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Attorneys for Plaintiff, the Class, and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

SYLVIA BERNABE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

899 CHARLESTON, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20CV366465

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: August 18, 2021

Time: 1:30 P.M.

Dept.: 3

Complaint Filed: May 8, 2020

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of Virginia, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Ward (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to do so could and would do so competently.

2. On April 6, 2020, Plaintiff sent her written notice to the California Labor & Force Development Agency (“LWDA”), alleging the following violations against Defendant 899 Charleston (“Defendant”): (1) failure to pay all overtime wages owed in violation of California Labor Code; and (2) failure to provide accurate itemized wage statements in violation of the California Labor Code. Based on these allegations, Plaintiff alleged that Defendant violated California Labor Code §§ 201-203, 226(a), 510, 558, and 1194.

3. On May 8, 2020, Plaintiff filed her class and representative PAGA Complaint (Complaint”) against Defendant in Santa Clara County Superior Court. The Complaint alleges the following causes of action: (1) violation of Labor Code §§ 201-203, 510, 558, and 1194; (2) violation of Labor Code § 226(a); (3) violation of the California Business and Professions Code §§ 17090, *et seq.*; and (4) violation of Labor Code §§ 2698, *et seq.*, the PAGA, predicated on the Labor Code violations as her class claims.

4. Plaintiff's class and PAGA claims as pled in this lawsuit are predicated upon the following allegations. With respect to Plaintiff's regular rate claim, Plaintiff contends that Defendant failed to factor non-discretionary incentives, such as shift differential wages, into the calculation of the regular rate of pay for purposes of paying overtime wages. As a result, Plaintiff alleges that Plaintiff and employees were underpaid overtime wages. With respect to Plaintiff's wage statement claims, Plaintiff alleges derivative violations resulting from the Defendant's regular rate claim as well as standalone wage statement violations. For Plaintiff's standalone wage statement violations, Plaintiff contends that Defendant issued deficient wage statements whenever overtime wages were paid, as the wage statements do not correctly identify all hours worked in the pay period.

1 5. After the filing of the Complaint, the Parties met and conferred and agreed to
2 participate in private mediation. In connection with mediation, the Parties engaged in informal
3 discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum
4 exposure of damages and penalties. Defendant provided Plaintiff's counsel with informal data
5 and information pertaining to the number of putative class members, the number of wage
6 statements at issue, the hourly rates of pay, a sample of putative class members' time and payroll
7 records, as well as information pertaining to Defendant's sick pay/paid time off (PTO), shift
8 differential pay, and wage statement policies and practices. Plaintiff engaged the services of an
9 expert witness to analyze and prepare an exposure analysis based on the data that was provided
10 by Defendant.

11 6. On April 13, 2021, the Parties engaged in a full-day mediation with mediator
12 Michael E. Dickstein, Esq. After thorough investigation and evaluation of the facts and claims,
13 and as a result of the arm's-length negotiations facilitated by Mr. Dickstein, the Parties and their
14 counsel ultimately reached the current settlement. Attached as **Exhibit A** is a true and correct
15 copy of the Parties' Joint Stipulation of Class Action Settlement and Release.

16 7. In connection with the settlement, on July 9, 2021, Plaintiff filed a supplemental
17 notice to the LWDA adding a claim for violation of Labor Code §§ 201-203 and 246, alleging
18 that Defendant failed to timely and correctly pay sick pay at the correct regular rate of pay.
19 Plaintiff also filed a First Amended Complaint on July 16, 2021, to add sick pay regular rate
20 class and PAGA claims. With respect to Plaintiff's sick pay regular rate claim, Plaintiff
21 contends that Defendant failed to factor non-discretionary incentives, including shift differential
22 wages, into the calculation of the regular rate for purposes of paying sick pay wages. Thus,
23 Plaintiff and employees were underpaid sick pay.

24 8. As a result of the violations alleged in this lawsuit, Plaintiff seeks damages and
25 penalties under the California Labor Code, the California Business & Professions Code, and the
26 PAGA, as well as attorneys' fees and costs.

27 9. The Parties recognize the risk, expense, and delay in continuing litigation with the
28 class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

1 10. Each side has apprised the other of their respective factual contentions, legal
2 theories and defenses, resulting in negotiations taking place between the Parties.

3 11. Based on the class data provided by Defendant, Plaintiff estimated that Defendant
4 would face potential liability of up to approximately \$525,758.00 for Plaintiff's overtime and
5 sick pay regular rate and wage statement class claims if Plaintiff succeeded at trial.

6 12. With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated
7 that Defendant could face civil penalties of up to a maximum \$555,650.00 if Plaintiff were
8 successful at trial.

9 13. Plaintiff retained an expert to calculate the potential class penalties based on data
10 provided by Defendant, including the number of employees, number of pay periods at issue, and
11 the hourly rates of pay applicable to the putative class members. Plaintiff's expert also analyzed
12 the sample time and payroll records provided by Defendant and extrapolated it to the entire class.

13 14. The total amount of class and PAGA penalties amount to approximately
14 \$1,081,408.00, without discounting for potentially losing on any of the causes of action. The
15 Maximum Settlement Amount is **\$250,000.00**, which is approximately **23.12%** of the maximum
16 class and PAGA penalties.

17 15. Although Plaintiff believes in the merits of the alleged claims and maintains that
18 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise
19 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
20 could be persuasive to the Court. The Maximum Settlement Amount was premised with this risk
21 in mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA
22 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

23 16. Although Plaintiff believes that the classes can be certified, Plaintiff also
24 believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to
25 Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in
26 the operative First Amended Complaint, the possibility of non-certification, and the potential for
27 appeals.

28 17. On a raw average, each participating Class Member may potentially recover

1 approximately **\$963.07**. The amount actually paid to each participating Class Member may
2 increase or decrease depending upon the actual number of pay periods with payments for shift
3 differentials, commissions, and/or bonuses during the period of April 6, 2017, through October
4 31, 2020.

5 18. Any remaining monies from uncashed settlement checks shall be distributed to
6 Asian Americans Advancing Justice – Los Angeles (AAJC). Plaintiff does not have any
7 relationship or connection with or to AAJC.

8 19. Attached as **Exhibit B** is a true and correct copy of the proposed “Notice of
9 Pendency of Class Action Settlement and Final Hearing” (“Class Notice”) to be sent to Class
10 Members.

11 20. From the inception of the case, Class Counsel has zealously represented the
12 interests of the Class. Class Counsel engaged in significant discussions with opposing counsel to
13 obtain informal data on behalf of the Class. This settlement was obtained for the benefit of the
14 Class, as opposed to the individual Class Representative.

15 21. I have spent significant time researching and pursuing the claims that have been
16 alleged in this action. The Parties engaged in informal discovery in connection with mediation,
17 and participated in the exchange of class data and Defendant’s pertinent policies and practices.
18 Based on my review of all the documents and information, and based on my experience in class
19 action litigation, I believe this settlement to be fair, adequate, and reasonable.

20 22. I was retained based upon a contingency fee arrangement wherein Plaintiff’s
21 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
22 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a
23 significant amount of time, money and other resources without any benefit or return. In addition,
24 had Plaintiff also failed to prevail in the present case, Defendant would have been able to seek
25 costs in connection with their defense of the case.

26 23. I am one of the primary attorneys on this matter. My qualifications are as
27 follows: I received my JD from Loyola Law School in 2017. I received the First Honors Award
28 in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First Honors

1 Award in Civil Litigation Practicum I for achieving the highest grade in those classes. During
2 law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District
3 Court, Central District of California, for the Honorable Christina A. Snyder, and a certified law
4 clerk at the San Diego County District Attorney's Office, Collaborative Courts Division, and the
5 Los Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes
6 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I
7 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the
8 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created
9 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the
10 California Bar in December 2017.

