

1 TOMAS E. MARGAIN, Bar No. 193555
2 Justice at Work Law Group, LLP
3 1550 The Alameda, Suite 302
4 San Jose, CA 95126
5 Telephone: (408) 317-1100
6 Facsimile: (408) 351-0105
7 Tomas@jawlawgroup.com

8 XIAOMING LIU, Bar No. 328109
9 P.O. Box 582
10 Los Gatos, CA 95031
11 Telephone: (408) 476-9389
12 lawyerming@outlook.com

13 Attorneys for Plaintiffs
14 ANGEL BRAVO and PABLO FLORES

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

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

Date: September 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. This declaration is organized into three sections.

6 3. First, I address the allegations, investigation, and accounting in this case.

7 4. Second, I address the PAGA settlement of Forty-Three Thousand Six Hundred
8 Dollars and Zero Cents (\$43,600.00) as payment to the LWDA; Two Thousand Dollars (\$2,000)
9 to pay the Claims Administrator for the PAGA settlement; and attorneys' fees not to exceed
10 Forty-Four Thousand Four Hundred Dollars and Zero Cents (\$44,400.00). This is to reimburse
11 counsel \$4,083.00 in costs and to take \$40,317.00 in fees. These attorneys' fees and costs are paid
12 from the entire settlement amount which also includes individual settlement amounts for the
13 plaintiffs. The fees do not further reduce the \$43,600 anticipated payment on PAGA to be
14 distributed 75% to the LWDA.

15 5. In the second section, I also address the arms-length negotiations, including two
16 mediation sessions with Don Sullivan, Esq., extensive follow up with the mediator, and
17 ultimately a mediator's proposal that was accepted by all parties.

18 6. Third, I address the *lodestar* hourly rates sought by providing my background and
19 experience. I also provide my opinion of both the market rate for our hourly rates and the unique
20 aspect of fee shifting contingency litigation and why I believe that should affect the rates. In
21 forming this opinion, I am including two declarations from Class and PAGA attorneys who
22 practice in Northern California. With respect to the *lodestar*, I am seeking to be paid for 84.6
23 hours at a rate of \$894.00 for \$75,632.40. My co-counsel Xiaoming Liu is seeking to be paid for
24 54 hours at a rate of \$300.00 for \$16,200.00. However, we are seeking a substantial negative
25 multiplier to reach the total sought of \$44,400.00. After accounting for costs in the amount of
26 \$4,083.00, the fee amounted to less than half of the amount billed to the case.

27 7. With respect to my work, I also want to emphasize that because of this case, I
28 turned down other work so Ms. Liu and I could properly give this case the attention it deserved.

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4 **Notice of Settlement and Motion Served on State of California's**
 Labor And Workforce Development Agency

5 8. On August 26, 2024, I served the State of California with the moving papers and
6 the settlement agreement using their electronic submissions webpage.

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8 **Procedural History and Investigation**

9 9. Defendants GALLAHER COMPANY and ROBERT JOHN GALLAHER
10 (collectively "GALLAHER") are a small construction company and its owner. GALLAHER
11 focuses on maintenance and repair services on real property primarily houses and apartments.
12 Most jobs are short term and can vary from less than one day to three days in length. Workers
13 would be assigned jobs which they usually performed by themselves unless there was a larger job
14 in which workers could rideshare or meet at a jobsite in separate vehicles. Customers varied from
15 homeowners to commercial accounts primarily for property management firms that have
16 apartment buildings.

17 10. While the claims are contested, the essence of the case is that certain workers, who
18 were drivers, were not properly paid mileage and worked prior to and after their start and end
19 time. Workers appear to have been paid for mileage in an *ad hoc* manner prior to the filing of the
20 action. Plaintiff BRAVO never received mileage pay and alleged that he never received any sort
21 of mileage reimbursement form. Plaintiff FLORES received minimal mileage pay in the form of
22 mileage reimbursement for jobs he performed over 30 miles from San Jose primarily in the East
23 Bay and near San Francisco. It appears that workers, when they received mileage were paid the
24 distance from the shop in San Jose to a job site, if more than 30 miles from that location.

