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

CINTHIA MENDOZA and DELISHIA
HYDE, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

PRIME NOW LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: RG20068286

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (2) VIOLATION OF LABOR CODE §§ 201-
203;**
- (3) VIOLATION OF LABOR CODE § 226;**
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (5) VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

Plaintiffs Clara Trotter, Eugenia Dubose, Araya Turner, and Delishia Hyde (“Plaintiffs”), hereby submit this Class Action Complaint against Defendant Prime Now LLC (“Defendant”), and Does 1-50 (hereinafter collectively referred to as “Defendants”), as individuals and on behalf of the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for failure to properly calculate the regular rate of pay for purposes of paying meal period premiums and sick pay, provide accurate itemized wage statements, and pay

1 all wages owed upon separation of employment under California Labor Code statutes, and
2 restitution for unfair business practices in violation of Business and Professions Code § 17200, *et*
3 *seq.*, as follows:

4 **INTRODUCTION**

5 1. This class action is within the Court’s jurisdiction under California Labor Code
6 §§ 201-203, 226, 226.7, 246, 512, and 2698, *et seq.*, the California Industrial Welfare
7 Commission’s (“IWC”) Wage Orders, and the California Unfair Competition Law (the “UCL”),
8 codified at California Business and Professions Code § 17200, *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code and Business and Professions Code against employees of
11 Defendants.

12 3. Plaintiffs are informed and believe and based thereon allege that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
15 purposes of paying meal period premiums and sick pay, provide accurate itemized wage
16 statements, and pay all wages owed upon separation of employment to Plaintiffs and the Class.

17 4. Plaintiffs are informed and believe and based thereon allege that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code,
19 Business and Professions Code and applicable IWC Wage Orders by creating and maintaining
20 policies, practices, and customs that knowingly deny employees the above stated rights and
21 benefits.

22 5. The policies, practices, and customs of defendants described above and below
23 have resulted in unjust enrichment of Defendants and an unfair business advantage over
24 businesses that routinely adhere to the strictures of the California Labor Code and the California
25 Business and Professions Code.

26 **JURISDICTION AND VENUE**

27 6. The Court has jurisdiction over the violations of the California Labor Code §§
28 201-203, 226, 226.7, 246, 512, and 2698, *et seq.*, and the UCL.

7. Venue is proper in Alameda County because Defendants maintain business locations in Alameda County, and at least some Plaintiffs performed work for Defendants in Berkeley, California.

PARTIES

8. Plaintiff Clara Trotter (“Trotter”) was hired by Defendants as an Amazon Whole Foods Shopper. Ms. Trotter worked as a non-exempt employee. On or about July 2019, Ms. Trotter separated from employment with Defendants. Trotter asserts claims that rest on the same general set of facts, involve the same injury, and refer to the same instrumentality as the claims originally brought by Cinthia Mendoza in the Second (violation of Labor Code §§ 201-03) and Fifth Cause (violation of Labor Code § 2698, *et seq.*) of action of the Complaint.

9. Plaintiff Delishia Hyde (“Hyde”) was hired by Defendants as an Amazon Whole Foods Shopper in about August 2019. Ms. Hyde worked as a non-exempt employee. On or about February 21, 2020, Ms. Hyde separated from employment.

10. Plaintiff Eugenia Dubose (“Dubose”) was hired by Defendants as an Amazon Whole Foods Shopper. Ms. Dubose worked as a non-exempt employee. On or about February 2021, Ms. Dubose separated from employment with Defendants. Dubose asserts claims that rest on the same general set of facts, involve the same injury, and refer to the same instrumentality as the claims originally brought by Cinthia Mendoza in the Second (violation of Labor Code §§ 201-03) and Fifth Cause (violation of Labor Code § 2698, *et seq.*) of action of the Complaint.

11. Plaintiff Araya Turner (“Turner”) was hired by Defendants as an Amazon Whole Foods Shopper. Ms. Turner worked as a non-exempt employee. On or about October 2020, Ms. Turner separated from employment with Defendants. Turner asserts claims that rest on the same general set of facts, involve the same injury, and refer to the same instrumentality as the claims originally brought by Cinthia Mendoza in the Second (violation of Labor Code §§ 201-03) and Fifth Cause (violation of Labor Code § 2698, *et seq.*) of action of the Complaint.

