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14 *Attorneys for Plaintiff Sima Adami and*
15 *all Aggrieved Employees*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SANTA CLARA**

18 SIMA ADAMI, in her representative
19 capacity on behalf of the State of California,
20 the general public, and all aggrieved
21 employees,

22 Plaintiff,

23 v.

24 PRIME NOW LLC, a Delaware limited
25 liability company authorized to do business
26 in California; and DOES 1 through 50,
27 inclusive,

28 Defendants.

Case No.: **21CV382938**

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698, et seq.)**

Plaintiff Sima Adami ("Plaintiff") brings this representative enforcement action in her representative capacity against Defendant Prime Now LLC and DOES 1 through 50, inclusive (collectively, "Defendants" or "PrimeNow"), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698, et seq., "PAGA") on behalf of

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Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV382938
Reviewed By: R. Walker

1 herself and all other current and former non-exempt employees of PrimeNow in California and
2 who were subject to COVID-19 temperature checks and/or who were retaliated against for using
3 sick leave during the relevant time period (“PrimeNow Employees”).

4 2. Plaintiff asserts that during the relevant time period, PrimeNow engaged in wage
5 and hour violations under the California Labor Code (“Labor Code”) and the California Industrial
6 Welfare Commission’s (“IWC”) Wage Order No. 7-2001 by, among other things:

- 7 a. Failing to timely compensate for all hours actually worked, including
8 minimum, regular, and/or overtime wages;
- 9 b. Failing to timely pay all wages due and owing upon separation of
10 employment and/or the mandatory waiting time penalties;
- 11 c. Failing to furnish accurate itemized wage statements;
- 12 d. Failing to maintain accurate records; and
- 13 e. Engaging in retaliation for use of sick leave.

14 3. By and through this representative enforcement action, Plaintiff seeks to recover
15 all available remedies, including, but not limited to, civil penalties, reasonable attorneys’ fees,
16 and litigation costs, as provided under California law.

17 4. All allegations in this Complaint are based upon information and belief except
18 those allegations that pertain to Plaintiff named herein and her counsel, which are based upon
19 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to
20 have evidentiary support after reasonable opportunity for further investigation and formal
21 discovery.

22 **JURISDICTION AND VENUE**

23 5. This Court has jurisdiction over this action pursuant to California Code of Civil
24 Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698, *et seq.* Pursuant to
25 Labor Code §§ 2698, *et seq.*, Plaintiff brings this action, in her representative capacity, on behalf
26 of the State of California, the general public, herself, and all other PrimeNow Employees.

27 6. This Court has personal jurisdiction over PrimeNow because PrimeNow conducts
28 business in the state of California and has caused injuries in the county of Santa Clara, as well as

1 throughout the state of California, through its acts, omissions, and violations of the Labor Code
2 and Business & Professions Code.

3 7. Venue as to PrimeNow is proper in this judicial district pursuant to Code of Civil
4 Procedure § 395(a). PrimeNow transacts business in Santa Clara County and is otherwise within
5 this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein
6 have a direct effect on Plaintiff and all other PrimeNow Employees within the county of Santa
7 Clara and throughout the state of California.

8 **THE PARTIES**

9 **I. PLAINTIFF**

10 8. Plaintiff Sima Adami at all material times mentioned herein:

- 11 a. Was and is a resident of Santa Clara County in the state of California;
 - 12 b. Was employed by PrimeNow from approximately December 14, 2020 to
13 February 7, 2021;
 - 14 c. Performed work for PrimeNow as a Prime Now Associate and Wfm
15 Amazon Shopper at a Whole Foods Market located in Cupertino, California
16 and a fulfillment warehouse in San Jose, California;
 - 17 d. Was classified by PrimeNow as a non-exempt employee for purposes of the
18 Labor Code and applicable IWC Wage Order;
 - 19 e. Earned an hourly wage;
 - 20 f. Was to be paid on a weekly basis;
 - 21 g. Was not timely compensated minimum, regular, and/or overtime wages for
22 all time worked or spent under the control of PrimeNow;
 - 23 h. Was not timely paid all wages due and owing upon separation of
24 employment;
 - 25 i. Was not paid the required waiting time penalties for late payment of final
26 wages;
 - 27 j. Was not furnished with accurate itemized wage statements;
- 28

