MAYALL HURLEY P.C.
WILLIAM J. GORHAM III (SBN: 151773)
wgorham@mayallaw.com
ROBERT J. WASSERMANN (SBN: 258538)
rwassermann@mayallaw.com
VLADIMIR J. KOZINA (SBN: 284645)
vjkozina@mayallaw.com
112 South Church Street
Lodi, California 95240
Telephone: (209) 477-3833
Facsimile: (209) 473-4818
Website: www.mayallaw.com

Attorneys for Plaintiff Maria Carralez

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/20/2023 8:40 AM
Reviewed By: R. Walker
Case #23CV417695
Envelope: 13359582

SUPERIOR COURT OF THE STATE OF CALIFORNIA

SANTA CLARA COUNTY

MARIA GUTIERREZ, **Plaintiff,** **vs.** **THE CHAINARY, INC. DBA VALLIANI JEWELERS; and DOES 1-100, inclusive,** **Defendants.**	**Case No.: 23CV417695** **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** **1. FAILURE TO PAY MINIMUM WAGE** **2. FAILURE TO PAY OVERTIME** **3. FAILURE TO PROVIDE MEAL PERIODS** **4. FAILURE TO PROVIDE REST PERIODS** **5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** **6. FAILURE TO PAY SICK PAY** **7. FAILURE TO TIMELY PAY WAGES** **8. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES** **9. UNLAWFUL BUSINESS PRACTICES** **10. PRIVATE ATTORNEYS GENERAL ACT**

Plaintiff Maria Gutierrez brings this class and representative action against The Chainary, Inc. dba Vaillani Jewelers and Does 1 through 100, for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Maria Gutierrez ("Gutierrez" or "Plaintiff") is and at all times relevant herein was employed in Santa Clara County, California, and was an "employee" as defined by the California

Labor Code ("Labor Code"), and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. The Chainary, Inc. dba Valliani Jewelers ("Valliani Jewelers" or "Defendant") is a California corporation which does business in California and throughout the United States.

3. At all times relevant herein, Valliani Jewelers has been an "employer" as defined by the Labor Code and the applicable IWC Order(s).

4. Valliani Jewelers and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believe and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Santa Clara because Valliani Jewelers conducts business in this County and Plaintiff performed work for Valliani Jewelers in this County. Further, unlimited jurisdiction is

proper as the amount in controversy exceeds the minimum threshold for the same. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. Plaintiff was employed by Valliani Jewelers as a Sales Associate from November 2021 until August 2022.

9. Throughout her employment, Plaintiff was a non-exempt employee.

10. As such, Plaintiff was entitled to be paid for every hour worked and overtime as appropriate.

11. Plaintiff and Valliani Jewelers' other non-exempt employees were also eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation.

12. The non-discretionary bonuses, commissions, and other items of compensation to which Plaintiff and Valliani Jewelers's other non-exempt employees were eligible included, but were not limited to, "Bonus" and "Misc Pay". See **Exhibit 1**.[1]

13. Throughout her employment Valliani Jewelers has either (a) failed to include these non-discretionary bonuses, commissions, and other items of compensation when calculating Plaintiff's and its non-exempt employees' regular rate of pay for purposes of overtime, or (b) miscalculated Plaintiff's and its non-exempt employees' regular rate of pay for purposes of overtime. Instead, Valliani Jewelers had a uniform policy, pattern, and practice of only paying 1 ½ times (or 2 times, as appropriate) the employee's base hourly rate for overtime hours worked.

14. For example, during the pay period of January 16, 2022, through January 31, 2022, Plaintiff received "Misc Pay" of $9.66 and a "Bonus" of $977.11. See **Exhibit 1**. Pursuant to its uniform policy and practice, Valliani Jewlers failed to include "Misc Pay" or "Bonus" when calculating her regular rate of pay. Instead, Valliani Jewelers utilized only Plaintiff's base hourly rate and multiplied it by 1.5 to obtain the overtime rate of $31.50, and thus underpaid her for overtime hours worked.