12. Plaintiffs were and are the victims of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived them of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.7, 246, 512, and 2698, *et seq.*, and the applicable

1 IWC Wage Orders, and the UCL.

2 13. Plaintiffs are informed and believe and based thereon allege that Defendant Prime
3 Now LLC was and is a Delaware limited liability company doing business in the State of
4 California and County of Alameda as an online retailer and delivery service for groceries and
5 other goods.

6 14. Plaintiffs are informed and believe and based thereon allege that at all times
7 herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals,
8 and partnerships, licensed to do business and actually doing business in the State of California.

9 15. As such, and based upon all the facts and circumstances incident to Defendants'
10 business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7,
11 246, 512, and 2698, *et seq.*, the IWC Wage Orders, and the UCL.

12 16. Plaintiffs do not know the true names or capacities, whether individual, partner, or
13 corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
15 complaint when the true names and capacities are known. Plaintiffs are informed and believe
16 and based thereon allege that each of said fictitious Defendants were responsible in some way for
17 the matters alleged herein and proximately caused Plaintiffs and members of the general public
18 and class to be subject to the illegal employment practices, wrongs, and injuries complained of
19 herein.

20 17. At all times herein mentioned, each of said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants, and employees of each of the other
23 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
24 acting within the course and scope of said agency and employment.

25 18. Plaintiffs are informed and believes and based thereon alleges that at all times
26 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
27 joint venturer of, or working in concert with each of the other co-defendants and was acting
28 within the course and scope of such agency, employment, joint venture, or concerted activity.

1 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
2 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

4 19. At all times herein mentioned, Defendants, and each of them, were members of,
5 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

7 20. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
13 the damages as herein alleged.

14 **CLASS ACTION ALLEGATIONS**

15 21. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
16 California Code of Civil Procedure § 382, of the following classes (collectively, “Class”):

- 17 a. All current and former non-exempt employees of Defendants in the State
18 of California at any time during April 6, 2016, to the present, who were
19 paid non-discretionary wages and “Ca Meal Prem” pay during the same
20 workweek (“Meal Period Class”);
- 21 b. All current and former non-exempt employees of Defendant in the State of
22 California who were paid sick pay wages during their employment and
23 whose employment ended at any time between April 6, 2017, through the
24 present (“Sick Pay Class”);
- 25 c. All non-exempt employees of Defendant in the State of California who
26 were paid sick pay wages and non-discretionary wages in the same
27 workweek during their employment and whose employment ended at any
28 time between April 6, 2017, through the present (“Sick Pay Subclass 1”);

1 and

2 d. All non-exempt employees of Defendant in the State of California who
3 were paid non-discretionary incentive wages, including, but not limited to,
4 shift differential wages, within 90 days prior to the payment of sick pay
5 wages during their employment and whose employment ended at any time
6 between April 6, 2017, through the present (“Sick Pay Subclass 2”).

7 22. **Numerosity and Ascertainability:** The members of the Class are so numerous
8 that joinder of all members would be impractical, if not impossible. The identity of the members
9 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
10 Plaintiffs allege that Defendants: (a) failed to pay employees meal period premiums at the correct
11 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
12 §§ 201-203, 226.7, and 512; (b) failed to pay employees sick pay at the correct regular rate of
13 pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203,
14 246; (c) failed to provide accurate itemized wage statements in violation of Labor Code § 226;
15 and (d) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code,
16 and the applicable IWC Wage Orders.

17 23. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
18 necessary steps to represent fairly and adequately the interests of the Class defined above.
19 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the Class and
20 individual Plaintiffs. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class
21 actions in the past and currently have a number of wage-and-hour class actions pending in
22 California courts.

23 24. Defendants uniformly administered a corporate policy, practice of: (a) failing to
24 pay employees meal period premiums at the correct regular rate of pay that included all non-
25 discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to
26 pay employees sick pay at the correct regular rate of pay that included all non-discretionary
27 remuneration, in violation of Labor Code §§ 201-203 and 246; (c) failing to provide accurate
28 itemized wage statements in violation of Labor Code § 226; and (d) engaging in Unfair Business

1 Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage
2 Orders.

