

## **PAGA SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

This Settlement Agreement and Release of PAGA Claims is made and entered into by and between Plaintiff Francisco Candelario, as an individual, representative for the State of California, and on behalf of other similarly situated Aggrieved Employees, and Defendant Mutual Trading Co., Inc., and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

### **A. Definitions.**

1. "PAGA Agreement" or "PAGA Settlement Agreement" shall mean this Settlement Agreement and Release of PAGA Claims, including any attached Exhibits.

2. "Aggrieved Employee(s)" means and refers to all current and former non-exempt employees employed by Defendant in California at any time during the Statutory Period. Defendant represents that as of the date it executes this PAGA Agreement, a total of approximately 250 Aggrieved Employees worked at least one Eligible Pay Period during the Statutory Period.

3. "Aggrieved Employees List" means a spreadsheet containing a list of all Aggrieved Employees including each Aggrieved Employee's: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked during the Statutory Period.

4. "Aggrieved Employees Settlement Proceeds" means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Aggrieved Employees.

5. "Complaint" (also referred to as the "PAGA Action") means and refers to the operative First Amended Representative Action Complaint in the case filed in the Superior Court, County of Los Angeles, entitled "Francisco Candelario vs. Mutual Trading Co., Inc.," Case No. 22STCV15301, which alleges PAGA claims for (1) Failure to Pay for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Reimburse Business Expenses; (7) Failure to Timely Pay Final Wages; and (8) Failure to Provide Accurate Itemized Wage Statements.

6. "Court" (or "Judge") means the California Superior Court, County of Los Angeles.

7. "Defendant" (or "MTC") means and refers to Mutual Trading Co., Inc., which does business in California.

8. "Defendant's Counsel" means and refers to Karl A. Schmidt, Gary Ganchrow, Joseph P. Wohrle, and Edzyl Magante of Parker, Milliken, Clark, O'Hara & Samuelian, a Prof. Corp.

9. "Effective Date" means the date the Court enters the Final Order.

10. "Eligible Pay Period" means any pay period during which an Aggrieved Employee worked in California during the PAGA Release Period.

**11.** “Final Order” refers to the order of the Court granting final approval of this PAGA Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.

**12.** “Gross Settlement Amount” or “Settlement Amount” is the sum of One Hundred Fifty Thousand Dollars and No cents (\$150,000.00), which represents the total amount payable under this PAGA Agreement by Defendant, and includes the Aggrieved Employees Settlement Proceeds payable to the Aggrieved Employees, the LWDA Settlement Proceeds payable to the Labor and Workforce Development Agency (“LWDA”), Court-Awarded attorneys’ fees (not to exceed \$50,000.00) and litigation costs (not to exceed \$20,000.00) to Plaintiff’s Counsel, and Settlement Administration Costs (not to exceed \$3,500.00).

**13.** “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency.

**14.** “Net Settlement Amount” is defined as the Settlement Amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) attorneys’ fees and litigation costs advanced by Plaintiff’s Counsel, and (b) Settlement Administration costs.

**15.** “Notice” means the notice that will be sent to the Aggrieved Employees with payment after the Final Order is entered by the Court. Attached hereto as Exhibit 1 is the Notice.

**16.** “PAGA” means the California Labor Code Private Attorney General Act, California Labor Code section 2698, *et seq.*

**17.** “Parties” or “Settling Parties” means Plaintiff, the Aggrieved Employees, and Defendant, collectively.

**18.** “Plaintiff” or “PAGA Representative” means Francisco Candelario.

**19.** “Plaintiff’s Counsel” is Kane Moon, Lilit Ter-Astvatsatryan, and Linh Tran of Moon Law Group, PC.

**20.** “Released Claims” or “PAGA Claims” means and refers to any and all rights and claims for civil penalties that were asserted or could have been asserted, assessed upon, or collected from the Released Parties by or on behalf of Plaintiff, the Aggrieved Employees, and/or the State of California under PAGA or the California Labor Code, based on the facts and violations alleged in the Complaint, including but not limited to the penalties sought in Plaintiff’s PAGA claims for: (1) Failure to Pay for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Reimburse Business Expenses; (7) Failure to Timely Pay Final Wages; and (8) Failure to Provide Accurate Itemized Wage Statements, which include claims for alleged violations of California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, 1197, 2699 and 2802 *et seq.*, and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order, arising during the Statutory Period.

