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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

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

**DECLARATION OF MAX W. GAVRON IN  
SUPPORT OF PLAINTIFFS’ 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

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of Virginia, and am with the law firm Diversity Law Group, counsel of record for Plaintiffs LaHyde, Eugenia Dubose, Clara Trotter, and Araya Turner (together, "Plaintiffs"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so truthfully.

## **FACTUAL AND PROCEDURAL HISTORY**

2. On or about June 11, 2020, Cinthia Mendoza (“Mendoza”) filed a notice with the & Workforce Development Agency (“LWDA”), alleging that Defendant violated Labor § 201-203, 226.7, 246, and 512, pursuant to Labor Code § 2699.

3. On or about June 16, 2020, Delishia Hyde (“Hyde”) filed a notice with the LWDA alleging that Defendant violated Labor Code §§ 201-203, 226.7, and 512, pursuant to Labor Code

4. Thereafter, on July 21, 2020, Mendoza and Hyde filed a class and representative complaint in the Alameda County Superior Court on behalf of themselves and all similarly situated employees. As set forth in the initial complaint, Mendoza and Hyde allege that Defendant implemented a policy and practice of (1) failing to correctly calculate the regular rate of pay by not including all non-discretionary remuneration in the regular rate for the purposes of paying meal break premiums, in violation of Labor Code §§ 226.7 and 512; (2) failing to correctly calculate the regular rate of pay by not including all non-discretionary remuneration in the regular rate of pay for the purposes of paying sick pay, in violation of Labor Code §§ 201-203 and 246; (3) failing to provide off-duty rest breaks, in violation of Labor Code § 226.7; (4) engaging in unfair labor practices, in violation of Business & Professions Code § 17200, et seq.; and (5) seeking damages for violation of the Private Attorneys General Act, Labor Code § 2698, et seq. (the "PAGA").

5. On or about February 28, 2022, Clara Trotter (“Trotter”), Eugenia Dubose (“Dubose”), and Araya Turner (“Turner”) filed a notice with the LWDA alleging that Defendant

1 violated Labor Code §§ 201-203 and 246, pursuant to Labor Code § 2699.

2           6.       During the course of litigation and discovery, Mendoza informed her counsel of  
3 record that she no longer wished to pursue her individual claims against Defendant. On March 31,  
4 2022, the Court approved the Parties' stipulation to file a First Amended Complaint, which  
5 dismissed Plaintiff Mendoza's claims and included the claims of additional plaintiffs Clara  
6 Trotter ("Trotter"), Eugenia Dubose ("Dubose"), and Araya Turner ("Turner").

7           7.       On April 5, 2022, Plaintiffs filed the first amended complaint.

8           8.       On November 4, 2022, Plaintiffs filed the operative Second Amended Complaint  
9 ("Complaint") which alleges causes of action for: (1) violation of Labor Code §§ 226.7 and 512;  
10 (2) violation of Labor Code §§ 201-203; (3) violation of Labor Code § 226; (4) violation of  
11 Business & Professions Code § 17200, *et seq.*; and (5) violation of Labor Code § 2698, *et seq.*

12           9.       As set forth in the Second Amended Complaint, Plaintiffs allege that Defendant  
13 failed to pay meal period premiums using the correct regular rate of pay. More specifically,  
14 Plaintiffs contend that Defendant did not include all non-discretionary incentive wages, such as  
15 Surge Premiums, in the regular rate computation. Consequently, Plaintiffs contend that employees  
16 are owed additional meal period premiums based on the correct regular rate of pay and derivative  
17 waiting time penalties.

18           10.      As a separate regular rate violation, Plaintiffs allege that Defendant also underpaid  
19 sick pay earnings whenever non-discretionary incentive wages were paid within the same work  
20 week. Under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code § 245, *et*  
21 *seq.* ("HWHFA"), "[p]aid sick time for nonexempt employees shall be calculated in the **same**  
22 **manner as the regular rate of pay** for the workweek in which the employee uses paid sick time,  
23 whether or not the employee actually works overtime in that workweek." Cal. Lab. Code §  
24 226(l)(1) (emphasis added). Here, Plaintiffs allege that during workweeks when an employee  
25 earned incentive wages and sick pay earnings, Defendant paid the sick pay at the employee's base  
26 hourly rate. Plaintiffs contend that the sick pay should have been paid at the employee's regular  
27 rate of pay, which includes all non-discretionary pay, such as incentive wages. Plaintiffs seek to  
28 recover alleged waiting time penalties based on the underpayment of sick pay wages.

1 11. As a result of the above underpayment of meal period premiums and sick pay,  
2 Plaintiffs allege that the wage statements they received failed to identify accurate rates of pay and  
3 gross and net wages earned in violation of Labor Code §§ 226(a)(1), (5), and (9).

4 **DISCOVERY AND INVESTIGATION**

5 12. Class Counsel investigated the facts surrounding the claims in this action before  
6 filing the lawsuit and conducted extensive discovery during the course of litigating and  
7 prosecuting this case.

8 13. On November 18, 2020, Plaintiffs served an initial set of Requests for Production  
9 of Documents and Special Interrogatories. Amongst other relevant topics, the discovery called for  
10 Defendant to provide verified responses regarding the number of putative class members, the  
11 types of non-discretionary remuneration paid to putative class members during the alleged  
12 liability period, and the contact information for the entity responsible for processing Defendant's  
13 payroll. The discovery also called for Defendant to produce Plaintiffs' personnel file and wage  
14 statements and Defendant's relevant policies, including meal and rest period policies, meal  
15 premium payment and sick pay policies, and policies pertaining to the calculation of the regular  
16 rate of pay.

17 14. On or about March 26, 2021, Defendant served Responses to Request for  
18 Production of Documents (Set One) and Responses to Special Interrogatories (Set One).  
19 Defendant also produced thousands of responsive documents on a rolling basis. The Parties met  
20 and conferred extensively regarding the responses and documents. Ultimately, Plaintiffs obtained  
21 the class list from Defendant which permitted them to further their investigation and interview  
22 putative class members regarding their experiences working for Defendant during the putative  
23 class period.

24 15. On February 1, 2022, Plaintiffs propounded a second set of Requests for  
25 Production on Defendant and the Parties subsequently met and conferred.

26 16. Defendant also served discovery requests upon Plaintiffs, to which Plaintiffs  
27 provided written responses and documents.

28 17. Finally, the Parties took the depositions of Defendant's Person Most

1 Knowledgeable and Delishia Hyde.

2 **MEDIATION**

3 18. After the depositions addressed above, the Parties agreed to participate in private  
4 mediation. In advance of the mediation, Defendant produced extensive payroll data informally,  
5 which allowed Plaintiffs to further investigate and evaluate the claims. The data produced by  
6 Defendant included: (1) the estimated number of putative class members; (2) the estimated  
7 number of putative class members who separated employment during the liability period; (3) the  
8 average hourly rate of putative class members during the liability period; (4) the aggregate  
9 number of workweeks in which putative class members earned meal period premiums and non-  
10 discretionary incentive pay; (5) the aggregate number of workweeks in which putative class  
11 members earned non-discretionary incentive pay and sick pay; (6) the aggregate number of meal  
12 period premiums paid to putative class members under each respective pay code identified in the  
13 payroll data; and (7) information regarding the number of meal period premiums and sick pay  
14 wages that was paid to putative class members after Defendant contended it changed its policy to  
15 pay employees these wages at the regular rate of pay. Based upon this information, I conducted a  
16 full damage analysis. The Parties also discussed Plaintiff's intention to amend the operative  
17 complaint in advance of mediation to include derivative penalties, pursuant to Labor Code § 226  
18 considering the California Supreme Court's ruling in *Naranjo v. Spectrum Sec. Servs., Inc.*, 13  
19 Cal. 5th 93, 121 (2022).

20 19. On June 14, 2022, the Parties participated in private mediation with mediator  
21 Michael J. Loeb, Esq. After a full day of negotiations, the Parties were not able to reach a  
22 settlement. However, with Mr. Loeb's assistance, the Parties continued settlement discussions.  
23 After the exchange of further information and extended negotiations, the Parties reached an  
24 agreement in principle which was memorialized in a Memorandum of Understanding.

25 **SUMMARY OF THE MONETARY TERMS OF SETTLEMENT**

26 20. The Parties executed a Class Action Settlement Agreement and Release  
27 ("Settlement Agreement" or "SA"), which is attached hereto as **Exhibit A**. A copy of the  
28 proposed notice to be sent to Settlement Class Members is attached to the Settlement Agreement

as Exhibit A.

21. As defined by the Settlement Agreement, the Settlement Class consists of:

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

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

SA ¶ 35. Defendant estimates that there are approximately 21,345 unique individuals comprising the Class. *Id.* ¶ 61.

22. The Settlement Agreement also identifies the aggrieved employees on whose behalf Plaintiffs pursue PAGA claims (“Allegedly Aggrieved Employees”) as:

(i) all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and meal period premium pay during the same workweek at any time during June 11, 2019 through August 15, 2022 (“Class and PAGA Period End Date”), and/or

(ii) all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and sick pay wages or paid time off during the same workweek and whose employment ended at any time during June 11, 2019, through and including August 15, 2022.

SA ¶ 2.

23. The Settlement Agreement requires Defendant to pay the gross settlement amount (“Gross Settlement Fund”) of \$5,150,000.00. SA ¶ 14. This is a non-reversionary settlement and the entirety of the Gross Settlement Fund will be fully paid out. *Id.* ¶ 39.

24. The balance of the Gross Settlement Fund remaining after deduction of the approved Class Representative Enhancement Payments to Plaintiffs, Settlement Administration Costs, PAGA Settlement Amount, Class Counsel Award, and the employer’s share of payroll

1 taxes (which were specifically negotiated to be included in and paid for from the Gross Settlement  
2 Amount) (“Net Settlement Amount”), will be available for distribution to Participating Settlement  
3 Class Members. SA ¶ 17. The Parties currently estimate that the Net Settlement Amount will be  
4 \$3,046,333.33 less the amount required to cover the employer’s share of payroll taxes as  
5 specifically negotiated for in the parties’ Agreement.

6 25. The Settlement allocates \$200,000.00 of the Gross Settlement Fund for PAGA  
7 penalties (the “PAGA Settlement Amount”). *See* SA ¶ 20. Pursuant to PAGA, seventy-five  
8 percent of the PAGA Settlement Amount, *i.e.*, the sum of \$150,000.00, will be paid to the  
9 LWDA. *Id.* The remaining twenty-five percent of the PAGA Settlement Amount, *i.e.*, the sum of  
10 \$50,000.00, will be distributed to the Allegedly Aggrieved Employees. *Id.*

11 26. As part of the Settlement Agreement, Defendant does not object to Class Counsel’s  
12 request for attorney’s fees up to one-third of the Gross Settlement Fund, *i.e.*, the sum of  
13 \$1,716,666.67, plus up to \$30,000.00 for reimbursement of litigation costs, subject to the Court  
14 finally approving this Settlement. SA ¶ 40. Class Counsel expressly acknowledges that the Court  
15 has final discretion in any fee award.

16 27. Pursuant to the terms of the Settlement Agreement, and without opposition from  
17 Defendant, Plaintiffs are entitled to request a Class Representative Enhancement Payment. SA ¶  
18 8. Specifically, Plaintiffs request payment of the following amounts: \$20,000.00 to Delishia  
19 Hyde; \$20,000.00 to Eugenia Dubose; \$10,000.00 to Clara Trotter; and \$10,000.00 to Araya  
20 Turner. *Id.* Plaintiffs and Class Counsel expressly acknowledge that the Court has final discretion  
21 in any fee award or Enhancement Payment.

22 28. The Parties have selected Phoenix Settlement Administrators as the Settlement  
23 Administrator. The settlement provides for the payment of the fees and expenses reasonably  
24 incurred by the Settlement Administrator. SA ¶ 33. The Parties have received a quote from  
25 Phoenix Settlement Administrators for a fee of approximately \$97,000.00. Based on my  
26 experience, I am of the opinion that this amount is reasonable in relation to the value of the  
27 settlement. The administration costs will be deducted from the Gross Settlement Fund.

28 29. Any portion of the Class Counsel Award, Class Representative Enhancement

1 Payments, and/or Settlement Administration Costs not approved by the Court shall be added to  
2 the Net Settlement Amount. SA ¶¶ 3, 8, 33.

3 **PAYMENTS TO SETTLEMENT CLASS MEMBERS, ALLEGEDLY AGGRIEVED**

4 **EMPLOYEES, AND SCOPE OF RELEASE**

5 30. Assuming that the Court approves the requested attorneys' fees (\$1,716,666.67),  
6 estimated litigation costs (\$30,000.00), Class Representative Enhancement Payments (\$60,000.00  
7 in total), Settlement Administration Costs (\$97,000.00), and the PAGA Settlement Amount  
8 (\$200,000.00), I estimate that the Net Settlement Amount will be at least \$3,046,333.33, less the  
9 amount required to cover the employer's share of payroll taxes as specifically negotiated for in  
10 the Parties' Agreement.

11 31. The Individual Settlement Payments for each Settlement Class Member will be  
12 based on the total number of weeks in which the employee performed at least one day of work  
13 during the applicable time period. SA ¶ 45.

14 32. Based on the approximate number of Settlement Class Members (21,345), each  
15 Class Member will be entitled to recover on raw average, up to \$142.72 each. The amount any  
16 particular Settlement Class Member will be entitled to recover will be greater or lower than this  
17 average depending on the number of weeks he or she worked, with some entitled to receive more,  
18 and others less. SA ¶ 45. This is fair, as it strives to allocate greater penalties to individual  
19 employees who experienced a higher number of alleged violations.

