

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND LIMITED
RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Cesar Ardon, Alfredo Arechiga, Luis Chavez, Jose Luis Mendez, Jose Antonio Ochoa, Heriberto Reyes, and Sergio Salazar (“Plaintiffs”), for themselves and on behalf of the State of California, and XPO Last Mile, Inc. (formerly known as 3PD, Inc.) (“3PD” or “Defendant”). Plaintiffs and 3PD are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.” This Agreement is made in consideration of the following facts:

A. WHEREAS, certain disputes have arisen between the Parties concerning their relationship, including the classification of Plaintiffs, and all other persons and/or “Contract Carriers” that signed Delivery Service Agreements with 3PD, Inc., and subsequently with XPO Last Mile, on behalf of themselves and/or for another entity, and themselves performed services in California between September 26, 2012 and February 26, 2015, inclusive (the “PAGA Contract Carriers”), as independent contractors and/or Contract Carriers.

B. WHEREAS, Plaintiffs filed the action entitled *Ardon et. al. v. 3PD, Inc., Case No. 13-cv-1758 DTB* which is currently pending in the United States District Court for the Central District of California based on the disputes described in Paragraph A above (the “Lawsuit”). In their First Amended Complaint, Plaintiffs asserted ten claims for monetary damages and equitable relief on their own behalf (“Individual Claims”) including (1) failure to Pay Overtime – FLSA; (2) failure to Pay California Minimum Wage; (3) failure to Pay California Overtime; (4) Reimbursement of Employment Expenses, Cal. Labor Code §2802; (5) unlawful deductions from wages, Cal. Labor Code §§221 and 223; (6) failure to authorize and permit meal periods, Cal. Labor Code §226.7 and §512; (7) failure to authorize and permit rest periods, Cal. Labor Code §§226.7; (8) failure to furnish accurate wage statements, Cal. Labor Code §§226 and 226.3, (9) waiting time penalties, Cal. Labor Code §§201-203; and (10) Violations of the UCL, Cal. B&P Code §17200 *et. seq.* Plaintiffs’ Eleventh Cause of Action asserts a representative claim for civil penalties, underpaid wages and an award of reasonable attorneys’ fees and costs payable to themselves, the State of California, and the PAGA Contract Carriers who they allege were also misclassified as “independent contractors” by Defendant pursuant to the California Private Attorney General Act (“PAGA”) set forth in California Labor Code §2698 *et. seq.* (“Representative PAGA Claim”). 3PD denies all of the allegations in the Lawsuit and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

C. WHEREAS, the Parties understand, acknowledge, and agree that this Private Attorney General Act Settlement Agreement constitutes a compromise of Plaintiffs and PAGA Contract Carriers’ Representative PAGA Claim, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claim that Plaintiffs and all PAGA Contract Carriers have against 3PD or any persons or companies affiliated with 3PD. The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by 3PD of liability.

D. WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Representative Claim, and have arrived at the settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

E. WHEREAS, under California Law, the State may assess and collect civil penalties from “employers” for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code §§ 2699(a) et seq. Under PAGA, however, if an “aggrieved employee” “give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated,” and the State thereafter decides not to investigate, or does investigate and determines that a citation against the employer should not issue, the employee may, “as an alternative” to enforcement by the State, bring a civil action under PAGA to recover the civil penalties “on behalf of himself or herself and other current or former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

F. WHEREAS, California Labor Code section 2699(l) requires Court approval of any penalties sought as part of a proposed settlement agreement pursuant to PAGA. Pursuant to Labor Code section 2699(f)(2), the civil penalty for violations of the California Labor Code for which there is not a civil penalty otherwise specifically provided is \$100 for each “aggrieved employee” per pay period for the initial violation and \$200 for each “aggrieved employee” per pay period for each subsequent violation.

G. WHEREAS, California Labor Code section 558 allows Plaintiffs and the PAGA Contract Carriers to recover underpaid wages on their own behalf and on behalf of the PAGA Contract Carriers, and where one-hundred percent of the recovered wages are paid to the “aggrieved employees.” *See also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112 (2012).

