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10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF KERN**

12 \* \* \*

13 JOSEPH PAYNE, an individual,  
14 Plaintiff,

15 vs.

16 PROS, INCORPORATED, A California  
17 Corporation; JAMES LEAL, An Individual,  
18 TERESA LEAL, An Individual, and Does 1  
through 50, inclusive,

19 Defendants.  
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Case No. BCV-16100356LHB

**PLAINTIFF'S AMENDED  
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**

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**SECTION 2698 ET SEQ.**

**(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”), Defendant JAMES LEAL, An Individual, Defendant TERESA LEAL, An Individual (collectively “THE LEALS”) 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 informed and believes, and thereon alleges, that JAMES LEAL is now, and at all times relevant to this Complaint, was the Managing Director of Defendants PROS and violated, or caused to be violated, the various provisions of the California Labor

1 Code alleged herein, by, among other things, having authority over the employment practices of  
2 PROS, including but not limited to the written policies and procedures of PROS with respect to  
3 providing PLAINTIFF and the putative class members with meal and rest periods in compliance  
4 with California law. PLAINTIFF is informed and believes that JAMES LEAL failed to adopt  
5 and apply legal, compliant meal and rest period policies and practices notwithstanding his ability  
6 and authority to do so.

7 4. PLAINTIFF is informed and believes, and thereon alleges, that TERESA LEAL  
8 is now, and at all times relevant to this Complaint, was the Controller of Defendants PROS and  
9 violated, or caused to be violated, the various provisions of the California Labor Code alleged  
10 herein, by, among other things, having authority over the employment practices of PROS,  
11 including but not limited to the written policies and procedures of PROS with respect to  
12 providing PLAINTIFF and the putative class members with meal and rest periods in compliance  
13 with California law. PLAINTIFF is informed and believes that TERESA LEAL failed to adopt  
14 and apply legal, compliant meal and rest period policies and practices notwithstanding his ability  
15 and authority to do so.

16 5. PLAINTIFF is unaware of the true names and/or capacities, whether individual,  
17 partnership, limited partnership, corporate, or otherwise, of the Defendants sued herein as DOES  
18 1 through 50, inclusive, and each of them, and therefore sues such Defendants by such fictitious  
19 names pursuant to Code of Civil Procedure section 474. PLAINTIFF is informed and believes,  
20 and thereon allege, that each of the Defendants sued herein, including DOES 1 through 50,  
21 inclusive, is and was proximately the cause of or contributed to cause the damages hereinafter  
22 alleged, or in some other manner is responsible in whole or in part for the damages which have  
23 been, are being, and will be suffered by PLAINTIFF as alleged herein. When the true names  
24 and/or capacities of the Defendants are ascertained, PLAINTIFF will seek leave to amend this  
25 Complaint to insert the same herein with appropriate charging allegations.

26 6. PLAINTIFF is informed and believes and thereon alleges that PROS, THE  
27 LEALS, and each of the DOE Defendants, were acting at all relevant times herein, as the agent,  
28 ostensible agent, joint-venturer, joint-employer, servant, employee, co-conspirator and/or

1 associate of each of the other Defendants, and were at all times acting within the course and  
2 scope of said agency, servitude, employment, joint-venture, association, and/or conspiracy and  
3 with the permission and consent of the other Defendants.

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

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

13 9. PLAINTIFF is informed and believes, and thereon alleges that, at all times  
14 relevant to this Complaint, the various acts and representations of Defendants, including each of  
15 the DOE Defendants, and each agent or representative of Defendants, were the result of, and in  
16 furtherance of, an agreement whereby the Defendants and each agent or representative of the  
17 Defendants knowingly conspired to engage in the acts described herein, including, but not  
18 limited to, Defendants' violation of the California Labor Code and/or any applicable Industrial  
19 Welfare Commission Wage Order(s).

20 10. PLAINTIFF brings Causes of Action One through Six on behalf of himself and  
21 all other similarly situated current and former employees of PROS as a class action pursuant to  
22 California Code of Civil Procedure section 382. PLAINTIFF seeks to represent a class and/or  
23 subclasses composed of and defined as follows:

24 Class 1 ("Overtime Class")

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

1           Class 2 (“First Meal Period Class”)

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

5           Class 3 (“Second Meal Period Class”)

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

9           Class 4 (“Rest Period Class”)

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

13          Class 5 (“Wage Statement Class”)

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

17          Class 6 (“Waiting Time Class”)

18          All former employees of PROS in California who are members of any of Classes  
19          1 through 4 at any time within at least three (3) years preceding the filing of this  
20          Action.

21           11.     These individuals shall hereinafter be referred to collectively as the “Class  
22 Members.”

23           12.     PLAINTIFF reserves the right under California Rules of Court Rule 3.765(b) to  
24 amend or modify the class description with greater specificity or further division into subclasses  
25 or limitation to particular issues.