20 33. The Individual Settlement Payments shall be allocated as follows: 25% to  
21 settlement of wage claims and 75% to settlement of claims for interest and penalties. SA ¶ 66.

22 34. Settlement Class Members who also meet the criteria of Allegedly Aggrieved  
23 Employees will receive Individual PAGA Payments as a result of the settlement of Plaintiffs'  
24 PAGA claims. The PAGA Settlement Amount allocated to Allegedly Aggrieved Employees will  
25 be distributed on a pro rata basis, based on the total number of weeks in which the employee  
26 performed at least one day of work for Defendant. SA ¶¶ 43, 46.

27 35. The Individual PAGA Payments shall be allocated as follows: 100% to settlement  
28 of penalties. SA ¶ 66.

1           36. Settlement Class Members will have 180 days from the mailing of the settlement  
2 payment to cash the check. SA ¶ 64. After the expiration of 180 days, the funds represented by  
3 uncashed settlement checks will be remitted to the Unclaimed Property Fund maintained by the  
4 State of California Controller's Office in the name of the Settlement Class Member. *Id.*

5           37. The scope of the release, as listed below, is identified in the Settlement Agreement  
6 at Paragraph 27, as well as in the Notice Packet that will be sent to Class Members. Upon the  
7 Effective Date, Plaintiffs and all Settlement Class Members will release the following:

8           all claims, actions, demands, causes of action, suits, debts, obligations, demands,  
9 rights, liabilities, or legal theories of relief, that are based on the facts and legal  
10 theories asserted in the operative complaint in the Action, including without  
11 limitation claims for (1) failure to provide meal periods or meal period premiums in  
12 violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid  
13 time off in violation of Labor Code §§ 201-203 and 246; (3) failure to timely pay all  
14 wages due upon separation of employment in violation of Labor Code § 201, 202,  
and 203; (4) failure to provide accurate wage statements in violation of Labor Code  
§ 226; and (5) violations of Business and Professions Code § 17200 et seq. based  
solely on the facts alleged in the operative complaint.

15 SA ¶¶ 27, 58. The scope of the release is narrow and is limited to the claims asserted in the  
16 operative Complaint.

17           38. The scope of the release for aggrieved employees is equally limited to the  
18 allegations of the operative complaint and LWDA notices. SA ¶ 28, Ex. B.

19           **POTENTIAL DAMAGES AND PENALTIES AND STRENGTHS AND WEAKNESSES**

20           39. Plaintiffs engaged in extensive investigation and discovery regarding the merits of  
21 the claim and Defendant's defenses, including propounding Requests for Production of  
22 Documents and Special Interrogatories, reviewing Defendant's compensation policies, taking the  
23 deposition of Defendant's Person Most Knowledgeable, defending Plaintiff Hyde's deposition,  
24 interviewing and communicating with putative class members, and researching Defendant's  
25 defenses. Additionally, in advance of the mediation, Defendant produced extensive payroll data  
26 for putative class members regarding the number of meal periods taken during workweeks that  
27 included additional remuneration, the number of meal period premiums paid pursuant to various  
28 earnings codes identified in payroll records. Using the information garnered through both formal

1 and informal discovery, I conducted a full damages and penalty analysis and negotiated the  
2 settlement with a clear understanding of the value of the class and representative PAGA claims.

3 40. At the time Plaintiffs filed their action, the California Supreme Court had yet to  
4 decide *Ferra* and thus Defendant vehemently contested Plaintiffs' interpretation of the law. *See*  
5 *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239, 1246, (2019), *rev'd*, 11 Cal. 5th  
6 858, 489 P.3d 1166 (2021) ("We agree with the trial court and with Loews, however, that the  
7 statutory terms "regular rate of pay" and "regular rate of compensation" are not synonymous, and  
8 the premium for missed meal and rest periods is the employee's base hourly wage."). Ultimately,  
9 the California Supreme Court held that "the term 'regular rate of compensation' in section  
10 226.7(c) has the same meaning as "regular rate of pay" in section 510(a) and encompasses not  
11 only hourly wages but all nondiscretionary payments for work performed by the employee."  
12 Plaintiff argued that because Defendant paid employees non-discretionary incentive wages such  
13 as "Surge Premiums" it should have included the value of those payments in the regular rate of  
14 compensation when paying meal period premiums.

15 41. Defendant argued several things in its defense. Most prominently, Defendant  
16 argued that *Ferra* did not alleviate Plaintiffs of their burden to prove the underlying meal period  
17 violation. In other words, even if Plaintiffs could show that Defendant paid premiums at less than  
18 the regular rate of pay, Plaintiffs would still have to demonstrate that Defendant did not meet its  
19 obligation under the Labor Code and *Brinker* to provide employees a meal period. *See Brinker*  
20 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other  
21 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is  
22 performed.").

23 42. This, Defendant argued, would result in a claim that could not be certified as a  
24 class action for several reasons. First, Defendant contended that it maintained and enforced  
25 legally compliant meal period policies. Defendant also argued that even in instances where it  
26 paid a meal period premium, it did so without any reference or investigation regarding whether  
27 the employee was actually entitled to receive the premium. Defendant contended that because of  
28 this policy, Plaintiffs could not use the fact that Defendant paid a premium as a basis to

1 demonstrate liability. Defendant argued that its practice is to automatically pay premiums based  
2 upon time records alone, without regard to whether any associate chose to take a short or late  
3 meal period or skip it altogether, intentionally erring on the side of overpayment. Defendant  
4 claimed this would require Plaintiffs to investigate and ask each putative class member the reason  
5 time records may have triggered the automatic payment of a premium.

6 43. Plaintiffs, on the other hand, argued that they could use the presumption articulated  
7 in *Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 77 (2021) to establish the underlying  
8 violations. Defendant countered that *Donohue* allows the presumption to be rebutted, which  
9 could easily be done in this circumstance where the putative class members ranged in the  
10 thousands and Defendant had compliant policies. Accordingly, while Plaintiffs were confident in  
11 this claim, the potential for certification was far from certain.

12 44. Even if Plaintiffs were successful in demonstrating liability and certifying this  
13 theory, Defendant argued that it changed its practice on August 1, 2021—only a month after  
14 *Ferra*—to include the value of non-discretionary remuneration in meal period premiums. This  
15 change in policy, it argued, would significantly limit the liability period and damages and would  
16 serve to limit the exposure on Plaintiff’s PAGA claims considering the Court’s discretion to  
17 reduce penalties, further discussed below.

18 45. As a separate regular rate violation, Plaintiffs allege that Defendant also underpaid  
19 sick pay earnings whenever non-discretionary incentive wages were paid within the same work  
20 week. Under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code § 245, *et*  
21 *seq.* (“HWHFA”), “[p]aid sick time for nonexempt employees shall be calculated in the **same**  
22 **manner as the regular rate of pay** for the workweek in which the employee uses paid sick time,  
23 whether or not the employee actually works overtime in that workweek.” Cal. Lab. Code §  
24 226(l)(1) (emphasis added). Here, Plaintiffs allege that Defendant consistently paid sick pay at an  
25 employee’s base hourly rate of pay, even during workweeks when the employee earned non-  
26 discretionary incentive wages. Plaintiffs contend that they and other Settlement Class Members  
27 are owed waiting time penalties for the allegedly underpaid sick pay wages.

28 46. In response, Defendant argued that Plaintiffs cannot recover derivative waiting

1 time penalties or assert a claim for sick pay wages because there is no private right of action. *See*  
2 Cal. Lab. Code § 248.5 (providing only that “the Labor Commissioner or the Attorney General  
3 may bring a civil action in a court of competent jurisdiction against the employer or other person  
4 violating this article”); *see also, e.g., Titus v. McLane Foodservices, Inc.*, 2016 WL 4797297, at  
5 \*4 (E.D. Cal. Sept. 14, 2016) (the sick pay “statute provides that only the LWDA may recover  
6 civil penalties for a violation”); *Schroeder v. Envoy Air, Inc.*, 2016 WL 11520388, at \*11 (C.D.  
7 Cal. Sept. 27, 2016) (“because the legislature did not clearly and unmistakably create a private  
8 right of action to enforce section 246(h), the Court concludes that there is none available”).  
9 Regarding Plaintiffs’ claim for waiting time penalties, some courts have held that sick pay is not  
10 “wages” entitling employees to Section 203 penalties even if underpaid. *See McPherson v. EF*  
11 *Intercultural Found., Inc.*, 47 Cal. App. 5th 243, 263, 260 Cal. Rptr. 3d 640, 654 (2020), review  
12 denied (July 22, 2020) (“because paid sick leave is not considered a form of “wages,” employers  
13 are not required to pay employees their unused sick leave on termination—accrued or not. (§ 246,  
14 subd. (g)(1).)).

15 47. Defendant also would have argued that, even if there were a private right of action  
16 and any underpayment could be proven (which Defendant disputes), its payments to employees  
17 were made pursuant to a good faith belief that it was paying sick pay correctly, and as a result,  
18 Plaintiffs cannot establish that Defendant willfully failed to pay the sick pay wages at separation  
19 of employment and/or that a good faith dispute exists as to whether the allegedly underpaid sick  
20 pay amounts to wages due. *Id.* This is a legal defense that, if successful, could potentially defeat  
21 Plaintiffs’ Section 203 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at \*1 (N.D. Cal. 2020)  
22 (holding that an employer’s failure to pay is not willful where there is uncertainty in the law or a  
23 “good faith mistaken belief that wages are not owed”).

24 48. Defendant argued that as of early 2020, it provides the employees at issue in this  
25 action with paid time off (“PTO”). Thus, class certification would be precluded because  
26 individual analysis would be required to determine whether an employee took time off using “sick  
27 wages,” which must arguably be paid at the regular rate of pay, or “PTO,” which would not need  
28 to be paid at the regular rate. Accordingly, this claim also faced hurdles from a liability and

1 certification perspective.

2 49. Plaintiffs allege a claim under Labor Code § 226(a) predicated on Defendant's  
3 alleged failure to list "all applicable hourly rates in effect during the pay period" and gross and net  
4 wages earned on the wage statements issued to Settlement Class Members. Labor Code §§  
5 226(a)(1), (5), and (9). Plaintiffs allege that as a result of the violations above, the wage  
6 statements issued to putative class members did not comply with California law. Accordingly, this  
7 claim suffers from the same weaknesses, and benefits from the same strengths, addressed above.

8 50. Plaintiffs would also face the additional burden of demonstrating that any alleged  
9 omission of information from the wage statements was a "knowing and intentional failure" by  
10 Defendant to comply with Labor Code § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp.  
11 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding  
12 its conduct was not "knowing and intentional"); Defendant also would have argued that penalties  
13 under Section 226 are subject to a similar "good faith" defense as articulated above in the context  
14 of Plaintiffs' claims for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*,  
15 2014 WL 2533427, at \*3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief  
16 that it is not in violation of Section 226, any violation is not knowing and intentional."); *Wright v.*  
17 *Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at \*9 (N.D. Cal. Apr. 24, 2013)  
18 (same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012)  
19 (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at \*5 (S.D. Cal. Mar. 22, 2011) (same).  
20 Considering the strengths and weaknesses of this claim too supports the proposed settlement as  
21 fair, adequate, and reasonable.

22 51. Plaintiffs also pursue representative PAGA claims. Given that the PAGA claim is  
23 derivative in nature, it faced the same obstacles. The PAGA claim also was subject to unique  
24 considerations given the Court's discretion to lower penalties.

25 52. **Meal Period Claim:** For Plaintiffs' meal period claim, the bulk of the exposure  
26 related to waiting time penalties because where Defendant paid meal period premiums at the base  
27 rate of pay, the difference between the base rate and regular rate of pay often would be a matter of  
28 cents. The potential exposure for waiting time penalties on the meal period claim could be as

high as approximately \$37.6 million, which Plaintiffs premised on approximately 9,797 former employees who received meal period premiums and non-discretionary wages during the same work week during the class period and who earned an average rate of pay of \$16.00 (9,797 Former Meal + Non-Discretionary x (( $\$16.00 \times 8$ ) x 30 days)).<sup>1</sup> This exposure contemplates the entirety of the class period, which includes almost a full year *after* Defendant changed its practices in August 2021—after this time, Defendants argue that there would have been no additional violations. If accounting for the more limited period, the potential exposure was approximately \$29.7 million in waiting time penalties based on approximately 7,747 former employees (7,747 Former Meal + Non-Discretionary x (( $\$16.00 \times 8$ ) x 30 days)).<sup>2</sup>

53. **Sick Pay Claim:** The exposure on Plaintiffs' sick pay claim was also largely driven by waiting time penalties for the same reason described above. Plaintiffs estimated the maximum exposure could be as high as \$30.8 million based on 8,144 former employees who earned sick pay and non-discretionary wages during the same workweek (8,144 Former Sick + Non-Discretionary x (( $\$15.77 \times 8$ ) x 30 days). This group of employees, however, necessarily included some overlap with the individuals who addressed above who fell within the meal period class. Further, Plaintiffs recognize that the likelihood that the Court would award successive waiting time penalties for different theories of liability is very low. This calculation also does not take into account Defendant's change in policy, discussed above, that may have significantly limited the period subject to Plaintiffs' theory of liability on the sick pay claim. If accounting for the more limited time period, Plaintiffs calculated approximately \$25.5 million in exposure (6,746 Former Sick + Non-Discretionary x (( $\$15.77 \times 8$ ) x 30 days)).

54. **Wage Statement Claim:** Plaintiffs calculated approximately \$3.6 million in Section 226 penalties, which Plaintiffs premised on approximately 36,668 pay periods during the applicable statute of limitations ( $\$100 \times 36,668$  pay periods).

