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Attorneys for Plaintiff, Ricardo Gauna

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

RICARDO GAUNA, an individual, and on
behalf of all aggrieved employees,

Plaintiff,

vs.

MERCADO BUENOS AIRES, INC., a
California corporation; PAUL RODRIGUEZ,
an individual; and DOES 1 through 50
inclusive.

Defendants.

Case No. 21STCV38369

Assigned for all purposes to:
Hon. Stephanie M. Bowick
Dept.: 19

**DECLARATION OF DAVID
GREIFINGER IN SUPPORT OF COURT
APPROVAL OF PAGA SETTLEMENT
BY STIPULATION AND ORDER**

Complaint filed: October 18, 2021
Trial Date: None Set

I, David Greifinger, declare:

1. I am an attorney, licensed to practice in the State of California. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration, know them to be true, and could and would testify to those facts if called as a witness.

2. I am attorney for Plaintiff Ricardo Gauna in the above-captioned matter.

3. Attached to this declaration as Exhibit A is a true and correct copy of the parties' fully executed PAGA Settlement Agreement.

1 4. Attached to this declaration as Exhibit B is a true and correct copy of a firm
2 quote of \$4,250 for administering the PAGA settlement from CPT Group, a qualified class
3 action administrator.

4 5. Attached to this declaration is a true and correct copy of the April 26, 2021,
5 tolling agreement in this matter between the parties.

6 6. Defendants provided me access to confidential financial information for the
7 restaurant that employed the aggrieved employees in this case. The restaurant lost an
8 amount in the thousands of dollars in 2020 and has netted an amount in the thousands of
9 dollars to date in 2021, leaving a net of zero for the last 23 months.

10 7. I have spent 24.2 hours investigating and litigating this case. My hourly rate
11 is \$725. My associate, Calvin Marshall has spent 38.0 hours investigating and litigating this
12 case. His hourly rate is \$500. My lodestar to date is \$17,545 and Mr. Marshall's lodestar to
13 date is \$19,000. The total lodestar is \$36,545.

14 8. I have served the LWDA with notice of the parties' intention to settle, the
15 settlement agreement, and all supporting documents filed with the court by posting on the
16 LWDA's PAGA website.

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

19 DATED: February 17, 2022

20 *David Greifinger*
21 David R. Greifinger

Ex. A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICARDO GAUNA, an individual, and on
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PAGA SETTLEMENT AGREEMENT

Complaint filed: October 18, 2021
Trial Date: None Set

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California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or that could have been alleged to have been violated in the Action with respect to Aggrieved Employees based on the facts alleged in the Action, as well as the PAGA notice submitted by Plaintiff, during the Settlement Period.

10. “Settlement Period” means February 17, 2020, through the date of entry of the Order and Judgment.

TERMS

11. Gross Settlement Amount. In consideration for Plaintiff’s promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will pay Twenty Thousand Dollars (\$20,000) (“Gross Settlement Amount”) to settle the Action, which represents the total amount payable in this Settlement by Defendant, and includes all attorneys’ fees, litigation costs and expenses, Settlement Administration Costs, Service Awards, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendant.

12. PAGA Penalties Fund. The PAGA Penalties Fund of \$7,450 will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

12(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

12(b) To determine each Aggrieved Employee’s payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement Payment = 25% of PAGA Penalties Fund × [Pay Periods Worked by

Individual Aggrieved Employee During the Settlement Period ÷ Total Pay
Periods Worked by All Aggrieved Employees during the Settlement
Period].

13. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for attorneys' fees, and all out-of-pocket costs incurred and to be incurred by Plaintiff's Counsel in the Action (including out-of-pocket costs not otherwise provided by Code of Civil Procedure section 1033.5), the Parties agree that Defendant will pay Plaintiff's Counsel a total of Six Thousand Six Hundred Dollars (\$6,600) in attorneys' fees and Seven Hundred Dollars (\$700) in litigation costs and expenses ("Attorneys' Fees and Costs"). Any portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will be added to the PAGA Penalties Fund.

14. Service Award. In consideration for the time and effort expended by the Named Plaintiff is prosecuting the Action in obtaining this Settlement, the Named Plaintiff shall receive a service award of One Thousand Dollars (\$1,000) from the Gross Settlement Amount.