26 **B. THE ACTION**

27           13.     This action is brought, in part, to remedy the following:

28                   (a)     PROS’ failure to pay PLAINTIFF and the Class Members the overtime

1 and/or double time wages to which they were entitled for each workweek  
2 during which such employees worked more than eight (8) hours in a  
3 workday, more than forty (40) hours in a workweek and/or seven days  
4 during a workweek, as required by California Labor Code section 510 and  
5 Industrial Welfare Commission Wage Order 16 and/or any other  
6 applicable Wage Order;

7 (b) PROS' failure to provide PLAINTIFF and the Class Members with a  
8 reasonable opportunity to take a net thirty-minute, duty-free meal period  
9 for each workday during which such employees worked more than five  
10 hours, as mandated by California law, or to pay such employees one (1)  
11 hour of additional wages at the employees' regular rate of compensation  
12 for each workday for which the duty-free meal period was and/or is not  
13 provided, as required by California Labor Code sections 226.7 and 512  
14 and Industrial Welfare Commission Wage Order 16 and/or any other  
15 applicable Wage Order;

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

25 (d) PROS' failure to provide PLAINTIFF and the Class Members with a  
26 reasonable opportunity to take a paid net ten-minute, duty-free rest period  
27 per four hours worked or major fraction thereof, as mandated by  
28 California law, or to pay such employees one (1) hour of additional wages

1 at the employees' regular rate of compensation for each workday for  
2 which the duty-free rest period was and/or is not provided, as required by  
3 Industrial Welfare Commission Wage Order 16 and/or any other  
4 applicable Wage Order;

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

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

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

11 **C. VENUE**

12 14. Venue is proper in this county because, among other reasons, certain of the  
13 violations of the California Labor Code and/or Industrial Welfare Commission Wage Order(s)  
14 were committed in Kern County and PROS conducts business and has facilities in Kern County.  
15 The unlawful acts alleged have a direct effect on PLAINTIFF and other Class Members.  
16 PLAINTIFF and the Class Members will continue to suffer the same harm as PLAINTIFF as a  
17 result of PROS' wrongful conduct unless the relief requested herein is granted. This case is not  
18 subject to original jurisdiction in federal court pursuant to the Class Action Fairness Act of 2005  
19 ("CAFA") because, as of the date of the filing of this Complaint, PLAINTIFF is informed and  
20 believes, and thereon alleges, that more than two thirds (2/3) of the Class Members in the  
21 aggregate are citizens of the State of California, where this case is being originally filed, at least  
22 one of the named Defendants is a citizen of California, significant relief is sought against PROS  
23 by the Class Members, PROS' alleged conduct forms a significant basis for the claims asserted  
24 by the proposed Class Members, and the principal injuries resulting from the alleged conduct or  
25 related conduct of PROS were incurred in California. PLAINTIFF is informed and believes, and  
26 thereon alleges, that during the three-year period preceding the filing of this class action, no  
27 other class action has been filed asserting the same or similar factual allegations against PROS  
28 on behalf of the same or similar Class Members.

1 **D. CLASS ACTION ALLEGATIONS**

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

6 **Numerosity**

7 16. The potential members of the class as defined are so numerous that joinder of all  
8 members of the class is impracticable. PLAINTIFF is informed and believes and thereon alleges  
9 that at all times mentioned herein PLAINTIFF and the Class Members are or have been affected  
10 by PROS', THE LEALS', and DOES 1-50's unlawful practices as alleged herein.

11 17. Accounting for employee turnover during the relevant period covered by this  
12 action necessarily and substantially increases the number of employees covered by this action.  
13 PLAINTIFF is informed and believes and thereon alleges that PROS, THE LEALS, and DOES'  
14 1-50's employment records would provide information as to the actual number and location of  
15 all Class Members. Joinder of all members of the proposed class is not practicable.

16 **Commonality**

17 18. There are questions of law and fact common to the class predominating over any  
18 questions affecting only individual Class Members. These common questions of law and fact  
19 include, without limitation:

- 20 a. Whether PROS and THE LEALS violated California Labor Code section 510  
21 and/or Industrial Welfare Commission Wage Order 16 and/or any other applicable  
22 Wage Order by failing to pay PLAINTIFF and the Class Members the overtime  
23 and double time wages to which they are entitled for hours worked in excess of  
24 eight (8) hours in one workday, forty (40) hours in one workweek, and/or for  
25 hours worked on the seventh workday of a workweek;
- 26 b. Whether PROS and THE LEALS violated California Labor Code sections 226.7  
27 and 512 and/or Industrial Welfare Commission Wage Order 16 and/or any other  
28 applicable Wage Order by failing to provide PLAINTIFF and the Class Members



1 with a thirty-minute, duty-free meal period for each workday during which such  
2 employees worked more than five hours, or by paying such employees one (1)  
3 hour of additional wages at the employees' regular rate of compensation;