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<sup>1</sup> This exposure analysis does not take into account that while approximately 9,797 former employees received meal period premiums, nothing demonstrates that all 9,797 of them were required to be paid meal period premiums.

<sup>2</sup> Again, this exposure analysis does not take into account that while approximately 7,747 former employees received meal period premiums, nothing demonstrates that all 7,747 of them were required to be paid meal period premiums.

1           55.     **PAGA Claim:** Plaintiffs estimated that Defendant could face civil penalties in the  
2 amount of approximately \$3.6 million if Plaintiffs were successful at trial and the Court applied a  
3 penalty of \$100 per pay period. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209  
4 (2008); accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL  
5 2448430, at \*9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that  
6 employers are not subject to heightened penalties for subsequent violations unless and until a  
7 court or commissioner notifies the employer that it is in violation of the Labor Code”); *see also*  
8 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty  
9 unless prior citation or court ruling). Even assuming Plaintiffs ultimately prevailed on their  
10 PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor  
11 Code § 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts  
12 and circumstances of the particular case, to do otherwise, would result in an award that is unjust,  
13 arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in  
14 *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the  
15 trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith  
16 attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of  
17 Appeal found such reduction to be proper. *Id.* at 539. Similarly, this Court reduced the maximum  
18 PAGA penalty amount by 93% in *Parr v Golden State Overnight Delivery Service, Inc. Parr v*  
19 *Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453 (Alameda Sup. Ct. July 10,  
20 2014). With respect to the Labor Code § 226 claim, this Court noted in assigning a \$15 penalty,  
21 “[a]mong the long list of possible Labor Code violations that could support a PAGA action, this is  
22 by no means the most serious, and there is no evidence that any employee was paid less than what  
23 was due or was otherwise harmed by the form of wage statement used by [defendant].” *Id.* A 90%  
24 reduction on the PAGA penalties here would result in potentially available penalties of  
25 approximately \$360,000.00. In *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed  
26 substantial PAGA penalties upon the defendant, such amount still represented reductions of 67%  
27 and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at \*87-\*100 (N.D.  
28 Cal. May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after

1 trial. Thereafter, the Ninth Circuit reversed the trial court's ruling eliminating the judgment  
2 altogether, which demonstrates the significant risk presented in moving forward with litigation.  
3 *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

4 56. Based on the information provided by Defendant, Plaintiffs' counsel estimated  
5 total damages and penalties to be as high as approximately \$75 million if Plaintiffs were  
6 successful in certifying all of their claims and prevailing on the merits, or approximately \$62.4  
7 million if Plaintiffs were only successful on the pre-policy change theories of liability. Plaintiffs'  
8 success was far from certain, given the risks addressed above and the possibility of years of  
9 appeal and reversal of judgment. Therefore, the proposed settlement of \$5,150,000.00 is fair,  
10 adequate and reasonable and well within the range accepted by most courts. *See Lesevic v.*  
11 *Spectraforce Techs., Inc.*, 2021 WL 1599310, at \*3 (N.D. Cal. Apr. 23, 2021) (noting wage and  
12 hour class fund of \$600,000 that compensated for 7% of maximum potential recovery was  
13 reasonable); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D.  
14 Cal. 2014) (approving wage and hour class settlement which obtained only 9.1% of projected  
15 damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21,  
16 2012) (holding that settlement of approximately 15% of the potential recovery was fair and  
17 reasonable); *McPhail v. First Command Fin. Planning, Inc.*, 2009 WL 839841, at \*5 (S.D. Cal.  
18 Mar. 30, 2009) (approving settlement equal to approximately 7% of estimated damages); *Int'l*  
19 *Bhd. Of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at  
20 \*3 (D. Nev. Oct. 19, 2012) (approving settlement recovering approximately 3.5% of maximum  
21 exposure).

22 57. Although Plaintiffs believe in the merits of the alleged claims and maintains that  
23 there is no reason for reducing PAGA penalties, Plaintiffs are aware that Defendant may raise  
24 defenses to the statutory violations and further with respect to the reduction of PAGA penalties  
25 and that it could be persuasive to the Court. The Gross Settlement Fund was premised with these  
26 risks in mind.

27 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

28 58. I believe that Plaintiffs and the Settlement Class could prevail at trial. However, I

1 also believe in the fairness of the settlement, which is based on factoring in the uncertainty and  
2 risks attendant to not prevailing on one or more theories of liability, the possibility of losing at  
3 trial, and potential for appeals. Moreover, as Defendant adamantly denies that it should be liable  
4 for the full extent of the alleged damages and penalties, there is a possibility that Plaintiffs and the  
5 Settlement Class would be awarded less or recover nothing at trial. Thus, after taking into account  
6 sharply disputed legal issues involved in this litigation, the risks associated with further  
7 prosecution, delays caused by potential appeals, and the substantial benefits to be received  
8 pursuant to the settlement, I believe that the proposed settlement is fair, reasonable, and adequate  
9 and is in the best interests of the Settlement Class.

10 59. Despite the asserted fairness of the settlement terms, should any Settlement Class  
11 Member wish to pursue his or her own case for the claims being released herein, each Settlement  
12 Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement of  
13 the class claims.

#### 14 **ATTORNEY'S EXPERIENCE**

15 60. Both Plaintiffs' and Defendant's counsel have a great deal of experience in wage  
16 and hour class action litigation. Plaintiffs' counsel have been approved as class counsel in a  
17 number of wage and hour class actions and have extensive litigation experience.

18 61. I am one of the primary attorneys on this matter. My qualifications are as follows:  
19 I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013,  
20 magna cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a  
21 Notes and Comments Editor on the Southwestern Law Review. I also received awards for  
22 achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at the  
23 United States District Court for the Central District. Immediately after law school, I taught several  
24 courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I taught  
25 those courses for approximately four years.

26 62. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately  
27 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted  
28 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I

1 also regularly litigated cases across the civil litigation spectrum, including employment matters.

2 63. From February 2016, through Fall 2017, I practiced at the international law firm of  
3 Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50  
4 companies in Multi-District Litigation primarily in the product liability sphere. I also successfully  
5 drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary judgment  
6 decision regarding trade secret issues, in addition to working in several other practice groups.

7 64. From September 2017, through September 2018, I served as a law clerk to a Judge  
8 sitting on the United States District Court, Central District of California. I regularly prepared  
9 bench memoranda, on cases involving all types of civil litigation, including regularly working on  
10 wage and hour class actions.

11 65. I am currently an associate at the law firm Diversity Law Group, P.C., an  
12 employment law firm that has handled numerous wage and hour class and individual actions, on  
13 both plaintiff and defense sides. My current practice focuses on employment matters involving  
14 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior  
15 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the  
16 United States District Courts for the Central, Northern, and Eastern Districts of California. I am  
17 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,  
18 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-  
19 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.  
20 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*  
21 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); and *Rodas v.*  
22 *Goodyear Tire* (Case No. 21-cv-07526, United States District Court, Central District of  
23 California), among many others.

24 66. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of  
25 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,  
26 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our  
27 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

28 67. I have also assisted the firm in numerous wage and hour class action mediations.

68. My co-counsel and I will adequately represent the Settlement Class Members in this action. Plaintiffs' counsel have and will zealously represent Plaintiffs and the Settlement Class and pursue this lawsuit to its conclusion.

69. I have no conflicts with the Settlement Class and will adequately represent the Settlement Class.

70. In conjunction with the filing of this Motion, I caused the Motion and Settlement Agreement to be uploaded to the LWDA's website. Attached hereto as **Exhibit B** is the confirmation of submission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 28th day of November 2022, at Los Angeles, California.

  
Max W. Gavron

# EXHIBIT A

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*Attorneys for Plaintiffs DELISHIA HYDE,  
EUGENIA DUBOSE, CLARA TROTTER,  
& ARAYA TURNER*

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,

v.

PRIME NOW LLC, a Delaware Limited  
Liability Company; and DOES 1 through 50,  
inclusive,

Defendants.

CASE NO. RG20068286

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE EVELIO GRILLO  
DEPARTMENT 21

**CLASS ACTION SETTLEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiffs Delishia Hyde, Eugenia Dubose, Clara Trotter, and Araya Turner (“Plaintiffs”), on behalf of themselves, the Settlement Class, as defined below, the State of California, and the Allegedly Aggrieved Employees, as defined below, on the one hand, and Defendant Prime Now LLC (“Defendant” or “Prime Now”) on the other.

Plaintiffs and Defendant (collectively, the “Parties”) enter into this Agreement to effectuate a full and final settlement and preclusive judgment resolving completely and to the fullest extent permitted by law the Released Class Claims and Released PAGA Claims, as defined below, and brought against Prime Now in *Mendoza v. Prime Now LLC* (Alameda County Sup. Ct. Case No. RG20068286). This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Class Claims and Released PAGA Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

**I. RECITALS**

WHEREAS, on July 21, 2020, Cinthia Mendoza and Delishia Hyde filed a putative class and PAGA action in Alameda Superior Court against Prime Now alleging various wage-and-hour violations, *Mendoza v. Prime Now LLC* (Alameda County Sup. Ct. Case No. RG20068286) (the “Action”);

WHEREAS, on April 5, 2022, Cinthia Mendoza dismissed her claims against Prime Now in their entirety and Plaintiff Hyde filed a First Amended Complaint in the Action joined by three additional plaintiffs: Eugenia Dubose, Clara Trotter, and Araya Turner;

WHEREAS, on June 14, 2022, Plaintiffs and Prime Now attended a mediation session with experienced professional mediator Michael J. Loeb, and, in preparation for the mediation, engaged in written discovery, depositions, and informal exchanges of information, documents, and voluminous data, which enabled a thorough evaluation of the claims, and the likely outcomes, risks, and expense of pursuing litigation;

WHEREAS, during mediation, the Parties reached an agreement in principle to resolve the Action, and memorialized that agreement in a Confidential Memorandum of Understanding; and

WHEREAS, the Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims that exist between them arising from the factual allegations that underlie the Action concerning any and all claims asserted therein, including the alleged: failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; failure to pay sick time pay or paid time off in violation of Labor Code §§ 201–203 and 246; failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; failure to provide accurate wage statements in violation of Labor Code § 226; violations of Business and Professions Code § 17200 *et seq.*, which are based on the aforementioned predicate Labor Code violations; and claims for PAGA penalties under Labor Code § 2698 *et seq.*, which are based on the aforementioned predicate Labor Code violations. To achieve a full and complete release of Prime Now (and the “Released Parties” as defined in this Agreement) of such disputes and claims, the Plaintiffs and Participating Settlement Class Members, as defined in this Agreement (which include any legal heirs and/or successors-in-interest of all Participating Settlement Class Members), through execution of the Agreement, acknowledge that this Settlement Agreement is intended to include in its effect the entirety of the Released Claims, as more fully described in Paragraphs 27, 28, 58, and 77 of this Agreement.

## II. DEFINITIONS

In addition to the terms defined elsewhere in this Settlement Agreement, capitalized terms used in this Settlement Agreement shall have the meanings set forth below:

1. “Action” means *Mendoza v. Prime Now LLC* (Alameda County Sup. Ct. Case No. RG20068286).

2. “Allegedly Aggrieved Employees” means (i) all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and meal period premium pay during the same workweek at any time during June 11, 2019 through August 15, 2022 (“Class and PAGA Period End Date”), , and/or (ii) all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and sick pay wages or paid

1 time off during the same workweek and whose employment ended at any time during June 11, 2019,  
2 through and including August 15, 2022.

3 3. "Attorneys' Fees and Costs" means attorneys' fees sought by Class Counsel for  
4 litigation and resolution of the Action, and all reasonable costs incurred by Class Counsel in the Action  
5 in an amount not to exceed Thirty Thousand Dollars (\$30,000.00). Subject to review and approval by  
6 the Court, Class Counsel may request attorneys' fees of not more than one third (1/3) of the Gross  
7 Settlement Fund, or One Million Seven Hundred Sixteen Thousand Six Hundred and Sixty-Six Dollars  
8 and Sixty-Seven Cents (\$1,716,666.67) plus reasonable costs and expenses in an amount not to exceed  
9 Thirty Thousand Dollars (\$30,000.00), which shall be paid from the Gross Settlement Fund.

10 4. "Class Counsel" means and includes Larry W. Lee, Max W. Gavron, Nicholas  
11 Rosenthal, Kwanporn "Mai" Tulyathan, and Shalom "Christine" Choo of Diversity Law Group, P.C.

12 5. "Class Counsel Award" means any attorneys' fees, expenses or costs awarded to Class  
13 Counsel by the Court.

14 6. "Class List" means a complete list of all Settlement Class Members and Allegedly  
15 Aggrieved Employees that Prime Now will diligently and in good faith compile from its records and  
16 provide to the Settlement Administrator within thirty (30) calendar days after entry of an order granting  
17 Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel  
18 and will include each Class Member's full name; most recent mailing address and telephone number  
19 contained in Prime Now's personnel records; Social Security number; dates of employment;  
20 information sufficient to calculate the number of workweeks that each Class Member worked during  
21 the Class Period and the number of "weeks worked" or "workweeks" that each Allegedly Aggrieved  
22 Employee worked during the PAGA Period according to Prime Now's records; and any other  
23 information needed to calculate Individual Settlement Payments.

24 7. "Class Period" means (i) the period from April 6, 2016 through and including August  
25 15, 2022 for the claims of all current and former non-exempt employees of Prime Now in the State of  
26 California who were paid additional remuneration (beyond wages) which were treated as non-  
27 discretionary and includable in the regular rate of pay and meal period premium pay during the same  
28 workweek and (ii) the period from April 6, 2017 through and including August 15, 2022 for the claims

1 of all current and former non-exempt employees of Prime Now in the State of California who were  
2 paid additional remuneration (beyond wages) which were treated as non-discretionary and includable  
3 in the regular rate of pay and sick pay wages or paid time off during the same workweek and whose  
4 employment ended during the same period.

