

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff LEONEL MERIDA, individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES-CENTRAL DISTRICT
SPRING STREET COURTHOUSE

LEONEL MERIDA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ALL-PRO ENTERPRISES, INC., a
California non-profit corporation; and
DOES 1 through 50, inclusive,

Defendant.

Case No.: BC667384

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Assigned for all purposes to:
Hon. Ann I Jones, Dept.:11

Complaint Filed: July 3, 2017
Trial Date: None Yet Set

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Stipulation of Settlement.

B. Agreement. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this Joint Stipulation of Class Action Settlement.

C. Class Counsel. The term “Class Counsel” as used herein means: Kevin Mahoney, and all the lawyers of MAHONEY LAW GROUP, APC who are (or were at some time) counsel for and acting on behalf of Named Plaintiff and the Settlement Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

D. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of Los Angeles.

E. Final and Final Effective Date. The terms “Final” and “Final Effective Date” shall mean the first business day upon which the last of the following have occurred:

a. If Class Members have not filed objections, or if they have filed objections, said objections have been withdrawn, entry of the Final Judgment in this Action after the Court has granted final approval of the Settlement, and a file stamped copy of the Final Judgment with a proof of service has been served on all parties by Class Counsel, or

FPDOCS 34065809.1
FPDOCS 34825097.1

1 b. If Class Members have filed objections that have not been withdrawn, either
2 (1) the time to appeal, object or attack the Court's entry of Final Judgment has
3 expired and there has been no appeal, objection or attack; or (2) The court of
4 last resort to which any appeal is taken has affirmed its entry of Final
5 Judgment in its entirety or the Class Member has presented a petition for
6 review and the affirmance is no longer subject to further appeal or review, and
7 no further challenge to the entry of Final Judgment is possible.

8 **F. Date of Final Approval.** The terms "Date of Final Approval" or "Final
9 Approval" as used herein mean the date of the Final Fairness and Approval Hearing.

10 **G. Defendant.** The term "Defendant" as used herein means the named defendant in
11 the Litigation, All-Pro Enterprises, Inc.

12 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
13 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
14 Unemployment Tax Act, and any similar state taxes and contributions required of employers,
15 such as for unemployment insurance. Defendant shall pay the employer's share of payroll taxes
16 separate and apart from the Settlement Amount as defined in herein.

17 **I. Judge.** The term "Judge" as used herein means Honorable Ann I. Jones, Judge
18 of the Superior Court of the State of California for the County of Los Angeles, or any other
19 judge(s) that may be subsequently assigned to proceed over the Litigation.

20 **J. Litigation.** The term "Litigation" as used herein means the action entitled *Leonel*
21 *Merida v. All-Pro Enterprises, Inc. et al.*, filed on or about July 3, 2017 in the Los Angeles
22 County Superior Court, Case No. BC667384.

23 **K. Named Plaintiff.** The term "Named Plaintiff" as used herein means the named
24 Plaintiff in the Litigation, Leonel Merida.

25 **L. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
26 means the Settlement Amount minus any award of attorneys' fees and Litigation costs,
27 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant
28 to California's Private Attorney General Act ("PAGA") ("PAGA Settlement").

1 **M. Net Settlement Payments.** The term "Net Settlement Payment(s)" shall include
2 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
3 interest.

4 **N. Resolution and Settlement.** The terms "Resolution" and "Settlement" as used
5 herein means this Agreement to resolve the Litigation.

6 **O. Response Deadline.** The term "Response Deadline" as used herein means the date
7 that is 30 days after the date the Settlement Administrator initially mails the Class Notice to the
8 Settlement Class members. For Settlement Class members who receive a re-mailed Class Notice,
9 the term "Response Deadline" as used herein means the date the Settlement Administrator re-
10 mails the Class Notice.

11 **P. Settlement Administrator.** The term "Settlement Administrator" as used herein
12 means Phoenix Settlement Administrators, which will be responsible for the administration of
13 the Settlement Payment, as defined below, and all related matters.

14 **Q. Settlement Agreement.** The terms "Settlement Agreement" or "Agreement" are
15 used synonymously herein to mean this Joint Stipulation of Class Action Settlement.