**21.** “Released Parties” means Defendant and its past, present, and/or future officers, directors, shareholders, employees, agents, attorneys, parent companies, affiliated companies, subsidiaries, predecessors, successors, partners, joint venturers, and assigns.

**22.** “Release” shall mean the release and discharge of the Released Claims by Plaintiff and all of the Aggrieved Employees as provided for in paragraphs 36 and 37.

**23.** “Settlement Administrator” means and refers to Phoenix Class Action Administration Solutions, the third-party entity selected by the Parties who will administer the settlement, subject to approval by the Court, in accordance with this PAGA Settlement Agreement.

**24.** “Settlement Administration Costs” means the costs payable from the Settlement Amount to pay the Settlement Administrator for administering this Settlement.

**25.** “Statutory Period” or “PAGA Release Period” means any time during the period of May 7, 2021 through either March 26, 2024 or the date of the Final Order, at Defendant’s sole discretion.

**B. General.**

**26.** On May 8, 2022, Plaintiff gave written notice to the LWDA and Defendant of alleged violations of California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, and 2802, and/or applicable sections of the California Industrial Welfare Commission Wage Orders for wage and hour penalty claims. The LWDA did not assert jurisdiction over the claims. Plaintiff’s original class action complaint was filed on May 9, 2022, and the operative first amended complaint (“Complaint”) was filed on July 13, 2022, alleging the PAGA Claims. On June 5, 2023, the Parties commenced settlement discussions on the PAGA Action and Released Claims, as well as Plaintiff’s separate individual (non-PAGA) claims, with Tripper Ortman, Esq. The matter resolved globally under terms including a settlement of this PAGA Action and Plaintiff’s individual (non-PAGA) claims against Defendant.

**27.** The PAGA Action asserts representative PAGA Claims for civil penalties, including an award of reasonable attorney’s fees and costs, pursuant to PAGA, based on alleged predicate violations of California Labor Code §§ including, but not limited to, 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, 1197, 2699 and 2802 et seq., and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order.

**28.** The Parties agree that neither the Parties’ settlement, this PAGA Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the settlement and PAGA Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

**29.** Defendant denies all of the allegations in the Action, including all PAGA Claims, and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind and further denies that this PAGA Action is appropriate for PAGA representative treatment for any purpose other than settling this Action. Defendant has denied and continues to deny each and every material factual allegation and alleged claims asserted against it in the PAGA Action.

**30.** The Parties have conducted a thorough investigation into the facts of the PAGA Action. This included conducting extensive informal discovery, and exchanging information and documents relating to the Released Claims. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. The Parties desire to completely dispose of the Action by this PAGA Settlement Agreement and the separate Individual Settlement Agreement (as defined below). The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

**31.** In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

**C. Terms of Settlement.**

**32.** Subject to submission of this PAGA Settlement Agreement to the Labor and Workforce Development Agency by Plaintiff and subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire Action.

**33.** The financial terms of the settlement are as follows:

(a) **Gross Settlement Amount:** The Parties agree to settle this PAGA Action for the Gross Settlement Amount of \$150,000.00, which is inclusive of all settlement payments to the State of California and Aggrieved Employees; Plaintiff's Counsel's attorneys' fees and litigation costs, and Settlement Administrator costs, and represents the maximum that Defendant will be required to pay under this PAGA Agreement (excluding Plaintiff's separate Individual Settlement Agreement).

(b) **Net Settlement Amount:** The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as set forth in section (e) below.

(c) **Settlement Administrator Costs:** The costs associated with settlement administration (e.g., NOCA searches, preparing and mailing payments/notices to LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$3,500.00.

(d) **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid up to one-third of the Gross Settlement Amount as attorneys' fees (\$50,000.00), plus actual litigation costs not to exceed \$20,000.00 from the Settlement Amount. In the event the Court approves a payment of less than \$50,000.00 for attorneys' fees and/or less than \$20,000.00 for actual litigation costs, the difference will be a part of the Net Settlement Amount. Defendant agrees not to oppose any request by Plaintiff's counsel

for attorneys' fees under the common fund doctrine. The Settlement Administrator will report these payments on an IRS Form 1099 issued to Plaintiff's Counsel.

