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County of Santa Clara,
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Case #20CV366465
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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)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) VIOLATION OF LABOR CODE §
226(a);**
- (3) VIOLATION OF LABOR CODE §§ 201-
203;**
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET*
SEQ.; AND**
- (5) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000

1 Plaintiff Sylvia Bernabe (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant 899 Charleston
3 (“Defendant”), and Does 1-50 (collectively, “Defendants”), as an individual and on behalf of all
4 other similarly situated current and former employees of Defendants for penalties and/or
5 damages for failure to pay all overtime wages, failure to pay all sick pay wages owed, and failure
6 to provide accurate itemized wage statements, in violation of the California Labor Code and the
7 California Business & Professions Code, as follows:

8 **INTRODUCTION**

9 1. This class and representative action is within the Court’s jurisdiction under
10 California Labor Code §§ 201-203, 226(a), 246, 510, 558, 1194, and 2698 *et seq.*, the California
11 Industrial Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair Competition
12 Law (the “UCL”), California Business & Professions Code § 17200, *et seq.*

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code and Business and Professions Code against employees of
15 Defendants.

16 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 jointly and severally have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees by failing to pay overtime and sick pay wages and failing
19 to keep accurate records as to Plaintiff and other employees.

20 4. Plaintiff is informed and believes, and based thereon, alleges that Defendants
21 have engaged in, among other things a system of willful violations of the California Labor Code,
22 California Business & Professions Code, and applicable IWC Wage Orders by creating and
23 maintaining policies, practices, and customs that knowingly deny employees the above-stated
24 rights and benefits.

25 5. The policies, practices, and customs of Defendants described above and below
26 have resulted in unjust enrichment of Defendants and an unfair business advantage over
27 businesses that routinely adhere to the strictures of the California Labor Code and the California
28 Business & Professions Code.

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7. Venue is proper in Santa Clara County, because Defendant operates a retirement facility in this County and Plaintiff worked for Defendant in this County.

8. Plaintiff is a former employee of Defendant. From on or about January 19, 2013, until on or about December 25, 2019, Plaintiff worked for Defendant as a CNA Medtech. Throughout her employment with Defendant, Plaintiff was an hourly, non-exempt employee.

10. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-203, 226(a), 246, 510, 558, 1194, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

12. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

14. Plaintiff does not know the true names or capacities, whether individual, partner

1 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
2 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
3 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
4 based thereon alleges that each of said fictitious Defendants were responsible in some way for
5 the matters alleged herein and proximately caused Plaintiff and members of the general public
6 and class to be subject to the illegal employment practices, wrongs and injuries complained of
7 herein.

8 15. At all times herein mentioned, each of said Defendants participated in the doing
9 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
10 Defendants, and each of them, were the agents, servants and employees of each of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
12 acting within the course and scope of said agency and employment.

13 16. Plaintiff is informed and believes and based thereon alleges that at all times
14 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
15 joint venturer of, or working in concert with each of the other co-defendants and was acting
16 within the course and scope of such agency, employment, joint venture, or concerted activity.
17 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
18 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
19 Defendants.

20 17. At all times herein mentioned, Defendants, and each of them, were members of,
21 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
22 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

23 18. At all times herein mentioned, the acts and omissions of various Defendants, and
24 each of them, concurred and contributed to the various acts and omissions of each and all of the
25 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
26 herein mentioned, Defendants, and each of them, ratified each and every act or omission
27 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all of the other Defendants in proximately causing

1 the damages as herein alleged.

2 **CLASS ACTION ALLEGATIONS**

3 19. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
4 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes:

5 a. All current and former non-exempt employees of Defendants in the State
6 of California who were paid overtime wages and non-discretionary remuneration, including
7 without limitation shift differential wages, during the same workweek, at any time during April
8 6, 2016, to the present (the “Overtime Regular Rate Class”);

9 b. All current and former non-exempt employees of Defendants in the State
10 of California who were paid shift differential wages at any time during April 6, 2019, to the
11 present (the “Shift Differential Wage Statement Class”); and

12 c. All non-exempt employees of Defendants in the State of California who
13 were paid non-discretionary remuneration, including without limitation, shift differential wages,
14 and sick pay wages in the same workweek, and whose employment ended (either voluntarily or
15 involuntarily) at any time from April 6, 2017, to the present (the “Sick Pay Class”).

16 20. Plaintiff reserves the right to propose additional classes and/or subclasses, and/or
17 amend the above class definitions upon further discovery and investigation.

