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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Eva Noriega, Deputy Clerk

Attorneys for Plaintiff
MATTEO MARTINS VILLACA,
individually and in a representative
capacity, on behalf of other members
of the general public similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MATTEO MARTINS VILLACA, individually
and in a representative capacity on behalf of other
members of the general public similarly situated,

Plaintiff,

v.

NORTON LILLY INTERNATIONAL, INC, an
Alabama Corporation; and DOES 1 through 10,
inclusive

Defendants.

Case No: 37-2023-00054751-CU-0E-CTL

COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
2. OVERTIME VIOLATIONS
PURSUANT TO LABOR CODE §
2698 *et seq.*
3. WAGE STATEMENT
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
4. MEAL AND REST PERIOD
VIOLATIONS PURSUANT TO
LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE
PURSUANT TO LABOR CODE §
2698 *et seq.*
6. FAILURE TO TIMELY PAY
WAGES PURSUANT TO LABOR
CODE § 2698 *et seq.*
7. FAILURE TO PAY WAGES UPON
SEPARATION PURSUANT TO
LABOR CODE § 2698 *et seq.*

[JURY TRIAL DEMANDED]

COMES NOW Plaintiff MATTEO MARTINS VILLACA (“Plaintiff”), in an Individual and Representative capacity on behalf of all aggrieved employees alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant NORTON LILLY INTERNATIONAL, INC. (“NORTON LILLY” or “Defendant”) was and is an Alabama Corporation doing business throughout the state of California, including the County of San Diego, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendant is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendant, and in doing the actions mentioned below, was acting within the course and

1 scope of his or her authority as such agent, servant, partner, and employee with the
2 permission and consent of the co-Defendant. Plaintiff injuries as herein alleged were
3 proximately caused by said Defendant. Wherever it is alleged herein that any act or
4 omission was done or committed by any specially named Defendant or Defendants,
5 Plaintiff intends thereby to allege and does allege that the same act or omission was also
6 done and committed by each and every defendant named as a DOE, both separately and
7 in concert with the named Defendant or Defendants.

- 8 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
9 including DOES 1 through 10, are and at all times herein mentioned were either
10 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
11 egos or other legal entities which were licensed to do and/or were doing business in the
12 County of San Diego, State of California at all times relevant to the subject matter of this
13 action.

14 **FACTUAL BACKGROUND**

- 15 7. On or around August 2021, Plaintiff MATTEO MARTINS VILLACA (formerly known
16 as “Tatyana Cleopatra Mendenhall” and “Matteo Mendenhall”) commenced working for
17 Defendant as a Boarding Agent. Plaintiff’s employment with Defendant lasted until July
18 27, 2021. Throughout his employment with Defendant, Plaintiff performed his job in a
19 capable and competent manner and was commended for doing so.
- 20 8. Throughout the term of his employment, Plaintiff and all other aggrieved employees
21 were, and currently are, denied the benefits and protections of the Labor Code due to
22 Defendant’s institutionalized pay practices, standard as to all of Defendant’s California-
23 based employees.

24 **REPRESENTATIVE ALLEGATIONS**

- 25 9. As more specifically set forth below, Plaintiff brings this action in a representative
26 capacity on behalf of all current and former nonexempt employees of Defendant. Code
27 Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout
28 the operative limitations period, Plaintiff and all other aggrieved employees were denied

1 the protections and benefits of the Labor Code and Industrial Welfare Commission
2 (“IWC”) Wage Order(s) due to Defendant’s standard practices. Throughout their
3 employment, Plaintiff and all other aggrieved employees were and are denied full and
4 accurate compensation, including overtime compensation, in violation of, *inter alia*,
5 Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are
6 denied meal and rest periods and meal and rest period payments, in violation of, *inter*
7 *alia*, IWC Wage Order 4 (or any other applicable Wage Order) and Labor Code §§ 226.7
8 and 512. Defendant failed to furnish accurate itemized wage statements in violation of,
9 *inter alia*, Labor Code § 226. Defendant failed to reimburse Plaintiff and other aggrieved
10 employees for necessary business expenditures in violation of, *inter alia*, Labor Code §
11 2802. Defendant failed to provide all compensation due at termination of employment in
12 violation of, *inter alia*, Labor Code §§ 201 through 203.

