

FEB 22 2016

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9 Attorneys for Plaintiff: Joseph Payne, an individual

**NOTICE OF ASSIGNMENT AND  
CASE MANAGEMENT CONFERENCE :**

Assigned to LOBNA H. BRUMFIELD for all purposes.

AUG 22 2016

Hearing Date: \_\_\_\_\_

Time: 8:15 AM

Department: 117

See CRC Rule 3.720 Et. Seq.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF KERN

**FILED BY FAX**

\* \* \*

13 JOSEPH PAYNE, an individual,  
14 Plaintiff,  
15 vs.

16 PROS, INCORPORATED, A California  
17 Corporation; and Does 1 through 50, inclusive,  
18 Defendants.  
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Case No BCV-16100354LHB

**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 Provide Rest Periods;**
- (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 for Failure to Pay Wages Due Upon Termination**

**JURY TRIAL DEMANDED**

Plaintiff JOSEPH PAYNE (“PLAINTIFF”) alleges against Defendant PROS, INCORPORATED, a California Corporation (“PROS”) and Does 1 through 50, inclusive as follows:

**GENERAL ALLEGATIONS**

**A. THE PARTIES**

1. PLAINTIFF is an individual who, at all times relevant herein, was residing in Kern County, California and is a former employee of PROS.

2. PLAINTIFF is informed and believes, and thereon alleges, that PROS is now, and at all times relevant to this Complaint, was a corporation, with its main offices in Bakersfield, California.

3. PLAINTIFF is unaware of the true names and/or capacities, whether individual, partnership, limited partnership, corporate, or otherwise, of the Defendants sued herein as DOES 1 through 50, inclusive, and each of them, and therefore sues such Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. PLAINTIFF is informed and believes, and thereon allege, that each of the Defendants sued herein, including DOES 1 through 50, inclusive, is and was proximately the cause of or contributed to cause the damages hereinafter

1 alleged, or in some other manner is responsible in whole or in part for the damages which have  
2 been, are being, and will be suffered by PLAINTIFF as alleged herein. When the true names  
3 and/or capacities of the Defendants are ascertained, PLAINTIFF will seek leave to amend this  
4 Complaint to insert the same herein with appropriate charging allegations.

5 4. PLAINTIFF is informed and believes and thereon alleges that PROS and each of  
6 the DOE Defendants, were acting at all relevant times herein, as the agent, ostensible agent,  
7 joint-venturer, joint-employer, servant, employee, co-conspirator and/or associate of each of the  
8 other Defendants, and were at all times acting within the course and scope of said agency,  
9 servitude, employment, joint-venture, association, and/or conspiracy and with the permission and  
10 consent of the other Defendants.

11 5. PLAINTIFF is informed and believes, and thereon alleges that, at all times  
12 relevant to this Complaint, PROS and DOE Defendants were and/or are the joint employers of  
13 PLAINTIFF and/or the class upon whose behalf PLAINTIFF brings these class action claims, in  
14 that Defendants exercised sufficient control over PLAINTIFF's wages, hours and working  
15 conditions, and/or suffered or permitted PLAINTIFFS to work, so as to be considered the joint  
16 employers of PLAINTIFF.

17 6. PLAINTIFF is informed and believes, and thereon alleges, that the above  
18 Defendants and/or each of its managing agents and supervisors aided, abetted, condoned,  
19 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

20 7. PLAINTIFF is informed and believes, and thereon alleges that, at all times  
21 relevant to this Complaint, the various acts and representations of Defendants, including each of  
22 the DOE Defendants, and each agent or representative of Defendants, were the result of, and in  
23 furtherance of, an agreement whereby the Defendants and each agent or representative of the  
24 Defendants knowingly conspired to engage in the acts described herein, including, but not  
25 limited to, Defendants' violation of the California Labor Code and/or any applicable Industrial  
26 Welfare Commission Wage Order(s).

27 8. PLAINTIFF brings Causes of Action One through Six on behalf of himself and  
28 all other similarly situated current and former employees of PROS as a class action pursuant to

1 California Code of Civil Procedure section 382. PLAINTIFF seeks to represent a class and/or  
2 subclasses composed of and defined as follows:

3 Class 1 (“Overtime Class”)

4 All current and former non-exempt California employees of PROS at any time  
5 within at least four (4) years preceding the filing of this action who worked more  
6 than eight hours in one workday or more than 40 hours in a workweek or seven  
7 workdays in one workweek.

8 Class 2 (“First Meal Period Class”)

9 All current and former non-exempt employees of PROS in California who worked  
10 more than five (5) hours in a work day at any time within at least four (4) years  
11 preceding the filing of this action.

12 Class 3 (“Second Meal Period Class”)

13 All current and former non-exempt employees of PROS in California who worked  
14 more than ten (10) hours in a work day at any time within at least four (4) years  
15 preceding the filing of this action.

16 Class 4 (“Rest Period Class”)

17 All current and former non-exempt employees of PROS in California who worked  
18 three and one-half (3 1/2) or more hours in a work day at any time within at least  
19 four (4) years preceding the filing of this action.

20 Class 5 (“Wage Statement Class”)

21 All current and former employees of PROS in California who are members of any  
22 of Classes 1 through 4 and who received a wage statement from PROS at any  
23 time within at least one (1) year preceding the filing of this action.

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27 Class 6 (“Waiting Time Class”)

1 All former employees of PROS in California who are members of any of Classes  
2 1 through 4 at any time within at least three (3) years preceding the filing of this  
3 Action.

4 9. These individuals shall hereinafter be referred to collectively as the “Class  
5 Members.”

6 10. PLAINTIFF reserves the right under California Rules of Court Rule 3.765(b) to  
7 amend or modify the class description with greater specificity or further division into subclasses  
8 or limitation to particular issues.

