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Attorneys for Plaintiff ESTEPHANY AVALOS,
 on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ESTEPHANY AVALOS, on behalf of herself
 and other aggrieved employees,

Plaintiff,

vs.

PRO-TECH DESIGN AND
 MANUFACTURING; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: **21STCV41807**

PAGA ACTION

**PLAINTIFF ESTEPHANY AVALOS'
 COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
 TO THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004
 ("PAGA"), LABOR CODE
 SECTION 2698, et seq.**

COMES NOW Plaintiff ESTEPHANY AVALOS ("Plaintiff"), who alleges and
 complains against Defendants PRO-TECH DESIGN AND MANUFACTURING and DOES 1 to
 100, inclusive (collectively, "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
 ("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself,
 and other current and former aggrieved employees of Defendants who worked as hourly, non-
 exempt employees, in California during the relevant time period seeking civil penalties associated
 with Defendants' violation of the Labor Code based on Defendant's failure to pay wages for all
 hours worked at the employees' minimum wage rate or overtime rate; failure to authorize or

1 permit all legally required and/or compliant meal periods or pay meal period premium wages;
2 failure to authorize or permit all legally required and/or compliant rest periods or pay rest period
3 premium wages; failure to indemnify for all necessary expenditures or losses incurred by
4 employees in direct consequence of discharging their duties; failure to timely pay earned wages
5 during employment; failure to provide complete and accurate wage statements; and failure to
6 timely pay all unpaid wages following separation of employment. Plaintiff seeks on a
7 representative basis, following notice to the Labor and Workforce Development Agency, civil
8 penalties, reasonable attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought
9 on behalf of Plaintiff, the State of California, and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over Plaintiff and the other current and former hourly
12 aggrieved California-based employees' claims because Plaintiff's lawsuit seeks damages in excess
13 of \$25,000 and Defendants employed class members and injuries occurred in locations in
14 California including but not limited to Los Angeles County, at 14561 Marquardt Ave., Santa Fe
15 Springs, CA 90670.

16 **III. PARTIES**

17 3. Plaintiff brings this action as a representative of the Labor and Workforce
18 Development Agency on behalf of herself and other current and former employees subject to
19 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
20 filed include current, former and/or future employees of Defendants who worked, work, or will
21 work for Defendants as non-exempt hourly employees in California. At all times mentioned
22 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
23 and was employed by Defendants in an hourly position at Defendants' location in Los Angeles
24 County from approximately September 2017 until his termination on or about August 27, 2021.

25 4. Plaintiff is informed and believes and thereon alleges that Defendant PRO-TECH
26 DESIGN AND MANUFACTURING is authorized to do business within the State of California
27 and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all
28 times relevant hereto were persons acting on behalf of Defendant PRO-TECH DESIGN AND

1 MANUFACTURING in the establishment of, or ratification of, the aforementioned illegal wage
2 and hour practices or policies. Defendant PRO-TECH DESIGN AND MANUFACTURING
3 operates in Los Angeles County and employed Plaintiff and putative class members in Los
4 Angeles County, including but not limited to, at 14561 Marquardt Ave., Santa Fe Springs, CA
5 90670.

6 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
7 through 50 are corporations, or are other business entities or organizations of a nature unknown to
8 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
9 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
10 working conditions of employment of Plaintiff and aggrieved employees.

11 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
12 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
13 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
14 supervisor, independent contractor and/or employee of each defendant who violated or caused to
15 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
16 the Industrial Welfare Commission's wage orders regulating hours and days of work.

17 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
18 sues said defendants by said fictitious names, and will amend this complaint when the true names
19 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
20 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
21 named defendants is in some manner responsible for the events and allegations set forth in this
22 complaint.

23 8. Plaintiff makes the allegations in this complaint without any admission that, as to
24 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
25 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

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1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

3 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

4 **(Against all Defendants)**

5 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 10. During the period beginning one-year period preceding the sending of the initial
7 notice to the LWDA to the present (“the Civil Penalty Period”), Defendants violated Labor Code
8 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 2802, and Sections 14 and 15 of the
9 applicable Wage Orders.

10 11. Specifically, Defendants have committed the following violations of California
11 Labor Code:

12 12. **Failure to pay wages for all hours worked at the legal minimum wage:**
13 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
14 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
15 which includes all time that an employee is under control of the employer and all time the
16 employee is suffered and permitted to work. This includes the time an employee spends, either
17 directly or indirectly, performing services which inure to the benefit of the employer.

18 13. Labor Code sections 1194 and 1197 require an employer to compensate employees
19 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
20 Wage Orders.

21 14. In this case, Plaintiff and other current and former aggrieved California-based
22 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
23 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
24 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
25 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
26 not limited to, since the outbreak of COVID-19, requiring Employee and other current and former
27 aggrieved California-based hourly non-exempt employees to arrive prior to the start of their shift
28 in order to line up to wait to undergo and undergo off-the-clock COVID-19 temperature checks

1 and/or medical screenings prior to being permitted to clock in for the start of their shift without
2 being paid for this time.

3 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
4 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
5 control without paying wages for that time. This resulted in Plaintiff and other current and former
6 aggrieved California-based hourly non-exempt employees working time for which they were not
7 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
8 Wage Order.

9 16. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
10 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
11 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
12 which includes all time that an employee is under control of the employer and all time the
13 employee is suffered and permitted to work. This includes the time an employee spends, either
14 directly or indirectly, performing services that inure to the benefit of the employer.'

15 17. Labor Code sections 510 and 1194 require an employer to compensate employees a
16 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
17 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

18 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
19 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
20 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
21 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
22 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
23 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
24 seventh day of a workweek shall be compensated at the rate of no less than twice the
25 regular rate of pay of an employee.

