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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

**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 BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*; AND**
- (4) **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

DEMAND OVER \$25,000

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

7 **INTRODUCTION**

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

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

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

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

24 5. The policies, practices, and customs of Defendants described above and below
25 have resulted in unjust enrichment of Defendants and an unfair business advantage over
26 businesses that routinely adhere to the strictures of the California Labor Code and the California
27 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), 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 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,

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

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

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

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

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

1 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

21 22. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
22 necessary steps to represent fairly and adequately the interests of the class defined above.
23 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Classes and
24 the named Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
25 actions in the past and currently have a number of wage-and-hour class actions pending in
26 California state and federal courts.

27 23. Defendants uniformly administered a corporate policy and practice of: (a) failing
28 to pay employees overtime wages at the correct regular rate of pay that included all non-

discretionary remuneration, in violation of Labor Code §§ 510, 558 and 1194; (b) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (c) engaging in unfair business practices in violation of the California Labor Code, the UCL, and the applicable IWC Wage Orders.

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

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

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

27. **Typicality:** The claims of Plaintiff are typical of the claims of all class members in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as class members. As with all other non-exempt employees of Defendants, Plaintiff earned non-discretionary remuneration, including without limitation, shift differential wages. During workweeks when Plaintiff worked in excess of eight hours in a workday and/or forty hours in a workweek and received non-discretionary compensation in that same workweek, Defendants failed to correctly calculate Plaintiff's regular rate of pay for the purposes of paying overtime. In this regard, Defendants failed to include any non-discretionary remuneration earned into the calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the

1 correct, higher regular rate of pay. To date, Plaintiff has yet to receive the underpaid overtime
2 wages owed to her. Thus, Defendant is liable for waiting time penalties under Labor Code §
3 203. Moreover, due to Defendants' miscalculation of the regular rate of pay for purposes of
4 paying overtime, the wage statements provided to Plaintiff did not reflect the accurate overtime
5 rates of pay, gross wages earned, and net wages earned, in violation of Labor Code § 226(a)(1),
6 (a)(5), and (a)(9). As a separate violation of Labor Code § 226(a), the total hours worked as
7 listed on Plaintiff's wage statements were inaccurately listed whenever overtime wages were
8 paid. The wage statements provided to Plaintiff omitted the total of hours worked. Moreover,
9 whenever the hours worked as listed on the wage statements are added up, it does not correspond
10 to the actual total hours worked by Plaintiff, in violation of Labor Code § 226(a)(2). As such,
11 Plaintiff is a member of the Classes and has suffered the alleged violations of California Labor
12 Code §§ 201-203, 226(a), 510, 558, and 1194.

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

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

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

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

32. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the class members to recovery on the causes of action alleged herein.

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

FIRST CAUSE OF ACTION

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

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

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as

1 though fully set forth herein.

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

5 36. As a pattern and practice, Defendants suffered and permitted employees to work
6 in excess of eight hours in a workday and/or over 40 hours in a workweek without proper
7 overtime pay. During workweeks where Plaintiff and Class Members worked overtime and
8 earned non-discretionary remuneration, including without limitation, shift differential wages, in
9 the same workweek, Defendants failed to properly calculate the regular rate of pay for purposes
10 of paying overtime. In particular, Defendants failed to factor any non-discretionary
11 remuneration earned into the calculation of the regular rate of pay for purposes of paying
12 overtime wages. As a result of such policy and practice, Defendants underpaid overtime wages
13 to Plaintiff and the Class and thus owe additional overtime wages.

14 37. Such a pattern, practice, and uniform administration of corporate policy regarding
15 illegal employee compensation as described herein is unlawful and creates an entitlement to
16 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
17 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
18 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

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

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

18 42. As a separate violation of Labor Code § 226(a), Defendants also provided wage
19 statements to Plaintiff and Shift Differential Wage Statement Class Members that inaccurately
20 identified the total hours worked whenever shift differential wages were paid. In this regard, the
21 wage statements provided to Plaintiff and Shift Differential Wage Statement Class Members
22 omitted the total hours worked. Moreover, whenever the hours worked as listed on the wage
23 statements are added up, the sum total does not correspond to the actual total hours worked in the
24 pay period. Thus, Plaintiff and Shift Differential Wage Statement Class Members cannot
25 determine the total hours worked just by looking at the wage statements or by way of simple
26 calculation. This is a direct violation of Labor Code § 226(a)(2).

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

1 44. Such a pattern, practice and uniform administration of corporate policy as
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
3 Members identified herein, in a civil action, for all damages or penalties pursuant to Labor Code
4 § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
5 California Labor Code § 226.

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***
8 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
9 **DEFENDANTS)**

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

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

16 47. Defendants' utilization of such unfair and unlawful business practices constitutes
17 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

18 48. Plaintiff seeks, individually and on behalf of other members of the Class similarly
19 situated, full restitution of monies, as necessary and according to proof, to restore any and all
20 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
21 complained of herein.

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

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1 **FOURTH CAUSE OF ACTION**

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

3 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL**
4 **DEFENDANTS)**

5 50. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 49 as
6 though fully set forth herein.

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

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

18 53. On or about April 6, 2020, Plaintiff sent written notice to the California Labor &
19 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
20 203, 226(a), 510, 558, and 1194, pursuant to Labor Code § 2698, *et seq.* As of the date of the
21 filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends
22 to investigate the Labor Code violations provided for in the written notice. In addition to the
23 LWDA, Plaintiff also sent his written notice to Defendants via certified mail according to Labor
24 Code § 2699.3.

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

1 **PRAYER FOR RELIEF**

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

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as the representatives of the Classes as described
6 herein;
- 7 3. For an order appointing counsel for Plaintiff as Class counsel;
- 8 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
9 California Labor Code §§ 201-203, 218.5, 510, 558 and 1194, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
11 statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
- 12 6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly
13 affected members of the general public of all funds unlawfully acquired by Defendants by means
14 of any acts or practices declared by this Court to be in violation of Business & Professions Code
15 § 17200, *et seq.*;
- 16 7. Upon the Fourth Cause of Action, for the full amount of civil penalties pursuant
17 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 18 8. On all causes of action, for attorneys' fees and costs as provided by California
19 Labor Code §§ 218.5, 226, 510, 558, 1194, and 2698, *et seq.*, and Code of Civil Procedure §
20 1021.5; and
- 21 9. For such other and further relief as the Court may deem just and proper.

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23 DATED: May 8, 2020

DIVERSITY LAW GROUP, P.C.

24 By: 

25 Larry W. Lee

Mai Tulyathan

26 Attorneys for Plaintiff, the Class, and Aggrieved
27 Employees
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