4 c. Whether PROS and THE LEALS violated California Labor Code sections 226.7  
5 and 512 and/or Industrial Welfare Commission Wage Order 16 and/or any other  
6 applicable Wage Order by failing to provide PLAINTIFF and the Class Members  
7 with a thirty-minute, duty-free second meal period for each workday during which  
8 such employees worked more than ten hours, or by paying such employees one  
9 (1) hour of additional wages at the employees' regular rate of compensation;

10 d. Whether PROS and THE LEALS violated Industrial Welfare Commission Wage  
11 Order 16 and/or any other applicable Wage Order by failing to permit  
12 PLAINTIFF and the Class Members to take a paid net ten-minute, duty-free rest  
13 period per four hours worked or major fraction thereof or to pay such employees  
14 one (1) hour of additional wages at the employees' regular rate of compensation  
15 for each workday for which a rest period was and/or is not provided;

16 e. Whether PROS and THE LEALS violated California Labor Code sections 201,  
17 202 and 203 by failing to pay all wages due and owing at the time that any Class  
18 Member's employment with PROS and/or DOES 1-50 ended, whether voluntarily  
19 or involuntarily;

20 f. Whether PROS and THE LEALS violated California Labor Code section 226 by  
21 failing to issue accurate, itemized wage statements to PLAINTIFF and the Class  
22 Members;

23 g. Whether PROS violated California Business and Professions Code section 17200  
24 *et seq.* and engaged in unlawful, unfair, and deceptive business practices by  
25 violating California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,  
26 1194, 1194.2, 1197, 2441, 2802, 2810.5 and/or Industrial Welfare Commission  
27 Wage Order 16 and/or any other applicable Wage Order and/or failing to: (1) pay  
28 minimum, regular, overtime, and/or double time wages to the Class Members; (2)

1 permit the Class Members to take a net thirty-minute, duty-free meal period when  
2 they worked more than five (5) hours in a workday and/or pay such employees  
3 additional wages as required by California law; (3) permit the Class Members to  
4 take a net thirty-minute, duty-free second meal period when they worked more  
5 than 10 hours in a workday and/or pay such employees additional wages as  
6 required by California law; (4) permit the Class Members to take a paid net ten-  
7 minute, duty-free rest period per four hours worked or major fraction thereof  
8 and/or pay such employees additional wages as required by California law; (5)  
9 pay all owed wages at the time that any Class Member's employment with  
10 DEFENDANTS ended, whether voluntarily or involuntarily; (6) issue mandated,  
11 accurate, itemized wage statements; and

12 h. Whether PLAINTIFF and the Class Members are entitled to equitable relief  
13 pursuant to California Business and Professions Code section 17200 *et seq.*

14 **Typicality**

15 19. The claims of the named PLAINTIFF are typical of the claims of the class.  
16 PLAINTIFF and all members of the class sustained injuries and damages arising out of, and  
17 caused by, PROS', THE LEALS, and DOES 1-50's common course of conduct in violation of  
18 California laws, regulations, and statutes as alleged herein.

19 **Adequacy of Representation**

20 20. PLAINTIFF will fairly and adequately represent and protect the interests of the  
21 members of the class. Counsel who represents PLAINTIFF is competent and experienced in  
22 litigating wage and hour class actions and California Business and Professions Code section  
23 17200 *et seq.* cases.

24 **Superiority of Class Action**

25 21. A class action is superior to other available means for the fair and efficient  
26 adjudication of this controversy. Individual joinder of all Class Members is not practicable and  
27 questions of law and fact common to the class predominate over any questions affecting only  
28 individual members of the Class. Each member of the Class has been damaged and is entitled to

1 recovery as a result of PROS' and DOES 1-50's unlawful policies and practices alleged in this  
2 Complaint.

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

7 **BACKGROUND ALLEGATIONS**

8 23. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF was  
9 a non-exempt employee of PROS.

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

15 25. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
16 mentioned herein, PROS had statutory obligations to pay PLAINTIFF and all other similarly  
17 situated Class Members at the rate of one-and-a-half times their regular rate of pay for all hours  
18 worked in excess of eight (8) in a workday, forty (40) in a workweek, and/or for the first eight  
19 (8) hours on the seventh day of work in any one workweek, and to pay PLAINTIFF and all other  
20 similarly situated Class Members at the rate of twice their regular rate of pay for all hours  
21 worked in excess of twelve (12) hours in a workday and for any work in excess of eight (8) hours  
22 on the seventh day of a workweek.

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

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

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

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

14 30. PLAINTIFF is informed and believes, and thereon alleges, that at all times  
15 mentioned herein, PROS had statutory obligations to issue mandated, accurate, itemized wage  
16 statements to PLAINTIFF and all other similarly situated Class Members.

17 31. PLAINTIFF is informed and believes, and thereon alleges, that PROS failed to  
18 pay PLAINTIFF and the Class Members the overtime and double time wages to which they are  
19 entitled under Labor Code section 510.

