

1 THE LAW OFFICES OF

2 **Young Wooldridge, LLP**

3 A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

4 Westchester Corporate Plaza

1800 30th Street, Fourth Floor Bakersfield, CA 93301-5298

Telephone 661-327-9661 Facsimile 661-327-1087

<http://www.youngwooldridge.com>

5 JERRY W. PEARSON, ESQ. SBN 179773

6 JEFFERSON X. EBERHARDT, ESQ. SBN 298466

7 Attorneys for Defendant PROS, INC.

8
9 **SUPERIOR COURT OF CALIFORNIA, KERN COUNTY**

10 **METROPOLITAN DIVISION, CIVIL UNLIMITED**

11
12 JOSEPH PAYNE, an individual, and on behalf
of himself and all others similarly situated,

13
14 Plaintiff,

15 vs.

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

18
19 Defendants.

Case No. BCV- 16 – 100356 DRL

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

CLASS ACTION

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

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

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AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

1. Plaintiffs' Amended 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' Amended 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' Amended 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' Amended Complaint on file herein, and each and every cause of action thereof, Defendant alleges that Plaintiffs consented to all allegations alleged in said Amended Complaint.

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FIFTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

5. Plaintiffs' Amended 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.

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 Amended Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

7. Plaintiffs' Amended 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' Amended 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' Amended 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

1 Defendant. Accordingly, Plaintiffs' loss or damages, if any, are barred or diminished to the
2 extent they are attributable to such conduct.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(Conduct of Plaintiff)**

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

10 **TWELFTH AFFIRMATIVE DEFENSE**

11 **(Laches)**

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

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

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

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 **(Estoppel)**

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

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 **(Unclean Hands)**

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

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SIXTEENTH AFFIRMATIVE DEFENSE

(Preemption)

16. Plaintiffs' Amended 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' Amended 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 Amended 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 Amended 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' Amended 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' Amended 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' Amended 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' Amended Complaint and each purported cause of action alleged therein is pled in conclusory allegations and therefore, Defendant cannot now fully anticipate all

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defenses and hereby reserves the right to assert additional applicable defenses as may become apparent at subsequent stages of this action.

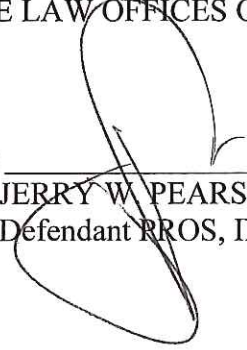
WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs takes nothing by way of their Amended Complaint;
2. That the court dismiss, with prejudice, Plaintiffs' Amended 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: December 26, 2017

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 December 26, 2017, I caused to be served the below listed document(s) entitled as: DEFENDANT PROS, INC'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT on the interested parties in this action, as listed below:

Jared Hague, Esq.
Sutton Hague Law
5200 N. Palm Avenue Suite 203
Fresno, CA 93704

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

(BY MAIL) on December 26, 2017, 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.

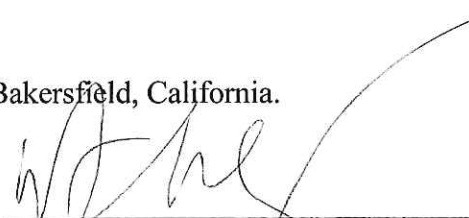
(BY PERSONAL SERVICE) on the date indicated below, pursuant to C.C.P. Section 1011, I caused such document to be delivered by hand to the representative of the office of the addressee, above.

(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 December 26, 2017, at Bakersfield, California.



LEANN BANDUCCI

RECEIVED
DEC 29 2017
BY: