

1 **MAYALL HURLEY P.C.**
2 **WILLIAM J. GORHAM, III (SBN: 151773)**
3 **wgorham@mayallaw.com**
4 **ROBERT J. WASSERMANN (SBN: 258538)**
5 **rwasserman@mayallaw.com**
6 **VLADIMIR J. KOZINA (SBN: 284645)**
7 **vjkozina@mayallaw.com**
8 **112 S Church Street**
9 **Lodi, CA 95240**
10 **Telephone: (209) 477-3833**
11 **Facsimile: (209) 473-4818**

12 **Attorneys for Plaintiff Maria Gutierrez**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF SANTA CLARA**

15 **MARIA GUTIERREZ,**

16 **Plaintiff,**

17 **vs.**

18 **THE CHAINARY, INC. DBA VALLIANI**
19 **JEWELERS; and DOES 1-100, inclusive,**

20 **Defendants.**

Case No.: 23CV416653

DECLARATION OF VLADIMIR J.
KOZINA IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT

Date: March 19, 2025

Time: 1:30 pm

Dept: 19

21 I, Vladimir J. Kozina, declare:

22 1. I am an attorney duly licensed to practice before all the courts of this state and am a
23 shareholder of Mayall Hurley P.C., counsel for Plaintiff Maria Gutierrez ("Plaintiff").

24 2. I have personal knowledge of the matters set forth herein and, if called upon to do so,
25 could and would competently testify thereto under oath.

26 ///

27 ///

28 ///

1 **Procedural History, Discovery, Settlement Negotiations and Mediation**

2 3. On June 16, 2023, Plaintiff sent notice to the LWDA and Defendant The Chainary, Inc.
3 dba Valliani Jewelers (“Defendant”) of Defendant’s alleged violations of the Labor Code, specifically
4 Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12 *et seq.* 1198, and 2802. Attached as
5 **Exhibit 1** is a true and correct copy of this notice.

6 4. The LWDA did not provide notice that it intended to investigate the alleged violations
7 set forth in either of Plaintiff’s notices.

8 5. Plaintiff filed the instant action on June 16, 2023, asserting class claims against
9 Defendant for: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) failure to furnish meal
10 breaks; 4) failure to furnish rest breaks; 5) failure to pay all wages at cessation of employment; 6)
11 failure to furnish accurate itemized wage statements; 7) failure to pay sick pay; 8) failure to reimburse
12 business expenses; and 9) violation of Business and Professions Code sections 17200 *et seq.* On
13 October 20, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under PAGA.

14 6. Through formal and informal discovery, Defendant produced hundreds of documents
15 and thousands of lines of data, consisting of time and payroll data for the putative class and copies of
16 Defendant’s relevant written policies. Through review of this information and the assistance of a
17 qualified expert, Plaintiff was able to assess the merits of her claims and ultimate suitability for class
18 treatment.

19 7. Plaintiff and Defendant engaged in private mediation with Phil Cook, Esq. on August
20 14, 2024. Prior to mediation, Plaintiff had the payroll and time data analyzed by a qualified expert
21 who created a damages model.

22 8. The matter did not settle at the end of the full day mediation session, but a mediator’s
23 proposal made at its conclusion was ultimately accepted by both sides. The parties agreed to settle for
24 a total of \$1,355,000 subject to Court approval.

25 9. At all times, the parties’ negotiations were adversarial, non-collusive, and at arms’
26 length. These negotiations were supervised and facilitated by a mediator with substantial experience
27 in wage and hour class actions.

1 10. The parties subsequently drafted a long-form settlement agreement. The agreement
2 was finalized and fully executed on October 15, 2024. Attached hereto as **Exhibit 2** is a true and
3 correct copy of the fully executed settlement agreement.

4 11. Pursuant to the Settlement, Defendant is to remit \$1,355,000.00 – the Gross Settlement
5 Amount (“GSA”) – on an all-in, non-reversionary basis to resolve the claims to be released by
6 Participating Class Members. Defendant also reviewed and, as appropriate, revised its policies,
7 procedures, and practices to ensure compliance with California law.

8 12. There are a total of 283 class members. The average payment to each Participating
9 Class Member is expected to be approximately \$3,443.62 (\$819,583.43 / 283).

10 **Class Counsel’s Damages Analysis and Valuation of the Class Claims**

11 13. The Settlement Agreement represents a compromise of highly disputed claims.
12 Defendant vigorously denies Plaintiff’s allegations in their entirety, denies that continued certification
13 of the class is appropriate (except for settlement purposes), contends that it has complied with the law,
14 and asserts numerous affirmative defenses, both legal and factual.

15 14. This Settlement has and will result in substantial benefits to all Class Members.

16 **Maximum Potential Class Damages**

17 15. Plaintiff has asserted class claims for: 1) failure to pay minimum wage; 2) failure to pay
18 overtime; 3) failure to furnish rest breaks; 4) failure to pay all wages at cessation of employment; 5)
19 failure to furnish accurate itemized wage statements; and 6) violation of Business and Professions
20 Code sections 17200 *et seq.*

21 16. Based on the substantial documentation and data provided to Class Counsel by
22 Defendant, including over 208,000 lines of time and payroll data, Class Counsel was able to develop a
23 model estimating the maximum damages recoverable by the class. This time and payroll information
24 was provided to Class Counsel’s expert economist, who utilized same to determine a model of the
25 maximum damages potentially faced by Defendant with respect to the class claims at issue in this
26 Action.

27 17. Under Class Counsel’s damages model, Defendant faced a maximum of \$4,109,900 in
28 non-PAGA exposure to the overall Class.

1 18. With respect to the regular rate claims, Plaintiff's theory of liability is premised on the
2 contention that the Class received non-discretionary bonuses that were not factored into their rate of
3 pay for overtime, meal and rest period premium payments, or sick pay. Based on this information,
4 Defendant faced an estimated maximum of just under \$522,000 in unpaid wages.

5 19. Analysis of Defendant's time records revealed that they were poorly-maintained and
6 unreliable, offering little assistance in cross-checking Defendant's own payroll records for purposes of
7 this off-the-clock claim (in other words, there were a substantial number of mismatches between the
8 time records and pay records, as well as gaps in the time records). With the assistance of their expert
9 and Plaintiff, Plaintiff's counsel made a reasoned estimate of an average of 15 minutes per shift of off
10 the clock time. This resulted in an estimated underpayment across the class of 24,591 hours, and a
11 liability of approximately \$542,000.

12 20. Based on the records provided to Plaintiff's counsel, it was determined that there was a
13 total of 20,541 non-compliant meal periods (missing, late, or short), resulting in a total of
14 approximately \$749,000 in unpaid meal premiums. Assuming a 25% rest period violation rate,
15 Plaintiff's counsel calculated an additional approximately \$793,000 in unpaid rest premiums (from an
16 estimated total of 24,190 violations).

17 21. Based on the foregoing alleged violations, it was determined that \$353,900 in wage
18 statement penalties under Labor Code section 226(e) would be owed for the alleged violations
19 occurring during the wage statement limitations period of June 16, 2022, forward.

20 22. As for the waiting time penalty claim, there were 134 former employees who would be
21 owed waiting time penalties if Plaintiff was successful in her wage claims, with a calculated exposure
22 of approximately \$730,000 in waiting time penalties under Labor Code section 203.

23 23. Plaintiff's reimbursement claim was premised on allegations that she and others were
24 required to utilize their personal cellular phones for work purposes, specifically to utilize an app called
25 "Podium" to track and maintain contact with potential clients but were not reimbursed for any of their
26 personal cell phone usage. Plaintiff estimated that a reasonable reimbursement rate would be
27 approximately \$5 per pay period, resulting in approximately \$50,000 in exposure on the
28 reimbursement claim.

1 24. Interest on the foregoing claims was calculated to be approximately \$352,000.

2 25. Finally, based on the same facts, Plaintiff's counsel's expert calculated that Defendant
3 faced a maximum PAGA exposure of \$1,013,000.

4 26. Overall, then, Defendant's maximum potential exposure was estimated to be
5 \$5,104,900, the non-PAGA exposure being approximately \$4,091,900. Even without any reduction
6 for risk, the \$1,355,000 Gross Settlement Amount represents 32.6% of the potential maximum non-
7 PAGA exposure, and 26.5% of the maximum overall exposure.

8 **Defendant's Defenses and Realistic Liability**

9 27. Defendant raised several defenses against the class claims having the potential to
10 substantially reduce or eliminate its potential exposure, including that several of the claims would be
11 difficult to certify given the difficulty in developing common proof for issues such as the rest break
12 claims and off the clock claims.

13 28. Because of anticipated challenges to certification, success on the merits at trial, and on
14 appeal, Class Counsel adjusted the exposure for reasonableness, particularly with respect to rest break
15 claims, which by their very nature are not discernable from records, and Plaintiff's off-the-clock
16 claims.

17 29. Based on the above, Class Counsel believes that a 50% reduction in the potential
18 exposure on the rest break and off-the-clock claims was appropriate, resulting in reasonable exposure
19 of \$271,000 on the off-the-clock claim and \$396,500 on the rest break claim. Class counsel also
20 applied a 20% reduction in exposure on the remaining claims, resulting in an estimated reasonable
21 potential liability of \$417,600 on the regular rate claims, \$599,200 on the meal period claims,
22 \$283,120 on the wage statement claims, \$584,000 on the waiting time penalty claims, and \$40,000 on
23 the reimbursement claims.

24 30. Accordingly, Plaintiff's counsel determined that the realistic potential classwide exposure
25 to Defendant was approximately \$2,591,420, with approximately \$222,800 in interest, totaling
26 \$2,814,220. A similar reduction in the PAGA exposure would be appropriate for the same reasons,
27 leaving a realistic PAGA exposure of approximately \$641,200.

1 31. Considering all the circumstances set forth above, and the inherent risks in a necessarily
2 protracted litigation process of uncertain outcome, the Settlement provides timely, guaranteed and
3 cognizable monetary relief that is objectively fair, adequate, and reasonable, a contention that I
4 strongly believe.