(e) **Allocation of Net Settlement Amount:** After deducting the amounts specified in items (c) and (d) from the Gross Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the LWDA and the Aggrieved Employees in the following proportion: 75% to the LWDA ("LWDA Settlement Proceeds") and 25% to the Aggrieved Employees ("The Aggrieved Employees Settlement Proceeds"). The Aggrieved Employees Settlement Proceeds will be distributed to the Aggrieved Employees on a *pro rata* basis according to the following formula:

- i. The Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Aggrieved Employees during the Statutory Period, and the resulting figure will be referred to as the "Divisor."
- ii. Each Aggrieved Employee's *pro rata* share of the Aggrieved Employees Settlement Proceeds will be determined by dividing the Eligible Pay Periods that each Aggrieved Employee worked by the Divisor and then multiplying the product by the Aggrieved Employees Settlement Proceeds. The product of the foregoing formula shall be referred to as the Aggrieved Employee's "Individual Share."

(f) **Taxes and Reporting:** Each Aggrieved Employee's Individual Share shall be treated as penalties (i.e., non-wage income) for all purposes and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities. No portion of the Aggrieved Employees Settlement Proceeds is or shall be construed as wages. Nothing in this PAGA Settlement Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations or legal requirements for attribution of settlement proceeds. Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns for tax purposes and paying all appropriate taxes due for any and all amounts paid to them under the settlement. Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel make no representations or warranties with respect to tax consequences of any payment under this PAGA Settlement Agreement, do not intend anything contained in this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this PAGA Settlement Agreement be relied upon as such.

To the extent that this PAGA Settlement Agreement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant, Defendant's Counsel, Plaintiff, and Plaintiff's Counsel are not responsible for any employee tax obligations arising out of the Aggrieved Employee's Individual Share.

**34.** The Parties agree that the settlement is fair and reasonable and will so represent to the Court. The Parties agree that should the Court deny approval of the settlement based on the allocation of the settlement amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the settlement.

**35. Escalator Clause:** Based on its records at the time of mediation, Defendant estimated that there were approximately 10,500 Eligible Pay Periods in the Statutory Period. In the event the actual count of Eligible Pay Periods during the Statutory Period increases by more than 15% from original estimate of 10,500 Eligible Pay Periods (i.e., by more than 1,575 Eligible Pay Periods, or in other words, if the Eligible Pay Periods during the Statutory Period exceed 12,075), Defendant must increase the Settlement Amount on a proportional basis equal to the percentage increase in the number of Eligible Pay Periods worked by all Aggrieved Employees during the Statutory Period above the 15% (i.e., if there was 20% increase in the number of Eligible Pay Periods during the Statutory Period, Defendant would agree to increase the Gross Settlement Amount by 5%).

**D. Release by Plaintiff and the Aggrieved Employees as to the PAGA Claims.**

**36.** Effective on the date when Defendant fully funds the Settlement Amount and except as to such rights or claims as may be created by this PAGA Settlement Agreement, Plaintiff, as an individual, representative for the State of California, and representative of the Aggrieved Employees, hereby forever completely releases and discharges Defendant of any and all of the Released Claims, and thus, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all Released Claims defined herein. The Parties understand and agree that this release does not otherwise impact the individual rights or claims of the Aggrieved Employees.

**37.** In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. In accordance with *Arias*, the Final Order shall be binding on the Aggrieved Employees as to the Released Claims, including the PAGA Claims.

**E. Separate Release and Individual Settlement by Plaintiff.**

**38.** In addition to this PAGA Agreement, Plaintiff has entered into a separate Confidential Settlement Agreement and General Release of Individual Claims (the “Individual Settlement Agreement”) with Defendant for all of his separate individual claims, including PAGA, arising out of his employment with Defendant, in exchange for a full release of those claims. The Parties acknowledge and agree that the Individual Settlement Agreement and the covenants, promises, and released claims contained therein shall not serve to modify or limit Plaintiff’s right and obligation to continue with this Action and seek the Court’s approval of this PAGA Settlement; however, Plaintiff shall have no right to be the representative of a class action lawsuit against Defendant. The Parties further agree that if for any reason the Effective Date does not occur with regard to this PAGA Settlement Agreement and/or the Final Order is not entered, then the Individual Settlement Agreement shall be null and void, whereupon Plaintiff and Plaintiff’s

Counsel shall return to Defendant all sums received under the Individual Settlement Agreement and Plaintiff's individual claims, including PAGA, shall not be deemed as released.