5 8. "Class Representative Enhancement Payments" means the amounts to be paid to  
6 Plaintiffs, subject to final approval by the Court, in recognition of their effort and work in prosecuting  
7 the Action on behalf of Settlement Class Members, and for their general release of claims under Civil  
8 Code section 1542. Subject to the Court granting final approval of this Settlement Agreement and  
9 subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of Class  
10 Representative Enhancement Payments of (a) Twenty Thousand Dollars (\$20,000.00) each to Plaintiff  
11 Delishia Hyde and Plaintiff Eugenia Dubose and (b) Ten Thousand Dollars (\$10,000.00) each to  
12 Plaintiff Clara Trotter and Plaintiff Araya Turner.

13 9. "Court" or "Alameda Superior Court" means the Superior Court of California for the  
14 County of Alameda.

15 10. "Effective Date" means the later of: (i) if no timely objections are filed, or if filed, are  
16 withdrawn prior to final approval, the date upon which the Court enters an order granting final approval  
17 of the Settlement Agreement; or (ii) if timely objections are filed and not withdrawn, then either five  
18 (5) calendar days from the final resolution of any appeals timely filed or the expiration date of the time  
19 for filing or noticing any such appeals, provided that the Settlement is finally approved without material  
20 modification.

21 11. "Final Approval" means the entry of an order that the Plaintiffs and Prime Now will  
22 jointly seek from the Court, and the entry of which shall reflect the Court's Judgment finally approving  
23 the Settlement Agreement.

24 12. "Final Approval Hearing" means the hearing that is to take place after the entry of the  
25 Preliminary Approval Order and after the date the Settlement Administrator mails Notice Packets to  
26 Settlement Class Members for purposes of: (i) entering Final Approval; (ii) determining whether the  
27 Settlement Agreement shall be approved as fair, reasonable, and adequate; and (iii) ruling upon an  
28

1 application by Class Counsel for Attorneys' Fees and Costs and Plaintiffs' Class Representative  
2 Enhancement Payments.

3 13. "Funding Date" means thirty (30) calendar days after the Effective Date.

4 14. "Gross Settlement Fund" means the non-reversionary amount of Five Million One  
5 Hundred Fifty Thousand Dollars (\$5,150,000.00), to be paid by Prime Now in full satisfaction of all  
6 Released Claims, which includes all Individual Settlement Payments to Participating Settlement Class  
7 Members, Participating Settlement Class Members' shares of applicable payroll tax payments  
8 (including FICA, FUTA, and SDI contributions), Prime Now's share of applicable employer payroll  
9 tax payments, the Class Representative Enhancement Payments to Plaintiffs, the PAGA Settlement  
10 Amount for release of all Private Attorneys' General Act claims, Attorneys' Fees and Costs, and  
11 Settlement Administration Costs. Other than as contemplated by the Escalator Clause in Paragraph 61,  
12 in no event will Prime Now be liable for more than the Gross Settlement Fund set forth in this  
13 paragraph.

14 15. "Individual Settlement Payment" means each Participating Settlement Class Member's  
15 respective share of the Net Settlement Amount.

16 16. "Individual PAGA Payment" means each Allegedly Aggrieved Employee's respective  
17 share of the 25% of the PAGA Settlement Amount allocated to Allegedly Aggrieved Employees.

18 17. "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining  
19 after deducting the Class Representative Enhancement Payments, the Class Counsel Award, Settlement  
20 Administration Costs, the PAGA Settlement Amount, Participating Settlement Class Members' shares  
21 of applicable payroll tax payments, and Prime Now's share of applicable employer payroll tax  
22 payments. The entirety of the Net Settlement Amount will be distributed to Participating Class  
23 Members pro rata, on a per "weeks worked" or "workweek" basis. There will be no reversion of the  
24 Net Settlement Amount to Prime Now.

25 18. "Notice of Objection" means a Settlement Class Member's valid and timely written  
26 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the  
27 objector's full name, signature, address, and telephone number; (ii) a written statement of all grounds  
28 for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs,

1 or other documents upon which the objection is based; and (iv) a statement whether the objector intends  
2 to appear at the Final Approval Hearing. Unless the Court orders otherwise, any Settlement Class  
3 Member who does not submit a timely written objection to the Settlement, who fails to appear at the  
4 Final Approval Hearing to lodge his or her objection, or who fails to otherwise comply with the specific  
5 and technical requirements of this paragraph, will be foreclosed from objecting to the Settlement and  
6 seeking any adjudication or review of the Settlement, by appeal or otherwise.

7 19. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form  
8 attached as **Exhibit A**.

9 20. "PAGA Settlement Amount" means the amount that the Parties agree to allocate to the  
10 Allegedly Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") in  
11 connection with resolution of the PAGA claims in the Action. The Parties agree that Two Hundred  
12 Thousand Dollars (\$200,000.00) of the Gross Settlement Fund will be allocated to the resolution of  
13 Allegedly Aggrieved Employees' claims arising under PAGA. As required by PAGA, Seventy-Five  
14 Percent (75%), or One Hundred and Fifty Thousand Dollars (\$150,000.00), of the PAGA Settlement  
15 Amount will be paid to the California LWDA ("LWDA Payment"), and Twenty-Five Percent (25%),  
16 or Fifty Thousand Dollars (\$50,000.00), of the PAGA Settlement Amount will be distributed to  
17 Allegedly Aggrieved Employees on a pro rata basis based on their respective number of "weeks  
18 worked" or workweeks between June 11, 2019 through August 15, 2022 ("PAGA Period").

19 21. "Participating Settlement Class Members" means all Settlement Class Members who do  
20 not submit timely and valid Requests for Exclusion.

21 22. "Parties" means Plaintiffs and Prime Now, collectively.

22 23. "Plaintiffs" means Plaintiffs Delishia Hyde, Eugenia Dubose, Clara Trotter, and Araya  
23 Turner.

24 24. "Preliminary Approval" means the Court order granting preliminary approval of this  
25 Settlement Agreement.

26 25. "Prime Now" means Defendant Prime Now LLC.  
27  
28

26. “Qualified Settlement Fund” means a fund, account, or trust satisfying the requirements of 26 C.F.R. § 1.468B-1, established by the Settlement Administrator for the purpose of distributing the Gross Settlement Fund according to the terms of this Settlement Agreement.

27. “Released Class Claims” means all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation claims for (1) failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid time off in violation of Labor Code §§ 201-203 and 246; (3) failure to timely pay all wages due upon separation of employment in violation of Labor Code § 201, 202, and 203; (4) failure to provide accurate wage statements in violation of Labor Code § 226; and (5) violations of Business and Professions Code § 17200 et seq. based solely on the facts alleged in the operative complaint.

28. “Released PAGA Claims” means all claims for civil penalties pursuant to the Private Attorneys General Act (codified in Labor Code § 2698 et seq.) based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation PAGA claims for (1) failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid time off in violation of Labor Code §§ 201-203 and 246; and (3) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; and (4) failure to provide accurate wage statements in violation of Labor Code § 226 based solely on the facts alleged in the operative complaint. Plaintiffs’ LWDA notices are attached as **Exhibit B** to this Settlement Agreement.

29. “Released Claims” means the Released Class Claims and the Released PAGA Claims.

30. “Released Parties” means Prime Now and each of its past, present, and/or future, direct, and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures.

31. “Request for Exclusion” means a timely letter submitted by a Settlement Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth

1 the name, address, and telephone number of the Settlement Class Member requesting exclusion; (ii) be  
2 signed by the Settlement Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly  
3 state that the Settlement Class Member does not wish to be included in the Settlement; and (v) be faxed  
4 or postmarked on or before the Response Deadline.

5 32. "Response Deadline" means the deadline by which Settlement Class Members must  
6 postmark or fax to the Settlement Administrator Requests for Exclusion, Notices of Objection, or  
7 disputes to workweeks. The Response Deadline will be forty-five (45) calendar days from the initial  
8 mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) day falls on  
9 a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on  
10 which the U.S. Postal Service is open.

11 33. "Settlement Administration Costs" means the reasonable fees and expenses payable  
12 from the Gross Settlement Fund to the Settlement Administrator for administering this Settlement,  
13 including, but not limited to, printing, distributing, and tracking forms for this Settlement, calculating  
14 estimated amounts per Settlement Class Member, tax reporting, distributing the LWDA Payment,  
15 Gross Settlement Fund and Class Counsel Award, and providing necessary reports and declarations,  
16 and other duties and responsibilities set forth herein to process this Settlement, as requested by the  
17 Parties. The Parties have agreed to allocate up to Ninety-Seven Thousand Dollars (\$97,000.00) to  
18 Settlement Administration Costs. The Settlement Administration Costs will be paid from the Gross  
19 Settlement Fund. In the event the allocated Settlement Administration Costs exceed the actual costs  
20 incurred by the Settlement Administrator, the difference shall be a part of the Net Settlement Amount  
21 and distributed the Participating Settlement Class Members.

22 34. "Settlement Administrator" means Phoenix Class Action Administration Solutions,  
23 which the Parties have agreed to, subject to approval by the Court for the purposes of administering  
24 this Settlement. The Parties each represent that they do not have any financial interest in the Settlement  
25 Administrator or otherwise have a relationship with the Settlement Administrator that could create a  
26 conflict of interest.

27 35. "Settlement Class Member(s)" or "Settlement Class" means (i) all current and former  
28 non-exempt employees of Prime Now in the State of California who were paid additional remuneration

(beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and meal period premium pay during the same workweek at any time during April 6, 2016 through and including August 15, 2022, and/or (ii) all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and sick pay wages or paid time off during the same workweek and whose employment ended at any time during April 6, 2017, through and including August 15, 2022.

### III. TERMS OF AGREEMENT

Plaintiffs, on behalf of themselves and the Settlement Class, and Prime Now agree as follows:

36. Consolidation of Action for Settlement Purposes Only. For purposes of this settlement only, within fifteen (15) calendar days of executing this Agreement, Plaintiffs will file a Second Amended Complaint ("SAC") that is identical to the operative First Amended Complaint except that it includes a claim for penalties under California Labor Code section 226 that is derivative of the claims already in the First Amended Complaint. Plaintiffs will also submit an amended PAGA letter to the LWDA including this claim. All proceedings relating to the approval of the Settlement shall be before the Alameda Superior Court.

37. Preliminary Approval Motion. The Parties agree to present the Settlement for Preliminary Approval, and consent to continued jurisdiction if Preliminary Approval is granted, in the Alameda Superior Court, and Plaintiffs further agree to endeavor in good faith to file a Motion for Preliminary Approval, including all executed and necessary exhibits, within thirty (30) calendar days of executing this Settlement Agreement.

38. Funding of the Gross Settlement Fund. Prime Now will make a one-time deposit of the Gross Settlement Fund of Five Million One Hundred Fifty Thousand Dollars (\$5,150,000.00) into a Qualified Settlement Fund to be established by the Settlement Administrator in exchange for the promises set forth in this Settlement Agreement, including the Releases by the Participating Settlement Class Members, Allegedly Aggrieved Employees, and Plaintiffs for the Released Claims. The Individual Settlement Payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or

unemployment compensation. After the Effective Date, the Gross Settlement Fund will be used to pay: (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Class Representative Enhancement Payments; (iv) the Class Counsel Award; and (v) Settlement Administration Costs. Prime Now will deposit the Gross Settlement Fund into a Qualified Settlement Fund by the Funding Date.

39. Non-Reversionary Settlement. Participating Settlement Class Members are entitled to one hundred percent (100%) of the Net Settlement Amount, to be distributed as outlined in Paragraph 17. Prime Now maintains no reversionary right to any portion of the Net Settlement Amount, including any increase in the Net Settlement Amount resulting from a reduction in the Class Representative Enhancement Payments, Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs. If there are any timely submitted opt outs or a reduction in the Class Representative Enhancement Payments, Class Counsel Award, the PAGA Settlement Amount, and/or the Settlement Administration Costs, the Settlement Administrator shall proportionately increase the Individual Settlement Payments for each Participating Settlement Class Member so that the amount actually distributed to Participating Settlement Class Members equals one hundred percent (100%) of the corresponding Net Settlement Amount.

40. Attorneys' Fees and Costs. Class Counsel shall apply to the Court for attorneys' fees of not more than one third (1/3) of the Gross Settlement Fund, or One (\$1,716,666.67), plus reasonable costs and expenses incurred, not to exceed Thirty Thousand Dollars (\$30,000.00) subject to proof by Class Counsel. The Settlement Administrator (and not Prime Now) shall issue an IRS Form 1099 to Class Counsel reflecting the Class Counsel Award. Prime Now agrees not to oppose Class Counsel's reasonable, collective request for a single award of attorneys' fees and costs in the amounts set forth in this paragraph.