16 **R. Settlement Amount.** The terms "Settlement Amount" and "Gross Settlement
17 Fund" as used herein mean a fund in the sum of Two Hundred Ninety Thousand Dollars and Zero
18 Cents (\$290,000.00), which shall be paid by Defendant, and from which all: Net Settlement
19 Payments, Court approved attorneys' fees and Litigation costs pursuant to Section XIII,
20 Administrative Costs pursuant to Section VIII, enhancement to Named Plaintiff pursuant to
21 Section XIV, statutory penalties, interest, and pursuant to Section XV, PAGA Settlement
22 pursuant to Section XVI shall be paid, except as provided herein. The Settlement shall be an "all
23 in" settlement and shall not provide for a reversion. Should the class size increase by more than
24 10%, i.e. forty (40) as the Defendant represented the Class size to consist of 402 class members,
25 then the Settlement Amount shall increase proportionately, i.e. twenty-nine thousand dollars
26 (\$29,000.00).

27 **S. Settlement Class.** For settlement purposes only, the Parties agree to the
28 certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

1 The Settlement Class is defined as all persons who are employed or have been employed
2 by Defendant as an hourly employee in the State of California at any time within four (4)
3 years prior to the filing of the Action and continuing through March 8, 2018 (the
4 "Settlement Class").

5 **T. Settlement Period.** The term "Settlement Period" as used herein means the
6 period from July 3, 2013 through March 8, 2018.

7 **U. Preliminary Approval.** The term "Preliminary Approval" as used herein means
8 the date on which the Court signs the preliminary approval order and grants preliminary approval
9 of the Resolution.

10 **II. BACKGROUND**

11 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and
12 all others similarly situated, that Defendant violated California state wage and hour laws, the
13 California *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of
14 Defendant's California wage and hour policies and practices. Specifically, Named Plaintiff
15 alleges that, during the Class Period, with respect to Named Plaintiff and the Settlement Class,
16 Defendant, *inter alia*, failed to properly pay minimum and overtime wages for all hours worked
17 (including, and not limited to, by way of failure to include non-discretionary incentive
18 compensation or remuneration in the calculation of the regular rate of pay for purposes of
19 calculating and paying overtime wages, and unlawful deductions and withholding of
20 compensation earned by and due to Named Plaintiff and Settlement Class members); failed to
21 timely pay wages during employment; failed to provide compliant meal and rest periods and/or
22 associated premium payments; failed to issue compliant and accurate itemized wage statements;
23 failed to maintain accurate payroll records; failed to timely pay all wages due and owing during
24 employment and at the time of termination or resignation; and as a result of the foregoing,
25 engaged in unfair competition in violation of the Business and Professions Code. Class Counsel
26 conducted formal and informal discovery that yielded information and documentation
27 concerning the claims set forth in the Litigation.

28 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length

1 negotiations with Defendant concerning possible resolution of the claims asserted in the
2 Litigation. On March 8, 2018, the Parties participated in a mediation before mediator Hon. Carl
3 West (Ret.) that resulted in a tentative settlement of the Litigation, subject to the approval of the
4 Court, and finalization of a formal Stipulation for Resolution. The Parties have since engaged in
5 extensive negotiations about the terms and conditions of the Resolution. The Parties have now
6 entered into a more detailed, formalized Settlement Agreement for submission to the Court for
7 preliminary and Final Approval.

8 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
9 claims asserted in the Litigation and has concluded, taking into account the sharply contested
10 issues involved, the expense and time necessary to pursue the Litigation through class
11 certification, trial and any appeals, the risks and costs of further prosecution of the Litigation, the
12 risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
13 to be received by the Named Plaintiff and the members of the Settlement Class pursuant to this
14 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
15 reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his
16 own behalf and on behalf of the Settlement Class, has agreed to settle the Litigation with
17 Defendant on the terms set forth herein.

18 **D.** Defendant has concluded that, because of the substantial expense of defending
19 against the Litigation, the length of time necessary to resolve the issues presented herein, the
20 inconvenience involved, and the concomitant disruption to their business operations, it is in their
21 best interests to accept the terms of this Agreement. Defendant denies each of the allegations
22 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle
23 the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing
24 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

25 **E.** This Agreement is intended to and does effectuate the full, final and complete
26 resolution of all allegations and claims that are asserted, were asserted, or could have been
27 asserted, in the Litigation by Named Plaintiff and members of the Settlement Class as set forth
28 in Section II.A.

1 **III. JURISDICTION**

2 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
3 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
4 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
5 Final Approval of the Resolution and after the Court has ordered the entry of judgment pursuant
6 to California *Code of Civil Procedure* Section 664.6 and Rule 3.769(h) of the California Rules
7 of Court, the Court shall retain jurisdiction of this action solely for the purpose of interpreting,
8 implementing, and enforcing the judgment in this Resolution consistent with the terms set forth
9 herein.