13 10. Plaintiff brings this action on the grounds that he and other similarly situated current and
14 former employees of Defendant were and are improperly denied the mandated wages and
15 reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699;
16 *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is
17 believed to exceed one hundred (100) aggrieved employees.

18 11. The approximately one hundred (100) aggrieved employees are comprised of all of
19 Defendant’s current and former California-based employees, designated as “nonexempt”
20 by Defendant. Defendant’s standard policies and practices which lead to Labor Code
21 violations, as alleged herein, applied to all California nonexempt employees.

22 12. There are questions of fact and law common to all aggrieved employees arising from
23 Defendant’s actions include, among others, the following:

- 24 a. Whether Defendant failed to pay its employees the proper straight-time, overtime,
25 and double time wages due and owing to them;
- 26 b. Whether Defendant failed to provide its employees with statutorily-compliant
27 Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code §§ 512
28 and 226.7, in that Defendant’s written policies and practices are not compliant

- 1 with California law, Defendant does not allow its employees duty-free Meal
2 and/or Rest Periods, and Defendant improperly “rounds” employees’ recorded
3 Meal Periods;
- 4 c. Whether Defendant failed to properly provide Meal and Rest Period premiums in
5 accordance with law;
- 6 d. Whether Defendant failed to properly calculate and pay its employees Overtime
7 compensation or Meal and Rest Period premiums in accordance with law by
8 failing to properly calculate, into the Regular Rate of Pay, the value of employee
9 benefits;
- 10 e. Whether Defendant failed to provide all compensation, timely, during
11 employment in violation of Labor Code § 204 due, in part, to the fact that
12 Defendant failed to provide proper compensation for all hours worked, as
13 discussed above;
- 14 f. Whether Defendant failed to provide all compensation upon termination of
15 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
16 Defendant failed to provide proper compensation for all hours worked, as
17 discussed above; and
- 18 g. Whether Defendant failed to provide Plaintiff and all other aggrieved employees
19 with accurate itemized wage statements in violation of, among other statutes,
20 Labor Code § 266.
- 21 13. At all times mentioned herein, Defendant was subject to the Labor Code and Industrial
22 Welfare Commission Wage Orders of the State of California, including, but not limited
23 to, California Labor Code § 2698 *et seq.*
- 24 14. At all times mentioned herein, Defendant is and was an “employer” as that term is used
25 within the relevant sections of the California Labor Code and the applicable wage order.
26 An employer-employee relationship existed between Plaintiff and Defendant.
- 27 15. Plaintiff has exhausted his administrative remedies and pre-filing requirements California
28 Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On

1 October 4, 2023, counsel for Plaintiff prepared and electronically submitted a letter to the
2 LWDA via the California Department of Industrial Relations' "PAGA Filing" website.
3 This letter concerned Norton Lilly International, Inc. and its Labor Code violations. A
4 copy of this letter was also mailed to Defendant, via USPS Certified Mail. The letter
5 contained the specific provisions of the California Labor Code violated by Defendant, as
6 well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true
7 and correct copy of this letter.)

8 16. The statutory time period for the LWDA to investigate and/or respond, and for the
9 employers to respond, has concluded.

10 17. Throughout the operative limitations period, Plaintiff and all other aggrieved employees
11 were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due
12 to Defendant's standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Minimum Wage Violations Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

13 18. Plaintiff hereby incorporates by reference each and every allegation contained in the
14 preceding paragraphs as though fully set forth herein.

