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Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Proliant Group, Inc.
1100 W. Town and Country Rd., Suite 1250
Orange, CA 92868

Proliant Services, Inc.
1370 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Angela Alvarez
Employers: Proliant Group, Inc.; Proliant Services, Inc.

Dear Sir or Madam:

Claimant Angela Alvarez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent her, and all other aggrieved employees, for wage and hour claims against her former employers, Proliant Group, Inc. and Proliant Services, Inc. (collectively hereafter “Employer”).

Employer provides security services to locations throughout Southern California. Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as an hourly, non-exempt employee until December 31, 2022, earning minimum wage.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, IWC Wage Orders)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below:

Rounding Time Entries

Employer rounds timecard entries, as evidenced by daily time sheets and payroll register reports. Claimant explains that she was required to clock in by taking a photo of a clock and send it to Employer at the beginning and end of her shift. The managers then recorded the time, changing it so that it did not reflect the exact time reflected on the clock.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Underpaid Overtime – Cash Payments

Employers did not pay all overtime and double time at the lawful rate of pay, and sometimes paid overtime and double time to employees in cash at a rate that was lower than their base rates. Employer would also attempt to pay Claimant and employees under different names when their hours extended into overtime and double time.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees frequently missed meal breaks and when they were provided, they were often interrupted with work duties resulting in underpaid hours worked.

As a result of the above unlawful policies and procedures, Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Additionally, Employer sometimes paid overtime wages in cash at a rate of pay that was lower than the required 1.5x.

Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Include All Earnings in Regular Rate of Pay to

Calculate Overtime and Penalty Wages

(Cal. Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*)

Pursuant to Labor Code §200(a) "'Wages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

Employer paid additional wages including nondiscretionary bonuses and additional wages including gift cards but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime, and meal and rest period premiums.

It is well established that these additional earnings increase the employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime, sick pay, or penalty pay rates to incorporate the additional pay, and this failure is reflected in Claimant and aggrieved employees' paystubs. Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation

of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§201.3, 204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer often paid wages late as shown on payroll register reports. Employer often gave employees paychecks 3-4 days later than the checks were dated and due.

Employer further failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant reports that she and her coworkers never received first or second rest periods despite consistently working shifts over 6 hours. Employees were never allowed to leave the worksite and oftentimes the worksite had no bathroom.

Rest periods were not provided or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an 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." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees experienced frequent meal period violations. Claimant explains that Employer did not provide first or second meal breaks despite sometimes working up to 12-24 hours in a day. Claimant has worked three 8-hour shifts in a row without a meal break. Additionally, Employer did not provide break rooms and sometimes worksites had no bathroom. Employees were unable to leave the premises at any time, including for a meal break. Employer would sometimes falsify time records to record a meal break when none was actually taken.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2698 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to incur numerous expenses but were never reimbursed.

Employer required Claimant and other employees to use their personal cell phones for work purposes, including communication and documentation of work. Employees used their phones

inside and outside working hours to communicate and clock in and out with pictures of the worksite.

Employer also required employees to purchase their own security guard uniforms and pay for Employer's patch to be attached to the uniforms they purchased with their own funds. Claimant estimates that between her uniform, baton, handcuffs, and jacket, she spent approximately \$1200-\$1300 and this does not include the cost of attaching the logos to the uniform. Employees were required by Employer to wear protective gear which is a security belt, baton, handcuffs, and mace yet never reimbursed employees for this cost. Employees had to pay to maintain their uniform at their own expense.

Employer never reimbursed employees for any of the above expenses. Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation and rest break penalty wages, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Day of Rest Violations

(Labor Code §§551, 552, 558, 2698 *et seq.*)

Cal. Lab. Code §§551 and 552 require that employers provide employees with 'one day's rest in seven.' The California Supreme Court recently confirmed that "[a] day of rest is guaranteed for each workweek." (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1078.) However, Claimant and aggrieved employees were frequently scheduled to work and did work seven days in a workweek. Claimant and other employees were frequently scheduled to work extended periods without breaks. For example, from 9/8/22 – 9/24/22 Claimant worked 17 consecutive days. Claimant further observed her coworkers similarly being denied one day's rest in seven. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Reporting Time Pay

(Cal Labor Code § 1198, IWC Wage Order)

Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled to reporting time pay if that employee is required to report to work and does report but is not put to work or is furnished less than half of said employee's usual or schedule workday. The amount of reporting time that must be paid "is 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..." *Id.*

The reporting time provision of the Applicable Wage Orders were meant to safeguard against unpredictable work schedules that understandably take a toll on affected employees. Without the security of definite work schedules, employees are forced to make childcare arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience adverse financial effects, and deal with the stress and strain on their family life. Claimant explains that on occasions when she and her coworkers reported to work for under two hours, they were not paid reporting time pay.

Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2698 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

Employer did not allow employees to record all hours worked, and would pay some overtime in cash instead of at the lawful rate. Additionally, pay registers also evidence overlapping pay periods resulting in inaccurate records and wage statements.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the correct total hours worked, rates of pay, as well as the amount of penalty wages to which they are entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Unlawful Agreements

(Cal. Labor Code § 432.5, 925)

Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment. For example, Employer required employees to agree to a non-compete clause which placed unlawful conditions and restraints on employment both during and up to two years after employment with Employer. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant