, but not limited to, Plaintiff's employment with PVH, his separation of employment from PVH, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with Plaintiff's employment with PVH. Plaintiff understands and agrees that this Agreement releases any and all rights that he has to pursue any claim of any Labor Code violation including, but not limited to, any claim under the California Private Attorney General Act. This release is intended to have the broadest possible application and includes, but

is not limited to, any tort, contract, common law, constitutional or other statutory claims, including, but not limited to, alleged violations of the California Labor Code, the California Business and Professions Code, the California Fair Employment and Housing Act, the California Government Code, the California Family Rights Act, the California Confidentiality of Medical Information Act, the California Labor Code Private Attorney General Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Employee Retirement Income Security Act of 1974, the Americans with Disabilities Act, the Equal Pay Act, and the Family Medical Leave Act, as well as all wage claims, wrongful termination claims, discrimination claims, harassment claims, public policy claims, retaliation claims, statutory claims, emotional distress claims, defamation claims, and any and all other claims arising under any federal, state, or other governmental statute, law, regulation or ordinance, and all claims for attorneys' fees, costs and expenses. Plaintiff expressly waives his right to recovery of any type, including damages or reinstatement, in any administrative or court action, whether state or federal, and whether brought by Plaintiff or on Plaintiff's behalf, related in any way to the Released Parties. Plaintiff represents and acknowledges that he has asserted no claim against Defendants or any of the Released Parties under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621 *et seq.*, and he further admits and acknowledges that he is unaware of any facts establishing or suggesting that his age in any way affected any terms and conditions of his employment with PVH, and that any such claim is now time-barred.

Notwithstanding the foregoing, nothing in this Agreement bars any claims that, by statute, may not be waived. Moreover, nothing in this Agreement restricts or prohibits Plaintiff from initiating communications directly with, responding to any inquiries from, providing testimony before, providing information to, reporting possible violations of law or regulation to, accepting a whistleblower award from, or assisting with an investigation by, a federal government agency or entity, including the U.S. Equal Employment Opportunity Commission ("EEOC"), the Department of Labor ("DOL"), the National Labor Relations Board ("NLRB"), the Department of Justice ("DOJ"), the Securities and Exchange Commission ("SEC"), and any federal agency Inspector General (collectively, the "Regulators"), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation.

4. Knowing and Voluntary Waiver: The Parties represent that it is their intention in executing this document that this Agreement shall be effective as a bar to each and every claim, demand, suit, action, cause of action, and debt, hereinabove specified and not expressly excluded herein, and in furtherance of this intention, Plaintiff **EXPRESSLY WAIVES ANY AND ALL RIGHTS AND BENEFITS CONFERRED BY THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WHICH PROVIDES AS FOLLOWS:**

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding Section 1542 of the California Civil Code, Plaintiff expressly consents that this Agreement shall be given full force and effect according to each and all of its express terms and provisions including, as well, those relating to unknown and unspecified claims,

demands, suits, actions, causes of action and debts, if any, and those relating to any other claims, demands, suits, actions, causes of action and debts hereinabove specified.

5. Settlement Approval by the Court: To the extent that court approval of this settlement may be required, Plaintiff's Counsel shall prepare, file and serve a request for such approval.

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

7. No Obligations: Plaintiff acknowledges that the Settlement Payment described in Paragraph 2 above is not required by Defendants' policies, practices, and/or procedures. Thus, Plaintiff represents, warrants, and agrees that he is receiving consideration pursuant to this Agreement beyond that to which he is entitled.

8. Confidentiality: Plaintiff and his counsel covenant and agree that they will keep the terms and amount of this Agreement completely confidential and will not disclose any information concerning the terms of this Agreement, including any of the amounts paid pursuant to the terms of this Agreement, to any other person except if compelled by law or regulation, or as required to enforce the terms of this Agreement, or to Plaintiff's attorneys and tax advisors, or to Plaintiff's immediate family, provided that each such advisor or immediate family member to whom any information concerning this Agreement is disclosed first agrees to abide by the pledge of confidentiality in this Paragraph. Without limiting the generality of the foregoing, Plaintiff and his attorneys shall not respond to or in any way contribute to any discussion, notice, or other publicity concerning or in any way relating to the terms of this Agreement, except as required by law, and shall not disclose information concerning this Agreement to any current or former employee of Defendants. Notwithstanding this Paragraph, Plaintiff may state in response to inquiries that his claims against Defendants have been resolved. In the event any person seeks disclosure from Plaintiff of the settlement terms through legal or administrative proceedings, Plaintiff shall notify Defendants' counsel in writing, sent by facsimile or personal delivery, within five (5) business days of receipt of the legal instrument by which disclosure is sought. Plaintiff's counsel agrees not to disclose the fact or amount of the Settlement Payment to any third-party including, but not limited to, any non-Plaintiff current or former employee of Defendants, except to Plaintiff's counsel's financial advisors as necessary for tax, insurance, or accounting purposes.

