

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND FINAL APPROVAL HEARING

To: All current and former hourly non-exempt employees of Pros, Incorporated (“Pros”) in California at any time from August 22, 2012 to May 22, 2018 (the “Class Period”)

IMPORTANT LEGAL NOTICE - PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE INFORMS YOU OF YOUR LEGAL RIGHTS TO MONEY YOU MAY BE OWED IN CONNECTION WITH A LEGAL SETTLEMENT. IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST MAIL A SIGNED ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM TO THE SETTLEMENT ADMINISTRATOR (AS DEFINED BELOW), POSTMARKED NOT LATER THAN JULY 16, 2018 OR ELSE YOU WILL BE BOUND BY THE SETTLEMENT.

IF YOU WISH TO RECEIVE A SHARE OF THE SETTLEMENT PROCEEDS, READ THE ENCLOSED CLASS MEMBER SETTLEMENT INFORMATION SHEET AND CONFIRM THAT YOUR IDENTIFYING INFORMATION AND THE INFORMATION ABOUT YOUR EMPLOYMENT WITH PROS IS CORRECT. IF IT IS CORRECT, YOU **DO NOT NEED TO DO ANYTHING**, AND YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT **AUTOMATICALLY** AT A LATER DATE IF THE COURT GRANTS FINAL APPROVAL OF THE SETTLEMENT. IF THE CLASS MEMBER SETTLEMENT INFORMATION SHEET IS INCORRECT, RETURN IT TO THE SETTLEMENT ADMINISTRATOR IN ACCORDANCE WITH THE INSTRUCTIONS IN THIS NOTICE.

IF YOU WISH TO OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.

PURSUANT TO THE ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF KERN (THE “COURT”) ENTERED ON MAY 22 2018, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

WHAT IS THIS NOTICE ABOUT?

A proposed settlement (the “Settlement”) has been reached between Plaintiff Joseph Payne (“Plaintiff” and “Class Representative”) and Defendants Pros, Incorporated, James Leal and Teresa Leal (collectively “Defendants”), in the class action pending in the Court brought on behalf of the following individuals (the “Class” or “Settlement Class Members”):

All current and former hourly non-exempt employees of Pros, Incorporated in California at any time from August 22, 2012 to May 22, 2018.

The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because Pros’ records indicate that you are a member of the Class. This notice is designed to inform you of how you can object to the Settlement, opt out of the Settlement, or provide corrected information to the Settlement Administrator. Unless you opt out of the Settlement, the Settlement, if finally approved by the Court, will be binding upon you.

WHAT IS THIS LAWSUIT ABOUT?

An action is currently pending in the Superior Court of California, County of Kern, entitled “*Joseph Payne, an individual, Plaintiff, vs. Pros, Incorporated, a California Corporation; James Leal, an individual; Teresa Leal, an individual; and Does 1 through 50, inclusive, Defendants,*” Case No. BCV-16100356LHB (the “Action”).

In this Action, Plaintiff alleges that the Settlement Class Members were not provided with compliant meal and rest periods, were not paid all overtime wages to which they were entitled, were not timely paid all wages on termination, and were not provided with compliant wage statements. Plaintiff seeks the recovery of wages, liquidated damages, interest, penalties, costs, attorneys' fees, and other relief. Plaintiff additionally seeks penalties under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab. Code § 2698 *et seq.* Plaintiff sues on behalf of himself and all other individuals employed by Pros as non-exempt hourly employees in California on or after August 22, 2012, with respect to the claims asserted.

Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, and have any liability to anyone under the claims.

After good-faith negotiations presided over by a private mediator, Plaintiff and Defendants agreed to settle the Action pursuant to the terms and conditions of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that Plaintiff's claims in the Action have merit or that Defendants have any liability to Plaintiff or the proposed class on those claims. On the contrary, Defendants deny any and all such liability.

The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate under the circumstances and is in the best interests of the members of the Class.

SUMMARY OF THE SETTLEMENT

WHO IS INCLUDED IN THE SETTLEMENT?