---

[1] **Exhibit 1** is incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

15. Throughout their employment, Plaintiff and Valliani Jewelers' other non-exempt California employees were also not properly paid for all hours worked, including overtime.

16. Specifically, because of issues with Valliani Jewelers' timekeeping practices, Plaintiff and Valliani Jewelers' other non-exempt California employees were routinely credited for less hours than they actually worked.

17. Plaintiff and Valliani Jewelers' other non-exempt employees were also not consistently authorized or permitted to take meal and rest breaks as required by California law.

18. Valliani Jewelers required Plaintiff and its other non-exempt employees to work through meal and rest breaks due to understaffing and work demands.

19. Plaintiff and Valliani Jewelers' other non-exempt employees' meal breaks were routinely interrupted by supervisors, who required them to attend to work-related tasks during their meal breaks.

20. Plaintiff and Valliani Jewelers' other non-exempt employees' meal breaks were also routinely interrupted by co-workers who needed help with work-related tasks during their meal breaks.

21. Plaintiff and Valliani Jewelers' other non-exempt employees' meal breaks were also routinely interrupted by clients who needed help.

22. On the occasions that Plaintiff and Valliani Jewelers' other non-exempt employees were able to take their meal breaks, they routinely occurred after 5 hours of work.

23. Further, Valliani Jewelers frequently failed to relieve Plaintiff and its other non-exempt employees of employer control during their rest breaks.

24. Plaintiff and Valliani Jewelers' other non-exempt employees' rest breaks were routinely interrupted by supervisors, who required them to attend to work-related tasks during their rest breaks.

25. Plaintiff and Valliani Jewelers' other non-exempt employees' rest breaks were also routinely interrupted by co-workers who needed help with work-related tasks during their rest breaks.

26. Plaintiff and Valliani Jewelers' other non-exempt employees' rest breaks were also routinely interrupted by clients who needed help.

27. Finally, Valliani Jewelers frequently failed to provide Plaintiff and its other non-exempt employees with the requisite number of meal and rest breaks.

28. When Plaintiff and Valliani Jewelers' other non-exempt employees were not provided compliant meal and rest breaks, Valliani Jewelers did not pay premiums as required by California law. Specifically, Valliani Jewelers either (a) failed to pay the premiums in their entirety or (b) paid the premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including shift premiums and differentials).

29. Valliani Jewelers also failed to incorporate non-discretionary bonuses, commissions, and other items of compensation into its non-exempt employees' regular rate of pay when paying sick pay.

30. Valliani Jewelers further failed to provide Plaintiff and its other non-exempt employees with written notice setting forth the amount of paid sick time off for use.

31. When Plaintiff's employment with Valliani Jewelers ended, she was not paid all minimum wage, overtime, meal and rest premiums, and sick pay that was owed to her.

32. Because it fails to pay all minimum wage, overtime, meal and rest premiums, and sick pay, and to do so at the correct rate, Valliani Jewelers also fails to timely pay its non-exempt employees each pay period and at the end of their employment.

33. Because of the violations set forth above, and as evidenced in the sample of Plaintiff's wage statements attached hereto as **Exhibit 1** the wage statements furnished by Valliani Jewelers to its non-exempt employees violate California Labor Code section 226(a) insofar as they fail to accurately show:

a. The gross wages earned, in violation of section 226(a)(1);
b. The total hours worked, in violation of section 226(a)(2)
c. The net wages earned, in violation of section 226(a)(5); and
d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

34. Plaintiff and Valliani Jewelers' other non-exempt employees were not reimbursed for business expenses incurred in the performance of their job duties.

35. For example, Plaintiff and Valliani Jewelers' other non-exempt employees were required to bring their cell phones to work and to utilize an application called "Podium" to track / maintain contact with potential clients. Notwithstanding the foregoing, Plaintiff and Valliani Jewelers' other non-exempt employees were not reimbursed for the same.

36. From at least four years prior to the filing of this action, Valliani Jewelers has adopted and employed unfair business practices. These unfair business practices include, but are not limited to, failing to properly pay all minimum and overtime wages due, failing to provide compliant meal and rest breaks, failing to properly compensate employees for statutorily required sick leave, and failing to reimburse employees for business expenses.

CLASS ACTION ALLEGATIONS

37. Plaintiff seeks to maintain this action as a class action as to the First through Ninth Causes of Action. Plaintiff brings this action, on behalf of themselves and all others similarly situated employees, as a class action pursuant to California Code of Civil Procedure Section 382. The putative classes which Plaintiff seeks to represent consists of the following:

a. All current and former non-exempt employees of Valliani Jewelers who received commissions, non-discretionary bonuses and/or other items of compensation and worked overtime during one or more pay periods from June 16, 2019, through the date of trial (the "Regular Rate Class");

b. All current and former non-exempt employees of Valliani Jewelers who worked during one or more pay periods from June 16, 2019, through the date of trial (the "Unpaid Wage Class");

c. All current and former non-exempt employees of Valliani Jewelers who worked one or more shift of longer than five hours from June 16, 2019, through the date of trial (the "Meal Break Class");

d. All current and former non-exempt employees of Valliani Jewelers who worked one or more shift of longer than three and one-half hours from June 16, 2019, through the date of trial (the "Rest Break Class");

e. All current and former non-exempt employees of Valliani Jewelers who received commissions, non-discretionary bonuses and/or other items of compensation and used sick leave during at least one pay period from June 16, 2019, through the date of trial (the "Sick Pay Class");

f. All members of the Regular Rate Class, Unpaid Wage Class, Meal Break Class, Rest Break Class and Sick Pay Class whose employment ended on or after June 16, 2020 (the "Waiting Time Penalty Class");

g. All current and former non-exempt employees of Valliani Jewelers who incurred business expenses in the performance of their duties from June 16, 2019, through the date of trial ("Business Expense Class"); and

h. All current and former non-exempt employees of Valliani Jewelers who worked from June 16, 2022, through the date of trial (the "Wage Statement Class").

The Regular Rate Class, Unpaid Wage Class, Meal Break Class, Rest Break Class, Sick Pay Class, Waiting Time Penalty Class, Business Expense Class, and the Wage Statement Class, are collectively referred to as the "Class".

38. The class of persons is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that Valliani Jewelers employs more than 250 employees who satisfy the class definition. Although the exact number and identity of class members is not presently known, they can be identified in Valliani Jewelers records through coordinated discovery pursuant to this class action.

39. This action may be maintained as a class because the questions of law and fact which are common to class members clearly predominate over any questions affecting only individual members and because a class action is superior to other available methods for adjudicating the controversy.

40. There are numerous common questions of law and fact arising out of Valliani Jewelers' conduct. This class action focuses on Valliani Jewelers' systematic failure to: (a) properly pay employees for all hours worked, including overtime; (b) pay employees' at the correct rate of pay; (b)

authorize and permit meal and rest breaks or to pay the requisite premiums; (c) properly pay sick pay; (d) timely pay wages; and (d) provide accurate itemized wage statements.

41. Furthermore, common questions of fact and law predominate over any questions affecting only individual members of the class. The predominating common or class-wide questions of law and fact include the following:

a. Whether Valliani Jewelers failed to properly calculate and pay overtime to its non-exempt employees;

b. Whether Valliani Jewelers failed to pay all its non-exempt employees for all hours worked, including overtime;

c. Whether Valliani Jewelers failed to provide compliant meal and breaks to its non-exempt employees;

d. Whether Valliani Jewelers failed to pay premiums, and at the correct rate of pay, to its non-exempt employees when they did not receive compliant meal and rest breaks;

e. Whether Valliani Jewelers failed to properly calculate and pay its non-exempt employees' sick pay;

f. Whether Valliani Jewelers failed to timely pay all wages due and owing to its non-exempt employees;

g. Whether Valliani Jewelers failed to reimburse its non-exempt employees for business expenses incurred in the performance of their job duties;

h. Whether the Valliani Jewelers failed to furnish accurate itemized wage statements;

i. Whether the alleged violations constitute unfair business practices;

j. Whether the Class is entitled to injunctive relief; and

k. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

42. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the

alleged violations of Valliani Jewelers. Plaintiff's claims are typical of those of the Class because Valliani Jewelers subjected Plaintiff and each member of the Class to the same violations alleged herein.