9 **B. THE ACTION**

10 11. This action is brought, in part, to remedy the following:

11 (a) PROS’ failure to pay PLAINTIFF and the Class Members the overtime  
12 and/or double time wages to which they were entitled for each workweek  
13 during which such employees worked more than eight (8) hours in a  
14 workday, more than forty (40) hours in a workweek and/or seven days  
15 during a workweek, as required by California Labor Code section 510 and  
16 Industrial Welfare Commission Wage Order 16 and/or any other  
17 applicable Wage Order;

18 (b) PROS’ failure to provide PLAINTIFF and the Class Members with a  
19 reasonable opportunity to take a net thirty-minute, duty-free meal period  
20 for each workday during which such employees worked more than five  
21 hours, as mandated by California law, or to pay such employees one (1)  
22 hour of additional wages at the employees’ regular rate of compensation  
23 for each workday for which the duty-free meal period was and/or is not  
24 provided, as required by California Labor Code sections 226.7 and 512  
25 and Industrial Welfare Commission Wage Order 16 and/or any other  
26 applicable Wage Order;

27 (c) PROS’ failure to provide PLAINTIFF and the Class Members with a  
28 reasonable opportunity to take a second net thirty-minute, duty-free meal

1 period for each workday during which such employees worked more than  
2 ten hours, as mandated by California law, or to pay such employees one  
3 (1) hour of additional wages at the employees' regular rate of  
4 compensation for each workday for which the duty-free meal period was  
5 and/or is not provided, as required by California Labor Code sections  
6 226.7 and 512 and Industrial Welfare Commission Wage Order 16 and/or  
7 any other applicable Wage Order;

8 (d) PROS' failure to provide PLAINTIFF and the Class Members with a  
9 reasonable opportunity to take a paid net ten-minute, duty-free rest period  
10 per four hours worked or major fraction thereof, as mandated by  
11 California law, or to pay such employees one (1) hour of additional wages  
12 at the employees' regular rate of compensation for each workday for  
13 which the duty-free rest period was and/or is not provided, as required by  
14 Industrial Welfare Commission Wage Order 16 and/or any other  
15 applicable Wage Order;

16 (e) PROS' failure to pay PLAINTIFF and the Class Members all wages due  
17 and owing upon the termination of employment with DEFENDANTS;

18 (f) PROS' failure to issue accurate, itemized wage statements to PLAINTIFF  
19 and the Class Members in accordance with California law; and

20 (g) PROS' engagement in unfair business practices against PLAINTIFF and  
21 the Class Members.

22 **C. VENUE**

23 12. Venue is proper in this county because, among other reasons, certain of the  
24 violations of the California Labor Code and/or Industrial Welfare Commission Wage Order(s)  
25 were committed in Kern County and PROS conducts business and has facilities in Kern County.  
26 The unlawful acts alleged have a direct effect on PLAINTIFF and other Class Members.  
27 PLAINTIFF and the Class Members will continue to suffer the same harm as PLAINTIFF as a  
28 result of PROS' wrongful conduct unless the relief requested herein is granted. This case is not

1 subject to original jurisdiction in federal court pursuant to the Class Action Fairness Act of 2005  
2 (“CAFA”) because, as of the date of the filing of this Complaint, PLAINTIFF is informed and  
3 believes, and thereon alleges, that more than two thirds (2/3) of the Class Members in the  
4 aggregate are citizens of the State of California, where this case is being originally filed, at least  
5 one of the named Defendants is a citizen of California, significant relief is sought against PROS  
6 by the Class Members, PROS’ alleged conduct forms a significant basis for the claims asserted  
7 by the proposed Class Members, and the principal injuries resulting from the alleged conduct or  
8 related conduct of PROS were incurred in California. PLAINTIFF is informed and believes, and  
9 thereon alleges, that during the three-year period preceding the filing of this class action, no  
10 other class action has been filed asserting the same or similar factual allegations against PROS  
11 on behalf of the same or similar Class Members.

12 **D. CLASS ACTION ALLEGATIONS**

13 13. Causes of Action One through Six have been brought and properly may be  
14 maintained as a class action under the provisions of section 382 of the California Code of Civil  
15 Procedure because: a) there is a well-defined community of interest in the litigation; and b) the  
16 proposed class is easily ascertainable.

17 **Numerosity**

18 14. The potential members of the class as defined are so numerous that joinder of all  
19 members of the class is impracticable. PLAINTIFF is informed and believes and thereon alleges  
20 that at all times mentioned herein PLAINTIFF and the Class Members are or have been affected  
21 by PROS’ and DOES 1-50’s unlawful practices as alleged herein.

22 15. Accounting for employee turnover during the relevant period covered by this  
23 action necessarily and substantially increases the number of employees covered by this action.  
24 PLAINTIFF is informed and believes and thereon alleges that PROS and DOES’ 1-50’s  
25 employment records would provide information as to the actual number and location of all Class  
26 Members. Joinder of all members of the proposed class is not practicable.

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1                   *Commonality*

2                   16.     There are questions of law and fact common to the class predominating over any  
3 questions affecting only individual Class Members.  These common questions of law and fact  
4 include, without limitation:

- 5                   a.     Whether PROS violated California Labor Code section 510 and/or Industrial  
6                   Welfare Commission Wage Order 16 and/or any other applicable Wage Order by  
7                   failing to pay PLAINTIFF and the Class Members the overtime and double time  
8                   wages to which they are entitled for hours worked in excess of eight (8) hours in  
9                   one workday, forty (40) hours in one workweek, and/or for hours worked on the  
10                  seventh workday of a workweek;
- 11                  b.     Whether PROS violated California Labor Code sections 226.7 and 512 and/or  
12                  Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage  
13                  Order by failing to provide PLAINTIFF and the Class Members with a thirty-  
14                  minute, duty-free meal period for each workday during which such employees  
15                  worked more than five hours, or by paying such employees one (1) hour of  
16                  additional wages at the employees’ regular rate of compensation;
- 17                  c.     Whether PROS violated California Labor Code sections 226.7 and 512 and/or  
18                  Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage  
19                  Order by failing to provide PLAINTIFF and the Class Members with a thirty-  
20                  minute, duty-free second meal period for each workday during which such  
21                  employees worked more than ten hours, or by paying such employees one (1)  
22                  hour of additional wages at the employees’ regular rate of compensation;
- 23                  d.     Whether PROS violated Industrial Welfare Commission Wage Order 16 and/or  
24                  any other applicable Wage Order by failing to permit PLAINTIFF and the Class  
25                  Members to take a paid net ten-minute, duty-free rest period per four hours  
26                  worked or major fraction thereof or to pay such employees one (1) hour of  
27                  additional wages at the employees’ regular rate of compensation for each  
28                  workday for which a rest period was and/or is not provided;



