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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)

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

Date: August 8, 2023

Time: 10:00 A.M.

Dept.: 21

Reservation No.: 138916486157

Complaint Filed: July 21, 2020

FAC Filed: April 5, 2022

SAC Filed: November 4, 2022

Trial Date: None Set

1 Plaintiffs Delishia Hyde, Clara Trotter, Eugenia Dubose, and Araya Turner (collectively,
2 “Plaintiffs”) and Defendant Prime Now LLC (“Defendant”) (together with Plaintiffs, the
3 “Parties”) have entered into a Class Action Settlement Agreement and Release (“Settlement
4 Agreement”) to settle the above-captioned class and PAGA representative action subject to the
5 Court’s final approval (the “Settlement”). This matter is now before the Court on Plaintiffs’
6 Motion for Final Approval of Class and Representative Action Settlement. The Court has read,
7 heard, and considered all the pleadings and documents submitted, and the presentations made in
8 connection with the Motion. The motion is GRANTED.

9 After preliminary approval, the Court determines whether the settlement is fair, adequate
10 and reasonable in a final hearing. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.*
11 (1996) 48 Cal.App.4th 1794, 1801; *see also, Officers for Justice v. Civil Service Com.* (9th Cir.
12 1982) 688 F.2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers
13 to determine whether the settlement is fair. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
14 1794, 1801; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.) The purpose of this
15 requirement is “the protection of those class members, including the named plaintiffs, whose
16 rights may not have been given due regard by the negotiating parties.” (*Officers for Justice v.*
17 *Civil Service Com., supra*, 688 F.2d at 624.)

18 The court should, according to *Dunk, supra*, 48 Cal.App.4th 1801, consider relevant
19 factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
20 further litigation, the risk of maintaining class action status through trial, the amount offered in
21 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
22 views of counsel, the presence of a governmental participant, and the reaction of the class
23 members to the proposed settlement. However, the list is not fixed and the factors which the
24 court considers must be tailored to each case. (*Dunk, supra*, 48 Cal.App.4th 1801.)

25 Ultimately, “the inquiry ‘must be limited to the extent necessary to reach a reasoned
26 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
27 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
28 to all concerned.’ [Citation.]” *Ibid.* The determination is in the end “an amalgam of delicate

balancing, gross approximations and rough justice.” (*Officers for Justice v. Civil Service Com.* (9th Cir.1982) 688 F.2d 615, 625; *see also, Dunk, supra*, 48 Cal.App.4th 1801, quoting *Officers for Justice, supra*.)

The party seeking settlement approval has the burden of showing the settlement is “fair and reasonable” but that nevertheless “there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336-337; *see also, Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

Objections/Challenges

Notices were sent to all class members. (Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators (“Phoenix”) [“Admin Decl.”] ¶¶ 5, 6.) From the date of mailing, 1,115 Notice Packets were returned due to an incorrect address and 1,040 were then re-mailed to an updated address after performing an address trace. (*Id.* at ¶ 7.) As of the date of this filing of the Motion, 75 Class Notices remain undeliverable because an updated address could not be located despite skip tracing efforts for the other Notice. (*Id.* at ¶ 8.) No objections have been filed, and nine (9) requests for exclusion have been received. (*Id.* at ¶¶ 9,10.)

The Settlement Class

The Settlement includes: (a) 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 nondiscretionary 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 (b) 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 nondiscretionary 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. There are 23,183 Class Members. Admin Decl. ¶ 6.

1 **The Gross Settlement Amount**

2 The Gross Settlement Amount is \$5,150,000.00. The Settlement allocates \$200,000.00 as
3 PAGA penalties, and 75% of this amount, or \$150,000 is to be paid to the LWDA, with the
4 remainder distributed to the Settlement Class Members.

5 **Distribution of the Net Settlement Amount**

6 After deducting fees, costs, and penalties, the Net Settlement Amount available to pay
7 Settlement Class Members is \$2,957,696.51. (Admin Decl. ¶ 14.) Based upon the calculations
8 stipulated in the Settlement, the highest individual settlement payment to be paid will be
9 approximately \$827.37, and the lowest individual settlement payment to be paid will be
10 approximately \$2.88, with the average individual settlement payment to be paid being
11 approximately \$127.63. (*Id.* ¶ 15)

12 **Attorney's Fees and Costs**

13 The Settlement provides that Class Counsel's fees and costs shall be paid from the Gross
14 Settlement Amount, in an amount of \$1,716,666.67 in fees and \$11,636.82 in costs. The fee
15 award equals 33.33% of the Gross Settlement Amount and appears fair and reasonable. (*See*
16 *generally, Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480.) Class Counsel are experienced
17 in employment law and class actions. (Gavron Decl. ¶¶ 9-14; Lee Decl. ¶¶ 5, 6; Rosenthal Decl.
18 ¶¶ 4, 5; Tulyathan Decl. ¶¶ 4-8; Agnew Decl. ¶¶ 4-9)

19 **Enhancement Payment**

20 Class Representatives request the following enhancements: (a) Twenty Thousand Dollars
21 (\$20,000.00) to Plaintiff Delishia Hyde; (b) Twenty Thousand Dollars (\$20,000.00) to Plaintiff
22 Eugenia Dubose; (c) Ten Thousand Dollars (\$10,000.00) to Plaintiff Clara Trotter; and (d) Ten
23 Thousand Dollars (\$10,000.00) to Plaintiff Araya Turner. Plaintiffs request a total enhancement
24 of \$60,000.00. Plaintiffs met with Class Counsel, including providing substantive information
25 regarding Defendant's alleged practices. Plaintiffs have provided evidence that they participated
26 in the case, helping facilitate the Settlement and justifying a service award. The Settlement
27 provides that the Enhancement Payments shall be paid from the Gross Settlement Amount.