15. Settlement Administration Costs. The Parties will retain CPT Group, Inc. c/o Nick Day as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs of \$4,250 will be paid from the Gross Settlement Amount.

16. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment").

17. List of Aggrieved Employees. Within ten (10) calendar days after entry of the Order and Judgment, Defendant will provide Plaintiff's Counsel and the Settlement Administrator a complete list of all Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employee's full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods

1 during which each Aggrieved Employee worked during the Settlement Period; and any other relevant
2 information needed to calculate settlement payments.

3 18. Funding of the Settlement. Within ten (10) calendar days after entry of the Order and
4 Judgment (“Funding Date”), Defendant will deposit the Gross Settlement Amount into an interest-
5 bearing account at a federally insured banking institution to be established by the Settlement
6 Administrator. Within fourteen (14) calendar days of the Funding Date, the Settlement Administrator
7 will issue payments (including all accrued interest) to: (a) Aggrieved Employees; (b) the Labor and
8 Workforce Development Agency; (c) Plaintiff; (d) Plaintiff’s Counsel; and (e) itself. The Settlement
9 Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this
10 Settlement.

11 19. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
12 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
13 explanatory letter substantially in the form attached as Exhibit A. Prior to mailing, the Settlement
14 Administrator will perform a search based on the National Change of Address Database for information
15 to update and correct for any known or identifiable address changes. Any checks returned as non-
16 deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S.
17 Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
18 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search
19 using the name, address or Social Security number of the Aggrieved Employee involved and will then
20 perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-
21 cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the
22 Settlement Administrator and funds represented by checks returned as undeliverable will be tendered to
23 the State Controller’s Office, Unclaimed Property Division.

24 20. Settled Claims. Upon entry of the Order and Judgment, Plaintiff and all Aggrieved
25 Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the
26 Settlement Period. Aggrieved Employees **will not be deemed to have released any individual wage**
27 **and hour claims by virtue of this Settlement.**

1 21. No Right to Exclusion or Objections by Representative Action Members. Because this
2 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
3 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
4 Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved
5 Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court,
6 regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties
7 also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

8 22. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
9 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
10 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
11 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
12 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
13 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

14 23. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
15 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
17 action or right herein released and discharged.

18 24. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
19 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
20 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
21 and the Parties will be returned to their original respective positions.

22 25. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
23 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
24 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
25 as may be appropriate under court rules or as set forth in this Settlement.

26 26. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
27 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
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on the Parties.

27. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

28. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by those Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the court to resolve the disagreement.

29. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

30. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

31. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

32. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. 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.

33. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that

1 Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from
2 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

3 34. Invalidity of Any Provision. Before declaring any provision of this Settlement
4 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
6 valid and enforceable.

7 35. Captions. The captions and section numbers in this Settlement Agreement are inserted
8 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
9 provisions of this Settlement Agreement.

10 36. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
11 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
12 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

13 37. Enforcement Action. In the event that one or more of the Parties institutes any legal
14 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
15 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
16 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
17 expert witness fees incurred in connection with any enforcement actions.

18 38. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
19 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
20 more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for
21 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
22 all Parties have contributed to the preparation of this Settlement Agreement.

23 39. Representation by Counsel. The Parties acknowledge that they have been represented by
24 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that
25 this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in
26 full.

27 40. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
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1 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
2 Settlement Agreement.

3 41. Binding Agreement. The Parties warrant that they understand and have full authority to
4 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
5 binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to
6 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
7 under federal or state law.

8 42. Denial of Liability. The Parties expressly recognize that the making of this agreement
9 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
10 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
11 discussions or communications, nor any materials prepared, exchanged, issued or used during the
12 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
13 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
14 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
15 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
16 Notwithstanding the foregoing, this agreement may be used in any proceeding in the court that has as its
17 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
18 of the court entered into in connection therewith.

19 43. Plaintiff's Counsel shall not hold any press conferences, issue any press releases, seek
20 any publicity, or publish any announcements on any website with respect to this matter at any time.
21 Upon settlement approval, the Parties and their Counsel may issue, if at all, only a mutually agreeable
22 joint press release, though neither party is required to agree to any press release of any kind. Unless
23 otherwise agreed by the Parties and their Counsel, any oral or written disclosure of information related to
24 the Settlement shall be restricted to the material discussed in this Settlement Agreement and approval
25 papers filed with the Court and LWDA.
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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: Jan 28, 2022

Ricardo Gauna
Ricardo Gauna (Jan 28, 2022 12:16 PST)

Ricardo Gauna

DEFENDANT

Dated: Feb 17/22

[Signature]
Authorized Signatory for
Mercado Buenos Aires, Inc.