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

24 33. PLAINTIFF is informed and believes, and thereon alleges, that PROS, through its  
25 managing agents and supervisors, established and carried out policies that violated California  
26 Labor Code sections 226.7 and 512 and/or Industrial Welfare Commission Wage Order 16  
27 and/or any other applicable Wage Order in that PLAINTIFF and other similarly situated Class  
28 Members were not provided a net thirty-minute duty-free meal period for each workday during

1 which such employees worked more than five hours, and were not paid one (1) hour of  
2 additional wages at the employees' regular rate of compensation for each workday for which the  
3 meal period was not provided.

4 34. 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 second meal  
6 period for employees who worked more than ten hours in a workday and/or pay such employees  
7 additional wages.

8 35. 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 second net thirty-minute duty-free meal period for each workday  
13 during which such employees worked more than ten 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 second meal period was not provided.

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

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

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1 38. PLAINTIFF is informed and believes, and thereon alleges, that PROS improperly,  
2 and in violation of California law, failed to timely pay all wages owed when employment with  
3 PROS ended.

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

6 40. As a result of the actions of PROS, PLAINTIFF and other similarly situated Class  
7 Members suffered damages, including lost pay, wages, and interest.

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

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 510**

15 **(OVERTIME PAY)**

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

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

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

21 (a) Eight hours of labor constitutes a day's work. Any work in  
22 excess of eight hours in one workday and any work in excess of 40  
23 hours in any one workweek and the first eight hours worked on the  
24 seventh day of work in any one workweek shall be compensated at  
25 the rate of no less than one and one-half times the regular rate of  
26 pay for an employee. Any work in excess of 12 hours in one day  
27 shall be compensated at the rate of no less than twice the regular  
28 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.

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

8 45. Accordingly, PROS and THE LEALS violated California Labor Code section 510  
9 by failing to pay PLAINTIFF and the Class Members at the appropriate rate of pay on the basis  
10 of the number of hours worked each workweek, and/or on the basis of work performed on the  
11 seventh day of a workweek. By its failure to properly compensate PLAINTIFF and the Class  
12 Members at the correct rate of pay, PROS is liable for the difference between wages paid to  
13 PLAINTIFF and the Class Members and the wages actually owed had PROS compensated such  
14 employees at the correct rate of pay.

15 46. As a result of the unlawful acts of PROS and THE LEALS, PLAINTIFF and  
16 Class Members have been deprived of additional wages in amounts to be proven at trial and are  
17 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of  
18 suit in addition to any other relief requested below

19 **SECOND CAUSE OF ACTION**

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

21 **(MEAL PERIODS)**

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

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

26 48. California Labor Code section 512, subsection (a), provides as follows:

27 (a) An employer may not employ an employee for a work period of  
28 more than five hours per day without providing the employee with  
a meal period of not less than 30 minutes, except that if the total

1 work period per day of the employee is no more than six hours, the  
2 meal period may be waived by mutual consent of both the  
3 employer and employee. An employer may not employ an  
4 employee for a work period of more than 10 hours per day without  
5 providing the employee with a second meal period of not less than  
6 30 minutes, except that if the total hours worked is no more than  
7 12 hours, the second meal period may be waived by mutual  
8 consent of the employer and the employee only if the first meal  
9 period was not waived.

6 49. Similarly, section 10 of Industrial Welfare Commission Wage Order 16 provides  
7 as follows:

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

13 (B) An employer may not employ an employee for a work  
14 period of more than ten (10) hours per day without providing the  
15 employee with a second meal period of not less than 30 minutes,  
16 except that if the total hours worked is no more than 12 hours, the  
17 second meal period may be waived by mutual consent of the  
18 employer and the employee only if the first meal period was not  
19 waived.

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

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

20 (b) If an employer fails to provide an employee a meal period  
21 or rest period in accordance with an applicable order of the  
22 Industrial Welfare Commission, the employer shall pay the  
23 employee one additional hour of pay at the employee's regular rate  
24 of compensation for each work day that the meal or rest period is  
25 not provided.

23 51. PLAINTIFF is informed and believes, and thereon alleges, that he and Class  
24 Members systematically worked periods of more than five hours in a workday without being  
25 provided a mandatory thirty-minute, duty-free meal period while in the employ of PROS.  
26 Specifically, PLAINTIFF is informed and believes, and thereon allege, that, at all times  
27 mentioned herein, PROS and THE LEALS maintained company policies that did not provide its  
28 employees the opportunity to take a meal period during the workday, including workdays during



1 which employees worked more than five hours and were engaged in field testing of any kind or  
2 work characterized by PROS as “over the well” work. PLAINTIFF is further informed and  
3 believes, and thereon alleges, that PROS and THE LEALS through its managing agents and  
4 supervisors, discouraged PLAINTIFF and the Class Members from taking meal periods and/or  
5 ordered or instructed PLAINTIFF and the Class Members to not take and/or work during such  
6 breaks and did not record the taking of meal periods on its time records. PLAINTIFF is further  
7 informed and believes, and thereon alleges, that PROS and THE LEALS did not pay  
8 PLAINTIFF or any of the other affected Class Members an additional one (1)-hour’s wage at the  
9 regular rate of pay for each meal period that was not provided as stated above.