- 1 e. Whether PROS violated California Labor Code sections 201, 202 and 203 by  
2 failing to pay all wages due and owing at the time that any Class Member's  
3 employment with PROS and/or DOES 1-50 ended, whether voluntarily or  
4 involuntarily;
- 5 f. Whether PROS violated California Labor Code section 226 by failing to issue  
6 accurate, itemized wage statements to PLAINTIFF and the Class Members;
- 7 g. Whether PROS violated California Business and Professions Code section 17200  
8 *et seq.* and engaged in unlawful, unfair, and deceptive business practices by  
9 violating California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,  
10 1194, 1194.2, 1197, 2441, 2802, 2810.5 and/or Industrial Welfare Commission  
11 Wage Order 16 and/or any other applicable Wage Order and/or failing to: (1) pay  
12 minimum, regular, overtime, and/or double time wages to the Class Members; (2)  
13 permit the Class Members to take a net thirty-minute, duty-free meal period when  
14 they worked more than five (5) hours in a workday and/or pay such employees  
15 additional wages as required by California law; (3) permit the Class Members to  
16 take a net thirty-minute, duty-free second meal period when they worked more  
17 than 10 hours in a workday and/or pay such employees additional wages as  
18 required by California law; (4) permit the Class Members to take a paid net ten-  
19 minute, duty-free rest period per four hours worked or major fraction thereof  
20 and/or pay such employees additional wages as required by California law; (5)  
21 pay all owed wages at the time that any Class Member's employment with  
22 DEFENDANTS ended, whether voluntarily or involuntarily; (6) issue mandated,  
23 accurate, itemized wage statements; and
- 24 h. Whether PLAINTIFF and the Class Members are entitled to equitable relief  
25 pursuant to California Business and Professions Code section 17200 *et seq.*

26 **Typicality**

27 17. The claims of the named PLAINTIFF are typical of the claims of the class.

28 PLAINTIFF and all members of the class sustained injuries and damages arising out of, and

1 caused by, PROS' and DOES 1-50's common course of conduct in violation of California laws,  
2 regulations, and statutes as alleged herein.

3 **Adequacy of Representation**

4 18. PLAINTIFF will fairly and adequately represent and protect the interests of the  
5 members of the class. Counsel who represents PLAINTIFF is competent and experienced in  
6 litigating wage and hour class actions and California Business and Professions Code section  
7 17200 *et seq.* cases.

8 **Superiority of Class Action**

9 19. A class action is superior to other available means for the fair and efficient  
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable and  
11 questions of law and fact common to the class predominate over any questions affecting only  
12 individual members of the Class. Each member of the Class has been damaged and is entitled to  
13 recovery as a result of PROS' and DOES 1-50's unlawful policies and practices alleged in this  
14 Complaint.

15 20. Class action treatment will allow those similarly situated persons to litigate their  
16 claims in the manner that is most efficient and economical for the parties and the judicial system.  
17 PLAINTIFF is unaware of any difficulties likely to be encountered in the management of this  
18 action that would preclude its maintenance as a class action.

19 **BACKGROUND ALLEGATIONS**

20 21. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF was  
21 a non-exempt employee of PROS.

22 22. PLAINTIFF is informed and believes, and thereon alleges, that PROS is and was,  
23 at all relevant times herein, engaged in the business of testing and servicing oil wells and  
24 providing other associated services attendant to oilfield operations. PROS employed  
25 PLAINTIFF and other employees in conjunction with the provision of these services and  
26 facilities.

27 23. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
28 mentioned herein, PROS had statutory obligations to pay PLAINTIFF and all other similarly

1 situated Class Members at the rate of one-and-a-half times their regular rate of pay for all hours  
2 worked in excess of eight (8) in a workday, forty (40) in a workweek, and/or for the first eight  
3 (8) hours on the seventh day of work in any one workweek, and to pay PLAINTIFF and all other  
4 similarly situated Class Members at the rate of twice their regular rate of pay for all hours  
5 worked in excess of twelve (12) hours in a workday and for any work in excess of eight (8) hours  
6 on the seventh day of a workweek.

7 24. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
8 mentioned herein, PROS had statutory obligations to provide PLAINTIFF and all other similarly  
9 situated Class Members with a net thirty-minute, duty-free meal period during any workday  
10 during which such employees worked more than five hours and/or pay such employees  
11 additional wages.

12 25. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
13 mentioned herein, PROS had statutory obligations to provide PLAINTIFF and all other similarly  
14 situated Class Members with a net thirty-minute, duty-free second meal period during any  
15 workday during which such employees worked more than ten hours and/or pay such employees  
16 additional wages.

17 26. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
18 mentioned herein, PROS had statutory obligations to permit PLAINTIFF and all other similarly  
19 situated Class Members to take a paid net ten-minute, duty-free rest period per four hours  
20 worked or major fraction thereof and/or pay such employees additional wages.

21 27. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
22 mentioned herein, PROS had statutory obligations to timely pay all wages owed to PLAINTIFF  
23 and all other similarly situated Class Members at the time that PLAINTIFF's or any Class  
24 Member's employment with DEFENDANTS ended, whether voluntarily or involuntarily.

25 28. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
26 mentioned herein, PROS had statutory obligations to issue mandated, accurate, itemized wage  
27 statements to PLAINTIFF and all other similarly situated Class Members.

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1           29.     PLAINTIFF is informed and believes, and thereon alleges, that PROS failed to  
2 pay PLAINTIFF and the Class Members the overtime and double time wages to which they are  
3 entitled under Labor Code section 510.

4           30.     PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
5 and in violation of California law, failed to provide a net thirty-minute, duty-free meal period for  
6 employees who worked more than five hours in a workday and/or pay such employees additional  
7 wages.

8           31.     PLAINTIFF is informed and believes, and thereon alleges, that PROS, through its  
9 managing agents and supervisors, established and carried out policies that violated California  
10 Labor Code sections 226.7 and 512 and/or Industrial Welfare Commission Wage Order 16  
11 and/or any other applicable Wage Order in that PLAINTIFF and other similarly situated Class  
12 Members were not provided a net thirty-minute duty-free meal period for each workday during  
13 which such employees worked more than five hours, and were not paid one (1) hour of  
14 additional wages at the employees' regular rate of compensation for each workday for which the  
15 meal period was not provided.

16           32.     PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
17 and in violation of California law, failed to provide a net thirty-minute, duty-free second meal  
18 period for employees who worked more than ten hours in a workday and/or pay such employees  
19 additional wages.

20           33.     PLAINTIFF is informed and believes, and thereon alleges, that PROS, through its  
21 managing agents and supervisors, established and carried out policies that violated California  
22 Labor Code sections 226.7 and 512 and/or Industrial Welfare Commission Wage Order 16  
23 and/or any other applicable Wage Order in that PLAINTIFF and other similarly situated Class  
24 Members were not provided a second net thirty-minute duty-free meal period for each workday  
25 during which such employees worked more than ten hours, and were not paid one (1) hour of  
26 additional wages at the employees' regular rate of compensation for each workday for which the  
27 second meal period was not provided.