5 32. While I believe that certification was likely as to all of Plaintiff's claims, given the
6 commonality of the policies and practices being challenged, continued litigation was guaranteed to be
7 costly, time consuming, and risky, particularly under these facts. Appellate proceedings would only
8 further delay and jeopardize recovery by Class Members. By contrast, the proposed Settlement
9 ensures timely relief and substantial recovery for the Class and is superior to other recently approved
10 settlements raising similar claims.

11 33. The released Class Member claims, defined in Paragraph 50 of the Settlement
12 Agreement, were narrowly tailored to track the factual allegations underlying the claims advanced on
13 behalf the Class and do not include a Civil Code section 1542 waiver.

14 34. Neither I nor my firm are aware of any other pending matter or action asserting claims
15 that will be extinguished or adversely affected by this Settlement.

16 **PAGA Penalty Payment**

17 35. The Settlement allocates \$50,000 to resolution of claims for PAGA civil penalties
18 arising out of the alleged violations of the Labor Code committed against the Class. The Parties
19 negotiated this amount in good faith, intending to serve the punitive and deterrent purposes of the
20 PAGA.

21 36. This is an appropriate resolution under the circumstances because the punitive and
22 deterrent purposes of the PAGA are being served, particularly in light of the additional payments
23 being made to the Class Members. *Jennings v. Open Door Marketing, LLC* (N.D. Cal. 2018) 2018
24 WL 4773057 *8-9 (approving PAGA recovery of 0.6% of maximum); *Ahmed v. Beverly Health &*
25 *Rehabilitation Svcs., Inc.* (ED. Cal. 2018) 2018 WL 746393 *10.

26 37. I transmitted the Settlement Agreement to the LWDA on February 19, 2025, in
27 compliance with Labor Code § 2699(1)(2). See **Exhibit 3**.

The Class Notice Complies with Rule 23 and Satisfies Due Process

38. Attached as Exhibit A to the Settlement Agreement (**Exhibit 2**) is true and correct copy of the proposed Notice of Class Action Settlement and Final Approval Hearing (the “Class Notice”) which has been reviewed and approved by the Parties.

39. The Class Notice meets all of the requirements of procedural due process and Rule 23(e) by identifying the Plaintiff and Defendant and describing the claims and the Class Action in a straightforward manner; succinctly describing the essential terms of the proposed Settlement, including the Class Representative’s proposed Service Award and the amount Class Counsel will request for attorney’s fees and costs; identifying the claims that are being released by the Class Members; identifying all parties against whom claims are being released; providing Class Members with information on how to participate in, exclude themselves from, or object to the Settlement; clearly providing all applicable deadlines for such action; informing Class Members of the consequences if they decide to exclude themselves from the Settlement; and advising them that, if they choose to participate and the Settlement is approved, they will be bound by the resulting judgment, including informing them that this may affect their ability to participate in other pending litigation. Further, the Class Notice clearly explains the manner in which Class Members can obtain further information (e.g., through the Court’s website and the administrator’s website) and that the Final Approval Hearing may be moved without further notice.

40. Because all Class Members are current or former employees of Defendant, for whom Defendant has current or last known addresses as well as SSNs, notice here is simpler and more reliable than in other types of class actions that require published notice to reach unidentifiable class members.

41. The Notice is being provided in English-only. An English-only notice is appropriate because Defendant’s employees conduct business in English, were expected to be able to read and understand employment policies and regulations written in English. Thus, an English-only notice is adequate.

///

1 **Apex Class Action Administration Should be Approved as Claims Administrator**

2 42. The Parties have selected Apex Class Action Administration (“Apex”) to serve as
3 Administrator.

4 43. Class Counsel has experience with Apex and have found their fees fair and competitive
5 amongst other administrators in the industry. I believe the estimated cost of administration of
6 \$6,999.90 is reasonable in relation to a class of this size and the work to be performed.

7 **Plaintiff Has Served and Will Continue to Serve the Class Well**

8 44. Plaintiff’s interest in prosecuting this Class Action and obtaining the most beneficial
9 recovery possible fully comport with the collective best interests of the Class Members. Plaintiff
10 understands the claims and theories that are being advanced, has been involved through the litigation
11 and has no conflicts with the other members of the Class whom she seeks to represent. Plaintiff was
12 subjected to the same alleged unlawful policies, practices, and procedures. Were Plaintiff not serving
13 as Class Representatives, she would be a Class Member.

14 45. Plaintiff has to date continued adequately representing the interests of the Class
15 Members. Plaintiff has demonstrated her commitment to prosecuting this Class Action on behalf of
16 the Class Members by, amongst other things, locating and retaining attorneys, participating in the
17 initial investigation into the claims in this action, filing this lawsuit and willingly exposing her name
18 and reputation to scrutiny from prospective and/or future employers, participating in formal and
19 informal discovery, participating in mediation and assisting in the preparation for same, helping to
20 facilitate the Settlement for which approval is now sought, and being willing to testify at trial.

21 46. Plaintiff, who has worked diligently with Class Counsel, should be rewarded for taking
22 the initiative to pursue these claims on behalf of her coworkers, and for her role in reaching a
23 settlement providing for valuable monetary relief to the Class.

24 47. Plaintiff will apply for a Service Award in the amount \$10,000 in consideration for her
25 service as Class Representative. I believe this to be fair, reasonable, and appropriate.

26 48. Class Members will be apprised of Plaintiff’s request as well as their ability to review
27 the moving papers on the Court’s website, and to object to the request if they so desire.
28

1 **Experience of Class Counsel**

2 49. I obtained a B.S. degree in Molecular Biology from the University of California, San
3 Diego in 2001. I subsequently obtained a M.S. degree from the University of the Pacific in Biological
4 Sciences in 2005.

5 50. I attended the Laurence Drivon School of Law from 2008 through 2012, graduating as
6 Valedictorian. I earned my J.D. and became a member of the California Bar in 2012.

7 51. The vast majority of my practice is devoted to plaintiff's employment matters,
8 including employment discrimination and wage-and-hour actions. My practice also includes
9 employment defense, personal injury, and contract actions. I have substantial involvement in complex
10 litigation like the instant case, and have worked on or am currently working on several wage and hour
11 class action cases with Mayall Hurley, P.C. Currently, the majority of my practice is devoted to
12 complex litigation similar to the instant action. My law firm, Mayall Hurley P.C., primarily through
13 attorneys William J. Gorham, III, Robert J. Wasserman, and me, has pursued this action aggressively,
14 and many other similar class, collective, and representative actions. For instance, Mayall Hurley P.C.
15 has been approved as class counsel numerous actions, including:

- 16 a. *Markson, et al. v. CRST International, Inc, et al.*, Eastern District of California Case
17 No. 5:17-cv-01261-VAP-SP;
18 b. *Jacques v. Mike's Mobile, Inc.*, San Joaquin County Superior Court Case No. STK-
19 CV-UOE-2022-2329;
20 c. *Schmeirer v. Arc Document Solutions, LLC*, San Joaquin County Superior Court
21 Case No. STK-CV-UOE-2019-2008;
22 d. *Starr, et al. v. Schell and Kampeter, Inc.*, San Joaquin County Superior Court Case
23 No. STK-CV-UOE-2021-4585;
24 e. *Maldonado, et al. v. Wine & Roses, LLC*, San Joaquin County Superior Court Case
25 No. STK-CV-UOE-2019-2629;
26 f. *Flores v. Dart Container Corp., et al*, Eastern District of California Case No. 2:19-
27 cv-00083-WBS-EFB;
28

- 1 g. *Rodriguez v. J-M Manufacturing, Inc.*, San Joaquin County Superior Court Case
2 No. STK-CV-UOE-2019-6065;
- 3 h. *Arata v. Cozad Trailer Sales, LLC*, San Joaquin County Superior Court Case No.
4 STK-CV-UOE-2020-1774;
- 5 i. *Modica v. Iron Mountain Information Management Svcs., Inc.*, United States
6 District Court, Eastern District of California Case No. 2:19-cv-00370-TLN-JDP;
- 7 j. *Magee v. Thyssenkrupp Materials, N.A., et al.*, Alameda County Superior Court
8 Case No. RG19027231;
- 9 k. *Basinger v. Il Palio Restaurant Group, Inc.*, San Diego County Superior Court Case
10 No. 37-2018-00004296-CU-OE-CTL;
- 11 l. *Pacheco v. Bushfire Grill, Inc., et al*, United States District Court, Southern District
12 of California, Case No. 3:18-cv-01696-JAH-WVG;
- 13 m. *Wise v. ULTA Salon, Cosmetics & Fragrance, Inc.*, United States District Court,
14 Eastern District of California, Case No. 1:17-cv-00853-DAD-EPG;
- 15 n. *Fernando and Kalaveras v. Burroughs, Inc.*, Alameda County Superior Court, Case
16 No. RG18906875;
- 17 o. *Mansur v. Owens-Brockway Glass Container, Inc.*, San Joaquin County Superior
18 Court, Case No. STK-CV-UOW-2018-14631;
- 19 p. *Alderson v. Alameda County Agricultural Fair Association*, Alameda County
20 Superior Court, Case No. RG18912654;
- 21 q. *Terry v. Mare Island Dry Dock, LLC*, Solano County Superior Court, Case No.
22 FCS051650;
- 23 r. *Mettler, Bender, and Rojas v. Les Schwab Tire Centers of California, Inc.*, San
24 Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476;
- 25 s. *Escalera v. La Tapatia Mexican Market, Inc.*, San Joaquin County Superior Court,
26 Case No., ST-CV-UOE-2017-5296;
- 27 t. *Garcia, et al. v. HMS Host USA, Inc.*, United States District Court, Northern
28 District of California, Case No. 17-cv-03069-RS;

- 1 u. *Ali v. Sutter Valley Medical Foundation, Inc.*, Sacramento County Superior Court,
2 Case No. 34-2017-00217486;
- 3 v. *Grady, et al. v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Case
4 No. STK-CV-UOE-2017-13867;
- 5 w. *Kumar v. Forty Niners Stadium Management Company*, Santa Clara County
6 Superior Court, Case No. 17CV3121427;
- 7 x. *Gast v. Flooring Liquidators, Inc.*, Stanislaus County Superior Court, Case No.
8 2026223;
- 9 y. *Russell v. KeHe Distributors, Inc.*, United States District Court, Eastern District of
10 California, Case No. 2:17-at-00592;
- 11 z. *Smith v. Wal-Mart Stores, Inc. et al.*, United States District Court, Northern District
12 of California, Case No. 3:16-cv-02832-JD;
- 13 aa. *Titus v. The Martin-Brower, LLC*, United States District Court, Eastern District of
14 California, Case No. 2:17-cv-00558-JAM-GGH;
- 15 bb. *Hugues v. The Morning Star Trucking Company, LLC, et al.*, Yolo County Superior
16 Court Case No. CV16-1215;
- 17 cc. *Ahmed v. Beverly Health and Rehabilitation Services, Inc., et al.*, United States
18 District Court, Eastern District of California, Case No. 2:16-cv-01747-WBS-KJN;
- 19 dd. *Guzman-Padilla, et al. v. Gerard Van De Pol, et al.*, United States District Court,
20 Eastern District of California, Case No. 2:17-cv-00196-JAM-KJN;
- 21 ee. *Jaime v. Walt Disney Parks and Resorts U.S., Inc.*, United States District Court,
22 Central District of California, Case No. SACV 15-01618-CJC(DFMx);
- 23 ff. *Stevens v. Suncrest Solar, Inc.*, Fresno County Superior Court, Case No.
24 16CECG03355;
- 25 gg. *Cardoza v. Blazona Concrete Construction, Inc.*, Alameda County Superior Court
26 Case No. RG17866256;
- 27 hh. *Maasrani v. Waterton Hospitality Management*, San Mateo County Superior Court,
28 Case No. 17CIV05470;

- 1 ii. *Huynh v. Parker-Hannifin Corporation*, Stanislaus County Superior Court, Case
2 No. 2022325;
3 jj. *Moser v. O'Connor Woods Housing Corporation*, San Joaquin County Superior
4 Court, Case No. STK-CV-UOE-2014-0009861;
5 kk. *Bastami v. Semiconductor Components Industries, LLC*, Santa Clara County
6 Superior Court, Case No. 16cv297447;
7 ll. *Davis v. Balfour Beatty Infrastructure, Inc.*, Los Angeles County Superior Court,
8 Case No. BC592580;
9 mm. *Van Lith v. iHeartmedia + Entertainment, Inc. et al.*, United States District
10 Court, Eastern District of California, Case No. 1-16-cv-00066-SKO;
11 nn. *Clark v. Arrow Sign Co.*, San Joaquin County Superior Court, Case No. STK-CV-
12 UOE-2016-6457;
13 oo. *Moreno v. B.R. Funsten & Co.*, Solano County Superior Court Case No.
14 FCS046149;
15 pp. *Taylor v. Meadowbrook Meat Company, Inc.*, United States District Court, Norther
16 District of California, Case No. 3:15-cv-00132-LB;
17 qq. *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin County
18 Superior Court, Case No. 39-2012-00288653-CU-OE-STK
19 rr. *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No.
20 STK-CV-UOE-2016-1264.

21 All of the above are wage-and-hour class actions. Not including this matter, we have several
22 other wage-and-hour class actions currently pending final approval in which we have been
23 preliminarily approved as class counsel. My law firm and I have also represented plaintiffs in
24 numerous representative employment actions, settlements in which have been approved by multiple
25 California and federal courts, and are currently prosecuting dozens more.

26 52. Mayall Hurley, P.C. has also obtained class and/or conditional certification in a number
27 of contested cases, including *Liu v. QNAP, Inc.*, Los Angeles County Superior Court Case No.
28 19PSCV00668; *Bice v. Vensure HR, Inc., et al.*, San Joaquin County Superior Court, Case No. STK-

1 CU-UOE-2016-1264; *Perez et al. v. Abbate Family Farms Limited Partnership et al.*, San Joaquin
2 County Superior Court, Case No. 39-2012-00288653-CU-OE-STK, *Wilk v. Skechers U.S.A., Inc.*,
3 United States District court, Central District of California, Case No. 5-18-CV-01921-JGB-SP; *Titus v.*
4 *Paramount Equity Mortgage, LLC*, United States District Court, Eastern District of California, Case
5 No. 2:17-cv-00349-MCE-KJN; and *Solati v. RPM Mortgage, LLC*, Solano County Superior Court
6 Case No. FCS048401.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States of America that the foregoing is true and correct. Executed on this 19th day of February, 2025,
9 in Lodi, California.

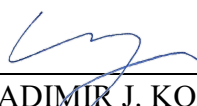
10
11 
12 _____
13 VLADIMIR J. KOZINA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

NORTHERN CALIFORNIA
118 WEST OAK STREET
LODI, CALIFORNIA 95240
[BY APPT. ONLY - NO SERVICE ACCEPTED]
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207
SOUTHERN CALIFORNIA
360 EAST 2ND STREET, SUITE 800
LOS ANGELES, CALIFORNIA 90012
[BY APPT. ONLY - NO SERVICE ACCEPTED]



VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMANN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

112 SOUTH CHURCH STREET
LODI, CALIFORNIA 95240

TELEPHONE: (209) 477-3833
WWW.MAYALLAW.COM

June 16, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

The Chainary, Inc.
302 Great Mall Drive
Milpitas, CA 95035

Re: Maria Gutierrez

To Whom It May Concern:

This firm represents Maria Gutierrez ("Gutierrez") relating to her former employment in a non-exempt hourly position for The Chainary, Inc. dba Valliani Jewelers ("Valliani Jewelers" or "Employer"). In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Gutierrez's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Plaintiff was employed by Valliani Jewelers as a Sales Associate from November 2021 until August 2022. Throughout her employment, Plaintiff was a non-exempt employee. As such, Plaintiff was entitled to be paid for every hour worked and overtime as appropriate.

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

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.

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. 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 Jewelers 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.

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

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. Valliani Jewelers required Plaintiff and its other non-exempt employees to work through meal and rest breaks due to understaffing and work demands. 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. 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. Plaintiff and Valliani Jewelers' other non-exempt employees' meal breaks were also routinely interrupted by clients who needed help. 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.

Valliani Jewelers also frequently failed to relieve Plaintiff and its other non-exempt employees of employer control during their rest breaks. 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. 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. Plaintiff and Valliani Jewelers' other non-exempt employees' rest breaks were also routinely interrupted by clients who needed help.

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

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. 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.

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. 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.

Because of the violations set forth above, and as evidenced in the sample of Plaintiff's wage statement attached hereto as **Exhibit 1** the wage statement 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).

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

In light of the above violations, Ms. Gutierrez is an "aggrieved employee" and has standing under the PAGA to bring an action for civil penalties. As set forth above, Valliani Jewelers has violated Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12, 1198 and 2802, as well as and the applicable IWC Wage Orders. Because of these violations, Valliani Jewelers is subject to civil penalties. In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Ms. Gutierrez.

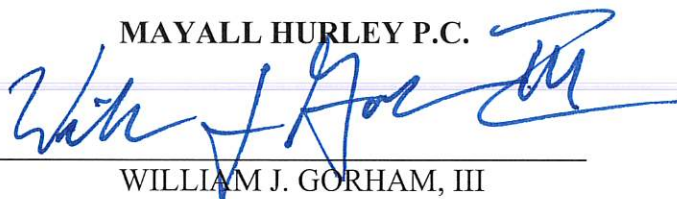
If the LWDA does not intend to investigate these violations, Ms. Gutierrez intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

June 16, 2023
Page 4 of 4

Sincerely,

MAYALL HURLEY P.C.

By



WILLIAM J. GORHAM, III

Enclosure: Exhibit 1

cc: client

Exhibit 1

Company Code RR7 WIS 21857301
THE CHAINARY INC
302 GREAT MALL DR
MILPITAS, CA 95035

Loc/Dept 01/10
Number 7145520
Page 1 of 1

Earnings Statement



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

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

Tax Override:
Federal:
State:
Local:

MARIA H GUTIERREZ

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	453.48
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	XXXXXXXXXX	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
Checking DirectDeposit

THIS IS NOT A CHECK

Account Number	transit/ABA	amount
XXXXXX6885	XXXXXXXXXX	2689.27

MARIA H GUTIERREZ
200 LEWIS RD APT 324
SAN JOSE, CA 95111

Exhibit 2

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 Gutierrez

FREEMAN MATHIS & GARY, LLP
JOHN K. RUBINER (SBN 155208)
jrubiner@fmglaw.com
550 South Hope Street, Suite 2200
Los Angeles, California 90071-2627
(213) 615-7000; FAX (213) 615-7100

FREEMAN MATHIS & GARY, LLP
ELIZABETH Y. MU (SBN 328743)
Elizabeth.Mu@fmglaw.com
1960 E. Grand Ave., Suite 1260
El Segundo, California 90245
(310) 937-2066; FAX (310) 937-2064

Attorneys for Defendant
THE CHAINARY, INC. DBA VALLIANI JEWELERS

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

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

1 This Joint Stipulation of Class Action Settlement and Release (hereinafter, “Settlement”) is
2 made and entered into by and between Plaintiff Maria Gutierrez (“Plaintiff”), individually and on
3 behalf of the Settlement Class, as defined below, and Defendant The Chainary, Inc. dba Valliani
4 Jewelers. (“Defendant” or “Valliani Jewelers”) and is subject to the terms and conditions hereof
5 and the approval of the Court.

6 DEFINITIONS

7 1. “Action” means the consolidated lawsuit between the Parties pending in the
8 Superior Court for the County of Santa Clara as Case No. 23CV417695, including the alleged class
9 claims and representative claims asserted therein.

10 2. “Class Counsel” refers to the law firm of Mayall Hurley P.C.