- 1 k. Contends her employment records, including time and payroll records,
2 were not accurately maintained by PrimeNow;
3 l. Asserts that she was retaliated against for using sick leave when she had
4 COVID-19 symptoms;
5 m. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c);
6 and
7 n. Has complied with all requirements outlined in Labor Code §§ 2698, *et seq.*

8 **II. DEFENDANTS**

9 9. Defendant Prime Now LLC is a Delaware limited liability company that is
10 authorized to do business in California and has its headquarters in Seattle, Washington. Prime
11 Now LLC is part of the Amazon corporate family and provides internet retail and mailing order
12 services to Amazon Prime customers in California and across the United State of America.
13 Prime Now LLC offers a two-hour delivery service for items ordered on Amazon.com from
14 Amazon Fresh, Bristol Farms, Keg N Bottle, and Whole Foods Market.

15 10. The true names and capacities, whether individual, corporate, subsidiary,
16 partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to
17 Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil
18 Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities
19 of these fictitiously named defendants when their true names are ascertained. Plaintiff is
20 informed and believes, and on that basis alleges, that each of the fictitious defendants have
21 participated in the acts and/or omissions alleged in this Complaint.

22 11. At all times mentioned herein, the acts alleged to have been done and/or caused by
23 the named defendant are also alleged to have been done and/or caused by the fictitiously named
24 defendants, and by each of their agents and/or employees who acted within the scope of their
25 agency and/or employment.

26 12. At all times mentioned herein, each named defendant, including each fictitiously
27 named defendant, is believed to have acted individually or as an officer, agent, or employee of
28 the other defendants, including each fictitiously named defendant.

1 13. At all times mentioned herein, each named defendant, including each fictitiously
2 named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint
3 venture of the other defendants, and in doing the things alleged herein, acted within the course
4 and scope of such agency, employment, alter-ego, and/or in furtherance of the joint venture.

5 14. At all times mentioned herein, the acts and/or omissions of each of the named
6 defendants, including each fictitiously named defendant, concurrently contributed to the various
7 acts and/or omissions of each and every one of the other defendants, including each fictitiously
8 named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged
9 herein. Each of the named defendants, including each fictitiously named defendant, approved of,
10 condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained
11 herein. Each named defendant, including each fictitiously named defendant, was and is acting
12 with authority of each and every other defendant and/or are acting as agents of each and every
13 other defendant or Doe defendant.

14 15. At all times mentioned herein there was a unity of interest and ownership between
15 each named defendant, including each fictitiously named defendant, such that all defendants,
16 including each fictitiously named defendant, acted as a single employer of Plaintiff and all other
17 PrimeNow Employees.

18 16. At all times mentioned herein, each named defendant, including each fictitiously
19 named defendant, exercised supervision and control over the wages, hours, and/or working
20 conditions of Plaintiff and all other PrimeNow Employees, including, but not limited to,
21 implementing standard policies and procedures.

22 17. At all times mentioned herein, each named defendant, including each fictitiously
23 named defendant, caused PrimeNow Employees, including Plaintiff, to work and/or prevented
24 Plaintiff and other PrimeNow Employees from working.

25 18. At all times mentioned herein, each named defendant, including each fictitiously
26 named defendant, had control over Plaintiff and PrimeNow Employees.

27 19. Each named defendant, including each fictitiously named defendant, is alleged to
28 have caused each of the violations alleged herein.

20. Each named defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

22. Plaintiff was employed by PrimeNow from approximately December 14, 2020 to February 7, 2021. Plaintiff performed work as Prime Now Associate and Wfm Amazon Shopper. Plaintiff performed work for PrimeNow at a Whole Foods Market location in Cupertino, California and a warehouse in San Jose, California. As a shopper, Plaintiff was responsible for fulfilling grocery orders placed through Amazon.com by retrieving, scanning, and placing items in specific bags; positioning the bags in certain areas of the store depending on the items ordered; and ensuring the order is ready for delivery to the customer. At all relevant times, Plaintiff was classified as a non-exempt employee, earned an hourly rate of \$16.40 per hour, and was paid on a weekly basis. Plaintiff typically worked around ten (10) hours per week. While Plaintiff was able to set her own schedule using the Amazon A to Z Application, Plaintiff could only work a maximum of four (4) hours per shift, with at least one (1) hour in between shifts.

