

# **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

## **I.** **INTRODUCTION**

This Settlement Agreement and General Release ("Agreement") is made on February \_\_, 2022, by and among the Plaintiff, The San Joaquin Valley Insurance Authority, a California joint powers authority, ("SJVIA"), and the Defendant Gallagher Benefit Services, Inc., a Delaware Corporation ("Gallagher"). The Plaintiff and the Defendant are collectively referred to herein as the "Parties."

## **II.** **RECITALS**

1. This Agreement is made with reference to the following facts:
  - a. From 2010 through 2016, Gallagher provided benefit consulting services to the SJVIA related to health insurance offered by the SJVIA to the employees of the County of Fresno, County of Tulare, and other public agencies who joined the SJVIA.
  - b. The services provided by Gallagher to the SJVIA were provided pursuant to two written contracts, the first effective January 1, 2010 through December 31, 2014, and the second effective January 1, 2015 through December 31, 2016.
  - c. On June 28, 2017, SJVIA commenced an action against Gallagher in the United States District Court for the Eastern District of California (Case No. 1:17-cv-00861-EPG) alleging claims against Gallagher for breach of contract and negligence (the "Complaint").
  - d. By way of answer and amended answer, Gallagher timely answered the Complaint and denied, and continues to deny, any wrongdoing or liability to the SJVIA.
  - e. The Parties have conducted multiple mediations during the pendency of this litigation.
  - f. The Parties have now reached a full settlement as set forth in this Agreement.

## **III.** **AGREEMENT**

NOW THEREFORE, for good cause and valuable consideration, the Parties hereto consent and agree as follows:

2. Consideration. To fully and finally resolve all claims relating to the Complaint, the Parties agree that:
  - a. The gross sum of Seven Million Dollars and No Cents (\$7,000,000.00) ("Settlement Amount") shall be paid to the SJVIA by Gallagher by the later of March 18, 2022 or 28 days after the Agreement's effective date.
  - b. Each party shall bear its own attorneys' fees, expenses and costs, including,

but not limited to, any fees, expenses and costs incurred in connection with the Agreement.

3. Effective Date of Agreement. This Agreement shall be effective upon approval by the SJVIA Board. If the SJVIA Board does not approve this Agreement, the parties shall be returned to their respective positions as if the Agreement were never executed.

4. Dismissal of the Complaint. Within fourteen (14) days of the SJVIA's receipt of the Settlement Amount, the SJVIA shall file with the Court for the Eastern District of California where the Complaint is pending, a stipulated dismissal of the Complaint, with prejudice, as to all Defendants.

#### **IV.** **MUTUAL RELEASES**

5. Subject to the payment of the Settlement Amount as provided in Section III.2(a) above, the SJVIA on behalf of itself, and its representatives, successors, heirs, assigns, and in a representative capacity on behalf of its plans, members, and beneficiaries, agrees to finally, fully, unconditionally and completely release, acquit and discharge Gallagher, Gallagher's Insurers, and each of their respective past, present and future officers, directors, representatives, owners, partners, subsidiaries, parent companies, affiliates, joint venturers, predecessors, managers, shareholders, servants, successors-in-interest, assigns, employees, agents, insurers and attorneys, and all persons or entities acting in concert with or affiliated with any of them (the "Gallagher Released Parties") from any and all claims, debts, liabilities, demands, obligations, controversies, agreements, promises, acts, agreements, liens, losses, fees, costs, expenses, damages, injuries, suits, actions, and causes of action, of whatever kind or nature, whether legal or equitable, known or unknown, suspected or unsuspected, contingent or fixed, that the SJVIA now has, claims to have, or may in the future claim to have against the Gallagher Released Parties, including without limitation any claims arising from or related to the events giving rise to the Complaint.

6. Subject to the dismissal with prejudice as provided in Section III.4, Gallagher, on behalf of itself, and its representatives, successors, heirs and assigns, agrees to finally, fully, unconditionally and completely release, acquit and discharge the SJVIA and each of its respective past, present and future officers, directors, representatives, owners, partners, subsidiaries, parent companies, affiliates, joint venturers, predecessors, managers, shareholders, servants, successors-in-interest, assigns, employees, agents, insurers and attorneys, and all persons or entities acting in concert with or affiliated with any of them (the "SJVIA Released Parties") from any and all claims, debts, liabilities, demands, obligations, controversies, agreements, promises, acts, agreements, liens, losses, fees, costs, expenses, damages, injuries, suits, actions, and causes of action, of whatever kind or nature, whether legal or equitable, known or unknown, suspected or unsuspected, contingent or fixed, that Gallagher now has, claims to have, or may in the future claim to have against the SJVIA Released Parties, including without limitation any claims arising from or relating to the events giving rise to the Complaint.