11 3. “Class” shall collectively refer to all current and former non-exempt employees of
12 Valliani Jewelers who worked during one or more pay periods from June 16, 2019, through
13 October 25, 2024.

14 4. “Class Member” shall refer to all current and former non-exempt employees of
15 Valliani Jewelers who worked in California at any time from June 16, 2019, through October 25,
16 2024.

17 5. “Class Notice” means the Notice of Proposed Class Action Settlement that shall be
18 mailed to Settlement Class Members, subject to court approval, in substantially the form attached
19 hereto as “**Exhibit A.**”

20 6. “Class Period” is the period from June 16, 2019, through October 25, 2024.

21 7. “Defendant” or “Valliani Jewelers” refers to The Chainary, Inc. dba Valliani
22 Jewelers.

23 8. “Defendant’s Counsel” refers to the law firm of Freeman Mathis & Gary, LLP.

24 9. “LWDA” means the California Labor & Workplace Development Agency.

25 10. “PAGA” means the California Labor Code’s Private Attorneys General Act of
26 2004, as amended, section 2698, *et seq.*

27 11. “PAGA Period” is the period from June 16, 2022, through October 25, 2024.

28 12. “Parties” means Plaintiff and Defendant, collectively.

13. “Plaintiff” means named Plaintiff Maria Gutierrez.

14. “Settlement” or “Settlement Agreement” shall be the collective terms and conditions set forth by way of this Joint Stipulation of Class Action Settlement and Release to completely settle and resolve any and all claims in and pertaining to this Action.

15. “Settlement Administrator” means Apex Class Action Administration. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

16. “Settlement Class” shall refer collectively to any and all Class Members.

17. “Settlement Class Member” means any participating Class Member (i.e., any Class Member who does not timely seek exclusion from the Settlement Agreement).

18. “Total Workweeks” means the number of calendar workweeks that the respective Settlement Class Member worked during the Class Period.

BACKGROUND

19. On June 16, 2023, Plaintiff submitted a notification letter to Defendant and the Labor & Workforce Development Agency (“LWDA”) alleging several wage and hour claims, including the failure to pay minimum wage and overtime, the failure to properly calculate and pay overtime wages and sick pay, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, the failure to timely pay wages, the failure to provide accurate itemized wage statements, the failure to pay all wages due and owing at the time of separation, and the failure to reimburse for business expenses (the “PAGA Claims”).

20. On June 16, 2023, Plaintiff filed a Class Action Complaint in the Superior Court of California, County of Santa Clara, Case No. 23CV417695 (the “Class Action”) alleging several wage and hour claims on a class-wide basis, including the failure to pay minimum wage and overtime, the failure to properly calculate and pay overtime wages and sick pay, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, the failure to timely pay wages, the failure to provide accurate itemized wage statements, the failure to

1 pay all wages due and owing at the time of separation, the failure to reimburse for business
2 expenses, and unlawful business practices (the “Class Claims”).

3 21. On October 20, 2023, Plaintiff filed the operative First Amended Class and
4 Representative Action Complaint (“FAC”) in order to add the PAGA Claims to the Class Action.

5 **RECITALS**

6 22. The Parties have conducted formal and informal discovery and investigation of the
7 facts and law in this Action. Such discovery and investigation have included, *inter alia*, the
8 exchange of informal data and discoverable information in preparation for the mediation session
9 and the propounding of formal discovery requests. The Parties have analyzed payroll and other
10 data pertaining to Plaintiff and members of the Class during the relevant Class Period, including
11 but not limited to, employee workweeks, time records, meal period records, wage statements,
12 wages, hours worked, compensation paid, and rates of hourly pay.

13 23. Plaintiff believes the action is meritorious. Plaintiff and Class Counsel have
14 considered the expense and length of continued proceedings necessary to continue the action
15 against Defendant through litigation, pre-trial motions, trial, and any possible appeals. Plaintiff
16 and Class Counsel have also taken into account the uncertainty and risk of the outcome of further
17 litigation, and the difficulties inherent in such litigation. Plaintiff and Class Counsel are also aware
18 of the burdens of proof necessary to establish liability for the claims asserted, Defendant’s defenses
19 thereto, and the potential difficulties in establishing Plaintiff’s entitlement to monetary recovery
20 and relief. Plaintiff and Class Counsel have also considered the settlement negotiations conducted
21 by the Parties with the experienced class action mediator, Philip E. Cook, Esq. Based on the
22 foregoing, Plaintiff and Class Counsel have determined that the Settlement is fair, adequate, and
23 reasonable, and in the collective best interest of Plaintiff and the Class.

24 24. Defendant disputes the merits of the action and denies all liability and wrongdoing
25 of any kind associated with the claims alleged in the Action, or otherwise. Defendant contends,
26 *inter alia*, that at all times they fully complied with all state and federal wage and hour laws,
27 including all Labor Code and Wage Order requirements, and all regulations applicable to Plaintiff
28 and the Class in connection with the services performed for Defendant. Nothing contained in this

1 Settlement Agreement, nor any documents referred to herein, nor any action taken to carry out
2 and/or consummate the Settlement is, or may be construed as, or may be used as, an admission of
3 liability, culpability, negligence or wrongdoing by or against Defendant as to the merits or lack
4 thereof of the claims being settled by this Settlement Agreement.

5 25. On August 14, 2024, the Parties mediated the Action before Philip E. Cook, Esq.,
6 who is a highly experienced and well-regarded mediator in employment litigation, specifically
7 including wage and hour class action matters. After a full day of mediation, the Parties were
8 unable to reach an agreement. After the mediation had concluded, Mediator Cook issued a
9 mediator's proposal to the Parties.

10 26. On August 16, 2024, the Parties accepted Mediator Cook's mediator's proposal.

11 27. On August 26, 2024, the Parties reduced their agreement to writing and executed a
12 Memorandum of Understanding (the "MOU").

13 28. The Parties now enter into this formal Settlement Agreement to supersede the MOU
14 and submit to the Court for evaluation and approval. As more particularly set forth below, it is the
15 desire of the Parties to fully, finally and forever settle, compromise and discharge the Released
16 Class Claims and the Released PAGA Claims as set forth below.

17 29. For settlement purposes only, the Parties conditionally stipulate and agree that all of
18 the requisites for establishing class certification are met with respect to the Class and stipulate to
19 certification under Code of Civil Procedure section 382. Defendant does not waive, and instead
20 expressly reserves, its right to challenge the propriety of class certification for any purpose should
21 the Court not approve the Settlement. Defendant's willingness to stipulate to class certification as
22 part of the Settlement shall have no bearing on, and shall not be admissible in or considered in
23 connection with, the issue of whether a class should be certified in a non-settlement context in this
24 Action and shall have no bearing on, and shall not be admissible or considered in connection with,
25 the issue of whether a class should be certified in any other lawsuit.

26 30. Should the Settlement not achieve final approval for any reason, the Parties agree
27 that this Action shall revert to the procedural posture that existed as of the date the Parties agreed to
28 a settlement in principle, August 16, 2024, including but not limited to any pending discovery

1 requests, and no Party shall have waived any rights between the Parties and/or the Class, and/or
2 any individual member of the Class.

3 31. The Parties intend that this Settlement Agreement shall include a full and complete
4 settlement and release, as more particularly set forth below, of: (i) named Defendant The Chainary,
5 Inc. dba Valliani Jewelers.; (ii) each of Defendant's respective past, present and future parents,
6 subsidiaries, and affiliates including, without limitation, any corporation, limited liability company,
7 partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under
8 common control with Defendant including, Brilliant Art, Inc.; (iii) the past, present and future
9 shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners,
10 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit
11 plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any
12 individual or entity which could be jointly liable with any of the foregoing. (the "Released
13 Parties").

14 32. In connection with the proposed certification of the Class, the Parties shall
15 cooperate and present to the Court for its consideration any additional competent evidence, as may
16 be requested by the Court, under the applicable due process requirements and standards for class
17 certification and shall take all steps necessary and appropriate to obtain preliminary and final
18 approval of the Settlement and to effectuate all aspects of the Settlement.

19 33. The Parties, Class Counsel and Defense Counsel represent that they are not aware of
20 any other pending matter or action asserting claims that will be extinguished or affected by the
21 Settlement.

22 **SETTLEMENT STRUCTURE**

23 34. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
24 warranties set forth herein, the Parties agree, subject to the Court's approval, as follows:

25 A. Settlement: This Action shall be settled and compromised as between
26 Plaintiff, the Settlement Class, and Defendant, subject to the terms and conditions set forth in this
27 Settlement Agreement and the approval of the Superior Court of California, County of Santa Clara.
28 In the event Judgment is not entered, or in the event this Settlement Agreement is modified in any

1 material respect, or in the event that the Effective Date, as defined herein, does not occur, this
2 Settlement Agreement shall be deemed null and void and shall be of no force or effect whatsoever,
3 and shall not be referred to or utilized for any purpose whatsoever.

4 B. Gross Settlement Amount: The settlement is in the gross amount of One
5 Million Three Hundred Fifty-Five Thousand Dollars (\$1,355,000) (hereinafter, the “Gross
6 Settlement Amount”). This Gross Settlement Amount is all-inclusive of all payments
7 contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the
8 Individual Settlement Shares allocated to wages which shall be separately paid by Defendant to the
9 Settlement Administrator. The Gross Settlement Amount shall be inclusive of, as described and
10 defined herein, all settlement payments to Settlement Class Members, the costs of settlement
11 administration, Class Counsel’s reasonable attorneys’ fees, Class Counsel’s reasonable litigation
12 expenses and costs, the Service Award to Plaintiff, and the PAGA Payment. No other funds shall
13 be owed or paid by Defendant in excess of the Gross Settlement Amount, other than the employer-
14 side tax obligations, unless the escalator clause, described in Paragraph 34.F is triggered.