11 24. I am currently an associate at the law firm Diversity Law Group, P.C., an
12 employment law firm that has handled numerous wage and hour class and individual actions, on
13 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including
14 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San
15 Diego County Superior Court, Monterey County Superior Court, as well as the United States
16 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

17 25. I am currently handling and/or have handled numerous wage and hour class action
18 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-
19 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
20 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*
21 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case
22 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
23 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*
Systems, LLC, et al. (Case Number RG19014709).

24 26. In 2018, I argued before the California Court of Appeal, Second Appellate
25 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case
26 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
27 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
28

1 that same year, I also assisted the firm in successfully obtaining class certification and partial
2 summary judgment by the United States District Court, Central District of California in the case
3 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the
4 bench trial in that same case in December 2018.

5 27. I have also been approved as class counsel in numerous other wage/hour class
6 actions. Most recently, I was approved as class counsel in the cases *Garcia v. Wal-Mart*
7 *Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.*
8 (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS
9 (DFM)), and *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319).
10 Moreover, I was granted final approval as class counsel in *California Forensic Medical Group*
11 *Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey*
12 *Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644),
13 *Hernandez v. Wells Fargo Bank National Ass’n, et al* (Case No. 16-CV-299319), *Mendez v.*
14 *Falcon Trading Company* (Case No. 19CV004512), and *Khan v. Amy’s Kitchen, Inc.* (Case No.
15 SCV-266127). I acted as lead counsel in these cases listed above.

16 28. My co-counsel and I will adequately represent the Class Members in this action.
17 Plaintiff’s Counsel have and will zealously represent Plaintiff and the Class and pursue this
18 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the
19 Class.

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

22 Executed on this 28th day of July, 2021, at Los Angeles, California.

23 

24 Mai Tulyathan

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

SYLVIA BERNABE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

899 CHARLESTON, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20CV366465

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

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

Complaint Filed: May 8, 2020

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

2 In accordance with the terms of the settlement accepted by the Parties and subject to
3 preliminary and final approval by the Court, Plaintiff Sylvia Bernabe (“Plaintiff”) and Defendant
4 899 Charleston (“Defendant”) (collectively, the “Parties”), by and through their attorneys of
5 record, respectively, (collectively, the “Parties”) agree to the following binding terms (the
6 “Agreement”) for the settlement of the putative class and representative action entitled *Sylvia*
7 *Bernabe, as an individual and on behalf of all others similarly situated, Plaintiff, vs. 899*
8 *Charleston, a California corporation; and Does 1 through 50, inclusive, Defendants*, pending
9 before the Superior Court for the State of California, County of Santa Clara, Case 20CV366465
10 (“Action”):

11 **I. RECITALS**

12 1. **WHEREAS**, on or about April 6, 2020, Plaintiff’s Counsel sent a letter to the
13 California Labor and Workforce Development Agency pursuant to Labor Code § 2699.3 seeking
14 to exhaust Plaintiff’s administrative remedies under the Private Attorneys General Act of 2004
15 (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*, alleging the following violations against Defendant:
16 (1) failure to pay all overtime wages owed in violation of the California Labor Code; and (2) failure
17 to provide accurate, itemized wage statements in violation of the California Labor Code. Based
18 on these allegations, Plaintiff alleged that Defendant violated California Labor Code §§ 201-203,
19 226, 510, 558, and 1194.

20 2. **WHEREAS**, on May 8, 2020, Plaintiff commenced this action in the Superior
21 Court for the State of California, County of Santa Clara, alleging four causes of action: (1) failure
22 to pay overtime wages in violation of Labor Code §§ 201-203, 510, 558, and 1194; (2) violation
23 of Labor Code § 226(a); (3) violation of the California Business and Professions Code § 17200, *et*
24 *seq.*; and (4) violation of Labor Code §§ 2698, *et seq.*, the PAGA.

25 3. **WHEREAS**, in connection with this Joint Stipulation of Class Action Settlement
26 and Release, Plaintiff will submit for filing a First Amended Complaint adding claims for
27 Defendant’s failure to pay all sick pay wages owed in a timely manner and upon separation of
28 employment in violation of Labor Code §§ 201-203 and 246.

1 4. **WHEREAS**, Plaintiff contends that she and the class she seeks to represent are
2 entitled to unpaid wages, damages, statutory and civil penalties, and other remedies as a result of
3 Defendant's alleged conduct, including failing to pay all overtime wages and sick pay wages owed,
4 failing to pay all wages owed upon separation of employment, and failing to provide accurate
5 itemized wage statements;

6 5. **WHEREAS**, Defendant denies that it has engaged in any alleged unlawful conduct,
7 denies that it has violated any statute, principle of common law or equity, rule or regulation, and
8 maintains that it has complied at all times with California law by, including, but not limited to,
9 compensating employees for all wages earned, providing employees with accurate wage
10 statements, and paying all amounts owed in a timely manner after termination of employment.
11 Further, Defendant attests that any regular rate calculation that led to the underpayment of overtime
12 wages and sick pay wages was based on a formula error by the payroll service hired by Defendant's
13 management company.

14 6. **WHEREAS**, extensive arm's-length settlement negotiations have taken place
15 between the Parties, including mediation on April 13, 2021, before wage and hour class action
16 mediator, Michael Dickstein, which resulted in this proposed settlement;

17 7. **WHEREAS**, after substantial discovery and investigation of the facts, and after
18 carefully considering the applicable law, Plaintiff and her counsel have concluded that: (1) it is in
19 the best interests of the Class (defined below) to enter into the settlement described herein in order
20 to avoid the uncertainties of litigation and to assure benefits to the Class Members (defined below);
21 and (2) the terms and conditions of this Agreement, and the settlement contemplated hereby, are
22 fair, reasonable and adequate and in the best interests of all of the Class Members;

23 8. **WHEREAS**, Defendant has also conducted an investigation into the allegations
24 raised by Plaintiff in the Action and evaluated the information exchanged between the parties and
25 has concluded that, despite its good faith belief that it is not liable for any of the claims asserted in
26 the Action and that it has good defenses to those claims, it will enter into this Agreement to obtain
27 the conclusive and complete settlement of the Action and avoid the further expense, inconvenience
28 and burden of this litigation, and the risk and uncertainty of the outcome inherent in any litigation;

9. **WHEREAS**, the Parties hereto agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever by Defendant, or the truth of any of the claims asserted in the Action;

10. **NOW THEREFORE**, in consideration of the mutual covenants, promises and warranties set forth herein, Plaintiff, the Class (defined below), and Defendant agree, subject to Court approval, that this Action, and any claims, damages, or causes of action arising out of the facts and allegations set forth in the Action, be submitted for Preliminary Approval on the terms set forth herein. The purpose of this Agreement is to memorialize the Parties' agreement reached pursuant to the mediation negotiations, which took place on April 13, 2021, and to settle and compromise all claims by Plaintiff and the Class Members against Defendant, and/or any of its past, present and future parents, owners, subsidiaries, affiliates, successors-in-interest, assigns, auditors, accountants, experts, contractors, partners, insurers, reinsurers, and other parties acting on their behalf, officers, directors, shareholders, employees, agents, and representatives.

II. REPRESENTATION OF THE PARTIES

1. Counsel for the Settlement Class (referred to herein as “Class Counsel”) are Larry W. Lee and Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071. Counsel for Defendant is Susan E. Bishop of Berliner Cohen, LLP, 10 Almaden Boulevard, 11th Floor, San Jose, California 95113.

2. Class Counsel conducted an extensive investigation of the facts surrounding the claims asserted in this Action prior to filing suit. Class Counsel also reviewed documents and data provided by Defendant in anticipation of mediation to evaluate potential and damages, including reviewing class data, analyzing sample time and payroll records for the class, and reviewing various documents pertaining to Defendant's payroll policies, practices, and procedures. Defendant's counsel likewise conducted a thorough internal investigation surrounding Plaintiff's claims, including analysis of time and payroll records and related information for class members.

3. Pursuant to the agreement of Counsel pending mediation, Defendant produced, and Class Counsel reviewed and analyzed, information regarding the size and scope of the putative

1 class and the pending claims. Class counsel retained a consultant to interpret and analyze the data.

