

Electronically Received 11/28/2022 04:50 PM

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Nicholas Rosenthal (State Bar No. 268297)
nrosenthal@diversitylaw.com
Max W. Gavron (State Bar No. 291697)
mgavron@diversitylaw.com
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
ktulyathan@diversitylaw.com
Shalom "Christine" Choo (State Bar No. 339947)
christine@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiffs and the Class

FILED
ALAMEDA COUNTY

MAR 07 2023

CLERK OF THE SUPERIOR COURT

By

Nicole Hall

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

(Assigned to the Hon. Evelio Grillo, Dept. 21)

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 20, 2022

Time: 10:00 A.M.

Dept.: 21

Reservation No.: 429567802028

Complaint Filed: July 21, 2020

FAC Filed: April 5, 2022

SAC Filed: November 4, 2022

Trial Date: None Set

1 Plaintiffs Delishia Hyde, Clara Trotter, Eugenia Dubose, and Araya Turner's
2 (collectively, "Plaintiffs") Motion for Preliminary Approval of Class and Representative Action
3 Settlement came before this Court, on December 20, 2022, the Honorable Evelio Grillo, Judge
4 presiding. The Court having considered the papers submitted in support of the application of the
5 parties, hereby grants the Motion for Preliminary Approval of Class and Representative Action
6 Settlement and ORDERS as follows:

7 1. All defined terms contained herein shall have the same meanings as set forth in the
8 Class Action Settlement Agreement and Release ("Settlement Agreement");

9 2. Plaintiffs Delishia Hyde, Clara Trotter, Eugenia Dubose, and Araya Turner
10 (collectively, "Plaintiffs") and Defendant Prime Now LLC ("Defendant"), through their counsel
11 of record in the Action, have reached an agreement to settle all claims in the Action on behalf of
12 the Settlement Class as a whole. The Court hereby conditionally certifies the following Settlement
13 Class for settlement purposes only:

14 a. all current and former non-exempt employees of Prime Now in the State of
15 California who were paid additional remuneration (beyond wages) which
16 were treated as non-discretionary and includable in the regular rate of pay
17 and meal period premium pay during the same workweek at any time
18 during April 6, 2016 through and including August 15, 2022, and/or

19 b. all current and former non-exempt employees of Prime Now in the State of
20 California who were paid additional remuneration (beyond wages) which
21 were treated as non-discretionary and includable in the regular rate of pay
22 and sick pay wages or paid time off during the same workweek and whose
23 employment ended at any time during April 6, 2017, through and including
24 August 15, 2022.

25 3. If, for any reason, the settlement is not finally approved, the fact that the Parties
26 were willing to stipulate to certification of a class as part of the Settlement Agreement shall have
27 no bearing on, or be admissible in connection with, the Action or the issue of whether a class
28 should be certified in a non-settlement context.

1 4. The Court appoints and designates: (a) Plaintiff Delishia Hyde, Clara Trotter,
2 Eugenia Dubose, and Araya Turner as the Class Representatives; and (b) Larry W. Lee, Nicholas
3 Rosenthal, Max W. Gavron, Kwanporn "Mai" Tuylathan, and Shalom "Christine" Choo of
4 Diversity Law Group, P.C. as Class Counsel. Class Counsel is authorized to act on behalf of the
5 Settlement Class with respect to all acts or consents required by, or which may be given, pursuant
6 to the Settlement Agreement, and such other acts reasonably necessary to finalize the Settlement
7 Agreement and its terms. Any Settlement Class Member may enter an appearance through his or
8 her own counsel at such Settlement Class Member's own expense. Any Settlement Class Member
9 who does not enter an appearance or appear on his or her own behalf and who does not opt-out of
10 the settlement will be represented by Class Counsel.

11 5. The Court hereby approves the terms and conditions provided for in the Settlement
12 Agreement.

13 6. The Court hereby preliminarily approves the Settlement Agreement and the Gross
14 Settlement Fund of Five Million One Hundred Fifty Thousand Dollars (\$5,150,000.00), which is
15 to be distributed as follows: (a) Twenty Thousand Dollars (\$20,000.00) is to be paid to Plaintiff
16 Delishia Hyde as a Class Representative Enhancement Payment; (b) Twenty Thousand Dollars
17 (\$20,000.00) is to be paid to Plaintiff Eugenia Dubose as a Class Representative Enhancement
18 Payment; (c) Ten Thousand Dollars (\$10,000.00) is to be paid to Plaintiff Clara Trotter as a Class
19 Representative Enhancement Payment; (d) Ten Thousand Dollars (\$10,000.00) is to be paid to
20 Plaintiff Araya Turner as a Class Representative Enhancement Payment; (e) One Million Seven
21 Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
22 (\$1,716,666.67) shall be paid to Class Counsel for attorneys' fees and up to Thirty Thousand
23 Dollars (\$30,000.00) for reimbursement of actual costs, (f) Two Hundred Thousand Dollars
24 (\$200,000.00) shall be allocated as PAGA penalties, of which One Hundred Fifty Thousand
25 Dollars (\$150,000.00) is to be paid to the LWDA, and (g) the Settlement Administrator shall be
26 paid for its fees and costs relating to the settlement administration process which is expected to
27 not exceed Ninety-Seven Thousand Dollars (\$97,000.00). The Court further hereby preliminarily
28 approves the Net Settlement Amount and the formulas provided in the Settlement Agreement

1 regarding Individual Settlement Payments, including the payment of necessary and appropriate
2 payroll taxes in connection with the calculation and payment of Individual Settlement Payments
3 as set forth and negotiated for in the Settlement Agreement.

