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10 Attorneys for Plaintiff,

11 ERICA CONNOLLY, and all others similarly situated

12 (Additional Counsel on Following Page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF FRESNO**

15 **(UNLIMITED JURISDICTION)**

16 ERICA CONNOLLY, on behalf of herself and
17 all others similarly situated, and as an
18 “aggrieved employee” on behalf of other
19 “aggrieved employees” under the Labor Code
20 Private Attorneys General Act of 2004,

21 *Plaintiff(s),*

22 vs.

23 PRABHATBHAI PATEL, an individual doing
24 business in California as Travelodge Fresno
25 Yosemite; SUSHILABEN PATEL, an
26 individual doing business in California as
27 Travelodge Fresno Yosemite; and DOES 1-50,
28 inclusive,

Defendant(s).

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Superior Court of California

County of Fresno

By: A. Rodriguez, Deputy

Case No.: **21CECG00178**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§226.7, 512, and 1198);
2. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 & 2802);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED



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1 Plaintiff ERICA CONNOLLY (hereafter “Plaintiff”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendants PRABHATBHAI
7 PATEL, an individual doing business in California as Travelodge Fresno Yosemite;
8 SUSHILABEN PATEL, an individual doing business in California as Travelodge Fresno
9 Yosemite; and DOES 1 through 50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated current and former employees who worked in California as hourly
12 employees, including, but not limited to housekeepers, desk clerks, and persons in similar
13 positions, at any time during the period beginning four years prior to the filing of this action to
14 the present, for unpaid wages, unpaid meal and rest break premium wages, statutory penalties,
15 and other related relief. These claims are based on Defendants’ alleged failures to (1) provide all
16 rest breaks and meal periods; (2) pay Plaintiff and the below-described Class for all hours worked
17 at the correct rates of pay; (3) indemnify Plaintiff and the Class for reasonable expenses incurred
18 during the course of performing their duties; (4) provide Plaintiff and the Class with adequate
19 resting facilities; (5) provide accurate written wage statements, (6) timely pay wages upon
20 termination of employment, and (7) fairly compete. Additionally, Plaintiff seeks civil penalties
21 under the California Labor Code Private Attorneys General Act, Labor Code §§ 2698, *et seq.*
22 (“PAGA”). Accordingly, Plaintiff now seeks to recover unpaid wages, unpaid meal and rest break
23 premium wages, statutory penalties, and related relief through this class action.

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
26 and the Class Members, inclusive of all relief, place more than \$25,000 in controversy.

27 4. There is no basis for federal question subject matter jurisdiction in this case.
28 Specifically, Plaintiff asserts claims on behalf of herself and the Class Members that solely arise
under California law, rather than federal law.

5. There is also no basis for federal diversity jurisdiction in this case.

6. Venue is proper in Fresno County pursuant to California Code of Civil Procedure



§ 395(a) and § 395.5 in that liability arose in Fresno County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

7. Plaintiff ERICA CONNOLLY is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

8. Defendant PRABHATBHAI PATEL is a natural person and resident of Fresno County based on Plaintiff’s information and belief.

9. Defendant SUSHILABEN PATEL is a natural person and resident of Fresno County based on Plaintiff’s information and belief.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

11. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

12. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the Class in accordance with applicable California labor laws as alleged herein.

13. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.



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CLASS ALLEGATIONS

14. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

15. **Class Definition:** The Class is defined as follows: all persons Defendants employed in California and paid on an hourly basis, including but not limited to housekeepers, desk clerks, and persons in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is rendered in this action.

16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses and/or by limitation to particular issues.