You are included in the Settlement if you fall within the following definition:

All current and former hourly non-exempt employees who work or worked for Pros in California at any time from August 22, 2012 to May 22, 2018 ("Class Members").

WHAT WILL I RECEIVE FROM THE SETTLEMENT?

1. Pros will pay Seven Hundred Thousand Dollars and No Cents (\$700,000.00) as the "Gross Settlement Amount." The Gross Settlement Amount will fund all payments to be made under the Settlement. The Gross Settlement Amount will be paid in three equal installments over the course of the next year. The first installment will be paid shortly after the Court grants final approval to the Settlement. The second installment will be paid approximately six months thereafter, and the third installment will be paid approximately six months following the second installment.
2. The "Net Settlement Amount" is the amount from the Total Settlement Amount that is available for distribution as shares of the Net Settlement Amount (the "Settlement Shares") payable to Class Members after deductions for the payment to the Labor and Workforce Development Agency of the State of California (the "LWDA"), the Class Representative Enhancement Payment (as defined below), the Class Counsel Fees and Expenses Payment (as defined below) and the Settlement Administrator's reasonable fees and expenses.
3. Out of the Net Settlement Amount, Defendants will pay to each Class Member who does not timely submit a valid Election Not to Participate in Settlement a Settlement Share (explained below) that is based on his/her compensable workweeks in a position covered by the Settlement, as reflected in Pros' records, during the Class Period. In particular:

- a. The dollars per compensable workweek (“Workweek Value”) will be calculated by dividing the total compensable workweeks worked by the Class Members during the Class Period into the Net Settlement Amount.
 - b. The Workweek Value will be multiplied by the number of compensable weeks worked as a member of the Class during the Class Period to determine the distribution, prior to applicable payroll tax withholding and deductions for the Class Member.
 - c. The Settlement Share will be reduced by any required payroll tax withholding and deductions for each Class Member. No benefit, including, but not limited to 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement.
4. The Settlement Share for a Class Member will depend on the number of workweeks the Class Member worked in a position covered by the Settlement, and the amounts awarded by the Court for the payments to Plaintiff as the Class Representative, Class Counsel (listed below), the LWDA, and the Settlement Administrator.
5. An estimate of your Settlement Share appears on your Class Member Settlement Information Sheet (explained more fully below) accompanying this Notice. Your actual Settlement Share may be more or less once awarded. The Settlement Shares and other amounts awarded by the Court will be paid after final court approval of the Settlement, entry of the final judgment, and the exhaustion of all rights to appeal or review, or after any appeal or review has been resolved in favor of the Settlement.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

1. You will be included in the Settlement and receive your proportional share of the Settlement unless you affirmatively opt out from the Settlement, by mailing to the Settlement Administrator a signed Election Not to Participate in Settlement, postmarked **no later than July 16, 2018**. If you opt out of the Settlement by the deadline, you will be excluded from the Settlement and will not receive a Settlement Share, but you will retain the right you may have, if any, to pursue a claim against Defendants.

WHAT IF THE INFORMATION ON THE ENCLOSED CLASS MEMBER INFORMATION SHEET IS INACCURATE?

1. The Court has appointed Phoenix Settlement Administrators to act as an independent settlement administrator (the “Settlement Administrator”) and to resolve any dispute concerning the calculation of a Settlement Class Member’s entitlement to a Settlement Share.
2. If you dispute the accuracy of any of the information shown on your enclosed Class Member Settlement Information Sheet used to calculate your Settlement Share, you must ask the Settlement Administrator to resolve the matter. In order to do so, you must return your Class Member Settlement Information Sheet to the Settlement Administrator postmarked **no later than July 16, 2018**. You should submit any documentary evidence that you have, along with the form. After consultation with you, Class Counsel, and Pros, the Settlement Administrator will make a determination of the number of your workweek units and that determination will be final, binding on you and Pros, and non-appealable.

WHAT CLAIMS ARE BEING RELEASED AS PART OF THE SETTLEMENT?