**F. Interim Stay of Proceedings.**

**39.** Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the PAGA Settlement Agreement.

**G. Settlement Approval and Implementation Procedures.**

**40.** Plaintiff's Counsel shall prepare a motion for approval of the settlement pursuant to California Labor Code § 2699(1)(2), advocating that the Settlement is fair, adequate, and reasonable, and Plaintiff's Counsel shall send a draft of the motion to Defendant's Counsel allowing sufficient time for review and revisions prior to filing. Plaintiff will then move the Court for approval of the PAGA Settlement Agreement, including the allocation of the Net Settlement Amount, Plaintiff's Counsel's attorneys' fees and costs, and Settlement Administrator costs, which Defendant will not oppose. Plaintiff's Counsel will serve the Motion on Defendant's Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the settlement. The Parties further agree to jointly request that the Court enter judgment, which will be mailed along with the Notice, and a draft of which is attached hereto as Exhibit 1.

**41.** The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, resolving any disputes regarding the calculation or application of the formula for determining the Individual Shares, drafting and mailing the settlement checks to Aggrieved Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. Any disputes relating to administration of the settlement by the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all payments and obligations contemplated by this PAGA Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Aggrieved Employees, and Plaintiff's Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this PAGA Agreement. The Settlement Administrator shall likewise be responsible for setting up all necessary tax accounts and forwarding all payments to the appropriate government authorities.

**42.** Upon the Court's entry of the Final Order, the Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel.

**43.** Within five (5) calendar days after the Effective Date, Defendant will send to the Settlement Administrator the Aggrieved Employees List. This information shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

**44.** The following payment plan will govern the payment of the Settlement Amount. On or before the Payment Due Date below, Defendant shall wire to the Settlement Administrator the amount owed for each payment, as approved by the Court and calculated by the Settlement Administrator:

| <b>Payment Number</b> | <b>Payment Due Date</b>           | <b>Amount</b>       | <b>Description of Payment</b>                                                                                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                     | 10 days after the Effective Date  | \$75,000.00         | This payment represents 25% of the Net Settlement Amount to be paid to the Aggrieved Employees (estimated to be \$19,125.00), and 73.04% of the Net Settlement Amount to be paid to the LWDA (estimated to be \$55,875.00).                                                                                                                 |
| 2                     | 274 days after the Effective Date | \$75,000.00         | This payment represents the remaining 1.96% of the Net Settlement Amount to be paid to the LWDA (estimated to be \$1,500.00), attorneys' fees awarded by the Court (estimated to be \$50,000.00), actual litigation costs awarded by the Court (not to exceed \$20,000.00), and Settlement Administration Costs (not to exceed \$3,500.00). |
|                       |                                   | <b>\$150,000.00</b> |                                                                                                                                                                                                                                                                                                                                             |

**45.** Within ten (10) days of receiving each wire transfer from Defendant, the Settlement Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's Counsel, and LWDA, as set forth in the payment plan herein. The settlement checks mailed to the Aggrieved Employees will be accompanied by the Notice letter explaining the payment and deadline to cash the check. The Notice to the LWDA shall comply with any legal requirements and be in compliance with the Final Order.

**46.** Aggrieved Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. The release nevertheless will be binding upon all Aggrieved Employees who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defendant's Counsel and Plaintiff's Counsel of the results. If a new address is located by these means, the Administrator will have ten

(10) business days to issue the check. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the California State Controller in the name of the Aggrieved Employee who did not cash the check from which the Aggrieved Employee may claim the funds. Neither Defendant, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks, or failure to timely cash a settlement check within the 180-day period.

**47.** Effective on the date when Defendant fully funds the Settlement Amount, Plaintiff and the Aggrieved Employees will: (i) be bound by the terms and conditions of this PAGA Agreement, and the releases set forth herein; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order; and (iii) be entitled to receive their respective Individual Share of the Net Settlement Amount, as set forth herein.

