

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		FOR COURT USE ONLY on 3/25/2025 12:10 PM Reviewed By: M. Offhaus Case #23CV417695 Envelope: 18726724
NAME: Vladimir J. Kozina (SBN: 284645)		
FIRM NAME: Mayall Hurley, P.C.		
STREET ADDRESS: 112 South Church Street		
CITY: Lodi	STATE: CA ZIP CODE: 95240	
TELEPHONE NO.: (209) 477-3833 FAX NO.:		
E-MAIL ADDRESS: vjkozina@mayallaw.com		
ATTORNEY FOR (name): Plaintiff Maria Gutierrez		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA		
STREET ADDRESS: 191 N. First Street		
MAILING ADDRESS: 191 N. First Street		
CITY AND ZIP CODE: San Jose 95113		
BRANCH NAME: Civil		
PLAINTIFF/PETITIONER: Maria Gutierrez		CASE NUMBER: 23CV417695
DEFENDANT/RESPONDENT: The Chainary, Inc., et al.		JUDICIAL OFFICER: Judge Theodore C. Zayner
OTHER:		
PROPOSED ORDER (COVER SHEET)		DEPT: 19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Vladimir J. Kozina, on behalf of Plaintiff
2. Title of the proposed order:
[Proposed] Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Preliminary Approval
 - b. Date and time: March 19, 2025 at 1:30 p.m.
 - c. Place: Santa Clara County Superior Court, 191 N. First St., San Jose, CA 95113, Dept. 19
4. The proposed order was served on the other parties in the case.

Vladimir J. Kozina

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:

Gutierrez v. The Chainary, Inc., et al.

CASE NUMBER:

23CV417695

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

Mayall Hurley, P.C., 112 South Church Street, Lodi, CA 95240

b. My electronic service address is (*specify*): jzeyen@mayallaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

Elizabeth Y. Mu, attorney for The Chainary, Inc. dba Valliani Jewelers

b. To (*electronic service address of person served*): Elizabeth.Mu@fmglaw.com

c. On (*date*): 3/25/25

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 25, 2025

Julie Zeyen

(TYPE OR PRINT NAME OF DECLARANT)



Julie Zeyen
(SIGNATURE OF DECLARANT)

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.: 23CV417695

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: March 19, 2025

Time: 1:30 pm

Dept: 19

21 Plaintiff Maria Gutierrez's ("Plaintiff") Motion for Preliminary Approval of Class Action and
22 PAGA Settlement ("Motion") came on for hearing before the Honorable Theodore C. Zayner on
23 March 19, 2025 at 1:30 pm in Department 19 of the above-captioned Court. The Court issued a
24 tentative ruling on March 18, 2025. No hearing was requested, and the tentative ruling is confirmed as
25 the Order of this Court as follows:

26 **I. INTRODUCTION**

27 This is a putative class and representative action arising from alleged wage and hour
28 violations. On June 16, 2023, plaintiff Maria Gutierrez ("Plaintiff") began this action by filing a class

1 action complaint against defendant The Chainary, Inc. dba Valliani Jewelers (“Defendant”). On
2 October 20, 2023, Plaintiff filed the operative first amended class and representative action complaint
3 against Defendant, asserting the following causes of action: (1) failure to pay minimum wage; (2)
4 failure to pay overtime; (3) failure provide meal periods; (4) failure to provide rest periods; (5) failure
5 to provide accurate itemized wage statements; (6) failure to pay sick pay; (7) failure to timely pay
6 wages; (8) failure to reimburse for business expenses; (9) unlawful business practices; (10) Private
7 Attorneys General Act (“PAGA”).

8 The parties have reached a settlement. Now before the court is Plaintiff’s motion for preliminary
9 approval of the settlement. The motion is unopposed.

10 **II. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS**

11 **A. Class Action**

12 Generally, “questions whether a [class action] settlement was fair and reasonable, whether
13 notice to the class was adequate, whether certification of the class was proper, and whether the
14 attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba*
15 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), disapproved of on other
16 grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

17 In determining whether a class settlement is fair, adequate and reasonable, the trial
18 court should consider relevant factors, such as the strength of plaintiffs’ case, the risk,
19 expense, complexity and likely duration of further litigation, the risk of maintaining
20 class action status through trial, the amount offered in settlement, the extent of
21 discovery completed and the stage of the proceedings, the experience and views of
22 counsel, the presence of a governmental participant, and the reaction of the class
23 members to the proposed settlement.

