

JAN 24 2019

BY EMAIL

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ENDORSED
 FEB 27 2019
 SUPERIOR COURT
 COUNTY OF IMPERIAL
 Maria Pineda, CLERK
 BY TEASHA GUNDERMAN, DEPUTY
R. MORALES

7 Attorneys for Plaintiffs Briny Woods and
 8 Greg Abraham and Proposed Class Counsel

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF IMPERIAL**

11 BRINY WOODS, GREG ABRAHAM, on
 12 behalf of themselves and all other similarly
 13 situated,

14 Plaintiffs,

15 v.

16 MONTAGE HOTELS & RESORTS, LLC,
 a Delaware limited liability company, KT
 17 HOTELS, LLC, a Delaware limited
 liability company, PBLH, LLC, a Delaware
 18 limited liability company, RGC
 GASLAMP, LLC, a Delaware limited
 liability company, and 1715 THAMES
 19 STREET MASTER TENANT, LLC, a
 Delaware limited liability company,

20 Defendants.

CASE NO.: ECU000671

*Assigned to the Honorable L. Brooks Anderholt,
 Dept. 9*

CLASS ACTION

**[PROPOSED] ORDER GRANTING MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Date: February 27, 2019
Time: 8:30 a.m.
Dept.: 9

Complaint Filed: November 26, 2018

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 22 Plaintiffs Briny Woods and Greg Abraham's (together, "Plaintiffs") motion for preliminary
 23 approval of class action settlement came on for hearing before this Court in Department 9, Judge
 24 L. Brooks Anderholt presiding, on February 27, 2019. The Court, having considered the papers
 25 submitted in support of the motion and having heard oral argument of the parties, **HEREBY**

26 **ORDERS THE FOLLOWING:**

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1 1. The Court grants preliminary approval of the settlement based upon the terms set
2 forth in the Class Action Settlement Agreement and Release of Claims ("Settlement Agreement")
3 filed with the Court. The Court finds that the proposed settlement and Settlement Agreement
4 appear to be fair, reasonable and adequate for the Class.

5 2. The settlement falls within the range of reasonableness and appears to be
6 presumptively valid, subject only to any objections that may be raised at the final approval hearing.

7 3. A Final Approval hearing shall be held on _____, 2019 at _____.m.
8 before the undersigned for the purpose of determining (a) whether the proposed settlement is fair,
9 reasonable, and adequate and should be finally approved by the Court and (b) whether to issue a
10 Final Order and Judgment. The Court reserves the right to adjourn or continue the Final Approval
11 Hearing, or any further adjournment or continuance thereof, without further notice other than
12 announcement at the Final Approval Hearing or at any adjournment or continuance thereof, and to
13 approve the settlement with modifications, if any, consented to by Class Counsel and Defendants'
14 Counsel without further notice. All pretrial proceedings in the Action are stayed and suspended
15 until further order of this Court.

16 4. For purposes of the Settlement Agreement and for settlement only, the Court
17 preliminarily certifies the following Settlement Class:

18 [A]ll persons in the United States who were provided with an
19 electronically printed receipt at the reception desk at one or more of
20 the Covered Hotels [defined below] during the Covered Periods
21 [defined below] on which more than the last five digits of the
22 person's credit or debit card number and/or expiration date was
23 printed.

24 5. "Covered Hotels" means the Pendry Hotel San Diego, the Pendry Hotel Baltimore,
25 and the Montage Hotel Palmetto Bluff.

26 6. "Covered Periods" means, for the Pendry Hotel San Diego, the time period from
27 January 1, 2017 through June 20, 2017, for the Pendry Hotel Baltimore, the time period from March
28 1, 2017 through June 30, 2017, and for the Montage Hotel Palmetto Bluff, the time period from
November 1, 2014 through June 30, 2017.

1 7. The Court finds, solely for purposes of preliminary approval, that (a) members of
2 the proposed Settlement Class are so numerous as to make joinder of all members impracticable;
3 (b) there are questions of law or fact common to the proposed Settlement Class; (c) the claims of
4 the Named Plaintiffs are typical of the claims of the proposed Settlement Class; (d) the Named
5 Plaintiffs and Class Counsel will fairly and adequately protect the interests of the proposed
6 Settlement Class; (e) questions of law or fact common to the members of the proposed Settlement
7 Class predominate over any questions affecting only individual members; and (f) a class action is
8 superior to other available methods for the fair and efficient adjudication of the controversy.

