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15 **CALIFORNIA SUPERIOR COURT**
16 **IN AND FOR THE COUNTY OF SANTA CLARA**

17 ANGEL BRAVO and PABLO FLORES

18 Plaintiffs,

19 V.

20 GALLAHER COMPANY AND ROBERT
21 JOHN GALLAHER AND DOES 1
22 THROUGH 50.

23 Defendants.

Case No: 21CV381912

**THIRD SUPPLEMENTAL DECLARATION
OF TOMAS E. MARGAIN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF
PAGA SETTLEMENT**

Date: December 18, 2024

Time: 1:30 p.m.

Dept: 19

Judge: Hon. Theodore C. Zaner

1 I, Tomas E. Margain, declare as follows:

2 1. I am an attorney licensed to practice law in California and one of the attorneys for
3 Plaintiffs in this matter. I have personal knowledge of the facts set forth in this declaration, and,
4 if called as a witness, I could and would testify thereto.

5 2. The Court has continued the matter from October 23, 2024 to November 20, 2024,
6 to now December 18, 2024. On November 20, 2024, the Court's tentative ruling gave the parties
7 guidance to redraft the PAGA settlement agreement to better define the "PAGA Pool" and
8 "Released Parties." At the November 20, 2024 hearing, myself and my opposing counsel also
9 explained to the Court the definition of the PAGA workers involved in the settlement.

10 3. Attached as Exhibit A is a true and correct copy of the \$65,000 PAGA settlement,
11 for which approval is sought, which has also been lodged with the State of California Labor and
12 Workforce Development Agency (LWDA). On December 12, 2024, I personally uploaded this
13 agreement to the LWDA PAGA website with reference to the LWDA case number along with
14 this declaration.

15 4. The revised Agreement at page 4 paragraph 6, defines the PAGA Pool Members
16 as:

17 The "PAGA Pool Members" bound by this settlement are hereby defined as all current or
18 former employees who worked for Defendants at any time during the period between
19 March 11, 2020, to June 20, 2021, and who drove their personal vehicles such that they
20 could have used those personal vehicles to: (1) purchase materials before or after their
21 work shift; or (2) without completing a mileage reimbursement for such that they would
22 be paid mileage for the use of the vehicle. Sixteen (16) PAGA Pool Members (Thirteen
23 plus the three workers who participated in this litigation) have been identified.

24 See Exhibit A at page 4, Par. 6.

25 5. The revised Agreement at page 4 paragraph 7, defines the Released Parties as:

26 "Released Parties" is defined as GALLAHER COMPANY, ROBERT JOHN
27 GALLAHER and their spouses, heirs, owners, principals, officers, directors, employees,
28 shareholders, partners, managers, holding companies, predecessors, successors, former,
current and future agents, attorneys, accountants, insurers, subsidiaries, affiliates, and
assigns.

See Exhibit A at page 4, Par. 7.

1 6. The PAGA Pool definition mirrors that of the definition in the Notice served on
2 the LWDA prior to the filing of the PAGA claim and attached as Exhibit A to the First Amended
3 Complaint. The PAGA LWDA Notice, the charging document, defines the violations alleged as
4 follows:
5

6 GALLAHER EMPLOYERS required PAGA Pool workers to use their personal pickup
7 trucks or work vans to be dispatched to certain jobs. On these jobs, workers would at
8 times stop off at a supply store, typically Home Depo, to purchase materials needed.
9 Other times, workers would have to arrive at a customer job site to take an inventory of
what was needed to then go purchase materials. Without a vehicle of a certain type,
pickup truck or van, the work could not be performed.

10 Workers were only paid after they arrived at a customer location and were instructed to
11 put that time as their “start time in” or the time in which their compensable workday
12 would begin. If a worker stopped at a supply store prior to arriving they would not be
13 paid for that time. Workers were also not paid for any drive time from their home to the
job site even though they were “suffered and permitted” to work and were under the
“control” of GALLAHER EMPLOYERS at the time.

14 GALLAHER EMPLOYERS take the position that a worker’s mobilization from their
15 home to a customer’s location is a non-compensable commute. However, the hours
16 worked are compensable as they were both under the “control” of and “suffered and
17 permitted” to work by GALLAHER EMPLOYERS. Specifically, by requiring the use of
18 a pickup truck or van, to be able to haul materials, workers could not use a smaller more
19 fuel-efficient car. Workers could also not ride share or attempt to take public
20 transportation. Moreover, the job required a pickup truck or van to discharge their work
21 duties as workers would routinely have to buy sheet rock, lumber and other bulky
materials. Finally, as workers would at times drive by a supply store like a Home Depo,
they would routinely stop buy materials to then continue to a customer job site to save
time so that they would not first stop at a customer job and then drive to a material store.
This was done for GALLAHER EMPLOYERS’ convenience. GALLAHER
EMPLOYERS would not pay for any of the time to drive to and from a job.

