

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA  
7

8 David Vargas,

9 Plaintiff,

10 v.

11 Central Freight Lines, Inc.,

12 Defendant.

Case No.: 16-cv-00507-JLB

ORDER GRANTING THIRD REVISED  
JOINT MOTION TO DISMISS  
CLAIMS UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT OF  
2004 (“PAGA”)

[ECF No. 50]

13  
14  
15  
16 The parties’ Third Revised Joint Motion to Dismiss Claims Under the Private  
17 Attorneys General Act of 2004 (“PAGA”) (ECF No. 50) and the Declaration of Todd  
18 Militzer Re: Third Revised Joint Motion to Dismiss Claims Under PAGA (ECF No. 52)  
19 are presently before the Court. Based on the record, the Court GRANTS the parties’ Third  
20 Revised Joint Motion to Dismiss Claims Under PAGA (ECF No. 50) as the parties have  
21 made a sufficient showing that the proposed “PAGA settlement is fair and adequate in view  
22 of the purposes and policies of the statute.” *O’Connor v. Uber Techs., Inc.*, 201 F. Supp.  
23 3d 1110, 1135 (N.D. Cal. 2016). Accordingly, **IT IS HEREBY ORDERED AS**  
24 **FOLLOWS:**

25 1. With the exception of the duration of the Court’s retained jurisdiction, the  
26 Court approves and incorporates by reference the terms and conditions of the Settlement  
27 Agreement attached to the Third Revised Joint Motion (ECF No. 50-1, Ex. 1) and directs  
28 the implementation of all remaining terms, conditions, and provisions of the Settlement

1 Agreement. The Settlement Agreement is attached hereto as Exhibit 1. The Court's  
2 retained jurisdiction outlined in Section H of the Settlement Agreement shall expire on  
3 **July 20, 2018.**

4 2. Plaintiff's Sixth Cause of Action for PAGA penalties is DISMISSED WITH  
5 PREJUDICE;

6 3. The Clerk of Court shall enter judgment on the terms set forth above and close  
7 this case.

8 **IT IS SO ORDERED.**

9  
10 Dated: December 5, 2017

11   
12 Hon. Jill L. Burkhardt  
13 United States Magistrate Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 1**

1 Christopher A. Olsen CA Bar No. 236928  
caolsen@caolsenlawoffices.com  
2 OLSEN LAW OFFICES, APC  
1010 Second Ave., Ste. 1835  
3 San Diego, CA 92101  
Telephone: 858.550.9352  
4 Facsimile: 858.923.2747  
caolsen@caolsenlawoffices.com

5 Attorneys for Plaintiff David Vargas

6 Spencer C. Skeen CA Bar No. 182216  
spencer.skeen@ogletreedeakins.com  
7 Tim L. Johnson CA Bar No. 265794  
tim.johnson@ogletreedeakins.com  
8 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
9 4370 La Jolla Village Drive, Suite 990  
San Diego, CA 92122  
10 Telephone: 858.652.3100  
Facsimile: 858.652.3101

11 Attorneys for Defendant Central Freight Lines, Inc.

12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**  
15

16  
17 DAVID VARGAS, on behalf of himself  
and all others similarly situated,

18 Plaintiff,

19 v.

20 CENTRAL FREIGHT LINES, INC., and  
21 DOES 1 through 100, inclusive,

22 Defendants.

Case No. 3:16-cv-00507-L-JLB

**SETTLEMENT AGREEMENT AND  
RELEASE OF PAGA CLAIMS**

1 Plaintiff David Vargas, individually and in his capacity as a representative of the  
2 State of California on behalf of other aggrieved employees, and Defendant Central  
3 Freight Lines, Inc. hereby enter into this Settlement Agreement and Release of Private  
4 Attorneys General Act of 2004 Claims (“Settlement”) as follows:

5 **I. DEFINITIONS**

6 As used in this Settlement, the following terms shall have the following meanings:

7 A. “Action” means the civil action entitled “*David Vargas v. Central Freight*  
8 *Lines, Inc., et al.*,” filed in the United States District Court, Southern District of California,  
9 Case No. 16-cv-00507-L-JLB.