**48.** The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the PAGA Settlement Agreement and the Court's Final Order, within ten (10) business days of distributing all payments under the settlement. Plaintiff's Counsel will file the declaration with the Court and any required papers (i.e., amended Judgment) or as otherwise ordered by the Court. This PAGA Settlement Agreement is expressly conditioned upon the Court entering the Final Order and entry of judgment, thereby disposing of the Action in its entirety. The Final Order and entry of judgment will not release or bar any claims other than the Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

#### **H. Miscellaneous Provisions.**

**49. Voiding the PAGA Agreement:** The Court's refusal to enter a Final Order approving the Settlement and/or its making of a fundamental change of the Parties' settlement shall render the entire PAGA Settlement Agreement voidable and unenforceable as to all Parties herein at the option of either Party. If the Court does not approve the Settlement as described in this PAGA Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the further assistance of mediator Tripper Ortman to resolve any disputes.

**50. Waiver:** The waiver by one Party of any breach of this PAGA Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this PAGA Agreement.

**51. Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this PAGA Settlement Agreement and bind the Parties hereto to the terms and conditions hereof. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this PAGA Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this PAGA Settlement Agreement to effectuate its terms. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to

disclosure in any proceeding to enforce its terms, notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

**52. Mutual Full Cooperation:** The Parties agree to fully cooperate with each other in good faith to accomplish the terms of this PAGA Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this PAGA Settlement Agreement. The Parties to this PAGA Settlement Agreement shall use their best efforts, including all efforts contemplated by this PAGA Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this PAGA Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this PAGA Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

**53. No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this PAGA Settlement Agreement.

**54. No Admission:** Defendant denies any and all liability to Plaintiff and/or the Aggrieved Employees in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this PAGA Agreement.

**55. Binding Settlement:** Nothing contained herein, nor the consummation of this PAGA Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this PAGA Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This PAGA Settlement Agreement is intended to and shall be fully binding, enforceable, and subject to disclosure, including Evidence Code section 1123 and Code of Civil Procedure section 664.6.

**56. Enforcement Actions:** Except as otherwise provided in this PAGA Settlement Agreement, in the event that one or more of the Parties to this PAGA Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this PAGA Settlement Agreement or to declare rights and/or obligations under this PAGA Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

**57. Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly

given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Kane Moon  
Lilit Ter-Astvatsatryan  
Linh Tran  
Moon Law Group, PC  
1055 West Seventh Street, Suite 1880  
Los Angeles, California 90017  
Tel: (213) 232-3128; Ext. 214  
Email: kmoon@moonlawgroup.com  
lilit@moonlawgroup.com  
ltran@moonlawgroup.com

To Defendant:

Karl A. Schmidt  
Gary Ganchrow  
Joseph P. Wohrle  
Edzyl Magante  
Parker, Milliken, Clark, O'Hara & Samuelian, APC  
515 South Figueroa Street, 8th Floor  
Los Angeles, California 90071  
Tel: (213) 683-6539  
Fax: (213) 683-6669  
Email: kschmidt@pmcos.com  
gganchrow@pmcos.com  
jwohrle@pmcos.com  
emagante@pmcos.com

**58. Construction:** The Parties hereto agree that the terms and conditions of this PAGA Settlement Agreement are the result of lengthy, intensive arms' length negotiations among the Parties, and that this PAGA Settlement Agreement constitutes the entire agreement among Plaintiff and Defendant regarding actual or potential claims asserted by Plaintiff against Released Parties, except for the Individual Settlement executed by Plaintiff, which shall be construed to have been executed and effective concurrently herewith. This PAGA Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this PAGA Settlement Agreement. With the exception of the Individual Settlement, this PAGA Settlement Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. No other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. Plaintiff acknowledges that he has read this PAGA Settlement Agreement, that he fully understands his rights, privileges, and duties under the PAGA Settlement Agreement, and enters into this PAGA Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult

with his attorneys to explain the terms of this PAGA Settlement Agreement and the consequences of signing this PAGA Settlement Agreement.

**59. Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this PAGA Settlement Agreement or any provision hereof. Each term of this PAGA Settlement Agreement is contractual and not merely a recital.

**60. Modification:** This PAGA Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto or their successors-in-interest or counsel for all Parties, and approved by the Court. This PAGA Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

**61. Choice of Law:** This PAGA Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

**62. Integration Clause:** This PAGA Settlement Agreement, together with the Individual Settlement Agreement, contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties each acknowledge and represent that no promise or representation not contained in this PAGA Settlement Agreement has been made to them, and acknowledge and represent that this PAGA Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and Released Claims.