24 (*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, internal citations and quotations omitted.)

25 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
26 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168
27 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and weighing of
28 factors depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p. 245.)
The trial court must examine the “proposed settlement agreement to the extent necessary to reach a
reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

1 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
2 adequate to all concerned.” (*Ibid.*, citation and internal quotation marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and reasonable.
4 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length
5 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
6 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
7 small.” (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.)

8 **B. PAGA**

9 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall review
10 and approve any settlement of any civil action filed pursuant to” PAGA. The court’s review
11 “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court*
12 (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA go to the
13 Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-five percent for
14 the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,
15 380, overruled on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ___, 2022
16 U.S. LEXIS 2940.)

17 Like its review of class action settlements, the Court must “determine independently whether
18 a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the LWDA in
19 the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.)
20 It must make this assessment “in view of PAGA’s purposes to remediate present labor law
21 violations, deter future ones, and to maximize enforcement of state labor laws.” (*Id.* at p. 77; see also
22 *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA
23 claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful,
24 consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA
25 guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110
26 (*O’Connor*).)

27 The settlement must be reasonable considering the potential verdict value. (See *O’Connor*,
28 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential

1 verdict].) But a permissible settlement may be substantially discounted, given that courts often
2 exercise their discretion to award PAGA penalties below the statutory maximum even where a claim
3 succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-cv-02198-
4 EMC) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *20-24.)

5 **III. DISCUSSION**

6 **A. Provisions of the Settlement**

7 This case has been settled on behalf of the following class:

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

10 (Declaration of Vladimir J. Kozina in Support of Motion for Preliminary Approval of Class Action
11 and PAGA Settlement (“Kozina Decl.”), Ex. 2 (“Agreement”), ¶ 3.) The settlement also includes a
12 subset class of PAGA employees who are Class Members employed by Defendant during the PAGA
13 Period [the period from June 16, 2022, through October 25, 2024]. (*Id.* at ¶¶ 11, 34.K.)

14 Defendant will pay a gross settlement amount of \$1,355,000, subject to an escalator clause.
15 (Agreement, ¶¶ 34.B, 34.F.) The gross settlement amount includes attorney fees of up to one-third of
16 the gross settlement amount (i.e., \$451,666.67); litigation costs up to \$16,750; a PAGA allocation of
17 \$50,000 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to
18 PAGA Employees as individual PAGA payments); a service payment of up to \$10,000; and
19 settlement administration costs up to \$6,999.90 (*Id.* at ¶¶ 34.C, 34.H-34.L.) The net settlement
20 amount will be distributed to participating class members on a pro rata basis according to the number
21 of workweeks worked during the Class Period. (*Id.* at ¶ 34.D.) Individual PAGA payments will be
22 distributed according to the number of workweeks worked during the PAGA Period. (*Id.* at ¶ 34.K.)

23 The Agreement proposes Apex Class Action Administration (“Apex”) as the neutral entity
24 appointed to administer the settlement. (Agreement, ¶ 15.) The court approves and appoints Apex as
25 the settlement administrator. The Agreement further provides that any residual funds from settlement
26 checks remaining uncashed after the void date (180 days after mailing) will be distributed to the
27 nonprofit organization CASA of Santa Clara County, a child advocacy program that places Court
28 Appointed Special Advocates For Children. (*Id.* at ¶¶ 48-49.) The court approves the designated cy

1 *pres* recipient. (See Code of Civil Procedure section 384, requiring that unclaimed or abandoned
2 class members’ funds be given to “nonprofit organizations or foundations to support projects that
3 will benefit the class or similarly situated persons, or that promote the law consistent with the
4 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
5 nonprofit organizations providing civil legal services to the indigent.”)