APPROVED AS TO FORM

THE LAW OFFICES OF DAVID R.
GREIFINGER

Dated: January 28, 2022

David Greifinger
David R. Greifinger, Esq.

RAINES FELDMAN LLP

Dated: 02/17/2022

[Signature]
Ricardo Rozen, Esq.

Ex. A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

**Re: Payment From *Ricardo Gauna v. Mercado Buenos Aires, et. al.*, Los Angeles
Superior Court Case No. 21STCV38369**

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Ricardo Gauna v. Mercado Buenos Aires, et. al.*, Los Angeles Superior Court Case No. 21STCV38369 (the “Action”).

The Action was filed against Defendants Mercado Buenos Aires, Inc. and Paul Rodriguez (“Defendants”) pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. (called “PAGA”). The Action was brought by a former employee of Defendants on behalf of the State of California and all allegedly “aggrieved employees” of Defendants. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendants owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code and California Wage Orders. Defendants deny that they violated the Labor Code or California Wage Orders. Moreover, in agreeing to this settlement, Defendants do not admit that they are liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75 percent will be paid to the California Labor and Workforce Development Agency, and the remaining 25 percent will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties.

Aggrieved employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order, for which they have a private right of action, by virtue of the Settlement.

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]

Ex. B



Class Action Administrators

www.cptgroup.com

Contact Name: Nick Day

Alan Rock

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Nick@cptgroup.com

Direct Number: (213) 800-2697

Corporate Office: (800) 542-0900

Fax Number: (949) 428-1023

Case Name: Gauna v. Mercado Buenos Aires

Date: November 22, 2021

PAGA Disbursement Only

Requesting Attorney: **David R. Greifinger**

* Class Members: **121**

Plaintiff or Defense: **Plaintiff**

Postage Total: **\$77.14**

Firm Name: **Greifinger Law**

Grand Total: **\$6,356.84**

Telephone: **(424) 330-0193**

***** DISCOUNTED FLAT FEE: \$4,250.00**

Email: tracklaw@me.com

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

Case Setup

Case Setup / Data Management / Create a Unified Mailing List / NCOA / TFN Establish, Setup & Support

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$95.00	1	\$95.00
System Programming/Data Base Setup	\$150.00	1	\$150.00
Project Manager-Notice Format	\$95.00	1	\$95.00
NCOA	\$150.00	1	\$150.00
Call Center Support	\$3.00	25	\$75.00
Total			\$565.00

* Up to 120 days after disbursement

SSN Verification

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$95.00	3	\$285.00
SSN Verification	\$0.20	121	\$24.20
Total			\$459.20

Disbursement

Calculations / Data Management / Create & Manage QSF / Print & Mail Notice, Checks/1099's

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$150.00	2	\$300.00
Project Supervisor Review of Distribution	\$150.00	3	\$450.00
Project Manager-Correspond w/ Attorney	\$95.00	2	\$190.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Programming/Setup & Printing of Checks	\$150.00	3	\$450.00
Print Mail Notice, Checks & 1099	\$3.00	121	\$363.00
Estimated Postage (up to 1 oz.)	\$0.58	121	\$70.18
Total			\$2,273.18

Post-Disbursement & Tax Reporting

Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration / Uncashed Checks Sent to Cy Pres

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	2	\$10.00
Project Supervisor -Account Recons	\$150.00	6	\$900.00
Skip Trace	\$1.25	10	\$12.50
Remail Undeliverable Checks	\$3.00	10	\$30.00
Estimated Postage (up to 1 oz.)	\$0.58	12	\$6.96
Project Supervisor-Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming- Final Reports	\$150.00	1	\$150.00
Project Manager - Acnt Files Sent to Atty	\$150.00	1	\$150.00
Project Supervisor - Final Declaration	\$150.00	1	\$150.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Uncashed Checks Sent to Cy Pres	Included	1	Included
Total			\$3,059.46

**CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.*

Grand Total: \$6,356.84

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination", Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the

other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
 - a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

- the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
 - c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
 - d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
 - e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
 - f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
 - g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
 - h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
 - i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
 - j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
 - k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
 - l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
 - m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
 - n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
 - o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
 - p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

Ex. C

AGREEMENT TO TOLL STATUTE OF LIMITATIONS

This Agreement to Toll the Statute of Limitations (“Agreement”) is entered into as of the date below signed, by and between Patty Guerra (“Plaintiff”) and Mercado Buenos Aires, Inc., and Paul Rodriguez (collectively “Defendants”). Plaintiff and Defendants are referred to collectively herein as “the Parties,” and may be individually referred to as a “Party.”