23. Plaintiff asserts that at all material times PrimeNow has employed, and will continue to employ, several PrimeNow Employees in Santa Clara County and throughout the state of California.

24. Plaintiff also asserts that throughout the relevant time period all PrimeNow Employees were classified as non-exempt employees, earned an hourly wage, and were to be paid on a weekly basis.

25. Plaintiff contends that she and all other PrimeNow Employees were subject to, and those currently employed continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

26. Plaintiff further asserts that she and all other PrimeNow Employees have suffered, and those currently employed will continue to suffer, the same and/or similar violations of law described herein.

27. Plaintiff alleges that PrimeNow had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not paying PrimeNow Employees all minimum, regular and/or overtime wages for all time actually worked on the days designated in advance by PrimeNow as the regular pay days and/or by the next regular pay period. Plaintiff contends that she and other PrimeNow Employees were mandated by PrimeNow to wait in line to undergo temperature checks as a result of the COVID-19 pandemic before entering the building and prior to clocking in for their scheduled shifts. PrimeNow Employees spent approximately three (3) to four (4) minutes waiting in line and completing the COVID-19 temperature check. PrimeNow required PrimeNow Employees to clock in for their shifts exactly at the time scheduled. PrimeNow Employees, therefore, had to arrive to their worksites early to undergo the temperature checks. PrimeNow considered the time spent by PrimeNow Employees waiting in line and undergoing temperature checks as non-compensable time, despite mandating that PrimeNow Employees undergo temperature checks and not permitting PrimeNow Employees to clock in early or a couple minutes late. PrimeNow therefore failed to timely pay all minimum, regular, and/or overtime wages for all hours worked and/or otherwise spent under the control of PrimeNow on the days designated in advance by PrimeNow as the designated pay days and/or by the next regular pay period.

28. Plaintiff alleges that PrimeNow had, and continues to have, a policy, practice, procedure, guideline, and/or culture of willfully failing to pay former PrimeNow Employees all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of such wages. Plaintiff asserts that she and other former PrimeNow Employees were not timely paid all wages due and owing upon separation of employment because she and other former PrimeNow Employees were not compensated for the time they spent waiting in line and undergoing temperature checks prior to clocking in. Additionally, Plaintiff was terminated by PrimeNow on February 7, 2021, however, Plaintiff was not immediately issued her final wages. Plaintiff did not receive her final wages until February 11, 2021. Plaintiff's final wages did not include the time spent waiting in line and undergoing temperature checks prior to clocking in and/or the necessary waiting time penalties for the late payment of her final wages.

1 Plaintiff contends, based on information and belief, that other former Prime Now Employees were
2 not timely paid all wages due and owing upon separation of employment and/or the required
3 waiting time penalties.

4 29. PrimeNow had, and continues to have, a policy, practice, procedure, guideline,
5 and/or culture of not furnishing PrimeNow Employees with accurate itemized wage statements.
6 The wage statements furnished to PrimeNow Employees, including Plaintiff, did not correctly
7 show the total hours worked by the employee, all applicable hourly rates in effect during the pay
8 period, the corresponding number of hours worked at each hourly rate by the employee, the actual
9 gross wages earned, and the actual net wages earned.

10 30. Due to the missing and/or incorrect information, Plaintiff and other PrimeNow
11 employees were unable to promptly and easily determine the total number of hours worked or the
12 applicable hourly rates in effect during the pay period and corresponding number of hours worked
13 at each hourly rate.