3 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
4 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
5 Labor Code §§ 201-203, 226, 226.7, 246, and 512, the UCL, and applicable IWC Wage Orders.

6 26. **Common Question of Law and Fact:** There are predominant common questions
7 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
8 concerning Defendants: (a) failing to pay employees meal period premiums at the correct
9 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
10 §§ 201-203, 226.7, and 512; (b) failing to pay employees sick pay at the correct regular rate of
11 pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and
12 246; (c) failing to provide accurate itemized wage statements in violation of Labor Code § 226;
13 and (d) engaging in Unfair Business Practices in violation of the UCL, the California Labor
14 Code, and the applicable IWC Wage Orders.

15 27. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of
16 the Class in that Plaintiffs have suffered the harm alleged in this Complaint in a similar and
17 typical manner as the Class members. As with other California employees, Plaintiffs earned
18 non-discretionary remuneration, including without limitation, Surge Premiums. Plaintiffs also
19 regularly worked more than 5 hours in a shift but were not provided timely and off-duty meal
20 breaks of at least 30 minutes. In lieu of receiving these meal breaks, Defendants paid Plaintiffs
21 meal period premiums calculated at one hour of Plaintiffs' base rate of pay for each missed or
22 late meal break. The meal period premiums should have been calculated at Plaintiffs' regular
23 rate of pay, however, and should have incorporated non-discretionary remuneration earned into
24 the calculation of the regular rate. Thus, Plaintiffs are owed additional meal period premium pay
25 based on the correct, higher regular rate of pay. Similarly, when Trotter, Turner, Dubose and the
26 Class received sick pay, it was disbursed at the base rate of pay, rather than the correct, higher
27 regular rate of pay. To date, Plaintiffs have yet to receive the underpaid meal period premium
28 wages and sick pay owed to them. Thus, Defendants are liable for waiting time penalties under

1 Labor Code § 203. Furthermore, as a result of the underpayment of meal period premiums and
2 sick pay wages, the wage statements issued to Plaintiffs identified inaccurate rates of pay and
3 gross and net wages eared. As such, Plaintiffs are members of the Class and/or sub-classes and
4 have suffered the alleged violations of California Labor Code §§ 201-203, 226, 226.7, 246, and
5 512, and the applicable IWC Wage Orders.

6 28. The California Labor Code and upon which Plaintiffs base these claims is broadly
7 remedial in nature. These laws and labor standards serve an important public interest in
8 establishing minimum working conditions and standards in California. These laws and labor
9 standards protect the average working employee from exploitation by employers who may seek
10 to take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment.

12 29. The nature of this action and the format of laws available to Plaintiffs and
13 members of the Class identified herein make the class action format a particularly efficient and
14 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
15 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
16 advantage since it would be able to exploit and overwhelm the limited resources of each
17 individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring
18 each Class member to pursue an individual remedy would also discourage the assertion of lawful
19 claims by employees who would be disinclined to file an action against their former and/or
20 current employer for real and justifiable fear of retaliation and permanent damage to their careers
21 at subsequent employment.

22 30. The prosecution of separate actions by the individual class members, even if
23 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
24 to individual Class members against Defendants and which would establish potentially
25 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
26 individual Class members which would, as a practical matter, be dispositive of the interest of the
27 other Class members not parties to the adjudications or which would substantially impair or
28 impede the ability of the Class members to protect their interests. Further, the claims of the

individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

31. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action, for unpaid wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, 226, and 246, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

32. Proof of a common business practice or factual pattern, which the named Plaintiffs experienced and are representatives of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

33. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(BY HYDE, TURNER, AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)

34. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

35. At all relevant times, Defendants failed in their affirmative obligation to ensure that Hyde, Turner, and Class members, had the opportunity to take and were provided with off-duty meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. At all relevant times, Hyde, Turner, and Class members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their off-duty meal breaks. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to Labor Code § 226.7 and the

1 applicable IWC Wage Order. Defendants, as a matter of corporate policy and procedure, failed
2 to pay such premium compensation at the correct, regular rate of pay for each meal period
3 Plaintiffs and the Class members missed.