2 4. The Parties participated in full-day mediation before Michael Dickstein on April
3 13, 2021, via Zoom videoconference. Mr. Dickstein is an experienced class action mediator in
4 California. After subsequent discussions and negotiations, the mediation resulted in a settlement,
5 which was accepted by both Parties on April 15, 2021.

6 **III. TERMS OF SETTLEMENT**

7 **A. Settlement Parties**

8 1. **“Class Period” Definition:** The class period encompasses April 6, 2017,
9 through October 31, 2020.

10 2. **“Class and Class Member(s)” Definition:** All current and former non-
11 exempt employees of Defendant in the State of California who were paid shift differential wages,
12 bonuses, and commissions at any time during the Class Period who do not opt out of this
13 Settlement.

14 3. **“Plaintiff” or “Class Representative” Definition:** Plaintiff Sylvia
15 Bernabe. Plaintiff worked for Defendant for approximately 7 years prior to her separation of
16 employment from Defendant. Plaintiff has no known conflicts with the Class and has agreed to
17 represent the Class. Class Counsel believes that Plaintiff is an adequate class representative.

18 4. **“Released Claims” Definition:** Plaintiff and Class Members who do not
19 opt of the Settlement release any and all claims that were alleged or reasonably could have been
20 alleged in the operative Complaint based upon the facts, allegations, or causes of actions contained
21 therein, including the following claims for relief, that accrued during the Class Period: a) Claims
22 for improper and/or inaccurate wage statements; underpayment of overtime wages; underpayment
23 of sick or PTO pay wages; timeliness of payment of overtime wages; timeliness of payment of
24 sick or PTO pay wages; waiting time penalties; any unpaid wages related to any of the foregoing;
25 restitution for any of the foregoing; violations of Labor Code §§ 201-203, 226, 246, 510, 558, and
26 1194; and b) Any and all claims for penalties under the California Private Attorneys General Act
27 predicated on claims for improper and/or inaccurate wage statements; underpayment of overtime
28 wages; underpayment of sick or PTO pay wages; timeliness of payment of overtime wages;

1 timeliness of payment of sick or PTO pay wages; waiting time penalties; any unpaid wages related
2 to any of the foregoing; violations of Labor Code §§ 201-203, 226, 246, 510, 558, and 1194, and
3 all other claims under the PAGA based on the facts as alleged in the Complaint.

4 5. **“Released Party” Definition:** Defendant 899 Charleston, including its
5 past, present, and future parents, owners, subsidiaries, affiliates, successors-in-interest, assigns,
6 auditors, accountants, experts, contractors, partners, insurers, reinsurers, and other parties acting
7 on their behalf, officers, directors, shareholders, employees, agents, attorneys, and representatives.

8 B. **Settlement Amount and Terms**

9 1. **Maximum Settlement Amount:** The Maximum Settlement Amount that
10 Defendant will be obligated to pay in connection with the Settlement shall be Two Hundred Fifty
11 Thousand Dollars and Zero Cents (\$250,000.00), to be paid by Defendant in full satisfaction of all
12 claims arising from the Action as described in Paragraph III.A.4., *supra*. The Maximum
13 Settlement Amount is inclusive of Attorneys’ Fees, Attorneys’ Expenses/Costs, Class
14 Representative Enhancement Payment, Settlement Administration Fees, and PAGA Settlement
15 Amount (as defined herein). The Maximum Settlement Amount shall be non-reversionary, such
16 that no funds will revert back to Defendant.

17 a. Defendant represents that there are no more than 116 Class
18 Members. The Maximum Settlement Amount is based on Defendant’s representation that there
19 are no more than 3,280 pay periods with payment to the Class Members for shift differentials,
20 commissions, and/or bonuses during the Class Period. If the actual number of pay periods exceeds
21 3,280 by more than five (5) percent (or 164 pay periods), Defendant agrees that the Maximum
22 Settlement Amount will increase by a proportionate percentage above the five percent allowance
23 (e.g., if the actual number of pay periods at issue is 10% higher than 3,280, the Maximum
24 Settlement Amount shall be increased by 5%).

25 2. **Payment by Defendant:** Defendant shall make a transfer of all monies
26 owed under the Agreement to a Qualified Settlement Fund (“QSF”) established by the Settlement
27 Administrator at the time prescribed herein, and the Settlement Administrator will distribute all
28 settlement proceeds payable after the Effective Date (as defined herein) in accordance with the

terms set forth in this Agreement.

3. **Responsibility for Employer Taxes:** One hundred percent (100%) of Class Members' settlement proceeds constitute penalties and interest. Class Members will be issued IRS Forms 1099 for the settlement proceeds.

4. **Class Representative Enhancement Payment:** Defendant will not oppose Plaintiff's application to the Court for a Class Representative Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff to be paid out of the Maximum Settlement Amount, in addition to Plaintiff's Individual Settlement Payment (as defined herein), in recognition of her efforts and work in prosecuting the Action on behalf of the Class Members. Any Class Representative Enhancement Payment awarded by the Court shall be independent of any other benefits to which Plaintiff may be entitled as a Class Member pursuant to this Agreement. The Settlement Administrator will issue an IRS Form 1099 for the Class Representative Enhancement Payment and Plaintiff will be responsible for correctly characterizing this payment for tax purposes and to pay any taxes owing on said amount. A reduction by the Court of the Class Representative Enhancement Payment is not grounds to void this Agreement.

5. **Attorneys' Fees and Costs:** Class Counsel may apply to the Court for attorneys' fees in the amount of up to one-third of the Maximum Settlement Amount, equal to Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$83,333.33), and up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for reimbursement of litigation costs, subject to Court approval. Defendant has agreed not to oppose Class Counsel's request for fees and reimbursement of costs and expenses as set forth herein, which remains within the discretion of the Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Should the Court approve a lesser amount, the difference between the lesser amount and the maximum Attorneys' Fees and Costs permitted to be sought by the terms of this Paragraph will be added to the Net Settlement Amount to be distributed to Class Members. Class Counsel, however, reserves the right to appeal an Order reducing the fees requested by Class Counsel, though they waive any right to seek fees or costs in connection with that appeal, and Defendant waives any right to oppose

any appeal on this issue. A reduction by the Court of Class Counsel attorneys' fees and/or costs, or the rejection of any appeal, is not grounds to void this Agreement.

6. **Settlement Administration Expenses:** The Parties agree to pay a Settlement Administrator, which is agreed to as Phoenix Settlement Administrators ("Settlement Administrator"), an independent third party, for its fees and expenses related to services rendered on this case in an amount not to exceed Four Thousand Nine Hundred and Fifty Dollars and Zero Cents (\$4,950.00) payable from the Maximum Settlement Amount. 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. The Settlement Administrator shall be solely liable for any errors, omissions, negligence, or malfeasance in administering its duties as settlement administrator.

7. **PAGA Settlement Amount:** This shall be the amount that the Parties have agreed to pay the Labor and Workforce Development Agency ("LWDA") in connection with the PAGA claim. Subject to Court approval, the Parties agree that the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) from the Maximum Settlement Amount will be designated for satisfaction of Plaintiff's and Class Members' PAGA claims ("PAGA Settlement Amount"). Pursuant to PAGA, seventy-five percent (75%), or Fifteen Thousand Dollars and Zero Cents (\$15,000.00), of the PAGA Settlement Amount will be paid to the LWDA, and twenty-five percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), of the PAGA Settlement Amount will become part of the Net Settlement Amount to be distributed to Class Members.

8. **Net Settlement Amount:** After deducting the Class Representative Enhancement Payment, Class Counsel's awarded attorneys' fees and costs, the PAGA Settlement Amount apportioned to the LWDA, and the Settlement Administration Expenses, the balance of the Maximum Settlement Amount will constitute the "Net Settlement Amount."