1. The Settlement provides that every Settlement Class Member (other than those Settlement Class Members who timely and validly opt out of the Settlement, by submitting an Election Not to Participate in Settlement) releases any and all known and unknown claims against, among others, Defendants and its current and former parents, subsidiaries, affiliates, fiduciaries, associates, stockholders, representatives, partners, agents, officers, directors, principles and administrators (the “Released

Parties”), whether raised in the Action or not, that are based on the factual allegations and claims made in the Action or otherwise based on or related to the allegations that, from August 22, 2012, through May 22, 2018 Pros failed to provide lawful meal and rest periods, failed to pay overtime, failed to provide accurate or adequate wage statements, and failed to pay timely all wages due upon termination. Such claims include claims for violation of unfair competition law under California Business and Professions Code section 17200 *et seq.*, claims for civil penalties under PAGA, California Labor Code section 2698 *et seq.*; any other associated claims for statutory or civil penalties or liquidated damages, whether recovery is founded on federal, state, or municipal law; and any associated claim for interest, attorneys’ fees, or costs (all collectively the Settlement Class Members’ “Released Claims”).

2. **The Released Claims include all such claims, whether known or unknown.** Thus, if you participate in the Settlement, but then you discover facts in addition to or different from those that you now know or believe to be true with respect to the subject matter of the Released Claims, those claims will remain released and forever barred.
3. **Class Representative Service Payment:** In addition to his Settlement Share as a Class Member, Plaintiff will seek approval from the Court for a payment of Ten Thousand Dollars and No Cents (\$10,000.00) in consideration of his initiating and pursuing the Action, undertaking the risk of liability for attorneys’ fees and expenses in the event he was unsuccessful in the prosecution of the Action, and granting the general release he is granting as part of the Settlement. This payment (the “Class Representative Enhancement Payment”), which will be paid in addition to his Settlement Share, will be made out of the Gross Settlement Amount.
4. **Class Counsel Fees and Expenses Payment:** As part of the final approval hearing, Class Counsel will request up to Two Hundred Thirty-Three Thousand, Three Hundred and Ten Dollars and No Cents (\$233,310.00) for their attorneys’ fees (one third of the Gross Settlement Amount) and up to Twenty-Five Thousand Dollars and No Cents (\$25,000.00) for their expenses incurred in connection with their work in this case (the “Class Counsel Fees and Expenses Payment”). Defendants do not oppose this payment. This amount constitutes full and complete compensation for all legal fees, costs, and expenses of all Class Counsel, including costs and expenses resulting from experts and other vendors retained by Class Counsel in connection with the litigation and all work done through the completion of the litigation, whatever date that may be. Class Members will not be required to pay Class Counsel for any other attorneys’ fees, costs or expenses out of their own pockets if the Settlement Agreement and the Class Counsel Fees and Expenses Payment is finally approved by the Court. The Class Counsel Fees and Expenses Payment as approved by the Court will be paid out of the Gross Settlement Amount over the course of the three installments described above. Class Counsel will file a motion with the Court for these fees and expenses no later than 21 days before your deadline to object or exclude yourself from the Settlement and you may request a copy of that motion from Class Counsel or by obtaining a copy from the Court as described below.
5. **Payment to LWDA:** Because Class Members are also releasing their claims for civil penalties under PAGA, the parties have agreed that the LWDA, which is entitled to share in any recovery of civil penalties, will be paid Thirty Thousand Dollars and No Cents (\$30,000.00) out of the Total Settlement Amount as the LWDA’s share of the settlement of civil penalties. This amount is subject to the Court’s approval.
6. **Costs of Administration:** The reasonable costs of administering the Settlement, including the Settlement Administrator’s fees and expenses of approximately Twenty-Five Thousand Dollars and No Cents (\$25,000.00), will also be paid out of the Total Settlement Amount.
7. **Plaintiff and Class Counsel’s Support of the Settlement:** Plaintiff as Class Representative and Class Counsel support the Settlement. Their reasons include the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and the possibility that the Class is not entitled to any recovery. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted.

No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

WHAT ARE MY RIGHTS AS A CLASS MEMBER?

1. **Participating in the Settlement:** Plaintiff as Class Representative and Class Counsel represent your interests as a Class Member. Unless you opt out of the Settlement, you are a part of the Class, you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court, and you will be deemed to have released the Released Claims against Defendants and the other Released Parties described above. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and expenses.

Class Member Settlement Information Sheet: The enclosed Class Member Settlement Information Sheet provides the information on which your Settlement Share will be calculated and an estimate of your Settlement Share if all Settlement Class Members are participating and all payment amounts are awarded; your actual Settlement Share may be more or less. If the information in the Class Member Settlement Information Sheet (including your mailing address) is correct, you do not need to return the form. Any correction to the Class Member Settlement Information Sheet must be completed, signed by you, and returned to the Settlement Administrator, **postmarked by not later than July 16, 2018**. It is your obligation to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Failing to provide the Settlement Administrator with any change of your mailing address may prevent you from receiving your Settlement Share.

- a. **Excluding Yourself from the Settlement:** If you do not wish to participate in the Settlement, you must sign and mail the enclosed Election Not to Participate in Settlement, **postmarked no later than July 16, 2018**.

Any person who timely and properly opts out of the Settlement will no longer be a member of the Settlement Class and will not be eligible to receive a Settlement Share, and he or she will not be included in calculating the Settlement Share of any other Class Member. Any such person will retain the right, if any, to pursue, at his or her own expense, a claim against Defendants. An incomplete or unsigned Election Not to Participate in Settlement will be deemed invalid.

Consistent with Pros' policies, there will be no retaliation or adverse action taken against any Settlement Class Member who participates in the Settlement or opts out of the Settlement.

- b. **Objecting to the Settlement:** You also may object to the terms of the Settlement, by mailing your objections to the addresses below:

MAIL YOUR OBJECTION TO:

Payne v. Pros, Incorporated et al.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

CLASS COUNSEL

S. Brett Hutton
Jared Hague
Sutton Hague Law Corporation, P.C.
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DEFENDANTS' COUNSEL

Jerry Pearson
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1800 30th Street 4th Floor
Bakersfield, CA 93301
Telephone: (661) 327-9661
Facsimile: (661) 324-0409

DO NOT TELEPHONE THE COURT, DEFENDANTS OR DEFENDANTS' COUNSEL.

Any written objection must state your full name, address, and the dates of your employment at Pros. **Written objections to the Settlement must be postmarked no later than July 16, 2018.**

If you submit a timely written objection, you may also appear, or appear through counsel of your choice, paid at your own expense, and be heard at the time of the final approval hearing (explained below), if you wish to do so, but only if you indicate in your objection that you intend to appear.

If the Court overrules your objection and you did not properly submit a timely opt-out statement, you will be bound by the terms of the Settlement and receive a Settlement Share.

FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing on August 29, 2018 at 8:30 a.m., at the Superior Court of California, County of Kern, 1415 Truxtun Avenue, Bakersfield, California 93301 in Department 17, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Enhancement Payment, the LWDA payment, the Class Counsel Fees and Expenses Payment and the Settlement Administrator's reasonable fees and expenses.

The hearing may be postponed without further notice to the Class. **It is not necessary for you to appear at this hearing. If you have submitted an objection and indicated that you intend to appear in the manner set forth above, you may appear at the hearing and be heard.**

GETTING MORE INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which will be on file with the Clerk of the Court or available for you to review at <http://phoenixclassaction.com/joseph-payne-v-pros-inc/>. The pleadings and other records in this litigation including the Settlement Agreement, may be examined at the Clerk's Office, Superior Court of California, County of Kern, 1415 Truxtun Avenue, Bakersfield, California 93301, during the Clerk's normal business hours; or you may view the documents at <http://phoenixclassaction.com/joseph-payne-v-pros-inc/> or you may contact Class Counsel or the Settlement Administrator.

PLEASE DO NOT TELEPHONE THE COURT, DEFENDANTS OR DEFENDANTS' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS! YOU MAY, HOWEVER, CALL ANY OF THE CLASS COUNSEL LISTED ABOVE OR THE SETTLEMENT ADMINISTRATOR AT (800) 523-5773.

Dated: June 14, 2018
By Order of the Court