41. Class Representative Enhancement Payments. In exchange for general releases of all known and unknown claims that they may have against Prime Now and Released Parties based on their employment with Prime Now (including a waiver of claims under Civil Code section 1542), and in recognition of their service to the class, Plaintiffs shall apply for Class Representative Enhancement Payments of (a) Twenty Thousand Dollars (\$20,000.00) each to Plaintiff Delishia Hyde and Plaintiff

1 Eugenia Dubose, and (b) Ten Thousand Dollars (\$10,000.00) each to Plaintiff Clara Trotter and  
2 Plaintiff Araya Turner. The Class Representative Enhancement Payments will be paid from the Gross  
3 Settlement Fund and will be in addition to Plaintiffs' Individual Settlement Payments paid pursuant to  
4 the Settlement Agreement. The Settlement Administrator (and not Prime Now) shall issue an IRS  
5 Form 1099 to each Plaintiff reflecting their Class Representative Enhancement Payments. Plaintiffs  
6 agree to assume responsibility of remitting to the Internal Revenue Service, the California Franchise  
7 Tax Board, and any other relevant taxing authority the amounts required by law, if any, from their  
8 Class Representative Enhancement Payments. In addition, Plaintiffs shall hold Prime Now and the  
9 Released Parties harmless and indemnify and defend Prime Now and the Released Parties for all taxes,  
10 interest, penalties, and costs incurred by Prime Now or the Released Parties by any reason of any claims  
11 relating to their non-withholding of taxes from the Class Representative Enhancement Award.

12 42. Settlement Administration Costs. The Settlement Administrator will be paid for the  
13 reasonable costs it incurs for purposes of administering the Settlement and distributing payments from  
14 the Gross Settlement Fund. These costs, which will be paid from the Gross Settlement Fund, will  
15 include, *inter alia*, calculating, paying, and reporting the required tax payments on the Individual  
16 Settlement Payments; the issuing and collection of 1099 and W-2 IRS Forms; distributing Notice  
17 Packets; processing Requests for Exclusion, Notices of Objection, and workweek disputes; performing  
18 single skip trace on Notice Packets returned as undeliverable; calculating and distributing from the  
19 Gross Settlement Fund all Individual Settlement Payments, PAGA Settlement Amount, Class  
20 Representative Enhancement Payments, and Class Counsel Award; and providing necessary reports  
21 and declarations, among other tasks set forth in this Agreement.

22 43. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount  
23 of Two Hundred Thousand Dollars (\$200,000) from the Gross Settlement Fund will be designated for  
24 satisfaction of Plaintiffs' and Allegedly Aggrieved Employees' PAGA claims. Pursuant to PAGA,  
25 Seventy-Five Percent (75%), or One Hundred and Fifty Thousand Dollars (\$150,000), of this sum will  
26 be paid to the LWDA and Twenty-Five Percent (25%), or Fifty Thousand Dollars (\$50,000), will be  
27 distributed on a pro rata basis to the Allegedly Aggrieved Employees based on the number of "weeks  
28 worked" or "workweeks" during the PAGA Period. This amount will not revert to Defendants.

1           44.   Net Settlement Amount. The entire Net Settlement Amount will be distributed to  
2 Participating Class Members as provided in paragraphs 17 and 38. No portion of the Net Settlement  
3 Amount will revert to or be retained by Prime Now.

4           45.   Individual Settlement Payment Calculations. Individual Settlement Payments will be  
5 calculated and apportioned from the Net Settlement Amount to Settlement Class Members on a pro  
6 rata basis depending on the number of “weeks worked” or “workweeks” (defined as any calendar week  
7 during the Class Period) in which a Settlement Class Member performed at least one day of work for  
8 Prime Now. Settlement Class Members do not need to submit a claim to participate and receive their  
9 Individual Settlement Payment.

10          46.   Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated  
11 and apportioned from the 25% portion of the PAGA Settlement Amount allocated to Allegedly  
12 Aggrieved Employees on a pro rata basis depending on the number of “weeks worked” or “workweeks”  
13 in which an Allegedly Aggrieved Employee performed at least one day of work for Prime Now.  
14 Allegedly Aggrieved Employees do not need to submit a claim to participate in the PAGA portion of  
15 the Settlement and also may not opt out or object to the resolution of the PAGA claim.

16          47.   No Credit Toward Benefit Plans. The Individual Settlement Payments made to  
17 Participating Settlement Class Members and Individual PAGA Payments made to Allegedly Aggrieved  
18 Employees under this Settlement, as well as any other payments made pursuant to this Settlement, will  
19 not be utilized to calculate any additional benefits under any benefit plans to which any Settlement  
20 Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k)  
21 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.  
22 Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights,  
23 contributions, or amounts to which any Settlement Class Members may be entitled under any benefit  
24 plans. For the avoidance of doubt, no Settlement Class Member shall be entitled to any additional  
25 right, contribution, or amount under any benefit plan as a result of this Settlement or payments made  
26 hereunder.

1           48.   Administration Process. The Parties agree to cooperate in the administration of the  
2 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred  
3 in the administration of the Settlement.

4           49.   Notice to Labor and Workforce Development Agency. Within ten (10) calendar days  
5 of the entry of the Court's order granting Preliminary Approval, Class Counsel will notify the LWDA  
6 of that order consistent with paragraph 20 of this Agreement and Labor Code sections 2699(1)(2)–(3).

7           50.   Preparation of the Class List. Within twenty-one (21) calendar days of the entry of the  
8 Court's order granting Preliminary Approval, Prime Now will provide the Class List to the Settlement  
9 Administrator. Within fifteen (15) calendar days after the Response Deadline, the Settlement  
10 Administrator will provide to counsel for Prime Now and Class Counsel the list of Participating  
11 Settlement Class Members, which, unless the Court orders otherwise, shall exclude individuals who  
12 filed a timely Request for Exclusion. The Settlement Administrator shall not provide social security  
13 numbers or contact information with this list.

14           51.   Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after receiving the  
15 Class List from Prime Now, the Settlement Administrator will mail a Notice Packet to all Settlement  
16 Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses  
17 identified in the Class List.

18           52.   Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement  
19 Administrator will perform a search based on the National Change of Address Database for information  
20 to update and correct for any known or identifiable address changes. Any Notice Packets returned to  
21 the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent  
22 promptly via regular First-Class U.S. Mail within three (3) business days of receipt to the forwarding  
23 address affixed thereto and the Settlement Administrator will indicate the date of such remailing on the  
24 Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly  
25 attempt to determine the correct address using a skip-trace or other search using the name, address,  
26 and/or Social Security number of the Settlement Class Member involved, and will then perform a single  
27 re-mailing within three (3) business days of receipt. Settlement Class Members will have until the later  
28

of fifteen (15) calendar days from the date of the re-mailing or the Response Deadline, to submit a Notice of Objection, Request for Exclusion, or workweeks dispute.

53. Notice Packets. All Settlement Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement Agreement's principal terms; (iii) the Settlement Class definition; (iv) the total number of workweeks each respective Settlement Class Member worked for Prime Now during the Class Period; (v) each Settlement Class Member's estimated Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) each Allegedly Aggrieved Employee's estimated Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (vii) the dates which comprise the Class Period and the PAGA Period; (viii) instructions on how to submit Requests for Exclusion or Notices of Objection or workweeks disputes; (ix) the deadlines by which the Settlement Class Member must postmark or fax Requests for Exclusion, Notices of Objection, and workweeks disputes; (x) the claims to be released; and (xi) the Settlement Administrator's contact information, including the website address where the electronic versions of the materials in the Notice Packet will be available. The Parties' proposed Notice Packet is attached hereto as **Exhibit A**.

54. Disputed Information in Notice Packets. Settlement Class Members will have an opportunity to dispute the individualized information provided in their Notice Packets. To the extent Settlement Class Members dispute their employment dates or the number of workweeks on record, Settlement Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate by the Response Deadline. The Settlement Administrator will decide the dispute. Prime Now's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Settlement Class Member and will make the final decision as to the merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen (15) business days of the Response Deadline.

55. Request for Exclusion Procedures. Any Settlement Class Member wishing to opt out of the Settlement Agreement must sign and fax or mail a written Request for Exclusion to the Settlement Administrator by the Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine

whether a Request for Exclusion has been timely submitted. Consistent with California law, Allegedly Aggrieved Employees may not opt out of the Settlement Agreement. Any Settlement Class Member who timely submits a Request for Exclusion will still receive an Individual PAGA Payment representing their portion of the PAGA Settlement Amount. All signatories and their counsel must not encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means. Objective statements to Settlement Class Members who call Class Counsel with inquiries regarding the Settlement Agreement, or the exercise of Class Counsel's ethical obligations, shall not be deemed a violation of the prohibitions contained herein.

56. Defective Submissions. If a Settlement Class Member's Request for Exclusion is defective as to the requirements listed herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Settlement Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Settlement Class Member will have until the later of (i) the Response Deadline or (ii) ten (10) calendar days from the date of the cure letter to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

57. Cancellation of Settlement Agreement. Within fourteen (14) calendar days of the Response Deadline, as defined in the Court's Order granting Preliminary Approval of the Settlement, Prime Now will have the option, in its sole discretion, to void the Settlement Agreement in its entirety if ten percent (10%) or more of all individuals eligible to become members of the Settlement Class submit timely and valid Requests for Exclusion or are otherwise deemed by the Court not to be bound by the Settlement. If Prime Now exercises this option, it shall be responsible for all Settlement Administration Costs incurred to the date of cancellation.

58. Releases.

58(a) Release of Class Claims by Settlement Class Members. The Parties agree that upon the Effective Date and Defendant's full funding of the Gross Settlement Fund, it is their intent that the terms set forth in this Settlement Agreement will

1 release any further attempt by lawsuit, administrative claim or action,  
2 arbitration, demand, claims for civil penalties, or other action of any kind by  
3 each and all of the Participating Settlement Class Members, who shall release  
4 their right to pursue any and all claims against the Released Parties for the  
5 Released Class Claims, as fully described in Paragraph 27, arising during the  
6 Class Period.

7 58(b) Release of PAGA Claims by Allegedly Aggrieved Employees. The Parties  
8 agree that upon the Effective Date and Defendant's full funding of the Gross  
9 Settlement Fund, it is their intent that the terms set forth in this Settlement  
10 Agreement will release any further attempt by lawsuit, administrative claim or  
11 action, demand, claims for civil penalties, or other action of any kind by each  
12 and all of the Allegedly Aggrieved Employees, who shall release their right to  
13 pursue any and all claims against the Released Parties for the Released PAGA  
14 Claims, as fully described in Paragraph 28, arising during the PAGA Period.

15 58(c) Release of Claims by Named Plaintiffs. Upon the Effective Date and  
16 Defendant's full funding of the Gross Settlement Fund, in addition to the claims  
17 being released by all Participating Settlement Class Members and Allegedly  
18 Aggrieved Employees, Plaintiffs will release and forever discharge the Released  
19 Parties, to the fullest extent permitted by law, of and from any and all claims,  
20 known and unknown, asserted and not asserted, which Plaintiffs have or may  
21 have against the Released Parties based in any way on, or otherwise related to  
22 or arising from, their employment with Prime Now as of the date of execution  
23 of this Settlement Agreement. The releases include, but are not limited to, all  
24 disputes relating to or arising out of any state, local, or federal statute, ordinance,  
25 regulation, order, or common law, including, but not limited to, Title VII of the  
26 Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e), *et seq.*; the Civil  
27 Rights Act of 1866, as amended, 42 U.S.C. §§ 1981, *et seq.*; the Equal Pay Act,  
28 as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1939, as

amended, 29 U.S.C. §§ 201, *et seq.* and Code of Federal Regulations; the Orders  
 of the California Industrial Welfare Commission regulating wages, hours and  
 working conditions; the California Fair Employment & Housing Act, as  
 amended, Cal. Govt. Code §§ 12900, *et seq.*; the California Family Rights Act  
 of 1991, as amended; Cal. Govt. Code § 12945.2; the California Unruh Civil  
 Rights Act, as amended, Cal. Civ. Code §§ 51, *et seq.*; the California Labor Code  
 (including any claim for civil penalties under the California Labor Code Private  
 Attorneys General Act); the California Government Code; Article 1 of the  
 California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C.  
 §§ 701 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12100,  
*et seq.*; the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq.*  
 and any state law equivalent; the Employee Retirement Income Security Act of  
 1974, 29 U.S.C. §§ 1001, *et seq.*; the National Labor Relations Act, as amended,  
 29 U.S.C. §§ 151, *et seq.*; California Business and Professions Code §§ 17200,  
*et seq.*; other statutory and common law claims; statutory or common law rights  
 to attorneys' fees and costs, penalties/fines, and/or punitive damages; any action  
 based on contract, quasi-contract, quantum meruit, implied contract, tort,  
 wrongful or constructive discharge, breach of the covenant of good faith and fair  
 dealing, defamation, libel, slander, immigration issues, infliction of emotional  
 distress, negligence, assault, battery, conspiracy, harassment, retaliation,  
 discrimination on any basis prohibited by statute or public policy, conversion,  
 any interference with business opportunity or with contract or based upon any  
 other theory; and/or similar causes of action.

58(d) Named Plaintiffs General Release. Upon the Effective Date, to the extent  
 allowed by California law, the Named Plaintiffs each waive all rights and  
 benefits afforded by section 1542 of the California Civil Code as to any Released  
 Claims. Section 1542 provides:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
4 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
5 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
6 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7 59. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Settlement Class  
8 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely and  
9 valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released  
10 Class Claims and Released PAGA Claims (collectively, the "Released Claims"), as well as any  
11 Judgment that may be entered by the Court if it grants final approval to the Settlement. The Settlement  
12 Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released  
13 Claims currently pending or raised in the future. Notwithstanding the foregoing, this Settlement  
14 Agreement, if approved, precludes further PAGA claims irrespective of whether a request for exclusion  
15 is submitted. As a result, all Allegedly Aggrieved Employees—regardless of whether they submit a  
16 Request for Exclusion—shall receive a check for their share of the PAGA Settlement Amount when  
17 settlement payments are delivered, and they will be bound by a release of the PAGA claims as outlined  
18 in paragraph 58.