22 See First Amended Complaint at Exhibit A, LWDA letter at page 2.

23 7. As noted in my previous declaration, through the investigation, we were able to
24 identify the PAGA Pool Members as workers who used their personal vehicles prior to the
25 change in the Defendants mileage reimbursement policy and who might have worked off the
26 clock or used their personal vehicles for work related activities without being reimbursed.
27 Sixteen workers were identified as the PAGA Pool Members. Also, the workers worked by
28 themselves and did not typically ride share, and most of Defendants’ employees did not use their

1 personal vehicles for work related activities because they drove company vehicles provided by
2 Defendants or did not work in the “handyman” construction jobs involved in the PAGA claims.

3 8. Again, I am still of the opinion that the PAGA settlement is fair, an excellent
4 result, and should be approved.
5

6 I declare under penalty of perjury pursuant to the laws of the United States that the
7 foregoing is true and correct, executed on December 12, 2024 in Santa Clara County, California.

8 *Tomas Margain*

9 _____
Tomas E. Margain

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TABLE OF AUTHORITIES

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EXHIBIT A

PAGA SETTLEMENT AND RELEASE AGREEMENT

PARTIES

This Settlement and Release Agreement ("Settlement Agreement" or "Agreement") is made by and between and amongst ANGEL BRAVO, PABLO FLORES and ALEJANDRO MARTINEZ AKA JAVIER MARTINEZ (collectively "Plaintiffs") on the one hand and GALLAHER COMPANY AND ROBERT JOHN GALLAHER (collectively, "Defendants") on the other hand. Throughout this Settlement Agreement, Plaintiffs and Defendants shall be collectively referred to as "the Parties."

RECITALS

WHEREAS, Plaintiffs allege that Defendants caused Plaintiffs injury and damage during, and pertaining to their employment by Defendants and that Defendants failed to abide by employment laws, statutes and ordinances;

WHEREAS, Plaintiffs filed claims under the California Labor Code both as to their individual rights and claims and as a Private Attorney General Claim under Cal. Lab. Code § 2698 *et seq.* (PAGA claims) and this settlement seeks to resolve PAGA claims while Plaintiffs' individual claims, except their individual PAGA claims, and any claims that Plaintiffs may have contemplated have been resolved by a separate Confidential settlement agreement.

WHEREAS, on or about September 7, 2021, BRAVO and FLORES filed a First Amended Complaint for Damages and Equitable Relief against DEFENDANTS with the California Superior Court in and for the County of Santa Clara, Case No. 21CV381912 alleging the following causes of action: (1) Unpaid Wages, Violation of IWC Orders 16-2001 and Labor Code §§ 200, *et seq.*, 204, 223, 226.2, 1194; (2) Overtime Wages, Violation of Wage Orders and Labor Code §§ 510 and 1194; (3) Failure to Provide Accurate Itemized Wage Statements, Violation of Labor Code § 226; (4) Failure to Pay All Wages Due Upon Termination (Labor Code §§ 201-203); (5) Failure to Reimburse Expenses (Labor Code § 2802); (6) Unfair Business Practices, Violation of Unfair Competition Law, Business & Professions Code §§ 17200, *et seq.*; and (7) PAGA violations (Labor Code §§ 2698 *et seq.* and 558 (the "Action"));

WHEREAS, Defendants deny any and all wrongdoing, deny that Plaintiffs' claims could properly be maintained as a PAGA representative action, and deny any and all liability related to Plaintiffs' employment with Defendants;

WHEREAS, following the filing of the FAC, it was agreed that the Parties would engage in mediation that would include MARTINEZ as a party to the matter without having to name MARTINEZ in the FAC;

WHEREAS, ANGEL BRAVO, PABLO FLORES and ALEJANDRO MARTINEZ AKA JAVIER MARTINEZ have entered into Confidential individual settlement agreements covering their individual non PAGA claims including a total of \$25,000 in fees and costs.