9. **Class Distribution Formula:** The Net Settlement Amount shall be distributed to the members of the Class on a pro rata basis as follows:

- a. For each Class Member, Defendant will provide the Settlement Administrator with the name, most recent mailing address,

1 telephone number, Social Security Number, and the number of pay
2 periods with payment(s) for shift differentials, commissions, and/or
3 bonuses during the Class Period (collectively “Class List and Data”)
4 within fifteen (15) calendar days following the Preliminary
5 Approval of the Settlement (should there be any dispute about
6 whether the data provided by Defendant is “sufficient” to make the
7 necessary calculations, the Parties agree to confer in good faith
8 about what additional information should be provided such that
9 sufficient data is provided to the Settlement Administrator to permit
10 it to execute its duties);

11 b. The Settlement Administrator will calculate each Class Member’s
12 estimated settlement amount (“Estimated Individual Settlement
13 Payment”) based upon the number of pay periods each Class
14 Member received with payment for shift differentials, commissions
15 and/or bonuses during the Class Period, with a minimum payment
16 to each Class Member of \$100.00. The Settlement Administrator
17 will divide the Net Settlement Amount by the total number of pay
18 periods with payment for shift differentials, commissions and/or
19 bonuses during the Class Period. That value will be multiplied by
20 the number of pay periods each respective Class Member received
21 with payment of shift differentials, commissions and/or bonuses
22 during the Class Period. The resulting amount shall be added to
23 the base payment of \$100.00 to each Class Member’s Estimated
24 Individual Settlement Payment.

25 c. Class Members are entitled to 100% of the Net Settlement Amount.
26 Defendant maintains no reversionary right to any portion of the Net
27 Settlement Amount. If there are any timely submitted Requests for
28 Exclusion, the Settlement Administrator shall proportionately

1 increase the Individual Settlement Payments for each Settlement
2 Class Member so that the amount actually distributed to Settlement
3 Class Members equals 100% of the Net Settlement Amount.

4 c. The Settlement Administrator shall be responsible for determining
5 the Estimated Individual Settlement Payment of each Class
6 Member, and the Estimated Individual Settlement Payment will be
7 stated on the Notice sent to each Class Member.

8 10. **Actual Individual Settlement Payments:** Once all timely requests for
9 exclusion have been submitted, the Settlement Administrator will allocate the Net Settlement
10 Amount to the Settlement Class (Class Members who have not submitted timely and valid requests
11 for exclusion are referred to as “Settlement Class”), based upon the aforementioned basis.

12 11. **Classification of Class Settlement Payments:** One hundred percent
13 (100%) of the settlement payment made to each Class Member pursuant to this Agreement is
14 considered compensation for statutory penalties and interest, and are not subject to withholdings.
15 Class Counsel and Defendant’s Counsel do not intend or purport this communication to constitute
16 legal advice. To the extent that this Agreement, or any of its attachments, is interpreted to contain
17 or constitute advice regarding any U.S. Federal tax issue, such advice is not intended or written to
18 be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal
19 Revenue Code.

20 12. **Circular 230 Disclaimer:** EACH PARTY TO THIS AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
22 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
23 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
25 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
26 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
27 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
28 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R.

PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13. **No Effect on Benefits:** The Individual Settlement Payments paid to Settlement Class Members and the Class Representative Enhancement Payment paid to Plaintiff shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Settlement Class Members or Plaintiff. The Parties agree that any Individual Settlement Payments or the Class Representative Enhancement Payment paid to Settlement Class Members or Plaintiff under the terms of this Agreement do not represent any modification of Settlement Class Members' or Plaintiff's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program, sponsored by Defendant. Further, any Individual Settlement Payments or the Class Representative Enhancement Payment paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant.

1 **C. Process for Approval of Settlement:**

2 1. **Preliminary Approval:** Class Counsel will move the Court for preliminary
3 approval of the Settlement as soon as practicable as permitted by the Court. Defendant will not
4 oppose said motion brought in accordance with the terms of this Agreement. Class Counsel shall
5 apply for a Preliminary Approval Order that contains the following provisions:

- 6 a. Conditionally certifying the Class for settlement purposes only;
7 b. Preliminarily approving the Agreement under the legal standards
8 relating to the preliminary approval of class action and/or
9 representative action settlements;
10 c. Approving the form of the Notice Packet (as defined below in
11 Paragraph (C)(3)), and finding that the proposed method of
12 disseminating the Class Notice is the best notice practicable under
13 the circumstances;
14 d. Approving Phoenix Settlement Administrators as the Settlement
15 Administrator;
16 e. Establishing the procedures by which Class Members may assert
17 objections to the Settlement; and
18 f. Setting a date for the Final Approval Hearing.

19 2. **Settlement Administrator:** The Parties agree that the Settlement
20 Administrator shall have the authority to mail the Class Notice, create and administer the QSF,
21 process requests by Class Members who timely and validly seek to be excluded from the
22 Settlement, and disburse sums from the Maximum Settlement Amount consistent with this
23 Agreement.

24 3. **Notice Packet:** The Parties will jointly draft a Notice of Class Action
25 Settlement (“Notice”), attached hereto as **Exhibit A**, and submit it to the Court for approval.
26 Settlement Class Members will not be required to submit a claims form to participate in the
27 Settlement. The Notice will include, non-exclusively, information regarding the nature of the
28 Action, a summary of the substance of the Settlement, the Class definition, the process for

1 objecting or seeking exclusion, the date for the final approval hearing, and the formula used for
2 the Individual Settlement Payments. The Notice shall include the Class Member's respective
3 number of pay periods with payment for shift differentials, commissions, and/or bonuses during
4 the Class Period and the Class Member's Estimated Individual Settlement Payment.

5 4. **Timing of Class List to Settlement Administrator:** Within fifteen (15)
6 calendar days after Preliminary Approval of the Settlement, Defendant shall provide the Settlement
7 Administrator with the Class List and Data.

8 5. **Mailing of Notice:** Within ten (10) calendar days of receipt of the Class List
9 and Data, the Settlement Administrator shall mail the Notice Packet to the Class Members via
10 first-class regular U.S. Mail.

11 6. **Class List and Data Confirmation Checks:** Prior to mailing, the
12 Settlement Administrator will perform a search based on the National Change of Address Database
13 information to update and correct for any known or identifiable address changes. If a new address
14 is obtained by way of a returned Notice Packet, then the Settlement Administrator shall promptly
15 forward the original Notice Packet to the updated address via first-class regular U.S. Mail
16 indicating on the original Notice Packet the date of such re-mailing. Where a Notice Packet is
17 returned as undeliverable, without a forwarding address, the Settlement Administrator will perform
18 a computer/SSN and "skip trace" search via U.S. Postal Service records to obtain an updated
19 address and will perform a single re-mailing. The Parties agree to cooperate with the Settlement
20 Administrator to locate a more recent address for Class Members, where necessary.

21 7. **Response Deadline:** The last date for Class Members to submit Requests
22 for Exclusion or written objections to the Settlement will be forty-five (45) calendar days from the
23 initial mailing of the Notice Packet ("Response Deadline"). Class Members who receive a re-
24 mailed Class Notice shall have their Response Deadline extended by up to fifteen (15) days from
25 the original Response Deadline.

26 8. **Requests for Exclusions:** The Notice Packet shall state that Class Members who
27 wish to exclude themselves from the Class must timely submit a written statement requesting to
28 be excluded. To elect not to participate in the Settlement, a Class Member must submit a written

letter indicating their request to be excluded from the Settlement (“Request for Exclusion”). In order to be deemed valid, the Request for Exclusion must: (a) clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth the name, address, telephone number of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by mail or fax to the Settlement Administrator at the specified address or fax number indicated in the Notice Packet; and (e) be postmarked or fax stamped on or before the Response Deadline. The timeliness of submitted Requests for Exclusion will be exclusively determined by valid postmark or fax stamp. Any Class Member who opts out of the Class by submitting a timely and valid Request for Exclusion will not be entitled to any recovery under the Agreement and will not be bound by the Agreement or have any right to object or file an appeal. Class Members who do not submit a valid and timely Request for Exclusion shall be bound by all the terms of the Agreement and any final judgment or order in this Action. Within five (5) business days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Class Members who have timely and validly requested to be excluded. The Parties agree that they will not encourage any Class Member to seek exclusion or to object to the Settlement.

