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May 9, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
21CV382938
By: rwalker

Attorneys for Plaintiff Sima Adami

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

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

Plaintiff,

v.

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

Defendants.

Case No.: 21CV382938

REPRESENTATIVE ACTION

**[PROPOSED] ORDER GRANTING MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT AND
REQUEST FOR AWARD OF ATTORNEYS'
FEES, COSTS, AND ENHANCEMENT
PAYMENT; AND JUDGMENT**

Date: May 8, 2024
Time: 1:30 p.m.
Dept: 19
Judge: Hon. Theodore C. Zayner

Complaint Filed: June 11, 2021
Trial Date: None Set

This matter came before the Honorable Theodore C. Zayner in Department 19 of the Superior Court of the State of California, in and for the County of Santa Clara, on May 8, 2024 at 1:30 p.m., on Plaintiff Sima Adami's ("Plaintiff") Motion for Final Approval of Class and PAGA Action Settlement and Request for Award of Attorneys' Fees, Costs, and Enhancement Payment ("Plaintiff's Motion for Final Approval"), pursuant to California Rules of Court, Rule 3.769 and Labor Code section 2698 et seq.

On November 7, 2023, the Court granted Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement and entered an Order in accordance therewith.

Having duly considered all papers, evidence, and oral arguments in this matter to date, including

1 Plaintiff's Motion for Final Approval and good cause appearing, the Court hereby **ORDERS AS**
2 **FOLLOWS:**

3 1. This Order shall incorporate the parties' Class Action Settlement Agreement and Release
4 ("Settlement Agreement") and to the extent that the terms are defined in the Settlement Agreement, all
5 defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement.

6 2. This Court has jurisdiction over the claims asserted in this Action and personal jurisdiction
7 over Plaintiff, Defendant, the Class Members, and the PAGA Settlement Members (collectively,
8 "Settlement Class Members"), as defined in the Settlement Agreement.

9 3. This Court finds that the applicable requirements of the California Code of Civil Procedure
10 section 382 and California Rules of Court, Rule 3.769, have been satisfied with respect to the Settlement
11 Class Members and the Settlement. The Court makes final its earlier provisional certification of the
12 following Settlement Class for the purposes of settlement only:

13 All current and former nonexempt employees of Prime Now in California
14 during the Class Period who underwent one or more COVID-19
15 temperature screenings at any time between March 18, 2020 through and
including July 5, 2021.

16 4. The Court also confirms the following appointments: Plaintiff Sima Adami as the Class
17 Representative; GrahamHollis APC as Class Counsel; and CPT Group, Inc. as the Settlement
18 Administrator.

19 5. The Court finds that the Notice of Class Action Settlement and Release of Claims that was
20 approved on November 7, 2023 and transmitted to the Settlement Class Members fully and accurately
21 informed the Settlement Class Members of all material elements of the Settlement, including their
22 opportunity to request exclusion from the Settlement or object to the Settlement (notwithstanding the
23 PAGA portion of the Settlement), was the best notice practicable under the circumstances; was valid, due,
24 and sufficient notice to all Settlement Class Members; and complied fully with the laws of the state of
25 California, the United States Constitution, due process, rule 3.766 of the California Rules of Court, and
26 all other applicable laws.

27 6. Based on the Declaration of Jennifer Forst Re: Settlement Administration and Class Notice,
28 the Court finds that there were no objections to the Settlement and the following 18 individual submitted

1 valid and timely requests for exclusion, and will be excluded from the Settlement Class: Yancy Ame
2 Castro, Songkran Chimkit, Julie Figueroa, Matthew A. Gavlak, Evangeline L. Jordan, Isabella A. Lee,
3 Gavin Leising, Julie M. Leyva, Emma Luman, Vaishnavi Muthangi, Tomasz Nalezinski, Deborah L.
4 Peters, Jaime Ramirez, Hector Rodas, Kevin Sobie, Vladimir Vrublevskiy, Joseph Wescoat, and Deidre
5 R. Whitfield.

6 7. In accordance with California law, the Court hereby GRANTS final approval of the
7 Settlement and finds it fair, reasonable, and adequate, and in the best interest of the Settlement Class
8 Members as a whole. Specifically, the Court finds that the Settlement is the result of serious, informed,
9 adversarial, and arm's-length negotiations between the parties and that the terms of the Settlement are, in
10 all respects, fair, adequate, and reasonable. In so finding, the Court has considered all the evidence
11 presented, including evidence regarding the strength of Plaintiff's case; the risks, expense, and complexity
12 of claims presented; the likely duration of further litigation; the amount offered in the Settlement; the
13 extent of investigation and discovery completed; and the experience and views of Class Counsel. The
14 Court ORDERS and directs that the Settlement be effectuated in accordance with the Settlement
15 Agreement and the following terms and conditions.

16 8. The Court finds that a full opportunity has been afforded to the Settlement Class Members
17 to participate in the hearing on Plaintiff's Motion for Final Approval. The Settlement Class Members have
18 had a full and fair opportunity to exclude themselves from the Settlement. Therefore, the Court ORDERS
19 that, pursuant to the Settlement Agreement, and as of the Effective Date, Plaintiff and all Settlement Class
20 Members will release the Released Parties of all claims, actions, demands, causes of action, suits, debts,
21 obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal
22 theories asserted in the operative complaint, or which relate to the primary rights asserted in the operative
23 complaint, including without limitation claims for (1) failure to timely pay all minimum, regular, and/or
24 overtime wages in violation of Labor Code sections 204, 210, 510, 558, 1194, 1197, and 1198; (2) failure
25 to pay all wages due and owing upon separation of employment and/or the mandatory waiting time
26 penalties in violation of Labor Code sections 201, 202, 203, and 210; (3) failure to furnish accurate
27 itemized wage statements in violation of Labor Code section 226; (4) failure to maintain accurate
28 employment records in violation of Labor Code sections 226 and 1174; and (5) unfair business practices

1 in violation of Business & Professions Code section 17200 et seq. (“Released Class Claims”). The period
2 of the Released Class Claims shall extend to the limits of the Class Period. The res judicata effect of the
3 Judgment will be the same as that of the Released Class Claims.