WHEREAS, there are Sixteen (16) PAGA Pool Members (Thirteen plus the three workers who participated in this litigation) covering the period from March 11, 2020, to June 20, 2021, the

date that the Parties agree that Defendants altered their mileage and shopping policy and practices. ("PAGA Pool Period");

WHEREAS, the settlement resolves PAGA claims for the entire period encompassed by the Action, from March 11, 2020, to the date of Court approval ("PAGA Period"), but because the period of alleged violations ceased, in accordance with this agreement, as a result of certain actions taken by Defendant on June 20, 2021, at the latest, the fairest distribution to PAGA Pool Members, who are limited to that time period, is to determine employee share by reference only to the pay periods within the timeframe from March 11, 2020, to June 20, 2021, which has been defined herein as the PAGA Pool Period, because including pay periods after June 20, 2021, in determining distribution would dilute compensation for pay periods within the PAGA Pool Period time frame in favor of pay periods after June 20, 2021, for which no violations are presumed to have occurred.

WHEREAS, there exists a bona fide dispute as to whether any amount of penalties are due from Defendants to any PAGA Pool Members or to the Labor & Workforce Development Agency ("LWDA"); and

WHEREAS, the Parties seek to resolve, without any admission of liability to the PAGA Cause of action as contained in the LWDA Notice (also referred to as "PAGA Notice") and First Amended Complaint;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

AGREEMENT

1. **Recitals Incorporated.** The Recitals above are incorporated into this Settlement Agreement as if set forth in full.
2. **Effective Date.** This Settlement Agreement shall be deemed effective on the date it is executed. However, the settlement pertaining to the PAGA remedies and review of the Attorneys' Fees and Costs shall only be deemed effective when (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final.
3. **Settlement Payment.** Defendants agree to pay SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) ("Settlement Amount") for settlement of the PAGA Claims, subject to Court approval. The Settlement Amount includes costs and fees, including the Plaintiffs' Counsel Award, Settlement Administrator Expenses, and PAGA Amount for distribution to the LWDA as follows:
 - a. Attorneys' fees and costs up to \$19,200. Plaintiffs' Counsel agrees not to seek an award of attorneys' fees from the Court in excess of \$19,200 of the Settlement Amount but acknowledges that they will be receiving \$25,000 in attorneys' fees and costs as part of the Individual Settlements contingent upon approval of this settlement agreement. Defendants agree not to oppose a request for attorneys' fees and reasonable costs and expenses incurred up to \$19,200 (the "Plaintiffs' Counsel Award"). Any amount awarded as the Plaintiffs'

Counsel Award shall be inclusive of any and all amounts due to or claimed by any and all counsel representing Plaintiffs. Released Parties and PAGA Pool Members shall have no obligation regarding or liability for allocation or payment of the Plaintiffs' Counsel Award;

- b. "Settlement Administrator Expenses" means the amount to be paid to the Settlement Administrator solely from the Total Settlement Amount, including the total costs, expenses, and fees of the Settlement Administrator. The amount is not to exceed Two Thousand Dollars (\$2,000). Upon approval by the Court, Defendants will tender a check in payment of Settlement Administrator Expenses in the amount of Two Thousand Dollars (\$2,000). If the Settlement Administrator's expenses are less than \$2,000, the balance of such funds shall be included in the amount to be distributed to the Settlement Pool; and
 - c. "Net PAGA Amount" means the total amount of PAGA civil penalties to be paid from the Total Settlement Amount. The Net PAGA Amount is anticipated to be Forty-Three Thousand, Eight Hundred Dollars (\$43,800.00). That figure is based on the aforementioned projected administration cost of \$2,000.00 and shall be equal to the portion of the Total Settlement Amount after the payment of the Plaintiffs' Counsel Award and the Settlement Administrator Expenses. Of the Net PAGA Amount, Seventy-Five percent (75%) shall be paid to the California Labor and Workforce Development Agency and Twenty Five percent (25%) shall be paid to PAGA Pool Members pro rata (based on the number of pay periods a PAGA Pool Member worked during the "PAGA Pool Period" as compared to the total number of pay periods worked by all PAGA Pool Members during that same time period) and considered penalties for tax reporting purposes. Each PAGA Pool Member's pro rata payment is an "Individual Settlement Payment." Based on the \$43,800.00 estimate, this will require Thirty-Two Thousand, Eight Hundred Fifty Dollars (\$32,850.00, or 75% of the Net PAGA Amount) to be distributed to the LWDA and Ten Thousand, Nine Hundred Dollars (\$10,950.00, or 25% of the Net PAGA Amount) to be distributed to PAGA Pool Members.
4. **Payments.** The foregoing payments of the Total Settlement Amount shall be mailed to the Third-Party Administrator ("Administrator") within thirty (30) days following the date of the Order approving the settlement. Has been entered by the Court. The Administrator will process the payments. Payment of the foregoing payments from Defendants to the Administrator is contingent upon Defendants' receipt of W-9 forms from Plaintiffs and Plaintiffs' counsel. Plaintiffs shall get at least two bids but no more than three bids to select the Administrator. It shall be the Administrator's responsibility to accept deposits on behalf of the Parties and Pool members (the "Settlement Trust Fund") and make payments as described above and as contained in the section addressing the administration of PAGA funds.
5. **Timing of Payments.** The above payments shall be made to the Third-Party Administrator to be held in trust. The total consideration for the Settlement from Defendants is the Total Settlement Amount, Sixty-Five Thousand Dollars (\$65,000.00), to be made 30 days after the Order approving the settlement. This is an "all in" number that includes, without limitation, Plaintiffs' Counsel Award from this Agreement, Settlement Administrator Expenses and the Net PAGA Amount, and all claims for interests, fees, and costs. Under no circumstances shall Defendants be required to pay anything more than the Settlement Amount. In no event shall Defendants be liable for making any payments under this Settlement Agreement, or for