26 Labor Code section 510.

27 18. In this case, Defendants failed to pay Plaintiff and other current and former
28 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
worked due to Defendants' policies, practices, and/or procedures including, but not limited to,
since the outbreak of COVID-19, requiring Employee and other current and former aggrieved
California-based hourly non-exempt employees to arrive prior to the start of their shift in order to
line up to wait to undergo and undergo off-the-clock COVID-19 temperature checks and/or

1 medical screenings prior to being permitted to clock in for the start of their shift without being
2 paid for this time.

3 19. The foregoing policies, practices, and/or procedures resulted in time during each
4 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
5 employees were under the control of Defendants but were not compensated. To the extent that the
6 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
7 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
8 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
9 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
10 sections 510 and 1194 and the applicable Wage Order.

11 20. **Failure to pay wages to hourly non-exempt employees for workdays that**
12 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
13 current and former aggrieved California-based hourly non-exempt employees regularly worked
14 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

15 21. California law requires an employer to authorize or permit an employee an
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
17 all duties and the employer relinquishes control over the employee's activities prior to the
18 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
19 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
20 employee for a work period of more than ten (10) hours per day without providing the employee
21 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
22 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
23 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
24 period is only permitted when: (1) the nature of the work prevents an employee from being
25 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26 22. If an employer fails to provide an employee a meal period in accordance with the
27 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
28 for each workday that a legally required and compliant meal period was not provided. Labor Code

1 section 226.7; Wage Order 1 at §11.

2 23. In this case, Defendants failed to authorize or permit legally required and compliant
3 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
4 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
5 limited to, failing to provide Employee and other current and former aggrieved California-based
6 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
7 (30) minutes when they worked shifts over 10 hours.

8 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
9 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
10 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
11 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees did not receive legally required and compliant meal periods, in violation of Labor Code
13 section 226.7.

14 25. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees not
16 receiving wages to compensate them for workdays during which Defendants did not provide them
17 with meal periods in compliance with California law.

18 26. **Failure to pay wages to hourly non-exempt employees for workdays that**
19 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
20 current and former aggrieved California-based hourly non-exempt employees regularly worked
21 shifts of more than three-and-a-half (3.5) hours.

22 27. California law requires every employer to authorize and permit an employee a rest
23 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
24 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
25 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
26 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
27 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
28 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of

each work period. Wage Order 1 at §12. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

28. If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 1 at § 12.

29. In this case, Defendants failed to authorize or permit all legally required and compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not limited to, failing to provide Employee other current and former aggrieved California-based hourly non-exempt employees a third uninterrupted duty-free rest period of a net ten (10) minutes when they worked shifts exceeding ten (10) hours.

30. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did not receive legally required and compliant rest periods, , in violation of Labor Code section 226.7.

31. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays in which Defendants did not provide them with rest periods in compliance with California law.

32. **Failure to Indemnify for Losses and Expenditures Incurred as Part of Employment:** California law requires that every employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §

2802.)

33. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff and other current and former aggrieved California-based non-exempt hourly employees' necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants employed a policy, practice, and procedure whereby Plaintiff and aggrieved employees were required to utilize their personal cell phones for employment related purposes. Plaintiff and aggrieved employees were required to purchase and/or have a personal cell phone plan, which Defendants routinely required Plaintiff and aggrieved employees to utilize in carrying out their daily work activities.

34. Moreover, Defendants employed policies and procedures which ensured Plaintiff and aggrieved employees would not receive indemnification for their employment related expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in compliance with California law.

35. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their employment related expenses, including but not limited to costs related to use of their personal cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

36. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code section 204(d).

37. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' earned wages (including minimum wages, overtime wages, reporting time

1 pay, meal period premium wages and/or rest period premium wages), in violation of Labor Code
2 section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in their
3 failure to pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' their earned wages within the applicable time frames outlined in Labor Code
5 section 204.

6 **38. Failure to provide complete and accurate wage statements:** Labor Code section
7 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
8 employee his or her wages, the employer must "furnish each of his or her employees ... an
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee, except for any employee whose compensation is solely based on a salary and who is
11 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
14 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
15 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
16 name of the employee and his or her social security number, (8) the name and address of the legal
17 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by the employee."

19 **39.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees all wages
21 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
22 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
23 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
24 section 226.

25 **40. Failure to pay employees all wages due at time of termination/resignation:** An
26 employer is required to pay all unpaid wages timely after an employee's employment ends. The
27 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
28 hours of resignation (Labor Code section 202).

1 41. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
2 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
3 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
4 and/or rest period premium wages), Defendants failed to pay those employees timely after each
5 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

6 42. Defendants' violations of Wage Order 1 constituted violations of Labor Code
7 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

8 43. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
9 employee, on behalf of himself or herself and other current or former employees, to bring a civil
10 action to recover civil penalties against all Defendants pursuant to the procedures specified in
11 Labor Code section 2699.3.

12 44. Plaintiff has complied with the procedures for bringing suit specified in Labor
13 Code section 2699.3. On September 7, 2021, Plaintiff filed notice with LWDA and provided
14 notice to Defendants by certified mail which provided notice of the specific provisions of the
15 Labor Code alleged to have been violated, including the facts and theories to support the
16 violations alleged.

17 45. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
19 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
20 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
21 Plaintiff's claims.

22 46. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
23 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
24 512, 1194, 1197, and 2802 during the Civil Penalty Period in the following amounts:

25 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802 and
26 512, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
27 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
28 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

1 51. For such and other further relief, in law and/or equity, as the Court deems just or
2 appropriate

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4 Dated: November 12, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

5
6 By:



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