17. **Numerosity:** The Class is so numerous that the joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of the Class, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

18. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class with all rest periods as required by Section 11 of the Wage Order;

B. Whether Defendants failed to provide the Class with all off-duty meal periods as required by section 12 of the Wage Order;

C. Whether Defendants failed to compensate the Class at one hour's pay on days when Defendants failed to provide them with one or more off-duty meal periods in a workday;

D. Whether Defendants failed to compensate the Class at one hour's pay on days when Defendants failed to provide them with one or more rest breaks in a workday;

E. Whether Defendants failed to pay all wages earned to Class Members for



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all hours worked at the correct rates of pay;

F. Whether Defendants failed to indemnify the Class for all necessary business expenditures incurred in the discharge of their duties;

G. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete wage statements;

H. Whether Defendants failed to timely pay final wages upon termination of the Class Members' employment;

I. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the Class;

J. Whether the Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations;

K. Whether the Class Members are entitled to prejudgment interest; and

L. Whether the Class Members are entitled to attorneys' fees.

19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice, or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent class. Plaintiff is dedicated to vigorously prosecuting this action on behalf of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class.

21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and the absent Class.

22. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus



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1 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
2 Moreover, a class action will serve an important public interest by permitting class members to
3 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
4 potential for inconsistent or contradictory judgments inherent in individual litigation.

5 **STATEMENT OF FACTS**

6 23. In or about January 20, 2020, Defendants first employed Plaintiff to work in
7 California as an hourly lead housekeeper at their Travelodge Inn in Fresno, California.
8 Defendants continuously employed Plaintiff in this position until on or about August 12, 2020,
9 when her employment ended.

10 24. At all relevant times, Plaintiff and the Class earned their wages at an hourly rate
11 and Defendants provided them with paychecks on a semimonthly basis. At all relevant times,
12 Defendants classified Plaintiff and the Class as non-exempt employees entitled to the protections
13 of both the Labor Code and the Wage Order. At relevant times, Plaintiff and the Class Members
14 worked shifts in excess of twelve hours in a workday and on the seventh consecutive day of work
15 in a workweek.

16 25. At all relevant times, Defendants failed to provide Plaintiff and the Class with an
17 off-duty, 30-minute meal period before the end of the fifth hour worked or with a second, off-
18 duty, 30-minute meal period before the end of the tenth hour worked. On the rare occasions on
19 which Plaintiff and the Class Members received meal and rest breaks, Defendants required them
20 to remain within the work premises. Further, Defendants failed to authorize and permit Plaintiff
21 and the Class to take a ten-minute, paid, duty-free rest break every four hours or major portion
22 thereof. Defendants failed to pay premium wages for days on which they failed to provide
23 Plaintiff and the Class with all timely, off duty meal and rest periods.

24 26. At relevant times, Defendants failed to provide suitable toilet and resting facilities
25 to Plaintiff and the Class. In approximately April of 2020, Defendants converted their single
26 designated breakroom and attached bathroom into a bedroom for one of their managers.
27 Defendants thereafter forbade Plaintiff and the Class from using the breakroom or bathroom.

28 27. At all relevant times, Defendants required Connolly and the Class to incur certain
business expenses in the course of performing their duties. Defendants required Plaintiff and the
Class Members to use their personal mobile telephones to communicate with Defendants'
managers and supervisors and failed to reimburse them for this expense.



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1 28. At all relevant times, Defendants required Plaintiff and the Class to perform work
2 while clocked out and failed to compensate them for this time. After Plaintiff and the Class
3 Members had clocked out at the end of their shifts, Defendants required them to perform
4 additional tasks, such as taking towels to guests, removing trash, and cleaning the office.
5 Defendants failed to compensate Plaintiff and the Class for this work performed off-the-clock.

6 29. Defendants also required Plaintiff and the Class Members to remain on-call while
7 clocked out from work. Defendants informed Plaintiff and the Class that on days in which they
8 were not scheduled to work, they were nonetheless on-call and must expect to be called in for
9 work as needed. Defendants expected on-call employees to report to work within one hour of
10 being called in to work, and would verbally discipline them if they arrived late. Defendants failed
11 to compensate Plaintiff and the Class for this time spent on-call.

12 30. Beginning in approximately March of 2020, Defendants required Plaintiff and the
13 Class to call in each morning by 7:00 a.m. to inquire if Defendants would schedule them for work
14 that day. Defendants failed to pay reporting time pay to Plaintiff and the Class for days on which
15 they were required to call in for work and were thereafter informed that they were not needed for
16 that day.

17 31. Defendants failed to maintain accurate written employee records pertaining to
18 Plaintiff and the other Class Members, including accurate wage statements itemizing each Class
19 Member's gross wages earned, net wages earned, total hours worked, corresponding number of
20 hours worked at each rate by the Class Member, and other requirements of California Labor Code
21 § 226.

22 32. Defendants terminated Plaintiff's employment on August 12, 2020. However,
23 Defendants did not pay Plaintiff her final wages until August 14, 2020. Moreover, at all relevant
24 times, upon resignation or termination, Defendants failed to pay final wages in a timely manner
25 as a result of their failure to pay employees for all work performed off-the-clock. Defendants
26 willfully failed and refused to pay timely compensation and wages, including, but not limited to,
27 regular time and overtime wages for hours they worked while completing preliminary
28 onboarding tasks and while attending training and orientation sessions while off-the-clock.

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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

35. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

36. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

37. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)



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hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

38. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

39. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of



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Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

42. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods and 10-minute rest periods in accordance with the Wage Order. Additionally, Defendants required Plaintiff and the Class Members to take on-duty meal periods without obtaining written consent of Plaintiff or the Class Members. Further, Defendants unlawfully restricted Plaintiff's and the Class Member's meal and rest periods by requiring them to remain on their work premises during such periods.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

44. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid premium wages owed for all meal periods and rest breaks not provided to them.

45. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more rest breaks were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

46. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.



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1 47. At all relevant times, Plaintiff and the Class Members have been non-exempt
2 employees of Defendants and entitled to the benefits and protections of California Labor Code §
3 § 510, 1194, 1197, 1198, and the Wage Order.

4 48. Section 2 of the Wage Order defines “hours worked” as “the time during which
5 an employee is subject to the control of an employer, and includes all the time the employee is
6 suffered or permitted to work, whether or not required to do so.”

7 49. Section 3 of the Wage Order states:

8 (A) Daily Overtime - General Provisions

9 (1) The following overtime provisions are applicable to employees
10 18 years of age or over and to employees 16 or 17 years of age who
11 are not required by law to attend school and are not otherwise
12 prohibited by law from engaging in the subject work. Such
13 employees shall not be employed more than eight (8) hours in any
14 workday or more than 40 hours in any workweek unless the
15 employee receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in the
17 workweek. Eight (8) hours of labor constitutes a day’s work.
18 Employment beyond eight (8) hours in any workday or more than
19 six (6) days in any workweek is permissible provided the employee
20 is compensated for such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee’s regular rate of
22 pay for all hours worked in excess of eight (8) hours up to and
23 including 12 hours in any workday, and for the first eight (8) hours
24 worked on the seventh (7th) consecutive day of work in a
25 workweek; and

26 (b) Double the employee’s regular rate of pay for all hours worked
27 in excess of 12 hours in any workday and for all hours worked in
28 excess of eight (8) hours on the seventh (7th) consecutive day of
work in a workweek.

 (c) The overtime rate of compensation required to be paid to a
nonexempt full-time salaried employee shall be computed by using
the employee’s regular hourly salary as one-fortieth (1/40) of the
employee’s weekly salary.

 50. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consist of all hours that
an employer has actual or constructive knowledge that employees are working.



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1 51. Labor Code section 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess
3 of eight hours in one workday and any work in excess of 40 hours
4 in any one workweek and the first eight hours worked on the
5 seventh day of work in any one workweek shall be compensated at
6 the rate of no less than one and one-half times the regular rate of
7 pay for an employee. Any work in excess of 12 hours in one day
8 shall be compensated at the rate of no less than twice the regular
9 rate of pay for an employee. In addition, any work in excess of
10 eight hours on any seventh day of a workweek shall be
11 compensated at the rate of no less than twice the regular rate of pay
12 of an employee. Nothing in this section requires an employer to
13 combine more than one rate of overtime compensation in order to
14 calculate the amount to be paid to an employee for any hour of
15 overtime work.