providing any relief to PAGA Pool Members, before the deadlines set forth in this Agreement. The Parties agree that the entire amount of the Net PAGA Amount shall be distributed to the PAGA Pool Members.

6. **PAGA Pool Members.** The “PAGA Pool Members” bound by this settlement are hereby defined as all current or former employees who worked for Defendants at any time during the period between March 11, 2020, to June 20, 2021, and who drove their personal vehicles such that they could have used those personal vehicles to: (1) purchase materials before or after their work shift; or (2) without completing a mileage reimbursement for such that they would be paid mileage for the use of the vehicle. Sixteen (16) PAGA Pool Members (Thirteen plus the three workers who participated in this litigation) have been identified.
7. **Released Parties.** “Released Parties” is defined as GALLAHER COMPANY, ROBERT JOHN GALLAHER and their spouses, heirs, owners, principals, officers, directors, employees, shareholders, partners, managers, holding companies, predecessors, successors, former, current and future agents, attorneys, accountants, insurers, subsidiaries, affiliates, and assigns.
8. **Taxes.** PAGA Pool Members shall be solely and exclusively responsible for the payment of any and all applicable taxes relating to their payments received pursuant to this Agreement. PAGA Pool Members shall defend, indemnify, and hold Defendants harmless from any tax liabilities, claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Defendants or any of their owners/employees arising out of or related to the payments made pursuant to this Agreement, including assessments for unpaid or delinquent taxes, assessments for Defendants’ failure to withhold any amount from the payments called for herein, interest, and penalties. Defendants agree to provide PAGA Pool Members with any relevant information and documents Plaintiffs may need to address any tax assessments or related liabilities that may be imposed against PAGA Pool Members by any federal, state, or local authority on account of the payments made pursuant to this Agreement.
9. **Defendants’ Duties to Provide Information.** Within 20 days of the Court’s order approving this Settlement Agreement, Defendants shall provide to the Third-Party Administrator a list containing 1) The names of the sixteen (16) PAGA Pool Members during the PAGA Pool Period; 2) the sixteen (16) PAGA Pool Members’ last known addresses; 3) the number of pay periods each PAGA Pool Member worked during the PAGA Pool Period ; 4) the SSN or TIN utilized to pay each PAGA Pool Member. Defendants may identify the address of Plaintiffs’ counsel as the address for the three (3) individual Plaintiffs.
10. **Distribution of Funds to Parties:**
 - a. Upon receipt of the funds, the Third-Party Administrator shall release all payments held in trust that are earmarked for Plaintiffs, their counsel, the LWDA and the PAGA Pool Members in the following order.
 - i. Plaintiffs’ MISC 1099 payments.
 - ii. Plaintiffs’ Counsel’s fees and costs as awarded by the Court.

iii. The PAGA payments to the LWDA and PAGA Pool members.

11. **Dismissal of Entire Action.** In exchange for the foregoing consideration set forth in Sections 3 through 7, above, Plaintiffs agree to do the following:

- i. Upon approval by the Court of the settlement of the PAGA Claims, Plaintiffs will immediately dismiss with prejudice the entire Action filed in the Superior Court of the State of California, County of Santa Clara, Case # 21CV381912; and
- ii. Plaintiffs will release Defendants from any and all claims, as described in paragraphs 10 through 15 *infra*, Plaintiffs have against Defendants and the Releasees, defined *infra*.

12. **Release of PAGA Claim.**

Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge, under the Private Attorney Generals Act, Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period including, but not limited to, all claims that were, or reasonably could have been alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiffs' Release"). Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

13. **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiffs' Release in this PAGA settlement and in the accompanying contingent individual settlement, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

Again, based on the nature of the Individual Confidential Settlement being contingent on the approval of this PAGA settlement, if this settlement is approved, Plaintiffs are entering into a general release of claims.