10 **IV. STIPULATION OF CLASS CERTIFICATION**

11 The Parties stipulate to the certification of this Settlement Class for purposes of
12 Resolution only. This Stipulation is contingent upon the Preliminary and Final approval and
13 certification of the Settlement Class only for purposes of Resolution. Should the Resolution not
14 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally
15 to class certification as part of the Resolution shall have no bearing on, and shall not be admissible
16 in connection with, the issue of whether a class should be certified in a non-settlement context in
17 the Litigation. Defendant reserves the right to oppose class certification should this Resolution
18 be modified or reversed on appeal or otherwise not become final.

19 **V. MOTION FOR PRELIMINARY APPROVAL**

20 Named Plaintiff will bring a motion before the Judge for an order preliminarily approving
21 the Resolution including the Notice of Proposed Class Action Settlement (“Class Notice”), which
22 is attached hereto as **EXHIBIT A**, and including conditional certification of the Settlement Class
23 for settlement purposes only, and approving the deadlines proposed by the Parties for the
24 submission of Requests for Exclusion, Workweeks Disputes, and Objections. The date that the
25 Court grants Preliminary Approval of this Agreement will be the “Preliminary Approval Date.”
26 Class Counsel will prepare the Motion for Preliminary Approval, as well as the papers in support
27 of final approval of the Settlement, and any responses to Objections or opposition papers to the
28 Motion for Final Approval.

1 **VI. STATEMENT OF NO ADMISSION**

2 A. Defendant denies liability to Named Plaintiffs and to the Settlement Class upon
3 any claim or cause of action. This Agreement does not constitute, and is not intended to
4 constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
5 allegations or claims made against it in the Litigation.

6 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
7 any statements, discussions or communications, nor any materials prepared, exchanged, issued
8 or used during the course of the negotiations leading to this Agreement or the Resolution, is
9 intended by the Parties to constitute evidence of any violation by or liability of Defendant of any
10 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
11 obligation or duty at law or in equity Defendant denies all liability in this action.
12 Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court
13 that has as its purpose the interpretation, implementation, or enforcement of this Agreement or
14 any orders or judgments of the Court entered in connection with the Resolution.

15 C. None of the documents produced or created by Named Plaintiff or the Settlement
16 Class in connection with the claims procedures or claims resolution procedures constitute, and
17 they are not intended to constitute, an admission by Defendant of any violation of any federal,
18 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
19 duty at law or in equity.

20 D. The Parties agree that class certification pursuant to California *Code of Civil*
21 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.
22 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
23 that any class should be certified or given collective treatment in the Litigation or in any other
24 action or proceeding. In the event that this Agreement is not approved by the Judge or any
25 appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiffs will not be
26 deemed to have waived, limited or affected in any way any claims, rights or remedies in the
27 Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any
28 of their objections or defenses in the Litigation.

1 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Release as to All Settlement Class Members.**

3 Upon the Final Effective Date, Named Plaintiffs and all members of the Settlement
4 Class, except those that make a valid and timely request to be excluded from the Settlement Class
5 and Resolution, waive, release, discharge, and promise never to assert in any forum any and all
6 wage-related claims arising during the Settlement Period against Defendant, Defendant's parents,
7 owners, subsidiaries, affiliates, payroll providers, professional employer organizations, their
8 insurers, attorneys and all agents thereof, that were alleged in the Litigation or which could have
9 been alleged in the Litigation based on the facts asserted in the Litigation, including claims during
10 the Settlement Period for: unpaid minimum wages, unpaid overtime wages, and/or any
11 deduction(s) from wages; meal and rest breaks; wage statement violations; failure to timely pay
12 wages; separation pay violations (Labor Code Section 203); unfair business practices; and
13 PAGA; and any other applicable provisions of state or federal law, including the applicable IWC
14 wage order(s) but not including the Fair Labor Standards Act, based on the facts alleged or which
15 could have been alleged in the Litigation.

16 With respect to only those members of the Settlement Class who deposit or cash his/her
17 settlement check, the released claims shall also include any and all claims under the Fair Labor
18 Standards Act or that could have been asserted under federal law based on the facts alleged in
19 the Litigation or that arise from the allegations pled in the Litigation. The Settlement check will
20 include language on the back of the check that states "by depositing and/or cashing this settlement
21 check you have affirmatively opted-in to the class and agree to release all claims for unpaid
22 wages under federal law," or similar language upon agreement of the Parties.