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1           34.     PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
2 and in violation of California law, failed to authorize and permit a paid net ten-minute, duty-free  
3 rest period for employees per four hours worked or major fraction thereof and/or pay such  
4 employees additional wages, all of which was done in blatant violation of California law.

5           35.     PLAINTIFF is informed and believes, and thereon alleges, that PROS, through its  
6 managing agents and supervisors, established and carried out policies that violated Industrial  
7 Welfare Commission Wage Order 16 and/or any other applicable Wage Order in that  
8 PLAINTIFF and other similarly situated Class Members were not provided a paid net ten-  
9 minute, duty-free rest period per four hours worked or major fraction thereof and were not paid  
10 one (1) hour of additional wages at the employees' regular rate of compensation for each  
11 workday for which the rest period was and/or is not provided.

12           36.     PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
13 and in violation of California law, failed to timely pay all wages owed when employment with  
14 PROS ended.

15           37.     PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
16 and in violation of California law, failed to issue mandated, accurate, itemized wage statements.

17           38.     As a result of the actions of PROS, PLAINTIFF and other similarly situated Class  
18 Members suffered damages, including lost pay, wages, and interest.

19           39.     PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF and  
20 other similarly situated Class Members did not secret or absent themselves from PROS nor did  
21 they refuse to accept the earned but unpaid wages from PROS. Accordingly, PROS is liable for  
22 waiting time penalties for the unpaid wages pursuant to Labor Code sections 201, 202, and 203  
23 and section 20 of the applicable Industrial Welfare Commission Order.

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**FIRST CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 510**

**(OVERTIME PAY)**

**(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES  
1 through 50)**

40. The allegations of each of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

41. California Labor Code section 510, subsection (a), provides as follows:

(a) Eight hours of labor constitutes a day's work. 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

42. PLAINTIFF is informed and believes, is informed and believes, and thereon alleges, that he and other Class Members systematically worked for periods of more than eight hours in a workday, forty hours in a workweek, and/or worked on the seventh day of a workweek without being compensated at the rate of one-and-a-half times their regular rate of pay, or alternatively for periods of more than twelve hours in a workday and/or more than eight hours on the seventh day of a workweek without being compensated at the rate of twice their regular rate of pay.

43. Accordingly, PROS violated California Labor Code section 510 by failing to pay PLAINTIFF and the Class Members at the appropriate rate of pay on the basis of the number of hours worked each workweek, and/or on the basis of work performed on the seventh day of a workweek. By its failure to properly compensate PLAINTIFF and the Class Members at the correct rate of pay, PROS is liable for the difference between wages paid to PLAINTIFF and the

1 Class Members and the wages actually owed had PROS compensated such employees at the  
2 correct rate of pay.

3 44. As a result of the unlawful acts of PROS, PLAINTIFF and Class Members have  
4 been deprived of additional wages in amounts to be proven at trial and are entitled to recover  
5 such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit in addition to  
6 any other relief requested below

7 **SECOND CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

9 **(MEAL PERIODS)**

10 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**  
11 **1 through 50)**

12 45. The allegations of each of the foregoing paragraphs are re-alleged and  
13 incorporated herein by this reference.

14 46. California Labor Code section 512, subsection (a), provides as follows:

15 (a) An employer may not employ an employee for a work period of  
16 more than five hours per day without providing the employee with  
17 a meal period of not less than 30 minutes, except that if the total  
18 work period per day of the employee is no more than six hours, the  
19 meal period may be waived by mutual consent of both the  
20 employer and employee. An employer may not employ an  
21 employee for a work period of more than 10 hours per day without  
22 providing the employee with a second meal period of not less than  
23 30 minutes, except that if the total hours worked is no more than  
24 12 hours, the second meal period may be waived by mutual  
25 consent of the employer and the employee only if the first meal  
26 period was not waived.

27 47. Similarly, section 10 of Industrial Welfare Commission Wage Order 16 provides  
28 as follows:

29 (A) No employer shall employ any person for a work period of  
30 more than five (5) hours without a meal period of not less than 30  
31 minutes, except that when a work period of not more than six (6)  
32 hours will complete the day's work the meal period may be waived  
33 by mutual consent of the employer and the employee.

34 (B) An employer may not employ an employee for a work  
35 period of more than ten (10) hours per day without providing the  
36 employee with a second meal period of not less than 30 minutes,

1 except that if the total hours worked is no more than 12 hours, the  
2 second meal period may be waived by mutual consent of the  
3 employer and the employee only if the first meal period was not  
4 waived.

48. California Labor Code section 226.7 provides, in pertinent part, as follows:

5 (a) No employer shall require any employee to work during  
6 any meal or rest period mandated by an applicable order of the  
7 Industrial Welfare Commission.

8 (b) If an employer fails to provide an employee a meal period  
9 or rest period in accordance with an applicable order of the  
10 Industrial Welfare Commission, the employer shall pay the  
11 employee one additional hour of pay at the employee's regular rate  
12 of compensation for each work day that the meal or rest period is  
13 not provided.

14 49. PLAINTIFF is informed and believes, and thereon alleges, that he and Class  
15 Members systematically worked periods of more than five hours in a workday without being  
16 provided a mandatory thirty-minute, duty-free meal period while in the employ of PROS.  
17 Specifically, PLAINTIFF is informed and believes, and thereon allege, that, at all times  
18 mentioned herein, PROS maintained company policies that did not provide its employees the  
19 opportunity to take a meal period during the workday, including workdays during which  
20 employees worked more than five hours and were engaged in field testing of any kind or work  
21 characterized by PROS as "over the well" work. PLAINTIFF is further informed and believes,  
22 and thereon alleges, that PROS, through its managing agents and supervisors, discouraged  
23 PLAINTIFF and the Class Members from taking meal periods and/or ordered or instructed  
24 PLAINTIFF and the Class Members to not take and/or work during such breaks and did not  
25 record the taking of meal periods on its time records. PLAINTIFF is further informed and  
26 believes, and thereon alleges, that PROS did not pay PLAINTIFF or any of the other affected  
27 Class Members an additional one (1)-hour's wage at the regular rate of pay for each meal period  
28 that was not provided as stated above.

50. Further, PLAINTIFF is informed and believes, and thereon alleges, that he and  
Class Members systematically worked periods of more than 10 hours in a workday without being  
provided a mandated thirty-minute, duty-free second meal period while in the employ of PROS.