14. **Release by PAGA Pool Members.** All PAGA Pool Members are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Action and any PAGA Notice.

15. **Release by PAGA Counsel.** Other than as expressly set forth herein, PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Action and the PAGA Period facts stated in the Action and any PAGA Notice.
16. **Waiver of Legal Action Arising From Agreement.** Plaintiffs agree never to commence, prosecute, or cause, permit, advise, or assist to be commenced or prosecuted, any action or proceeding against Defendants, including but not limited to any action or proceeding based upon any claims, demands, causes of action, obligations, damages or liabilities which are released pursuant to this Agreement, except as prohibited by law. Plaintiffs warrant that Plaintiffs do not have any pending claims, suits or charges against Defendants other than the Action.
17. **Contingent Nature of PAGA and Attorneys' Fee and Costs Subject to Court Approval.** Plaintiffs and Defendants both acknowledge that the terms of settlement outlined herein are subject to Court approval under California *Labor Code* § 2699 *et seq.* The parties agree that this settlement shall be presented to the Court for approval.
18. **Motion for Court Approval.** Plaintiffs will prepare and file a noticed Motion for Approval of Settlement of PAGA Claims along with a proposed order after all Parties execute the Settlement Agreement. Defendants will cooperate with Plaintiffs in preparation and submission of the Motion for Approval of Settlement of PAGA Claims as necessary. Plaintiffs will request entry of an order that accomplishes the following:
- a. approves this Agreement;
 - b. approves the amount of the Net Settlement to be allocated to the LWDA and Aggrieved Employees;
 - c. approves Plaintiffs' counsel's request for reasonable attorneys' fees, litigation costs, and administration fees, as set forth in this Agreement;
 - d. provides that the Court shall retain continuing jurisdiction over Plaintiffs, Aggrieved Employees, Defendants, and the LWDA to enforce this Agreement;
 - e. enters Judgment in accordance with the terms of this Agreement which includes dismissal of the Action with prejudice.

Plaintiffs' counsel shall be responsible for ensuring that at least the following documents are filed with the Court in anticipation of the approval hearing, if any:

- a. A duly noticed motion, accompanying memorandum of points and authorities prepared by Plaintiffs' Counsel, and such other pleadings or other documents as may be necessary for the Court to approve the Agreement.
- b. A [Proposed] Order and Judgment for the Court's signature that (i) approves the Agreement; (ii) approves the amount of the Net Settlement to be allocated to the LWDA and PAGA Pool Members as set forth in this Agreement; (iii) approves Plaintiffs' Counsel's request for reasonable attorneys' fees, litigation costs and administration costs, as set forth in this Agreement; (iv) provides that the Court shall retain continuing jurisdiction over Plaintiffs, PAGA Pool Members, Defendants and the LWDA, to enforce this Agreement; and (v) enters Judgment in

accordance with the terms of this Agreement; and (vi) approves dismissal with prejudice of the Action

19. Administration of PAGA Funds. The Administrator, upon Court's approval, shall administer the PAGA claims.

- i. Notice by First-Class Mail. The Third-Party Claims Administrator shall send each PAGA Pool Member their Individual Settlement check corresponding to the portion they are due, a Letter explaining why they are receiving the check and what ITIN or Social Security Number was used and a W-9 Form if they wish to amend the number via First Class mail. The Claims Administrator shall mail the check and notice letter to each PAGA Pool Member's most current mailing address as identified by Defendants.
- ii. Procedure for Undeliverable Notices. Any Notice Packages returned to the Claims Administrator as non-delivered within twenty-one (21) calendar days shall be sent to the forwarding address affixed thereto. If no forwarding address is affixed or if subsequent notices are returned non-delivered, any remaining funds attributed to civil penalties under *Labor Code § 2698 et seq.* shall be and will be donated to the St. Jude's Children's Research Hospital.
- iii. The Administrator shall use the PAGA Pool Members' Information solely for the purpose of giving notice of the Settlement and calculating the Individual PAGA Payments. PAGA Pool Members' Information shall be kept confidential by the Administrator and will not be disclosed to anyone other than as required to report to applicable taxing authorities or as required to carry out the reasonable efforts to identify PAGA Pool Members' Information – pursuant to Defendants' express written authorization – or by order of the Court. Within ten (10) business days after the receipt of the PAGA Pool Members' Information and prior to mailing, the Administrator shall run all the addresses provided in the PAGA Pool Members' Information through the United States Postal Service NCOA database to obtain current address information.
- iv. Notice Package. The Letter is attached as Exhibit A as well as a W-9 IRS tax form.
- v. Submission to LWDA. Claims Administer will submit the Labor and Workforce Development Agency's portion of the PAGA penalties within 30 days after Court approval, whichever is later.