9. **Objections:** To object to the Settlement, a Class Member can submit his or her objection to the Settlement Administrator in writing pursuant to this paragraph or present their objection to the Court orally at the final approval hearing. For a written objection to be valid, it must be postmarked no later than the Response Deadline and must include: (a) the name and case number of this lawsuit, *Sylvia Bernabe v. 899 Charleston*, Case No. 20CV366465; (b) the objector’s name, current address, and telephone number; (c) the specific grounds for the objection; and (d) any and all evidence for which the objection is based on. The Settlement Administrator will furnish copies of any such objections to counsel for the Parties within three (3) calendar days after receipt. Objecting Class Members may also appear at the final approval hearing, either in person or through counsel retained at their own expense, to have their objections heard, whether or not they had submitted a prior written objection as specified in this paragraph. At no time shall the Parties or their counsel seek to solicit or otherwise encourage or discourage Class Members from submitting an objection. Any Participating Class Member who submits an objection will

1 remain eligible to receive monetary compensation from the Settlement, assuming the Court
2 approves the Settlement. Any Class Member who does not submit an objection according to this
3 Paragraph shall be deemed to have waived any objection(s), shall be conclusively deemed a
4 Settlement Class Member, and shall be precluded from making any objection(s) (including by
5 appeal or otherwise) to the Settlement).

6 **10. Certification Reports:** The Settlement Administrator will provide
7 Defendant's counsel and Class Counsel a weekly report which certifies: (a) the number of
8 members of the Settlement Class who have submitted timely and valid Requests for Exclusion; (b)
9 whether any Class Members have objected; and (c) whether any Class Member has submitted a
10 challenge to the employment dates and/or pay periods contained in his/her Notice Packet.
11 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
12 reports regarding the administration of the Agreement as needed or requested. Further, the
13 Settlement Administrator shall forward any objections and/or Requests for Exclusion to the
14 Parties' counsel upon receipt.

15 **11. Declaration from Settlement Administrator:** Fourteen (14) calendar days
16 before the Final Approval Hearing, the Settlement Administrator shall provide to counsel for all
17 Parties a declaration under penalty of perjury concerning the following:

- 18 a. Confirmation that the Notice Packets were mailed and, if applicable,
19 re-mailed pursuant to the terms of this Agreement; and
20 b. The number of all Class Members who properly and timely
21 submitted a request to be excluded from the Settlement;
22 c. Any additional information requested by the Court or as deemed
23 necessary.

24 **D. Final Approval:**

25 1. Following completion of the dissemination of the Notice and the Response
26 Deadline, a motion for final approval of the Settlement will be filed by Class Counsel, which will
27 include a request for an award of the Class Representative Enhancement Payment and Class
28 Counsel's attorneys' fees, costs, and expenses, as provided herein. Plaintiff's Motion for Final

1 Approval, which, if filed in accordance with the terms set forth herein Defendant shall not oppose,
2 shall request that the Court enter a Final Approval Order and Judgment as follows:

- 3 a. Finding that the dissemination of the Notice Packet in the form and
4 manner ordered by the Court was accomplished as directed, met the
5 requirements of due process, was the best notice practicable under
6 the circumstances, and constituted due and sufficient notice to all
7 parties entitled thereto;
- 8 b. Finding that Plaintiff and Class Counsel herein have fairly and
9 adequately represented and protected the interests of the Class at all
10 times in the Action;
- 11 c. Finally approving the Agreement and the Settlement terms as fair,
12 reasonable and adequate and directing consummation of the
13 Agreement in accordance with its terms and provisions;
- 14 d. Entering judgment directing the Parties to implement the terms of
15 the Agreement, including, without limitation, the provisions
16 regarding the payment of the Individual Settlement Payments to
17 each Class Member as set forth in this Agreement;
- 18 e. Entering judgment defining the Class;
- 19 f. Awarding reasonable attorneys' fees, costs and expenses to Class
20 Counsel as provided herein;
- 21 g. Awarding the Class Representative Enhancement Payment to
22 Plaintiff as provided herein; and
- 23 h. Reserving continuing and exclusive jurisdiction over all matters
24 related to the administration and consummation of the terms of this
25 Agreement, over the enforcement, construction, and interpretation
26 of the Judgment.

- 27
28 2. If the Court does not grant final approval of the Settlement, or if the Court's

1 final approval of the Settlement is reversed or materially modified on appeal, then the Settlement
2 will become null and void and of no further force and effect, and all negotiations, proceedings, and
3 statements relating thereto shall be without prejudice as to the rights of any and all parties, and
4 their respective predecessors and successors shall be deemed to have reverted to their respective
5 positions in this Action as of the date and time immediately prior to the execution of this
6 Agreement, and except as otherwise expressly provided, the effect shall be the same as if the
7 Agreement was terminated pursuant to paragraph 5 below.

8 3. The Parties, including Counsel, will use their best efforts to obtain
9 preliminary and final approval as promptly as possible, and will not encourage any Class Member
10 to opt-out or object to the terms of this Agreement or preliminary and final approval.

11 4. In the event that any provision of the Settlement is rejected by the Court,
12 the Parties will work in good faith to negotiate alteration of the rejected term. The Parties agree
13 to seek the assistance of Michael Dickstein, Esq. if informal efforts to negotiate alteration have
14 been exhausted.

15 E. **Class Member Pay Period Disputes:**

16 1. **Disputes as to Pay Period Count or Calculation:** Any Class Members
17 who wish to dispute the pay periods listed on the Notice with payment for shift differentials,
18 commissions, and/or wages may submit evidence to the Settlement Administrator in support of
19 their position. Any such pay period disputes will be deemed timely only if postmarked on or
20 before forty-five (45) calendar days following the initial date of mailing of the Notice Packet by
21 the Settlement Administrator. Defendant's records will be presumed determinative, however, and
22 the Settlement Administrator will make a decision on the dispute which will be binding, subject to
23 final resolution by the Court, if necessary. Prior to any resort to the Court, counsel for the Parties
24 will confer in good faith in an attempt to resolve the dispute.

25 2. **Expiration of Settlement Checks:** Any checks issued by the Settlement
26 Administrator to Class Members shall be negotiable for not less than one hundred eighty (180)
27 calendar days from issuance. Those funds represented by Settlement Checks remaining uncashed
28 for more than one-hundred eighty (180) calendar days after issuance (collectively, "Voided

Settlement Checks”) will be remitted as follows:

- a. One hundred percent (100%) of the Voided Settlement Checks shall be sent by the Settlement Administrator to the following *cy pres* recipient: Asian Americans Advancing Justice – Los Angeles (AAJC).

F. Distribution to Class Members, Plaintiff, and Class Counsel

1. **Effective Date:** “Effective Date” means the latest of: (a) ten (10) calendar days from the day the Final Approval Order and Judgment is entered if no objections are made to the settlement; (b) if any objections are made to settlement, but no appeals are filed, sixty (60) calendar days after the Court enters an order granting final approval of the Joint Stipulation of Class Action Settlement and Release; and (c) if any timely appeals are filed, the date the judgment is final and no longer subject to appeal.