RECITALS

WHEREAS, Plaintiff made a demand by letter dated April 27, 2020, on behalf of herself and other hourly employees against Defendants alleging violations of the California Labor Code at Defendants’ restaurants.; and

WHEREAS, the Parties have met and conferred and agree to enter into this Agreement to toll the statute of limitations as to the allegations by Plaintiff on behalf of herself and all hourly employees so as to allow the Parties to engage in settlement discussions prior to the matter being litigated in superior court.

NOW, THEREFORE, in consideration of the mutual promises contained herein, IT IS HEREBY AGREED by and between the Parties that:

1. Commencing on June 23, 2020, and continuing until 30 days after counsel for one of the Parties to this Agreement provides to the other Party written notice of cancellation of this Agreement under Paragraph 5 below (the “Tolling Period”), the Parties agree that the statute of limitations applicable to any and all of the claims by Plaintiff, on behalf of herself or a putative class (collectively the “Tolled Claims”) shall be tolled and suspended. The Parties agree, during the Tolling Period, to toll all statutes of limitations, statutes of repose, equitable defenses of laches, and all other time-related bars and defenses that may apply solely to the Tolled Claims, and Defendants agree that the Tolling Period shall not be asserted or used in computing the running of time under any statute of limitations applicable to the Tolled Claims. Nothing in this Agreement is intended to allow Plaintiff to revive any claim or cause of action which would otherwise be time-barred at the start of the Tolling Period.

2. The Parties solely waive any statute of limitations defense which would otherwise arise during the Tolling Period for any of the Tolloed Claims, except that this waiver shall not be construed as a waiver of any statute of limitations or other time-related defenses that existed before the Tolling Period, or which arises after the expiration of the Tolling Period.

3. Defendants do not waive their ability to assert any other special and/or affirmative defenses to Plaintiff's potential causes of action. Nothing in this Agreement is intended to affect Defendants' substantive or procedural rights including, but not limited to, Defendants' defenses with respect to any claims asserted by Plaintiffs.

4. The running of the statutes of limitations for the Tolloed Claims shall commence again upon the expiration of the Tolling Period, unless there is a written extension of this Agreement, which is executed by and on behalf of the Parties.

5. This Agreement may be terminated at any time by any Party. Written notice of intent to terminate this Agreement shall be provided via e-mail or other method designed to give notice no later than the following business day to the representative(s) of the other Party, and the termination shall be effective 30 days after the Party seeking to terminate the Agreement provides written notice in accordance with this paragraph.

6. This Agreement shall not operate or be construed as an admission by either Party of the existence of any claim, cause of action, or defense, and this Agreement shall not be used or referred to in any proceeding for any purpose other than to establish the existence of this Agreement and its terms.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. This Agreement shall be deemed to have been drafted by the Parties equally and shall not be construed against any Party on the premise that a specific Party drafted this Agreement.

9. This Agreement is the entire agreement between the Parties as it relates to tolling. In executing this Agreement, no Party is relying on, nor acting on any promise, inducement, or agreement not expressed in this Agreement.

10. Each signatory represents that he is authorized to enter into this Agreement on behalf of the individuals or entity for whom they are signing.

11. This Agreement may be executed by the Parties in counterparts, and all of the executed counterparts together, whether original, faxes, or scanned, shall constitute one and the same instrument.

Dated: June 29, 2020

THE LAW OFFICES OF
DAVID R. GREIFINGER



David R. Greifinger, Esq.
Attorneys for Plaintiff,
Patty Guerra

Dated: June 29, 2020

RAINES FELDMAN



Ricardo Rozen, Esq.
Attorneys for Defendants,
Mercado Buenos Aires, Inc.,
and Paul Rodriguez

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