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**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**

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

### **DEFINITIONS**

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

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

3. “Class” shall collectively refer to 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.

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

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

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

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

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

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

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

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

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

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

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

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

- A. Schedule a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class.
- B. Certify the Settlement Class for settlement purposes only;
- C. Certify this action under Code of Civil Procedure section 382 and Rule 3.760, *et seq.*, of the California Rules of Court as a class action for settlement purposes only;
- D. Approve as to form and content the proposed Class Notice;
- E. Approve the Settlement Administrator and preliminarily approve the estimated costs of settlement administration;
- F. Direct the Settlement Administrator to mail the Class Notice by first class mail to the Settlement Class Members;
- G. Preliminarily approve the Settlement subject only to the Objections of Settlement Class Members and final review by the Court;
- H. Preliminarily approve Class Counsel's attorneys' fees and costs subject to final review of the Court; and
- I. Preliminarily approve the Plaintiff's service award subject to final review of 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.

**MODIFICATION**

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

**DEFENDANT'S RIGHT TO RESCISSION**

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

**INTEGRATION CLAUSE**

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

**BINDING ON ASSIGNS**

66. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and 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*

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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*

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

DATED: \_\_\_\_\_, 2024

Freeman Mathis &amp; Gary, LLP, Counsel for Defendant

John K. Rubiner  
Elizabeth Y. Mu

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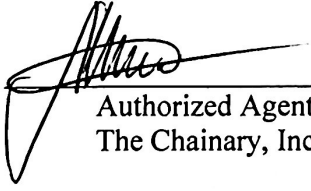
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**COUNTERPARTS**

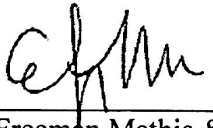
68. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding 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.**

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Do Nothing and Receive a Payment</b>	<p>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.</p> <p><b>If the Settlement is approved by the Court, your estimated Settlement Share is: \$&lt;&lt; &gt;&gt;. See the explanation in Section 5 below.</b></p> <p>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 <b>Section 4</b> below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.</p>
<b>Exclude Yourself</b>  The Response Deadline is _____	<p>To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. <b>If you request exclusion, you will not receive any Settlement Share and you will not be bound by the Settlement;</b> 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.</p> <p>If you choose to exclude yourself, you must notify the Settlement Administrator as explained in <b>Section 7</b> below.</p>
<b>Object</b>  The Response Deadline is _____	<p>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.</p> <p>Instructions are provided in <b>Section 8</b> below.</p>

**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.  
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**Counsel for Defendant:**

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**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](http://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](http://www.childadvocatessv.org)).
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.