10 52. Further, PLAINTIFF is informed and believes, and thereon alleges, that he and  
11 Class Members systematically worked periods of more than 10 hours in a workday without being  
12 provided a mandated thirty-minute, duty-free second meal period while in the employ of PROS.  
13 Specifically, PLAINTIFF is informed and believes, and thereon allege, that, at all times  
14 mentioned herein, PROS and THE LEALS maintained company policies that did not provide its  
15 employees the opportunity to take a second meal period during any given workday, including  
16 workdays during which employees worked more than ten hours. PLAINTIFF is further informed  
17 and believes, and thereon alleges, that PROS and THE LEALS through their managing agents  
18 and supervisors, discouraged PLAINTIFF and the Class Members from taking second meal  
19 periods and/or ordered or instructed PLAINTIFF and the Class Members to not take and/or work  
20 during such breaks. PLAINTIFF is further informed and believes, and thereon alleges, that  
21 PROS and THE LEALS did not pay PLAINTIFF or any of the other affected Class Members an  
22 additional one (1)-hour’s wage at the regular rate of pay for each second meal period that was  
23 not provided as stated above.

24 53. Accordingly, PROS and THE LEALS violated California Labor Code sections  
25 226.7 and 512 by failing to provide meal periods mandated by California Labor Code section  
26 226.7 and Section 10 of Industrial Welfare Commission Wage Order 16 and/or any other  
27 applicable Wage Order to their employees who worked more than five hours in a workday. By  
28 their failure to provide a meal period for days on which non-exempt employees work(ed) in

1 excess of five hours, and failing to pay one hour of additional wages in lieu of each meal period  
2 not provided, PROS violated California Labor Code sections 226.7 and 512 and Section 10 of  
3 Industrial Welfare Commission Wage Order 16 and/or any other applicable Wage Order. PROS  
4 and THE LEALS are liable for one hour of additional wages at each of the affected Class  
5 Members' regular rate of compensation for each workday for which a meal period was not  
6 lawfully provided.

7 54. Further, PROS and THE LEALS violated California Labor Code sections 226.7  
8 and 512 by failing to provide a second meal period mandated by California Labor Code section  
9 226.7 and section 10 of Industrial Welfare Commission Wage Order 16 and/or any other  
10 applicable Wage Order to their employees who worked more than ten hours in a workday. By  
11 their failure to provide a second meal period for days on which non-exempt employees work(ed)  
12 in excess of ten hours, and failing to pay one hour of additional wages in lieu of each meal period  
13 not provided, PROS and THE LEALS violated California Labor Code sections 226.7 and 512  
14 and section 10 of Industrial Welfare Commission Wage Order 16 and/or any other applicable  
15 Wage Order. PROS and THE LEALS are liable for one hour of additional wages at each of the  
16 affected Class Members' regular rate of compensation for each workday for which a meal period  
17 was not lawfully provided.

18 55. As a result of the unlawful acts of PROS and THE LEALS, PLAINTIFF and  
19 Class Members have been deprived of additional wages in amounts to be proven at trial and are  
20 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of  
21 suit in addition to any other relief requested below.

22 **THIRD CAUSE OF ACTION**

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

24 **COMMISSION WAGE ORDER NO. 5**

25 **(REST PERIODS)**

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

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

3           57. Section 11 of Industrial Welfare Commission Wage Order 16 provides, in  
4 pertinent part, as follows:

5  
6           (A) Every employer shall authorize and permit all employees to  
7 take rest periods, which insofar as practicable shall be in the  
8 middle of each work period. The authorized rest period time shall  
9 be based on the total hours worked daily at the rate of ten (10)  
10 minutes net rest time per four (4) hours or major fraction  
11 thereof....Authorized rest period time shall be counted as hours  
12 worked for which there shall be no deduction from wages.

13  
14           (B) If an employer fails to provide an employee a rest period in  
15 accordance with the applicable provisions of this order, the  
16 employer shall pay the employee one (1) hour of pay at the  
17 employee's regular rate of compensation for each workday that the  
18 rest period is not provided.

19  
20           58. California Labor Code section 226.7 provides, in pertinent part, as follows:

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

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

29           59. PLAINTIFF is informed and believes, and thereon alleges, that he and Class  
30 Members systematically worked periods of more than 3 ½ hours in a workday without being  
31 provided a mandated paid ten-minute, duty-free compensated rest period while in the employ of  
32 PROS for every four hours worked or major fraction thereof. PLAINTIFF is informed and  
33 believes, and thereon alleges, that, at all times mentioned herein, PROS maintained company  
34 policies that did not permit its employees to take a compensated rest period during any given  
35 workday including workdays during which their employees worked more than 3 ½ hours.  
36 PLAINTIFF is further informed and believes, and thereon alleges, that PROS, through their

1 managing agents and supervisors, discouraged PLAINTIFF and the Class Members from taking  
2 rest periods and/or ordered or instructed PLAINTIFF and the Class Members to not take and/or  
3 work during such breaks. PLAINTIFF is further informed and believes, and thereon alleges, that  
4 PROS never paid PLAINTIFF or any of the other affected Class Members an additional one (1)-  
5 hour's wage for each rest period that was not provided as stated above.