16 52. California Labor Code § 1194 invalidates any agreement between an employer
17 and an employee to work for less than the minimum wage required under the applicable Wage
18 Order.

19 53. California Labor Code § 1197 makes it unlawful for an employer to pay an
20 employee less than the minimum wage required under the applicable Wage Order for all hours
21 worked during a payroll period.

22 54. California Labor Code § 1198 makes it unlawful for an employer to employ an
23 employee under conditions that violate the Wage Order.

24 55. In conjunction, these provisions of the California Labor Code require employers
25 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
26 for all hours worked, including unrecorded hours when the employer knew or reasonably should
27 have known that employees were working during those hours. (See *Morillion v. Royal Packing*
28 *Co.* (2000) 22 Cal.4th 575, 585.)

29 56. Reporting time pay provides wages to nonexempt employees who report to work
30 but are permitted to work less than half the hours of their regular shift. Employees must be paid
31 for half the usual or scheduled day's work, but in no event for less than two (2) hours or more
32 than four (4) hours, at their regular rate of pay. Wage Order § 5(A); *Murphy v. Kenneth Cole*
33 *Prods, Inc.* (2007) 40 Cal.4th 1094, 1111. Reporting time pay constitutes wages required by law.
34 *Kamar v. Radioshack Corp.*, No. CV 07-2252 AHM (AJWx), 2008 U.S. Dist. LEXIS 40581 at
35 *15-16 (C.D. Cal. May 15, 2008) (citing *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal.4th



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1094, 1111).

57. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the Class Members with respect to working conditions and compensation arrangements.

58. At all relevant times, Defendants paid Plaintiff and the Class Members at an hourly rate on a semimonthly basis.

59. At all relevant times, Defendants failed to pay Plaintiff and the Class Members for all hours worked at the correct rates of pay, including, but not limited to, all minimum, regular, overtime, and double time wages for all hours they worked after the end of their shifts and while on-call.

60. Further, at all relevant times, Defendants required Plaintiff and the Class to telephonically report to work for shifts of at least four hours in length only to deny them work without any pay for the day. On such occasions, Defendants failed to pay them the “reporting time” wages to which they were entitled pursuant to Labor Code § 1198 and the Wage Order.

61. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to compensate the Class for all hours worked at the correct rate of pay as required by California law.

62. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum, overtime, and double-time wages, and all reporting time wages.

63. Pursuant to California Labor Code § 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, including interest thereon, as permitted by law, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against all Defendants)

64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 65. At all relevant times, Plaintiff and the Class Members have been non-exempt
2 employees of Defendants and entitled to the benefits and protections of California Labor Code
3 §§ 1199 and 2802 and the Wage Order.

4 66. In pertinent part, California Labor Code § 2802(a) states:

5 “An employer shall indemnify his or her employee[s] for all
6 necessary expenditures incurred by the employee in direct
7 consequence of the discharge of his or her duties.”

8 67. Section 9(B) of the Wage Order states:

9 When tools or equipment are required by the employer or are
10 necessary to the performance of a job, such tools and equipment
11 shall be provided and maintained by the employer, except that an
12 employee whose wages are at least two (2) times the minimum
13 wage provided herein may be required to provide and maintain
14 hand tools and equipment customarily required by the trade or
15 craft.

16 68. California Labor Code § 1198 prohibits employers from employing their
17 employees under conditions prohibited by the Wage Order.

18 69. At all relevant times during the applicable limitations period, Defendants required
19 Plaintiff and the Class to use personal mobile telephones to communicate with Defendants as a
20 necessary condition of employment. Defendants failed to indemnify Plaintiff and the Class for
21 expenses associated with the use of their personal mobile phones both during and after their
22 employment ended.

23 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
25 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
26 during the course of performing their duties.

27 71. Pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are
28 entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and
owing to them within four years of the date of the filing of the Complaint until the entry of
judgment.