25 11. Plaintiffs also alleged that GALLAHER never paid workers for their time
26 purchasing materials prior to or after their paid workday. This was particularly true for Plaintiff
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1 Flores, and Javier Martinez, who would stop at the Gilroy or Morgan Hill Home Depo prior to
2 their workday to purchase items.

3 12. On April 21, 2021, Plaintiffs ANGEL BRAVO and PABLO FLORES filed their
4 Complaint. On March 11, 2021, Plaintiffs ANGEL BRAVO and PABLO FLORES through
5 counsel filed a PAGA Notice letter with the State of California.

6 13. On September 7, 2021, a First Amended Complaint was filed alleging the PAGA
7 violation and including the PAGA letter to the LWDA and Defendants.

8 14. I am of the opinion that shortly after receiving the PAGA Notice letter, Defendants
9 changed and formalized their mileage policy. I formed this opinion by reviewing records,
10 including the time and mileage records for Javier Martinez produced which showed a change in
11 the timekeeping system after the lawsuit was filed.

12 15. During the Discovery phase on this case, Plaintiffs propounded written discovery
13 including various Document Requests. In total, Defendants produced 3091 documents. Among
14 the documents produced were PLAINTIFFS time and pay records, the time and pay records of
15 Javier Alejandro Martinez, and as well as records of workers in the PAGA claim. Home Depot
16 transaction records as well as mileage and expense records were also produced.

17 16. My co-counsel and I were able to able to audit the records. This included a time
18 consuming audit of Home Depot transaction records for the Plaintiffs and Mr. Martinez to refine
19 the audit. This is because an audit was first produced showing the exposure based on an imputed
20 start and end time. After receiving transaction records, my co-counsel was able to produce an
21 audit using that data.

22 17. My co-counsel and I were also able to determine that there were approximately
23 199 PAGA Pay Period Violations among fourteen aggrieved workers for a total of \$295,000.00 in
24 potential PAGA exposure based on the application of nine different penalties.

25 18. On July 27, 2022, the parties attended a mediation session with Don Sullivan,
26 Esq., an experienced litigator and mediator. The matter did not settle at mediation. However, Mr.
27 Sullivan kept attempting to bring the parties together including multiple follow up emails and a
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1 second zoom session to discuss the use of the transaction data on the audit. He finally used a
2 mediator's proposal to help the parties reach a settlement.

3 19. While the amount agreed to be paid the three participating workers, is confidential,
4 it was less than two audited amounts referenced above. While I do not like confidentiality in
5 settlement agreement, this was a nonnegotiable term for the Defendants.

6 20. Counsel for the parties were then able to draft and have all parties execute a
7 settlement agreement. The parties are working to submit this for an *in camera* review.

8 9 **Counsel Assessment of Settlement Terms**

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11 21. In my opinion, the settlement reached is an excellent result reached during non-
12 collusive arms-length negotiations between counsel experienced in wage and hour litigation.

13 22. In this case, my co-counsel and I were able to interview our clients, conduct
14 discovery, and analyze all documents to both come up with an individual audit as well as the
15 PAGA audit for fourteen workers.

16 23. Once we had this information, we held the first mediation session. We were
17 unable to resolve the matter even through both parties made significant compromises. Because of
18 this, Mr. Sullivan kept attempting to get the parties closer to a settlement. This included getting
19 Defendants to produce Home Depot transaction data for my co-counsel and I to analyze and
20 incorporate into our audit. Mr. Sullivan then held a second session which was a zoom session
21 with counsel to discuss the audit, use of the transaction records, and our damages model. Mr.
22 Sullivan then made a decision to make a mediator's proposal. The case settled after my co-
23 counsel and I agreed to take less than a one third contingency based on the proposal.

24 24. The negotiations in this matter were all non-collusive arm's length negotiations
25 conducted during adversarial proceedings.