23 **B. General Release by Named Plaintiff Only.**

24 In addition to the release made in Section VII(A), Named Plaintiff makes the additional
25 following general release of all claims, known or unknown.

26 Named Plaintiff releases Defendant, and each of its respective owners, subsidiaries,
27 affiliates, predecessors or successors in interest, officers, directors, shareholders, employees,
28 payroll providers, professional employer organizations, attorneys, agents, assigns, insurers, and

1 re-insurers of any of them, from all claims, demands, rights, liabilities and causes of action of
2 every nature and description whatsoever, known or unknown, asserted or that might have been
3 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
4 arising out of, relating to, or in connection with any act or omission by or on the part of any
5 Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the
6 "General Release.") With respect to the General Release, Named Plaintiff stipulates and agree
7 that, upon the Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived
8 and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of
9 Section 1542 of the California Civil Code, or any other similar provision under federal or state
10 law, which provides:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS,**
12 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
13 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
14 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

15 Accordingly, if the facts relating in any manner to this Resolution are found hereafter to be other
16 than or different from the facts now believed to be true, the release of claims contained herein
17 shall be effective as to all unknown claims.

18 **C. Publicity.**

19 Excluding the Court in this matter, Named Plaintiff and Class Counsel agree that they
20 have not and will not publish the Litigation or the Resolution outside of the procedures set forth
21 in this Agreement. In response to any inquiries Named Plaintiff will state that "the case was
22 resolved and it was resolved confidentially." Nothing herein shall prevent Class Counsel from
23 discharging their duties to Settlement Class members. Class Counsel can discuss the Litigation
24 and the Resolution with Named Plaintiff and the Settlement Class. Class Counsel, without
25 identifying Defendant and Defendant's counsel, may report the settlement amount of this matter.

26 **VIII. SETTLEMENT ADMINISTRATOR**

27 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
28 Settlement Administrators as the Settlement Administrator to administer the Resolution, which

1 includes but is not limited to distributing and responding to inquiries about the Notice of
2 Proposed Class Action Resolution, objections, and requests for exclusion, determining the
3 validity of any disputes and opt-outs and calculate all amounts to be paid from the Net Settlement
4 Fund. Charges and expenses of the Settlement Administrator, not to exceed Fifteen Thousand
5 Dollars (\$15,000.00), will be paid from the Settlement Amount. If the actual Settlement
6 Administrator fees are less than the Parties' estimation, the difference between the actual and
7 estimated Settlement Administrator fees will revert to the participating Settlement Class
8 members.

9 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

10 **A. Notice.**

11 Within fourteen (14) calendar days following Preliminary Approval of the Resolution,
12 Defendants shall provide the Settlement Administrator with information with respect to each
13 Settlement Class member, including his or her: (1) name and last known address(es) currently in
14 Defendant's possession, custody, or control; (2) Social Security Number; and (3) number of
15 Workweeks (collectively the "Class List"). The Settlement Administrator shall perform an
16 address search using the United States Postal Service National Change of Address ("NCOA")
17 database and update the addresses contained on the Class List with the newly-found addresses,
18 if any. Within ten (10) calendar days of receiving the Class List from Defendants, the Settlement
19 Administrator shall mail the Class Notice to the Settlement Class Members via first-class regular
20 U.S. Mail using the most current mailing address information available. The Settlement
21 Administrator shall maintain a list with names and all addresses to which notice was given, and
22 digital copies of all the Settlement Administrator's records evidencing the notice provided to any
23 Settlement Class Member, for at least four (4) years from the Final Approval Date.

24 The Class Notice will set forth:

- 25 (i) the Settlement Class Member's estimated payment and the basis for it;
26 (ii) the information required by California Rule of Court 3.766(d);
27 (iii) the material terms of the Settlement;
28 (iv) the proposed Settlement Administration Costs;

- 1 (v) the definition of the Class;
- 2 (vi) a statement that the Court has preliminarily approved the Settlement;
- 3 (vii) how the Settlement Class Member can obtain additional information, including
- 4 contact information for Class Counsel;
- 5 (viii) information regarding opt-out and objection procedures;
- 6 (ix) the date and location of the Final Approval Hearing; and
- 7 (x) that the Settlement Class Member must notify the Settlement Administrator no
- 8 later than the Response Deadline if the Settlement Class Member disputes the
- 9 accuracy of the number of Workweeks as set forth on his or her Class Notice
- 10 (“Workweeks Dispute”). If a Settlement Class Member fails to timely dispute the
- 11 number of Workweeks attributed to him or her in conformity with the instructions
- 12 in the Class Notice, then he or she shall be deemed to have waived any objection
- 13 to the accuracy of the Workweeks credited to him or her, and any claim to any
- 14 additional settlement payment based on different data.