 72. Accordingly, with respect to this cause of action, on behalf of herself and the
Class, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’ fees pursuant
to Labor Code § 2802(c) and as otherwise permitted by law



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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

74. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing, among other items, 1) gross wages earned; 2) total hours worked, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; 3) net wages earned; and 4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

75. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Additionally, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

76. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.



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1 77. As alleged herein, Defendants failed to pay Plaintiff and the Class Members all
2 wages owed, including but not limited to, all minimum, regular, overtime, and double time wages
3 owed at the correct rates. Defendants further failed to pay Plaintiff and the Class all reporting
4 time wages owed. As a result, Defendants have failed to properly and accurately itemize each
5 employee's gross wages earned, net wages earned, the total hours worked, the corresponding
6 number of hours worked by employees, and other requirements of California Labor Code § 226.
As a result, Defendants have violated California Labor Code § 226.

7 78. Defendants' failure to provide Plaintiff and the Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the Class with accurate wage statements but intentionally provided wage statements that
10 Defendants knew were not accurate.

11 79. As a result of being provided with inaccurate wage statements by Defendants,
12 Plaintiff and the Class have suffered injury. Their legal rights to receive accurate wage statements
13 were violated and they were misled about the amount of wages they had actually earned and were
14 owed. In addition, the absence of accurate information on their wage statements prevented
15 immediate challenges to Defendants' unlawful pay practices, has required discovery and
16 mathematical computations to determine the amounts of wages owed, has caused difficulty and
17 expense in attempting to reconstruct time and pay records and/or has led to the submission of
18 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
19 and the Class Members were not able to ascertain from the wage statements whether Defendants
complied with their obligations under California Labor Code § 226(a).

20 80. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are entitled to
21 recover the greater of actual damages, or penalties of fifty dollars (\$50.00) for the initial pay
22 period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars
23 (\$100.00) for each violation of California Labor Code § 226(a) in a subsequent pay period, not
24 to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per Class Member, and are
also entitled to an award of costs and reasonable attorneys' fees.

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FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

82. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203 and the Wage Order.

83. California Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

84. California Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

85. By failing to pay earned minimum, regular, overtime, and double time wages, as well as all reporting time wages to Plaintiff and the Class Members at the correct rates, Defendants failed to timely pay them all earned and unpaid wages in violation of California Labor Code § 201 or § 202.

86. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with California Labor Code §§ 201 and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

87. California Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with California Labor Code § 201 or § 202.

88. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

89. Pursuant to California Labor Code § 203, Plaintiff seeks waiting time penalties



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1 on behalf of herself and the Class, in amounts subject to proof not to exceed 30 days of waiting
2 time penalties for each Class Member.

3 **SIXTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(Bus. & Prof. Code §§ 17200, et seq.)**

6 **(By Plaintiff and the Class against all Defendants)**

7 90. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 91. At all relevant times, Plaintiff and the Class Members have been non-exempt
9 employees of Defendants and entitled to the benefits and protections of the Business and
10 Professions Code §§ 17200, et seq.

11 92. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
13 seq. Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
14 gained a competitive advantage over other comparable companies doing business in California
15 that comply with their legal obligations to, among other things, pay their employees premium
16 wages for workdays in which they did not provide employees with one or more meal and rest
17 period, reimburse their employees for reasonable expenses incurred in the course of performing
18 their duties, and all pay them all wages earned.

19 93. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
20 Class Members have suffered injuries in fact and have lost money or property. Defendants
21 deprived Plaintiff and the Class Members of minimum wages, regular wages, overtime wages,
22 double-time wages, reporting time wages, premium wages for all workdays one or more meal
23 periods was not provided, premium wages for all workdays a rest period was not provided, and
24 reimbursement for expenses that Plaintiff and the other Class Members incurred during the
25 course of performing their duties.

26 94. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
27 Class Members are entitled to restitution of all monies rightfully belonging to them that
28 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
practices.