19 60. Notice of Objection Procedures. To object to the Settlement Agreement, a Settlement  
20 Class Member must mail or fax a valid Notice of Objection to the Settlement Administrator on or  
21 before the Response Deadline. The Notice of Objection must be signed by the Settlement Class  
22 Member and contain all information required by this Settlement Agreement. The postmark or fax-  
23 stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely.  
24 The Settlement Administrator will notify any person from whom it receives a Notice of Objection that  
25 is not timely and/or valid if, in fact, such Notice of Objection is not timely and/or valid. Any disputes  
26 regarding the timeliness, validity or effectiveness of a Notice of Objection shall be decided by the  
27 Settlement Administrator consistent with the terms of this Agreement, and with the Parties' input, if  
28 appropriate. Settlement Class Members who fail to object in the manner specified above will be

1 deemed to have waived all objections to the Settlement and will be foreclosed from making any  
2 objections, whether by appeal or otherwise, to the Settlement Agreement, unless they appear at the  
3 Final Approval Hearing and state their objection at that time. Settlement Class Members who submit  
4 timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections  
5 heard by the Court. If the Court permits, Settlement Class Members who have not submitted a written  
6 Notice of Objection in compliance with the Settlement Agreement may still appear at the Final  
7 Approval Hearing and present their objections. At no time will any of the Parties or their counsel seek  
8 to solicit or otherwise encourage Settlement Class Members to submit written objections to the  
9 Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not  
10 represent any Settlement Class Members with respect to any such objections to this Settlement.

11 61. Escalation Clause. Prime Now estimates that there are approximately 21,345 Settlement  
12 Class Members. Should the number of Settlement Class Members increase by more than ten percent  
13 (10%) of this estimate (or by more than 2,135 Settlement Class Members), this Paragraph shall be  
14 triggered and Prime Now shall have the option to either:

15 (a) Increase the Gross Settlement Fund commensurate with the percentage increase in the  
16 number of Settlement Class Members beyond ten percent (10%). For the avoidance of doubt,  
17 if the number Settlement Class Members increases to 11% above the estimate provided in this  
18 Paragraph, then the Gross Settlement Fund shall increase by 1%; or

19 (b) Modify the Class and PAGA Period End Dates in Paragraph 2 (which are presently  
20 August 15, 2022), for purposes of calculating the size of the Settlement Class only, to an earlier  
21 date so that the total number of Settlement Class Members is no more than 23,480.

22 62. Certification Reports Regarding Individual Settlement Payment Calculations. The  
23 Settlement Administrator will provide Prime Now's counsel and Class Counsel a weekly report that  
24 identifies the number of Settlement Class Members who have submitted valid Requests for Exclusion,  
25 or objected to the Settlement, and whether any Settlement Class Member has submitted a challenge to  
26 any information contained in his or her Notice Packet as provided in Paragraph 53. Additionally, the  
27 Settlement Administrator will provide counsel for both Parties with any updated reports regarding the  
28

administration of the Settlement Agreement as needed or requested, as consistent with the terms of the Settlement Agreement.

63. Distribution Timing of Individual Settlement Payments. The Settlement Administrator will distribute the funds in the Gross Settlement Fund within the time period set forth with respect to each category of payment.

63(a) Class Counsel Award and Class Representative Enhancement Payments:

Within twenty-one (21) calendar days of the Funding Date, the Settlement Administrator will issue payments to Class Counsel of the Class Counsel Award and Class Representative Enhancement Payments in the amounts awarded by the Court.

63(b) Individual Settlement Payment and PAGA Settlement Amount: Within

twenty-one (21) calendar days of the Funding Date, the Settlement Administrator will issue the LWDA Payment to the LWDA, the Individual Settlement Payments to the Participating Settlement Class Members, and the Individual PAGA Payments to the Allegedly Aggrieved Employees. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement in the amount approved by the Court. The Settlement Administrator will also issue Prime Now's share of applicable employer payroll tax payments and penalties to the appropriate government authorities.

64. Un-cashed Settlement Checks. Individual Settlement Payment and/or Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be void. Funds from the uncashed checks shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500 *et seq.*, for the benefits of those Allegedly Aggrieved Employees and Participating Settlement Class Members who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code Section 384, as the entire Net Settlement Amount (plus the PAGA Settlement Amount) will be paid to the

1 Allegedly Aggrieved Employees and Participating Settlement Class Members, whether or not they all  
2 cash their Individual Settlement Payment and/or Individual PAGA Payment checks.

3 65. Certification of Completion. Upon completion of the administration of the Settlement,  
4 the Settlement Administrator will provide a written declaration under oath to certify such completion  
5 to the Court and counsel for all Parties.

6 66. Treatment of Individual Settlement Payments. For tax purposes, the Individual PAGA  
7 Payments from the PAGA Settlement Amount will be treated as 100% penalties and will be reported  
8 on IRS Form 1099. Individual Settlement Payments will be allocated as follows: (i) Twenty-Five  
9 Percent (25%) to settlement of wage claims and (ii) Seventy-Five Percent (75%) to settlement of claims  
10 for interest and statutory penalties. The portion allocated to wages shall be reported on an IRS Form  
11 W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the  
12 Settlement Administrator. Participating Settlement Class Members shall be responsible for remitting  
13 to state and/or federal taxing authorities any applicable other taxes due. Neither this Agreement, nor  
14 any of its attachments, should be interpreted to contain or constitute representations or advice regarding  
15 any U.S. federal or state tax issue. Settlement Class Members and Allegedly Aggrieved Employees  
16 will be specifically informed that neither Prime Now nor Class Counsel make any representations  
17 regarding the tax implications of any amounts paid under this Settlement Agreement and that if  
18 Settlement Class Members or Allegedly Aggrieved Employees have any questions regarding those  
19 implications, they can and should consult a tax expert.

20 67. Administration of Taxes by the Settlement Administrator. The Settlement  
21 Administrator will be responsible for issuing to Plaintiffs, Participating Settlement Class Members, and  
22 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid  
23 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding  
24 Prime Now's share of applicable employer payroll tax payments and penalties to the appropriate  
25 government authorities. All Settlement Class Members, including Participating Settlement Class  
26 Members and Allegedly Aggrieved Employees, shall be solely and exclusively responsible for  
27 remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold Prime  
28 Now and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, and expenses

1 caused by any such taxing authority relating in any way to the Allegedly Aggrieved Employees',  
2 Settlement Class Members' and Participating Settlement Class Members' tax treatment of payments  
3 made to them pursuant to this Stipulation or failure to timely or properly pay any taxes owed on their  
4 respective Individual Settlement Payment.

5 68. Tax Liability. Prime Now makes no representation as to the tax treatment or legal effect  
6 of the payments called for hereunder, and Plaintiffs and Participating Settlement Class Members are  
7 not relying on any statement, representation, or calculation by Prime Now or by the Settlement  
8 Administrator in this regard.

9 69. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES  
10 OF THIS SECTION, THE "ACKNOWLEDGING PARTY," AND EACH PARTY TO THIS  
11 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")  
12 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO  
13 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR  
14 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL  
15 ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE  
16 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY  
17 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE  
18 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,  
19 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN  
20 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT  
21 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR  
22 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
23 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER  
24 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY  
26 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY  
27 SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER  
28 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
3 AGREEMENT.

4 70. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause  
7 of action or right herein released and discharged.

8 71. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally  
9 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other  
10 reason, then this Settlement Agreement, except as expressly agreed upon in writing by the Parties, will  
11 be null and void. Any order or judgment entered by the Court in furtherance of this Settlement  
12 Agreement will likewise be treated as void from the beginning.

13 72. Termination of Settlement Agreement. Plaintiffs (by unanimous agreement of all  
14 Plaintiffs) and Prime Now will each have the right to unilaterally terminate this Settlement Agreement  
15 by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto  
16 within ten (10) business days of any of the following occurrences; provided, however, that the Parties  
17 agree to cooperate in good faith to address any issues the Court raises in connection with issuing  
18 Preliminary and/or Final Approval of the Settlement:

19 72(a) the Court rejects, materially modifies, materially amends or changes, or  
20 declines to issue a Preliminary Approval Order or a Final Approval Order with  
21 respect to the Settlement Agreement and the Parties are not permitted to  
22 remedy any deficiencies the Court identifies;

23 72(b) an appellate court reverses the Final Approval Order, and the Settlement  
24 Agreement is not reinstated without material change by the Court on remand;  
25 or

26 72(c) any court incorporates terms into, or deletes or strikes terms from, or modifies,  
27 amends, or changes the Preliminary Approval Order, the Final Approval  
28 Order, or the Settlement Agreement in a way that Plaintiffs or Prime Now

1 reasonably consider material, unless the modification or amendment is  
2 accepted in writing by all Parties, except that, as provided above, the Court's  
3 approval of Attorneys' Fees and Costs, Class Counsel Awards, and Class  
4 Representative Enhancement Payments, or their amounts, is not a condition of  
5 the Settlement Agreement.

6 73. Reversion Nunc Pro Tunc. If this Settlement Agreement is terminated pursuant to its  
7 terms, or the Effective Date for any reason does not occur: (a) all Orders certifying the Settlement  
8 Class for purposes of effecting this Settlement, and all preliminary and/or final findings regarding the  
9 Settlement Class, shall be void *ab initio* and automatically vacated upon notice to the Court, (b) the  
10 Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement  
11 Agreement and such findings had never been made, and (c) the Action shall revert *nunc pro tunc* to the  
12 procedural status quo as of the date and time immediately before the execution of the Settlement  
13 Agreement, in accordance with this Settlement Agreement. The Parties further agree that, by assenting  
14 to the filing of a Second Amended Complaint for purposes of this Settlement only, Prime Now does  
15 not admit any facts or waive any defenses.

16 74. Preliminary Approval Hearing. Plaintiffs will obtain a hearing date before the Court to  
17 request the Preliminary Approval of the Settlement Agreement and the entry of an order:  
18 (i) conditionally certifying the Settlement Class for settlement purposes only; (ii) granting preliminary  
19 approval to the proposed Settlement Agreement; (iii) setting a deadline for Class Counsel to file an  
20 application for attorney's fees and costs and an application for a Class Representative Enhancement  
21 Award for Plaintiffs; and (iv) setting a date for a Final Approval Hearing. The Preliminary Approval  
22 Order will provide for the Notice Packet to be sent to all Settlement Class Members as specified herein.  
23 In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement  
24 Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet,  
25 which will include the proposed Notice of Class Action Settlement, attached as **Exhibit A**. Class  
26 Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

27 75. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to  
28 postmark Requests for Exclusion or Notices of Objection (and no earlier than one hundred (100)

calendar days after the date on which Plaintiffs file their motion for Preliminary Approval) and with the Court's permission, a Final Approval Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual Settlement Payments (including all applicable taxes); (ii) the PAGA Settlement Amount; (iii) the Class Representative Enhancement Payments; (iv) the Class Counsel Award; and (v) all Settlement Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the Class Counsel Award and Class Representative Enhancement Payments application to be heard at the Final Approval Hearing, which may be filed concurrently with a motion requesting final approval.

76. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or after the Final Approval Hearing, the Parties will present a proposed form of Judgment to the Court for its approval, which Class Counsel shall submit to the Court that (i) approves the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, adequate, and directing consummation of its terms and provisions; (ii) approving Class Counsel's application for an award of attorney's fees and costs; (iii) approving the Class Representative Enhancement Awards; (iv) approving the PAGA Settlement Amount; (v) the Settlement Administrator's fees from the Gross Settlement Amount; and (vi) barring all Allegedly Aggrieved Employees and Participating Class Members from prosecuting against the Released Parties, or any of them, any of the Released Claims. As required by California Rule of Court 3.769(h), after entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

77. Older Workers' Benefit Protection Act Waiver.

77(a) Plaintiffs specifically intend that the claims they are releasing herein include any claims that Plaintiffs may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers' Benefit Protection Act of 1990.

1           77(b) Plaintiffs are advised to consult with their counsel before signing this  
2           Settlement Agreement because Plaintiffs are permanently giving up significant  
3           legal rights. Plaintiffs acknowledge that they have been so advised.

4           77(c) Plaintiffs acknowledge that they have been given at least twenty-one (21)  
5           calendar days to execute and return this Settlement Agreement and have been  
6           advised that, after they execute this Settlement Agreement, Plaintiffs have  
7           seven (7) calendar days to reconsider and revoke the Settlement Agreement,  
8           recognizing that Plaintiffs will not be provided anything under this Settlement  
9           Agreement until at least that seven (7)-day revocation period has expired. The  
10          general release will then become effective on the eighth (8th) calendar day  
11          after it is signed, provided that Plaintiffs do not revoke it.

12          77(d) In order to effectively revoke this general release, the Parties agree that  
13          Plaintiffs must provide written notice of such revocation within seven (7)  
14          calendar days after Plaintiffs execute this Settlement Agreement to counsel for  
15          Prime Now, Heather Richardson and Megan Cooney, via email to  
16          hrichardson@gibsondunn.com and mcooney@gibsondunn.com.

17          78. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include  
18          the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully  
19          set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

20          79. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
21          entirety of the Parties' settlement terms and, should this Settlement Agreement receive Final Approval,  
22          its terms will supersede all prior written or oral agreements between the Parties.

23          80. Amendment or Modification. No amendment, change, or modification to this  
24          Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

25          81. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
26          represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement  
27          Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant  
28          to this Settlement Agreement to effectuate its terms and to execute any other documents required to

1 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with  
2 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are  
3 unable to reach agreement on the form or content of any document needed to implement the Settlement,  
4 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,  
5 the Parties may seek the assistance of the Court to resolve such disagreement.

6 82. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
7 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

8 83. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto  
9 will be governed by and interpreted according to the laws of the State of California.