15 If a Class Notice from the initial notice mailing is returned as undeliverable, the

16 Settlement Administrator will attempt to obtain a current address for the Settlement Class

17 Member to whom the returned Class Notice had been mailed, within five (5) business days of

18 receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone

19 (if the Class List provided by Defendants includes a last known telephone number for the

20 Settlement Class Member), and (2) undertaking skip tracing. If the Settlement Administrator is

21 successful in obtaining an updated address, it shall promptly re-mail the Class Notice to the

22 Settlement Class Member. Further, any Class Notices that are returned to the Settlement

23 Administrator with a forwarding address before the Response Deadline shall be promptly re-

24 mailed to the forwarding address affixed thereto, within five (5) business days of receipt of the

25 returned Class Notice.

26 No later than twenty (20) court days prior to the Final Approval Hearing, the Settlement

27 Administrator shall provide counsel for the Parties with a declaration attesting to the completion

28 of the notice process, including the number of attempts to obtain valid mailing addresses for and

1 re-sending of any returned Class Notices, as well as the number of opt-outs and objections
2 received by the Settlement Administrator.

3 **B. Objections.**

4 Only Settlement Class Members who do not opt out of the Settlement may object to the
5 Settlement. In order for any Settlement Class Member to object to this Settlement, or any of its
6 terms, he or she may mail a written Objection to the Settlement Administrator at the addresses
7 provided on the Class Notice by no later than the Response Deadline, and/or may appear
8 personally at the Final Approval Hearing and ask to speak to the Court. The Settlement
9 Administrator shall notify counsel for Plaintiff and Defendant of any objections, and counsel for
10 Plaintiff and Defendant shall then notify the court. The date of the postmark shall be the
11 exclusive means for determining whether an Objection has been timely submitted to the
12 Settlement Administrator. The Objection shall set forth in writing: (1) the objector's name and
13 address, (2) the reason(s) for the objection, along with whatever legal authority, if any, the
14 objector asserts supports the objection, and (3) whether the objector plans to appear at the Final
15 Approval Hearing. The Settlement Administrator shall provide copies of all Objections to Class
16 Counsel and Defendants' Counsel within three (3) business days of receipt and shall report the
17 Objections to the Court in its declaration to be provided in advance of the Final Approval
18 Hearing. If a Settlement Class Member objects to this Settlement, the Settlement Class Member
19 will remain a member of the Settlement Class and if the Court grants final approval of the
20 Settlement, he or she will be bound by the terms of the Settlement in the same way and to the
21 same extent as a Settlement Class Member who does not object. The date of mailing of the Class
22 Notice to the objecting Settlement Class Member shall be conclusively determined according to
23 the records of the Settlement Administrator. Provided that the Settlement Administrator mailed
24 the Class Notice in accordance with the Settlement Agreement and the Court's orders, the
25 deadline to file an Objection shall apply notwithstanding any assertion by any Settlement Class
26 Member of non-receipt of the Class Notice. The Court retains final authority with respect to the
27 consideration and admissibility of all Settlement Class Member objections.

28 **C. Requesting Exclusion.**

Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the Settlement by mailing or faxing a written request to be excluded from the Settlement (“Request for Exclusion”), in conformity with the procedures set forth in the Class Notice, to the Settlement Administrator, postmarked or fax-stamped on or before the Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name, last 4 digits of his or her Social Security number, signature, and the following statement: “Please exclude me from the Settlement Class in *Merida v. All-Pro Enterprises, Inc.*” or a statement of similar meaning. The Settlement Administrator shall provide copies of all Requests for Exclusion to Defendants’ Counsel within three (3) business days and shall report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who requests exclusion from the Settlement will not be entitled to receive any payment from the Settlement and will not be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not opt-out of the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants Final Approval of the Settlement.

D. Disputes Regarding Settlement Class Member’ Workweeks Data

Each Settlement Class member may dispute the number of Workweeks contained on his or her Class Notice (“Workweeks Dispute”) in conformity with the procedures set forth in the Class Notice. Any such Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Settlement Class Member, postmarked or fax-stamped on or before the Response Deadline, and must include any records or documentation to support the dispute. The Settlement Administrator shall provide copies of all disputes to Class Counsel and counsel for Defendants within three (3) business days of receipt and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants’ Counsel and Class Counsel. If the claims cannot be resolved in that manner, the Workweeks Dispute shall be presented to the Court and the Court shall adjudicate the dispute at the Final Approval Hearing.

