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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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

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]