1 Specifically, PLAINTIFF is informed and believes, and thereon allege, that, at all times  
2 mentioned herein, PROS maintained company policies that did not provide its employees the  
3 opportunity to take a second meal period during any given workday, including workdays during  
4 which employees worked more than ten hours. PLAINTIFF is further informed and believes,  
5 and thereon alleges, that PROS, through their managing agents and supervisors, discouraged  
6 PLAINTIFF and the Class Members from taking second meal periods and/or ordered or  
7 instructed PLAINTIFF and the Class Members to not take and/or work during such breaks.  
8 PLAINTIFF is further informed and believes, and thereon alleges, that PROS did not pay  
9 PLAINTIFF or any of the other affected Class Members an additional one (1)-hour's wage at the  
10 regular rate of pay for each second meal period that was not provided as stated above.

11 51. Accordingly, PROS violated California Labor Code sections 226.7 and 512 by  
12 failing to provide meal periods mandated by California Labor Code section 226.7 and Section 10  
13 of Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage Order to  
14 their employees who worked more than five hours in a workday. By their failure to provide a  
15 meal period for days on which non-exempt employees work(ed) in excess of five hours, and  
16 failing to pay one hour of additional wages in lieu of each meal period not provided, PROS  
17 violated California Labor Code sections 226.7 and 512 and Section 10 of Industrial Welfare  
18 Commission Wage Order 16 and/or any other applicable Wage Order. PROS is liable for one  
19 hour of additional wages at each of the affected Class Members' regular rate of compensation for  
20 each workday for which a meal period was not lawfully provided.

21 52. Further, PROS violated California Labor Code sections 226.7 and 512 by failing  
22 to provide a second meal period mandated by California Labor Code section 226.7 and section  
23 10 of Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage Order to  
24 their employees who worked more than ten hours in a workday. By their failure to provide a  
25 second meal period for days on which non-exempt employees work(ed) in excess of ten hours,  
26 and failing to pay one hour of additional wages in lieu of each meal period not provided, PROS  
27 violated California Labor Code sections 226.7 and 512 and section 10 of Industrial Welfare  
28 Commission Wage Order 16 and/or any other applicable Wage Order. PROS is liable for one

1 hour of additional wages at each of the affected Class Members' regular rate of compensation for  
2 each workday for which a meal period was not lawfully provided.

3 53. As a result of the unlawful acts of PROS, PLAINTIFF and Class Members have  
4 been deprived of additional wages in amounts to be proven at trial and are entitled to recover  
5 such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit in addition to  
6 any other relief requested below.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE §§ 226.7 AND INDUSTRIAL WELFARE**

9 **COMMISSION WAGE ORDER NO. 5**

10 **(REST PERIODS)**

11 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**  
12 **1 through 50)**

13 54. The allegations of each of the foregoing paragraphs are re-alleged and  
14 incorporated herein by this reference.

15 55. Section 11 of Industrial Welfare Commission Wage Order 16 provides, in  
16 pertinent part, as follows:

17  
18 (A) Every employer shall authorize and permit all employees to  
19 take rest periods, which insofar as practicable shall be in the  
20 middle of each work period. The authorized rest period time shall  
21 be based on the total hours worked daily at the rate of ten (10)  
22 minutes net rest time per four (4) hours or major fraction  
23 thereof....Authorized rest period time shall be counted as hours  
24 worked for which there shall be no deduction from wages.

25  
26 (B) If an employer fails to provide an employee a rest period in  
27 accordance with the applicable provisions of this order, the  
28 employer shall pay the employee one (1) hour of pay at the  
employee's regular rate of compensation for each workday that the  
rest period is not provided.

56. California Labor Code section 226.7 provides, in pertinent part, as follows:

(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.

1 (b) If an employer fails to provide an employee a meal period  
2 or rest period in accordance with an applicable order of the  
3 Industrial Welfare Commission, the employer shall pay the  
4 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.

5 57. PLAINTIFF is informed and believes, and thereon alleges, that he and Class  
6 Members systematically worked periods of more than 3 ½ hours in a workday without being  
7 provided a mandated paid ten-minute, duty-free compensated rest period while in the employ of  
8 PROS for every four hours worked or major fraction thereof. PLAINTIFF is informed and  
9 believes, and thereon alleges, that, at all times mentioned herein, PROS maintained company  
10 policies that did not permit its employees to take a compensated rest period during any given  
11 workday including workdays during which their employees worked more than 3 ½ hours.  
12 PLAINTIFF is further informed and believes, and thereon alleges, that PROS, through their  
13 managing agents and supervisors, discouraged PLAINTIFF and the Class Members from taking  
14 rest periods and/or ordered or instructed PLAINTIFF and the Class Members to not take and/or  
15 work during such breaks. PLAINTIFF is further informed and believes, and thereon alleges, that  
16 PROS never paid PLAINTIFF or any of the other affected Class Members an additional one (1)-  
17 hour's wage for each rest period that was not provided as stated above.

18 58. Accordingly, PROS violated California Labor Code section 226.7 and Section 11  
19 of Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage Order to  
20 their employees who worked more than 3 ½ hours in a workday. By their failure to permit a  
21 compensated rest period for days on which non-exempt employees work(ed) in excess of 3 ½  
22 hours and failing to pay one hour of additional wages in lieu of each rest period not provided,  
23 PROS violated California Labor Code section 226.7 and Section 11 of Industrial Welfare  
24 Commission Wage Order 16 and/or any other applicable Wage Order. PROS is liable for one  
25 hour of additional wages at each of the affected Class Members' regular rate of compensation for  
26 each workday for which a rest period was not lawfully provided.

27 59. As a result of the unlawful acts of PROS, PLAINTIFF and Class Members have  
28 been deprived of additional wages in amounts to be proven at trial and are entitled to recover

1 such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit, in addition to  
2 any other relief requested below.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO FURNISH ITEMIZED STATEMENTS OF WAGES**

5 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**  
6 **1 through 50)**

7 60. The allegations of each of the foregoing paragraphs are re-alleged and  
8 incorporated herein by this reference.

9 61. PROS is required to maintain accurate records of, among other things, wages  
10 earned at each hourly rate and the accurate number of total hours worked by PLAINTIFF and  
11 Class Members.

12 62. PROS was required to furnish such records to PLAINTIFF and Class Members  
13 semi-monthly or at the time of payment of wages and to properly itemize the paycheck as  
14 required by the California Labor Code, Industrial Welfare Commission Order No. 16, and the  
15 California Code of Regulations, including, but not limited to, California Labor Code section 226.

16 63. PLAINTIFF is informed and believes, and on that basis alleges, that PROS failed  
17 to accurately maintain and furnish records of the wages earned by PLAINTIFF and Class  
18 Members.

19 64. As a direct and proximate result of PROS' failure to issue accurate, itemized  
20 wages statements to PLAINTIFF and Class Members, PLAINTIFF and Class Members suffered  
21 damage.

