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VIA CERTIFIED MAIL

Montage Healdsburg, LLC
c/o C T Corporation System
330 N. Brand Boulevard
Glendale, CA 91203

Montage Healdsburg, LLC
3 Ada Parkway, Suite 100
Irvine, CA 92618

Montage Hotels & Resorts, LLC
c/o C T Corporation System
330 N. Brand Boulevard
Glendale, CA 91203

Montage Hotels & Resorts, LLC
3 Ada Parkway, Suite 100
Irvine, CA 92618

Re: Notice of California Labor Code Violations Pursuant to Labor Code § 2699.3

To the California Labor & Workforce Development Agency and Respondents:

We have been retained to represent Jason Baumgarten against Montage Hotels & Resorts, LLC and Montage Healdsburg (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as "Montage") for violations of California wage-and-hour laws. Mr. Baumgarten seeks penalties for violations of the California Labor Code, recoverable under California Labor Code section 2698 et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available thereunder.

Mr. Baumgarten seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the California Labor Code section 2699.3's reporting requirements.

The "aggrieved employees" that Mr. Baumgarten may seek penalties on behalf of are all current and former non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Montage has violated and/or continues to violate provisions of the California Labor Code and applicable wage law, including California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 227.3, 246, 351, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 1-2001, 4-2001, 5-2001 and 16-2001.

Montage required Mr. Baumgarten and other aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks, and failed to compensate them for this time. Such work included, but was not limited to, responding to work-related communications, and completing other regular tasks/duties.

California Labor Code sections 1194, 1197, and 1197.1 establish the minimum wage to be paid to employees, paying less than that the minimum is unlawful. During the relevant time period, Montage did not provide Mr. Baumgarten and other aggrieved employees with the minimum wages to which they were entitled for all “off-the-clock” work performed.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages; working employees more than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates is unlawful at one- and-one-half times or double the regular rate of pay. During the relevant time period, Mr. Baumgarten and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week but were not paid for all overtime hours worked.

Montage also unlawfully excluded non-discretionary bonuses, tips, gratuities, commissions, and other earned incentive pay from the regular rate calculation, artificially lowering the overtime premium rate and creating ongoing underpayments.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee’s regular rate of pay for each meal or rest period that is not provided. During the relevant time period, Montage required Mr. Baumgarten and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including *inter alia*, short, late, interrupted, and missed meal and rest periods. Montage also required Mr. Baumgarten and other aggrieved employees to remain on work premises during rest periods.

Any meal and rest period premiums distributed to Mr. Baumgarten and the aggrieved employees were underpaid because Montage failed to calculate them at the true regular rate of pay. Montage unlawfully excluded earned non-discretionary compensation—such as non-discretionary bonuses, tips, gratuities, commissions, and performance incentives—from the regular rate formula, resulting in deficient premium payments.

California Labor Code section 351 mandates that all tips and gratuities are the sole property of the employee, and strictly prohibits employers from taking, collecting, or retaining any portion of a tip left for an employee. During the relevant time period, Montage systematically collected credit card and cash tips, including those earned by Mr. Baumgarten and other aggrieved employees, and redistributed a portion of those gratuities to management.

California Labor Code section 2751 requires employers of non-exempt commission-based employees to provide a signed, written commission contract detailing the commission computations method. During the relevant time period, Montage did not provide Mr. Baumgarten or other aggrieved employees with any such agreement.

Montage systematically withheld accrued paid sick leave from Mr. Baumgarten and other aggrieved employees in direct violation of California Labor Code section 246. Under Section 246, employees working 30 or more days within a year of their hire date are entitled to accrue and utilize paid sick days starting on their 90th day of employment. The statute mandates an accrual rate of at least one hour for every 30 hours worked, ensuring employees accumulate no less than 24 hours (or three days) of sick leave by their 120th calendar day or within each calendar year/12-month period, with unused time carrying over. As a direct result of Montage's non-compliance, Mr. Baumgarten and other aggrieved employees suffered actionable injuries and seek all applicable civil penalties under PAGA.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, wages earned and unpaid are immediately due and payable, if an employee quits, wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee gives seventy-two (72) hours' notice of intent to quit, in which case wages are due at the time of quitting. During the relevant time period, Montage failed to pay Mr. Baumgarten and other aggrieved employees all wages due within the time period specified by California Labor Code sections 201 and 202, including, but not limited to, earned and unpaid minimum, overtime, and premium wages

California Labor Code section 204 requires that all wages earned between the 1st and the 15th days of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day that month, and that all wages earned between the 16th and the last day of a calendar month, other than those wages due upon termination, are due and payable between the 1st and the 10th day of the following month. Section 204 also requires wages earned for labor in excess of the normal work period to be paid no later than the payday for the next regular payroll period. During the relevant time period, Montage failed to pay Mr. Baumgarten and other aggrieved employees all wages due within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above. Montage is therefore liable for civil penalties pursuant to California Labor Code section 210 for each initial and subsequent underpayment or delayed payment.

Further, Montage maintains a systematic policy and practice of failing to pay Mr. Baumgarten and other aggrieved employees all accrued, vested vacation time and paid time off (PTO) upon separation of employment. This failure violates California Labor Code section 227.3 and the applicable IWC Wage Orders. Specifically, any vacation or PTO payouts provided were deficient because Montage miscalculated the regular rate of pay by unlawfully excluding non-discretionary bonuses, tips, gratuities, commissions, and other mandatory forms of compensation, resulting in systematic underpayments at separation.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Montage did not provide Mr. Baumgarten and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Montage were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Baumgarten and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above. Further, because Montage did not properly factor bonuses, tips, gratuities and commissions into Mr. Baumgarten and other aggrieved employees' regular rates of pay, the line items on the corresponding pay stubs were mathematically inaccurate, misstating total earnings.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, no employer shall require employees to work more than six days in a workweek, and violations carry a civil penalty of fifty dollars ($50) for each aggrieved employee per pay period for the initial violation and one hundred dollars ($100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Baumgarten and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Baumgarten and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Baumgarten and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Baumgarten and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174, subdivision (d), requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. During the relevant time period, Montage failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Baumgarten and other aggrieved employees, including earned and unpaid minimum, overtime, premium wages, bonuses, commission and tip based wages, as well as the correct amount of sick pay, as discussed above.

California Labor Code section 1198 provides that "The employment of any employee … under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, 5-2001, and 16-2001, require that for each workday an employee reports for work but is furnished less than half of the employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at their regular rate of pay. During the relevant time period, Montage failed to compensate Mr. Baumgarten and other aggrieved employees with the required reporting-time pay—both for initial reporting days where less than half the scheduled work was provided and for second-reporting instances where less than two hours of work was furnished.

California Labor Code sections 2800 and 2802 require an employer to reimburse employees for all necessary expenditures incurred in direct consequence of the discharge of their job duties or in direct consequence of their obedience to the directions of the employer. During the relevant time period, Mr. Baumgarten and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Montage.

Therefore, on behalf of all aggrieved employees, Mr. Baumgarten seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Sincerely,

Bryan

Bryan A. Kabahar