43. The defenses of Valliani Jewelers, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

44. Plaintiff will fairly and adequately protect the interests of all members of the Class, and have retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately protect the interests of all members of the class because it is in their best interest to prosecute the claims alleged herein in order to obtain the full compensation due herself and the other class members.

45. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Valliani Jewelers, 4) class members still working for Valliani Jewelers may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of the class actions to enforce employment laws and protect individuals who, by virtue of their subordinate position, are particularly vulnerable.

46. Judicial economy will be served by maintenance of this lawsuit as a class action. To process numerous virtually identical individual cases will significantly increase the expense on the Court, the class members, and Valliani Jewelers, all while unnecessarily delaying the resolution of this matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court and doing so will provide multiple benefits to the litigating parties including, but not limited to, efficiency, economy, and uniform adjudication with consistent results.

47. Notice of a certified class action and any result or resolution of the litigation can be provided to class members by mail, email, publication, or such other methods of notice as deemed appropriate by the Court.

PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS

48. The Private Attorney General Act ("PAGA"), as set forth at California Labor Code § 2698 et seq., is and at all times relevant herein was applicable to Plaintiff's employment.

49. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

50. Pursuant to PAGA, an "Aggrieved Employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Labor Code § 2699(c).

51. Plaintiff was employed by Valliani Jewelers and several of the violations alleged herein were committed against her during her time of employment. Plaintiff is therefore an Aggrieved Employee as defined by Labor Code § 2699(c).

52. Valliani Jewelers' other current and former non-exempt employees are also Aggrieved Employee in that one or more of the alleged violations were also committed against them during their time of employment with Valliani Jewelers.

53. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

54. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

55. As is outlined herein, Valliani Jewelers violated the Labor Code as to Plaintiff and other Aggrieved Employees it employed and/or employs within California. Specifically, Valliani Jewelers violated Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1185.12, 1198 and 2802, as well as the applicable IWC Wage Orders.

56. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil penalty, the penalty recoverable shall be $100 for the initial violation per employee per pay period and $200 for each subsequent violation per employee per pay period.

57. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

58. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice by certified mail to the LWDA and the employer (hereinafter "Employee's Notice") of the specific provisions of California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 days of the postmark date of the Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does not provide notice with 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

59. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that the violation has been cured. If the violation is not cured, the aggrieved employee may commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

60. On June 16, 2023, Plaintiff provided written notice by certified mail to Valliani Jewelers and by online filing to the LWDA of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

61. As of the filing of this First Amended Class and Representative Action Complaint, which is more 65 days after Plaintiff provided written notice and after this Court lifted its stay for amendments, the LWDA has not responded to his notification or otherwise indicated an intention to investigate her claims.

62. Accordingly, Plaintiff has satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties against Valliani Jewelers, in addition to other remedies, for the aforementioned violations of California Labor Code sections and applicable IWC Wage Orders.

FIRST CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.
(Failure to Pay Minimum Wage)
Against Defendants

63. Plaintiff hereby reallege sand incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

64. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

65. Labor Code Section 1194 provides, in relevant part:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

66. Labor Code section 1194.2 provides, in relevant part:

> In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

67. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful.

68. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

69. During the relevant time period, Valliani Jewelers intentionally and willfully failed to pay Plaintiff and the other members of the Unpaid Wages Class for every hour worked.

70. Wherefore, Plaintiff and the other members of the Unpaid Wages Class have been injured as set forth above and request relief as hereafter provided.

SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 510 and 1198
(Failure to Pay Overtime)
Against Defendants

71. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

72. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

73. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

74. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq., requires time-and-a-half pay for the time an employee works over forty hours a week.