1 **E. Opportunity to Terminate the Settlement.**

2 If more than ten percent (10%) or more of the Settlement Class members opt out of the
3 Settlement by submitting a timely and valid Request for Exclusion, Defendant may, in its sole
4 discretion, terminate this Agreement by communicating that decision in writing, at least eighteen
5 (18) court days prior to the Final Approval Hearing, to Class Counsel. If Defendant exercises its
6 right to terminate the Agreement pursuant to this provision, Defendants will be responsible for
7 any costs and fees incurred by the Settlement Administrator.

8 **F. Cooperation and Non-Interference**

9 The Parties and their respective counsel agree not to encourage members of the
10 Settlement Class to participate or refrain from participating in the settlement, to opt out of this
11 settlement, or to object to the Resolution, directly or indirectly, through any means. However, if
12 a Settlement Class member contacts Class Counsel, Class Counsel may discuss the terms of the
13 Resolution and the Settlement Class member's options.

14 **X. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
15 **MEMBERS**

16 Individual Settlement Shares will be calculated and apportioned to Participating Class
17 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
18 Members' respective number of Workweeks during the Class Period. Specific calculations of
19 the Individual Settlement Shares and Individual Settlement Payments will be made as follows:

20 **A.** The Settlement Administrator will determine the total number of Workweeks
21 worked by each Settlement Class Member, as reflected on the Class List provided by
22 Defendants.

23 **B.** The Settlement Administrator will determine the aggregate number of
24 Workweeks worked by all Settlement Class Members during the Class Period ("Workweeks").

25 **C.** To determine each Settlement Class Member's Individual Settlement Share, the
26 Settlement Administrator will use the following formula: Individual Settlement Share =
27 (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

28 **D.** The Individual Settlement Share will be reduced by any required employee's

1 share of taxes and withholdings with respect to the wage-portion of the Individual Settlement
2 Share as set forth in this Agreement, to yield the Individual Settlement Payment.

3 **E.** Participating Class Members (i.e. Settlement Class Members who do not submit
4 a timely and valid Request for Exclusion) will be entitled to payment of their Individual
5 Settlement Share as calculated on a *pro rata* basis based on the Participating Class Members'
6 respective individual Workweeks as compared to the aggregate total Workweeks of all
7 Participating Class Members. No portion of the Net Settlement Amount will revert to
8 Defendants.

9 **XI. DISTRIBUTION OF PAYMENTS**

10 **A. Distribution of Individual Settlement Payments.**

11 Participating Class Members will receive an Individual Settlement Payment. Individual
12 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
13 calendar days after the date of their issuance. Within ten (10) calendar days after the expiration
14 of the 180-day period, the Settlement Administrator will cancel all Individual Settlement
15 Payment checks that have not been cashed or negotiated within the 180-day period (the "Unused
16 Funds"). The Unused Funds shall be paid, without the need to include interest, as follows in
17 compliance with California Code of Civil Procedure section 384: One hundred percent (100%)
18 to the Legal Aid Foundation of Los Angeles ("LAFLA"). LAFLA is a non-profit organization
19 helping indigent individuals, including, in the area of employment law, helping with the recovery
20 of unpaid wages; obtaining unemployment benefits; legal advice regarding discrimination; legal
21 advice regarding workplace harassment; and legal advice regarding medical leave and other
22 workplace rights. Distribution to LAFLA will advance the purpose of the lawsuit, which is to
23 recover unpaid wages for employees. The Settlement Administrator will instruct LAFLA that
24 the funds should be used by LAFLA to support projects that will benefit employees seeking
25 recovery of unpaid wages, thus furthering the objectives and purposes of this class action or its
26 separate causes of action, and promoting the law consistent with the objectives and purposes of
27 this class action or its separate causes of action. The Parties and/or counsel for the Parties do not
28 have any interests in or involvement with the governance or work of LAFLA.

1 **B. Funding of Resolution.**

2 Defendant shall fund the Settlement fourteen (14) calendar days after the Court enters an
3 order of Final Approval of the settlement and entry of judgment, if there are no valid and timely
4 objections to the settlement. If there are valid and timely objections to the settlement that are not
5 withdrawn, the Defendant shall fund the Settlement seventy-four calendar days after the date of
6 the entry of the order granting Settlement Approval and entry of judgment, unless there is an
7 appeal filed and in which case the Defendant are not obligated to fund the Settlement until 14
8 calendar days after the remittitur issues on the final ruling as to any such appeal or writ assuming
9 the settlement has been approved. At no time prior to the Final Effective Date shall Defendant
10 be required to escrow any portion of the Settlement Amount.