20. No Admission of Liability. Parties understand and agree that (a) Parties have entered into this Agreement for the purpose of purchasing peace and to prevent further involvement with the matter, and (b) neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be taken or construed to be an admission on the part of any of the Parties of liability on behalf of any of the Parties as to the validity of any of the claims, defenses, or allegations. Nor shall this Settlement Agreement be admissible in any court, administrative agency, or tribunal for any purpose whatsoever, with the sole exception of any proceeding to enforce or interpret the terms of this Settlement Agreement. It is understood that this Settlement Agreement and General Release does not constitute or arise out of any admission of liability or wrongdoing of any party but is a compromise of disputed facts, issues and claims.

21. **Use and Return of PAGA Pool Member Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants' Counsel in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destruction, of PAGA Pool Members Data.
22. **Voluntarily Entered.** The Parties represent and warrant that this Settlement Agreement is executed voluntarily by the parties and with the full knowledge of the consequences and implications of the obligations contained herein. Each of the Parties acknowledges that it may hereafter discover facts in addition to or different from those which such Party now believes to be true with respect to the subject matter of the claims released hereunder, but hereby stipulates and agrees that, as set forth herein, they nonetheless have fully, finally and forever released any and all disputes, claims and controversies pertaining in any way to Plaintiffs' employment with Defendants.
23. **Right to Counsel.** The Parties represent and warrant that they have had the opportunity to be represented by legal counsel of their choice throughout the negotiations which preceded the execution of this Settlement Agreement, and in connection with the preparation and execution of this Settlement Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety with their attorneys or have knowingly and voluntarily waived the right to do so.
24. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of, the Parties hereto and their predecessors, successors, heirs, assigns, past, present or future executors, administrators, trustees, beneficiaries, affiliated and related entities, officers, directors, agents, employees and representatives.
25. **Breach of Agreement.** Any party to this Agreement may bring an action at law for material breach of its terms. Unless otherwise ordered by the Court, only the provisions of this Agreement alleged to have been breached shall be disclosed.
26. **Attorney Fees.** If any additional or further legal proceedings and/or arbitration(s) are necessary by any of the Parties for enforcement of this Agreement or declaration of any rights under the terms of this Agreement, the prevailing party in that litigation and/or arbitration shall be entitled to receive from the other party who opposes such action all costs incurred, including, but not limited to, reasonable attorneys' fees.
27. **Construction.** The Parties have cooperated in the drafting and preparation of this Agreement. The normal rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the party drafting the writing shall not apply to any action on this Agreement. This Agreement is entered into in the State of California and shall be construed and interpreted in accordance with its laws.

28. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
29. **Complete Integration/Modification.** The Parties agree that this Agreement shall not be subject to rescission or modification based on any mistake of fact or law in that there is absolutely no agreement or reservation that is not clearly expressed herein. The Parties further represent and warrant that, except as set forth in this Agreement, they have not relied upon or been induced by any representation, statement or disclosure of any other party but have relied upon their own knowledge and judgment and upon the advice and representation of counsel of their own selection in entering into this Agreement, that they have read and fully understand the terms of this Agreement and are fully advised as to the legal effects thereof. This Settlement Agreement constitutes the full and complete integration of the Parties' agreement with respect to settlement of the disputes and matters described herein, and all statements, negotiations and/or prior agreements or understandings with respect to these matters are merged herein.
30. **Modification.** This Settlement Agreement may be modified only by a written instrument signed by all of the Parties hereto. No oral modifications shall be effective to vary or alter the terms of this Agreement.
31. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Settlement Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Settlement Agreement.
32. **Severability.** In the event that any of the terms of this Agreement are found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.
33. **Applicable Law.** This Settlement Agreement shall be governed by the laws of the State of California, exclusive of its choice of law rules.
34. **Enforceable Obligations; Court to Maintain Jurisdiction.** When executed, this Agreement will be valid, binding and legally enforceable in accordance with its terms and California Code of Civil Procedure Section 664.6. Pursuant to C.C.P. §664.6, the Parties agree that the Court shall retain jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the Settlement Agreement and if necessary, to enter judgment pursuant to the terms of the Settlement Agreement.
35. **Waiver of Right to Appeal.** Provided the Court's final Judgment is consistent with the terms and conditions of this Agreement, specifically including the Plaintiffs' Counsel Award, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