4 7. The Court finds that on a preliminary basis the Settlement Agreement appears to
5 be within the range of reasonableness of a settlement, including the amount of the PAGA
6 penalties, Class Representative Enhancement Payments, Class Counsel's fees and costs, the
7 Settlement Administration Costs, and the allocation of payments to Settlement Class Members,
8 that could ultimately be given final approval by this Court. It appears to the Court on a
9 preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Settlement
10 Class Members when balanced against the probable outcome of further litigation relating to
11 liability and damages issues. It also appears that extensive and costly investigation, research, and
12 court proceedings have been conducted so that counsel for the Parties are able to reasonably
13 evaluate their respective positions. It appears to the Court that settlement at this time will avoid
14 substantial additional costs by all Parties, as well as avoid the delay and risks that would be
15 presented by the further prosecution of the Action. It also appears that settlement has been
16 reached as a result of intensive, serious, and non-collusive arm's-length negotiations.

17 8. A Final Fairness and Final Approval is hereby set for 8/8/2023 at
18 10:00am in this Court to determine all necessary matters concerning the Settlement Agreement,
19 including whether the proposed settlement of the action on the terms and conditions provided for
20 in the Settlement Agreement is fair, adequate and reasonable and should be finally approved by
21 the Court and whether a Judgment, as provided in the Settlement Agreement, should be entered
22 herein.

23 9. The Court hereby approves, as to form and content, the Notice of Class Action
24 Settlement ("Notice Packet") to be sent to Settlement Class Members, which is attached as an
25 exhibit to the Settlement Agreement. The Court finds that distribution of the Notice Packet to
26 Settlement Class Members substantially in the manner and form set forth in the Settlement
27 Agreement and this Order meets the requirements of due process and shall constitute due and
28 sufficient notice to all parties entitled thereto.

1 10. The Court appoints and designates Phoenix Settlement Administrators as the
2 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
3 approved Notice Packet to Settlement Class Members pursuant to the terms and procedures set
4 forth in the Settlement Agreement.

5 11. Any Settlement Class Member may choose to opt out of and be excluded from the
6 settlement as provided in the Settlement Agreement and Notice Packet and by following the
7 instructions for requesting exclusion. Any person who timely and properly opts out of the
8 settlement will not be bound by the Settlement Agreement or have any right to object, appeal, or
9 comment thereon. Any Request for Exclusion must be in writing and signed by each such
10 Settlement Class Member opting out and must otherwise comply with the requirements delineated
11 in the Notice Packet. Settlement Class Members who have not requested exclusion by submitting
12 a valid and timely Request for Exclusion, by the Response Deadline, shall be bound by all
13 determinations of the Court, the Settlement Agreement, and Judgment.

14 12. Any Settlement Class Member, who does not opt-out of the settlement, may object
15 to the Settlement Agreement or express his or her views regarding the Settlement Agreement, and
16 may present evidence and file briefs or other papers that may be proper and relevant to the issues
17 to be heard and determined by the Court as provided in the Notice Packet. Any Settlement Class
18 Member who does not make his or her objection in the manner provided for in the Settlement
19 Agreement and Notice Packet, including by the Response Deadline, or at the Final Approval
20 Hearing, shall be deemed to have waived such objection and shall forever be foreclosed from
21 making any objection to the Settlement Agreement.

22 13. The Motion for Final Approval shall be filed by Plaintiffs no later than sixteen (16)
23 court days before the Final Fairness and Final Approval hearing.

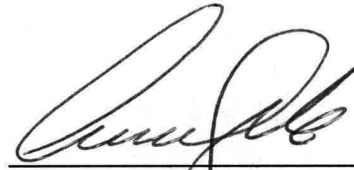
24 14. In the event that the Effective Date occurs, all Settlement Class Members and
25 Plaintiffs will be deemed to have forever released and discharged the Released Claims applicable
26 to them. Plaintiffs additionally will be deemed to have waived their rights under California Civil
27 Code § 1542.

28 The Court reserves the right to adjourn or continue the date of the Final Fairness and Final

1 Approval hearing and all dates provided for in the Settlement Agreement without further notice to
2 the Settlement Class, and retains jurisdiction to consider all further applications arising out of or
3 connected with the Settlement Agreement.

4 **IT IS SO ORDERED.**

5
6 Dated: March 7, 2023



HON. EVELIO GRILLO
SUPERIOR COURT OF CALIFORNIA