6 60. Accordingly, PROS and THE LEALS violated California Labor Code section  
7 226.7 and Section 11 of Industrial Welfare Commission Wage Order 16 and/or any other  
8 applicable Wage Order to their employees who worked more than 3 ½ hours in a workday. By  
9 their failure to permit a compensated rest period for days on which non-exempt employees  
10 work(ed) in excess of 3 ½ hours and failing to pay one hour of additional wages in lieu of each  
11 rest period not provided, PROS and THE LEALS violated California Labor Code section 226.7  
12 and Section 11 of Industrial Welfare Commission Wage Order 16 and/or any other applicable  
13 Wage Order. PROS and THE LEALS are liable for one hour of additional wages at each of the  
14 affected Class Members' regular rate of compensation for each workday for which a rest period  
15 was not lawfully provided.

16 61. As a result of the unlawful acts of PROS and THE LEALS, PLAINTIFF and  
17 Class Members have been deprived of additional wages in amounts to be proven at trial and are  
18 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of  
19 suit, in addition to any other relief requested below.

20 **FOURTH CAUSE OF ACTION**

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

22 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**  
23 **1 through 50)**

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

26 63. PROS is required to maintain accurate records of, among other things, wages  
27 earned at each hourly rate and the accurate number of total hours worked by PLAINTIFF and  
28 Class Members.

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

5 65. PLAINTIFF is informed and believes, and on that basis alleges, that PROS' failed  
6 to accurately maintain and furnish records of the wages earned by PLAINTIFF and Class  
7 Members.

8 66. As a direct and proximate result of PROS' failure to issue accurate, itemized  
9 wages statements to PLAINTIFF and Class Members, PLAINTIFF and Class Members suffered  
10 damage.

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

14 **FIFTH CAUSE OF ACTION**  
15 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION IN VIOLATION OF**  
16 **LABOR CODE §§ 201, 202, & 203**  
17 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS, THE**  
18 **LEALS, and DOES 1 through 50)**

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

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

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

25  
26 If an employee not having a written contract for a definite period  
27 quits his or her employment, his or her wages shall become due  
28 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

1 of quitting. Notwithstanding any other provision of law, an  
2 employee who quits without providing a 72-hour notice shall be  
3 entitled to receive payment by mail if he or she so requests and  
4 designates a mailing address. The date of the mailing shall  
5 constitute the date of payment for purposes of the requirement to  
6 provide payment within 72 hours of the notice of quitting.

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

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

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

73. PLAINTIFF is informed and believes, and thereon alleges, that this failure by  
PROS and THE LEALS to pay was willful and intentional.

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

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1 75. In addition, PLAINTIFF is informed and believes, and on that basis alleges, that  
2 since PLAINTIFF's and Class Members' termination from employment with PROS, PROS and  
3 THE LEALS have continually failed to pay the compensation that is due and owing, thereby  
4 entitling PLAINTIFF and Class Members to waiting time penalties for the unpaid wages owed  
5 pursuant to California Labor Code sections 201, 202, and 203.

6 76. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF and  
7 Class Members did not secret or absent themselves from PROS and THE LEALS nor did he or  
8 they refuse to accept the earned and unpaid wages from PROS and THE LEALS. Accordingly,  
9 PROS and THE LEALS are liable for waiting time penalties for the unpaid wages pursuant to  
10 California Labor Code sections 201, 202, and 203.

11 77. In addition, PLAINTIFF, on behalf of himself and the Class Members, has  
12 incurred, and will continue to incur, legal expenses, including attorneys' fees and costs.  
13 PLAINTIFF, on behalf of himself and the Class Members, is presently unaware of the precise  
14 amount of these fees and expenses and prays for leave of this Court to amend the Complaint  
15 when the amounts are fully known. PLAINTIFF and Class Members are entitled to recover  
16 attorneys' fees, expenses, and costs according to proof.

17 **SIXTH CAUSE OF ACTION**

18 **VIOLATION OF UNFAIR COMPETITION LAW**

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

20 **(PLAINTIFF, Individually and on Behalf of the Class Members, Against PROS and DOES**  
21 **1 through 50)**

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

24 79. PROS has engaged and continue to engage in unfair business practices in  
25 California by practicing, employing, and utilizing the employment policy of failing to pay  
26 PLAINTIFF and Class Members employment compensation as required by the California law  
27 cited herein above and by violating applicable provisions of the California Labor Code,  
28 including, but not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,

1 1194, 1194.2, 1197, 2441, 2802, 2810.5, and certain provisions of the Industrial Welfare  
2 Commission Wage Order 16 and/or any other applicable Wage Order, as alleged herein.  
3 DEFENDANTS' utilization of such illegal and unfair business practices constitutes unfair  
4 competition and provides PROS with an unfair advantage over PROS' competitors.