26 25. In my opinion, the settlement of \$43,600 plus \$2,000 in costs for the PAGA claim
27 is exemplary. Hurttles included: (1) the fact that Defendant as a small employer may have
28 solvency issues; (2) the fact that there is caselaw on the value of PAGA penalties differentiate

1 between initial and subsequent violations or citations and notice issues to trigger higher
2 subsequent penalties, and (3) the fact that penalties were stacked a trial court has discretion to
3 reduce PAGA penalties. In fact, the \$43,600 based on 199 pay periods equals \$219.10 per pay
4 period.

5 26. While there is no “formula,” as there are a variety of factors affecting PAGA
6 settlements, in my opinion, a settlement of \$100 to \$150 per pay period is a good to excellent
7 result for PAGA claims. A result of a settlement of nearly \$220.00 per pay period is an excellent
8 result.

9 **COUNSEL’S BACKGROUND, WAGE AND HOUR EXPERIENCE**

10 27. I have been licensed to practice law in California since 1997. I have focused my
11 practice, aside from a one-year position as a research attorney for the Sonoma County Superior
12 Court, to Employment and Labor law primarily representing low wage workers in the service and
13 construction industries.

14 28. I attended law school at the University of California Hastings College of Law and
15 graduated in 1997. I was then admitted to the California Bar in December of 1997. Prior to
16 attending law school, I received a Bachelor of Arts Degree from UC Berkeley in English Literature
17 and a Master of Arts Degree from UCLA in Latin American Studies.

18 29. While in Law School, I clerked at the following Non-Profits or Governmental
19 Agencies: (1) Tenderloin Housing Clinic (Full Time Summer after First year and Part Time First
20 Semester Second year); (2) Employment Law Center-ACLU Language Rights Program (Part
21 Time Second Semester Second year); (3) Fair Employment and Housing Commission (Full Time
22 Summer of Second year); (4) Lawyers Committee For Civil Rights/Asylum Screenings (Part
23 Time First Semester Third year); and (5) San Mateo District Attorneys’ Office as part of
24 Hasting’s Clinical Program instruction (Full Time Second Semester Third year). I was also
25 enrolled in the Hasting’s workers’ Rights Clinic the second semester of my second year in Law
26 School.
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1 30. After being admitted to the California Bar, I held a year-long research attorney
2 position with the Sonoma County Superior Court. While at the Sonoma County Superior Court, I
3 worked for three and then four weekly law and motion calendars. I worked under the supervision
4 of then Presiding Judge Lloyd Von der Mehden (Ret.) and Judge Lawrence K. Sawyer (Ret.) who
5 took over as presiding judge upon Judge Von der Mehden's retirement about halfway through my
6 clerkship.

7 31. After completing my clerkship, I became an associate attorney at the firm of Van
8 Bourg, Weinberg, Roger and Rosenfeld (VBWRR). VBWRR is the largest firm outside of
9 Washington D.C. representing Labor Unions. In the three years I worked at VBWRR, I primarily
10 worked on wage and hour class action and mass action cases. At VBWRR, I was involved in 15
11 class action lawsuits alleging the systematic underpayment of wages to workers. Five of those
12 lawsuits reached a class certification stage and three settled on behalf of a class. I was the
13 primary associate in the first Class Action case I settled, *Range v. E.L. Wills*, Alameda County
14 Superior Court Case No. C-794347, before the honorable Ronald M. Sabraw (Ret.). The *Wills*
15 case involved a class wide settlement of approximately \$1,000,000.00 payable to over 300
16 ironworkers from California's Central Valley. At VBWRR, I was also practiced traditional
17 Labor law including NLRB work and representing Unions in Discharge/Discipline and
18 Contractual Interpretation Arbitrations.

19 32. In 2001, I left VBWRR and opened up my own firm in San Francisco's Mission
20 District.

21 33. In mid-2008, I relocated my practice to San Jose because my client base had
22 increasingly become service workers living in San Mateo and Santa Clara Counties and
23 construction workers living in Santa Clara, San Benito, Monterey and Santa Cruz counties.