**63. Successors.** This PAGA Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, trustees, executors, administrators, successors and assigns.

**64. Counterparts:** This PAGA Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed PAGA Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

**65. Jurisdiction:** The Parties agree that upon approval of this PAGA Settlement Agreement submitted to the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be



END OF DOCUMENT

# **Exhibit 1**

## **NOTICE OF PAGA ACTION SETTLEMENT**

*Francisco Candelario vs. Mutual Trading Co., Inc., Los Angeles County Superior Court Case No. 22STCV15301*

*This is not a solicitation by a lawyer. You are not being sued.*

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANT MUTUAL TRADING CO., INC. (“DEFENDANT”) DURING THE PAGA PERIOD (MAY 7, 2021 THROUGH [REDACTED] [EITHER MARCH 26, 2024 OR THE DATE OF THE FINAL ORDER, AT DEFENDANT’S DISCRETION]), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in a lawsuit entitled *Francisco Candelario vs. Mutual Trading Co., Inc., Los Angeles County Superior Court Case No. 22STCV15301* (the “Action”), asserting claims under the Labor Code Private Attorney General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The Settlement resolves the Action. The purpose of this Notice is to explain to you why you are receiving a portion of the Settlement proceeds.

### ***Who is affected by this proposed Settlement?***

The Court has designated for settlement purposes the following persons as “Aggrieved Employee(s),” who are entitled to a portion of the Settlement proceeds:

all current and former non-exempt employees employed by Defendant in California at any time during the Statutory Period.

The “Statutory Period” means any time during the period of May 7, 2021 through either March 26, 2024 or the date of the Final Order, at Defendant’s sole discretion.

According to Defendant’s records, you are one of the Aggrieved Employees.

### ***What is this case about?***

In the Action, Plaintiff Francisco Candelario (“Plaintiff”) asserted claims that Defendant violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

Defendant denied all liability and was confident it had strong legal and factual defenses to Plaintiff’s claims.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses. This Settlement is a compromise reached after good faith, arm’s-length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability by Defendant. The court approved the Settlement.

### ***What are the Settlement terms?***

Defendant will pay **\$150,000.00** (the “Gross Settlement Amount”) for: (a) payment of \$----- to the Labor and Workforce Development Agency (“LWDA”) as its 75% share of the net amount (after deducting attorneys’ fees, litigation costs, and settlement administration costs from the Gross Settlement Amount); (b) payment of \$----- to Aggrieved Employees as their 25% share of the net amount, (c) payment of attorney’s fees of **\$50,000.00** and litigation costs of **\$20,000.00**; and, (d) payment of administration costs of **\$3,500.00** to the Settlement Administrator.

Defendant will pay the Gross Settlement Amount in two installments: (1) \$75,000.00 due on [REDACTED] [10 days after the Effective Date], and (2) \$75,000.00 due on [REDACTED] [274 days after the Effective Date].

The settlement includes a full release by the Aggrieved Employees of any and all rights and claims for civil penalties that were asserted or could have been asserted, assessed upon, or collected from the Released Parties by or on behalf of Plaintiff, the Aggrieved Employees, and/or the State of California under PAGA or the California Labor Code, based on the facts and violations alleged in the Complaint, including but not limited to the penalties sought in Plaintiff’s PAGA claims for: (1) Failure to Pay for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Reimburse Business Expenses; (7) Failure to Timely Pay Final Wages; and (8) Failure to Provide Accurate Itemized Wage Statements, which include claims for alleged violations of California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, 1197, 2699 and 2802 *et seq.*, and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order, arising during the Statutory Period.

The Settlement Payments to you will be classified as other miscellaneous income and will be reported on IRS Form 1099-MISC, if required.<sup>1</sup> Your share was calculated based on the number of pay periods you worked for Defendant during the PAGA Period.

<sup>1</sup> One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors

All checks will remain valid and negotiable for one hundred eighty (180) days from the date of the check's issuance and will automatically be void if not cashed within that time. Uncashed checks will be sent to the California State Controller in the name of the Aggrieved Employee who did not cash the check, from which the Aggrieved Employee may claim the funds.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.**

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as to the tax consequences, if any, of your individual PAGA payment. Neither Plaintiff nor Defendant has made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).