10 B. “Defendant” means Central Freight Lines, Inc.

11 C. “Defense Counsel” means Spencer C. Skeen and Tim L. Johnson of  
12 Ogletree Deakins, Nash, Smoak, & Stewart P.C.

13 D. “Effective Date” of the Settlement means the date upon which both of the  
14 following have occurred: (i) approval of the Settlement is granted by the United States  
15 District Court, or other court assuming jurisdiction of this matter, and (ii) the Court’s  
16 Judgment approving the Settlement becomes Final. Final shall mean the latest of: (i) if  
17 there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal,  
18 the date of dismissal of such appeal, or the expiration of the time to file a petition for  
19 writ of certiorari to the Supreme Court; or (ii) if a petition for writ of certiorari is filed,  
20 the date of denial of the petition for writ of certiorari, or the date the Judgment is  
21 affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the  
22 time for filing or noticing any appeal of the Judgment.

23 E. “LWDA” means the California Labor & Workforce Development Agency.

24 F. “PAGA” means the Labor Code Private Attorneys General Act of 2004,  
25 California Labor Code §§ 2698 *et seq.*

26 G. “PAGA Period” means February 26, 2015 through the date of entry of an  
27 order by the Court in this Action approving this Agreement.  
28

1 H. "PAGA Settlement Members" means all persons employed in California by  
2 Central Freight Lines, Inc. as Pick Up and Delivery Drivers during the PAGA Period.

3 I. "Plaintiff" means David Vargas individually and in his capacity as a  
4 representative of the State of California on behalf of other aggrieved employees.

5 J. "Plaintiff's Counsel" means Christopher A. Olsen of Olsen Law Offices,  
6 APC.

7 K. "Parties" means Plaintiff and Defendant.

8 L. "Released Claims" means any and all claims for the recovery for civil  
9 penalties under PAGA, whether known or unknown, to recover wages, damages,  
10 penalties, attorney fees, litigation costs, restitution, or equitable relief, which Plaintiff  
11 and/or the PAGA Settlement Members had, or may claim to have, against Released  
12 Parties, arising out of the violations alleged in Plaintiff's Sixth Cause of Action.  
13 "Released Claims" does not include the underlying substantive claims for failure to  
14 provide meal periods, failure to provide rest breaks, failure to pay wages of terminated  
15 or resigned employees, knowing and intentional failure to comply with itemized wage  
16 statement provisions, or violations of the unfair competition law.

17 M. "Released Parties" means Defendant and all of its past and present owners,  
18 officers, directors, shareholders, employees, agents, assigns, attorneys, insurers, parent  
19 companies, subsidiaries, and affiliates, and their respective predecessors, successors, and  
20 assigns.

21 **II. RECITALS**

22 A. On February 23, 2016, Plaintiff's Counsel sent a letter to the LWDA on  
23 behalf of Plaintiff under California Labor Code § 2699.3. Plaintiff sought to represent  
24 himself and all PAGA Settlement Members. More than 33 days passed after the letter  
25 was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the  
26 alleged violations referenced in the letter.  
27  
28

1 B. On February 26, 2015, Plaintiff filed a complaint in the United States  
2 District Court, Southern District of California. On April 5, 2016, Plaintiff filed a First  
3 Amended Complaint, which contained a cause of action under PAGA.

4 C. The Parties agreed to engage in a mediation, which took place on January  
5 12, 2017, before the Hon. Herbert Hoffman. The Parties engaged in formal and informal  
6 discovery prior to the mediation. The Parties also engaged in extensive settlement  
7 negotiations at the mediation, which involved substantive offers and counteroffers  
8 between the Parties. The Parties also participated in numerous telephonic conferences  
9 and exchanged information about the financial condition of Defendant. Ultimately,  
10 negotiations resulted in this Settlement.

11 D. Counsel for all Parties have thoroughly investigated the facts relating to the  
12 claims alleged in the operative complaint and made a thorough study of the legal  
13 principles applicable to the claims asserted against Defendant. Plaintiff's Counsel has  
14 concluded that the Settlement is fair, reasonable, and adequate in light of all known facts  
15 and circumstances, including the defenses asserted by Defendant, potential adverse  
16 findings regarding liability, and numerous potential appellate issues. Plaintiff and  
17 Plaintiff's Counsel also acknowledge they may have difficulty recovering a large PAGA  
18 penalty from Defendant given its financial situation.

