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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)

**[PROPOSED] ORDER GRANTING
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

1 Plaintiff Sylvia Bernabe's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on July 27, 2021, and a hearing
3 was held before this Court on August 18, 2021. Plaintiff's counsel, Larry W. Lee and Mai
4 Tulyathan of Diversity Law Group, P.C., appeared on behalf of Plaintiff, and Defendant's
5 counsel, Susan Bishop of Berliner Cohen, appeared on behalf of Defendant 899 Charleston
6 ("Defendant").

7 Having considered the Joint Stipulation of Class Action Settlement and Release
8 ("Stipulation" or "Settlement Agreement") and all other papers filed in this action, the Court
9 HEREBY FINDS AND ORDERS as follows:

10 1. This Court grants preliminary approval of the Settlement Agreement between
11 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,
12 and reasonable to the Class.

13 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
14 their counsel of record in the Litigation, have reached an agreement to settle the class and PAGA
15 claims in the Litigation as set forth in the Settlement Agreement, on behalf of the Class (as
16 defined below and in the Settlement Agreement).

17 3. The Court hereby conditionally certifies the following Class for settlement
18 purposes only: All current and former non-exempt employees of Defendant in the State of
19 California who were paid shift differential wages, bonuses, and commissions at any time from
20 April 6, 2017, through October 31, 2020, who do not opt out of this Settlement ("the Class").

21 4. Should for whatever reason the Settlement Agreement not become Final, the fact
22 that the Parties were willing to stipulate to certification of a class as part of the Settlement
23 Agreement shall have no bearing on, or be admissible in connection with, the Litigation or the
24 issue of whether a class should be certified in a non-settlement context.

25 5. The Court appoints and designates: (a) Plaintiff Sylvia Bernabe as the Class
26 Representative and (b) Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. as Class
27 Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to
28 all acts or consents required by, or which may be given, pursuant to the Settlement Agreement,

and such other acts reasonably necessary to finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance through his or her own counsel at such Class Member's own expense. Any Class Member who does not enter an appearance or appear on his or her own behalf will be represented by Class Counsel.

6. The Court hereby approves the terms and conditions provided for in the Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement falls within the range of reasonableness of a settlement, including the amount of the PAGA penalties, and appears to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing and final approval by the Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation relating to liability, class certification, and damages issues. It also appears that investigation and research into the claims, liability, and damages have been conducted so that counsel for the Settling Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement at this time will avoid substantial additional costs by all Settling Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the Litigation. It also appears that settlement has been reached as a result of intensive, serious, and non-collusive arm's length negotiations.

7. The Court hereby approves the following dates:

Description	Date
Preliminary Approval Hearing	August 18, 2021
Class List to Administrator	15 calendar days after preliminary approval
Class Notice Distribution	10 calendar days after receiving Class List and Data
Opt Out/Objection Deadline	45 calendar days after initial Class Notice distribution
Opt Out/Objection Deadline (for re-mailed notices)	15 calendar days extension for re-mailed notices
Final Approval Filing Deadline	16 court days before the Final Approval Hearing
Final Approval Hearing	December 15, 2021 at 1.30 PM

A final fairness hearing on the question of whether the proposed Settlement Agreement,

1 the allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the
2 payment to the Settlement Administrator, the payment to the Labor Workforce & Development
3 Agency, and the service payment to the Class Representative should be finally approved as fair,
4 reasonable, and adequate as to the members of the Class is hereby set for December 15, 2021, at
5 1:30 p.m. in this Court. The Motion for Final Approval shall be filed by the Class
6 Representative no later than sixteen (16) court days before the final fairness hearing.

7 8. The Court hereby approves, as to form and content, the Notice of Pendency of
8 Class Action Settlement and Final Hearing ("Class Notice") to be sent to Class Members, which
9 is attached herein as **Exhibit A**. The Court finds that distribution of the Class Notice to Class
10 Members substantially in the manner and form set forth in the Settlement Agreement and this
11 Order meets the requirements of due process and shall constitute due and sufficient notice to all
12 parties entitled thereto.

13 9. The Court appoints and designates Phoenix Settlement Administrators as the
14 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
15 approved Class Notice to Class Members using the procedures set forth in the Settlement
16 Agreement.

17 10. Any Class Member may choose to opt out of and be excluded from the Settlement
18 as provided in the Settlement Agreement and Class Notice, and by following the instructions for
19 requesting exclusion. Any person who timely and properly opts out of the Settlement will not be
20 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.
21 Any requests for exclusion must be in writing and signed by each such Class Member opting out
22 and must otherwise comply with the requirements delineated in the Class Notice. Class
23 Members who have not requested exclusion by submitting a valid and timely request by the
24 deadline shall be bound by all determinations of the Court, the Settlement Agreement, and
25 Judgment.

26 11. Any Class Member may object to the Settlement Agreement or express his or her
27 views regarding the Settlement Agreement, and may present evidence and file briefs or other
28 papers that may be proper and relevant to the issues to be heard and determined by the Court as

1 provided in the Notice.

2 12. The Court reserves the right to adjourn or continue the date of the Settlement
3 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
4 the Class, and retains jurisdiction to consider all further applications arising out of or connected
5 with the Class Settlement Agreement.

6 IT IS SO ORDERED.

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8 DATED: _____

9 HON. PATRICIA M. LUCAS
10 SUPERIOR COURT OF CALIFORNIA
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EXHIBIT A

**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**