22 65. PLAINTIFF and Class Members are, therefore, entitled to penalties pursuant to  
23 Labor Code section 226 along with interest on those penalties and attorneys' fees, as required by  
24 Labor Code section 226, in addition to the relief requested below.

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**FIFTH CAUSE OF ACTION**

**FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION IN VIOLATION OF  
LABOR CODE §§ 201, 202, & 203**

**(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES  
1 through 50)**

66. The allegations of each of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

67. California Labor Code section 201 provides, in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately . . .” See Cal. Lab. Code § 201.

68. California Labor Code section 202 provides, in pertinent part, as follows:

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 72 hours thereafter, unless the employee has given 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 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

69. California Labor Code section 203 provides, in pertinent part, as follows:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or quit, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. Suit may be filed for these penalties at any time before the

1 expiration of the statute of limitations on an action for the wages  
2 from which the penalties arises.

3 70. PLAINTIFF's employment with PROS terminated on or about March 8, 2015.  
4 Despite said termination of employment, PLAINTIFF did not receive compensation for wages  
5 owed pursuant to California Labor Code sections 201, 202, and 203.

6 71. PLAINTIFF is informed and believes, and thereon alleges, that this failure by  
7 PROS to pay was willful and intentional.

8 72. PLAINTIFF is informed and believes, and on that basis alleges, that Class  
9 Members were terminated or have voluntarily left PROS' employ, and PLAINTIFF is informed  
10 and believes, and on that basis alleges, that they have not received compensation for all their  
11 wages owed in accordance with the provisions of California Labor Code sections 201, 202, and  
12 203, including, but not limited to, minimum, regular, overtime, and/or double time wages,  
13 premium pay for meal and/or rest periods not provided, and/or reimbursable expenses.  
14 PLAINTIFF is informed and believes, and on that basis alleges, that this failure by PROS to pay  
15 was willful and intentional.

16 73. In addition, PLAINTIFF is informed and believes, and on that basis alleges, that  
17 since PLAINTIFF's and Class Members' termination from employment with PROS, PROS has  
18 continually failed to pay the compensation that is due and owing, thereby entitling PLAINTIFF  
19 and Class Members to waiting time penalties for the unpaid wages owed pursuant to California  
20 Labor Code sections 201, 202, and 203.

21 74. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF and  
22 Class Members did not secret or absent themselves from PROS nor did he or they refuse to  
23 accept the earned and unpaid wages from PROS. Accordingly, PROS is liable for waiting time  
24 penalties for the unpaid wages pursuant to California Labor Code sections 201, 202, and 203.

25 75. In addition, PLAINTIFF, on behalf of himself and the Class Members, has  
26 incurred, and will continue to incur, legal expenses, including attorneys' fees and costs.  
27 PLAINTIFF, on behalf of himself and the Class Members, is presently unaware of the precise  
28 amount of these fees and expenses and prays for leave of this Court to amend the Complaint

1 when the amounts are fully known. PLAINTIFF and Class Members are entitled to recover  
2 attorneys' fees, expenses, and costs according to proof.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF UNFAIR COMPETITION LAW**

5 **(BUSINESS & PROFESSIONS CODE §17200, ET SEQ.)**

6 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**

7 **1 through 50)**

8 76. The allegations of each of the foregoing paragraphs are re-alleged and  
9 incorporated herein by this reference.

10 77. PROS has engaged and continue to engage in unfair business practices in  
11 California by practicing, employing, and utilizing the employment policy of failing to pay  
12 PLAINTIFF and Class Members employment compensation as required by the California law  
13 cited herein above and by violating applicable provisions of the California Labor Code,  
14 including, but not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,  
15 1194, 1194.2, 1197, 2441, 2802, 2810.5, and certain provisions of the Industrial Welfare  
16 Commission Wage Order 16 and/or any other applicable Wage Order, as alleged herein.  
17 DEFENDANTS' utilization of such illegal and unfair business practices constitutes unfair  
18 competition and provides PROS with an unfair advantage over PROS' competitors.

19 78. PLAINTIFF seeks on his own behalf, on behalf of those similarly situated, and on  
20 behalf of the general public full restitution and disgorgement of all employment compensation  
21 wrongfully withheld, as necessary and according to proof, to restore any and all monies  
22 withheld, acquired, and/or converted by PROS by means of the unfair and unlawful practices  
23 complained of herein. The restitution and disgorgement requested includes all wages earned and  
24 unpaid, including interest thereon. The acts complained of herein occurred, at least in part,  
25 within the last four (4) years preceding the filing of the Complaint in this action and continue to  
26 the present.

27 79. PLAINTIFF is informed and believes, and on that basis alleges, that at all times  
28 herein mentioned PROS has engaged in unlawful and unfair business practices as proscribed by

1 California Business and Professions Code 17200 *et seq.* by depriving PLAINTIFF and Class  
2 Members of the minimum working conditions and standards due to them under the California  
3 Labor Code and Industrial Welfare Commission Wage Orders as identified herein.

4 80. California Business and Professions Code 17200 *et seq.* prohibits acts of unfair  
5 competition, which mean and include any unlawful, unfair, or fraudulent business act or practice.  
6 Under California law, wages unlawfully withheld from an employee constitutes an unfair  
7 business act, entitling PLAINTIFF and Class Members to a restitution remedy authorized by  
8 California Business and Professions Code section 17203. PLAINTIFF and Class Members and  
9 the general public are, therefore, entitled to the relief requested below.

10 81. In addition, PLAINTIFF has incurred, on behalf of himself, and on behalf of the  
11 Class Members, and will continue to incur, legal expenses and attorneys' fees. PLAINTIFF, on  
12 behalf of himself, and on behalf of the Class Members, is presently unaware of the precise  
13 amount of these fees and expenses and prays for leave of this Court to amend the Complaint  
14 when the amounts are fully known. Pursuant to California Labor Code sections 512 and  
15 California Code of Civil Procedure section 1021.5, PLAINTIFF and Class Members are entitled  
16 to recover attorneys' fees, expenses, and costs according to proof.

17 **SEVENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES FOR FAILURE TO PAY OVERTIME**

19 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**

20 **Against PROS and DOES 1 through 50)**

21 82. The allegations of each of the foregoing paragraphs are re-alleged and  
22 incorporated herein by this reference.

23 83. At all relevant times, PROS was subject to the provisions of the California Labor  
24 Code and Industrial Welfare Commission Wage Orders mentioned herein.