4 36. Specifically, Labor Code § 226.7(c) states that “the employer shall pay the
5 employee one additional hour of pay at the employee’s regular rate of compensation for each
6 workday that the meal or rest or recovery period is not provided.” Throughout their
7 employment, Plaintiffs and Class members earned non-discretionary remuneration, including
8 Surge Premiums. Such non-discretionary forms of remuneration, however, were not included in
9 the regular rate of pay for purposes of paying meal period premium pay. Instead, the meal
10 period premium was paid at the base rate of pay. As such, Hyde, Turner, and Class members are
11 owed additional meal period premium pay.

12 37. At all relevant times, Hyde, Turner, and Class members regularly worked in
13 excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each
14 day worked in excess of five (5) hours.

15 38. Such a pattern, practice, and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by Hyde, Turner, and the
17 Class members identified herein, in a civil action, for the unpaid balance of the unpaid premium
18 compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order,
19 including interest thereon, penalties, and costs of suit.

20 39. Hyde, Turner, and Class Members are informed and believe, and based thereon
21 allege, that Defendants’ willful failure to provide all meal period premium wages due and owing
22 to Hyde, Turner, and Class Members upon separation from employment results in a continued
23 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Hyde,
24 Turner, and Class Members who have separated from employment are entitled to compensation
25 pursuant to Labor Code § 203.

26 **SECOND CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE §§ 201-203**

28 **(BY DUBOSE, TURNER, TROTTER, AND THE SICK PAY CLASS, SICK PAY**

SUBCLASS 1, AND SICK PAY SUBCLASS 2 AGAINST ALL DEFENDANTS)

40. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

41. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

42. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

43. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

44. Labor Code § 246 provides that an employee is entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

45. Whenever Defendants paid Dubose, Turner, Trotter, and the Class members sick time pursuant to California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid Mendoza and Class members at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary wages such as Surge Premiums, or by dividing the employees’ total wages by the employees’ total hours worked in the full pay periods of the prior 90 days of employment, as required by Labor Code § 246. This resulted in the employees being underpaid for sick time, and resulted in violations of California

1 Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations, because
2 Defendants did not pay, or timely pay, Dubose, Turner, Trotter, and Class members all owing
3 and unpaid wages for work performed by them during their employment and at the end of their
4 employment.

5 46. Defendants willfully failed to pay Dubose, Turner, Trotter, and Class members all
6 their wages due, as alleged hereinabove and hereinafter, upon the termination of their
7 employment within the times prescribed by Labor Code §§ 201 and 202 and are therefore subject
8 to a waiting time penalty. Dubose, Turner, Trotter, and the Class members are entitled to recover
9 from Defendants the statutory penalty for each day they were not paid at their regular hourly rate
10 of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

11 **THIRD CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 226**

13 **(BY PLAINTIFFS AND THE CLASSES AGAINST ALL DEFENDANTS)**

14 47. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
15 though fully set forth herein.

16 48. Defendant failed in its affirmative obligation to provide accurate itemized wage
17 statements. Defendant, as a matter of policy and practice, did not provide accurate records in
18 violation of Labor Code section 226(a).

19 49. Plaintiffs and the Class members were paid on an hourly basis. As such, the wage
20 statements provided to them should have reflected all applicable hourly rates in effect during the
21 pay period. The wage statements provided to Plaintiffs and the Class failed to accurately identify
22 such information. More specifically, Plaintiffs and Class members earned meal period premiums
23 and non-discretionary remuneration during the same pay period, the wage statements failed to
24 identify accurate applicable rates of pay and gross and net wages earned. Similarly, whenever
25 Plaintiffs and Class members earned sick pay and non-discretionary remuneration during the
26 same pay period, the wage statements failed to identify accurate applicable rates of pay and gross
27 and net wages earned.

28 50. Such a pattern, practice, and uniform administration of corporate policy as

described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein in a civil action, for all penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

FOURTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.* (BY PLAINTIFFS AND THE CLASSES AGAINST ALL DEFENDANTS)

51. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

52. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above, include, to wit, by failing to pay employees meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512.

53. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

54. Plaintiffs seek, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

55. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiffs and other members of the Class the minimum working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

1 **(BY PLAINTIFFS, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
2 **AGAINST ALL DEFENDANTS)**

3 56. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
4 though fully set forth herein.