7. It is the intention of the Parties granting a release under this Agreement that the releases shall be effective upon the SJVIA's receipt of the Settlement Amount that has cleared the banking process. It is also the intent of the Parties that the releases under this Agreement shall be

effective as a bar to each and every claim, demand, and cause of action that the Parties each have against the other, arising from or relating to the events giving rise to the Complaint. In furtherance of this intention, the parties hereby expressly waive any and all benefits or rights conferred by the provisions of Section 1542 of the California Civil Code, or any similar provision of California law, federal law, or the law of any other state now in effect or in effect in the future. The Parties hereby expressly consent that this Agreement shall be given full force and effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands and causes of action, if any, as well as those relating to any other claims, demands, and causes of action specified above. Section 1542 of the California Civil Code, which the Parties expressly waive with respect to the events giving rise to the Complaint, provides as follows:

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.

## **V. COVENANT TO COOPERATE**

8. The Parties agree to cooperate and timely perform all acts reasonably necessary to assist each other with the execution and performance of the acts required to effectuate this Agreement.

## **VI. WARRANTIES AND REPRESENTATIONS**

9. The Parties hereby warrant and represent, one to the other, that they have not heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims and properties disposed of by this Agreement. Each person signing this Agreement on behalf of a Party represents and warrants to the other Party that he/she has the requisite power and authority to execute and deliver this Agreement on behalf of that Party and that this Agreement, when so executed and delivered, will be a binding obligation of and enforceable against such Party in accordance with its terms.

10. The Parties have each made such investigation of the facts and matters pertaining to this Agreement as each of them has deemed necessary.

## **VII. GOVERNING LAW**

11. This Agreement shall be governed by and construed in accordance with the laws of the State of California. If an action is filed to enforce the terms of this settlement agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

**VIII.**  
**ENTIRE AGREEMENT**

12. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only through the written agreement of all the Parties.

**IX.**  
**CONSENT**

13. The Parties represent that they were represented by attorneys of their own choosing, or by their own choosing declined to obtain legal representation, in the negotiations and preparation of this Agreement, that they have read this Agreement, that they are fully aware of its contents and of its legal effect by virtue of discussions with their attorneys, and that they have freely and voluntarily entered into the settlement set forth in this Agreement.

**X.**  
**CAPTIONS**

14. Any captions to the paragraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any portion thereof.

**XI.**  
**SAVINGS CLAUSE**

15. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nonetheless continue in full force and effect without being impaired or invalidated in any way. Parole evidence shall not be admissible to modify, alter or vary the terms of this Agreement.

**XII.**  
**JURISDICTION**

16. The Parties hereto agree that the United States Court for the Eastern District of California shall have sole and exclusive jurisdiction, sitting without a jury, to hear and determine any disputes that arise under or on account of this Agreement.

**XIII.**  
**COUNTERPARTS**

17. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Copies of this executed Agreement shall have the same force, effect and enforceability as the original.

**XIV.**  
**NO ADMISSION OF LIABILITY**

18. The Parties agree that the claims, demands, actions and causes of action affected by this Agreement are disputed and that nothing in this Agreement is intended or may be deemed to constitute an admission or concession of wrongdoing or liability, or other evidence of any wrongdoing or liability on the part of Defendants, and that any such asserted liability is expressly denied.

**XV.**  
**PUBLIC STATEMENTS**

19. The Agreement and its terms will be publicly available upon distribution to the SJVIA Board. Excluding any writings distributed at or statements made in an open meeting subject to California Government Code § 54950, et. seq., and except as may be otherwise required by law, neither Party will issue any press releases or make any public announcements of any kind regarding the relationship between the Parties or this Agreement without the other party's prior consent. No prior consent shall be necessary or required to allow the SJVIA to inform county labor groups of the Agreement or its terms if asked. Nothing contained herein shall prohibit Gallagher or any other person from making public criticism of the policies, procedures, programs, or services of the SJVIA, or the acts or omissions of the SJVIA, to the extent permitted by California Government Code section 54954.3, subdivision (c).

**XVI.**  
**NOTICES**

20. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, or by courier service, electronic mail, or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at their addresses set forth below (or at such other address a party hereto shall request in writing):

(a) if to Plaintiff:  
John Clifford  
Smith LC  
4 Park Plaza, Suite 1050  
Irvine, CA, 92614  
E-mail: [jclifford@smith-lc.com](mailto:jclifford@smith-lc.com)

With a courtesy copy by email to  
[pwall@fresnocountyca.gov](mailto:pwall@fresnocountyca.gov)  
[dlmendez@tularecounty.ca.gov](mailto:dlmendez@tularecounty.ca.gov)

(b) if to the Defendants  
Stephen D'Amore  
Winston & Strawn, LLP  
35 W. Wacker Drive  
Chicago, IL 60601-9703  
[sdamore@winston.com](mailto:sdamore@winston.com)

DATED: February \_\_\_\_, 2022

San Joaquin Valley Insurance Authority, a  
California Joint Powers Authority

By: \_\_\_\_\_  
Name: Pete Vander Poel  
TITLE: President of the Board of Directors

DATED: February \_\_\_\_, 2022

Gallagher Benefit Services, Inc

By: \_\_\_\_\_  
Name:  
TITLE: