

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:
nick@bamlawca.com

WRITERS EXT:
1009

May 12, 2025
CA3647

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Merritt Hospitality, LLC
Certified Mail #9589071052703176334174
CSC - LAWYERS INCORPORATING
SERVICE
KOY SAECHAO
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Re: AMENDED NOTICE FOR LWDA CASE NO. LWDA-CM-1082306-25

Amended Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), Violation of Applicable Industrial Welfare Commission Wage Order(s) brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Plaintiffs' original PAGA Notice was sent to Defendant and the LWDA on February 25, 2025. On April 1, 2025, the LWDA sent Plaintiffs' counsel a letter directing the submission of an Amended PAGA Notice setting forth specific violations personally suffered by Plaintiffs and describing the particular facts and theories supporting the specific violations alleged. Accordingly, this letter serves as Amended written notice under California Labor Code Section 2699.3 on behalf of Gregory August, Ann Jung, Montserrat Alon, Mohammad Mahyari, Maria Walz-Smith, and Martin Kazinski ("Plaintiffs") and all other Aggrieved Employees of Merritt Hospitality, LLC ("Defendant").

"Aggrieved Employees" refers to all individuals who are or previously were employed by Merritt Hospitality, LLC in California, including any employees staffed with Merritt Hospitality, LLC by a third party, and classified as non-exempt employees during the time period of February 25, 2024 until a date as determined by the Court ("PAGA Period"). Our offices represent Plaintiffs and other Aggrieved Employees in a lawsuit against Defendant. Plaintiff August was employed by Defendant from June of 1993 to January 17, 2025. Plaintiff Jung was employed by Defendant from 1998 to January 10, 2025. Plaintiff

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Alon was employed by Defendant from October 16, 1989 to January 10, 2025. Plaintiff Mahyari was employed by Defendant from 1990 to January 10, 2025. Plaintiff Walz-Smith was employed by Defendant from October 16, 1989 to January 10, 2025. Plaintiff Kazinski was employed by Defendant from 1997 to January 7, 2025. Plaintiffs were at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock as described further below.

Specifically, Plaintiff August was employed by Defendant as a waiter at 433 Clay St., San Francisco, CA 94111. Plaintiff Jung was employed by Defendant as a banquet server at 433 Clay St., San Francisco, CA 94111. Plaintiff Alon was employed by Defendant as a banquet server at 433 Clay St., San Francisco, CA 94111. Plaintiff Mahyari was employed by Defendant as a banquet captain at 433 Clay St., San Francisco, CA 94111. Plaintiff Walz-Smith was employed by Defendant as a bartender at 433 Clay St., San Francisco, CA 94111. Plaintiff Kazinski was employed by Defendant as a banquet server at 433 Clay St., San Francisco, CA 94111. Defendant's hotel where Plaintiffs worked at was called The Jay. Plaintiffs all provided banquet services for defendant which included, but was not limited to, preparing, serving and cleaning up in the dining room at The Jay hotel. Their job duties consisted of prepping for the current banquet service, setting up tables with tablecloths, napkins, and silverware, checking the schedule of other employees to see who would arrive, caring for guests during those banquet services by getting/serving refreshments and food, checking with the kitchen to get anything needed, tallying up the consumption of food, drinks, and alcohol, and taking everything down/putting everything up once the banquet was over. Each banquet would have four to thirty tables with ten people per table. Plaintiffs worked one to four banquets per week.