36. **Cooperation.** The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
37. **Execution in Multiple Counterparts.** This Settlement Agreement may be executed in multiple counterparts, each of which may be treated as an original document, but all such executed counterparts together shall constitute one and the same instrument. A facsimile or email signature shall be deemed effective as if it were an original signature.
38. **Copies.** Both facsimile and photocopies of the executed Settlement Agreement may be treated as original documents.
39. **Notice:** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs	To Defendants
Tomas E. Margain JUSTICE AT WORK LAW GROUP, LLP 1550 The Alameda, Suite 160 San Jose, CA 95126 Phone: (408) 317-1100 Fax: (408) 351-0105 tomas@jawlawgroup.com	Susan K. Hatmaker Hatmaker Law Group 7522 N. Colonial Avenue, Suite 105 Fresno, California 93711 (559) 374-0077 Office (559) 374-0078 Facsimile

40. **Warranty of Authority.** The undersigned individuals warrant and represent that they are authorized to execute this Settlement Agreement. Plaintiffs further represent and warrant that they have the full right, power, legal capacity and authority to enter into and perform obligations under this Agreement and that no approvals or consents of any persons are necessary in connection with it.
41. **No Assignment of Claims.** Plaintiffs represent and warrant that there has not been an assignment or transfer, or purported assignment or transfer, voluntarily, involuntarily, or by operation of law, of any claim or matter released pursuant to this Agreement. Plaintiffs agree to indemnify, defend and hold harmless any other party hereto from any claims which may be asserted against such party, based on, arising out of, or in connection with any such assignment, transfer or conveyance, or purported assignment, transfer or conveyance.

42. **Tax Liability.** Defendants make no representations as to the tax treatment or legal effect of the payments to Plaintiffs and PAGA Pool Members called for hereunder and Plaintiffs are not relying on any statement or representation by Defendants in this regard. Plaintiffs understand and agree that PAGA Pool Members will be solely responsible for the payment of any taxes or penalties predicated on the payments to them described herein. Defendants shall be held harmless from and against any claims resulting from the treatment of such payments as non-taxable damages, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
43. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.
44. **CIRCULAR 230 DISCLAIMER.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.
45. **Representations and Warranties.** Each of the Parties warrants that:
- a. **THEY HAVE READ THIS SETTLEMENT AGREEMENT OR HAVE HAD THE PROVISIONS OF THIS SETTLEMENT AGREEMENT READ AND/OR EXPLAINED TO THEM AS NEEDED; AS EACH DEEMED NECESSARY AND UNDERSTAND THE CONTENTS HEREOF;**

- b. THEY HAVE MADE SUCH INVESTIGATION OF THE FACTS PERTAINING TO THIS SETTLEMENT AGREEMENT AS EACH DEEMED NECESSARY;**
- c. THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR SELECTION OR HAVE VOLUNTARILY REFUSED SUCH CONSULTATION;**
- d. THEY UNDERSTAND ALL OF THE TERMS OF THIS SETTLEMENT AGREEMENT; AND**
- e. THEY EXECUTE THIS SETTLEMENT AGREEMENT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS LEGAL CONSEQUENCES.**

Plaintiffs further warrant and represent that:

- f. PLAINTIFFS HAVE RECEIVED INDEPENDENT LEGAL ADVICE WITH RESPECT TO THE ADVISABILITY OF REACHING A SETTLEMENT IN THIS MATTER, THE ADVISABILITY OF EXECUTING THIS AGREEMENT, AND THE RAMIFICATIONS OF THE MEANING OF CALIFORNIA CIVIL CODE SECTION 1542**
- g. NO PARTY (NOR ANY OFFICER, AGENT, EMPLOYEE, REPRESENTATIVE, OR ATTORNEY OF OR FOR ANY PARTY) HAS MADE ANY STATEMENT OR REPRESENTATION TO PLAINTIFFS REGARDING ANY FACT RELIED UPON IN ENTERING INTO THIS AGREEMENT, AND PLAINTIFFS HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION OR PROMISE OF ANY OTHER PARTY (OR OF ANY OFFICER, AGENT, EMPLOYEE, REPRESENTATIVE, OR ATTORNEY FOR THE OTHER PARTY) IN EXECUTING THIS AGREEMENT OR IN MAKING THE SETTLEMENT PROVIDED FOR HEREIN, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed in their respective names on the date of this Settlement Agreement.