25 84. California Labor Code section 2699(a) specifically provides for a private right of  
26 action to recover penalties for violations of the Labor Code:

27 "Notwithstanding any other provision of law, any provision of this  
28 code that provides for a civil penalty to be assessed and collected



1 by the Labor and Workforce Development Agency or any of its  
2 departments, divisions, commissions, boards, agencies, or  
3 employees, for a violation of this code, may, as an alternative, be  
4 recovered through a civil action brought by an aggrieved employee  
5 on behalf of himself or herself and other current or former  
6 employees.”

7 85. California Labor Code section 2699.3(a) states,

8 “A civil action by an aggrieved employee pursuant to subdivision  
9 (a) or (f) of Section 2699 alleging a violation of any provision  
10 listed in Section 2699.5 shall commence only after the following  
11 requirements have been met: (1) The aggrieved employee or  
12 representative shall give written notice by certified mail to the  
13 Labor and Workforce Development Agency and the employer of  
14 the specific provisions of this code alleged to have been violated,  
15 including the facts and theories to support the alleged violation.  
16 2(A) The agency shall notify the employer and the aggrieved  
17 employee or the representative by certified mails that it does not  
18 intend to investigate the alleged violation within 30 calendar days  
19 of the postmark date of the notice received pursuant to paragraph  
20 (1). Upon receipt of that notice or if no notice is provided within  
21 33 calendar days of the postmark date the notice given pursuant to  
22 paragraph (1), the aggrieved employee may commence a civil  
23 action pursuant to Section 2699.”

24 86. PLAINTIFF exhausted his administrative remedies pursuant to California Labor  
25 Code section 2699.3 in that PLAINTIFF gave written notice of his claims under California Labor  
26 Code section 2699 et seq. to the California Labor and Workforce Development Agency in or  
27 about May of 2015, and the California Labor and Workforce Development Agency did not  
28 respond within the statutory time frame to indicate its intention to take any further action with  
respect to PLAINTIFF’s written notice of wage and hour violations and his intention to seek  
civil penalties against PROS pursuant to California Labor Code section 2699 *et seq.*

87. PLAINTIFF is entitled to recover these penalties for himself and other current or  
former aggrieved employees through a civil action filed on their behalf. These penalties are in  
addition to all other remedies permitted by law.

88. PROS set the policies for, established, controlled, consented to, approved and/or  
ratified the non-payment of the wages due to PLAINTIFF and other current and former

1 aggrieved employees in violation of the California Labor Code and the applicable Industrial  
2 Welfare Commission Wage Order(s).

3 89. As alleged more fully in PLAINTIFF's First Cause of Action, incorporated herein  
4 by reference, PROS failed to comply with California Labor Code section 510 by failing to pay  
5 PLAINTIFF and the other Class Members at the correct hourly rate for those hours worked in  
6 excess of eight (8) in a workday, in excess of forty (40) in a workweek, and/or for hours worked  
7 on the seventh day of a workweek as required under California law. PLAINTIFF is therefore  
8 entitled to the penalties set forth in the California Labor Code, including but not limited to the  
9 penalties set forth in California Labor Code sections 210, 225.5, and 558 on behalf of himself and  
10 other current and former aggrieved employees of PROS, for each and every pay period that PROS  
11 violated California Labor Code section 510, or to those penalties set forth in California Labor  
12 Code section 2699(f) if it is determined that there is no established civil penalty for violation of  
13 the foregoing provisions of the California Labor Code.

14 90. In addition, PLAINTIFF seeks an award of reasonable attorneys' fees and costs  
15 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who prevails  
16 in any action shall be entitled to an award of reasonable attorneys' fees and costs."

17 91. Pursuant to California Labor Code section 218.6, in any action brought for the  
18 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of  
19 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per  
20 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFF and  
21 current and former aggrieved employees of PROS are therefore entitled to said interest.

22 **EIGHTH CAUSE OF ACTION**

23 **CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**

24 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**  
25 **Against PROS and DOES 1 through 50)**

26 92. The allegations of each of the foregoing paragraphs are re-alleged and  
27 incorporated herein by this reference.

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1 93. At all relevant times, PROS was subject to the provisions of the California Labor  
2 Codes and Industrial Welfare Commission Wage Orders mentioned herein.

3 94. As alleged more fully in PLAINTIFF’s Second Cause of Action, incorporated  
4 herein by reference, PROS failed to comply with California Labor Code sections 226.7 and 512  
5 and Section 12 of the Industrial Welfare Commission Wage Order No. 16 by failing to provide  
6 PLAINTIFF and other aggrieved employees with all meal periods to which PLAINTIFF and  
7 other aggrieved employees were entitled under California law. PLAINTIFF is therefore entitled  
8 to the penalties set forth in the California Labor Code, including but not limited to the penalties  
9 set forth in California Labor Code sections 210, 225.5, and 558 on behalf of himself and other  
10 current and former aggrieved employees of PROS, for each and every pay period that PROS  
11 violated California Labor Code sections 226.7 and 512, or to those penalties set forth in  
12 California Labor Code section 2699(f) if it is determined that there is no established civil penalty  
13 for violation of the foregoing provisions of the California Labor Code.

14 95. In addition, PLAINTIFF seeks an award of reasonable attorneys’ fees and costs  
15 pursuant to California Labor Code section 2699(g)(1), which states, “Any employee who  
16 prevails in any action shall be entitled to an award of reasonable attorneys’ fees and costs.”

17 96. Pursuant to California Labor Code section 218.6, in any action brought for the  
18 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of  
19 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per  
20 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFF  
21 and current and former aggrieved employees of PROS are therefore entitled to said interest.

22 **NINTH CAUSE OF ACTION**

23 **CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**

24 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**  
25 **Against Defendant PROS, and DOES 1 through 50)**

26 97. The allegations of each of the foregoing paragraphs are re-alleged and  
27 incorporated herein by this reference.

1 98. At all relevant times, PROS was subject to the provisions of the California Labor  
2 Codes and Industrial Welfare Commission Wage Orders mentioned herein.

3 99. As alleged more fully in PLAINTIFF's Third Cause of Action, incorporated  
4 herein by reference, PROS failed to comply with California Labor Code section 226.7 and  
5 Section 12 of the Industrial Welfare Commission Wage Order No. 16 by failing to provide  
6 PLAINTIFF and other aggrieved employees with all rest periods to which PLAINTIFF and other  
7 aggrieved employees were entitled under California law. PLAINTIFF is therefore entitled to the  
8 penalties set forth in the California Labor Code, including but not limited to the penalties set  
9 forth in California Labor Code sections 210, 225.5, and 558 on behalf of himself and other  
10 current and former aggrieved employees of PROS, for each and every pay period that PROS  
11 violated California Labor Code section 226.7, or to those penalties set forth in California Labor  
12 Code section 2699(f) if it is determined that there is no established civil penalty for violation of  
13 the foregoing provisions of the California Labor Code.