15 C. Net Class Settlement Amount: The Net Class Settlement Amount shall be
16 the Gross Settlement Amount, less all of the following: the costs of settlement administration
17 (subject to the approval of the Court), Class Counsel’s reasonable attorneys’ fees, expenses, and
18 costs (subject to the approval of the Court), Plaintiff’s service fee award (subject to the approval of
19 the Court), and the PAGA Amount (subject to the approval of the Court). It is estimated that the
20 Net Class Settlement Amount will be approximately \$819,583.43.

21 D. Settlement Share of Settlement Class Members: Each Settlement Class
22 Member’s respective individual share of the Net Class Settlement Amount shall be calculated as
23 follows:

24 The Settlement Share for each participating Class Member will be determined by dividing
25 the Net Settlement Amount by the total number of Workweeks worked by the participating
26 Class Members during the Class Period, resulting in a payment ratio. A workweek will be
27 any week during which the Class Member worked at least one day/shift, and each
28 individual Class Member will be credited with at least one Workweek. The ratio will then

1 be multiplied by the number of Workweeks each individual participating Class Member
2 was employed to determine his or her individual Settlement Share. Class Members whose
3 employment has ended will receive credit for an additional ten (10) Workweeks in order to
4 account for his/her potential waiting time penalty claim.

5 E. Non-Monetary Relief. Defendant represents that it has reviewed and, where
6 appropriate, has revised and amended its policies, practices and procedures related to the
7 calculation of regular rate of pay for purposes of overtime, meal/rest break premiums and sick pay
8 as well as its policies, practices and procedures related to the provision of meal and rest breaks.

9 F. Escalator Clause. Defendant has represented that there are approximately
10 9,893 Pay Periods and 283 Class Members (134 of whom are no longer employed by Valliani) as
11 of April 30, 2024, and Plaintiff is entering into this agreement based on that representation. In the
12 event it is determined that the actual number of Pay Periods, Class Members or former employee
13 Class Members as of the Class Period End Date exceeds any of these figures by more than 10%,
14 then at the sole option of Valliani, either: (1) the Settlement Sum will increase by a pro-rata dollar
15 value equal to the number of Pay Periods, Class Members, or former employee Class Members in
16 excess of 9,893, 283, or 134 respectively (the 10% escalation limit); or (2) the Class Period End
17 Date will be shortened to the date the actual number of Pay Periods, Class Members, or former
18 employee Class Members exceeds the aforementioned totals by 10% (i.e., the number of
19 workweeks increases above 10,882, the number of Class Members increases above 311, or the
20 number of former employee Class Members increases above 147). To illustrate, in the event
21 Valliani elects the former, if the actual number of Pay Periods is determined to be 11% higher than
22 9,893, the Settlement Sum shall be increased by 1%. Further, in the event that this provision is
23 triggered by more than one category, the largest increase shall control.

24 G. No Effect on Collateral Benefits. Settlement Shares will not count as
25 earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans)
26 sponsored by Defendant.

27 H. Class Counsel Attorneys' Fees: Defendant agrees that it will not oppose
28 Plaintiff's request for an award of attorneys' fees to Class Counsel in an amount up to one-third

(1/3) of the Gross Settlement Amount (presently \$451,666.67) in order to compensate and reimburse Class Counsel for all of the work already performed in this case, all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final approval of this Settlement. Plaintiff believes such a percentage fee is warranted considering, without limitation: (1) the time and labor required of Class Counsel in this Action; (2) the complexity involved and the results obtained; (3) the potential contingent nature of the compensation; (4) the opportunity costs to Class Counsel in the time the engagement has taken away from other potential matters; and (5) the informed consent of Plaintiff to a percentage fee to Class Counsel of up to one-third of the Gross Settlement Amount. The Parties acknowledge and understand that Class Counsel's attorneys' fees will be paid entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and that should the Court approve a lesser amount than set forth in this subparagraph, the unapproved amount shall be allocated to the Class Net Settlement Amount.

I. Class Counsel's Costs: Class Counsel will separately seek recovery of their actual, reasonable litigation costs and expenses. Defendant agrees that it will not oppose or otherwise object to Plaintiff's request for an award of costs in an amount up to \$16,750.00. The Parties acknowledge and understand that Class Counsel's costs will be paid entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and that should the Court approve a lesser amount than set forth in this subparagraph, the unapproved amount shall be allocated to the Net Class Settlement Amount.

J. Class Representative Service Award for Plaintiff: Subject to Court approval, Defendant will not object to application for a service fee award of \$10,000 for Plaintiff. It is understood that this service fee award is in addition to Plaintiff's Settlement Share as a Settlement Class Member. The Settlement Administrator will issue IRS Form 1099 for the service fee award to Plaintiff. Plaintiff shall assume full responsibility and liability for correctly characterizing this compensation on her personal income tax return for tax purposes and for paying any taxes on the amounts received. The Parties acknowledge and understand that the service fee award will be paid

1 entirely from the Gross Settlement Amount, regardless of the amount approved by the Court, and
2 that should the Court approve a lesser amount(s) than set forth in this subparagraph, the
3 unapproved amount(s) shall be allocated to the Net Class Settlement Amount.

4 K. PAGA Payment: The Parties have agreed that \$50,000 of the Gross
5 Settlement Amount shall be allocated to the resolution of all Class Members' claims arising under
6 PAGA (the "PAGA Payment") during the PAGA Period. Pursuant to PAGA, seventy-five percent
7 (75%) of the PAGA Payment shall be paid to the LWDA, and the remaining 25% shall be
8 distributed amongst Class Members employed during the PAGA Period (the "Employee PAGA
9 Amount"), regardless of whether the Class Member is a Settlement Class Member, in exchange for
10 the PAGA Release. Any Class Member employed during the PAGA Period will be entitled to a
11 pro rata share of the Employee PAGA Amount based on the number of workweeks that individual
12 worked for Defendant during the PAGA Period. The Parties acknowledge and understand that the
13 PAGA Amount will be paid entirely from the Gross Settlement Amount, regardless of the amount
14 approved by the Court, and that any unapproved amount of the PAGA Amount shall be allocated to
15 the Net Class Settlement Amount.

16 L. Settlement Administration Costs: The Settlement Administrator has agreed
17 to perform all necessary class administration duties for a fee estimated to be no more than
18 \$6,999.90. These administration duties shall include, without limitation, searching for updated
19 addresses before mailing Class Notices, performing necessary skip traces on notices returned as
20 undeliverable, calculating, processing, and mailing settlement checks, handling tax withholding,
21 contributions, reporting and filings, and maintaining a static informational website for Class
22 Members. The Parties acknowledge and understand that the Settlement Administrator's fees will
23 be paid entirely from the Gross Settlement Amount, regardless of the amount approved by the
24 Court, and that any unapproved or unused portion below the amount set forth in this paragraph
25 shall be allocated to the Net Class Settlement Amount.

26 35. Effective Date: The "Effective Date" is a condition of performance of the
27 obligations under this Settlement. The Effective Date is the latter of: (a) the Court's final approval
28 of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time

1 for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c)
2 the final resolution of any appeal that has been filed.

3 36. Settlement Funding and Payment Timetable: Within ten (10) calendar days of the
4 Effective Date, Defendant will deposit the entire Gross Settlement Amount, plus applicable payroll
5 taxes, into a Qualified Settlement Account to be established by the Settlement Administrator. The
6 Settlement Administrator shall be responsible for depositing the funds in the Settlement Account
7 and solely responsible for taking all necessary and reasonable steps to ensure the entirety of the
8 funds are securely deposited into and remain in the Settlement Account for the distributions
9 specified in this Agreement.

10 A. Within fourteen (14) calendar days of the Settlement Administrator's receipt
11 of the entire Gross Settlement Amount from Defendant, the Settlement Administrator will make all
12 required distributions pursuant to this Settlement and the order and Judgment of final approval
13 including, to the extent ordered, all Settlement Shares to Settlement Class Members and Court-
14 approved attorneys' fees, costs, service payment, costs of settlement administration, and PAGA
15 Payment.

16 37. Resolution of Workweek Disputes: If any Settlement Class Member timely disputes
17 the number of his or her Total Workweeks, by way of a written dispute that is postmarked within
18 the Notice Period (as defined below) as provided for in the Class Notice, the dispute shall be
19 determined by the Settlement Administrator, who shall examine all available written records in an
20 attempt to resolve the dispute. Defendant's records shall be presumed accurate and control unless
21 the Settlement Class Member provides satisfactory proof that Defendant's records are incorrect. In
22 any event, the Settlement Administrator will make every reasonable effort to resolve any such
23 disputes before final approval of this Settlement. The Settlement Administrator's determination of
24 the eligibility for and amount of any Settlement Share shall be final, not subject to appeal, and
25 binding upon the Settlement Class Member and the Parties.

26 38. Opt-Out Threshold. In the event 10% or more of the class members opt-out of the
27 settlement, Defendant may, at its sole option, void the agreement. The Parties and their counsel
28

1 agree they will not encourage any class member to opt-out. Class members will have sixty (60)
2 days to opt out of the settlement after notice is mailed.

3 **NOTICE TO THE SETTLEMENT CLASS**

4 39. Subject to Court approval, the Parties agree that, within fourteen (14) calendar days
5 after the Court enters any Order granting preliminary approval of the Settlement, Defendant will
6 provide to the Settlement Administrator the following information for each Settlement Class
7 Member in a reasonable format requested by the Settlement Administrator: (1) name; (2) last
8 known home address and telephone number(s); (3) social security number; (4) number of
9 workweeks worked during the Class Period; (5) number of pay periods worked during the PAGA
10 Period; and (6) dates of employment within the Class Period (collectively, the “Class
11 Information”). The Settlement Administrator will perform address updates and verifications, as
12 necessary, prior to the first mailing. Within fourteen (14) calendar days after the Settlement
13 Administrator receives the Class Information from Defendant, and subject to Court approval, the
14 Settlement Administrator will mail the Class Notice by first class mail.