5 57. Plaintiff Hyde brings this cause of action as a proxy for the State of California and
6 in this capacity, seek penalties on behalf of all Aggrieved Employees from June 16, 2019,
7 through the present, for Defendants' violations of Labor Code §§ 201-203, 226.7, and 512,
8 arising from Defendants' failure to properly calculate the regular rate of pay for purposes of
9 paying meal period premiums, and pay all wages owed upon separation of employment.

10 58. On or about June 11, 2020, a prior plaintiff in this action, Cinthia Mendoza, sent
11 written notice to the California Labor & Workforce Development Agency ("LWDA") of
12 Defendants' violations of Labor Code §§ 201-203, 226.7, 246, and 512, pursuant to Labor Code
13 § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). Plaintiffs Turner, Trotter, and
14 Dubose assert claims that rest on the same general set of facts, involve the same injury, and refer
15 to the same instrumentality as the claims originally brought by Cinthia Mendoza in PAGA claim
16 asserted in the Complaint, which was filed on or about July 21, 2020.

17 59. On or about June 16, 2020, Plaintiff Delishia Hyde sent written notice to the
18 LWDA of Defendants' violations of Labor Code §§ 201-203, 226.7, and 512.

19 60. On or about February 28, 2022, Turner, Trotter, and Dubose sent written notice to
20 the LWDA of Defendants' violations of Labor Code §§ 201-203, and 246.

21 61. On or about September 26, 2022, Hyde, Turner, Trotter, and Dubose sent written
22 notice to the LWDA of Defendants' derivative violations of Labor Code § 226.

23 62. To date, the LWDA has not responded to Plaintiffs' written notice.

24 63. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all
25 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 226.3, 226.7,
26 246, and 512, for the time periods described above, on behalf of themselves and other Aggrieved
27 Employees.

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment as individuals and on behalf of all others that
3 this suit is brought against Defendants, jointly and severally, as follows:

- 4 1. For an order certifying the proposed Class;
- 5 2. For an order appointing Plaintiffs as the representatives of the Class as described
6 herein;
- 7 3. For an order appointing counsel for Plaintiffs as Class counsel;
- 8 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
9 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 10 5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant
11 to California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code
12 § 218.5;
- 13 6. Upon the Third Cause of Action, for statutory penalties pursuant to California
14 Labor Code § 226, and for costs and attorneys' fees;
- 15 7. Upon the Fourth Cause of Action, for restitution to Plaintiffs and other similarly
16 affected members of the general public of all funds unlawfully acquired by Defendants by means
17 of any acts or practices declared by this Court to be in violation of Business and Professions
18 Code § 17200, *et seq.*, for the time periods described above;
- 19 8. Upon the Fifth Cause of Action, for civil penalties according to proof pursuant to
20 Labor Code § 2698, *et seq.*, 226.3, and for costs and attorneys' fees;
- 21 9. On all causes of action, for attorneys' fees and costs as provided by California
22 Labor Code §§ 218.5, 226, and 2699, and Code of Civil Procedure § 1021.5; and
- 23 10. For such other and further relief as the Court may deem just and proper.
- 24

25 DATED: November 4, 2022

DIVERSITY LAW GROUP, P.C.

26 By: 
27 _____

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiffs and the Class

28

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

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

9 On November 4, 2022, I served the following document(s) described as: **SECOND**
10 **AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** on the interested parties
11 in this action as follows:

12 Heather L. Richardson *Attorneys for Defendant Prime Now*
13 Bradley J. Hamburger *LLC*
14 Danielle Hesse
15 Hazel Chuang HRichardson@gibsondunn.com
16 Gibson, Dunn & Crutcher LLP BHamburger@gibsondunn.com
17 333 S. Grand Avenue dhesse@gibsondunn.com
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19 Michele L. Maryott *Attorneys for Defendant Prime Now*
20 Megan Cooney *LLC*
21 Gibson, Dunn & Crutcher LLP
22 3161 Michelson Drive, Suite 1200 mmaryott@gibsondunn.com
23 Irvine, CA 92612 mcooney@gibsondunn.com

24 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
25 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
26 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
27 the above-entitled case. The service transmission was reported as complete and a copy of the
28 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 November 4, 2022, at Los Angeles, California.

24 
25 Erika Mejia