95. Plaintiff and the Class are entitled to reasonable attorneys' fees in connection with
their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the



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substantial benefit doctrine and/or the common fund doctrine.

96. Accordingly, with respect to this cause of action, on behalf of herself and the Class, Plaintiff prays for the herein stated relief, and an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

98. The "Aggrieved Employees" are all members of the above-defined Class whom Defendants employed during the period beginning November 11, 2019 and ending on the date that final judgment is entered in this action.

99. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 201.4, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and last day, inclusive, of any calendar month, shall be paid between the 1st and 10th day of the following month. . . .

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.



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100. Defendants paid wages on to employees on semimonthly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked, including but not limited to all minimum, regular, overtime, and double time wages for hours she worked after the end of her shifts and while on-call. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

101. Labor Code § 2350 states

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

102. Section 13 of the Wage Order states

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean

...

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

103. At relevant times, Defendants failed to provide any toilet or resting facilities for use by Plaintiff or the Aggrieved Employees within reasonable access.

104. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2350, and 2802.

105. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

106. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and Aggrieved Employees are entitled to recover civil penalties for each of Defendants' violations of California



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1 Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2350,
2 and 2802 during the applicable limitations period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
5 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

6 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
7 (\$250.00) for each Aggrieved Employee for initial violations and one thousand dollars
8 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
9 established by California Labor Code § 226.3).

10 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
11 (\$50.00) for each Aggrieved Employee for initial violations and one hundred dollars (\$100.00)
12 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
13 established by California Labor Code § 558).

14 D. For violations of California Labor Code § 1174, five hundred dollars
15 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
California Labor Code § 1174.5).

16 E. For violations of California Labor Code § 1197, one hundred dollars
17 (\$100.00) for each Aggrieved Employee per pay period for each initial and intentional violation
18 and two hundred fifty dollars (\$250.00) for each Aggrieved Employee per pay period for each
19 subsequent violation (regardless of whether the initial violations were intentionally committed)
20 (penalty amounts established by California Labor Code § 1197.1).

21 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
22 1198, 2350, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
23 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
24 per pay period for each subsequent violation (penalty amounts established by California Labor
Code § 2699(f)(2)).

25 107. Plaintiff has complied with the procedures for bringing suit specified in California
26 Labor Code § 2699.3. By letter dated November 11, 2020 Plaintiff gave written notice online
27 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
28 certified mail to Defendants of the specific provisions of the California Labor Code alleged to



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1 have been violated, including the facts and theories in support of the alleged violations. Plaintiff
2 accompanied her LWDA notice with a fee in the amount of \$75.00. A true and correct copy of
3 Plaintiff's written notice to the LWDA dated November 11, 2020 is attached hereto as **Exhibit**
4 **A.** The LWDA has not responded to Plaintiff's letter.

5 108. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief and judgment
10 against Defendants as follows:

- 11 A. An order that the action be certified as a class action;
- 12 B. An order that Plaintiff be appointed class representative;
- 13 C. An order that counsel for Plaintiff be appointed class counsel;
- 14 D. Unpaid wages;
- 15 E. Actual damages;
- 16 F. Statutory damages;
- 17 G. Liquidated damages;
- 18 H. Restitution;
- 19 I. Declaratory relief;
- 20 J. Equitable relief;
- 21 K. Statutory penalties;
- 22 L. Civil Penalties;
- 23 M. Pre-judgment and post-judgment interest;
- 24 N. Costs of suit;
- 25 O. Interest;
- 26 P. Reasonable attorneys' fees; and
- 27 Q. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 21, 2021

By: 
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, ERICA CONNOLLY
and all others similarly situated



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

November 12, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Erica Connolly / Travelodge Fresno Yosemite*

To whom it may concern:

This notice concerns the following employers:

1. Prabhatbhai Patel, an individual; and
2. Sushilaben Patel, an individual

Collectively, the aforementioned individuals are employers doing business in California as Travelodge Fresno Yosemite, and are herein referred to as “TFY.”