15 **SETTLEMENT ADMINISTRATION**

16 40. Class Information. Any Class Information or other personnel data provided by
17 Defendant to the Settlement Administrator, shall be treated as confidential and shall not be used by
18 the Settlement Administrator for any purpose other than as permitted by this Agreement. Further,
19 the Settlement Administrator shall use commercially reasonable efforts to secure the data provided
20 by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data
21 other than as permitted by this Agreement. At no time during the settlement process will any Class
22 Member’s Social Security Number be filed with the Court, except under seal as may be ordered by
23 the Court. The Settlement Administrator shall ensure that the Notice and any other
24 communications to Class Members shall not include the Class Members’ Social Security Number,
25 except for the last four digits, if necessary.

26 41. Notice Period. Class Members will be afforded the opportunity to submit an
27 objection to the Settlement (“Objection”), to exclude themselves from the Settlement (“Exclusion
28 Request”) by mail, or to dispute the information as discussed in paragraph 43. Class Members will

1 be permitted no more than forty-five days (45) calendar days from the date the Class Notices are
2 mailed by the Settlement Administrator to postmark their Objection, Exclusion Request, or dispute
3 to the Settlement Administrator (the “Notice Period”). To be valid, an Objection, Exclusion
4 Request, or dispute must be timely submitted during the Notice Period and must follow the
5 procedures outlined below. These procedures must also be described in the Class Notice. A Class
6 Member may not submit both an Objection and an Exclusion Request; if a Class Member submits
7 to Exclusion Request to exclude himself or herself from the Settlement, he or she has no right to
8 submit an Objection to the Settlement.

9 42. Exclusion Requests. Any Class Member, other than Plaintiff, may elect to submit
10 an Exclusion Request during the Notice Period. To be effective, any such election: (i) must be
11 made in writing; (ii) must contain the name and sufficient information to verify the individual’s
12 identity in the opinion of the Settlement Administrator, which may include address, telephone
13 number, and/or last four digits of the social security number of the Class Member requesting
14 exclusion; (iii) must be signed by the Class Member who is electing to be excluded; and (iv) must
15 be mailed to the Settlement Administrator on or before the end of the Notice Period. As
16 applicable, the date of the postmark on the mailing envelope shall be the exclusive means to
17 determine whether an Exclusion Request is timely. Any Class Member who timely submits an
18 Exclusion Request in compliance with these requirements shall not be a Settlement Class Member,
19 shall not be entitled to receive any Settlement Share, shall not be entitled to submit an Objection to
20 the Settlement Agreement, and shall not be bound by the terms of this Settlement Agreement,
21 except that the PAGA Release shall apply to all Class Members and all Class Members shall still
22 be entitled to his or her individual share of the Employee PAGA Amount. Under no circumstances
23 may any Class Member request exclusion from that portion of the Settlement relating to the PAGA
24 Allocation, and any request for exclusion shall not have any effect on the PAGA Release, which
25 shall remain in full force and effect.

26 43. Objections: Any Settlement Class Member (one who does not timely seek exclusion
27 from the Settlement Agreement), other than Plaintiff, may submit an Objection to final approval of
28 this Settlement, provided that the Objection is made in writing and mailed to the Settlement

1 Administrator by no later than the last day of the Notice Period. As applicable, the date of the
2 postmark on the mailing envelope shall be the exclusive means to determine whether the Objection
3 is timely. An Objection must clearly state the name of the case and case number and must also
4 include the objector's full name, address, and the basis for any Objection and, if the objector is
5 represented by counsel, the name and address of the objector's counsel. The Objection must also
6 state whether the Settlement Class Member intends to appear at the final approval hearing and
7 present oral argument. At the Court's discretion, any Settlement Class Member who has not
8 complied with these requirements may not be heard at the final approval hearing. Any Settlement
9 Class Member who fails to comply with these requirements will be deemed to have waived any
10 right to submit an Objection to the Settlement Agreement. The Settlement Administrator shall
11 promptly forward any and all Objections that it receives to Class Counsel and Defendant's
12 Counsel.

13 44. Re-mailing. The Settlement Administrator will perform one skip-trace on any
14 returned Class Notices and re-mail Class Notices to any updated address (if any) within seven (7)
15 calendar days of receipt of the returned mail for all returned mail received by the Settlement
16 Administrator by the conclusion of the Notice Period. The deadline for a Settlement Class
17 Member, who has been re-mailed the Class Notice, to submit the Exclusion Request, or to object to
18 the Settlement, shall be the later of the conclusion of the Notice Period or fifteen (15) calendar days
19 from the date the Class Notice is re-mailed. It is the intent of the Parties that the Settlement
20 Administrator use reasonable and customary means to locate Class Members.

21 45. Deficiency Notice. Within seven (7) calendar days of receipt by the Settlement
22 Administrator of any timely submitted, but deficient, Exclusion Request, the Settlement
23 Administrator will send a deficiency notice to the Settlement Class Member regarding any
24 irregularities ("Deficiency Notice"). The Deficiency Notice will provide any applicable Settlement
25 Class Member no more than fifteen (15) calendar days from the mailing of any Deficiency Notice
26 to postmark the response to any deficiencies in writing. The failure of a Settlement Class Member
27 to cure a deficiency shall invalidate an Exclusion Request, unless counsel for both of the Parties
28 stipulate otherwise.

1 46. Weekly Report. On a weekly basis, the Settlement Administrator will advise Class
2 Counsel and Defendant's Counsel regarding the number of Exclusion Requests and/or Objections
3 that have been submitted. The Settlement Administrator shall be responsible for calculating the
4 Settlement Share for each Settlement Class Member, issuing payments to Settlement Class
5 Members, and performing all other settlement administration duties required by this Settlement
6 Agreement. Upon completion of the Notice Period, the Settlement Administrator shall provide
7 Class Counsel and Defendant's Counsel with a report listing the amount of all payments to be
8 made to each Settlement Class Member. Proof of Payment will be filed with the Court and
9 provided to the Parties' respective counsel.

10 47. Tax Payment. The Settlement Administrator shall withhold all payroll and income
11 taxes required by law to be withheld and/or paid on behalf of the employees from its distributions
12 to the Settlement Class, and report and remit the same to the appropriate government agencies. For
13 tax purposes, the Settlement Shares shall be allocated as follows: 15% to wages and 85% to
14 penalties and interest. The Settlement Administrator shall report individual settlement amounts to
15 all required taxing and other authorities, and issue IRS Forms W-2 and 1099. Upon completion of
16 administration of the Settlement, the Settlement Administrator shall provide written certification of
17 such completion to the Court and counsel for all Parties.

18 48. Settlement Checks. Checks issued by the Settlement Administrator to Settlement
19 Class Members for their respective Settlement Shares shall be negotiable for 180 calendar days. At
20 the conclusion of the 180-day period the checks shall be void.

21 49. Uncashed Funds. With the sole exception of the residual, if any, resulting from any
22 Settlement Class Members' failure to deposit the check issued to them for their respective
23 Settlement Shares within the 180-day period provided above (hereafter, the "Residual"), the Parties
24 agree that Code of Civil Procedure section 384 ("Section 384") is not applicable to any portion of
25 the Gross Settlement Amount (including but not limited to any portion of the Net Settlement
26 Amount). Neither Plaintiff nor Class Counsel shall take, or cause any other person to take, a
27 position before the Court that Section 384 applies to any portion of the Gross Settlement Amount,
28 with the sole exception of the Residual. The Parties agree that any Residual will be distributed to

1 the nonprofit organization CASA of Santa Clara County, a child advocacy program that places
2 Court Appointed Special Advocates For Children, and accordingly there will be no “unpaid cash
3 residue and unclaimed or abandoned funds” within the meaning of Section 384. However, in the
4 event the Residual is determined by the Court to constitute “unpaid cash residue and unclaimed or
5 abandoned funds” within the meaning of Section 384, the Residual shall be distributed in
6 compliance with Section 384, as directed by the Court after a hearing regarding the actual amount
7 paid to the class members, to the nonprofit organization CASA of Santa Clara County.

8 **SETTLEMENT CLASS RELEASED CLAIMS AND PAGA RELEASE**

9 50. Other than the rights created by this Settlement Agreement, upon the Effective Date
10 and after full funding of the Gross Settlement Amount, Plaintiff and each Settlement Class Member
11 shall fully release and discharge the Released Parties for the entire Class Period from any and all
12 claims as follows:

13 A. Released Class Claims: Upon the entry of final judgment and Defendant
14 funding the Gross Settlement and for the class period, all Participating Class Members, on behalf
15 of themselves and their respective former and present representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns, release Released Parties from all claims that were alleged,
17 or reasonably could have been alleged within the Class Period based on the facts set forth in the
18 First Amended Complaint, including claims for violations of Labor Code sections 201, 202, 203,
19 204, 218, 226(a), 226.7, 233, 246, *et seq.*, 510, 512 1182.12, 1194, 1197, 1198 and 2802 and
20 Business and Professions Code sections 17200, *et seq.* (the “Released Class Claims”).

21 B. Released PAGA Claims: Upon entry of final judgment and Defendant
22 funding the Gross Settlement Amount and for the PAGA period, all Participating Class Members
23 and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
24 behalf of themselves and their respective former and present representatives, agents, attorneys,
25 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
26 penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based
27 on the facts stated in the First Amended Complaint, and Plaintiff’s PAGA Notice, including civil
28 penalties for violations of Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.7, 233, 246, *et*

1 *seq.*, 510, 512, 1182.12, 1194, 1197, 1198 and 2802 (the “Released PAGA Claims”).