14 100. In addition, PLAINTIFF seeks an award of reasonable attorneys' fees and costs  
15 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who  
16 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

17 101. Pursuant to California Labor Code section 218.6, in any action brought for the  
18 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of  
19 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per  
20 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFF  
21 and current and former aggrieved employees of PROS are therefore entitled to said interest.

22 **TENTH CAUSE OF ACTION**

23 **CIVIL PENALTIES FOR FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

24 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**

25 **Against PROS and DOES 1 through 50)**

26 102. The allegations of each of the foregoing paragraphs are re-alleged and  
27 incorporated herein by this reference.

28 ///



1 108. At all relevant times, PROS was subject to the provisions of the California Labor  
2 Codes and Industrial Welfare Commission Wage Orders mentioned herein.

3 109. PROS failed to comply with California Labor Code section 204 by failing to  
4 timely pay twice during each calendar month all wages owed to PLAINTIFF and other aggrieved  
5 employees were entitled. PLAINTIFF is therefore entitled to the penalties set forth in the  
6 California Labor Code, including but not limited to the penalties set forth in California Labor  
7 Code section 210 on behalf of himself and other current and former aggrieved employees of  
8 PROS, for each and every pay period that PROS violated California Labor Code section 204, or  
9 to those penalties set forth in California Labor Code section 2699(f) if it is determined that there  
10 is no established civil penalty for violation of the foregoing provisions of the California Labor  
11 Code.

12 110. In addition, PLAINTIFF seeks an award of reasonable attorneys' fees and costs  
13 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who  
14 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

15 111. Pursuant to California Labor Code section 218.6, in any action brought for the  
16 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of  
17 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per  
18 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFF  
19 and current and former aggrieved employees of PROS are therefore entitled to said interest.

20 **TWELFTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE UPON DEMAND**

22 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**  
23 **Against PROS and DOES 1 through 50)**

24 112. The allegations of each of the foregoing paragraphs are re-alleged and  
25 incorporated herein by this reference.

26 113. At all relevant times, PROS was subject to the provisions of the California Labor  
27 Codes and Industrial Welfare Commission Wage Orders mentioned herein.

28 ///

1 114. PROS failed to comply with California Labor Code section 216 by, having the  
2 ability to pay, willfully refusing to pay wages due and payable upon demand, and/or denying the  
3 amount or validity thereof, or that the same is due, with intent to secure for themselves, or other  
4 person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder,  
5 delay, or defraud PLAINTIFF and other aggrieved employees to whom such indebtedness is due.  
6 PLAINTIFF is therefore entitled to the penalties set forth in the California Labor Code, including  
7 but not limited to the penalties set forth in California Labor Code section 225.5, on behalf of  
8 himself and other current and former aggrieved employees of PROS, for each and every pay  
9 period that PROS violated California Labor Code section 216, or to those penalties set forth in  
10 California Labor Code section 2699(f) if it is determined that there is no established civil penalty  
11 for violation of the foregoing provisions of the California Labor Code.

12 115. In addition, PLAINTIFF seeks an award of reasonable attorneys' fees and costs  
13 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who  
14 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

15 116. Pursuant to California Labor Code section 218.6, in any action brought for the  
16 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of  
17 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per  
18 annum], which shall accrue from the date that the wages are due and payable[.]" PLAINTIFF  
19 and current and former aggrieved employees of PROS are therefore entitled to said interest.

20 **THIRTEENTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR FAILURE TO ISSUE NOTICE OF PAY**

22 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**  
23 **Against PROS and DOES 1 through 50)**

24 117. The allegations of each of the foregoing paragraphs are re-alleged and  
25 incorporated herein by this reference.

26 118. At all relevant times, PROS was subject to the provisions of the California Labor  
27 Codes and Industrial Welfare Commission Wage Orders mentioned herein.

28 ///

1           119. PROS failed to comply with California Labor Code section 2810.5 by failing to  
2 provide to PLAINTIFF and other aggrieved employees a written notice, in the language the  
3 employer normally uses to communicate employment-related information to the employee,  
4 containing the following information:

- 5           (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift,  
6           day, week, salary, piece, commission, or otherwise, including any rates for  
7           overtime, as applicable;
- 8           (b) Allowances, if any, claimed as part of the minimum wage, including meal  
9           or lodging allowances;
- 10          (c) The regular payday designated by the employer in accordance with the  
11          requirements of this code;
- 12          (d) The name of the employer, including any "doing business as" names used  
13          by the employer;
- 14          (e) The physical address of the employer's main office or principal place of  
15          business, and a mailing address, if different;
- 16          (f) The telephone number of the employer;
- 17          (g) The name, address, and telephone number of the employer's workers'  
18          compensation insurance carrier;
- 19          (h) That an employee: may accrue and use sick leave; has a right to request  
20          and use accrued paid sick leave; may not be terminated or retaliated  
21          against for using or requesting the use of accrued paid sick leave; and has  
22          the right to file a complaint against an employer who retaliates.

23           120. PLAINTIFF is therefore entitled to the penalties set forth in the California Labor  
24 Code for each and every pay period that PROS violated California Labor Code section 2810.5, or  
25 to those penalties set forth in California Labor Code section 2699(f) if it is determined that there  
26 is no established civil penalty for violation of the foregoing provisions of the California Labor  
27 Code.

28 ///







1           10. For penalties pursuant to Labor Code section 2699 to PLAINTIFF on behalf of  
2 himself and all other current and former aggrieved employees of PROS;

3           11. For interest, attorney's fees, and cost of suit under California Labor Code sections  
4 218.6, 226, 1194, 2699 and California Code of Civil Procedure section 1021.5;

5           12. That PROS be ordered to show cause why it should not be enjoined and ordered  
6 to comply with the applicable California Labor Code sections and Industrial Welfare  
7 Commission Wage Orders related to payment of wages;

8           13. For such other and further relief as the Court deems just and proper.

9           PLAINTIFF, on behalf of himself and all similarly situated Class Members, hereby  
10 demands trial by jury of Causes of Action One through Six to the extent authorized by law.

11  
12 Dated: February 22, 2016

SUTTON HAGUE LAW CORPORATION  
A California Professional Corporation



14  
15 By: \_\_\_\_\_  
16 JARED HAGUE  
17 Attorneys for Plaintiff  
18 JOSEPH PAYNE