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Erica Connolly (hereafter “Connolly”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including, but not limited to, all individuals currently and formerly employed as housekeepers, desk clerks, and comparable positions (hereafter the “Aggrieved Employees”) by TFY of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, 2350, and 2802.

At all relevant times, TFY has employed persons, conducted business in and engaged in illegal payroll practices and policies in California. Connolly and the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about January 20, 2020, TFY first employed Connolly as an hourly lead housekeeper at its Travelodge Inn in Fresno, California. TFY continuously employed Connolly in this position until on or about August 12, 2020, when her employment ended.

At all relevant times, TFY paid Connolly and the other Aggrieved Employees at an hourly rate of pay on a semimonthly basis. At all relevant times, TFY classified Connolly and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order. At relevant times, Connolly and the Aggrieved Employees worked shifts in excess of twelve hours in a workday and on the seventh consecutive day of work in a workweek.

At all relevant times, TFY failed to provide Connolly and the other Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second, off-duty, 30-minute meal period before the end of the tenth hour worked. On the rare occasions on which Connolly and the Aggrieved Employees received meal and rest breaks, TFY required Connolly and the Aggrieved Employees to remain within the work premises. Further, TFY failed to authorize and permit Connolly and the other Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof. TFY failed to pay premium wages for days on which it failed to provide Connolly and the Aggrieved Employees with all timely, off duty meal and rest periods.

TFY further failed to provide suitable toilet and resting facilities to Connolly and the Aggrieved Employees. In approximately April of 2020, TFY converted its single designated breakroom and attached bathroom into a bedroom for one of its managers, Keny Patel. TFY thereafter forbade Connolly and the Aggrieved Employees from using the breakroom or bathroom.

At all relevant times, TFY required Connolly and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. TFY required Plaintiff and the Aggrieved Employees to use their personal mobile telephones to communicate with TFY managers and supervisors and failed to reimburse them for this expense.

At all relevant times, TFY required Connolly and the Aggrieved Employees to perform work while clocked out and failed to compensate them for this time. After Connolly and the Aggrieved Employees had clocked out at the end of their shifts, TFY required them to perform additional tasks, such as taking towels to guests, removing trash, and cleaning the office. TFY failed to compensate Connolly and the Aggrieved Employees for this work performed off-the-clock.

TFY also required Connolly and the Aggrieved Employees to remain on-call while clocked out from work. TFY informed Connolly and the Aggrieved Employees that on days in which they were not scheduled to work, they were nonetheless on-call and must expect to be called in for work as needed. TFY expected on-call employees to report to work within one hour of being called in to work, and would verbally discipline them if they arrived late. TFY failed to compensate Connolly and the Aggrieved Employees for this time spent on-call.

Beginning in approximately March of 2020, TFY required Connolly and the Aggrieved Employees to call in each morning by 7:00 a.m. to inquire if TFY would schedule them for work that day. TFY failed to pay reporting time pay to Connolly and the Aggrieved Employees for days on which they were required to call in for work and were informed that they were not needed for that day.

TFY terminated Connolly's employment on August 12, 2020. However, TFY did not pay Connolly her final wages until August 14, 2020.

As set forth below, Connolly alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and other Aggrieved Employees:

- a) TFY failed to provide Connolly and the other Aggrieved Employees with off-duty meal periods;
- b) TFY failed to provide Connolly and the other Aggrieved Employees with rest breaks periods as required by law;
- c) TFY failed to compensate Connolly and the other Aggrieved Employees at one hour's pay on days when TFY failed to provide them with one or more meal periods in a workday;
- d) TFY failed to compensate Connolly and the other Aggrieved Employees at one hour's pay on days when TFY failed to provide them with one or more rest periods in a workday;
- e) TFY failed to provide adequate resting facilities to Connolly and the Aggrieved Employees as required by law;
- f) TFY failed to pay Connolly and the Aggrieved Employees for all hours worked at the correct rates of pay including but not limited to minimum, regular, overtime, and doubletime pay due to off-the-clock work;
- g) TFY failed to pay Connolly and the Aggrieved Employees additional "reporting time" wages on days on which TFY required them to call in for work and did not provide them with work;
- h) TFY failed to indemnify Connolly and the Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- i) TFY failed to provide Connolly and the other Aggrieved Employees with accurate wage statements;
- j) TFY failed to timely pay Connolly and the other Aggrieved Employees all earned and unpaid wages during their employment with Travelodge Fresno Yosemite and at the time such employment ended; and
- k) TFY willfully failed to maintain accurate employment records regarding Connolly and the Aggrieved Employees.

