

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

DAVE CROCKETT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

PRO ENERGY SERVICES GROUP, LLC, a
Delaware limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. S-CV-0050881

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unpaid Overtime
(Lab. Code §§ 510, 1198)**
- (2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));**
- (3) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and**
- (4) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 Plaintiff, Dave Crockett, submits this First Amended Class and Representative Action Complaint (the
3 “Complaint”) against Defendant, Pro Energy Services Group, LLC, and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. The
8 Complaint seeks damages, penalties, and other relief pursuant to, among other provisions, Labor Code
9 sections 201-204, 210, 218.5, 218.6, 226, 226.3, 510, 558, 1194, 1198, and 2698 et seq., and the Unfair
10 Competition Law, codified at Business and Professions Code sections 17200 et seq. (the “UCL”).¹

11 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
12 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
13 failing to pay all overtime wages due, failing to timely pay all wages during employment or upon
14 termination of employment, and failing to provide complete and accurate itemized wage statements.

15 3. Defendants routinely fail to correctly calculate the regular rate of pay for purposes of
16 paying overtime to Plaintiff and other non-exempt employees. Specifically, Plaintiff and other non-
17 exempt employees earn non-base hourly wages or other non-hourly, non-discretionary remuneration,
18 including for example per diems. Defendants fail to properly calculate the regular rate of pay by not
19 accounting for such compensation.

20 4. Because Plaintiff and other non-exempt employees are not paid overtime at the regular
21 rate, Defendants routinely fail to timely pay Plaintiff and other non-exempt employees all wages during
22 employment or upon separation of employment. Moreover, Defendants also routinely fail to furnish
23 wage statements that accurately show and itemize all applicable hourly rates in effect during the pay
24 period, gross wages earned, and net wages earned.

25 5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
26 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
27 customs that knowingly deny its employees the above stated rights and benefits.

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

6. The policies, practices, and customs of Defendants result in unjust enrichment of Defendants and an unfair business advantage over businesses that comply with the Labor Code.

JURISDICTION AND VENUE

7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226, and 510, and the UCL.

8. Venue is proper in the County of Placer. Plaintiff worked for Defendants in Newcastle, California.

PARTIES

9. In June of 2019, Plaintiff began working for Defendants as a Senior Program Manager. Until his employment ended in June of 2023, Plaintiff was paid on an hourly basis as a non-exempt employee and earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example per diems. Plaintiff was not paid all overtime at one and one-half times the regular rate. Plaintiff was not timely paid all due wages during employment or upon separation of employment and also was not provided with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

10. Plaintiff is informed and believes that Pro Energy Services Group, LLC was and is a Delaware limited liability company. Plaintiff is informed and believes that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 226, and 510, and the UCL.

11. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

12. At all times mentioned herein, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

13. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

14. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

15. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who have earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example per diems, during a period in which they also worked more than 8.0 hours in a day or more than 40.0 hours in a workweek, at any time since July 21, 2019 (the “Overtime Class”), and (ii) all current and former non-exempt employees of Defendants in the State of California who have earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example incentives and stipends, during a period in which they have worked more than 8.0 hours in a day or more than 40.0 hours in a workweek, at any time since July 21, 2022 (the “Wage Statement Class”). The Overtime Class and Wage Statement Class are collectively referred to as the “Class.”

16. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the

Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226, and 510, and the UCL against Plaintiff and the Class by failing to pay overtime, failing to timely pay all wages during employment or upon separation of employment, and failing to provide complete and accurate itemized wage statements.

17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

18. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of routinely failing to pay overtime, to timely pay all wages during employment or upon separation of employment, or to provide complete and accurate itemized wage statements.

19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt employee and also earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example per diems. Plaintiff was not paid all overtime at one and one-half times the regular rate. Plaintiff was not timely paid all due wages during employment or upon separation of employment and also was not provided with accurate itemized wage statements. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power.

21. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the

1 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
2 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
3 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
4 legal resources. Requiring each member of the Class to pursue an individual remedy would also
5 discourage the assertion of lawful claims by employees who would be disinclined to file an action
6 against their former or current employer for real and justifiable fear of retaliation and permanent
7 damage to their careers at their current or subsequent employment.

8 22. The prosecution of separate actions by individual members of the Class, even if possible,
9 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
10 members of the Class that would establish potentially incompatible standards of conduct for
11 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
12 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
13 of other members of the Class not parties to the adjudications. Further, the claims of the individual
14 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
15 the concomitant costs and expenses.

16 23. Defendants' pattern, practice, and uniform administration of corporate policy in violation
17 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
18 rights of Plaintiff and the Class under Sections 201-204, 210, 218.5, 218.6, 226, 510, 1194, and 1198,
19 applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover
20 damages and restitution, including unpaid wages and interest thereon, applicable penalties, reasonable
21 attorneys' fees, and costs of suit.

22 24. This action is brought for the benefit of the Class, which is commonly entitled to a
23 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
24 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

25 **FIRST CAUSE OF ACTION**

26 **Unpaid Overtime (Lab. Code §§ 510, 1198)**

27 **(By Plaintiff and the Overtime Class Against All Defendants)**

28 25. The preceding paragraphs are re-alleged and incorporated by this reference.