15 19. Defendant failed to pay its employees all compensation due in violation of, among other
16 statutes, Labor Code § 1197. California law holds that the failure to pay for any work
17 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135
18 Cal.App.4th 314, 323. These violations were caused by and through Defendant's failure
19 to maintain accurate Time Records (as required by California law), to the detriment of the
20 employees. Specifically, Defendant recorded only scheduled work time as opposed to
21 actual work time, and would frequently falsify, or edit, employees' recorded time.
22 Additionally, the right to receive the proper minimum wage compensation was impacted
23 by Defendant's knowingly failing to consider other work performed by the employees,
24 including all time employees were under Defendant's control. These actions, and
25 instructions, caused the employees to lose compensation, including proper minimum
26 wage compensation and overtime compensation.
27
28

20. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

21. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

22. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

23. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SECOND CAUSE OF ACTION

Overtime Violations Pursuant to Labor Code § 119 510

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

24. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

25. Defendant willfully failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. These violations occurred due to Defendant's illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiff's (and other employees') shifts, the unpaid work time would have been owed at the overtime rate of pay. Additionally, Plaintiff and other employees worked in excess of eight hours per shift without receiving all overtime pay owed. These systematic failures to provide proper overtime compensation are in violation of California law.

26. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

1 27. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
2 behalf of himself and all other aggrieved employees by and through Labor Code §
3 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
4 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
5 the below Prayer For Relief.

6 28. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
7 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

8 29. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
9 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Wage Statement Violations Pursuant to Labor Code § 226

Representative Action

(By Plaintiff Representative against Defendant and DOES 1 through 10)

10 30. Plaintiff hereby incorporates by reference each and every allegation contained in the
11 preceding paragraphs as though fully set forth herein.

12 31. Defendant willfully failed to provide Plaintiff and all other aggrieved employees with
13 accurate itemized wage statements in violation of, among other statutes, Labor Code §
14 226. These violations include, but are not limited to, Defendant's failure to accurately
15 identify all applicable regular and overtime rates of pay in violation of section 226(a)(9),
16 and providing inaccurate representations of both "gross" and "net wages." Defendant also
17 failed to provide an accurate showing of the "total hours worked," in violation of Labor
18 Code § 226(a)(2).
19

20 32. As a direct result of Defendant's failure to comply with the foregoing provisions of the
21 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
22 amount to be proven at trial.

23 33. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
24 behalf of himself and all other aggrieved employees by and through Labor Code §
25 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
26 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
27 the below Prayer For Relief.
28

1 34. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
2 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

3 35. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
4 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

5 **FOURTH CAUSE OF ACTION**

6 **Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512**
7 **Representative Action**

8 **(By Plaintiff Representative against Defendant and DOES 1 through 10)**

9 36. Plaintiff hereby incorporates by reference each and every allegation contained in the
10 preceding paragraphs as though fully set forth herein.

11 37. Labor Code § 1198 states:

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

17 Defendant violated this section by establishing working conditions below the standard of
18 the applicable Wage Order.

19 38. Under applicable California law, "An employer may not employ an employee for a work
20 period of more than five hours per day without providing the employee with a Meal
21 Period of not less than 30 minutes [...] An employer may not employ an employee for a
22 work period of more than 10 hours per day without providing the employee with a second
23 Meal Period of not less than 30 minutes" Lab. Code § 512(a); see also 8 Cal. Code Regs.
24 § 11040 (11)(A)(B).

25 39. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the
26 Meal Period shall be considered an "on duty" Meal Period and counted as time worked. 8
27 Cal. Code Regs. § 11040 (11).

28 40. California law requires employers to provide nonexempt employees with a 10-minute
Rest Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs.
§ 11040 (12).

- 1 41. An employer who fails to provide Meal or Rest Periods as required by an applicable
2 Wage Order must pay the employee one additional hour of pay at the employee's regular
3 rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code §
4 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).
- 5 42. Within the operative time period, Defendant failed to possess compliant Meal and Rest
6 Period policies or practices.
- 7 43. For example, Defendant's Rest Period policy and practice do not provide the right for
8 employees to "leave the premises," by requiring employees to remain on the job site
9 during Rest Periods. Additionally, employees often are instructed to remain available
10 during rest periods to respond to supervisors and/or vendors.
- 11 44. Moreover, Defendant's policies and practices preclude "duty-free" Meal and Rest
12 Periods. These institutional and established practices of Defendant are illegal, in that
13 Plaintiff and all other employees were denied proper and/or timely Meal and Rest
14 Periods.
- 15 45. These violations are due, in part, to the fact that Defendant does not possess a legal Rest
16 Period policy or practice, as its Rest Period policy lacks required language, resulting in
17 employees failing to receive all Rest Periods legally due. Defendant does not provide
18 Rest Periods, as defined by California law. Further, Defendant rarely, if ever provide Rest
19 Period penalty payments to employees when earned.
- 20 46. Defendant also does not possess a legal Meal Period policy, and makes no attempt to
21 ensure that its employees are either timely or wholly provided Meal Periods. The
22 employees would often either miss a Meal Period entirely, be provided a short or late
23 Meal Period, or be provided only one Meal Period, even when they were working in
24 excess of 10 hours a day. Additionally, Defendant failed to accurately record its
25 employees' actual start and stop times of Meal Periods (and would frequently edit or
26 falsify time records with respect to Meal Periods), in violation of the IWC Wage Orders.
27 8 Cal. Code Regs. § 11040 (7)(A).
28