Accordingly, Connolly now seeks civil penalties on behalf of herself and other Aggrieved Employees based on TFY's alleged violations of the California Labor Code and the Wage Order.

Wage Order 5

Wage Order 5 applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis. . . ." § 1. The public housekeeping industry includes, but is not limited to, "[h]otels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters." § 2(P).

At all relevant times during the applicable limitations period, Connolly and the other Aggrieved Employees were employed by TFY as hotel housekeepers, desk clerks, and in comparable positions. Accordingly, Connolly and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods **(Lab. Code §§ 226.7, 512 and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

As alleged herein, TFY has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Connolly and the other Aggrieved Employees as required by law. As a result, TFY violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Connolly seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Suitable Resting Facilities and Toilet Facilities
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

“every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.”

Section 13 of the Wage Order states,

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Section 15 of the Wage Order states,

...

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

At relevant times, TFY failed to provide any toilet or resting facilities for use by Connolly or the Aggrieved Employees within reasonable access. Accordingly, Connolly seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2350, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, TFY required Connolly and the Aggrieved Employees to use personal mobile telephones to communicate with TFY as a necessary condition of employment. TFY failed to indemnify Connolly and the Aggrieved Employees for expenses associated with the use of their personal mobile phones both during and after their employment ended.

Accordingly, Connolly seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay

period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages For All Hours Worked at the Correct Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in

the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, TFY knowingly failed to pay Connolly and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all minimum, regular, overtime, and double time wages for the work they performed after the end of their shifts and while on-call.

Accordingly, Connolly seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Pay Reporting Time Pay
(Lab. Code § 1198)

Under section 5 of the Wage Order,

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said 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, which shall not be less than the minimum wage.

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

As described above, TFY required Connolly and the Aggrieved Employees to telephonically report to work for shifts of at least four hours in length only to deny them work without any pay for the day. On such occasions, TFY failed to pay Connolly and the Aggrieved Employees the “reporting time” wages to which they were entitled pursuant to Labor Code § 1198 and the Wage Order.

Accordingly, Connolly seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and

- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, TFY violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. TFY failed to state in the wage statements it issued to Connolly and the Aggrieved Employees all their hours worked and wages earned, including but not limited to minimum, regular, overtime, and doubletime wages for work they performed while clocked out from work, and all reporting time wages.

Accordingly, Connolly seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a); and
2. \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In

addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, TFY failed to provide Connolly and the other Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided, all minimum, regular, overtime, and doubletime wages for work performed off-the-clock, and all reporting time wages. As a result, TFY failed to pay Connolly and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, TFY has violated California Labor Code § 204.

Accordingly, Connolly seeks civil penalties on behalf of herself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 204 occurred; and
2. \$200 for each Aggrieved Employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code § § 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for

purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, TFY failed to provide Connolly and the other Aggrieved Employees all wages owed including, but not limited to, all minimum, regular, overtime, and double time wages for work performed off-the-clock, and all reporting time wages. As a result, TFY failed to pay Connolly and other Aggrieved Employee all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, TFY has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Connolly seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred; and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, and 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

- (d) 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 in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total

daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

TFY has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for late meal periods and missed rest periods, records pertaining to all unpaid hours worked by Connolly and the Aggrieved Employees, and records pertaining to all reporting time wages due to Connolly and the Aggrieved Employees. Accordingly, Connolly seeks civil penalties from TFY on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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EXHIBIT A