2 **PLAINTIFF’S GENERAL RELEASE OF ALL CLAIMS**

3 51. Other than the rights created by this Settlement Agreement, in addition to the
4 Released Class Claims and the Released PAGA Claims, Plaintiff individually and on behalf of
5 each of her executors, administrators, representatives, attorneys, successors and assigns knowingly
6 and voluntarily releases and forever discharges Defendant and the Released Parties, to the full
7 extent permitted by law, of and from any and all claims, known and unknown, asserted and
8 unasserted, which Plaintiff has or may have against the Released Parties as of the Effective Date of
9 this Settlement Agreement, including, but not limited to, any alleged violation of Title VII of the
10 Civil Rights Act of 1964; the Civil Rights Act of 1991; the Americans with Disabilities Act of
11 1990; the Age Discrimination in Employment Act of 1967; the Family and Medical Leave Act; the
12 Equal Pay Act; the California Family Rights Act – Cal. Gov’t Code § 12945.2; the California Fair
13 Employment and Housing Act – Cal. Gov’t Code § 12900 *et seq.*; the California Equal Pay Law –
14 Cal. Lab. Code § 1197.5; any provision of the California Labor Code, specifically including claims
15 pursuant to Labor Code section 432.6, and any other federal, state or local civil or human rights
16 law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort
17 or common law; or; any basis for fees or other expenses including attorneys’ fees incurred in these
18 matters.

19 52. To affect a full and complete general release as described above, Plaintiff expressly
20 waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of
21 California, and does so understanding and acknowledging the significance and consequence of
22 specifically waiving section 1542. Section 1542 of the Civil Code of the State of California
23 provides,

24 **“A general release does not extend to claims that the creditor or releasing party**
25 **does not know or suspect to exist in his or her favor at the time of executing the**
26 **release and that, if known by him or her, would have materially affected his or**
27 **her settlement with the debtor or released party.”**
28

1 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release
2 and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement
3 is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect
4 to exist in their favor at the time of the Effective Date of this Settlement Agreement, and that this
5 Settlement Agreement contemplates the extinguishment of any such claims.

6 **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

7 53. The Parties shall promptly submit this Settlement Agreement to the Court in support
8 of a request for preliminary approval and determination by the Court as to its fairness, adequacy,
9 and reasonableness. Promptly upon execution of this Settlement Agreement, the Parties shall apply
10 to the Court for the entry of an order of preliminary approval, which shall:

11 A. Schedule a final fairness hearing on the question of whether the proposed
12 Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class.

13 B. Certify the Settlement Class for settlement purposes only;

14 C. Certify this action under Code of Civil Procedure section 382 and Rule
15 3.760, *et seq.*, of the California Rules of Court as a class action for settlement purposes only;

16 D. Approve as to form and content the proposed Class Notice;

17 E. Approve the Settlement Administrator and preliminarily approve the
18 estimated costs of settlement administration;

19 F. Direct the Settlement Administrator to mail the Class Notice by first class
20 mail to the Settlement Class Members;

21 G. Preliminarily approve the Settlement subject only to the Objections of
22 Settlement Class Members and final review by the Court;

23 H. Preliminarily approve Class Counsel's attorneys' fees and costs subject to
24 final review of the Court; and

25 I. Preliminarily approve the Plaintiff's service award subject to final review of
26 the Court.

DUTIES OF THE PARTIES PRIOR TO FINAL APPROVAL

54. In advance of the final approval hearing, Class Counsel will submit to the Court a proposed order of final approval and Judgment, which shall:

- A. Approve the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- B. Approve the award of attorneys' fees and costs to Class Counsel;
- C. Approve the Service Award to Plaintiff as set forth in the Settlement; and
- D. Approve the administration costs of the Settlement Administrator as set forth in the Settlement.

FINAL JUDGMENT AND CONTINUING JURISDICTION

55. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the Settlement has been fully funded, incorporating the terms of the Settlement in accordance with California Rules of Court, Rule 3.769(h). Pursuant to California Rule of Court 3.769(h), after granting final approval of the Settlement, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment.

PARTIES' AUTHORITY

56. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

MUTUAL FULL COOPERATION

57. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's preliminary and then final approval of this Settlement.

NO PRIOR ASSIGNMENTS

58. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION OF LIABILITY

59. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part of Defendant. Defendant expressly denies that it has violated the law in any manner and affirmatively asserts that its wage and hour practices, and any other acts related to its employees, are and have been in full compliance with all applicable statutes and regulations. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152, be inadmissible as evidence in any proceeding except a proceeding to enforce its terms. Each of the Parties hereto has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

CONSTRUCTION

60. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, arms-length negotiations between the Parties, and that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or its counsel participated in this drafting of this Settlement Agreement.

CAPTIONS AND INTERPRETATIONS

61. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

62. This Settlement Agreement shall be subject to and governed by the laws of the State of California. The Parties acknowledge that they are subject to the continuing jurisdiction of the Court to enforce the terms of the Settlement contained herein.

1 **MODIFICATION**

2 63. This Settlement Agreement may not be changed, altered, or modified, except in
3 writing and signed by counsel of the Parties hereto, and approved by the Court. This Settlement
4 Agreement may not be discharged except by performance in accordance with its terms or by a
5 writing signed by the Parties hereto.

6 **DEFENDANT'S RIGHT TO RESCISSION**

7 64. Notwithstanding any other provision of this Settlement Agreement, Defendant
8 retains the right, in the exercise of its sole discretion, to nullify the Settlement within ten (10)
9 calendar days of the expiration of the Notice Period, if three percent (3%) or more of the Class
10 Members timely exclude themselves from this Settlement. If Defendant wishes to exercise this
11 right, Defendant must do so by written notice sent by mail or electronic mail to Class Counsel
12 within the ten (10) calendar day period. None of the Parties or respective counsel shall, directly or
13 indirectly, solicit or otherwise encourage Class Members to exclude themselves from the
14 Settlement. In the event of such a rescission, no party may use the fact that the Parties agreed to
15 settle this case in any future proceeding in this Action or any other action, including but not limited
16 to, in support of a motion for class certification or as evidence of Defendant's liability in this
17 lawsuit or the lack thereof.

18 **INTEGRATION CLAUSE**

19 65. This Settlement Agreement contains the entire agreement between the Parties
20 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
21 agreements, understandings, representations, and statements, whether oral or written, and whether
22 by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
23 except in writing.

24 **BINDING ON ASSIGNS**

25 66. This Settlement Agreement shall be binding upon and inure to the benefit of the
26 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and
27 assigns, including, but not limited to, Misfits Market, Inc.

SIGNATORIES

67. It is agreed that because of the large number of Class Members, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

COUNTERPARTS

68. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

10/8/2024

DATED: _____, 2024

DocuSigned by:

Maria Helena Gutierrez

BABCE0E38E9948E...

Maria Gutierrez, Plaintiff

DATED: _____, 2024

Authorized Agent for Defendant,
The Chainary, Inc., dba Valliani Jewelers

APPROVED AS TO FORM:

10/8/2024

DATED: _____, 2024

DocuSigned by:

Robert Wassermann

077A13A0E77A4C5...

Mayall Hulrey, P.C., Class Counsel
William J. Gorham, III
Robert J. Wassermann

DATED: _____, 2024

Freeman Mathis & Gary, LLP, Counsel for Defendant

John K. Rubiner
Elizabeth Y. Mu

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

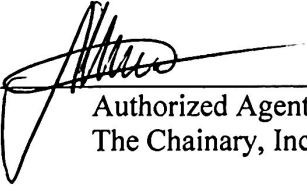
SIGNATORIES

67. It is agreed that because of the large number of Class Members, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Class Member.

COUNTERPARTS

68. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. Copies of the executed Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

DATED: _____, 2024 _____
Maria Gutierrez, Plaintiff

DATED: October 15, 2024  _____
Authorized Agent for Defendant,
The Chainary, Inc., dba Valliani Jewelers

APPROVED AS TO FORM:

DATED: _____, 2024 _____
Mayall Hulrey, P.C., Class Counsel
William J. Gorham, III
Robert J. Wassermann

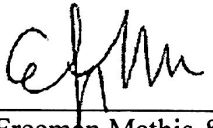
DATED: October 14, 2024  _____
Freeman Mathis & Gary, LLP, Counsel for Defendant

Exhibit A

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Gutierrez v. The Chainary, Inc. dba Valliani Jewelers., Superior Court of California,
County of Santa Clara, Case No. 23-CV417695)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. If the Settlement is approved by the Court, your estimated Settlement Share is: \$<< >>. See the explanation in Section 5 below. If you do nothing, you will be considered a Settlement Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the Settlement Share payment, you will release the Released Class Claims as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself The Response Deadline is _____	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will not receive any Settlement Share and you will not be bound by the Settlement; however, if you were employed during the PAGA Period, you will still be paid your individual PAGA Payment and will release the Released PAGA Claims regardless of whether you submit a request for exclusion. If you choose to exclude yourself, you must notify the Settlement Administrator as explained in Section 7 below.
Object The Response Deadline is _____	Write to the Court about why you object to or do not agree with the Settlement and/or appear at the Final Approval Hearing to make an oral objection. Instructions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement of the above-captioned action (the “Settlement”) pending in the Superior Court of the State of California, in and for the County of Santa Clara (the “Court”) has been reached between Plaintiff Maria Gutierrez (“Plaintiff”) and Defendant The Chainary, Inc. dba Valliani Jewelers (“Defendant”) and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member the Settlement Class defined as follows:

All current and former non-exempt employees of Valliani Jewelers who worked during one or more pay periods from June 16, 2019, through October 25, 2024.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement. To exclude yourself from, or object to, the Settlement you must take action by certain deadlines. If you want to be part of the Settlement, you don't need to do anything to obtain your Settlement Share. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

2. What is this class and representative action lawsuit about?

On June 16, 2023, Plaintiff submitted a notification letter to Defendant and the Labor & Workforce Development Agency ("LWDA") alleging several wage and hour claims, including the failure to pay minimum wage and overtime, the failure to properly calculate and pay overtime wages and sick pay, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, the failure to timely pay wages, the failure to provide accurate itemized wage statements, the failure to pay all wages due and owing at the time of separation, and the failure to reimburse for business expenses (the "PAGA Claims").

On June 16, 2023, Plaintiff filed a Class Action Complaint in the Superior Court of California, County of Santa Clara, Case No. 23CV417695 (the "Class Action") alleging several wage and hour claims on a class-wide basis, including the failure to pay minimum wage and overtime, the failure to properly calculate and pay overtime wages and sick pay, the failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, the failure to timely pay wages, the failure to provide accurate itemized wage statements, the failure to pay all wages due and owing at the time of separation, the failure to reimburse for business expenses, and unlawful business practices (the "Class Claims").