1 26. Section 510 and the applicable IWC Wage Order provide that “[a]ny work in excess of
2 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
3 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
4 less than one and one-half times the regular rate of pay for an employee” and that “[a]ny work in excess
5 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
6 an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
7 IWC Wage Order.

8 27. As a matter of policy and practice, Defendants permit Plaintiff and the Overtime Class to
9 work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay.
10 Defendants routinely fail to correctly calculate the regular rate of pay for purposes of paying overtime to
11 Plaintiff and the Overtime Class. Specifically, Defendants fail to properly calculate the regular rate of
12 pay by not accounting for all non-base hourly wages or other non-hourly, non-discretionary
13 remuneration, including for example per diems.

14 28. Moreover, all owing wages must be paid timely. Section 204 provides that wages are
15 generally due and payable no later than seven days after the end of a pay period or at least twice during
16 each calendar month, on days designated in advance as the regular paydays. Section 201 provides that if
17 an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
18 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no
19 later than 72 hours after an employee quits his or her employment, unless the employee has given
20 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
21 entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully
22 fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall
23 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
24 for more than thirty (30) days.

25 29. Based on Defendants’ failure to pay all overtime wages to Plaintiff and the Overtime
26 Class, and as a matter of policy and practice, Defendants fail to timely pay all due wages during
27 employment and fail to timely pay all due wages upon separation of employment. On information and
28 belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of

1 the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay
2 Plaintiff and the Overtime Class all wages due, Defendants are subject to applicable penalties.

3 30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
4 entitles Plaintiff and the Overtime Class to recover unpaid overtime and interest thereon, applicable
5 penalties, attorneys' fees, and costs of suit.

6 **SECOND CAUSE OF ACTION**

7 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

8 **(By Plaintiff and the Wage Statement Class Against All Defendants)**

9 31. The preceding paragraphs are re-alleged and incorporated by this reference.

10 32. Section 226(a) requires an employer to furnish to its employees itemized wage
11 statements that show accurate information, including without limitation, all applicable hourly rates in
12 effect during the pay period, gross wages earned, and net wages earned.

13 33. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage
14 Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail
15 to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the
16 applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

17 34. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
18 entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs
19 of suit.

20 **THIRD CAUSE OF ACTION**

21 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

22 **(By Plaintiff and the Overtime Class Against All Defendants)**

23 35. The preceding paragraphs are re-alleged and incorporated by this reference.

24 36. Plaintiff is informed and believes that Defendants have engaged and continue to engage
25 in unfair and unlawful business practices in California by utilizing the employment policies and
26 practices alleged herein, including the failure to pay all overtime.

27 37. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
28 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed

1 by the UCL. Defendants have deprived Plaintiff and the Overtime Class of the minimum working
2 condition standards and conditions due to them under the Labor Code and applicable IWC Wage
3 Orders.

4 38. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiff and the Overtime Class to full restitution of all monies withheld, acquired, or converted
6 by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and
7 costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **Violations of California Labor Code (Lab. Code §§ 2698 et seq.)**

10 **(By Plaintiff as a Proxy for the State Against All Defendants)**

11 39. The preceding paragraphs are re-alleged and incorporated by this reference.

12 40. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
13 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
14 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 510, 1194, and
15 1198 committed since July 7, 2022, against all aggrieved employees. As stated herein, Defendants fail
16 to (i) pay overtime wages, (ii) timely pay all wages, and (iii) provide accurate itemized wage statements.
17 Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations
18 was committed against Plaintiff as an employee of Defendants.

19 41. On or about July 7, 2023, Plaintiff sent written notice to the Labor & Workforce
20 Development Agency ("LWDA") of specific facts and theories for Defendants' above violations.
21 Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing
22 of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the
23 allegations in the written notice.

24 42. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all
25 applicable penalties pursuant to Section 2699(a), (f), and (g) for Defendants' violations against all
26 aggrieved employees for the period described above.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit
3 is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Classes;
- 5 2. For an order appointing Plaintiff as the representative of the Classes;
- 6 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 7 4. Upon the First Cause of Action for damages, including unpaid wages and interest
8 thereon, penalties, and attorneys' fees and costs;
- 9 5. Upon the Second Cause of Action for penalties, actual damages, and attorneys' fees and
10 costs;
- 11 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
12 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
13 and for attorneys' fees and costs;
- 14 7. Upon the Fourth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),
15 and for attorneys' fees and costs;
- 16 8. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,
17 UCL, and Code of Civil Procedure section 1021.5; and
- 18 9. For such other and further relief that the Court may deem just and proper.

19 DATED: September 11, 2023

DIVERSITY LAW GROUP, P.C.

20 By: 

21 Larry W. Lee
22 Simon L. Yang
23 Attorneys for Plaintiff
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

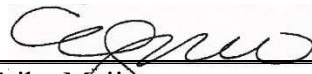
I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On December 27, 2023, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Jeffrey P. Michalowski Adrielli Ferrer Quarles & Brady LLP 101 West Broadway, Ninth Floor San Diego, California 92101	<i>Attorneys for Defendant Pro Energy Services Group, LLC</i> jeff.michalowski@quarles.com adrielli.ferrer@quarles.com
---	---

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE Attorney Service E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on this proof of service for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 27, 2023, at Los Angeles, California.



Erika Mejia