Plaintiff expressly acknowledges that maintaining the confidentiality of this Agreement is a material term of the Agreement. Plaintiff further agrees that should Plaintiff or any of the individuals identified above in Paragraph 8 make disclosures prohibited by Paragraph 8, it may be difficult to specify or prove damages suffered by Defendants. Therefore, Plaintiff agrees that if he is proven to have breached this clause, he shall be required to pay to Defendants liquidated damages equal to Five Thousand U.S. Dollars (\$5,000.00) per proven breach of Paragraph 8, plus Defendants' attorneys' fees and costs, and Defendants shall have the right to obtain an injunction restraining any such breach.

9. Dismissal of Complaint with Prejudice: Plaintiff agrees to authorize his attorney to execute a Request for Dismissal With Prejudice of his claims in this Action and provide said

executed Request for Dismissal With Prejudice to attorneys for Defendants on or before the Effective Date.

10. No Other Pending Claims: Plaintiff represents that he has not filed or otherwise presented any other claims, complaints, charges, arbitration claims, or lawsuits of any kind whatsoever with any court, governmental agency, other regulatory body, or arbitration tribunal with respect to any matter related to Defendants, or arising out of his employment, or termination from employment, with PVH.

11. Resolution of Disputed Wages: Plaintiff acknowledges that, prior to his receipt of the payment provided for in this Agreement, he has been paid any and all wages and business expenses that PVH concedes are due to him. Plaintiff acknowledges that the payment he is receiving in this Agreement is to settle a bona fide dispute between the Parties as to whether any regular pay, minimum wages, overtime pay, premium pay, or other wages, damages, or statutory penalties are due to him. Plaintiff acknowledges that Section 206.5 of the California Labor Code is therefore not violated by this Agreement.

12. No Representation: Plaintiff represents and acknowledges that in executing this Agreement he does not rely and has not relied on any representation or statement by the Released Parties or by any of the Released Parties' agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement, other than what is stated in this Agreement.

13. No Future Employment: Plaintiff understands and agrees that his employment with Defendants has been permanently terminated. Plaintiff represents and agrees that he will not apply for or otherwise seek re-employment or employment with Defendants, or any of its related parents, subsidiaries, or affiliates at any time in the future. Plaintiff further agrees that Defendants and/or its related entities will not be liable for not hiring Plaintiff in the future should he apply for employment in violation of this provision.

14. Non-Disparagement: Plaintiff agrees that he shall not make any disparaging statements or comments about Defendants and/or its operations, business, technologies, market position, employment policies and practices, employees (past and present), operations, and/or products or services, either as statements of fact or opinion.

15. No Assignment: Plaintiff represents that he has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, and Plaintiff agrees to indemnify, defend, and hold harmless the Released Parties against any and all disputes based on, arising out of, or in connection with any such transfer or assignment, or purported transfer or assignment, of any claims or any portion thereof or interest thereon.

16. Entire Agreement: This Agreement constitutes and contains the entire agreement and understanding between the Parties concerning the subject matters addressed herein, and supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matters hereof. This Agreement does not affect Plaintiff's and Defendants' previously executed Arbitration Agreement. Plaintiff represents and agrees that no promises, statements, or inducements have been made to him which caused him to sign this Agreement other than those which are expressly stated in this Agreement.

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

18. Modification: Except as provided in Paragraph 17 above, this Agreement may be amended, revoked, changed, or modified only upon a written agreement executed by all Parties. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged.

19. Consultation with Counsel: Plaintiff represents and certifies that he has carefully read and fully understands all of the provisions and effects of this Agreement and has discussed this Agreement with his counsel, Sullivan Law Group APC, and that he is voluntarily entering into this Agreement.

20. Governing Law: This Agreement is made and entered into in the State of California and shall be interpreted, enforced and governed under the laws of this State. Neither this Agreement nor anything contained in it shall be introduced in any proceeding except to enforce this Agreement or to prosecute or defend any claim relating to the subject matter of the release contained herein or as required by court order, subpoena, or other legal process.

21. Binding Effect: This Agreement shall be binding upon the Parties and their respective heirs, representatives, executors, administrators, successors, and assigns.

22. No Presumption: This Agreement shall be construed and interpreted as if all of its language were prepared jointly by Plaintiff and Defendants. No language in this Agreement shall be construed against a Party on the ground that such Party drafted or proposed that language.

23. Execution of Counterparts: This Agreement may be executed in counterparts, but shall be construed as if signed in one document. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original.

24. ADEA Waiver For Plaintiffs Over 40: Plaintiff acknowledges that he already has attained the age of 40 and understands that this is a full release of all existing claims, whether known or unknown, including, but not limited to, claims for age discrimination under the Age Discrimination in Employment Act. Plaintiff acknowledges that he has read and understands this Agreement and signed this Agreement voluntarily. Plaintiff further acknowledges that he has been advised to consult with an attorney of his choice before signing this Agreement, in which Plaintiff waives important rights, including those under the Age Discrimination in Employment Act.

(a) By executing this Agreement, Plaintiff also acknowledges that he has been afforded at least 21 calendar days to consider the contents, meaning and effect of this Agreement, as well as alternatives to signing this Agreement, and has taken advantage of that opportunity to the extent he wished to do so. Plaintiff agrees that the 21-day consideration period began on the date this Agreement was first delivered to Plaintiff and that the 21-day consideration period shall not be restarted and shall continue without interruption if the Parties change any of the terms of the offer contained in this Agreement, whether or not the changes are material.

(b) Plaintiff understands that the releases contained in this Agreement do not extend to any rights or claims that he has under the Age Discrimination in Employment Act that first arise after execution of this Agreement

(c) If Plaintiff signs this Agreement before the 21-day consideration period expires, the 7-day revocation period (described in sub-paragraph (d) below) immediately shall begin. If Plaintiff signs this Agreement before the 21-day consideration period expires, Plaintiff agrees that he knowingly and voluntarily accepted the shortening of the 21-day consideration period and that Defendants have not promised Plaintiff anything or made any representations that are not contained in this Agreement. In addition, if Plaintiff signs this Agreement before the 21-day consideration period expires, Plaintiff acknowledges and affirms that Defendants have not threatened to withdraw or alter the offer contained in the Agreement prior to the expiration of the 21-day consideration period.

(d) Plaintiff may revoke this Agreement for a period of 7 calendar days following the date Plaintiff executes this Agreement. Any revocation during this period must be submitted in writing and state, "I hereby revoke my acceptance of our Confidential Agreement and General Release of All Claims." The revocation must be personally delivered to John D. Hayashi, Morgan, Lewis & Bockius, LLP, 600 Antron Blvd., Suite 1800, Costa Mesa, CA 92626, within 7 calendar days of Plaintiff's execution of this Agreement. If the last day of the revocation period falls on a Sunday or legal holiday, then the revocation period shall not expire until the next day that is not a Sunday or legal holiday. The foregoing notwithstanding, this Agreement shall not become effective and enforceable until the 7-day revocation period has expired. Plaintiff understands that 7 days after the date of execution of this Agreement, the Agreement shall become effective and, as of that date, Plaintiff may not change his decision or seek any other remuneration in any form.

PLAINTIFF UNDERSTANDS AND ACKNOWLEDGES THAT HE HAS AT LEAST 21 CALENDAR DAYS TO REVIEW THIS AGREEMENT PRIOR TO EXECUTION OF THIS AGREEMENT. PLAINTIFF FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL 21 CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN THIS AGREEMENT ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT INTENDED TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS PLAINTIFF HAS OR MIGHT HAVE AGAINST THE RELEASE PARTIES AS OF THE EXECUTION OF THIS AGREEMENT.

PLEASE READ CAREFULLY: THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS

I have carefully read the entire Agreement and accept and agree to the provisions it contains and hereby execute it voluntarily and with full understanding of its consequences.

DATED: 11-30-, 2017

By: 
PEDRO GUTIERREZ

SIGNATURES CONTINUED ON NEXT PAGE

DATED: November 30, 2017

PRIME HEALTHCARE PARADISE VALLEY,
LLC

By: 
DONALD THOMPSON

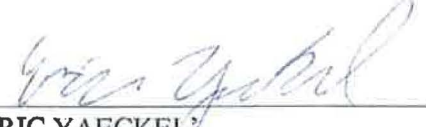
DATED: November 30, 2017

PRIME HEALTHCARE SERVICES, INC.

By: 
DONALD THOMPSON

APPROVED AS TO FORM:

DATED: Nov 30, 2017

By: 
ERIC YAECKEL
SULLIVAN LAW GROUP, APC
Attorneys for Plaintiff