18 21. **Numerosity and Ascertainability:** The members of the Classes are so numerous
19 that joinder of all members would be impractical, if not impossible. The identity of the members
20 of the Classes is readily ascertainable by review of Defendants’ records, including payroll
21 records. Plaintiff alleges that Defendants: (a) failed to pay employees overtime wages at the
22 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
23 Code §§ 510, 558 and 1194; (b) failed to provide accurate itemized wage statements in violation
24 of Labor Code § 226(a); (c) failed to pay sick pay wages at the regular rate of pay in violation of
25 Labor Code §§ 201-203 and 246; and (d) engaged in unfair business practices in violation of the
26 California Labor Code, the UCL, and the applicable IWC Wage Orders.

27 22. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
28 necessary steps to represent fairly and adequately the interests of the class defined above.

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Classes and
2 the named Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
3 actions in the past and currently have a number of wage-and-hour class actions pending in
4 California state and federal courts.

5 23. Defendants uniformly administered a corporate policy and practice of: (a) failing
6 to pay employees overtime wages at the correct regular rate of pay that included all non-
7 discretionary remuneration, in violation of Labor Code §§ 510, 558 and 1194; (b) failing to
8 provide accurate itemized wage statements in violation of Labor Code § 226(a); (c) failing to pay
9 sick pay wages at the regular rate of pay, in violation of Labor Code §§ 201-203 and 246; and (d)
10 engaging in unfair business practices in violation of the California Labor Code, the UCL, and the
11 applicable IWC Wage Orders.

12 24. Plaintiff is informed and believes, and based thereon alleges, that this corporate
13 conduct is accomplished with the advance knowledge and designed intent to willfully and
14 intentionally fail to accurately record proper total hours worked, hourly rates of pay, gross wages
15 earned, and net wages earned.

16 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
17 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
18 Labor Code §§ 201-203, 226(a), 246, 510, 558, and 1194, the UCL, and applicable IWC Wage
19 Orders.

20 26. **Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Classes
22 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
23 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
24 Labor Code §§ 510, 558 and 1194; (b) failing to provide accurate itemized wage statements in
25 violation of Labor Code § 226(a); (c) failing to pay sick pay wages at the regular rate of pay, in
26 violation of Labor Code §§ 201-203 and 246; and (d) engaging in unfair business practices in
27 violation of the California Labor Code, the UCL, and the applicable IWC Wage Orders.

28 27. **Typicality:** The claims of Plaintiff are typical of the claims of all class members

1 in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner
2 as class members. As with all other non-exempt employees of Defendants, Plaintiff earned non-
3 discretionary remuneration, including without limitation, shift differential wages. During
4 workweeks when Plaintiff worked in excess of eight hours in a workday and/or forty hours in a
5 workweek and received non-discretionary compensation in that same workweek, Defendants
6 failed to correctly calculate Plaintiff's regular rate of pay for the purposes of paying overtime. In
7 this regard, Defendants failed to include any non-discretionary remuneration earned into the
8 calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the
9 correct, higher regular rate of pay. Additionally, whenever sick pay wages and non-discretionary
10 incentives were paid to Plaintiff in the same workweek, Defendant also incorrectly paid sick pay
11 wages to Plaintiff at her base rate of pay, rather than at the higher regular rate of pay that
12 included any non-discretionary wages. To date, Plaintiff has yet to receive the underpaid
13 overtime and sick pay wages owed to her. Thus, Defendant is liable for waiting time penalties
14 under Labor Code § 203. Moreover, due to Defendants' miscalculation of the regular rate of pay
15 for purposes of paying overtime, the wage statements provided to Plaintiff did not reflect the
16 accurate overtime rates of pay, gross wages earned, and net wages earned, in violation of Labor
17 Code § 226(a)(1), (a)(5), and (a)(9). As a separate violation of Labor Code § 226(a), the total
18 hours worked as listed on Plaintiff's wage statements were inaccurately listed whenever overtime
19 wages were paid. The wage statements provided to Plaintiff omitted the total of hours worked.
20 Moreover, whenever the hours worked as listed on the wage statements are added up, it does not
21 correspond to the actual total hours worked by Plaintiff, in violation of Labor Code § 226(a)(2).
22 As such, Plaintiff is a member of the Classes and has suffered the alleged violations of California
23 Labor Code §§ 201-203, 226(a), 246, 510, 558, and 1194.

24 28. The California Labor Code and upon which Plaintiff bases these claims is broadly
25 remedial in nature. These laws and labor standards serve an important public interest in
26 establishing minimum working conditions and standards in California. These laws and labor
27 standards protect the average working employee from exploitation by employers who may seek
28 to take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment.

2 29. The nature of this action and the format of laws available to Plaintiff and
3 members of the Classes identified herein make the class action format a particularly efficient and
4 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
5 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
6 advantage since it would be able to exploit and overwhelm the limited resources of each
7 individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring
8 each individual class member to pursue an individual remedy would also discourage the
9 assertion of lawful claims by employees who would be disinclined to file an action against their
10 former and/or current employer for real and justifiable fear of retaliation and permanent damage
11 to their careers at subsequent employment.