11 **C. Time for Distribution.**

12 The Settlement Administrator shall cause the Net Settlement Fund, Court approved
13 enhancements to Named Plaintiff, Court approved attorney's fees and Litigation costs, and
14 PAGA Settlement to be mailed within fifteen (15) calendar days following the date on which the
15 settlement is funded by the Defendant in accordance with the provisions of Section XI.B.

16 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
17 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
18 search and, if another address is identified, shall mail the check to the newly identified address.
19 If the Settlement Administrator is unable to obtain a valid mailing address through this process,
20 the monies represented by the check shall be turned over according to the above procedures. The
21 Settlement Administrator may wire funds electronically to Class Counsel for the Court approved
22 attorney's fees and Litigation costs.

23 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

24 The amounts paid under this Agreement do not represent a modification of any previously
25 credited hours of service under any employee benefit plan, policy or bonus program sponsored
26 by Defendant. Such amounts will not form the basis for additional contributions to, benefits
27 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
28 Defendant, policies or bonus programs. Any payments made under the terms of this Resolution

1 shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages,
2 or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus
3 program. Defendant retains the right to modify the language of their benefit plans, policies and
4 bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
5 Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring
6 term as defined by applicable plans, policies and bonus programs for purpose of eligibility,
7 vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not
8 required by this Resolution.

9 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

10 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall
11 not seek or receive an amount in excess of Ninety-Six Thousand Six Hundred Sixty-Six Dollars
12 and Sixty-Six Cents (\$96,666.66) which represents 1/3rd % of the Settlement Amount for all past
13 and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this
14 Resolution. Additionally, Defendant shall not oppose an application by Class Counsel for, and
15 Class Counsel shall not seek or receive an amount in excess of Twelve Thousand Dollars
16 (\$12,000.00), which represents all past and future Litigation costs and expenses necessary to
17 prosecute, settle and administer the Litigation and this Resolution. Any attorneys' fees or
18 Litigation costs awarded to Class Counsel by the Court shall be deducted from the Settlement
19 Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these
20 amounts include, without limitation, all time and expenses expended by Class Counsel in
21 defending the Resolution and securing Final Approval (including any appeals therein). There
22 will be no additional charge of any kind to either the members of the Settlement Class or request
23 for additional consideration from Defendant for such work. This amount shall include all
24 attorneys' fees, Litigation costs and expenses for which Named Plaintiffs and Class Counsel
25 could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or
26 amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then
27 the unapproved portion or portions shall revert to the participating settlement class members on
28 a pro-rata basis.

1 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

2 Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall
3 not seek or receive an amount in excess of Seven Thousand Five Hundred Dollars (\$7,500.00)
4 for his participation in and assistance with the Litigation. Any enhancement awarded to Named
5 Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of
6 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court
7 approves an enhancement of less than the above amounts to Named Plaintiffs, then the
8 unapproved portion or portions shall revert into the Net Settlement Amount to be distributed
9 between the participating Settlement Class Members on a pro-rata basis.

10 **XV. TAXATION AND ALLOCATION**

11 The Parties agree that all employment taxes and other legally required withholdings will
12 be withheld from payments to the members of the Settlement Class and Named Plaintiffs based
13 on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section.
14 The amount of federal income tax withholding will be based upon a flat withholding rate for
15 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended
16 or supplemented. Income tax withholding will also be made pursuant to applicable state and/or
17 local withholding codes or regulations. For withholding tax characterization purposes and
18 payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as
19 follows ("Net Settlement Allocation"):

- 20 (1) 20% as wages;
21 (2) 40% as penalties; and
22 (3) 40% as interest.

23 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by
24 the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code,
25 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
26 this Agreement, the processes set forth in this section may be modified in a manner to bring
27 Defendant into compliance with any such changes.

28 Finally, Defendant shall be responsible for paying the Employer Taxes separate and apart

1 from the Net Settlement Fund based on the stipulated Net Settlement Allocation.