As a result of the time consuming work of Plaintiffs and other Aggrieved Employees, Plaintiffs and other Aggrieved Employees were subjected to numerous violations during their employment with Defendant. For example, Plaintiffs were regularly unable to take rest breaks and took many of his meal breaks late, after the 5th hour of work as a result of their strenuous tasks Plaintiffs had to complete prior to, during, and after a banquet service in violation of Cal. Labor Codes Section 226.7, 512 & 1198. Further, Plaintiffs were never encouraged to take meal or rest breaks by their Director of Banquets, Ana Kutle, and their General Manager, Michael Mussara. While some of Plaintiffs' wage statements show that meal break premiums were paid to Plaintiffs for some meal break violations, Defendant did not come close to compensating Plaintiffs for every meal break violation that occurred. Plaintiffs were rarely able to take rest breaks and their meal breaks were late, missed or interrupted multiple times every week. Moreover, because the reasons for not being able to

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take compliant breaks was generally the same for meal breaks and rest breaks (eg. extremely busy, under-staffed), it is illogical that no rest break violations occurred. Only Plaintiff Mahyari received rest break payment during the PAGA period. Plaintiffs, however, did not receive any rest break premium payments despite regularly being unable to take compliant rest breaks. Attached as **Exhibit #1** are true and correct copies of Plaintiff Alon's wage statements for pay periods from December 15, 2024 to December 24, 2024 showing no rest break premiums paid and no meal break premiums paid by Defendant when Plaintiff regularly did not receive compliant meal and rest breaks during that time.

Further, as a result of their strenuous tasks Plaintiffs had to complete prior to, during, and after a banquet service, there were also times when Plaintiffs, while clocked out for a meal break, were forced to return to their job duties which resulted in unpaid minimum and overtime wages in violation of California Labor Code Sections 510, 1194, 1197 & 1198. Moreover, it was not uncommon for Plaintiffs to perform work prior to clocking in and after clocking out. Plaintiff Mahyari was called multiple times by Mr. Mussara while off the clock to determine the schedule for the next week or to help order items. Further, Plaintiffs would work prior to clocking in as Plaintiffs were not allowed to take their uniform home and had to put their uniforms on prior to clocking in for work. Also, Plaintiff performed work off the clock pre-shift as they would set up for a banquet (sometimes this involved setting up tables and chairs) and would work after clocking out by continuing to take down, clean up, and put various items up after the banquet. These actions resulted in unpaid off the clock work. Further, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages, including the meal and rest break penalties described above.

Additionally, Plaintiffs and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the proper regular and overtime wages earned. Often, this did not occur. Plaintiffs therefore contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a), such as not including all non-discretionary incentive wages into the regular rate for purposes of calculating Plaintiffs' correct overtime and meal break penalty rate during certain pay periods. For example, Plaintiff Alon earned non-discretionary shift differential pay in December of 2024 identified on her wage statement as "SHIFT DIFF" in the same pay period where she also worked overtime and received meal break penalty payment. During this pay period, however, Plaintiff Alon was underpaid overtime and meal break penalties because her regular rate, for purposes of determining her correct overtime and meal break penalty rate, did not include this shift differential pay as required by law. This failure to include all non-discretionary incentive wages into Plaintiff Alon's regular rate, also was a violation of Cal. Lab code section 226.7, 510 & 512. Attached as **Exhibit #2** is a true and correct copy of Plaintiff Alon's wage statement for the time period December 1, 2024 to December 14, 2024. Further, Defendant violated Cal. Lab. Code Section 226(a)(2) by

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failing to list the hours and rate of the “Retro” payment of wages and only listed a total amount. Attached hereto as **Exhibit #3**, is a true and correct copy of Plaintiff Walz-Smith’s pay stub reflecting this violation. Defendant also failed to include other non-discretionary performance based incentives, including but not limited to, “Banq Svc Chrg,” into Plaintiff’s regular rate and underpaid break premium pay and overtime pay. Attached hereto as **Exhibit #4** is a true and correct copy of Plaintiff Kazinski’s pay stub reflecting this violation. Exhibit #4 also reveals Defendant’s violation of Cal. Labor Code Section 226(a)(8) in that Defendant failed to list the correct name of the legal entity that employed Plaintiffs. The pay stub only states “The Jay” and not the correct legal entity which was the employer - Merritt Hospitality, LLC.

Plaintiffs were also not reimbursed for business related expenses that they incurred as a result of their job duties for Defendant in violation of Cal. Lab. Code Section 2802. For example, there were many instances where Plaintiffs used their cell phones to communicate via text and phone calls with their supervisor asking them to get more equipment or get something from a different building that was missing at the banquet. Plaintiffs would also use their personal cell phones to notify the kitchen that food needs to come out and to contact other team workers. This would occur during each banquet service. Yet, Plaintiffs were not reimbursed for the reasonable expenses they incurred on their cell phone. This also led to additional unpaid off the clock work. Further, Plaintiffs were required to wear a uniform consisting of pants, shirt, jacket, tie/bowtie, and dress shoes. Those dress shoes were paid for by Plaintiffs themselves.

Defendant also failed to comply with California’s paid sick leave laws (Cal. Lab. Code Section 246) with respect to Plaintiffs and other Aggrieved Employees in violation of California Labor Code Section 246. Due to Defendants’ policy and practice of excluding some forms of non-discretionary wages, including, but not limited to the shift differential wages, incentives, and banquet service charges from the regular rate of pay, Plaintiffs believe and allege that Defendant underpaid sick pay at only Plaintiffs’ and Aggrieved Employees’ base hourly rate instead of regular rate of pay.

Finally, as described in detail in this notice, Defendant failed to pay all wages and premiums owed to Plaintiffs and Aggrieved Employees during their employment and also failed to timely pay those amounts due and earned to departing employees upon separation of employment in violation of California Labor Code Sections 201-204. Defendant also failed to pay the waiting time penalties owed to Plaintiffs and other Aggrieved Employees that stemmed from the non-payment of wages and premiums owed based on the allegations above. Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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This notice is provided to enable Plaintiffs to proceed with a Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit will consist of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

If you have any questions of concerns, please do not hesitate to contact me at the above number and email address.

Respectfully,

/s/ Nicholas De Blouw

Nicholas De Blouw, Esq.

EXHIBIT #1



The Jay 433 Clay St. San Francisco, CA 94111 +1 (415) 2962911

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Montserrat Alon	The Jay	10004598	12/15/2024	12/28/2024	01/03/2025	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	5.98	463.80	0.00			422.74
YTD	5.98	463.80	0.00			422.74

Earnings							Employee Taxes	
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount		
BANQ SVC CHRG	12/15/2024 - 12/21/2024	0	0	352.08	0	352.08		
Regular Hours	12/15/2024 - 12/21/2024	5.983334	18.67	111.72	5.983334	111.72		
Earnings				463.80		463.80		

Taxable Wages		
Description	Amount	YTD

		Federal	State	Absence Plans		
				Description	Accrued	Reduced Available
				PTO (LSF Sun-Sat Biweekly Odd) Time	0.230358	0 75.300175
				PTO Tip (LSF) Time Off Plan	0.460717	0 2.66035

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
				422.74 USD

MHL-MA-000065

EXHIBIT NO. 2



The Jay 433 Clay St. San Francisco, CA 94111 +1 (415) 2962911

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Montserrat Alon	The Jay	10004598	12/01/2024	12/14/2024	12/20/2024	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	5.02	330.70	0.00			301.75
YTD	145.32	17,031.55	0.00			12,821.71

Earnings							Employee Taxes	
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount		
BANQ SVC CHRG	12/01/2024 - 12/07/2024	0	0	234.00	0	13,442.75		
BANQ SVC CHRG		0	0		0	597.55		
MEAL BRK PEN		0			0	150.86		
Overtime		0			0.25	10.42		
PAID MEAL BRK		0			0.5	9.34		
Regular Hours		0			116.5	2,277.29		
Regular Hours	12/01/2024 - 12/07/2024	5.016667	18.67	93.67	14.700001	274.46		
SHIFT DIFF	12/01/2024 - 12/07/2024	2.016667	1.5	3.03	8.033334	9.97		
Regular Hours		0			13.866667	258.91		
Earnings				330.70		17,031.55	Employee Taxes	

Taxable Wages		
Description	Amount	YTD

	Federal	State	Absence Plans			
			Description	Accrued	Reduced	Available
			PTO (LSF Sun-Sat Biweekly Odd) Time	0.193142	0	75.069817
			PTO Tip (LSF) Time Off Plan	0.386283	0	2.199633

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
				301.75 USD

MHL-MA-000064

EXHIBIT NO. 3



The Jay 433 Clay St. San Francisco, CA 94111 +1 (415) 2962911

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Maria Walz-Smith	The Jay	10009413	01/12/2025	01/25/2025	01/31/2025	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	0.00	1,218.65	0.00			1,069.10
YTD	10.72	3,435.53	60.00			1,509.20

Earnings						
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
BANQ SVC CHRG	01/12/2025 - 01/18/2025	0	0	979.36	0	1,323.78
BANQ SVC CHRG			0		0	35.96
DAY OFF W PAY			0		16	328.32
MEETING			0		2	47.54
PAID MEAL BRK	01/12/2025 - 01/25/2025	1.5	20.52	30.78		
PAID MEAL BRK	01/12/2025 - 01/25/2025	2	28.41	56.82	3.5	87.60
PTO PAYOUT	01/12/2025 - 01/25/2025	1.807557	20.52	37.10	45.927557	942.45
PTO TIPPED PAYC	01/12/2025 - 01/25/2025	1.742294	41.04	71.51	8.142294	334.17
RETRO DOLLARS	01/12/2025 - 01/25/2025	0	0	43.08	0	43.08
Regular Hours			0		5.85	166.20
Regular Hours			0		4.866667	126.43
Earnings				1,218.65		3,435.53

Employee Taxes	

Pre Tax Deductions	Post Tax Deductions
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Federal	State
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EXHIBIT NO. 4



The Jay 433 Clay St. San Francisco, CA 94111 +1 (415) 2962911

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Martin Kazinski	The Jay	10007172	11/03/2024	11/16/2024	11/22/2024	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	15.60	1,399.75	0.00			1,108.40
YTD	166.05	18,181.65	0.00			13,445.57

Earnings							Employee Taxes	
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount		
BANQ SVC CHRG	11/03/2024 - 11/09/2024	0	0	773.57	0	13,744.15		
BANQ SVC CHRG	11/10/2024 - 11/16/2024	0	0	178.20	0	178.20		
MEAL BRK PEN	11/03/2024 - 11/09/2024	1	120.86	120.86	1	363.13		
Overtime	11/03/2024 - 11/09/2024	0.083334	79.1	6.60				
Overtime	11/10/2024 - 11/16/2024	0.516667	39.13	20.23	6.160001	385.68		
PAID MEAL BRK	11/03/2024 - 11/16/2024	1	18.67	18.67	1.5	108.24		
Regular Hours			0		119.56	2,599.33		
RETRO DOLLARS			0		0	44.48		
Regular Hours	11/03/2024 - 11/09/2024	7.5	18.67	140.03	32.833334	613.02		
Regular Hours	11/10/2024 - 11/16/2024	7.5	18.67	140.03	7.5	140.03		
SHIFT DIFF	11/03/2024 - 11/09/2024	1.2	1.15	1.38				
SHIFT DIFF	11/10/2024 - 11/16/2024	0.15	1.15	0.18	4.666667	5.39		
Earnings				1,399.75		18,181.65		

Taxable Wages	

	Federal	State	Absence Plans			
			Description	Accrued	Reduced	Available
			PTO (LSF Sun-Sat Biweekly Odd) Time	0.6006	0	27.240958
			PTO Tip (LSF) Time Off Plan	1.2012	0	3.201917

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
				1,108.40 USD

MHL-MK-000068