75. The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

76. During the relevant time period, Plaintiff and Valliani Jewelers' other non-exempt employees regularly worked overtime.

77. During the relevant time period, Valliani Jewelers intentionally and willfully failed to pay Plaintiff and other members of the Unpaid Wages Class the proper overtime wages due to them.

78. During the relevant time period, Valliani Jewelers intentionally and willfully failed to properly calculate and pay overtime wages due to Plaintiff and the other members of the Regular Rate Class.

79. Wherefore, Plaintiff and the other members of the other members of the Unpaid Wages Class and the Regular Rate Class have been injured as set forth above and request relief as hereafter provided.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Periods)
Against Defendants

80. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

81. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

82. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

83. During the relevant time period, Plaintiff and the other members of the Meal Break Class were not provided with compliant meal breaks, nor did they receive appropriate premium pay for each missed meal break.

84. Wherefore, Plaintiff and the other members of the Meal Break Class have been injured as set forth above and request relief as hereafter provided.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Rest Periods)
Against Defendants

85. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

86. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

87. The applicable Wage Order(s) provides that every "employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." The applicable Wage Order further provides that "[i]f an employer fails to provide an employee rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

88. During the relevant time period, Plaintiff and other members of the Rest Break Class were not provided with compliant rest breaks, nor did they receive appropriate premium pay for each missed rest break.

89. Wherefore, Plaintiffs and the other members of the Rest Break Class have been injured as set forth above and request relief as hereafter provided.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants

90. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

91. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages

earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment."

92. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

93. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay period or any of the other information required to be provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and address of the employer and iv) the name of the employee and the last four digits of his or her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). "Promptly and easily determine" means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

94. As set forth above, Valliani Jewelers intentionally and willfully failed to furnish accurate itemized wage statements which complied with Labor Code section 226.

95. Wherefore, Plaintiff and the other members of the Wage Statement Class have been injured as set forth above and request relief as hereafter provided.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 218, 233, 246, et seq. and IWC Wage Orders
(Failure to Properly Pay Sick Pay)
Against Defendants

96. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

97. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

98. The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

99. During the relevant time period, Defendants failed to include commissions, incentive payments, non-discretionary bonuses, and/or other items of compensation when determining the "regular rate of pay" for Smith and their other non-exempt California employees for purposes of sick time pay.

100. According to the California Supreme Court, sick pay is a form of wages. *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

101. Labor Code section 233 provides that "any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5."

102. During the relevant time period, Valliani Jewelers intentionally and willfully failed to pay Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by law. Accordingly, Plaintiff and the other members of the Sick Pay Class did not receive the full amount of paid sick time that they were entitled to receive by law, and were therefore denied the right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

103. Any employer who violates Labor Code section 233 is liable to employees for the greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys' fees and costs. Labor Code §233(d), (e).

104. Further, Labor Code section 218 authorizes a private right of action to recover unpaid wages.

105. Wherefore, Plaintiff and the other members of the Sick Class have been injured as set forth above and request relief as hereafter provided.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 201 et. seq.
(Failure to Timely Pay Wages)
Against Defendants

106. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

107. Labor Code section 201 requires an employer to pay an employee all wages earned and unpaid at the employer discharges the employee.

108. Labor Code section 202 requires an employer to pay the employee all wages due no later than 72 hours after the employee quits his or her employment.

109. Labor Code section 203 provides: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

110. During the relevant time period, Valliani Jewelers failed to timely pay Plaintiff and the other members of the Waiting Time Penalty Class all earned but unpaid wages at discharge.

111. Wherefore, Plaintiff and the other members of the Waiting Time Penalty Class have been damaged as set forth above and request relief as hereafter provided.

/ / /

/ / /

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2802
(Failure to Reimburse for Business Expenses)
Against Defendants

112. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

113. Pursuant to California Labor Code § 2802(a), "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

114. As set forth above, Valliani Jewelers intentionally and willfully failed to reimburse Plaintiff and the other members of the Business Expense Class for all necessary expenditures or losses incurred in the direct consequence of the discharge of their job duties in violation of Labor Code section 2802.