14 31. PrimeNow had, and continues to have, a policy, practice, procedure, guideline,
15 and/or culture of knowingly and intentionally failing to maintain, for at least three years, a
16 duplicate of the itemized wage statements furnished to PrimeNow Employees or a computer-
17 generated record that accurately shows all of the information required by Labor Code § 226(a), as
18 well as records showing the total daily hours worked each period, the beginning and end times of
19 each work period, and the beginning and end times of each meal period. PrimeNow did not permit
20 PrimeNow Employees to record the time they spent under PrimeNow's control waiting in line and
21 undergoing temperature checks as time worked, resulting in inaccurate time records, payroll
22 records, and wage statements.

23 32. PrimeNow had, and continues to have, a policy, practice, procedure, guideline,
24 and/or culture of retaliating against PrimeNow Employees for the use of sick leave. For instance,
25 on January 18, 2021, Claimant called PrimeNow's Human Resource Department because she was
26 feeling ill, had COVID-19 symptoms, and believed that she needed to get tested for COVID-19.
27 Human Resources instructed Claimant to get tested for COVID-19 and placed her on a two-week
28 sick leave pending results of the test. On or about January 20, 2021, Plaintiff took a test for

COVID-19 and was later informed that her results were negative. Upon learning of her negative result, Plaintiff sent an email to Human Resources notifying them of the results. Human Resources subsequently instructed Plaintiff that she could return to work. Thereafter, Claimant worked multiple shifts between January 22, 2021 through and including February 6, 2021. On February 7, 2021, Claimant was locked out of the Amazon A to Z application used to schedule work shifts. Upon calling Human Resources, Claimant learned that she was terminated for missing work on January 18 and 19, 2021 despite the fact that she was on sick leave for experiencing COVID-19 symptoms. Claimant was improperly terminated for using sick leave during the COVID-19 pandemic. Claimant further asserts, based on information and belief, that other PrimeNow Employees have been retaliated against for using their sick leave.

33. On March 26, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and PrimeNow as required by the PAGA informing them of PrimeNow's alleged violations of the Labor Code. A true and correct copy of the March 26, 2021 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

34. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

35. Plaintiff believes that additional violations may be discovered and therefore reserves her right to allege additional violations of law as investigation and discovery warrants. In the event, Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

PAGA DESIGNATION

36. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

37. By and through this representative enforcement action, Plaintiff intends to represent the following classes of PrimeNow Employees (i.e., "aggrieved employees"), which are defined as follows:

All current and former non-exempt employees of Defendants, individually and/or collectively, in California who were subject to COVID-19 temperature checks during the period commencing on the date that is within one year and sixty-five days prior to the filing of

the Complaint through and including the last date of trial (hereinafter the “PAGA Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA class against Defendants, the time period should be adjusted accordingly.

All current and former non-exempt employees of Defendants, individually and/or collectively, in California who were retaliated against for using sick leave during the PAGA Period. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA class against Defendants, the time period should be adjusted accordingly.

38. All PrimeNow Employees are “employees” as the term is used in the Labor Code and the relevant IWC Wage Order regulating wages, hours, and working conditions in the state of California.

39. A more precise definition of the PAGA class(es) may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the PAGA class(es) and/or create additional classes and/or sub-classes as permitted by California law.

40. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Pursuant to the PAGA, all civil penalties recovered must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

41. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of her claims with LWDA, PrimeNow was Plaintiff’s and all other PrimeNow Employees’ employer or person acting on behalf of PrimeNow Employees’ employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable

1 penalties imposed pursuant to Labor Code § 203.

2 42. Plaintiff is an “aggrieved employee” under the PAGA because she was employed
3 by the alleged violators, PrimeNow, and had one or more of the alleged violations committed
4 against her, and therefore is properly suited to represent the interests of other aggrieved
5 employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751,
6 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

7 43. Plaintiff alleges that all other PrimeNow Employees are also “aggrieved employees”
8 under the PAGA as PrimeNow employed them and all aggrieved employees experienced one or
9 more of the alleged violations outlined herein.