1 47. Moreover, Defendant's policies and practices preclude "duty-free" Meal and Rest
2 Periods, in that the employees are required to remain "On Call" at all times, including
3 during the Meal and Rest Periods, in order to (among other reasons) respond to
4 supervisors and vendors. These institutional and established practices of Defendant are
5 illegal, in that Plaintiff and all other aggrieved employees were denied proper and/or
6 timely Meal and Rest Periods.

7 48. Defendant willfully failed and refused to pay Plaintiff and all other aggrieved employees
8 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
9 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 4
10 (11), (12).

11 49. Any payments made by Defendant for missed or late Meal Periods were not paid at an
12 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
13 Orders. Instead, these payments were made at an employee's base rate and did not
14 include the value of, inter alia, additional compensation and/or employee benefits.

15 50. As a direct result of Defendant's failure to comply with the foregoing provisions of the
16 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
17 amount to be proven at trial.

18 51. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
19 behalf of himself and all other aggrieved employees by and through Labor Code §
20 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
21 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
22 the below Prayer For Relief.

23 52. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
24 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

25 53. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
26 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

27 **FIFTH CAUSE OF ACTION**
28 **Failure to Timely Pay Wages Pursuant to Labor Code § 2698 *et seq.***
Representative Action
(By Plaintiff Representative against Defendant and DOES 1 through 10)

- 1 54. Plaintiff hereby incorporates by reference each and every allegation contained in the
2 preceding paragraphs as though fully set forth herein.
- 3 55. Plaintiff and all other aggrieved employees performed work for Defendant, as employees
4 of Defendant, as stated herein. Throughout Plaintiff's and all other aggrieved employees'
5 employment, they earned wages that were not paid to them, as stated herein, in an amount
6 according to proof at trial.
- 7 56. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's and all
8 other aggrieved employees' employment by Defendant, provides that all wages earned by
9 any person in any employment are due and payable twice during each calendar month.
10 Defendant failed to pay Plaintiff and all other aggrieved employees the wages they were
11 entitled to under the Code.
- 12 57. During their employment, Plaintiff and all other aggrieved employees were and are
13 denied proper wages due, in part, to Defendant's uniform policies and procedures of
14 editing time records resulting in an underpayment to employees.
- 15 58. As a direct result of Defendant's failure to comply with the foregoing provisions of the
16 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
17 amount to be proven at trial.
- 18 59. As a result of Defendant's willful failure to pay wages, in addition to such other damages
19 and penalties as may properly be recovered herein, Plaintiff and all other aggrieved
20 employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys'
21 fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.
- 22 60. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
23 behalf of himself and all other aggrieved employees by and through Labor Code §
24 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may
25 recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in
26 the below Prayer For Relief.
- 27 61. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
28 Defendant pursuant to Labor Code § 2699(a) for each of these employees.

62. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SIXTH CAUSE OF ACTION

**Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 *et seq.*
Representative Action**

(By Plaintiff Representative against Defendant and DOES 1 through 10)

63. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

64. Defendant willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendant's willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

65. Defendant failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that Defendant failed to provide proper compensation for all hours worked, and failed to pay meal and/or rest period penalties.

66. As a direct result of Defendant's failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

67. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

68. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

69. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of all other aggrieved employees, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 5 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: December 12, 2023

GRUENBERG LAW



JOSHUA D. GRUENBERG, ESQ.