10 84. Execution and Counterparts. This Settlement Agreement is subject to the execution of  
11 all Parties. The Settlement Agreement may be executed in one or more counterparts. All executed  
12 counterparts and each of them, including facsimile and scanned copies of the signature page, will be  
13 deemed to be one and the same instrument.

14 85. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this  
15 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at  
16 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into  
17 account all relevant factors, present and potential. The Parties further acknowledge that they are each  
18 represented by competent counsel and that they have had an opportunity to consult with their counsel  
19 regarding the fairness and reasonableness of this Settlement.

20 86. Invalidity of Any Provision. Before declaring any provision of this Settlement  
21 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
22 possible consistent with applicable precedents so as to define all provisions of this Settlement  
23 Agreement valid and enforceable.

24 87. Waiver of Certain Appeals. With the exception of a right to appeal the reduction of any  
25 award of attorneys' fees, costs, and expenses as provided herein, Plaintiffs and Prime Now hereby  
26 waive their right to appeal or seek other judicial review of any order that is materially consistent with  
27 the terms of this Settlement Agreement.

1           88.    Class Certification for Settlement Purposes Only. The Parties stipulate to class  
2 certification of any claims not yet certified for purposes of implementing the Settlement only, and in  
3 no way is that an admission by Prime Now that class certification is proper. The Settlement will not  
4 be admissible in any proceeding as evidence that (i) a class or collective should be certified as Plaintiffs  
5 have proposed for any claims, including but not limited to any currently non-certified claims; (ii) the  
6 Action should proceed on a representative basis pursuant to PAGA; or (iii) Prime Now is liable to  
7 Plaintiffs or any other individuals they claim to represent in the Action in connection with any claims  
8 that were or could have been asserted in the Action.

9           89.    Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute  
10 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In  
11 entering into this Settlement, Prime Now does not admit, and specifically denies, that it violated any  
12 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute  
13 or any other applicable laws, regulations, or legal requirements; breached any contract; violated or  
14 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful  
15 conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or  
16 provisions, nor any of the negotiations connected with it, will be construed as an admission or  
17 concession by Prime Now of any such violations or failures to comply with any applicable law. Except  
18 as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its  
19 terms and provisions will not be offered or received as evidence in any action or proceeding to establish  
20 any liability or admission on the part of Prime Now or to establish the existence of any condition  
21 constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

22           90.    Media Restrictions. The Parties and their counsel agree that they will not issue any  
23 press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement.  
24 Unless required by applicable law, neither the Plaintiffs nor Class Counsel shall publicize the terms of  
25 this Settlement Agreement in any medium, or initiate or issue any press release or have any  
26 communications to the press or media concerning the Action, the Settlement of the Action, and/or this  
27 Settlement Agreement, except as posted by the Settlement Administrator as ordered by the Court. Class  
28 Counsel shall not include, and shall affirmatively remove, any reference to any of the foregoing subjects

1 in any advertising, mass mailing, website, or other communication. If counsel for either Party receives  
2 an inquiry about the Settlement from the media, counsel may respond only after the motion for  
3 Preliminary Approval has been filed and only by confirming the terms of the Settlement.  
4 Notwithstanding the foregoing, nothing will prevent Class Counsel from communicating confidentially  
5 with Settlement Class Members as necessary to fulfill their obligations as Class Counsel.

6 91. Waiver. No waiver of any condition or covenant contained in this Settlement  
7 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to  
8 imply or constitute a further waiver by such party of the same or any other condition, covenant, right,  
9 or remedy.

10 92. Enforcement Actions. In the event that one or more of the Parties institutes any legal  
11 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement  
12 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be  
13 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including  
14 expert witness fees incurred in connection with any enforcement actions.

15 93. Disputes Regarding Settlement Agreement. In the event that there are any disputes  
16 arising out of or relating to this Settlement Agreement, any such dispute will be submitted to Michael  
17 J. Loeb, Esq. or a mutually agreeable mediator for mediation.

18 94. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
19 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
20 construed more strictly against one party than another merely by virtue of the fact that it may have been  
21 prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length  
22 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement  
23 Agreement.

24 95. Representation by Counsel. The Parties acknowledge that they have been represented  
25 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
26 that this Settlement Agreement has been executed with the advice of counsel. Further, Plaintiffs and  
27 Class Counsel warrant and represent that there are no liens on the Settlement Agreement.  
28

97. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

**SIGNATURE PAGE FOLLOWS**

**Gibson, Dunn &  
Crutcher LLP**

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Delishia Hyde  
Plaintiff and Class Representative

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Eugenia Dubose  
Plaintiff and Class Representative

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Clara Trotter  
Plaintiff and Class Representative

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Araya Turner  
Plaintiff and Class Representative

Dated: October 31, 2022

By: DocuSigned by: Eane Brown  
DDF214FDD377494  
Prime Now LLC  
Authorized Representative

**APPROVED AS TO FORM**

Dated: November 1, 2022

Gibson, Dunn & Crutcher LLP

By:   
Heather L. Richardson  
Attorneys for Defendant

Dated: November 7, 2022

Diversity Law Group, P.C.

By:   
Larry W. Lee  
Attorneys for Plaintiffs

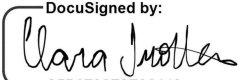
1  
2 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Delishia Hyde  
Plaintiff and Class Representative

3  
4  
5  
6 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Eugenia Dubose  
Plaintiff and Class Representative

7  
8  
9 Dated: October 28, 2022

By: \_\_\_\_\_  
DocuSigned by:  
  
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Clara Trotter  
Plaintiff and Class Representative

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12  
13 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Araya Turner  
Plaintiff and Class Representative

14  
15  
16 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Prime Now LLC

1  
2 Dated: November <sup>7</sup> \_\_, 2022

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By: \_\_\_\_\_  
Delishia Hyde  
Plaintiff and Class Representative

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6 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Eugenia Dubose  
Plaintiff and Class Representative

7  
8  
9 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Clara Trotter  
Plaintiff and Class Representative

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13 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Araya Turner  
Plaintiff and Class Representative

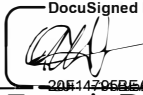
14  
15  
16 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Prime Now LLC

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2  
3 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Delishia Hyde  
Plaintiff and Class Representative

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6 Dated: November 3, 2022

DocuSigned by:  
  
By: \_\_\_\_\_  
Eugenia Dubose  
Plaintiff and Class Representative

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9 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Clara Trotter  
Plaintiff and Class Representative

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13 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Araya Turner  
Plaintiff and Class Representative

14  
15  
16 Dated: October \_\_, 2022

By: \_\_\_\_\_  
Prime Now LLC

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Delishia Hyde  
Plaintiff and Class Representative

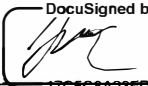
Dated: October \_\_, 2022

By: \_\_\_\_\_  
Eugenia Dubose  
Plaintiff and Class Representative

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Clara Trotter  
Plaintiff and Class Representative

Dated: November <sup>3</sup>, 2022

By: \_\_\_\_\_  
DocuSigned by:  
  
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Araya Turner  
Plaintiff and Class Representative

Dated: October \_\_, 2022

By: \_\_\_\_\_  
Prime Now LLC

# EXHIBIT A

*Cinthia Mendoza, et al. v. Prime Now LLC*  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
(CASE NO. RG20068286)

**NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)**

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF PRIME NOW LLC IN THE STATE OF CALIFORNIA AND YOU:

- WERE PAID ADDITIONAL REMUNERATION (BEYOND WAGES) WHICH WERE TREATED AS NON-DISCRETIONARY AND INCLUDABLE IN THE REGULAR RATE OF PAY AND MEAL PERIOD PREMIUM PAY DURING THE SAME WORKWEEK AT ANY TIME FROM APRIL 6, 2016 THROUGH AND INCLUDING AUGUST 15, 2022 (“Meal Period Class”);

and/or

- WERE PAID ADDITIONAL REMUNERATION (BEYOND WAGES) WHICH WERE TREATED AS NON-DISCRETIONARY AND INCLUDABLE IN THE REGULAR RATE OF PAY AND SICK PAY WAGES OR PAID TIME OFF DURING THE SAME WORKWEEK AND WHOSE EMPLOYMENT ENDED AT ANY TIME FROM APRIL 6, 2017 THROUGH AND INCLUDING AUGUST 15, 2022 (“Sick Pay Class”)

YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A SETTLEMENT.

*The Alameda County Superior Court (“Court”) authorized this Notice to be sent by [REDACTED] (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.*

«BarcodeString»  
SIMID «SIMID»

**ATTN:** «FirstName» «LastName»  
«Address1» «Address2»  
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE  
APPROXIMATELY  
\$«MERGED\_EstSettAmnt\_CALC»  
THROUGH THIS CLASS ACTION  
SETTLEMENT**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

**You Can DO NOTHING**

**You will receive a payment from the settlement.** If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will **lose** any rights to assert claims against Prime Now LLC (“Prime Now”) separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.

|                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT</b><br/>(Deadline: _____, 2023)</p> | <p>If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to assert claims against Prime Now separately for the same legal claims made in this lawsuit. <b>Important: You cannot ask to be excluded <u>and</u> still get a settlement payment for the Released Class Claims (defined below). However, if you are an Allegedly Aggrieved Employee (defined below), you may not request to exclude yourself from the Released PAGA Claims (defined below) and you will still receive your Individual PAGA Payment.</b></p> |
| <p><b>You Can OBJECT TO THE SETTLEMENT</b><br/>(Deadline: _____, 2023)</p>               | <p>If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline or personally appear at the final approval hearing. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a settlement payment. <b>Important: If you object to the settlement, you cannot also ask to be excluded.</b></p>                                                                                                                                                                           |

**THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.**

The Court is in charge of this lawsuit and has preliminarily approved the settlement as proposed, but the Court still has to decide whether to ultimately approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

**1. Why Should You Read this Notice?**

You should read this Notice because you may be entitled to money from a class action settlement.

**2. What is this Lawsuit About?**

In the lawsuit, the Plaintiffs allege that Prime Now failed to include all non-discretionary remuneration in the regular rate of pay during pay periods when Plaintiffs and other employees earned meal period premiums and/or sick pay wages. As a result of the alleged underpayment of meal period premiums and/or sick pay wages, Plaintiffs allege that the corresponding wage statements failed to list accurate rates of pay and gross and net wages earned. Furthermore, Plaintiffs allege that Prime Now failed to timely pay all wages owed upon separation of employment.

Prime Now denies all of the allegations in the lawsuit and denies it has engaged in any wrongdoing. Prime Now asserts that it complied with all legal requirements, but is resolving this action in order to avoid the risk and costs of further legal proceedings.

**3. Why is this a Class Action?**

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Delishia Hyde, Eugenia Dubose, Clara Trotter, and Araya Turner), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Alameda County Superior Court is in charge of the case. The lawsuit is known as *Cinthia Mendoza v. Prime Now LLC*, Case No. RG20068286.

#### 4. Why is There a Settlement?

The Court did not decide in favor of Plaintiffs or Prime Now. Plaintiffs think they could have won at trial. Prime Now thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the risks and cost of litigation, and the individuals potentially affected will get compensation. The class representatives and the attorneys believe the settlement is fair and reasonable.

#### 5. How Do I Know If I Am Part of the Settlement?

The Court has decided that the following individuals are class members:

- all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and meal period premium pay during the same workweek at any time during April 6, 2016 through and including August 15, 2022 (“Meal Period Class”)

and/or

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

Together, the Meal Period Class and Sick Pay Class comprise the “Class.”

If you received this Notice, you are a member of the Class.

#### 6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Prime Now in the amount of Five Million One Hundred Fifty Thousand Dollars (\$5,150,000.00) to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Fund”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Fund minus the following (the “Net Settlement Amount”): (a) settlement administration costs estimated at \$97,000.00; (b) class representative enhancement payments to (i) Plaintiff Delishia Hyde not to exceed \$20,000.00, (ii) Plaintiff Eugenia Dubose not to exceed \$20,000.00, (iii) Plaintiff Clara Trotter not to exceed \$10,000.00, and (iv) Plaintiff Araya Turner not to exceed \$10,000.00, for their work and efforts in prosecuting this case and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$1,716,666.67; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$30,000.00; and (e) payment of \$150,000.00 to the Labor and Workforce Development Agency. **Class Counsel’s attorneys’ fees and costs remain subject to final Court approval.**

No portion of the Net Settlement Amount will be returned to Prime Now. Instead, any unclaimed portions will be conveyed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in your name.

#### 7. How Much Will My Payment Be?

Your estimated share of the settlement is shown above and is based on the number of Qualifying Workweeks you worked. A Qualifying Workweek is determined as follows:

- If you are a member of the Meal Period Class, it is the number of weeks in which you performed at least one day of work, during the period from April 6, 2016 through and including August 15, 2022.
- If you are a member of the Sick Pay Class, it is the number of weeks in which you performed at least one day of work, during the period from April 6, 2017 through and including August 15, 2022.
- If you are a member of both classes, then it will be based on the total number of Qualifying Workweeks that were worked in each class.

Based upon Prime Now's records, you are a member of the [Meal Period Class and/or Sick Pay Class]. Based thereon, the number of Qualifying Workweeks you worked is determined to be \*\*. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of Qualifying Workweeks, see below (Question 9).

#### 8. How Do I Receive a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately sixty-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

#### 9. What If I Believe the Information is Inaccurate?

If you believe the number of Qualifying Wage Statements you received is inaccurate, you may dispute it by sending a letter to [ADMINISTRATOR'S NAME], [ADMINISTRATOR'S ADDRESS] no later than [REDACTED], 2023. Be sure to include your name, address, telephone number, last four digits of your Social Security number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

#### 10. What Am I Giving Up to Receive a Settlement Payment?

Unless you request to be excluded from the settlement, you remain a part of the settlement class, and that means you cannot assert claims against, continue to assert claims against, or be part of any other lawsuit against Prime Now or the other Released Parties for any legal claims based on the subject matter of this settlement.