10 44. Pursuant to Labor Code §§ 2698, *et seq.*, Plaintiff has exhausted her administrative
11 remedies because she complied with the notice requirements outlined in Labor Code § 2699.3. On
12 March 26, 2021, Plaintiff submitted notice to the LWDA and PrimeNow informing them of
13 PrimeNow’s alleged Labor Code violations pursuant to the PAGA. (See Ex. 1.) Pursuant to the
14 PAGA, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged
15 violations. To date, the LWDA has not provided notice of its intent to investigate the alleged
16 violations. Plaintiff thus has the right to pursue, and does pursue, her claims under PAGA in a
17 representative capacity pursuant to Labor Code §§ 2698, *et seq.*

18 45. As set forth herein, PrimeNow has committed, and continues to commit, numerous
19 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in her
20 representative capacity, to recover, on behalf of herself, all other PrimeNow Employees, the state
21 of California, and the general public, civil penalties as well as attorneys’ fees and costs from
22 PrimeNow for the violations of law, described herein.

23 46. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
24 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
25 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
26 limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226, 510, 1174, 1194, 1197, 1197.1, and
27 1198. Plaintiff and other aggrieved employees are entitled to, and therefore seek, the civil penalties
28 described in Labor Code § 2699(f) for the violations of law described herein.

47. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys’ fees and costs. As such, Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, attorneys’ fees and costs.

48. Plaintiff expressly disclaims the recovery of any “amount sufficient to recover underpaid wages” on behalf herself and all other PrimeNow Employees.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff in her Representative Capacity Against PrimeNow and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698, *et seq.*]

49. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

50. Plaintiff, in her representative capacity, on behalf of herself and all other PrimeNow Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failure to timely pay all minimum, regular, and/or overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 7-2001;
- b. Failure to timely pay all wages due and owing upon separation of employment in violation of Labor Code §§ 201, 202, 203, and 210;
- c. Failure to furnish accurate itemized wage statements in violation Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 7-2001;
- d. Failure to maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section IWC Wage Order No. 7-2001; and
- e. Retaliation for use of sick leave in violation of Labor Code §§ 98.6, 246,

246.5, 248.2, 248.5, and 1198.

51. Labor Code § 98.6(a)(3) provides that “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.” Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 98.6(a)(3).

52. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for an initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210.

53. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in section 226(a), this civil penalty in addition to any other penalty provided by law. Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

54. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 558.

55. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to

1 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of
2 \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code §
3 2699 for a violation of Labor Code § 1174(d). Plaintiff, in her representative capacity on behalf
4 of herself and all other PrimeNow Employees, is entitled to, and therefore seeks, the civil penalty
5 imposed by § 1174.5.

6 56. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee
7 for each pay period for which the employee is underpaid and a subsequent civil penalty of \$250
8 for each underpaid employee for each pay period for which the employee is underpaid for paying
9 or causing an employee to be paid a wage less than the minimum wage. Plaintiff, in her
10 representative capacity on behalf of herself and all other PrimeNow Employees, is entitled to, and
11 therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

12 57. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee
13 for the initial violation, and \$200 per pay period, per employee for each subsequent violation for
14 all Labor Code provisions for which a civil penalty is not specifically provided, including, but not
15 limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226, 510, 1174, 1194, 1197, 1197.1, and
16 1198. Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow
17 Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

18 58. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
19 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs.
20 Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow Employees,
21 is entitled to, and therefore seeks, an award of reasonable attorneys' fees and costs.

22 59. Plaintiff, in her representative capacity on behalf of herself and all other PrimeNow
23 Employees, is entitled to, and therefore seeks, the recovery of reasonable attorneys' fees as
24 provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

25 60. Plaintiff, in her representative capacity on behalf of herself and all PrimeNow
26 Employees, requests further relief as described in the below prayer for relief.

27 ///

28 ///

PRAYER FOR RELIEF

Plaintiff, in her representative capacity, prays for judgment against Defendants and in favor of the State of California, Plaintiff, and all other aggrieved employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6, 210, 226.3, 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including but not limited to Labor Code §§ 210, 218.5, 1194, 2699(g)(1), Code of Civil Procedure § 1021.5, the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory, and/or other applicable law; and
- d. For any other relief the Court may deem proper and just.