2 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

3 In order to implement the terms of this Resolution and to settle claims alleged under the
4 Private Attorneys' General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to
5 allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the penalties portion of the
6 Settlement Amount as the PAGA Settlement. Defendant, through the Settlement Administrator,
7 agrees to establish a PAGA Settlement fund. Within fifteen calendar days after the settlement is
8 funded by the Defendant, the Settlement Administrator shall disburse 75% of the PAGA
9 Settlement to the California Labor Workforce Development Agency ("LWDA").

10 **XVII. COURT APPROVAL**

11 This Agreement and the Resolution is contingent upon Final Approval by the Court and
12 the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably
13 necessary to secure both Preliminary Approval and Final Approval of the Resolution, to the
14 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
15 each other in obtaining Judge approval, and, if necessary, appellate approval, of the Resolution
16 in all respects. Named Plaintiff and Defendant expressly agree that they will not file any
17 objection to the terms of this Stipulation of Resolution or assist or encourage any person or entity
18 to file any such objection.

19 **XVIII. MISCELLANEOUS PROVISIONS**

20 **A. Stay of Litigation.**

21 Named Plaintiffs and Defendant agree to the stay of all discovery in the Litigation,
22 pending Final Approval of the Resolution by the Court.

23 **B. Interpretation of the Agreement.**

24 This Agreement constitutes the entire agreement between Named Plaintiffs and
25 Defendant. Except as expressly provided herein, this Agreement has not been executed in
26 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
27 written representations or terms shall modify, vary or contradict its terms. In entering into this
28 Agreement, the Parties agree that this Agreement is to be construed according to its terms and

1 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
2 enforced under the laws of the State of California, both in its procedural and substantive aspects,
3 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
4 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
5 Court of the State of California for the County of Los Angeles, and Named Plaintiffs and
6 Defendant hereby consent to the personal jurisdiction of the Judge over them solely in connection
7 therewith. The foregoing is only limited to disputes concerning this Agreement and in no way
8 limits or negates the enforceability and effect of the underlying arbitration agreements signed by
9 employees of Defendant, specifically including but not limited to Named Plaintiffs, obligating
10 them to arbitrate any and all claims on an individual (and not on a class, collective, or
11 representative) basis. Named Plaintiffs, on their own behalf and on behalf of the Settlement
12 Class, and Defendant participated in the negotiation and drafting of this Agreement and had
13 available to them the advice and assistance of independent counsel. As such, neither Named
14 Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed
15 against the other.

16 The terms and conditions of this Agreement constitute the exclusive and final
17 understanding and expression of all agreements between Named Plaintiffs and Defendant with
18 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
19 signed by the original signatories and approved by the Court.

20 **C. Further Cooperation.**

21 Named Plaintiffs and Defendant and their respective attorneys shall proceed diligently to
22 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
23 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
24 possible.

25 **D. Counterparts.**

26 The Agreement may be executed in one or more actual or non-original counterparts, all
27 of which will be considered one and the same instrument and all of which will be considered
28 duplicate originals.

1 **E. Authority.**

2 Each individual signing below warrants that he or she has the authority to execute this
3 Agreement on behalf of the party for whom or which that individual signs.

4 **F. No Third Party Beneficiaries.**

5 Named Plaintiffs, members of the Settlement Class, and Defendant are direct
6 beneficiaries of this Agreement, but there are no third party beneficiaries.

7 **G. Force Majeure.**

8 The failure of any party to perform any of its obligations hereunder shall not subject such
9 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
10 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
11 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
12 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
13 terrorist acts, acts or failures to act of any third parties, or any other similar or different
14 circumstances or causes beyond the reasonable control of such party.

15 **H. Deadlines Falling on Weekends or Holidays.**

16 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
17 or legal holiday, that deadline shall be continued until the following business day.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **I. Severability.**

2 In the event that any one or more of the provisions contained in this Agreement shall for
3 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
4 unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel,
5 on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such
6 invalid, illegal, or unenforceable provision had never been included in this Agreement.

7
8 Date: ~~December~~ 01-9-19, 2018


LEONEL MERIDA, Named Plaintiff

9
10
11
12 Date: December 28, 2018


ALL-PRO ENTERPRISES, INC

Name: Dan Tronson

Title: President

13
14
15 APPROVED AS TO FORM:

16
17 Date: December 28, 2018

FISHER & PHILLIPS LLP

18
19 By:  for

20 SHAUN J. VOIGT
Attorneys for Defendant
ALL-PRO ENTERPRISES, INC.

21
22 Date: January 9, 2019
23 ~~December~~ 9, 2018

MAHONEY LAW GROUP, APC

24
25 By: 

26 KEVIN MAHONEY
Attorneys for Plaintiff