H. WHEREAS, the Parties mutually desire to enter into a separate and related Confidential Settlement Agreement and Release with respect to Plaintiffs’ Individual Claims. (“Plaintiffs’ Individual Settlement Agreement”)

Therefore, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

1. EFFECTIVE DATE: The effective date of the release of Plaintiffs and PAGA Contract Carriers’ Representative PAGA Claim shall be the date the Court approves this Agreement and the PAGA Settlement. (“Effective Date”).

2. LIMITED RELEASE: Upon the Effective Date the California Labor & Workforce Development Agency (“LWDA”) and each PAGA Contract Carrier, including Plaintiffs, shall fully release and forever discharge any and all claims seeking **civil penalties** under California Labor Code Sections 558 and 2698 *et. seq.* predicated on the alleged California Labor Code violations asserted in the First Amended Complaint, filed November 15, 2013, (which include California Labor Code Sections 201-203, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 1182.11 and 1194) during the period September 26, 2012 through the Effective Date,

(hereinafter the “Released PAGA Claim”) against 3PD, and/or 3PD’s past or present parents, subsidiaries, and affiliated corporations, and/or 3PD’s officers, directors, employees, partners, agents, insurers, and/or any other individual or entity which could be liable for the acts of omissions of 3PD (hereinafter “Released Parties”). It is expressly understood and agreed that this limited release does not release Defendant from liability, if any, to the nonparty PAGA Contract Carriers for any claims they may assert against Defendant other than the PAGA claim for civil penalties asserted in the First Amended Complaint, or effect a waiver of claims, if any, the nonparty PAGA Contract Carriers may have against Defendant for unpaid wages or for violations of any statute other than PAGA.

3. NOTICE TO PAGA CONTRACT CARRIERS:

a. No later than five (5) days after the Effective Date, 3PD shall provide the Claims Administrator with a list of all PAGA Contract Carriers (the “PAGA Contract Carriers List”). The PAGA Contract Carriers List shall state the PAGA Contract Carriers’ full names, business names, contact information (including address, phone number, and drivers’ license number), and dates of service.

b. No later than fourteen (14) days after the Effective Date, the Claims Administrator will mail notice of settlement and claims forms to the PAGA Contract Carriers identified on the PAGA Contract Carriers List. Should any of the notice of settlement and claims forms be returned as undeliverable, the Claims Administrator will have until no later than forty-five (45) days after the Effective Date to search for a more current address for the PAGA Contract Carrier and to re-mail notices to traced addresses.

c. The deadline by which PAGA Contract Carriers must submit a claim shall be sixty (60) days after the Effective Date.

4. PAGA SETTLEMENT PAYMENT PROCEDURES:

a. In exchange for Plaintiffs and PAGA Contract Carriers’ limited release of any and all claims for civil penalties asserted or that could have been asserted under California Labor Code Sections 558 and 2698, *et. seq.* (including PAGA penalties payable in part to the State of California and penalties for alleged underpaid wages payable in full to the PAGA Contract Carriers pursuant to California Labor Code Section 558 *et. seq.*) against the Released Parties, 3PD agrees to pay, in accordance with the terms specified below, the total sum of \$1,000,000.00 (the “PAGA Fund”) to Plaintiffs, PAGA Contract Carriers, and/or the LWDA, as apportioned below. 3PD agrees to fund the PAGA Fund established by the Claims Administrator within sixty (60) days after the Effective Date. In addition, 3PD agrees to pay an Attorneys’ Fees and Costs Payment of \$500,000.00 to Plaintiffs’ Counsel (“Attorney Fee Payment re PAGA”) as compensation for the reasonable attorneys’ fees and costs incurred in connection with work performed to litigate the Representative PAGA Claim. 3PD shall pay or cause to be paid to the total amount of the agreed Attorney Fee Payment Re PAGA to the Client Trust Account of Leonard Carder LLP no later than ten (10) days following Court approval of the PAGA Settlement, only after all of the following conditions have been met: (1) all Plaintiffs have signed this Agreement; (2) all of Plaintiffs’ Individual Claims in the Lawsuit are dismissed in their entirety with prejudice, with the Parties to bear their own costs of suit except to the

extent set forth in the settlement agreement; (3) each Plaintiff has provided 3PD with a completed and executed IRS Form W-9 for himself and for his attorneys; and (4) the Court has granted approval of the settlement of PAGA Representative Claim in the Lawsuit. 3PD will issue IRS Form 1099s to Plaintiffs' attorneys, as required by IRS regulations.