Dated: June 11, 2021

GRAHAMHOLLIS APC

Bv: Monique R. Rodriguez
GRAHAM S.P. HOLLIS
VILMARIE CORDERO
HALI M. ANDERSON
MONIQUE R. RODRIGUEZ
*Attorneys for Plaintiff Sima Adami and All
Aggrieved Employees*

EXHIBIT 1

March 26, 2021

Attorneys at Law

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www.grahamhollis.com

Monique R. Rodriguez
mrodriguez@grahamhollis.com
619.546.4373 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Prime Now, LLC
410 Terry Ave N
Seattle, WA 98109

Prime Now, LLC
c/o Corporation Service Company Which Will Do
Business in California as CSC – Lawyers Incorporating
Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Sima Adami's PAGA Claims Against Prime Now, LLC

Dear California Labor and Workforce Development Agency and Prime Now, LLC:

Please be advised that Sima Adami ("Claimant") has retained our firm, Graham**Hollis** APC, to represent her for various claims against Prime Now, LLC (the "Company").

Please be advised that this letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current and former non-exempt employees of the Company who worked in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent herself and all other current and former non-exempt employees of the Company who worked in California during the relevant time period (referred to herein as the "Prime Now Employees"). All Prime Now Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein.

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Claimant contends that she and all other Prime Now Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

Prime Now, LLC is part of the Amazon corporate family and provides internet retail and mail-order services to Amazon Prime customers in California and across the United States. Prime Now, LLC offers a two-hour delivery service for items ordered on Amazon.com from Amazon Fresh, Bristol Farms, Keg N Bottle, and Whole Foods Market. Prime Now, LLC is organized in the state of Delaware and has its headquarters located in Seattle, Washington.

Claimant was employed by the Company from approximately December 14, 2020 to February 7, 2021. Claimant performed work as Prime Now Associate and Wfm Amazon Shopper. Claimant performed work for the Company at a Whole Foods Market location in Cupertino, California and fulfillment warehouse in San Jose, California. As a shopper, Claimant was responsible for fulfilling grocery orders placed through Amazon.com by retrieving, scanning, and placing items in specific bags; positioning the bags in certain areas of the store depending on the items ordered; and ensuring the order is ready for delivery to the customer. At all relevant times, Claimant was classified as a non-exempt employee, earned an hourly rate of \$16.40 per hour, and was paid on a weekly basis. Claimant typically worked around ten (10) hours per week. She was able to set her own schedule using the Amazon A to Z Application, but could only work a maximum of four (4) hours per shift, with at least one (1) hour in between shifts.

Claimant contends that at all relevant times, the Company employed, and continues to employ, Prime Now Employees in California in various non-exempt positions. Claimant also contends, based on information and belief, that all policies, practices, procedures and/or guidelines of the Company applicable to Claimant were also applicable to all other Prime Now Employees throughout the relevant time period. Claimant further contends, based on information and belief, that she and all other Prime Now Employees suffered, and will continue to suffer, the same and/or similar violations of law described herein.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Prime Now Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular and/or overtime wages to all Prime Now Employees, including Claimant; failed, and continues to fail, to timely pay Claimant and other former Prime Now Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Prime Now Employees, including Claimant, with accurate itemized wage statements; failed, and continues to fail, to maintain accurate employment records; and engaged in unlawful retaliation against Prime Now Employees, including Claimant, for the use of sick leave during the COVID-19 pandemic.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not timely paying Prime Now Employees all minimum, regular wages, and/or overtime wages for all time actually worked on the days designated in advance by the Company. For

instance, Claimant and other Prime Now Employees were required to clock in for their shifts at exactly the time scheduled. However, the Company required Prime Now Employees, including Claimant, to arrive early to their shifts to undergo a COVID-19 temperature check. Prime Now Employees were required to complete a COVID-19 temperature check before they could enter the building. Claimant and other Prime Now Employees typically spent around three (3) to four (4) minutes completing the COVID-19 temperature check. Thereafter, Claimant and other Prime Now Employees had to walk to the opposite side of the building where the clock-in station was located in order to clock in for their shift. The Company improperly considered the time Claimant and other Prime Now Employees spent under the control of the Company prior to clocking in as non-compensable time and failed to provide any remuneration. Therefore, Claimant contends that she, and on information and belief, other Prime Now Employees were not timely paid all minimum and/or regular wages for all hours worked on the days designated in advance by the employer and/or paid timely overtime wages for all hours worked no later than the payday for the next regular pay period.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not timely paying former Prime Now Employees, including Claimant, all wages due and owing upon separation of employment and/or the required waiting time penalties for the late payment of such wages. For instance, Claimant contends that despite being terminated from her employment on February 7, 2021, she was not immediately paid all of her wages due and owing including, but not limited to, unpaid minimum and/or regular wages for undergoing COVID-19 temperature checks. In fact, Claimant did not receive her final wages from the company until February 11, 2021, which did not include the required waiting time penalties. Claimant also contends that, to date, she has not received all wages owed nor the required waiting time penalties. Claimant further contends, based on information and belief, that other former Prime Now Employees were not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