6 In exchange for the settlement, the class members agree to release the Defendant and related
7 entities and persons from “all claims that were alleged, or reasonably could have been alleged within
8 the Class Period based on the facts set forth in the First Amended Complaint, ... (the ‘Released
9 Class Claims’). (Agreement, ¶¶ 31, 50.A.) The Aggrieved Employees are deemed to release
10 Defendant and related persons “from all claims for PAGA penalties that were alleged, or reasonably
11 could have been alleged during the PAGA Period, based on the facts stated in the First Amended
12 Complaint, and Plaintiffs PAGA Notice, ... the ‘Released PAGA Claims’.” (*Id.* at ¶¶ 31, 50.B.) The
13 release provisions are appropriately tailored to the factual allegations of the operative pleading. (See
14 *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538.)

15 **B. Fairness of the Settlement**

16 Plaintiff contends that preliminary approval of the settlement is warranted because the
17 settlement terms are fair, reasonable, and adequate. (Motion, pp. 8:1-14:6.) On August 14, 2024, the
18 parties participated in mediation with Phil Cook, Esq. (Kozina Decl., ¶ 7.) Prior to mediation,
19 Defendant produced time and payroll data for the putative class and copies of Defendant’s relevant
20 written policies. (*Id.* at ¶ 6.) The parties ultimately accepted the mediator’s proposal. (*Id.* at ¶ 8.)
21 Plaintiff’s counsel has provided an analysis of the value of Plaintiff’s claims. (*Id.* at ¶¶ 13-30;
22 Motion, pp. 9:9-10:22.) According to this analysis, Defendant’s estimated maximum exposure for
23 the class and PAGA claims is \$5,104,900, and Plaintiff’s counsel provides a breakdown of this
24 amount by claim. (*Ibid.*)

25 The gross settlement amount of \$1,355,000 represents approximately 26.5 percent of
26 Defendant’s estimated total maximum exposure. Therefore, the proposed settlement amount is
27 within the general range of percentage recoveries that California courts have found to be reasonable.
28 (See *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022

1 U.S.Dist. LEXIS 30201, at *41-42 [citing cases approving settlements in the range of 5 to 35 percent
2 of the maximum potential exposure].)

3 The court has reviewed Plaintiff's written submissions in support of the proposed settlement.
4 Based on the circumstances of the case, including the strength of Plaintiffs' case and potential
5 defenses, the court finds the terms of the settlement to be fair. The settlement provides for some
6 recovery for each class member and eliminates the risk and expense of further litigation.

7 C. Service Award, Fees and Costs

8 Plaintiff requests a service award of \$10,000. (Motion, p. 13:1-17.)

9 The rationale for making enhancement or incentive awards to named plaintiffs is that
10 they should be compensated for the expense or risk they have incurred in conferring a
11 benefit on other members of the class. An incentive award is appropriate if it is
12 necessary to induce an individual to participate in the suit. Criteria courts may
13 consider in determining whether to make an incentive award include: 1) the risk to the
14 class representative in commencing suit, both financial and otherwise; 2) the notoriety
15 and personal difficulties encountered by the class representative; 3) the amount of time
16 and effort spent by the class representative; 4) the duration of the litigation and; 5) the
17 personal benefit (or lack thereof) enjoyed by the class representative as a result of the
18 litigation. These "incentive awards" to class representatives must not be
19 disproportionate to the amount of time and energy expended in pursuit of the lawsuit.

20 (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1394-1395, internal
21 punctuation and citations omitted.) Incentive awards are particularly appropriate where a plaintiff
22 undertakes a significant reputational risk in bringing an action against an employer. (Covillo v.
23 Specialty's Café (N.D. Cal. 2014) 2014 U.S.Dist.LEXIS 29837, at *29.)

24 Plaintiff Gutierrez has provided a declaration describing her participation in this litigation.
25 (Declaration of Maria Gutierrez, ¶¶ 6-11.) Plaintiff's involvement has included gathering
26 information, obtaining and reviewing documents, communicating with her attorneys and their
27 paralegal about the case, and participating in mediation. (Id. at ¶ 6.) Plaintiff Gomez states that she
28 has spent approximately 63 hours working on this action. (Ibid.) The court finds that a service award
is justified and that the amount requested is reasonable. Therefore, the court approves a service
award to Plaintiff in the amount of \$10,000.

The court also has an independent right and responsibility to review the requested attorney
fees and only award so much as it determines reasonable. (See Garabedian v. Los Angeles Cellular

1 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will seek attorney fees of
2 up to one-third of the gross settlement amount (i.e., \$451,666.67). Prior to the final approval hearing,
3 Plaintiff's counsel shall submit lodestar information (including hourly rate and hours worked) as
4 well as evidence of actual litigation costs incurred and settlement administration costs.