24 34. For the last twenty years, I have worked as a sole practitioner and then a part
25 owner or partner in two law firms focusing on wage and hour litigation primarily representing
26 recent immigrants to this country. I have represented or represent clients in over 400 lawsuits
27 filed in State or Federal Court and have represented over 120 claimants before the State of
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1 California's Labor Commissioner's Office. Approximately 95% of my practice involves wage
2 and hour litigation.

3 35. I have litigated more than ten (10) Class Action lawsuits as lead counsel that
4 settled on behalf of a class.

5 36. In Federal Court, I represented through settlement and a Final Fairness hearing as
6 lead counsel the following matters:

- 7 a. *Moreno v. Capital Building Maintenance & Cleaning Services Inc.*,
8 USDC NDCA 9-cv-07087-DMR;
- 9 b. *Gerardo v. Quong Hop and Co* USDC NDCA Case No. 08-CV-
10 03953 JF;
- 11 c. *Cruz v. JSC-SC Project Inc.* USDC NDCA Case No. 09-cv-04296-
12 JW;
- 13 d. *Lopez v. San Jose Market Center HB, Inc.* USDC NDCA Case No.
14 08-cv-04865-RS;
- 15 e. *Palana v. Mission Bay*, USDC NDCA Case No. 15-cv-5235 SI; and
- 16 f. *Sandoval, et al v. Ali, et al* USDC Case No. NDCA 13-cv-03230-
17 EDL.

18 37. In State Court, I was lead counsel in the following matters:

- 19 a. *Rosales v. Heavenly Greens*, Santa Clara Superior Court Case No.
20 08-CV-119684
- 21 b. *Rodriguez v. United Site Services of California, Inc.*, Santa Clara
22 Superior Court Case No. 13-CV-257373
- 23 c. *Cormier v. Comcast of California, et al*, Alameda County Superior
24 Court Case No. RG04146868
- 25 d. *Covarrubias, et al v. Petersendean Builder Group, Inc. et al*, Kern
26 County Superior Court Case No. BCV-16-101122.

1 38. With respect to non-class action representative work, I was the lead attorney on
2 what I believe was one of the first settlements to reach a Fairness Hearing under the Private
3 Attorney General Act of 2004. In Burns v. Bustichi Construction, Inc., Santa Cruz Superior Court
4 Case CV152157 the late Judge Robert B. Yonts approved a \$630,000.00 claims made settlement
5 to carpenters who worked on prevailing wage jobs with the payment of \$60,000.00 to the State of
6 California as a penalty under PAGA.

7 39. I have litigated over 20 PAGA cases which settled and in which I have secured
8 penalties to the State of California after a Fairness Hearing. The last PAGA settlement that was
9 approved by this Court was in the case of *Hernandez v. Tucker Construction Company and Mark*
10 *Tucker*, Santa Clara County Case No. 19CV360241 in which this Department approved a PAGA
11 and individual settlement of two workers of \$325,000.00 in which seven thousand five hundred
12 dollars (\$7,500.00) were paid as part of a PAGA settlement.

13 40. Finally, as part of my law practice, I have worked with non-profits, faith-based
14 organizations, Unions and Labor Management Trust Funds on employment law matters and
15 specifically wage and hour litigation. I am a volunteer attorney with the Employment Law
16 Center's Worker's Rights Clinic which is affiliated with Santa Clara University (Katherine and
17 George Alexander Law Center), Hastings College of the Law and UC Berkeley's law school. I
18 have also worked with community-based non-profits such as the Instituto Laboral de la Raza, the
19 Legal Aid Society and Voluntarios de la Comunidad. I am also actively involved with SIREN, an
20 immigrant rights non-profit, and am the President of the Board of Directors. I am also an active
21 participant in the Santa Clara County Wage Theft Coalition. As part of the Wage Theft Coalition,
22 I participate with community advocates to provide testimony and encourage municipalities to
23 adopt anti wage theft ordinances. We also hold direct actions and community education events.