19 E. Defendant denies, and continues to deny, each and every claim and  
20 contention alleged in the Action, and has always maintained that it never engaged in any  
21 unlawful acts regarding any of the matters alleged in the Action.

22 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and  
23 conditions set forth, the Parties agree as follows:

24 **III. NON-ADMISSION OF LIABILITY**

25 A. Based on the factual and legal issues involved, the expense and time  
26 necessary to prosecute the Action through trial, the risks, uncertainty and costs of further  
27 prosecution, the financial status of Defendant, the financial status of Defendant, the  
28

1 difficulty of proof necessary to establish a class for purposes of liability, and the relative  
2 benefits to the PAGA Settlement Members of an expeditious resolution to the Action,  
3 the Parties have concluded that the terms set forth in this Settlement are fair, reasonable,  
4 adequate and in the best interests of the PAGA Settlement Members.

5       B. By entering into this Settlement, Defendant denies any liability for any of  
6 the claims in the Action, as well as any other potential or unknown claims based on  
7 wage and hour violations under California or federal law. Neither this Settlement, nor  
8 any document referred to or contemplated herein, nor any action taken to carry out this  
9 Settlement, may be construed as, or may be used as, an admission, concession, or  
10 indication by or against Defendant of any unlawful conduct, fault, wrongdoing or  
11 liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or  
12 wrongful conduct against Plaintiff or the PAGA Settlement Members.

#### 13 **IV. TERMS OF THE PAGA SETTLEMENT**

##### 14 **A. The Total Settlement Payment**

15 Defendant shall pay a settlement payment in a total amount not to exceed \$7,500  
16 (“Total Settlement Payment”). The Total Settlement Payment is the maximum amount  
17 Defendant can be required to pay under this Settlement.  
18

##### 19 **B. Settlement Administration Fees and Costs**

20 Settlement administration shall be done by Defendant. Accordingly, the Parties  
21 did not allocate any funds for settlement administration.

##### 22 **C. PAGA Fund**

23 The Total Settlement Payment shall be allocated toward payment to the LWDA  
24 and PAGA Settlement Members (“PAGA Fund”). 75% of the PAGA Fund will be sent  
25 to the LWDA and 25% of the PAGA Fund will be allocated among the PAGA  
26 Settlement Members based on his or her proportionate share of the weeks worked during  
27 the PAGA Period.  
28



1 **V. COMPUTATION/DISTRIBUTION OF TOTAL SETTLEMENT FUND**

2 **A. Payment of Total Settlement Payment**

3 Within 30 days after the Effective Date, Defendant shall distribute the Settlement  
4 Funds to the LWDA and the PAGA Settlement Members.

5 **B. Formula for Calculating Share of PAGA Fund**

6 The portion of the PAGA Fund that is paid to each PAGA Settlement Member  
7 shall be determined based on the following formula:

8 1. The payment to PAGA Settlement Members will be based on the  
9 number of weeks worked by each PAGA Settlement Member during the PAGA Period.  
10 Partial weeks will be counted as full work weeks.

11 2. The amount to be paid per week worked by a PAGA Settlement  
12 Member will be calculated by dividing the value of the portion of the PAGA Fund that  
13 will be paid to PAGA Settlement Members by the total number of weeks worked by all  
14 PAGA Settlement Members during the PAGA Period.

15 3. Defendant's records shall be determinative for purposes of  
16 calculating the number of weeks worked and any payments to PAGA Settlement  
17 Members.

18 **C. Distribution of PAGA Fund**

19 1. Defendant shall pay to the LWDA an amount equivalent to 75% of  
20 the PAGA Fund, or as otherwise directed by the Court.

21 2. Defendant shall distribute to PAGA Settlement Members their  
22 individual portion of the PAGA Fund ("Individual Payment"), or as otherwise directed  
23 by the Court.

24 3. Defendant will send the Individual Payment to the PAGA Settlement  
25 Members by postmarked First Class U.S. Mail.