1 **Settlement Administration Costs**

2 The Settlement Administration costs total \$97,000.00. (Admin Decl. ¶ 14.) The Settlement
3 provides that the settlement administration costs shall be paid from the Gross Settlement Amount.

4 **Conclusion**

5 In this case, there is a presumption of fairness. The parties participated in extensive
6 negotiations and discovery. The settlement amount is substantial in total and a significant
7 percentage of what Plaintiffs could obtain if prevailing at trial. The Court finds that the
8 Settlement, payment of fees and costs, and distribution of funds is fair, reasonable, and adequate,
9 and is in the best interests of the Class Members. The entire settlement amount is available to the
10 class, attorney fees are the same as what was preliminarily approved, and costs are less.

11 Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
12 FOLLOWS:

13 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
14 Settlement Agreement filed in this case.

15 2. The Court has jurisdiction over the subject matter of the litigation, the Class
16 Representatives, the other members of the Settlement Class, and Defendant.

17 3. The Court finds that the dissemination of the Settlement Class Notices, as
18 disseminated by the appointed Settlement Administrator, Phoenix Settlement Administrators, to
19 the Class Members, constituted the best notice practicable under the circumstances to all persons
20 within the definition of the Class, and fully met the requirements of California law and due
21 process under the United States Constitution.

22 4. The Court approves the Settlement of the above-captioned action, as set forth in
23 the Settlement Agreement, as fair, just, reasonable, and adequate as to the Parties. The Parties are
24 directed to perform in accordance with the terms set forth in the Settlement Agreement.

25 5. Except as otherwise provided in the Settlement Agreement, the Parties are to bear
26 their own costs and attorneys' fees.

27 6. The Court hereby certifies the following Class for settlement purposes only:

28 a. 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 nondiscretionary 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;

- b. 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 nondiscretionary 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.

7. With respect to the Class and for purposes of approving the Settlement only and for no other purpose, this Court finds and concludes that: (a) the members of the Classes are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Classes, and there is a well-defined community of interest among members of the Classes with respect to the subject matter of the non-exempt claims in the Litigation; (c) the claims of Class Representatives are typical of the claims of the members of the Classes; (d) the Class Representatives have fairly and adequately protected the interests of the members of the Classes; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representatives, *i.e.*, Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and representative capacities and for the Classes.

8. Within thirty (30) days after the grant of Final Approval of the settlement, Defendant shall remit to a Qualified Settlement Fund established by the Settlement Administrator the Class Settlement Amount of Five Million One Hundred Fifty Thousand Dollars (\$5,150,000.00), pursuant to the terms of the Settlement Agreement.

9. From the Class Settlement Amount, the Settlement Administrator shall pay:

(a) to Class Counsel attorneys' fees in the amount of One Million Seven Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents

1 (\$1,716,666.67) and reimbursement of costs in the amount of Eleven Thousand Six Hundred
2 Thirty-Six Dollars and Eighty-Two Cents (\$11,636.82);

3 (b) Enhancement Payments to Class Representatives Delishia Hyde, Eugenia
4 Dubose, Clara Trotter, and Araya Turner to reimburse them for their unique services, and as
5 consideration for the execution of a general release, in the total amount of Sixty Thousand Dollars
6 (\$60,000.00), to be distributed as follows: (a) Twenty Thousand Dollars (\$20,000.00) to Plaintiff
7 Delishia Hyde; (b) Twenty Thousand Dollars (\$20,000.00) to Plaintiff Eugenia Dubose; (c) Ten
8 Thousand Dollars (\$10,000.00) to Plaintiff Clara Trotter; and (d) Ten Thousand Dollars
9 (\$10,000.00) to Plaintiff Araya Turner;

10 (c) the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) to the
11 California Labor and Workforce Development Agency for its seventy-five percent (75%) share of
12 PAGA penalties; and

13 (d) the sum of Ninety-Seven Thousand Dollars (\$97,000.00) to the Settlement
14 Administrator, Phoenix Settlement Administrators, for its fees and costs relating to the settlement
15 administration process.

16 10. The Court finds that these amounts are fair and reasonable. The Settlement
17 Administrator is directed to make such payments in accordance with the terms of the Settlement
18 Agreement.

19 11. The Court approves the individual settlement payment amounts, which shall be
20 distributed by the Settlement Administrator pursuant to the terms of the Settlement Agreement
21 from the Net Settlement Amount.

22 12. The Court hereby orders the parties to implement the terms of the Settlement
23 Agreement, including distributing any uncashed settlement payment checks to Feeding America.

24 13. All Class Members who did not opt out of the Settlement shall be bound by the
25 releases provided in the Settlement Agreement. The Class Representatives shall be bound by the
26 general releases provided in the Settlement Agreement.

27 14. The Court hereby enters final judgment in this case in accordance with the terms of
28 the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the

1 Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over
2 the action and the Parties, including all Settlement Class Members, for purposes of enforcing and
3 interpreting this Order and the Settlement. This Final Order shall constitute a final judgment.

4 **IT IS SO ORDERED.**

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6 Dated: _____

7 HON. EVELIO GRILLO
8 SUPERIOR COURT OF CALIFORNIA
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