b. A total of \$940,000.00 of the PAGA Fund will be allocated to penalty payments payable 100% to the PAGA Contract Carriers' claim for underpaid wages (the "Underpaid Wage Penalty Fund"), and each PAGA Contract Carrier shall receive a *pro rata* share of this amount as further detailed in Paragraph 4(d) below.

c. A total of \$60,000.00 of the PAGA Fund shall be allocated to civil penalties (the "Penalties Fund"). A total of \$45,000.00 (*i.e.*, Seventy-Five percent (75%)) of the Penalties Fund is to be paid to the California Labor & Workforce Development Agency in satisfaction of all PAGA Claims in the Lawsuit ("LWDA PAGA Payment"). 3PD's payment of the LWDA PAGA Payment shall be made by the Claims Administrator from the PAGA Fund within ten (10) days of the Effective Date. \$15,000.00 (*i.e.*, Twenty-Five percent (25%)) of the Penalties Fund is to be held in reserve and used for potential disputed claims by the PAGA Contract Carriers ("Disputed Claim Fund"). Any amounts not distributed to PAGA Contract Carriers as a result of a disputed claim shall revert to the PAGA Fund.

d. PAGA Contract Carriers who submit a timely claim form shall receive a *pro rata* share of the amount of the Underpaid Wage Fund, which shall include any amounts that revert from the Disputed Claim Fund. Each PAGA Contract Carrier's *pro rata* share shall be determined based on the number of workweeks that he or she provided services to 3PD in the State of California from September 26, 2012 through February 26, 2015 (the "Calculations Period") relative to the total number of workweeks during which all of the PAGA Contract Carriers who submit timely and valid claims provided services to 3PD in the State of California during the Calculations Period. These amounts paid to each PAGA Contract Carrier shall be issued via an IRS Form 1099.

e. The Claims Administrator shall distribute Settlement Checks to PAGA Contract Carriers in accordance with the procedures specified in Paragraph 4(d) for payment of all undisputed claims no later than seventy-five (75) days after the Effective Date. The Claims Administrator shall distribute Settlement Checks to PAGA Contract Carriers in accordance with the procedures specified in Paragraph 4(d) for payment of all disputed claims no later than ninety (90) days after the Effective Date. Payment of disputed claims shall be taken from the Disputed Claim Fund.

f. Settlement Checks issued to PAGA Contract Carriers pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are issued by the Claims Administrator. Any unclaimed funds after the 180 day period shall be remitted by the Claims Administrator to the Legal Aid Society – Employment Law Center as a *cy pres* recipient.

5. ADMINISTRATION AND DISBURSEMENT COSTS: Within 20 days of the Effective Date, 3PD agrees to place the sum of \$25,000.00 in the Administration Fund. This amount shall be used to pay for any fees and costs associated with the administration and

disbursement of the PAGA Fund. Should the administration and disbursement of the PAGA Fund cost less than \$25,000.00, the remainder shall revert back to 3PD.

6. COURT APPROVAL: Should the Court not approve this Agreement, the Parties shall request leave and work jointly to attempt to remedy the PAGA settlement in order to obtain the Court's approval.

7. REPRESENTATIONS AND WARRANTIES: In further consideration for payment of the PAGA settlement amounts, Plaintiffs each represent and warrant that they have the right and exclusive authority to execute this Agreement. Each Party to this Agreement also represents and warrants to, and agrees with, each other Party hereto as follows:

7.1 Each Party has carefully read, and knows and understands the full contents of this Agreement and is voluntarily entering into this Agreement after having received independent legal advice from his or its attorneys with respect to the advisability of making the settlement provided for herein and the advisability of executing this Agreement.

7.2 In executing this Agreement and in making the settlement provided for herein, no Party relies or has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party), except as expressly stated in this Agreement.

7.3 Each Party to this Agreement has investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that each Party deems necessary.

7.4 Each separately-numbered term of this Agreement is contractual, not merely a recital.

7.5 Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

8. CHOICE OF LAW: The rights and obligations of the Parties and the PAGA Contract Carriers under this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California. California law shall govern the interpretation of this Agreement even if a choice of law analysis under state or federal law would dictate that another forum's law be applied.