26 4. Defendant shall maintain a list of the postmark date for the original  
27 mailing of the Individual Payment to the PAGA Settlement Members and a list of PAGA  
28

1 Settlement Members who did not receive the Individual Payment due to the inability to  
2 locate a valid address.

3           5. All settlement checks will remain valid and negotiable for 180 days  
4 from the date of their mailing by Defendant. After 180 days from the date of their  
5 mailing by Defendant, any uncashed checks will be void and escheat to the State of  
6 California Department of Industrial Relations, Unclaimed Wages Fund in the names of  
7 the PAGA Settlement Members.

8           6. No later than January 31, 2018, Defendant will prepare and issue IRS  
9 Form 1099 to PAGA Settlement Members who received a payment.

10 **VI. INJUNCTIVE RELIEF**

11           Defendant disputes injunctive relief may be obtained under PAGA. Defendant  
12 further denies it has engaged in any unlawful conduct under California law. Nevertheless,  
13 in consideration for the releases and other consideration set forth herein, Defendant  
14 agrees to the following injunctive relief within 30 days of the Effective Date: (1)  
15 distribute written meal and rest break policies that inform employees of their ability to  
16 take off-duty meal and rest breaks in compliance with California law; (2) provide  
17 training to all California hourly employees regarding their ability to take off-duty meal  
18 and rest breaks in compliance with California law; (3) implement a reporting procedure  
19 through which employees report when they have not been provided a duty-free meal or  
20 rest break; and (4) implement a policy to pay meal and rest break premiums whenever  
21 the foregoing does not fully accomplish the objective of ensuring off-duty meal and rest  
22 breaks in compliance with California law.

23 **VII. CLAIMS RELEASED BY PAGA SETTLEMENT MEMBERS**

24 **A. Claims Released By the LWDA and the PAGA Settlement Members**

25           Upon the Effective Date, the LWDA and PAGA Settlement Members, including  
26 Plaintiff, fully release and forever discharge the Released Parties from any and all  
27 Released Claims during the PAGA Period. As a result of this release, the PAGA  
28

1 Settlement Members will be unable to bring a claim under, or recover in any other claim  
2 brought under, the California Private Attorneys General Act, California Labor Code §§  
3 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA  
4 Period.

5 **B. Tax Treatment and Tax Indemnification**

6 PAGA Settlement Members will assume any tax obligations or consequences  
7 which may arise from this Settlement. PAGA Settlement Members release any and all  
8 claims that they have or may have against Defendant or Released Parties for any claims,  
9 demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes,  
10 indemnification, and any other recoveries related to any payments made under this  
11 Settlement or any compensation provided at any time by Defendant or any of the  
12 Released Parties. The PAGA Settlement Members shall not contact Defendant, any of  
13 the Released Parties, or Defense Counsel.

14 **VIII. MISCELLANEOUS PROVISIONS**

15 **A. Voiding the Settlement**

16 A failure of the Court to approve any material condition of this Settlement shall  
17 render the entire Settlement voidable and unenforceable as to Plaintiff and Defendant, at  
18 the option of Plaintiff or Defendant.

19 **B. Mutual Full Cooperation**

20 Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully  
21 cooperate with each other to accomplish the terms of this Settlement, including, but not  
22 limited to, execution of such documents and to take such other action as may reasonably  
23 be necessary to implement the terms herein. Defendant will cooperate with Plaintiff to  
24 provide support to substantiate its financial condition. The Parties agree to use their best  
25 efforts and any other efforts that may become necessary by Order of the Court, or  
26 otherwise, to effectuate this Settlement.  
27  
28

1           **C. Parties' Authority**

2           The signatories hereto represent that they are fully authorized to enter into this  
3 Settlement.

4           **D. Binding Nature of the Settlement**

5           1. This Settlement shall be binding upon, and inure to the benefit of, the  
6 successors or assigns of the Released Parties. Plaintiff represents, covenants, and  
7 warrants that he has not directly or indirectly, assigned, transferred, encumbered, any  
8 claim, demand, action, cause of action or rights released in the Released Claims in this  
9 Settlement. This Settlement shall be binding upon Plaintiff and the PAGA Settlement  
10 Members.

