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THE LAW OFFICES OF

**Young Wooldridge, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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**SUPERIOR COURT OF CALIFORNIA, KERN COUNTY**

**METROPOLITAN DIVISION, CIVIL UNLIMITED**

JOSEPH PAYNE, an individual, and on behalf  
of himself and all others similarly situated,

Plaintiff,

vs.

PROS, INCORPORATED, a California  
Corporation; and Does 1 through 50,

Defendants.

Case No. BCV- 1600356

**DEFENDANT PROS, INC'S  
ANSWER TO PLAINTIFF'S  
COMPLAINT FOR DAMAGES FOR:**

**CLASS ACTION**

- (1) Failure to Pay Overtime Wages in Violation of Labor Code §510**
- (2) Failure to Provide All Mandated Meal Periods or Additional Wages In Lieu Thereof;**
- (3) Failure To Provide All Mandated Rest Periods Or Additional Wages in Lieu Thereof;**
- (4) Failure To Issue Accurate Wage Statements in Violation of Labor Code §226;**
- (5) Failure to Timely Pay Wages Due At Termination In Violation of Labor Code §§201, 202, &203;**
- (6) Unfair Competition (Bus. & Prof. Code § 17200); and**

**CLAIMS UNDER LABOR CODE  
SECTION 2698 ET SEQ.**

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- (7) Civil Penalties for Failure to Pay Overtime;
- (8) Civil Penalties for Failure to Provide Meal Periods;
- (9) Civil Penalties for Failure to Issue Itemized Wage Statements
- (10) Civil Penalties for Failure to Issue Itemized Wage Statements;
- (11) Civil Penalties for Failure to Pay Wages Due and Payable Twice Each Calendar Month;
- (12) Civil Penalties for Failure to Pay Wages Due Upon Demand;
- (13) Civil Penalties for Failure to Issue Notice of Pay; and
- (14) Civil Penalties Failure to Pay Wages Due Upon Termination

**AND REQUEST FOR JURY TRIAL**

COMES NOW, Defendant PROS, INC. (hereinafter "Defendant") files an Answer to the Complaint ("Complaint") filed by plaintiff, JOSEPH PAYNE, an individual and on behalf of himself and all others similarly situated ("Plaintiffs"), by virtue of the provisions of Section 431.30 of the Code of Civil Procedure, and generally and specifically denies each and every allegation of the Complaint and further denies that Plaintiffs, or any other similarly situated, has been damaged in the amounts alleged, or in any amount at all, by reason of any act or omission on the part of Defendant, or that Plaintiffs, or any member of the putative class, is entitled to recover any relief of any kind whatsoever against Defendant.

WHEREFORE, Defendant prays for judgment against Plaintiffs as set forth below.

**AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to the Complaint and each purported cause of action alleged therein, Defendant alleges as follows:

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**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State Facts Sufficient to Constitute a Cause of Action)**

1. Plaintiffs' Complaint and each purported cause of action alleged therein fails to state facts sufficient to constitute a cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

**(Failure to State Facts Sufficient to Constitute a Class Action)**

2. Plaintiffs' Complaint and each purported cause of action alleged therein fails to state facts sufficient to constitute a class action against Defendant because, among other reasons: (1) the class cannot be ascertained; (2) Plaintiffs lack the capacity to sue as a representative of the purported class; (3) Plaintiffs cannot establish commonality of claims; (4) Plaintiffs cannot establish typicality of claims; and (5) the individualized nature of Plaintiffs' claims makes class treatment inappropriate.

**THIRD AFFIRMATIVE DEFENSE**

**(Statutes of Limitation)**

3. Plaintiffs' Complaint and each purported cause of action alleged therein is barred, in whole or in part, by the applicable statutes of limitation, including but not limited to Sections 339 and 340 of the Code of Civil Procedure, Section 17208 of the Business & Professions Code and Section 203 of the California Labor Code.

**FOURTH AFFIRMATIVE DEFENSE**

**(Consent)**

4. As for a separate, and distinct affirmative defense to Plaintiffs' Complaint on file herein, and each and every cause of action thereof, Defendant alleges that Plaintiffs consented to all allegations alleged in said Complaint.

**FIFTH AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Administrative Remedies)**

5. Plaintiffs' Complaint and each purported cause of action alleged therein are barred, even whole or in part, by Plaintiffs' failure to exhaust all required administrative remedies.



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**SIXTH AFFIRMATIVE DEFENSE**

**(Standing)**

6. Plaintiffs lack standing to recover on behalf of the purported class under each purported cause of action alleged in the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

7. Plaintiffs' Complaint and each purported cause of action alleged therein are barred by the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

**(California Labor Code Section 2856)**

8. Plaintiffs' Complaint and each purported cause of action alleged therein are barred by Plaintiffs' failure to comply with its obligations pursuant to California Labor Code Section 2856.

**NINTH AFFIRMATIVE DEFENSE**

**(California Labor Code Section 2857)**

9. Plaintiffs' Complaint and each purported cause of action alleged therein are barred by Plaintiffs' failure to comply with his obligations pursuant to California Labor Code Section 2857.

**TENTH AFFIRMATIVE DEFENSE**

**(Conduct of Others)**

10. Plaintiffs' loss or damages, if any, were caused solely by the negligent, reckless or intentional conduct of persons or entities other than Defendant, for whom Defendant cannot be held vicariously liable or legally responsible, and whose conduct was not known to, or ratified by Defendant. Accordingly, Plaintiffs' loss or damages, if any, are barred or diminished to the extent they are attributable to such conduct.