24 **LODESTAR RATES SOUGHT AND AWARDED**

25 41. I am familiar with the rates charged by Plaintiff contingency attorneys. This is
26 based on conversations with three contingency attorneys I have worked with as co-counsel,
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1 Marco Palau, Carry Kletter and Kevin Allen. It is also based on my review of case law, including
2 review to prepare this motion, as well as the *Laffey*-Matrix discussed below.

3 42. In the last four years, I have been awarded fees in the range of \$650 in individual
4 cases to \$894 in class cases. Here, given that this is a PAGA case, I am seeking to be paid at \$894
5 an hour though I am only recovering for approximately 40% of my fees.

6 43. I am also familiar with what is termed the *Laffey*-Matrix which is an objective
7 chart of litigation rates primarily for the Washington DC Baltimore area.

8 <http://www.laffeymatrix.com/>. This matrix was adopted by a Federal District Court in the
9 Washington DC area in 1983 in the case of *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354,
10 371 (D.D.C. 1983). The *Laffey*-Matrix looked at the years of experience of an attorney and
11 would adjust the rates by yearly inflation.

12 44. Based on the *Laffey*-Matrix, the following are the rates for the 6/1/2023 to
13 5/31/2024 time period is \$1,057.00. I note that the rates are substantially higher than the rates of
14 \$894.00 that I am seeking.

15 45. The retainer agreements I used in 2020 and 2021 lists my hourly rate as \$894.00
16 an hour.

17 46. With respect to the hourly rates, I have three comments or opinions.

18 47. First, I think it is important for contingency attorneys who represent Plaintiffs in
19 fee shifting litigation to be paid at or near the highest market rate. For one, there is always an
20 uncertainty in contingency litigation, one's client may not prevail, or one may be forced to
21 significantly compromise fees to secure a settlement.

22 48. Second, because the payment is not secured until after a resolution, a contingency
23 attorney typically goes a year or more without being paid for their work. In this case, I began to
24 represent Plaintiffs in 2021 and if the motion is granted the case will not be approved until the
25 end of 2024 or more than 3 years after the representation began.

26 49. Third, I believe that recognizing a high billable rate on par with management side
27 law firms incentivizes attorneys to engage in fee shifting litigation. This is especially true when
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1 representing low wage earners. Frankly, recognizing these rates levels the playing field in
2 securing representation which is in the public interest.

3 **Billing Methodology and Accounting of Fees and Costs**

4 50. Since July of 2013, my firm has used a cloud-based application called Toggl to
5 track time. Toggl allows me to turn on a project and has my time recorded both from my
6 computer and smartphone as an app. Time is kept to the minute. I open up a toggle file by
7 naming a case a “project” which allows me to activate that project to begin keeping time track of
8 my time.

9 51. In total, I am billing 84.6 hours. Exhibit A is a true and correct copy of my Toggl
10 billing records. I excluded from my billing a review of emails which I usually due. I counted
11 over 300 emails sent and received in the litigation. I also engaged in many client phone calls in
12 the last year which I did not bill for.

13 I declare under penalty of perjury pursuant to the laws of the United States that the
14 foregoing is true and correct, executed on August 26, 2024 in Santa Clara County, California.