5 **D. Conditional Certification of Class**

6 Plaintiff requests that the class be conditionally certified for purposes of the settlement. Rule
7 3.769(d) of the California Rules of Court states that "[t]he court may make an order approving or
8 denying certification of a provisional settlement class after [a] preliminary settlement hearing."
9 California Code of Civil Procedure Section 382 authorizes certification of a class "when the question
10 is one of a common or general interest, of many persons, or when the parties are numerous, and it is
11 impracticable to bring them all before the court" As interpreted by the California Supreme
12 Court, section 382 requires: (1) an ascertainable class; and (2) a well-defined community of interest
13 among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326
14 (*Sav-On*).

15 The "community-of-interest" requirement encompasses three factors: (1) predominant
16 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and,
17 (3) class representatives who can adequately represent the class. (*Sav-On, supra*, 34 Cal.4th at p.
18 326.) "Other relevant considerations include the probability that each class member will come
19 forward ultimately to prove his or her separate claim to a portion of the total recovery and whether
20 the class approach would actually serve to deter and redress alleged wrongdoing." (*Linder v. Thrifty*
21 *Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment
22 will yield "substantial benefits" to both "the litigants and to the court." (*Blue Chip Stamps v.*
23 *Superior Court* (1976) 18 Cal.3d 381, 385.) As explained by the California Supreme Court,

24 The certification question is essentially a procedural one that does not ask whether an
25 action is legally or factually meritorious. A trial court ruling on a certification motion
26 determines whether the issues which may be jointly tried, when compared with those
27 requiring separate adjudication, are so numerous or substantial that the maintenance of
a class action would be advantageous to the judicial process and to the litigants.

28 (*Sav-On, supra*, 34 Cal.4th at p. 326, internal punctuation and citations omitted.)

1 Plaintiff states there are approximately 283 class members, who can be identified from a
2 review of Defendant's records. There are common questions regarding whether class members were
3 subjected to common practices that violated wage and hour laws. No issue has been raised regarding
4 the typicality or adequacy of Plaintiff as class representative. Therefore, the court finds that the
5 proposed class should be conditionally certified for settlement purposes.

6 **E. Class Notice**

7 The content of a class notice is subject to court approval. "If the court has certified the action
8 as a class action, notice of the final approval hearing must be given to the class members in the
9 manner specified by the court." (Cal. Rules of Court, rule 3.769(f).) "The notice must contain an
10 explanation of the proposed settlement and procedures for class members to follow in filing written
11 objections to it and in arranging to appear at the settlement hearing and state any objections to the
12 proposed settlement." (*Ibid.*) In determining the manner of the notice, the court must consider: "(1)
13 The interests of the class; (2) The type of relief requested; (3) The stake of the individual class
14 members; (4) The cost of notifying class members; (5) The resources of the parties; (6) The possible
15 prejudice to class members who do not receive notice; and (7) The res judicata effect on class
16 members." (Cal. Rules of Court, rule 3.766(e).)

17 Here, the form of the notice is generally acceptable as it describes the lawsuit, explains the
18 settlement, and informs class members that they may opt out of the settlement or object. The
19 settlement amounts, including attorney fees and payment to the named plaintiff, are stated. The
20 notice informs class members that they may appear at the final fairness hearing to make an oral
21 objection without filing a written objection.

22 The court requests that the following language regarding the final approval hearing be added
23 to the notice:

24 Class members may appear at the final approval hearing in person or remotely using
25 the Microsoft Teams link for Department 19 (Afternoon Session), and should review
the remote appearance instructions beforehand:

26 https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml
27
28

1 Class members who wish to appear remotely are encouraged to contact class counsel
2 at least three days before the hearing, if possible, so that potential technology or
audibility issues can be avoided or minimized.


3 In all other respects, the notice is approved.

4 **IV. CONCLUSION**

5 The motion for preliminary approval is GRANTED. A final approval hearing shall take place on
6 **September 24, 2025**, at 1:30 p.m. in Department. 19. The following class shall be preliminarily
7 certified for settlement purposes:

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

10 Dated: March 28, 2025

11 
12 _____
Judge of the Superior Court