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**ELEVENTH AFFIRMATIVE DEFENSE**

**(Conduct of Plaintiff)**

11. Plaintiffs' loss or damages, if any, were caused by their own negligence, fault, reckless or improper conduct and their failure to conduct themselves in a manner ordinarily expected of a reasonable prudent employee in their position performing their job in a satisfactory manner. Accordingly, Plaintiffs' loss or damages, if any, are barred or diminished to the extent they are attributable to Plaintiffs' own conduct.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Laches)**

12. Plaintiffs' delay in reporting any alleged misconduct by Defendant, its agents or employees and Plaintiffs' delay in filing and serving the Complaint has prejudiced Defendant's ability to question witnesses and defend the case. Accordingly, the Complaint and all purported causes of action alleged therein are barred by the doctrine of laches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate or Avoid Damages)**

13. Plaintiffs' has failed to mitigate or avoid their alleged damages. Plaintiffs' recovery, if any, is therefore barred or reduced by such amounts as could and should have been mitigated or avoided.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

14. Plaintiffs are estopped based on their own acts or omissions from asserting any claim for damages against Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

15. Plaintiffs' Complaint and each purported cause of action alleged therein are barred, in whole or in part, by the doctrine of unclean hands.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Preemption)**

16. Plaintiffs' Complaint and each purported cause of action alleged therein are preempted by federal law under the Fair Labor and Standards Act and its accompanying regulations.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Business Justification/Good Cause)**

17. Plaintiffs' Complaint and each purported cause of action therein are barred because any actions taken by Defendant regarding Plaintiffs' employment were a just and proper exercise of management discretion undertaken for a fair and honest reason regulated by good faith under the circumstances then existing.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Superseding and Supervening Acts)**

18. Plaintiffs' damages, if any, were proximately caused by supervening and superseding acts of the Plaintiffs or other parties.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Causation)**

19. Defendant alleges that any act or omission on its part was not the proximate cause of the damages alleged in the complaint and each cause of action alleged therein because the acts and omissions of others with the actual and proximate cause of the damages, if any, suffered by Plaintiffs.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Lack of Specificity)**

20. Defendant alleges that the Complaint and each cause of action alleged therein are ambiguous, uncertain, and unintelligible.



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**TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**(No Penalties or Attorney's Fees Under Business and Professions Code Sections 17200 et seq)**

21. Plaintiffs' claims for penalties and attorney's fees under the Sixth Cause of Action is barred because such recovery is not available under Business & Professions Code Section 17200 et seq.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**  
**(Justification, Privilege and Excuse)**

22. As for a separate, and distinct affirmative defense to Plaintiffs' complaint on file herein, and each and every cause of action thereof, Defendant alleges that any actions taken by Defendant was done to protect its legitimate interests, was justified, privileged and excused, was done in good faith, necessary under the circumstances and did not proximately cause any loss to the Plaintiffs.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**  
**(Lack of Knowledge)**

23. As for a separate, and distinct affirmative defense to Plaintiffs' complaint on file herein, and each and every cause of action thereof, Defendant alleges that it had no knowledge of the alleged wrongdoings claimed by Plaintiffs, and Plaintiffs are therefore barred from recovery.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
**(Unreasonable Behavior)**

24. Plaintiffs' complaint and each purported cause of action alleged therein are barred because Plaintiffs unreasonably failed to take advantage of any preventative opportunities provided by the Defendant to avoid harm.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
**(Reservation of All Defenses)**

25. Plaintiffs' Complaint and each purported cause of action alleged therein is pled in conclusory allegations and therefore, Defendant cannot now fully anticipate all defenses and hereby reserves the right to assert additional applicable defenses as may become apparent at subsequent stages of this action.

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WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs takes nothing by way of their Complaint;
2. That the court dismiss, with prejudice, Plaintiffs' Complaint and each purported cause of action alleged therein;
3. That judgment be entered against Plaintiffs and in favor of Defendant;
4. That the Court award the Defendant costs of suit and attorneys' fees; and
5. That the Court grant such further relief as may be appropriate.

Dated: April 19, 2016

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 

JERRY W. PEARSON, Esq., Attorney for  
Defendant PROS, INC.



**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF KERN**

I, LeAnn Banducci, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On April 20, 2016, I caused to be served the below listed document(s) entitled as: DEFENDANT PROS, INC'S ANSWER TO PLAINTIFF'S COMPLAINT on the interested parties in this action, as listed below:

Jared Hague, Esq.  
Sutton Hague Law  
6715 N. Palm Avenue #216  
Fresno, CA 93704

Zachary Crosner, Esq.  
Crosner Legal  
433 N. Camden Dr #400  
Beverly Hills, CA 90210

(BY MAIL) on April 20, 2016, at Bakersfield, California, pursuant to C.C.P. Section 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of business.

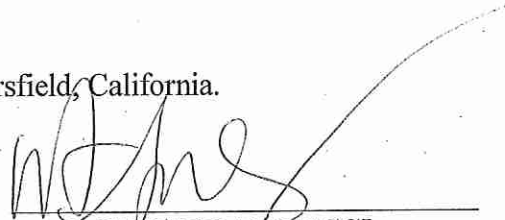
(BY PERSONAL SERVICE) on the date indicated below, pursuant to C.C.P. Section 1011, I caused such document to be delivered by hand to the representative of the office of the addressee, above.

(BY OVERNIGHT COURIER) on the date indicated below, pursuant to C.C.P. Section 1013(c)(d), I caused such envelope with delivery fees fully prepaid to be sent by

(BY ELECTRONIC SERVICE) on the date indicated below, pursuant to C.C.P. Section 1010.6; 1013(g), I caused such document to be electronically delivered to the recipient via electronic service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 20, 2016, at Bakersfield, California.

  
LEANN BANDUCCI