15
16 *Tomas Margain*

17 _____
Tomas E. Margain

Justice at Work Law Group, LLP**EXHIBIT A**

1550 The Alameda, Suite 302

San Jose, CA

95126

Billing

Bravo v. Gallaher, et al

DATE	Time	Description
11/30/2020	1.25	mtg with potential client ABravo, intake, review documents, start file
12/30/2020	0.5	research company; draft and send retainer to client; call client re same
12/31/2020	1	draft release for 226 records; call client and send for signature and send to client
2/7/2021	0.75	Follow up mtg with client meeting to go over facts for PGAand lawsuit
3/6/2021	1.75	call client and finalize PAGAlletter; XXXXXXXXXXXXXXXXXXXXXXXX meeting with potential client Pablo Flores; Draft retainer,
3/8/2021	1.75	XXXXXXXXXXXXXXXXXXXXXXXXXXXX
3/8/2021	2	Finalize and PAGAlletter Mtg with both clients to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX; call to Ming
3/8/2021	1.65	Liu re co-counseling
3/11/2021	0.35	file PAGAlletter, email to co-counsel re prosecuting PAGAcase
4/12/2021	2.85	Draft Complaint
4/21/2021	1.25	Finalize Complaint and Cover Sheet, Summons
5/20/2021	0.25	review filing and text clients re XXXXXXXXXXXXXXXX, put out for service
7/22/2021	1	call and mtg with co counsel re next steps, discovery PAGAcounsel
7/22/2021	1.25	draft co-counsel agreement, PAGAmendment FAC
7/23/2021	1.25	letter to opposing counsel re amending complaint re PGA; upcoming CMC
7/27/2021	0.25	email to co-counsel re FAC
8/16/2021	0.75	Draft stipulation emails re CMC
8/17/2021	0.35	call Robert Branch (Def Counsel), call Ming, email Ming
8/18/2021	0.75	draft and submit CMC statement
8/30/2021	0.25	call Ming re stip
8/30/2021	0.25	call Bob and Ming re stip
9/3/2021	0.25	process stip and order
9/22/2021	0.3	call Ming re case update, discovery plan
10/26/2021	2.25	mtg with Javier (New worker)
11/16/2021	0.25	emails re FAC, mediation
3/1/2022	1.35	Attend CMC
5/9/2022	0.25	call from Javier re XXXXXXXXXXXXXXXXXXXXXXXX
6/18/2022	0.45	Call Javier re XXXXXXXXXXXXXXXXissue; joining lawsuit
7/2/2022	2.85	meeting Angel and Pablo, review documents
7/3/2022	0.75	review documents
7/4/2022	1.25	review documents; create audit template for clerk
7/9/2022	1	review audit mtg with Sarahi (Clerk)
7/10/2022	2.25	finalize audit and email to co counsel
7/11/2022	0.45	call Sarahi and Ming review what to put in brief and audit

7/18/2022	1.25	draft mediation brief
7/18/2022	2.35	review documents, call Javier, send Pablo documents, work on fact section of mediation brief
7/20/2022	4.5	finalize mediation brief
7/20/2022	1.25	Call Angel and Pablo re mediation
7/23/2022	1.35	client mtg re mediation (all 3 clients)
7/27/2022	8.5	call Angel, fill out paperwork, prep clients, attend mediation with Ming
9/20/2022	1	finalize and serve discovery
12/6/2022	0.5	call Ming re case and next steps
12/12/2022	0.75	review documents, send Ming email, work on audit and doc review
12/13/2022	0.5	text and emails to clients re update
12/15/2022	1.45	call Ming, call to Don and Ming
12/16/2022	0.85	review audit, call to Ming
12/16/2022	0.5	work on submission for mediation
12/19/2022	1.85	review audit to spot check, pull documents
2/14/2023	0.75	client meeting re settlement
2/27/2023	0.95	damages review meeting
2/27/2023	0.45	research PAGApunalty cases
2/27/2023	0.35	call Ming re settlement numbers
3/6/2023	0.25	email re CMC and data to opposing counsel
3/9/2023	0.45	calls to client re mediation meeting and numbers
6/7/2023	4.5	prep and second mediation; meeting with clients
8/16/2023	1.25	work on settlement agreement
8/23/2023	0.45	call co counsel, changes to agreement, send to opposing counsel
9/28/2023	0.5	med status hearing
11/10/2023	0.25	review edits to settlement
2/12/2024	0.75	go over agreements and XXXXXXXXXXXXXXXwith Pablo and Javier, get signed
2/29/2024	0.75	attend CMC re dismissal
3/26/2024	4	Draft PAGAApproval motion and declaration
3/27/2024	1.25	Draft PAGAApproval motion and declaration
8/5/2024	2	Draft PAGAApproval motion and declaration
8/19/2024	4	Draft PAGAApproval motion and declaration
TOTAL	84.6	