Claimant further alleges that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not furnishing Prime Now Employees, such as Claimant, with final wage statements. For example, despite being terminated from her employment on February 7, 2021, Claimant did not receive her final payment or a wage statement immediately upon termination. Moreover, upon termination Claimant lost access to the Amazon A to Z application where her wage statements were posted. As a result, Claimant never received her final wage statement. Claimant also alleges, based on information and belief, that other former Prime Now Employees were not furnished wage statements with their final wage payment.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure and/or guideline of furnishing Prime Now Employees, including Claimant, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to Claimant and other Prime Now Employees did not correctly show, and still do not correctly show, the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. For instance, the wage statements furnished to Prime Now Employees, including Claimant, do not reflect the time spent by Prime Now Employees completing pre-shift COVID-19 temperature checks. The wage statements furnished also do not include accrued sick leave. Due to the missing and/or incorrect information,

Claimant and other Prime Now Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures and/or guidelines, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Prime Now Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law.

Additionally, Claimant alleges that the Company had, and continues to have, a policy, practice, procedure and/or guideline of retaliating against Prime Now Employees for the use of sick leave. For instance, Claimant called the Company's Human Resources Department on January 18, 2021 because she was feeling ill, had COVID-19 symptoms, and believed she needed to take a COVID-19 test. In response, Human Resources told Claimant she was required to get tested for COVID-19 and Claimant was placed on a two-week sick leave pending results of the test. On or around January 20, 2021, Claimant took a COVID-19 test and received a negative result. Claimant then sent the negative result to Human Resources via email. Human Resources instructed Claimant that she was able to return to work. Thereafter, Claimant worked several shifts from January 22, 2021 to February 6, 2021. On February 7, 2021, Claimant was unable to schedule a shift on the Amazon A to Z Application. Claimant called Human Resources to determine why she was unable to schedule her shift. Claimant was then informed that she was terminated due to missing work on January 18, 2021 and January 19, 2021, when she was on sick leave for experiencing COVID-19 symptoms. Claimant attempted to appeal the termination decision but was informed by Human Resources that the time frame for an appeal had already passed. Claimant contends that the Company terminated her employment in retaliation for using her sick leave when she was experiencing COVID-19 symptoms. Claimant further contends, based on information and belief, that other Prime Now Employees have been retaliated against for using their sick leave during the COVID-19 pandemic.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Prime Now Employees certain rights afforded them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of herself and all other Prime Now Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Prime Now Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of herself and other current and former Prime Now Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or

omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR
AND/OR OVERTIME WAGES**

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and 1199, and the “Minimum Wages” and “Hours and Days of Work” sections of IWC Wage Order No. 7-2001)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable on twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 44 [providing that an employer may not pay “less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise”].)

The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee's right to overtime compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" and "Minimum Wages" sections of IWC Wage Order No. 7-2001 mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 558 provides that "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company has a policy, practice, procedure and/or guideline of failing to timely pay all minimum, regular and/or overtime wages to Claimant and, on information and belief, other Prime Now Employees for all hours actually worked on the date designated in advance by the Company as the regular pay day. For instance, the Company requires Claimant and other Prime Now Employees to undergo a COVID-19 temperature check before clocking in for their shifts, but does not provide

remuneration for this time despite being under the control of the employer. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Prime Now Employees to the extent permitted by law.

FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING
UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 provides, in pertinent part,

[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As discussed herein, the Company violated these Labor Code sections by not timely paying to Claimant and other former Prime Now Employees all minimum, regular and/or overtime wages within the required time upon separation of their employment. The Company, on information and belief, also did not pay Claimant and, on information and belief, other former Prime Now Employees the required waiting time penalties for the late payment of wages. Thus, the Company violated California law. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all former Prime Now Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Prime Now Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. Moreover, the Company failed to furnish Claimant with an itemized wage statement with her final wages. Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of herself and all Prime Now Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the “Records” section of IWC Wage Order No. 7-2001)

Labor Code § 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code § 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174(d) further requires:

Every person employing labor in this state shall...[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper

beginning of each work period, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the law on behalf of herself and all Prime Now Employees to the extent allowed by law.

RETALIATION FOR USE OF SICK LEAVE
(Labor Code §§ 98.6, 246.5, 248.2, and 248.5)

Labor Code § 246.5(a) requires an employer to provide paid sick days for “[d]iagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee...” upon oral or written request by the employee.

Labor Code § 246.5(c)(1) further provides:

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

Labor Code § 248.2 entitles an employee, who is unable to work due to experiencing symptoms of COVID-19 and seeking a medical diagnosis to COVID-19 supplemental paid sick leave “at the regular rate of pay to which the covered employee would be entitled as if the covered employee had been scheduled to work those hours.” The employer must “make COVID-19 supplemental paid sick leave available for immediate use by the covered employee, upon the oral or written request of the covered employee to the employer.” (Labor Code § 248.2(b).)

Labor Code § 248.2(d) further provides that the Labor Commissioner “shall enforce this section as if COVID-19 supplemental paid sick leave constitutes ‘paid sick days,’ ‘paid sick leave,’ or ‘sick leave’ under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5.”

For violations of Labor Code §§ 246.5 and 248.2, Labor Code § 248.5 permits the Labor Commission, in a civil or administrative proceeding, to obtain legal and equitable relief on behalf of the aggrieved employee, including, but not limited to, reinstatement or other injunctive relief; backpay; a penalty “of fifty dollars (\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000);” reasonable attorney’s fees and costs; and “interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.”

Labor Code § 248.5(e) further provides: “any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.”

Labor Code section 98.6(a) mandates,

“[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

Labor Code section 98.6(a)(3) further provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

As set forth herein, the Company has a policy, practice, procedure and/or guideline of engaging in retaliation against employees for use of sick leave. For instance, Claimant was terminated from her employment after she used her sick leave because she was experiencing COVID-19 symptoms. The Company thus engaged in retaliation against Claimant in violation of Labor Code §§ 98.6, 246.5, 248.2, and 248.5. Claimant alleges, based on information and belief, that the Company has terminated other Prime Now Employees for exercising the rights afforded to them under the Labor Code. Claimant will pursue all available remedies against the Company for their Labor Code violations on behalf of herself and all Prime Now Employees to the extent permitted by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE IWC
WAGE ORDER**

(Labor Code §§ 98.6(a)(3), 210, 226(f), 226.3, 248.5, 558, 558.1, 1174.1, 1197.1, and 2699(f))

Labor Code section 98.6(a)(3) provides that, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code § 226(f) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

For violations of Labor Code §§ 246.5 and 248.2, Labor Code § 248.5 entitles the Labor Commissioner to collect from an employer "...the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred...."

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code § 558.1(a) states that,

"[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to §

1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226(a), 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and IWC Wage Order No. 7-2001 by failing to timely pay Claimant and Prime Now Employees all regular, minimum and/or overtime wages as required under the Labor Code and the applicable sections of IWC Wage Order No. 7-2001. Furthermore, the Company violated the Labor Code by retaliating against Prime Now Employees for use of sick leave. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies including, but not limited to, those stated herein, for the Company's violations on behalf of herself and all Prime Now Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and other Prime Now Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

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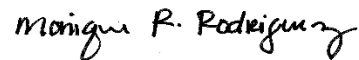
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CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order No. 7-2001, thereby depriving Claimant and other Prime Now Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Prime Now Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Prime Now Employees, as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez