

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Mario Javier Palacio, Jr. (“Plaintiff”) and defendant MTC Distributing (“MTC”). The Agreement refers to Plaintiff and MTC collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Mario Javier Palacio, Jr. v. MTC Distributing* and bearing Case No CV-21-004716 initiated on August 27, 2021 and pending in Stanislaus County Superior Court.
- 1.2. “Administrator” means Phoenix Settlement Administrators, 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 a person employed by MTC in California and classified as a non-exempt hourly employee who worked for MTC during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in MTC’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 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 Stanislaus.
- 1.8. “Defense Counsel” means Joshua B. Wagner of Gordon Rees Scully Mansukhani, LLP.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the day the Court enters Judgment.
- 1.10. “Gross Settlement Amount” means \$500,000.00 which is the total amount MTC 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, PAGA Representative Enhancement 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 Final Approval.
- 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: PAGA Representative Enhancement Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder will constitute the PAGA Penalties, as defined in Section 1.22 below.
- 1.16. "PAGA Counsel" means Samuel Wong, Kashif Haque, Jessica Campbell, and Kristy R. Connolly of Aegis Law Firm, PC, the attorneys representing the Plaintiff 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 MTC for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from August 27, 2020 to January 11, 2023.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. "PAGA Notice" means Plaintiff's August 27, 2021 letter to MTC and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (currently \$73,458.33) and 75% to LWDA (currently \$220,374.99) in settlement of PAGA claims.

- 1.23. "Plaintiff" means Mario Javier Palacio, Jr., the named plaintiff 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: MTC and each of its former and present directors, officers, shareholders, owners (expressly including Tom Eakin, Harbor Wholesale Grocery Inc., and Harbor Foods Group Inc.), members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "MTC" means named Defendant MTC Distributing. .

2. RECITALS.

- 2.1. On August 27, 2021, Plaintiff commenced this Action by filing a Class Action Complaint alleging causes of action against MTC for (a) Failure to Pay Overtime Wages; (b) Failure to Provide Meal Periods, (c) Failure to Permit Rest Breaks, (d) Failure to Provide Accurate Itemized Wage Statements, (e) Failure to Pay all Wages Due Upon Separation of Employment; and (e) Violation of Business and Professions Code §§17200, et. seq.

On November 10, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against MTC for (a) Failure to Pay Overtime Wages; (b) Failure to Provide Meal Periods, (c) Failure to Permit Rest Breaks, (d) Failure to Provide Accurate Itemized Wage Statements, (e) Failure to Pay all Wages Due Upon Separation of Employment, (e) Violation of Business and Professions Code §§17200, et. seq., and (f) Enforcement of Labor Code §2698 et. seq. ("PAGA").

On December 7, 2021, the Court entered an Order Granting Request for Dismissal of the Individual and Class Claims without Prejudice. As modified by the December 7, 2021 Order, the First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). MTC 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 alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to MTC and the LWDA by sending the PAGA Notice.

2.3. On January 10, 2023, the Parties participated in an all-day mediation presided over by Tripper Ortman which led to this Agreement to settle the Action. Prior to mediation, Plaintiff obtained, through informal discovery, MTC's payroll and time records for Aggrieved Employees.

2.4. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other 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, MTC promises to pay five hundred thousand dollars (\$500,000.00) and no more as the Gross Settlement Amount. MTC has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 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 MTC.

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 one-third of the Gross Settlement Amount which is currently estimated to be \$166,666.67 and PAGA Counsel Litigation Expenses Payment of not more than \$25,000.00. MTC will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for approval of 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. 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 MTC harmless, and indemnifies MTC, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To Plaintiff as PAGA Representative Enhancement Award: Plaintiff shall request not more than ten thousand dollars (\$10,000) in exchange for his release of individual claims and in service of his role as PAGA representative, which MTC shall not oppose.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$4,500.00 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 \$4,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$293,833.33 to be paid from the Gross Settlement Amount, with 75% (\$220,374.99) allocated to the LWDA PAGA Payment and 25% (\$73,458.34) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$73,458.34) 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, MTC estimates there are four hundred sixty-two (462) Aggrieved Employees who worked a total of 12,015 PAGA Pay Periods from August 27, 2020 through November 12, 2022.

4.2. Aggrieved Employee Data. Within 30 days, MTC will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' 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. MTC has a continuing duty to immediately notify PAGA Counsel if it discovers 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 MTC 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. MTC shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 21 days after MTC funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and the Plaintiff Representative Enhancement 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. A notice letter explaining why the check is being sent, in a mutually-agreed upon form that has been approved by the Court, in substantially the form that is attached hereto as "Exhibit A," will be included in the mailing of each Aggrieved Employee's Individual PAGA Payment check.

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 MTC 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 MTC fully funds the entire Gross

Settlement Amount, Plaintiff, the State of California, the Aggrieved Employees and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's 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. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by State of California and Aggrieved Employees:

The State of California and 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 ("Released Claims").

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 the 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 Plaintiff's Responsibilities. Plaintiff 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 Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its 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)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declaration, 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 is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the 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 Approval Order to the Administrator.

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 Settlement Administrators to serve as the Administrator and verified that, as a

condition of appointment, Phoenix Settlement Administrators 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, MTC estimates that, as of November 12, 2022 there were 462 Aggrieved Employees who worked 12,015 Pay Periods from August 27, 2020 to November 12, 2022. The settlement as negotiated contemplates a PAGA Pay Period count through date of mediation, or January 10, 2023. However, should the actual number of PAGA Pay Periods worked by the Aggrieved Employees exceed ten percent (10%) of this figure (i.e., 13,216 PAGA Pay Periods from August 27, 2020 to January 10, 2023), Defendant, at its sole and exclusive discretion, may elect to: (1) set the PAGA Period as of the date that the PAGA Pay Period count hits 12,015 PAGA Pay Periods; or (2) consent to have the Gross Settlement Amount increased by the percentage that the actual number of PAGA Pay Periods exceeds the permitted 10% cap of 13,216 PAGA Pay Periods.

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 and 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 MTC that any of the allegations in the Operative Complaint have merit or that MTC has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that MTC's 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, MTC reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest MTC 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 Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and MTC, 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 Plaintiff, PAGA Counsel, MTC 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 MTC 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, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from MTC unless, prior to the Administrator's payment of all Settlement Funds, MTC makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee 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 Plaintiff:

Samuel A. Wong
Kashif Haque
Jessica Campbell
Kristy Connolly
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Ste 100
Irvine, CA 92618
kconnolly@aegislawfirm.com
khaque@aegislawfirm.com

To MTC Distributing:

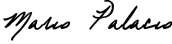
Joshua Wagner
Shiao-wen Huang
GORDON REE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
jwagner@grsm.com
shuang@grsm.com

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.

PLAINTIFF Mario Javier Palacio Jr.

DATED: 4/5/2023 | 5:21 PM PDT

DocuSigned by:

7F44217111B0493...
Mario Javier Palacio, Jr.

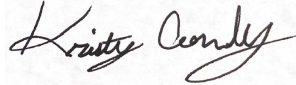
DEFENDANT MTC Distributing

DATED: _____

By: _____

APPROVED AS TO FORM AND CONTENT:

DATED: 4/5/2023

AEGIS LAW FIRM, PC

By: _____
Kashif Haque
Kristy R. Connolly
Attorneys for Plaintiff

DATED: _____

GORDON REES SCULLY MANSUKHANI, LLP
By: _____
Joshua B. Wagner
Attorneys for Defendant

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Address>>
<<City>> <<State>> <<Zip>>

Re: Individual PAGA Payment from *Mario Javier Palacio, Jr. v. MTC Distributing*.
Stanislaus County Superior Court, Case No. CV-21-004716

Exhibit 1

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<**amount of payment**>> (“Individual PAGA Payment”). This check is your payment from the settlement of a lawsuit entitled *Mario Javier Palacio, Jr. v. MTC Distributing*, Case No. CV-21-004716 (“Action”), pending in the Superior Court of California for the County of Stanislaus (“Court”).

The lawsuit was filed by Mario Javier Palacio Jr. (“Plaintiff”), a former employee of MTC Distributing (“Defendant”), on behalf of the State of California with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). Plaintiff alleged that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Orders by failing to properly pay all overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, provide accurate itemized wage statements, and timely pay all wages during employment and upon separation of employment. Defendant denies these allegations and denies any wrongdoing of any kind associated with these allegations.

A settlement was reached between Plaintiff and Defendant, on behalf of Plaintiff, the State of California, and the following Aggrieved Employees: persons employed by MTC in California and classified as a non-exempt hourly employee who worked for MTC at any time from August 27, 2020 to January 11, 2023.

On <<Approval Date>>, the settlement was approved by the Court, with a portion to be paid to the State of California and a portion to be paid to the Aggrieved Employees. You are receiving a portion of the settlement (the enclosed Individual PAGA Payment) because you have been identified as an Aggrieved Employee. Your Individual PAGA Payment is based on the total number of pay periods that you worked as a PAGA Employee during the period between August 27, 2020 to January 11, 2023. (“PAGA Period”). The Individual Settlement Check is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

By way of the settlement, you are deemed to fully release and forever discharge the Released Parties from the Released Claims. The “Released Parties” means MTC and each of its former and present directors, officers, shareholders, owners (expressly including Tom Eakin, Harbor Wholesale Grocery Inc., and Harbor Foods Group Inc.), members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. The “Released Claims” means and refers to 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 for the failure to properly pay overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, provide accurate itemized wage statements, and timely pay all wages during employment and upon separation of employment.

Your check is valid for 180 calendar days from the date of issuance, and if you do not cash, deposit, or otherwise negotiate the check within the 180-day timeframe, your Individual PAGA Payment will be cancelled and the funds will be transmitted to the State Controller’s Office Unclaimed Property Fund in the name of the PAGA Employee whose check is voided.

Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions concerning the settlement, you may contact the Settlement Administrator at <<INSERT CONTACT INFORMATION>>.