"Released Parties" means Prime Now and each of its past, present, and/or future, direct, and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint ventures.

Specifically, you will be giving up or "releasing" the claims summarized below, as fully defined within the Parties' Settlement Agreement:

- If you are a member of the Meal Period Class, you are releasing all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the

facts and legal theories asserted in the operative complaint in the Action, including without limitation claims for (1) failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid time off in violation of Labor Code §§ 201-203 and 246; (3) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; (4) failure to provide accurate wage statements in violation of Labor Code § 226; and (5) violations of Business and Professions Code § 17200, *et seq.* based solely on the facts alleged in the operative complaint during the period from April 6, 2016 through and including August 15, 2022;

- If you are a member of the Sick Pay Class, you are releasing all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation claims for (1) failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid time off in violation of Labor Code §§ 201-203 and 246; (3) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; (4) failure to provide accurate wage statements in violation of Labor Code § 226; and (5) violations of Business and Professions Code § 17200, *et seq.* based solely on the facts alleged in the operative complaint during the period from April 6, 2017 through and including August 15, 2022.

Together, the above shall be referred to as the “Released Class Claims.”

Class Members who are classified as Allegedly Aggrieved Employees will provide an additional release of the following claims (“Released PAGA Claims”):

- All claims for civil penalties pursuant to the Private Attorneys General Act (codified in Labor Code § 2698, *et seq.*) based on the facts and legal theories asserted in the operative complaint in the Action, including without limitation PAGA claims for (1) failure to provide meal periods or meal period premiums in violation of Labor Code §§ 226.7 and 512; (2) failure to pay sick time pay or paid time off in violation of Labor Code §§ 201-203 and 246; and (3) failure to timely pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, and 203; and (4) failure to provide accurate wage statements in violation of Labor Code § 226 based solely on the facts alleged in the operative complaint during the period from June 11, 2019 through August 15, 2022.

Allegedly Aggrieved Employees are defined as:

- all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and meal period premium pay during the same workweek at any time during June 11, 2019 through August 15, 2022

and/or

- all current and former non-exempt employees of Prime Now in the State of California who were paid additional remuneration (beyond wages) which were treated as non-discretionary and includable in the regular rate of pay and sick pay wages or paid time off during the same workweek and whose employment ended at any time during June 11, 2019, through and including August 15, 2022.

Even if you decide you do not want to participate in the settlement of the Released Class Claims, if you are an Allegedly Aggrieved Employee you will still release the Released PAGA Claims.

### 11. How Do I Exclude Myself From the Settlement?

To exclude yourself from the settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Cinthia Mendoza v. Prime Now LLC* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security number, and your signature. You must mail your exclusion letter postmarked or faxed no later than [REDACTED], 2023, to the Settlement Administrator at [REDACTED].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the class action portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens in this lawsuit as it pertains to the class action claims. You will keep any rights to assert class action claims against (or continue asserting class action claims against) Prime Now in the future for the same legal claims made in this lawsuit, at your own expense.

Class members who meet the criteria of Allegedly Aggrieved Employees may not opt out of the settlement as it pertains to the Released PAGA Claims. Such individuals who timely submit a Request for Exclusion will still receive an Individual PAGA Payment representing their portion of the PAGA Settlement Amount.

### 12. How Do I Tell the Court That I Don’t Believe That the Settlement is Fair?

As a class member, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you may do so in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. (See Question 14.).

All written objections should be signed by you and should include: (1) your full name, address, and telephone number; (2) a written statement of the basis for your objection; (3) any copies of papers, briefs, or documents upon which the objection is based; and (4) the case name and number (*Cinthia Mendoza v. Prime Now LLC*, Case Number RG20068286).

You must mail your objection postmarked or faxed no later than [REDACTED], 2023, to the Settlement Administrator at Settlement Administrator at [REDACTED].

### 13. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don’t want to be part of the case. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement and be legally bound by the settlement if it is approved by the Court.

If you are an Allegedly Aggrieved Employee, you may not exclude yourself from the Released PAGA Claims.

### 14. Do I Have a Lawyer in this Case?

The Court decided that the law firm of Diversity Law Group (contact information below), which represents the Plaintiffs, is also qualified to represent you and all class members. You will not be charged for these lawyers. This law firm is referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 15. How Will the Attorneys for the Class and the Class Representatives be Paid?

The attorneys for the Plaintiffs and the class will be paid from the Gross Settlement Fund. Class Counsel will ask for up to \$1,716,666.67 in attorneys’ fees and for actual litigation costs incurred up to a maximum of \$30,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If approved by the Court, a service payment to (i) Plaintiff Delishia Hyde of an amount up to \$20,000.00, (ii) Plaintiff Eugenia Dubose of an amount up to \$20,000.00, (iii) Plaintiff Clara Trotter of an amount up to \$10,000.00, and (iv) Plaintiff Araya Turner of an amount up to \$10,000.00, will be paid from the Gross Settlement Fund for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

#### 16. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Evelio Grillo on [REDACTED], 2023, at [REDACTED] a.m., in Department 21 of the Superior Court of California for the County of Alameda, located at 1221 Oak Street, Oakland, CA 94612, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter a judgment, and all class members who have not requested exclusion will be deemed to have waived the Released Class Claims set forth above.

#### 17. How Do I Receive More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

Additionally, the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court’s website, known as “eCourt Public Portal,” at <https://eportal.alameda.courts.ca.gov/>. To access the eCourt Public Portal, you must first create a new account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

After creating a new account, log in to the portal and click on the ‘Searches’ link, then click on the “Case Number Search.” Enter RG20068286 as the case number, complete the reCAPTCHA, and click on “Search.” Select the

resulting link, named “Mendoza VS Prime Now LLC.” The Register of Actions lists every document filed in the case. You may view those documents marked as available to download at a minimal charge.

You may also obtain copies of documents relevant to the case by reaching out to Class Counsel.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT’S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!

18. What is the Contact Information for Class Counsel?

The address for Class Counsel is as follows:

DIVERSITY LAW GROUP, P.C.  
Larry W. Lee  
Nicholas Rosenthal  
Max W. Gavron  
Kwanporn “Mai” Tulyathan  
Shalom “Christine” Choo  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
Telephone: (213) 488-6555  
Fax: (213) 488-6554

**WHAT IF I HAVE QUESTIONS?**

**If you have any questions about the settlement, you may contact the Settlement Administrator:**

*Cinthia Mendoza, et al. v. Prime Now LLC*  
c/o [redacted]  
Address  
City, CA, Zip  
Toll-Free Phone Number: [insert]  
Fax Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT PRIME NOW, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

# EXHIBIT B

## CINTHIA MENDOZA

c/o DIVERSITY LAW GROUP, P.C.  
515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

June 1, 2020

### VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Mendoza v. Prime Now LLC*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Prime Now LLC (collectively, the “Company”). Specifically, I allege that the Company:

1. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other employees our meal period premium pay for missed meal periods at our regular rates of pay as required by these provisions. Specifically, Labor Code § 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the employee’s **regular rate** of compensation for each workday that the meal or rest or recovery period is not provided.” Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including Surge Premiums. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal period premium pay. However, whenever the Company paid me and other employees our meal period premium pay during pay periods in which we earned this non-discretionary remuneration, the meal period premium was always paid at our base rate of pay. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed meal period premiums.

2. Violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at the regular rate of pay. I and other employees routinely earned non-discretionary incentive wages such as Surge Premiums, thus increasing our regular rate of pay. However, when sick pay was paid, it was paid at our base rate of pay rather than the regular rate of pay.

3. Violated Labor Code § 226.7 by failing to provide me and other aggrieved employees with off-duty rest breaks for each work shift of 3.5 hours or more. Specifically, during our rest breaks, we were not allowed to go home, and thus, we were subject to the Company’s control during our rest breaks. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed rest period premiums.

June 1, 2020

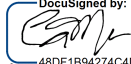
Page 2

The address for the Company is:

Prime Now LLC  
202 Westlake Ave N  
Seattle, WA 98109

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

  
DocuSigned by:  
Cinthia Mendoza  
1BDF1B9A274C4DA...

cc: Prime Now LLC (by certified mail)

## DELISHIA HYDE

c/o DIVERSITY LAW GROUP, P.C.  
515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

June 1, 2020

### VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Hyde v. Prime Now LLC*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Prime Now LLC (collectively, the “Company”). Specifically, I allege that the Company:

1. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other employees our meal period premium pay for missed meal periods at our regular rates of pay as required by these provisions. Specifically, Labor Code § 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the employee’s **regular rate** of compensation for each workday that the meal or rest or recovery period is not provided.” Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration, including Surge Premiums. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal period premium pay. However, whenever the Company paid me and other employees our meal period premium pay during pay periods in which we earned this non-discretionary remuneration, the meal period premium was always paid at our base rate of pay. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed meal period premiums.

The address for the Company is:

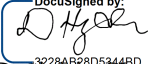
Prime Now LLC  
202 Westlake Ave N  
Seattle, WA 98109

June 1, 2020

Page 2

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:  
  
3028AB28D5344BD...  
Delishia Hyde

cc: Prime Now LLC (by certified mail)

## CLARA TROTTER

c/o DIVERSITY LAW GROUP, P.C.  
515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

February 21, 2022

### VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Mendoza v. Prime Now LLC*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Prime Now LLC (collectively, the "Company"). Specifically, I allege that the Company:

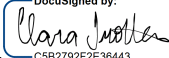
1. Violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at the regular rate of pay. I and other employees routinely earned non-discretionary incentive wages such as Surge Premiums, thus increasing our regular rate of pay. However, when sick pay was paid, it was paid at our base rate of pay rather than the regular rate of pay.

The address for the Company is:

Prime Now LLC  
202 Westlake Ave N  
Seattle, WA 98109

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:  
  
Clara Trotter  
C592792F2E38443...

cc: Prime Now LLC (by certified mail)

## ARAYA TURNER

c/o DIVERSITY LAW GROUP, P.C.  
515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

February 23, 2022

### VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Mendoza v. Prime Now LLC*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Prime Now LLC (collectively, the "Company"). Specifically, I allege that the Company:

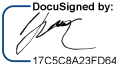
1. Violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at the regular rate of pay. I and other employees routinely earned non-discretionary incentive wages such as Additionalpay and Surge Premiums, thus increasing our regular rate of pay. However, when sick pay was paid, it was paid at our base rate of pay rather than the regular rate of pay.

The address for the Company is:

Prime Now LLC  
202 Westlake Ave N  
Seattle, WA 98109

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

  
Araya Turner

cc: Prime Now LLC (by certified mail)

## EUGENIA DUBOSE

c/o DIVERSITY LAW GROUP, P.C.  
515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

February 25, 2022

### VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Mendoza v. Prime Now LLC*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code section 2699.3 of my claims against my former employer, Prime Now LLC (collectively, the "Company"). Specifically, I allege that the Company:

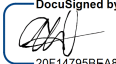
1. Violated Labor Code §§ 201-203 and 246 by failing to pay sick pay at the regular rate of pay. I and other employees routinely earned non-discretionary incentive wages such as Premium and Surge Premiums, thus increasing our regular rate of pay. However, when sick pay was paid, it was paid at our base rate of pay rather than the regular rate of pay.

The address for the Company is:

Prime Now LLC  
202 Westlake Ave N  
Seattle, WA 98109

Please contact my attorney, Larry W. Lee, at the address/telephone number listed above if you have any questions regarding this matter.

Sincerely,

DocuSigned by:  
  
20F14705B6A84F8  
Eugenia Dubose

cc: Prime Now LLC (by certified mail)

# DIVERSITY LAW GROUP

A PROFESSIONAL CORPORATION

515 S. FIGUEROA STREET, SUITE 1250  
LOS ANGELES, CALIFORNIA 90071  
TELEPHONE (213) 488-6555  
FACSIMILE (213) 488-6554

September 26, 2022

## VIA ONLINE FILING

California Labor & Workforce Development Agency  
Attn.: PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Mendoza v. Prime Now LLC*  
LWDA Case No. LWDA-CM-793160-20

*Hyde v. Prime Now LLC*  
LWDA Case No. LWDA-CM-793589-20

To Whom It May Concern:

This correspondence shall constitute supplemental written notice under Labor Code section 2699.3 of Delishia Hyde, Clara Trotter, Araya Turner, and Eugenia Dubose's ("Claimants") claims against their former employer, Prime Now LLC (collectively, the "Company"). Specifically, in addition to the claims as set forth in Claimants' June 16, 2020 and February 28, 2022 notices, Claimants further allege as follows:

1. The Company violated Labor Code §§ 226, 226.3 by failing to issue accurate itemized wage statements to Claimants and other similarly situated aggrieved employees. Specifically, whenever meal break premium wages were paid during the same period as non-discretionary incentive wages, including Surge Premiums, the wage statements failed to identify the accurate rates of pay for such meal premium wages, as well as failed to identify the accurate gross and net wages earned. Similarly, whenever sick pay wages were paid during the same period as non-discretionary incentive wages, the wage statements failed to identify the accurate rates of pay for sick pay wages, as well as accurate gross and net wages earned.

The address for the Company is:

Prime Now LLC  
202 Westlake Ave. N  
Seattle, WA 98109

September 26, 2022

Page 2

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Gavron", with a stylized, flowing script.

Max W. Gavron

cc: Heather L. Richardson and Megan Cooney of Gibson, Dunn & Crutcher LLP, on behalf of  
Prime Now LLC

# EXHIBIT B