115. Wherefore, Plaintiff and the other members of the Business Expense Class have been damaged as set forth above and request relief as hereafter provided.

NINTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.*
(Unfair Business Practices)
Against Defendants

116. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

117. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and include, but are not limited to failing to pay minimum wage and overtime wages, failing to pay meal and rest break premiums, and failing to properly compensate employees for statutorily required sick leave.

118. Wherefore, Plaintiff and the other members of the Class have been damaged as set forth above and request relief as hereafter provided.

TENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 2698 *ET SEQ*
(Private Attorneys General Act)
Against Defendants

119. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

120. Plaintiff is an "aggrieved employee" under the PAGA as she was employed by Valliani Jewelers during the applicable statutory period, and suffered one or more of the Labor Code violations outlined herein. Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with Valliani Jewelers.

121. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce Development Agency (the "LWDA"), the civil penalties provided by the PAGA through a representative action permitted by the PAGA and Arias v, Sup. Ct. (2009) 46 Cal.4th 969. Class certification of the PAGA claims is not required.

122. Plaintiff seeks to enforce the California Labor Code and related regulations and Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of violations which include, but are not limited to, all of the following: Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1185.12, 1198 and 2802, as well as the applicable IWC Wage Orders

123. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

124. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against

whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

125. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA as set forth below.

126. Wherefore, Plaintiff and the other Aggrieved Employees have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Ninth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiff as representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under Labor Code sections 226(h) and 248.5(e), as well as Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226(e)(1), 248.5(e), and 1194, 29 U.S.C. § 216, as well as Code of Civil Procedure section 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Tenth Cause of Action:

For such other and further relief as the court deems just and proper.

1. For civil penalties, including but not limited to those available under Labor Code §§, 210, 226.3, 558 and 2699(f);

2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);

3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and

4. For such other and further relief as the court deems just and proper.

DATED: October 20, 2023

MAYALL HURLEY P.C.

By Will J. Gorham III

WILLIAM J. GORHAM III
ROBERT J. WASSERMANN
VLADIMIR J. KOZINA
Attorneys for Plaintiffs and the Putative Class

Exhibit 1

Company Code	Loc/Dept	Number	Page
RR / WI8 21857301	0 1/10	7145520	1 of 1

THE CHAINARY INC
302 GREAT MALL DR
MILPITAS, CA 95035

Earnings Statement

ADP

Period Starting: 01/16/2022
Period Ending: 01/31/2022
Pay Date: 02/04/2022

Taxable Filing Status: Single
Exemptions/Allowances:
Federal: Std With Table
State: 0
Local: 0
Social Security Number: XXX-XX-5579

Tax Override:
Federal:
State:
Local:

MARIA H GUTIERREZ
[redacted]

Earnings	rate	hours/units	this period	year to date
Regular	21.0000	88.00	1848.00	3799.95
Overtime	31.5000	29.96	943.74	1726.20
Bonus		0.00	9.66	9.66
Misc pay		0.00	977.11	1778.39
Gross Pay			$3,778.51	$7,314.20

Statutory Deductions	this period	year to date
Federal Income	-529.94	970.33
Social Security	-234.27	453.46
Medicare	-54.79	106.06
California State Income	-228.67	415.70
California State DI	-41.57	80.46
Net Pay	$2,689.27	

Other Benefits and Information	this period	year to date
Total Hours Worked	117.96	235.75

Deposits account number	transit/ABA	amount
XXXXXX6885	XXXXXXXXX	2689.27

Important Notes
Basis of pay: Hourly

Your federal taxable wages this period are $3,778.51

THE CHAINARY INC
302 GREAT MALL DR
MILPITAS, CA 95035

Pay Date: 02/04/2022

Deposited to the account	account number	transit/ABA	amount
Checking DirectDeposit	XXXXXX6885	XXXXXXXXX	2689.27

THIS IS NOT A CHECK

MARIA H GUTIERREZ
[redacted]