9 8. The Court notes and further finds that neither the certification of the Settlement
10 Class, nor the settlement of this action, shall be deemed to be a concession by Defendants of the
11 propriety of the certification of a litigation class, in this action or any other action, and Defendants
12 shall retain all rights to assert that the action may not be certified as a class action except for
13 settlement purposes. Furthermore, the preliminary certification of the Settlement Class,
14 appointment of the class representative and Class Counsel, and all other actions associated with
15 preliminary approval are undertaken on the condition that the certification and other actions shall
16 be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the
17 Court, any appellate court, and/or any other court of review, or if Defendants invoke the right to
18 revoke the settlement according to the terms of the Settlement Agreement, in which case the
19 Settlement Agreement and that fact that it was entered into shall not be offered, received, or
20 construed as evidence for any purpose, including but not limited to an admission by Defendants of
21 liability or of any misrepresentation or omission in any statement or written document approved or
22 made by Defendants; or of the certifiability of a litigation class, as further provided in the Settlement
23 Agreement.

24 9. The Court approves, as to form and content, the Notice of Pendency of Settlement
25 of Class Action and Final Hearing ("Class Notice"), attached as Exhibit "1" to the Settlement
26 Agreement, and the Claim Form, attached as Exhibit "2" to the Settlement Agreement. The Court
27 finds preliminarily that the Class Notice and Claim Form described in the Settlement Agreement
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1 and the notice plan submitted to the Court, and the dates for submissions of Claim Forms, Requests
2 for Exclusion, and Objections, provide (i) the best practicable notice; (ii) are reasonably calculated,
3 under the circumstances, to apprise Settlement Class Members of the pendency of the Action and
4 of the proposed settlement, and of their right to object or to exclude themselves from the proposed
5 settlement; (iii) provide reasonable, due, adequate, and sufficient notice to all persons entitled to
6 receive notice; and (iv) are compliant with applicable law and due process. The Court therefore
7 directs the Parties and the Settlement Administrator to implement the notice program contemplated
8 by the Settlement Agreement, including the Class Notice.

9 10. Any Settlement Class Member who timely requests exclusion from the Settlement
10 Class in accordance with the Class Notice and Settlement Agreement shall not be bound by any
11 judgment entered in this Action and shall not be entitled to receive any benefits provided by the
12 settlement in the event it is finally approved by the Court.

13 11. Any Settlement Class Member who does not timely request exclusion as set forth in
14 the Class Notice and Settlement Agreement shall be bound by all proceedings, orders, and
15 judgments in the Action, even if such Settlement Class Member has previously initiated or
16 subsequently initiates individual litigation or other proceedings encompassed by the Class Member
17 Released Claims, as defined in the Settlement Agreement, and even if he or she never received
18 actual notice of the Action or the settlement.

19 12. Any Settlement Class Member who does not timely request exclusion as set forth in
20 the Class Notice, and who wishes to object to the fairness, reasonableness, or adequacy of the
21 proposed settlement, including the Attorneys Fee and Cost Award, must submit an objection that
22 complies with the requirements for objections as set forth in the Settlement Agreement and the
23 Class Notice. Failure to adhere to these requirements will bar the objection.

24 13. The Court confirms Kenneth S. Gaines, Esq., Daniel F. Gaines, Esq. and Alex P.
25 Katofsky, Esq. of Gaines & Gaines, APLC as Class Counsel.

26 14. The Court confirms Briny Woods and Greg Abraham as the Class Representatives.

27 15. The Court hereby approves ILYM Group, Inc. as the Settlement Administrator.

1 16. The Court orders the following schedule of dates for the specified actions/further
 2 proceedings:
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<u>EVENT</u>	<u>TIMING</u>
Defendant will provide to the Settlement Administrator a list of all Class Members, and for each, their last known address, telephone number, and email address, if available ("Settlement Class Information")	Within 15 calendar days after the Court grants Preliminary Approval of the Settlement
Settlement Administrator shall send via e-mail and first class mail the Court-approved Class Notice and Claim Form to all persons who appear within the Settlement Class Information	Within 30 calendar days of receiving the Settlement Class Information
The Settlement Administrator shall maintain the Settlement Website	Beginning no later than the date the Class Notice is first mailed
Last day for Claims to be submitted by Class Members to Settlement Administrator	60 calendar days from the date the Settlement Administrator transmits the Class Notice and Claim Form to Class Members
Last day for requests for exclusion by Class Members to be submitted to Settlement Administrator	60 calendar days from the date the Settlement Administrator transmits the Class Notice and Claim Form to Class Members
Deadline for written objections to the settlement by Class Members to be submitted to Settlement Administrator	60 calendar days from the date the Settlement Administrator transmits the Class Notice and Claim Form to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	10 calendar days before the final settlement approval hearing date
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator describing the scope and effect of the notice plan	10 calendar days prior to the final settlement approval hearing date

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<u>EVENT</u>	<u>TIMING</u>
Final settlement approval hearing	June 5, 2019, at 8:30 a.m. (Approximately 110 days after entry of this Order)

Dated: Feb. 27, 2019, 2019

L. BROOKS ANDERHOLT
JUDGE OF THE SUPERIOR COURT