DATED: 12/10/20

By: 
ANGEL BRAVO

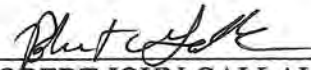
DATED: 12/10/24

By: 
PABLO FLORES

DATED: 10/12/24

By: 
Alejandro Martinez (Dec 10, 2024 17:39 PST)
ALEJANDRO MARTINEZ AKA
JAVIER MARTINEZ

DATED: 12/11/2024 TM

By: 
ROBERT JOHN GALLAHER

GALLAHER COMPANY, a California
corporation

DATED: 12/11/2024 TM

By: 
ROBERT JOHN GALLAHER
Its Authorized Agent


Angel Bravo (Dec 10, 2024 17:13 PST)


Angel Bravo (Dec 10, 2024 17:13 PST)


Pablo Flores (Dec 10, 2024 17:35 PST)
Pablo Flores (Dec 10, 2024 17:35 PST)

Exhibit A

SAMPLE LETTER

Dear [Insert]:

You are receiving \$ [], which represents a portion of the settlement amount your [former] employer Gallaher Company agreed to pay to the State of California as part of a claim for statutory penalties. As part of the Settlement, Gallaher Company did not admit any wrongdoing; payment of these funds was not an admission of any wrongdoing. You are receiving your share of the amount specified by statute to be paid to the employees (that is, 25% of the penalty amount). The amount of this payment was based on the number of pay periods you worked at Gallaher Company.

This payment is income to you in the tax year you receive it and you will have to report it on your tax return. Please consult a tax professional for further advice on this. We are making no representation of your tax obligation regarding this payment.

We used the Social Security or Tax ID Number identified below. If this number is incorrect, please fill out the enclosed W-9 Form and return it to us. Please note that we used our best efforts to maintain the confidentiality of your Social Security or Tax ID number in this process.

S.S.N. or Tax ID used:

2024-12-10 - Settlement Agreement - PAGA ONLY Second Revised

Final Audit Report

2024-12-11

Created:	2024-12-11
By:	Tomas Margain (tomas@jawlawgroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWff-XNPMU4roflf1-O7kQfY1KKIKPuvN

"2024-12-10 - Settlement Agreement - PAGA ONLY Second Revised" History

-  Document created by Tomas Margain (tomas@jawlawgroup.com)
2024-12-11 - 1:08:58 AM GMT- IP address: 104.50.141.220
-  Document emailed to Alejandro Martinez (martinezruiz1109@gmail.com) for signature
2024-12-11 - 1:09:03 AM GMT
-  Document emailed to Angel Bravo (tenochca73angel@gmail.com) for signature
2024-12-11 - 1:09:03 AM GMT
-  Document emailed to Pablo Flores (pato9973@gmail.com) for signature
2024-12-11 - 1:09:03 AM GMT
-  Email viewed by Angel Bravo (tenochca73angel@gmail.com)
2024-12-11 - 1:11:09 AM GMT- IP address: 172.225.89.17
-  Email viewed by Alejandro Martinez (martinezruiz1109@gmail.com)
2024-12-11 - 1:11:33 AM GMT- IP address: 172.225.80.194
-  Document e-signed by Angel Bravo (tenochca73angel@gmail.com)
Signature Date: 2024-12-11 - 1:13:35 AM GMT - Time Source: server- IP address: 99.37.245.250
-  Email viewed by Pablo Flores (pato9973@gmail.com)
2024-12-11 - 1:33:54 AM GMT- IP address: 66.249.80.138
-  Document e-signed by Pablo Flores (pato9973@gmail.com)
Signature Date: 2024-12-11 - 1:35:53 AM GMT - Time Source: server- IP address: 172.59.161.9
-  Document e-signed by Alejandro Martinez (martinezruiz1109@gmail.com)
Signature Date: 2024-12-11 - 1:39:37 AM GMT - Time Source: server- IP address: 12.75.243.84



Adobe Acrobat Sign

✔ Agreement completed.
2024-12-11 - 1:39:37 AM GMT

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PROOF OF SERVICE

I am employed in the County of Sana Clara, State of California. I am over the age of 18 and not a party to the within action; my business address is 1550 The Alameda, Suite 160, San Jose, California 95126.

On December 12, 2024, I served the documents described as:

**THIRD DECLARATION OF TOMAS E. MARGAIN IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA SETTLEMENT**

on Interested Parties at the following address(es):

SUSAN K. HATMAKER 17254
Email: susan@hatmakerlaw.com
ROBERT W. BRANCH 154963
Email: robert@hatmakerlaw.com
HATMAKER LAW GROUP
7522 N. Colonial Avenue, Suite 105
Fresno, California 93711
Telephone: (559) 374-0077

Counsel for Defendants

and served the named documents in the manner indicated below:

[X] BY EMAIL: I transmitted the document(s) described above by email to the email address(es) of the attorney(s) for Defendant(s) in this action.

STATE OF CALIFORNIA LWDA ELECTRONIC SUBMISSION

I uploaded the foregoing documents to the LWDA to the following URL for electronic submissions:

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

[X] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2024 at Santa Clara County, California.

Tomas Margain

Tomas Margain