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

13 81. PLAINTIFF is informed and believes, and on that basis alleges, that at all times  
14 herein mentioned PROS has engaged in unlawful and unfair business practices as proscribed by  
15 California Business and Professions Code 17200 *et seq.* by depriving PLAINTIFF and Class  
16 Members of the minimum working conditions and standards due to them under the California  
17 Labor Code and Industrial Welfare Commission Wage Orders as identified herein.

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

24 83. In addition, PLAINTIFF has incurred, on behalf of himself, and on behalf of the  
25 Class Members, and will continue to incur, legal expenses and attorneys' fees. PLAINTIFF, on  
26 behalf of himself, and on behalf of the Class Members, is presently unaware of the precise  
27 amount of these fees and expenses and prays for leave of this Court to amend the Complaint  
28 when the amounts are fully known. Pursuant to California Labor Code sections 512 and



1 California Code of Civil Procedure section 1021.5, PLAINTIFF and Class Members are entitled  
2 to recover attorneys' fees, expenses, and costs according to proof.

3 **SEVENTH CAUSE OF ACTION**

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

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

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

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

11 86. California Labor Code section 2699(a) specifically provides for a private right of  
12 action to recover penalties for violations of the Labor Code:

13 “Notwithstanding any other provision of law, any provision of this  
14 code that provides for a civil penalty to be assessed and collected  
15 by the Labor and Workforce Development Agency or any of its  
16 departments, divisions, commissions, boards, agencies, or  
17 employees, for a violation of this code, may, as an alternative, be  
18 recovered through a civil action brought by an aggrieved employee  
19 on behalf of himself or herself and other current or former  
20 employees.”

21 87. California Labor Code section 2699.3(a) states,

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

1 paragraph (1), the aggrieved employee may commence a civil  
2 action pursuant to Section 2699.”

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

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

13 90. PROS set the policies for, established, controlled, consented to, approved and/or  
14 ratified the non-payment of the wages due to PLAINTIFF and other current and former  
15 aggrieved employees in violation of the California Labor Code and the applicable Industrial  
16 Welfare Commission Wage Order(s).

17 91. As alleged more fully in PLAINTIFF’s First Cause of Action, incorporated herein  
18 by reference, PROS failed to comply with California Labor Code section 510 by failing to pay  
19 PLAINTIFF and the other Class Members at the correct hourly rate for those hours worked in  
20 excess of eight (8) in a workday, in excess of forty (40) in a workweek, and/or for hours worked  
21 on the seventh day of a workweek as required under California law. PLAINTIFF is therefore  
22 entitled to the penalties set forth in the California Labor Code, including but not limited to the  
23 penalties set forth in California Labor Code sections 210, 225.5, and 558 on behalf of himself  
24 and other current and former aggrieved employees of PROS, for each and every pay period that  
25 PROS violated California Labor Code section 510, or to those penalties set forth in California  
26 Labor Code section 2699(f) if it is determined that there is no established civil penalty for  
27 violation of the foregoing provisions of the California Labor Code.

28 ///



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

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

9 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

9 **TENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**  
11 **(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,**  
12 **Against PROS and DOES 1 through 50)**

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

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

17 106. As alleged more fully in PLAINTIFF’s Fourth Cause of Action, incorporated  
18 herein by reference, PROS failed to comply with California Labor Code section 226 by failing to  
19 provide PLAINTIFF and other aggrieved employees with itemized wage statements to which  
20 PLAINTIFF and other aggrieved employees were entitled under California law. PLAINTIFF is  
21 therefore entitled to the penalties set forth in the California Labor Code, including but not limited  
22 to the penalties set forth in California Labor Code sections 226.3 and 1174.5 on behalf of himself  
23 and other current and former aggrieved employees of PROS, for each and every pay period that  
24 PROS violated California Labor Code sections 226 and 1174, or to those penalties set forth in  
25 California Labor Code section 2699(f) if it is determined that there is no established civil penalty  
26 for violation of the foregoing provisions of the California Labor Code.

27 ///

28 ///

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

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

9 **ELEVENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE AND PAYABLE TWICE**  
11 **EACH CALENDAR MONTH**

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

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

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

18 111. PROS failed to comply with California Labor Code section 204 by failing to  
19 timely pay twice during each calendar month all wages owed to PLAINTIFF and other aggrieved  
20 employees were entitled. PLAINTIFF is therefore entitled to the penalties set forth in the  
21 California Labor Code, including but not limited to the penalties set forth in California Labor  
22 Code section 210 on behalf of himself and other current and former aggrieved employees of  
23 PROS, for each and every pay period that PROS violated California Labor Code section 204, or  
24 to those penalties set forth in California Labor Code section 2699(f) if it is determined that there  
25 is no established civil penalty for violation of the foregoing provisions of the California Labor  
26 Code.