KATHERINE D. KREBS, ESQ.

Attorneys for Plaintiff

**ANDREW JAMES MILLER in an individual
and representative capacity, and on behalf of
other members of the general public similarly
situated**

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EXHIBIT 1

(1) PLAINTIFF’S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



October 4, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Matteo Mendenhall v. Norton Lilly International, Inc.

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Norton Lilly International, Inc. (hereinafter “Norton”), in the above-referenced matter.

This “written notice” is filed on behalf of Matteo Mendenhall (formerly known as Tatyana Cleopatra Mendenhall) and all current and former non-exempt employees employed by Norton. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Norton are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-204, 223, 226, 226.7, 510, 512, 1194, 1197, as well as IWC Wage Order 4, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11040 et seq.

Facts and theories supporting the allegations: Our client, Matteo Mendenhall, worked as a non-exempt employee employed by Norton Lilly International, Inc. from approximately August 16, 2021 until approximately July 27, 2021. Mr. Mendenhall was a Bording Agent for Norton.

Throughout the term of Mr. Mendenhall’s employment, Norton required Mr. Mendenhall and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Norton failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 223, 1194, 1197, 510, IWC Wage Order 4, and any other applicable wage orders. This illegal action is due, in part, to Norton’s policies and practices of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control

of the employer. For instance, Norton would instruct Mr. Mendenhall to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Moreover, Norton would often require Mr. Mendenhall to work extended hours (beyond his scheduled hours) without compensation.

Additionally, among other issues, Norton had notice of Mr. Mendenhall, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Period, but failed to provide any compensation for this work time.

Finally, Mr. Mendenhall, and other non-exempt employees, worked Overtime, Norton failed to properly calculate the legal Overtime Rate of Pay (or pay Overtime Pay, at all), as Norton ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

Norton failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 4, or any other applicable wage orders. For example, Norton does not possess a legal Meal Period policy and makes no attempt to ensure its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely or be provided a short or untimely Meal Period. Over the course of his employment, Mr. Mendenhall was instructed on numerous occasions to remain available during his Meal Periods.

Norton would pressure its employees to either skip or cut short a Meal Period as employees were expected to respond to supervisors and vendors at all times. On the rare occasions when employees *were* paid Meal Period penalties (i.e. California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73.) To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Norton failed to pay Meal Period Premiums at the proper rate, as Norton fails to either (1) pay a full hour’s worth of pay, or (2) properly calculate the Regular Rate of Pay for purposes of determining the premium rate owed. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.)

Finally, Norton illegally retained control over its employees during Meal Periods. For example, Norton required its employees to remain “on call” (i.e. monitor their telephones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

Norton failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 4, and any other applicable wage orders. For example, Norton does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Norton makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Norton would pressure its employees to either skip or cut short a Rest Period as employees were expected to respond to supervisors and vendors at all times. Norton has never provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Norton would provide a Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

Finally, Norton illegally retained control over its employees during Rest Periods. For example, Norton required its employees to remain “On Call” (i.e. monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

Norton violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Norton **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

Norton violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Additionally, Mr. mendenhall and other employees were not compensated for all hours worked (due in part to Norton’s requirement that employees list only *scheduled* work times, not actual work times).

Norton violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Norton **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and *lesser*) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties

when due. Further, on the rare occasions in which Norton would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.

Norton violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Mendenhall, and the other employees, were not compensated for all hours worked (due in part to Norton requiring employees to list only *Scheduled* work time, not actual work time). Therefore, Norton failed to provide a showing of the “total hours worked” by its employees pursuant to section 226(a)(2).

Willful Failure to Provide All Compensation

Norton failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-204, due in part, to the fact that Norton failed to provide proper compensation for all hours worked, and failed to pay full Meal and Rest Period penalties, as discussed above. Mr. Mendenhall ceased employment with Norton in or around July 2023 and did not receive all wages due and owed to him.

To confirm, Norton Lilly International, Inc. is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Katherine D. Krebs

Cc: Via Certified U.S. Mail

1505 Corporation

C T CORPORATION SYSTEM

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