2. **Funding of the Qualified Settlement Fund:**

- a. Defendant shall fund the Maximum Settlement Amount within ten (10) calendar days of the Effective Date. At least seven (7) calendar days prior to the Effective Date, the Settlement Administrator will provide notice and direct Defendant to: (1) remit to the Settlement Administrator the total funds required to fully fund the Maximum Settlement Amount to an escrow account set up by the Settlement Administrator, and (2) authorize the payments due to Plaintiff and the Settlement Class. On or before the Effective Date, Defendant will wire the funds required to fully fund the Maximum Settlement Amount into a QSF set up and controlled by the Settlement Administrator. Payments to the Settlement Class Members, the Class Representative Enhancement Payment, attorneys’ fees and costs to Class Counsel, PAGA Settlement Amount to the LWDA, and the Settlement Administrator’s Expenses shall be made from the QSF.
- b. The Settlement Administrator will be solely responsible, under

1 Court supervision, for distributing settlement proceeds including
2 complying with the reporting and payment obligations on the QSF
3 (as well as reporting and payment obligations to state and local tax
4 authorities with respect to the QSF); and paying any tax imposed on
5 the QSF and other applicable provisions of Federal, state, or local
6 law imposing tax on the QSF. All Settlement Administrator costs
7 will be borne out of the Maximum Settlement Amount; Defendant
8 has no separate obligation to fund costs of administration. The
9 Settlement Administrator shall furnish to Defendant all copies of all
10 Forms 1099, or other tax reporting forms provided by the QSF to
11 any payee of the Maximum Settlement Amount within thirty (30)
12 days after each such form has been furnished to the payee shown
13 thereon.

14 3. **Distribution to Class Counsel:** The total amount of attorneys' fees and
15 costs due to Class Counsel shall be due and payable no later than seven (7) calendar days after
16 receipt by the Settlement Administrator of the QSF. In no event will the disposition of the
17 attorneys' fees and costs awarded to Class Counsel delay the administration or completion of the
18 Settlement Administration process.

19 4. **Distribution of Class Representative Enhancement Payment:** Within
20 seven (7) calendar days after receipt by the Settlement Administrator of the QSF, the Settlement
21 Administrator shall pay to Plaintiff the amount of the court-approved Class Representative
22 Enhancement Payment from the QSF. In addition, Plaintiff shall also be eligible to receive an
23 Individual Settlement Payment as a Settlement Class Member as set forth in this Agreement. The
24 Settlement Administrator will issue a 1099 form to the Plaintiff in connection with the Class
25 Representative Enhancement Payment.

26 5. **Distribution to Settlement Class Members:** Within seven (7) calendar
27 days after receipt by the Settlement Administrator of the QSF, the Settlement Administrator will
28 make payments to Settlement Class Members out of the QSF as required by the Final Approval

Order. The Settlement Administrator will pay the requisite portion of the PAGA Settlement Amount over to the applicable governmental authorities, and the Settlement Administrator will issue the appropriate 1099s. The Settlement Administrator shall mail payments to Settlement Class Members by first-class U.S. mail. The checks shall indicate on their face that they are void if not negotiated within one hundred eighty (180) calendar days of issuance, and after such time the Settlement Class Member's claim will be deemed void and of no further force and effect.

G. Release of Claims:

1. In consideration of the monetary sum provided by Defendant under this Agreement and upon final approval of this settlement by the Court, Plaintiff and each of the Class Members, except those who timely and validly submit a request to be excluded from the Settlement, hereby cancel, terminate, abrogate, discharge, waive, fully release and forever discharge the Released Parties from the Released Claims that arose during the Class Period.

2. **Identity of Releasing Parties.** The Class Members, other than those who submit a valid and timely request to be excluded from the Settlement, shall be deemed to be within the Class for all purposes under this Agreement, shall be bound by the terms and conditions of this Agreement, including all orders issued pursuant thereto, and shall be deemed to have waived all unstated objections and oppositions to the fairness, reasonableness, and adequacy of this Agreement, and any of its terms and will pursuant to the terms of this Agreement release and discharge the Released Parties.

3. **No Admissions.** The Parties understand and agree that this Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Agreement or any conduct or written or oral statements made in connection with this Agreement, whether or not the Agreement is finally approved and/or consummated, may be offered as or construed to be an admission or concession of any kind by Defendant and the Released Parties. In particular, but without limiting the generality of the foregoing, nothing about this Agreement shall be offered or construed as an admission that Defendant's non-exempt California employees were denied wages or were not provided proper wage statements or payroll records or were not properly paid wages upon termination. Likewise, nothing about this Agreement shall be offered or construed as an

admission that Defendant engaged in any wrongdoing, impropriety, breach of responsibility, or fault. Similarly, nothing about this Agreement shall be construed as or deemed to be evidence of, or an admission or concession that the Plaintiff or any Class Member has suffered any damage. In addition, this Agreement shall not be offered to be admissible in evidence against Defendant or any Released Party, except in an action or proceeding brought by or against Plaintiff, the Class and/or any Class Members, or Defendant to enforce the Agreement's terms, or by Defendant in defense of any claims brought by Plaintiff, the Class, and/or any Class Members (or anyone acting on their behalf), or any member of the general public. Defendant attests that any regular rate calculation that led to the underpayment of overtime wages and sick pay wages was based on a formula error by the payroll service hired by Defendant's management company

H. Additional Terms

1. **Confidentiality:** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement, or engage in any advertising or distribute any marketing materials relating to the Settlement of this case on their website. This provision does not apply to prevent any necessary disclosure to the Court to seek approval of the Settlement, any court filings or Notices to be sent to Class Members by the Settlement Administrator, or the posting of the final judgment of this Settlement on the Settlement Administrator's website to the extent required by the Court in connection with approval of the Settlement.

2. **Fair, Adequate, and Reasonable Settlement:** The Parties agree that the Settlement is fair and reasonable and will so represent to the Court.

3. **Class Certification for Settlement Purposes Only:** The Parties agree that the motion for preliminary approval seeks, *inter alia*, certification of a Settlement Class for purposes of the Settlement only. The Parties further agree that certification for purposes of the Settlement is in no way an admission by Defendant that class certification is or would be proper under the standard applied to contested certification motions and that this Settlement will not be admissible in this or any other proceeding as evidence that: (i) a class could or should be certified

as Plaintiff proposed; or (ii) Defendant is liable to Plaintiff or the Class Members.

4. **Extension of Time:** Without further order of the Court, counsel for the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Agreement.

5. **Construction:** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Agreement.

6. **Due Authority of Attorneys:** Each of the attorneys executing this Agreement on behalf of one or more Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Agreement on behalf of each such respective party and to bind them to the terms hereof.

7. **Entire Agreement:** This Agreement sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Agreement, shall be valid or binding.

8. **Exhibits Incorporated by Reference.** The terms of this Settlement include the terms set forth in the proposed Notice to the Class which is incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

9. **Modification or Amendment:** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

10. **Deadlines Falling on Weekends or Holidays:** To the extent that any

1 deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline
2 shall be continued until the following business day as construed by the courts of the State of
3 California.

4 11. **Successors:** This Agreement shall be binding upon and inure to the benefit
5 of the Parties hereto (including members of the Class) and their respective heirs, executors,
6 administrators, successors, and assigns, and upon any corporation, partnership, affiliate, or other
7 entity into or with which any Party hereto may merge, combine or consolidate. As used in the
8 preceding sentence and elsewhere throughout this Agreement, “including” shall mean including
9 without limitation.

10 12. **Severability:** In the event that any one or more of the provisions contained
11 in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect,
12 such invalidity, illegality, or unenforceability shall in no way affect any other provision if
13 Defendant and Class Counsel, on behalf of the Parties and the Class, mutually elect in writing to
14 proceed as if such invalid, illegal or unenforceable provision had never been included in this
15 Agreement.

16 13. **Counterparts:** This Agreement may be executed in counterparts and
17 delivered by electronic scan, pdf, DocuSign, or facsimile. Each of the counterparts, when so
18 executed and delivered, shall be deemed an original, and all of which together shall constitute one
19 and the same instrument, which shall be binding upon and effective as to all Parties.

20 14. **Waivers:** The waiver by any party of any breach of this Agreement shall
21 not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or
22 contemporaneous of this Agreement.

23 15. **Plaintiff’s Agreement to Be Bound:** By signing this Agreement, Plaintiff
24 agrees to be bound by the terms herein.

25 16. **Governing Law:** This Agreement will in all respects be interpreted,
26 enforced and governed by and under the laws of the State of California, without regard to choice
27 of law principles, except to the extent that the law of the United States governs any matter set forth
28 herein, in which case such Federal law will govern.

1 17. **Continuing Jurisdiction:** The Court will have continuing jurisdiction over
2 the Action for the purposes of implementing the Agreement, the Final Approval of the Settlement,
3 entry of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as
4 provided in Paragraph III(E), above, any dispute regarding the Parties' obligations pursuant to this
5 Agreement and/or interpretation of the terms of this Agreement will be presented by written
6 motion to, and resolved by, the Court. To the extent any motion alleging breach of this Agreement
7 by either party is filed with the Court, the prevailing party to any such motion shall be entitled to
8 its reasonable attorneys' fees and costs incurred with such motion.

9 18. **Headings:** The headings contained in this Agreement are for convenience
10 and reference purposes only and shall not be given weight in its construction.

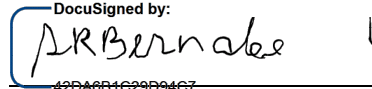
11 19. **Notices:** Any notices, requests, demands, or other communications required
12 or permitted to be given pursuant to this Agreement, other than notice to the Class or Class
13 Members, shall be in writing and, except as provided elsewhere in this Agreement or in any
14 communication to the Class, shall be delivered personally, via overnight delivery, or via postage
15 pre-paid first class U.S. mail, as follows: (1) to Plaintiff, the Class and/or Class Members, and
16 Class Counsel to the attention of Larry W. Lee and Kwanporn "Mai" Tulyathan of Diversity Law
17 Group, P.C., 515 S. Figueroa, Street, Suite 1250, Los Angeles, CA 90071; and (2) to Counsel for
18 Defendant to the attention of Susan E. Bishop of Berliner Cohen, LLP, 10 Almaden Boulevard,
19 11th Floor, San Jose, California 95113. By written notice given in accordance herewith and filed
20 with the Court, each party may modify or change the addressee and/or address of any person
21 identified above or pursuant hereto as the person or persons to whom all future notices shall be
22 sent.

23 20. **Signatures of Plaintiff and Counsel for the Parties:** Plaintiff and counsel
24 for the Parties indicate by signing below their approval of the form of this Agreement, and, in the
25 case of counsel for Plaintiff and the Class, their representation and warranty of authority to bind
26 the Class as certified and the Class described herein (subject to the final approval of the Court) and
27 their acceptance of the provisions regarding attorneys' fees.

28 21. **Binding Agreement:** Except as provided herein, the Parties intend that this

Stipulation of Settlement shall be fully enforceable and binding up on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law.

DATED: July 9, 2021

DocuSigned by:

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Plaintiff SYLVIA BERNABE

DATED: June __, 2021

On behalf of Defendant 899 Charleston

DATED: July 9, 2021

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff Sylvia Bernabe, the
Class, and Aggrieved Employees

DATED: June __, 2021

BERLINER COHEN, LLP

By: _____
Susan E. Bishop
Attorneys for Defendant 899 Charleston

Stipulation of Settlement shall be fully enforceable and binding up on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law.

DATED: July __, 2021

Plaintiff SYLVIA BERNABE

DATED: July 28, 2021

DocuSigned by:

David Steirman

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David Steirman

On behalf of Defendant 899 Charleston

DATED: July __, 2021

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiff Sylvia Bernabe, the Class, and Aggrieved Employees

DATED: July 27, 2021

BERLINER COHEN, LLP

By: _____

Susan E. Bishop

Attorneys for Defendant 899 Charleston

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SYLVIA BERNABE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

899 CHARLESTON, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO: 20CV366465

Assigned to the Hon. Patricia M. Lucas, Dept. 3

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. This is not a solicitation from a lawyer.

**YOUR ESTIMATED TOTAL INDIVIDUAL PAYMENT AMOUNT FROM THIS
CLASS ACTION SETTLEMENT IS \$ [REDACTED].**

According to 899 Charleston's records, there are [REDACTED] pay periods during which you were paid shift differentials, bonuses, and/or commissions as a non-exempt employee in California between April 6, 2017 and October 31, 2020. Based on this number, your Individual Payment Amount as a member of the Class is estimated to be \$[REDACTED].

- A settlement will provide \$250,000.00 to pay claims to certain current and former non-exempt employees, as described below, who have been employed in California by 899 Charleston ("899 Charleston") and paid shift differentials, bonuses, and/or commissions between April 6, 2017 and October 31, 2020 (the "Class Period").
- The settlement resolves a lawsuit in which it is alleged that 899 Charleston failed to: (1) properly calculate and timely pay overtime wages to employees in California who received overtime and shift differential wages in the same workweek; (2) properly calculate and timely pay sick pay wages to employees in California; and (3) provide accurate wage statements to California employees who received overtime, shift differential, and/or sick pay wages, as described more fully below. The settlement avoids the costs and risks from continuing the lawsuit, pays money to employees, and releases 899 Charleston from liability for the alleged violations.
- Lawyers for the employees will ask the Court to award them up to \$83,333.33 as attorneys' fees and up to \$25,000 as costs and expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- 899 Charleston expressly denies all of the claims in the lawsuit and denies any wrongdoing or liability. The two sides disagree on how much money – if any – could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You need not take any action if you wish to receive your settlement payment. If the settlement is approved by the Court and you do nothing, you will automatically be mailed a settlement check for your share of the settlement at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue 899 Charleston separate for the same legal claims that are part of this lawsuit (see page 4 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue 899 Charleston for the same legal claims that are part of this lawsuit. This is the only option that allows you to be part of any other lawsuit against 899 Charleston asserting the legal claims that were settled in this case. You cannot ask to be excluded <u>and</u> still get a settlement payment. If you ask to be excluded from the settlement, you cannot object to the settlement.
You Can Object to the Settlement	If you do not agree with the settlement, you can object to the settlement according to the procedures described below on page 6. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.
You Can Attend the Final Approval Hearing	You can ask to speak in Court about the fairness of the settlement at the final fairness hearing. The Court will hold a final fairness hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE], 2021 at [TIME]. More information regarding this hearing is set forth on page 5.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because, according to 899 Charleston's records, you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On May 8, 2020, Plaintiff Sylvia Bernabe filed this class action lawsuit against 899 Charleston in Santa Clara County Superior Court. The lawsuit alleges violations of California Labor Code §§ 201-203, 226(a),

510, 558, 1194, and 2698, *et seq.*, and Business and Professions Code § 17200, *et seq.* Specifically, the lawsuit alleges that 899 Charleston failed to timely pay overtime wages at the correct regular rate to employees in California who received overtime and shift differential wages in the same workweek; timely pay sick pay wages at the correct regular rate to employees in California; and provide accurate wage statements to California employees whenever overtime and/or shift differential wages were paid. Based on these allegations, Plaintiff seeks to recover statutory penalties, civil penalties, attorneys' fees, and costs on behalf of herself and other employees affected by these alleged violations (the "Settlement Class").

899 Charleston denies all of the material allegations in the lawsuit and denies that it did anything wrong. Further, 899 Charleston attests that any regular rate calculation that led to the underpayment of overtime wages and sick pay wages was based on a formula error by the payroll service hired by 899 Charleston's management company.

The Parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminary approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims in the lawsuit.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or 899 Charleston. Plaintiff believes she would have prevailed on her claims at a trial. 899 Charleston does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, after thorough investigation into the facts and claims, both sides agreed to a settlement. That way they each avoid the costs, risks, and uncertainty of a trial, and the employees allegedly affected will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, and adequate and is in the best interests of all Settlement Class Members.

B. Who is in the Settlement Class?

The settlement encompasses a Settlement Class consisting of the following:

All current and former non-exempt employees of Defendant in the State of California who were paid shift differential wages, bonuses, and commissions at any time during the Class Period who do not opt out of this Settlement (the "Class").

You are a member of this class.

C. What has 899 Charleston agreed to do?

899 Charleston will pay \$250,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$15,000 to the California Labor and Workforce Development Agency ("LWDA") as its share of the settlement payment being made under the California Private Attorneys General Act ("PAGA"); (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$83,333.33, and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$25,000; (3) a service payment to the Plaintiff in an amount set by the Court, not to exceed \$10,000 for her service in the lawsuit; and (4) no more than \$4,950 to the settlement administrator for administering the settlement. The portion of the Maximum Settlement Amount remaining after these payments is the Net Settlement Amount, which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below.

D. What are you giving up to get a payment and stay in the Class?

Subject to the Court's approval of the Settlement, Plaintiff and all Settlement Class Members who do not opt out of the Settlement ("Participating Class Members") will release 899 Charleston, and any of its past, present, and future parents, owners, subsidiaries, affiliates, successors-in-interest, assigns, auditors, accountants, experts, contractors, partners, insurers, reinsurers, and other parties acting on their behalf, officers, directors, shareholders, employees, agents, attorneys, and representatives ("Released Parties"), as follows:

If you do not opt out of the Settlement, you will be releasing the Released Parties from any and all claims that were alleged or reasonably could have been alleged in the operative Complaint based upon the facts, allegations, or causes of actions contained therein, including the following claims for relief, that accrued during the Class Period: a) Claims for improper and/or inaccurate wage statements; underpayment of overtime wages; underpayment of sick or PTO pay wages; timeliness of payment of overtime wages; timeliness of payment of sick or PTO pay wages; waiting time penalties; any unpaid wages related to any of the foregoing; restitution for any of the foregoing; violations of Labor Code §§ 201-203, 226, 246, 510, 558, and 1194; and b) Any and all claims for penalties under the California Private Attorneys General Act predicated on claims for improper and/or inaccurate wage statements; underpayment of overtime wages; underpayment of sick or PTO pay wages; timeliness of payment of overtime wages; timeliness of payment of sick or PTO pay wages; waiting time penalties; any unpaid wages related to any of the foregoing; violations of Labor Code §§ 201-203, 226, 246, 510, 558, and 1194, and all other claims under the PAGA based on the facts as alleged in the Complaint.

The claims being released above (collectively, "the Released Claims") do not include a release of *all* legal claims you may have as an employee or former employee of 899 Charleston. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each Participating Class Member will receive an Individual Payment Amount, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by deducting attorneys' fees and costs, settlement administration costs, any service payment to the Plaintiff, and the LWDA's share of the PAGA penalty payment from the Maximum Settlement Amount.

The Net Settlement Amount will be apportioned among Class Members on a pro rata basis, based on the number of pay periods reflecting payment for shift differentials, commissions, and/or bonuses during the Class Period, with a minimum payment to each Class Member of \$100.

According to 899 Charleston's records, there are [REDACTED] pay periods during which you received shift differentials, bonuses, and/or commissions as a non-exempt employee in California between April 6, 2017 and October 31, 2020.

Based on this number, your Individual Payment Amount as a member of the Class is estimated to be \$[REDACTED].

The actual amount that you receive as a member of the Settlement Class could end up being more or less than this amount, depending on the final settlement terms approved by the Court.

Please be advised that the number of pay periods listed above, and the other information regarding your eligibility as a member of the Settlement Class, is presumed to be correct unless you submit documents proving otherwise. If you disagree with the information listed above, please submit an explanation and supporting evidence to the Settlement Administrator no later than [45 days after mailing]. In the event of

a dispute about the correctness of this information, the Settlement Administrator will resolve the challenge with input from 899 Charleston and Class Counsel, subject to final resolution by the Court if necessary.

F. Will any taxes be taken out of the Individual Payment Amounts?

No. There will be no payroll withholding from your payment because the entirety of your Individual Payment Amount will be treated as penalties and interest and reported as non-wage income on an IRS Form 1099. The Settlement Administrator will issue 1099 Forms to all Settlement Class Members who cash their checks.

The fact that payroll withholdings will not be made does not mean that the payments are not taxable income to you. Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the settlement payments they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2021, at [REDACTED], in Department 3 of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113. The Court will then determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s attorneys; (v) the amount that should be awarded to Plaintiff as a service payment for prosecuting this lawsuit on behalf of other 899 Charleston employees; and (vi) the amount that should be approved for settlement administration costs. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The Final Approval Hearing may be continued to another date without further notice. Due to the ongoing COVID-19 pandemic, hearings before the judge overseeing this case are currently being conducted remotely with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the Final Approval Hearing, Class Members who wish to appear at the Final Approval Hearing should contact class counsel to arrange a remote appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by class counsel.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with the number of pay periods during which you received shift differentials, bonuses, and/or commissions as indicated in section E above, you must submit an explanation

and/or documentation to the Settlement Administrator to justify your position. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from (“opt out” of) the Settlement Class, but if you choose to do so, you will not receive any benefits or a monetary payment from the proposed settlement. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against 899 Charleston for the same claims in this lawsuit in your own separate lawsuit if you wish.

To exclude yourself from the Settlement, you can exclude yourself by writing to the Settlement Administrator stating that you want to be excluded from the *Sylvia Bernabe v. 899 Charleston* settlement.

Be sure to include: (a) your name; (b) address; (c) telephone number; (d) your signature; and (e) a statement that you wish to be excluded from the *Sylvia Bernabe v. 899 Charleston* settlement. Your letter must be postmarked or fax stamped no later than [45 days after mailing] and mailed or faxed to the Settlement Administrator at [Settlement Administrator address and fax number].

- If you submit a valid and timely request for exclusion, you will no longer be part of the Settlement. You may not object to the Settlement and will not receive an Individual Payment Amount. However, you will retain all rights you may have against 899 Charleston for the same legal claims made in this lawsuit.

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you dislike the proposed settlement, you can object to the proposed settlement (or any of its terms). You can object to the proposed settlement by writing to the Settlement Administrator or you may also appear at the Final Approval Hearing to have the Court hear your objections, either in person or through an attorney at your own expense.

If you wish to submit a written objection, you must include: (a) the case name and number of this lawsuit, *Sylvia Bernabe v. 899 Charleston*, Case No. 20CV366465; (b) your name; (c) your current address; (d) your telephone number; (e) the grounds for your objection; and (f) any and all evidence for which your objection is based on. All written objections and supporting papers must be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than [45 days after mailing]. However, you may show up and raise an objection at the Final Approval Hearing, either in person or through counsel retained at your own expense, whether or not you provided prior written notice of your objection.

If you submit an objection, you will remain eligible for a monetary payment under the Settlement if the Court approves the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement. You cannot exclude yourself from the Settlement **and** submit an objection to the Settlement.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed Settlement Agreement, which is on file with the Clerk of the Santa Clara Superior Court, 191 N. First Street, San Jose, CA 95113, and may also be reviewed online at [insert court website link] or at [Settlement Administrator's website].

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS: Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group LLP, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214. **DO NOT CALL THE COURT.**

**BY ORDER OF THE SANTA CLARA COUNTY
SUPERIOR COURT OF THE STATE OF CALIFORNIA**

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

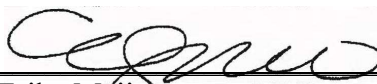
7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On July 28, 2021, I served the following document(s) described as: **DECLARATION**
11 **OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S MOTION FOR**
12 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested
13 parties in this action as follows:

14 Susan E. Bishop
15 Susan.bishop@berliner.com
16 Sabina Hall
17 Sabina.Hall@berliner.com
18 Berliner Cohen, LLP
19 10 Almaden Blvd., 11th Floor
20 San Jose, California 95113
21 *Attorneys for Defendant 899 Charleston*

22 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
23 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
24 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
25 the above-entitled case. The service transmission was reported as complete and a copy of the
26 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
27 in this office.

28 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on July 28, 2021, at Los Angeles, California.

24 
25 Erika Mejia