11           2. This Settlement may be amended or modified only by a written  
12 instrument signed by Plaintiff's Counsel and Plaintiff, as well as Defense Counsel and  
13 Defendant. No rights under this Settlement may be waived except in writing.

14           3. This Settlement and any attached exhibits constitute the entire  
15 agreement between Plaintiff and Defendant relating to the terms contained herein. All  
16 prior or contemporaneous agreements, understandings and statements, whether oral or  
17 written, whether express or implied, and whether by a party or its counsel, concerning  
18 this Settlement are merged herein. No oral or written representations, warranties or  
19 inducements have been made to any party concerning this Settlement or its exhibits  
20 other than the representations, warranties and covenants contained and memorialized in  
21 such documents.

22           4. Paragraph titles or captions contained herein are inserted as a matter  
23 of convenience and for reference, and in no way define, limit, extend, or describe the  
24 scope of this Settlement or any of its provisions. Each term of this Settlement is intended  
25 to be contractual and not merely a recital.

1           **E.     Joint Drafting of Settlement Documents**

2           1.     Plaintiff’s Counsel and Defense Counsel have arrived at this  
3 Settlement as a result of a series of arm’s-length negotiations, taking into account all  
4 relevant factors, present and potential.

5           2.     This Settlement has been drafted jointly by Plaintiff’s Counsel and  
6 Defense Counsel and, therefore, in any construction or interpretation of this Settlement,  
7 the same shall not be construed against any of the Parties.

8           3.     Plaintiff and Plaintiff’s Counsel agree that none of the documents  
9 provided to them by Defendant shall be used for any purpose other than the settlement of  
10 this Action. Specifically, none of the documents provided shall be used to pursue any  
11 subsequent claims or litigation against Defendant or the Released Parties.

12           **F.     Execution of the Settlement**

13           This agreement may be executed in one or more counterparts and by facsimile. All  
14 executed copies of this Settlement and photocopies thereof shall have the same force and  
15 effect and shall be as legally binding and enforceable as the original.

16           **G.     No Press Release or Publicity Regarding the Terms of Settlement**

17           Plaintiff and Plaintiff’s Counsel, as well as Defendant and Defense Counsel agree  
18 that they will not issue any media or press release, initiate any contact with the media or  
19 the press, respond to any media or press inquiry or have any communications with the  
20 media or the press about the fact, amount or terms of this Settlement. Plaintiff and  
21 Plaintiff’s Counsel shall not publicize or refer to the fact or amount of the Settlement, on  
22 their websites, social media, any other marketing materials, or legal publication. Plaintiff  
23 and Plaintiff’s Counsel will not state on their websites, social media, any other  
24 marketing materials, or legal publications, that Defendant engaged in any act contrary to  
25 California law, or denied payment owed to individuals classified as independent  
26 contractors or employees, or otherwise disparage Defendant, or otherwise identify  
27 Defendant. Defendant shall be allowed to report the Settlement or results of this lawsuit  
28

1 if required to do so by public disclosure regulatory requirements or with respect to any  
2 financial or other disclosures which in their judgment are necessary.

3  
4 **H. Continuing Jurisdiction of the Court**

5 The Parties agree that the Court shall retain jurisdiction over the Parties, and over  
6 this Settlement, in order to: (i) monitor and enforce compliance of Settlement, and/or (ii)  
7 resolve any disputes over this Settlement or the administration of the benefits of this  
8 Settlement.

9 [*Signatures on next page*]

**PLAINTIFF AND PLAINTIFF'S COUNSEL**

DATED: November 2, 2017

By:   
David Vargas

DATED: November 2, 2017

OLSEN LAW OFFICES, APC

By: /s/ Christopher A. Olsen  
Christopher A. Olsen  
Attorneys for Plaintiff

*[Signatures on next page]*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEFENDANT AND DEFENDANT’S COUNSEL**

DATED: November 2, 2017

By:   
\_\_\_\_\_  
Todd Miltzer  
V.P. and Chief Financial Officer  
Authorized to sign on behalf of Defendant  
Central Freight Lines, Inc.

DATED: November 2, 2017

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
  
By: /s/ Spencer C. Skeen  
Spencer C. Skeen  
Tim L. Johnson  
Attorneys for Defendant  
Central Freight Lines, Inc.