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

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

9 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

17 121. PROS failed to comply with California Labor Code section 2810.5 by failing to  
18 provide to PLAINTIFF and other aggrieved employees a written notice, in the language the  
19 employer normally uses to communicate employment-related information to the employee,  
20 containing the following information:

- 21 (a) The rate or rates of pay and basis thereof, whether paid by the hour, shift,  
22 day, week, salary, piece, commission, or otherwise, including any rates for  
23 overtime, as applicable;
- 24 (b) Allowances, if any, claimed as part of the minimum wage, including meal  
25 or lodging allowances;
- 26 (c) The regular payday designated by the employer in accordance with the  
27 requirements of this code;
- 28



- (d) The name of the employer, including any "doing business as" names used by the employer;
- (e) The physical address of the employer's main office or principal place of business, and a mailing address, if different;
- (f) The telephone number of the employer;
- (g) The name, address, and telephone number of the employer's workers' compensation insurance carrier;
- (h) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

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

**FOURTEENTH CAUSE OF ACTION**

**CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE UPON TERMINATION  
(PLAINTIFF, Individually and on Behalf of Current and Former Aggrieved Employees,  
Against PROS and DOES 1 through 50)**



1           3.       For restitutionary and compensatory damages in an amount according to proof  
2 and with interest thereon, including, but not limited to unpaid minimum, regular, overtime,  
3 and/or double time wages;

4           4.       That PROS be found to have engaged in unfair competition in violation of  
5 California Business and Professions Code section 17200 *et seq.*;

6           5.       That PROS be ordered and enjoined to make restitution to PLAINTIFF and the  
7 Class Members due to their unfair competition, including disgorgement of their wrongfully  
8 obtained revenues, earnings, profits, compensation, and benefits pursuant to California Business  
9 and Professions Code sections 17203 and 17204;

10          6.       That PROS be enjoined from continuing the unlawful course of conduct alleged  
11 herein;

12          7.       That PROS further be enjoined to cease and desist from unfair competition in  
13 violation of the California Business and Professions Code section 17200 *et seq.*;

14          8.       That PROS be enjoined from further acts of restraint of trade or unfair  
15 competition;

16          9.       For payment of penalties for non-payment of wages to PLAINTIFF and the Class  
17 Members in accordance with California Labor Code sections 201, 202, and 203 and/or California  
18 Business and Professions Code section 17202;

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

21          11.       For interest, attorney's fees, and cost of suit under California Labor Code sections  
22 218.6, 226, 1194, 2699 and California Code of Civil Procedure section 1021.5;

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

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

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

Dated: November 20, 2017

SUTTON HAGUE LAW CORPORATION  
A California Professional Corporation



By: \_\_\_\_\_

JARED HAGUE  
Attorneys for Plaintiff  
JOSEPH PAYNE

**PROOF OF SERVICE**

1  
2 My business address is **5200 N. Palm Ave., Suite 203, Fresno, California**  
3 **93704**. I am employed in Fresno, California. I am over the age of 18 years and am not a party  
4 to this case.

5 On the date indicated below, I served the foregoing document(s) described as:

**PLAINTIFF’S AMENDED COMPLAINT FOR DAMAGES**

6 on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes  
7 addressed as follows:

8 Jerry Wayne Pearson Jr., Esq. 9 Young Wooldridge LLP 10 1800 30th Street, Fourth Floor 11 Bakersfield, CA 93301-1919	8 Zachary Crosner, Esq. 9 Michael Crosner, Esq. 10 Crosner Legal, PC 11 345 Reeves Dr., Suite 2 12 Beverly Hills, CA 90212
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13   X   (BY FIRST CLASS MAIL) I am readily familiar with the business' practice for  
14 collection and processing of correspondence for mailing, and that correspondence,  
15 with postage thereon fully prepaid, will be deposited with the United States Postal  
16 Service on the date noted below in the ordinary course of business, at Fresno,  
17 California.

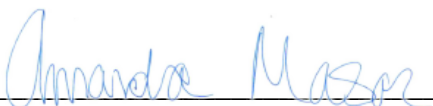
18 \_\_\_\_\_ (BY PERSONAL SERVICE) I caused such envelopes to be delivered by hand to  
19 the office(s) of the addressee(s).

20 \_\_\_\_\_ (BY FACSIMILE) I caused the above-referenced document to be delivered by  
21 facsimile to the facsimile number(s) of the addressee(s).

22 \_\_\_\_\_ (BY OVERNIGHT MAIL) I am readily familiar with the business' practice for  
23 collection and processing of correspondence for mailing and that correspondence  
24 will be deposited with an overnight carrier on the date noted below in the ordinary  
25 course of business, in accordance with the overnight carrier’s method for billing  
26 for same, and before the last scheduled pick-up time, at Fresno, California.

**EXECUTED on November 20, 2017, at Fresno, California.**

27   X   (STATE) I declare under penalty of perjury under the laws of the State of  
28 California that the foregoing is true and correct.

  
\_\_\_\_\_  
Amanda Mason