On October 20, 2023, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") in order to add the PAGA Claims to the Class Action.

Defendant denies and disputes all claims pending in the Action. Specifically, Defendant contends Plaintiff and the Settlement Class were properly compensated for wages, including sick pay wages, under California law; that Plaintiff and the Settlement Class were provided meal periods and/or premiums in compliance with California law; that Defendant complied with California wage statement requirements; that Defendant is not liable for any damages or penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on [REDACTED], 2025. At that time, the Court also preliminarily approved Plaintiff to serve as Class Representative and the law firm of Mayall Hurley P.C. to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of \$1,355,000 (the "Gross Settlement Amount") to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Settlement Class Members, the costs of the Settlement Administrator, Class Counsel's reasonable attorneys' fees, expenses, and costs,

Plaintiff's Service Award, and the PAGA Payment. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within 10 calendar days of the Effective Date, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. The "Effective Date" is the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or has been withdrawn; or (c) the final resolution of any appeal that has been filed. Fourteen (14) calendar days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Settlement Class Members.

Amounts to be Paid From the Gross Settlement Amount. The following proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion ("Settlement Class Members"):

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$6,999.90, for expenses, including expenses of notifying the Class Members of the Settlement, processing exclusion requests and objections, distributing Settlement Shares, the PAGA Payment, and tax forms, and handling inquiries and uncashed checks.
- Class Counsel's Reasonable Attorneys' Fees, Expenses, and Costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third of the Gross Settlement Amount, which is presently \$451,666.67, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$16,750. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will request and the final amounts paid will be decided by the Court at the Final Approval Hearing.
- Class Representative Service Award. A Class Representative Service Award in an amount not to exceed \$10,000 to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook. The amount stated is what Plaintiff will request and the final amount paid will be decided by the Court at the Final Approval Hearing.
- PAGA Payment. A payment of \$50,000 relating to the claim for penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), \$37,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment"). The remaining \$12,500 will be distributed to Class Members employed during the PAGA Period (June 16, 2022, through October 25, 2024) based on the number of pay periods worked during the PAGA Period. Class Members employed during the PAGA Period will receive a pro rata distribution of the PAGA Payment, regardless of whether they submit a Request for Exclusion and will be subject to the PAGA Release.

Calculation of Payments to Class Members. After all of the payments of the Court-approved Class Counsel's Reasonable Attorneys' Fees, Expenses and Costs, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount", shall be distributed as Settlement Shares to Settlement Class Members. The Net Settlement Amount is estimated to be \$819,583.43.

Individual Settlement Shares from the Net Settlement Amount will be calculated as follows:

The Settlement Share for each participating Class Member will be determined by dividing the Net Settlement Amount by the total number of Workweeks worked by the participating Class Members during the Class Period, resulting in a payment ratio. A workweek will be any week during which the Class Member worked at least one day/shift, and each individual Class Member will be credited with at least one Workweek. The ratio will then be multiplied by the number of Workweeks each individual participating Class Member was employed to determine his or her individual Settlement Share. Class Members whose employment has ended will receive credit for an additional ten (10) Workweeks in order to account for his/her potential waiting time penalty claim.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. In addition, if the Settlement is approved by the Court and you were employed during the PAGA Period, you will automatically be mailed a check for your individual share of the PAGA Payment. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. For tax purposes, the Settlement Shares shall be allocated as follows: 15% to wages and 85% to penalties and interest. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Settlement Class Member are unique to him/her, and each Settlement Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

Upon the Effective Date, Settlement Class Members will release claims against: (i) Defendant; (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing (the "Released Parties") as follows:

Released Class Claims: Upon the entry of final judgment and Defendant funding the Gross Settlement and for the class period, all Participating Class Members release the Released Parties from all claims that were alleged, or reasonably could have been alleged within the Class Period based on the facts set forth in the First Amended Complaint, including claims for failure to pay minimum wage and overtime, failure to properly calculate and pay overtime wages and sick pay, failure to provide meal and rest periods or appropriately calculate and pay meal/rest period premiums, failure to timely pay wages, failure to provide accurate itemized wage statements,

failure to pay all wages due and owing at the time of separation, failure to reimburse for business expenses, and unlawful business practices (the “Released Class Claims”).

No Class Member, other than Plaintiff, will waive/release any claims asserted on behalf of the Unlawful Arbitration Agreement Class as outlined in the Action.

If you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and/or any other Released Party about any of the Released Claims resolved by the Settlement. It also means that all of the Court’s orders in the Action will apply to you and legally bind you.

Released PAGA Claims by All Class Members: Upon entry of final judgment and Defendant funding the Gross Settlement Amount, the Defendant and the Released Parties shall be entitled to a release from the State of California of all PAGA claims for civil penalties pled or that could have been pled based on the facts, claims, causes of action or legal theories pled in the operative complaint or PAGA letters in the Action, or which could have been alleged based on the factual allegations therein, that occurred during the PAGA Period as to the Aggrieved Employees and expressly excluding all other claims, including claims for alleged failures to provide meal/rest periods and/or properly pay meal/rest period premiums, claims for vested benefits, wrongful insurance, disability, social security, workers’ compensation and PAGA claims outside of the PAGA period. (the “Released PAGA Claims”).

5. How much will my payment be?

Defendant’s records reflect that you have worked << [REDACTED] >> workweeks for Defendant as a Class Member and that you [have/have not] had your employment with Defendant end during the respective Timeframe.

Based on this information, your estimated Settlement Share [and portion of the PAGA Payment] from the Net Settlement Amount is << [REDACTED] >>.

If you wish to challenge the information set forth above, then you must submit a written and signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [60 days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later] (“Response Deadline”).

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. Following final approval of the Settlement by the Court, a check for your Settlement Share will be mailed automatically to the same address as this Class Notice. Similarly, if you were employed during the PAGA Period, payment for your individual share of the PAGA Payment will be mailed automatically following final approval of the Settlement by the Court. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator can be contacted at: [REDACTED] or (800) [REDACTED].

The Court will hold a Final Approval Hearing on _____ at _____ a.m./p.m. to decide whether to approve the Settlement and fix the amounts to be paid as attorneys’ fees and

costs to Class Counsel, the service award to Plaintiff, the costs for settlement administrator, and the PAGA Payment. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately 45 days after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may request exclusion from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for the Released Class Claims.** However, you will still be paid your individual portion of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion from the Settlement.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than the Response Deadline, which is [60 days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later]. The request to opt-out: (i) must be made in writing; (ii) must contain the name and sufficient information to verify the individual's identity; (iii) must be signed by the Class Member who is electing to be excluded; and (iv) must be mailed to the Settlement Administrator on or before the end of the Notice Period. Please include the name and number of the case, which is *Gutierrez vs. The Chainary, Inc.*, Case No. 23CV417695. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is [REDACTED]. Written requests for exclusion that are postmarked after [REDACTED] or are incomplete or unsigned may be rejected; and if so, those Class Members will remain bound by the Settlement and the Released Class Claims described above.

8. How do I tell the Court that I don't agree with the Settlement?

Any Class Member who has not opted out and believes the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, including the attorneys' fees, costs, and administration expenses, the service award, and/or the PAGA Payment, in writing. Objections must be made in writing and include the objector's full name, address, and the basis for any Objection and, if the objector is represented by counsel, the name and address of the objector's counsel. The Objection must also state whether the Settlement Class Member intends to appear at the final approval hearing and present oral argument. At the Court's discretion, any Settlement Class Member who has not complied with these requirements may not be heard at the final approval hearing. Any Settlement Class Member who fails to comply with these requirements will be deemed to have waived any right to submit an Objection to the Settlement Agreement. All written objections or other correspondence should also state the name and number of the case, which is *Gutierrez vs. The Chainary, Inc.*, Case No. 23CV417695.

All written objections must be mailed to the Settlement Administrator at [REDACTED], no later than [REDACTED] [60 days after the mailing of the Class Notice or 15 days after re-mailing, whichever is later].

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.
The addresses for Parties' counsel are as follows:

Class Counsel:

William J. Gorham, III
Robert J. Wassermann
Vladimir J. Kozina
Mayall Hurley P.C.
112 S. Church Street
Lodi, CA 95240
Tel.: (209) 477-3833
Email: wgorham@mayallaw.com
rwassermann@mayallaw.com
vjkozina@mayallaw.com

Counsel for Defendant:

John K. Rubiner
Elizabeth Y. Mu
Freeman Mathis & Gary, LLC
550 South Hope Street, Suite 2200
Los Angeles, CA 90071-2627
Tel: (213) 615-7000
Email: jrubiner@fmglaw.com
Elizabeth.mu@fmglaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [REDACTED] a.m./pm. on [REDACTED], 2025 at the Santa Clara County Superior Court, located at 191 N. First St., San Jose, CA 95113, in Department [REDACTED] before Judge [REDACTED]. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel, the service award to Plaintiff, the settlement administration costs, and the PAGA Payment. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating in the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at [REDACTED], visit the Settlement Administrator's website at www.WEBSITE.com, write to *Gutierrez v. The Chainary, Inc.* Settlement Administrator, c/o [REDACTED]; or contact Class Counsel.

This Class Notice summarizes the proposed settlement. You may also get more details by examining the Court's file on the Internet via the public webpage for the Santa Clara County Superior Court (<https://portal.scscourt.org/>) and entering the Case No. 23CV417695. If you wish to view the Court files in person, you can go to the Clerk's Office at 191 N. First St., San Jose, CA 95113.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Settlement Share and portion of the PAGA Allocation.

- Settlement checks will be null and void if not cashed within one hundred twenty (180) days after its mailing. In such event, the Settlement Administrator shall pay all unclaimed funds to the nonprofit organization CASA of Santa Clara County (Child Advocates of Silicon Valley), a child advocacy program that places Court Appointed Special Advocates For Children (website is www.childadvocatessv.org).
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

Exhibit 3