12 30. The prosecution of separate actions by the individual class members, even if
13 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
14 to individual class members against Defendants and which would establish potentially
15 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
16 individual class members which would, as a practical matter, be dispositive of the interest of the
17 other class members not parties to the adjudications or which would substantially impair or
18 impede the ability of the class members to protect their interests. Further, the claims of the
19 individual class members are not sufficiently large to warrant vigorous individual prosecution
20 considering all of the concomitant costs and expenses.

21 31. Such a pattern, practice and uniform administration of corporate policy regarding
22 illegal employee compensation described herein is unlawful and creates an entitlement to
23 recovery by the Plaintiff and the Classes identified herein, in a civil action, for unpaid minimum
24 wages, overtime wages, applicable penalties, reasonable attorneys' fees, and costs of suit
25 according to the mandate of California Labor Code §§ 201-203, 218.5, 226(a), 510, 558, 1194,
26 and Code of Civil Procedure § 1021.5.

27 32. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is representative of, will establish the right of each of the class members to

1 recovery on the causes of action alleged herein.

2 33. The Overtime Regular Rate Class is commonly entitled to a specific fund with
3 respect to the compensation illegally and unfairly retained by Defendants. The Overtime
4 Regular Rate Class is commonly entitled to restitution of those funds being improperly withheld
5 by Defendants. This action is brought for the benefit of the entire class and will result in the
6 creation of a common fund.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

9 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
10 **DEFENDANTS)**

11 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as
12 though fully set forth herein.

13 35. This cause of action is brought pursuant to Labor Code § 510, which requires an
14 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of
15 pay for any work in excess of eight hours in a workday or 40 hours in a workweek.

16 36. As a pattern and practice, Defendants suffered and permitted employees to work
17 in excess of eight hours in a workday and/or over 40 hours in a workweek without proper
18 overtime pay. During workweeks where Plaintiff and Class Members worked overtime and
19 earned non-discretionary remuneration, including without limitation, shift differential wages, in
20 the same workweek, Defendants failed to properly calculate the regular rate of pay for purposes
21 of paying overtime. In particular, Defendants failed to factor any non-discretionary
22 remuneration earned into the calculation of the regular rate of pay for purposes of paying
23 overtime wages. As a result of such policy and practice, Defendants underpaid overtime wages
24 to Plaintiff and the Class and thus owe additional overtime wages.

25 37. Such a pattern, practice, and uniform administration of corporate policy regarding
26 illegal employee compensation as described herein is unlawful and creates an entitlement to
27 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
28 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according

1 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

2 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
3 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
4 separation from employment results in a continued payment of wages up to thirty (30) days from
5 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
6 separated from employment from Defendants are entitled to compensation pursuant to Labor
7 Code § 203.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 226(a)**

10 **(BY PLAINTIFF, THE OVERTIME REGULAR RATE CLASS, AND THE SHIFT**
11 **DIFFERENTIAL WAGE STATEMENT CLASS AGAINST ALL DEFENDANTS)**

12 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as
13 though fully set forth herein.

14 40. Labor Code § 226(a) requires employers to provide itemized wage statements to
15 its employees that identify accurate information, including without limitation, all applicable
16 hourly rates of pay, gross wages earned, net wages earned, and total hours worked. Defendants,
17 as a matter of policy and practice, failed in its affirmative obligation to provide accurate itemized
18 wage statements to Plaintiff, Overtime Regular Rate Class Members, and Shift Differential Wage
19 Statement Class Members, in violation of Labor Code § 226(a).

20 41. As a result of Defendants' violations of Labor Code §§ 510, 558, and 1194 as
21 identified above, the wage statements issued to Plaintiff and Overtime Regular Rate Class
22 Members intentionally did not accurately identify the correct applicable hourly rates for overtime
23 wages, gross wages earned, and net wages earned, in violation of Labor Code § 226(a)(1), (a)(5),
24 and (a)(9).

25 42. As a separate violation of Labor Code § 226(a), Defendants also provided wage
26 statements to Plaintiff and Shift Differential Wage Statement Class Members that inaccurately
27 identified the total hours worked whenever shift differential wages were paid. In this regard, the
28 wage statements provided to Plaintiff and Shift Differential Wage Statement Class Members

1 omitted the total hours worked. Moreover, whenever the hours worked as listed on the wage
2 statements are added up, the sum total does not correspond to the actual total hours worked in the
3 pay period. Thus, Plaintiff and Shift Differential Wage Statement Class Members cannot
4 determine the total hours worked just by looking at the wage statements or by way of simple
5 calculation. This is a direct violation of Labor Code § 226(a)(2).

6 43. The issuance of inaccurate wage statements caused actual injury to Plaintiff and
7 Class Members as they cannot accurately verify and/or calculate their wages.

8 44. Such a pattern, practice and uniform administration of corporate policy as
9 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
10 Members identified herein, in a civil action, for all damages or penalties pursuant to Labor Code
11 § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
12 California Labor Code § 226.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 201-203**

15 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

16 45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 as
17 though fully set forth herein.

18 46. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees by
19 “calculated in the same manner as the regular rate of pay for the workweek in which the
20 employee uses paid sick time, whether or not the employee actually works overtime in that
21 workweek.”

22 47. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
23 employees by “calculated by dividing the employee’s total wages, not including overtime
24 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
25 of employment.”

26 48. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
27 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages,
28 including without limitation, shift differential wages, thereby increasing their regular rates of pay

1 to amounts that were higher than their base rates of pay. However, whenever sick pay was paid
2 to Plaintiff and Class Members, it was paid at their base rates of pay rather than the correct,
3 higher regular rates of pay, as required under Labor Code § 246.

4 49. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
5 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
6 Code § 203. Further, Plaintiff is informed and believes, and based thereon alleges that such
7 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
8 Members whose employment has separated are entitled to waiting time penalties pursuant to
9 Labor Code §§ 201-203.

10 50. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and Class Members identified herein, in a civil action, for the unpaid
13 balance of the full amount of damages and penalties, attorneys' fees, and costs of suit according
14 to the mandate of California Labor Code §§ 201-203, 218.5, and 1194.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

17 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
18 **DEFENDANTS)**

19 51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 as
20 though fully set forth herein.

21 52. Defendants, and each of them, have engaged and continue to engage in unfair and
22 unlawful business practices in California by practicing, employing and utilizing the employment
23 practices outlined above, including by failing to pay employees overtime wages at the correct
24 regular rate of pay in violation of Labor Code §§ 510, 558, and 1194.

25 53. Defendants' utilization of such unfair and unlawful business practices constitutes
26 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

27 54. Plaintiff seeks, individually and on behalf of other members of the Class similarly
28 situated, full restitution of monies, as necessary and according to proof, to restore any and all

monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

55. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

FIFTH CAUSE OF ACTION

VIOLATION OF THE PAGA, LABOR CODE §§ 2698, *ET SEQ.*

(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 as though fully set forth herein.

57. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), 246, 510, 558, and 1194, arising from Defendants' following misconduct alleged above: (a) failure to pay employees overtime wages at the correct regular rate of pay that included non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failure to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (c) failure to pay sick pay at the regular rate of pay, in violation of Labor Code §§ 201-203 and 246..

58. Because of Defendants' above-stated Labor Code violations, Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699(a). As such, Plaintiff brings this cause of action on behalf of the State of California for violations committed against all similarly situated Aggrieved Employees of Defendant.

59. On or about April 6, 2020 and July 9, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of

1 Labor Code §§ 201-203, 226(a), 510, 558, and 1194, pursuant to Labor Code § 2698, *et seq.* As
2 of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to
3 whether it intends to investigate the Labor Code violations provided for in the written notice. In
4 addition to the LWDA, Plaintiff also sent her written notice to Defendants via certified mail
5 according to Labor Code § 2699.3.

6 60. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
7 applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 226(a), 246, 510,
8 558, and 1194, for the time period described above, on behalf of herself and other Aggrieved
9 Employees.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
12 this suit is brought against Defendants, jointly and severally, as follows:

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as the representatives of the Classes as described
15 herein;
- 16 3. For an order appointing counsel for Plaintiff as Class counsel;
- 17 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
18 California Labor Code §§ 201-203, 218.5, 510, 558 and 1194, and for costs and attorneys' fees;
- 19 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
20 statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
- 21 6. Upon the Third Cause of Action, for waiting time penalties pursuant to California
22 Labor Code §§ 201-203 and for costs and attorneys' fees;
- 23 7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly
24 affected members of the general public of all funds unlawfully acquired by Defendants by means
25 of any acts or practices declared by this Court to be in violation of Business & Professions Code
26 § 17200, *et seq.*;
- 27 8. Upon the Fifth Cause of Action, for the full amount of civil penalties pursuant to
28 Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

1 9. On all causes of action, for attorneys' fees and costs as provided by California
2 Labor Code §§ 218.5, 226, 510, 558, 1194, and 2698, *et seq.*, and Code of Civil Procedure §
3 1021.5; and

4 10. For such other and further relief as the Court may deem just and proper.
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6 DATED: July 15, 2021

DIVERSITY LAW GROUP, P.C.

7 By: /s/ Mai Tulyathan

8 Larry W. Lee

Mai Tulyathan

9 Attorneys for Plaintiff, the Class, and Aggrieved
10 Employees
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1 **PROOF OF SERVICE**

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

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

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 16, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested
12 parties in this action as follows:

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

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

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on July 16, 2021, at Los Angeles, California.

29 
30 _____
31 Olympia Pena