9. COOPERATION: Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

10. SEVERANCE: If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed severed and deleted from this Agreement, and neither that provision nor its severance and deletion shall affect the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release contained

herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable 3PD Released Party.

11. NON-ADMISSION OF WRONGDOING: The Parties agree that this Agreement does not constitute an admission by 3PD or any of the Released 3PD/XPO Parties, as defined in the Plaintiffs' Individual Settlement Agreement, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiffs, 3PD or any of 3PD's parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

12. ADDITIONAL TERMS:

12.1 This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in interest.

12.2 Given that all Parties hereto had the opportunity to draft, review, and edit the language of this Agreement, no presumption for or against any Party arising out of drafting all or any part of this Agreement may be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing that, in cases of uncertainty, the language of a contract should be interpreted against the Party who caused the uncertainty to exist.

12.3 This Agreement may be executed in counterparts. A signature by way of facsimile shall serve as an original for all purposes.

12.4 Headings in this Agreement are included solely for convenience and shall not control the meaning or interpretation of any provision of this Agreement.

12.5 Nothing in this Agreement is intended to alter or impact the terms of the Delivery Service Agreements entered into between 3PD and the non-party PAGA Contract Carriers.

13. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the Parties concerning the subject matter of this Agreement. Plaintiffs acknowledge that they have not relied on any representations, promises or agreements of any kind made to them in connection with their decision to accept the terms of this Agreement, except for the representations, promises and agreements herein. Any modification to this Agreement must be in writing and signed by Plaintiffs and an authorized officer of 3PD.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

Agreed to by Plaintiffs:

Dated: _____

Cesar Ardon
Plaintiff

Dated: _____

Alfredo Arechiga
Plaintiff

Dated: _____

Luis Chavez
Plaintiff

Dated: _____

Jose Luis Mendez
Plaintiff

Dated: _____

Jose Antonio Ochoa
Plaintiff

Dated: _____

Heriberto Reyes
Plaintiff

Dated: _____

Sergio Salazar
Plaintiff

DEFENDANT

Dated: _____

Gordon Devens
Senior Vice President and Secretary
For Defendant 3PD, Inc.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private Attorneys General Act Settlement Agreement and Release as of the date set forth below.

Agreed to by Plaintiffs:

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Plaintiff

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Jose Luis Mendez
Plaintiff

Dated: _____

Jose Antonio Ochoa
Plaintiff

Dated: _____

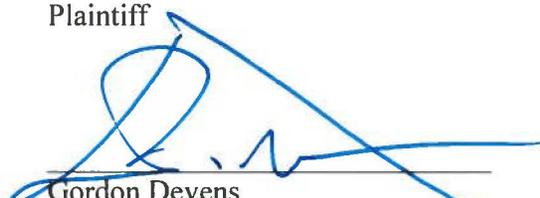
Heriberto Reyes
Plaintiff

Dated: _____

Sergio Salazar
Plaintiff

DEFENDANT

Dated: May 15, 2015



Gordon Devens
Senior Vice President and Secretary
For Defendant 3PD, Inc.

APPROVED AND ACKNOWLEDGED BY PLAINTIFFS' COUNSEL:

Dated: _____

Beth Ross, Esq.
LEONARD | CARDER
Attorneys for Plaintiffs

Dated: _____

David A. Rosen, Esq.
ROSE, KLEIN & MARIAS, LLP

APPROVED AND ACKNOWLEDGED BY DEFENSE COUNSEL:

Dated: _____

Robert G. Hulteng, Esq.
Carlos Jimenez, Esq.
LITTLER MENDELSON
Attorneys for Defendant
3PD, Inc.

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APPROVED AND ACKNOWLEDGED BY PLAINTIFFS' COUNSEL:

Dated: _____

Beth Ross, Esq.
LEONARD | CARDER
Attorneys for Plaintiffs

Dated: _____

David A. Rosen, Esq.
ROSE, KLEIN & MARIAS, LLP

APPROVED AND ACKNOWLEDGED BY DEFENSE COUNSEL:

Dated: 5/15/15



Robert G. Hulteng, Esq.
Carlos Jimenez, Esq.
LITTLER MENDELSON
Attorneys for Defendant
3PD, Inc.

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