4 9. The Court further ORDERS that, pursuant to the Settlement Agreement, and as of the
5 Effective Date, Plaintiff and all PAGA Settlement Members will release the Released Parties of all claims
6 pursuant to the Private Attorneys General Act (codified in Labor Code section 2698 et seq.) based on the
7 facts and legal theories asserted in the operative complaint, or which relate to the primary rights asserted
8 in the operative complaint, including without limitation PAGA claims for (1) failure to timely compensate
9 for all hours worked, including minimum, regular, and /or overtime wages in violation of Labor Code
10 sections 204, 210, 510, 558, 1194, 1197, and 1198; (2) failure to pay all wages due and owing upon
11 separation of employment and/or the mandatory waiting time penalties in violation of Labor Code sections
12 201, 202, 203, and 210; (3) failure to furnish accurate itemized wage statements in violation of Labor
13 Code section 226; (4) failure to maintain accurate records in violation of Labor Code sections 226 and
14 1174; and (5) retaliation for use of sick leave in violation of Labor Code sections 98, 246, 248, and 1198.
15 The period of the Released PAGA Claims shall extend to the limits of the Release Period. The res judicata
16 effect of the Judgment will be the same as that of the Release.

17 10. It is ORDERED that Settlement Class Members shall be prohibited and permanently
18 enjoined from pursuing in any fashion the Released Class Claims and Released PAGA Claims against the
19 Released Parties.

20 11. Defendant is ORDERED to fund the Gross Settlement Fund of \$4,300,000. Defendant is
21 further ORDERED to deposit the Gross Settlement Fund, plus the employer’s share of payroll taxes, into
22 a Qualified Settlement Fund with the Settlement Administrator within 30 calendar days after the Effective
23 Date.

24 12. The Settlement Administrator, CPT Group, Inc., is ORDERED to distribute the Gross
25 Settlement Fund in accordance with the Settlement Agreement.

26 13. In accordance with Labor Code section 2699(1)(2), the Court has reviewed the Settlement
27 Agreement as it relates to the allocation of civil penalties under PAGA. The Court finds that the PAGA
28 Settlement Amount of \$215,000 for claims under the PAGA is fair, reasonable, and appropriate. The Court

GRANTS approval of the PAGA Settlement Amount of \$215,000 towards claims under the PAGA.

14. The Court ORDERS that \$161,250 (75% of \$215,000) be allocated to the LWDA Payment, and paid to the California Labor and Workforce Development Agency (“LWDA”), as required by statute.

15. The Court ORDERS that \$53,750 (25% of \$215,000) be allocated to the Net Settlement Amount for distribution to PAGA Settlement Members who worked during the PAGA Period, as defined by the Settlement Agreement.

16. The Court finds that the requested Class Representative Enhancement Award of \$2,500 to named Plaintiff Sima Adami is fair and reasonable for the work performed and the risks associated with bringing this Action. The Court awards and thus ORDERS that the Settlement Administrator issue a Class Representative Enhancement Award to Plaintiff in the amount of \$2,500. The Class Representative Enhancement Award is in addition to any payment Plaintiff is entitled to under the Settlement.

17. The Court finds that Class Counsel’s request for Attorneys’ Fees in the amount of \$1,433,333.33 falls within the range of reasonableness and the result achieved justifies the award sought. The Court awards and therefore ORDERS that the Settlement Administrator issue Attorneys’ Fees in the amount of \$1,433,333.33 to GrahamHollis APC.

18. The Court finds that Class Counsel’s request for actual and documented litigation costs incurred in the amount of \$18,068.53 falls within the range of reasonableness and the result achieved justifies the award sought. The Court awards and thus ORDERS that the Settlement Administrator issue payment for actual and documented litigation costs incurred in the amount of \$18,068.53 to GrahamHollis APC.

19. The Court finds that the request for Settlement Administration Costs in the amount of \$130,000 is fair, reasonable, and appropriate. The Court awards and thus ORDERS that the Settlement Administrator issue payment for Settlement Administration Costs to CPT Group, Inc. in the amount of \$130,000.

20. The Court ORDERS that the amount remaining in the Net Settlement Amount, estimated to be \$2,501,098.14, be issued to the Settlement Class Members based on the number of workweeks worked during the Class Period, as defined by the Settlement Agreement.

21. The Court approves the State Bar of California’s Justice Gap Fund as the *cy pres*

beneficiary for any uncashed checks, and finds that the *cypres* beneficiary meets the requirements of Code of Civil Procedure section 384.

22. Plaintiff's Motion for Final Approval is GRANTED.

23. Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, this Court retains exclusive and continuing jurisdiction over this action and the parties for the purposes of: (a) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, and the Order of Final Approval and Judgment; and (b) supervising distribution of amounts paid under this Settlement.

24. The Court sets a compliance hearing regarding the distribution of the Gross Settlement Fund for December 11, 2024 at 2:30 p.m. in Department 19 of the Santa Clara County Superior Court. At least 10 calendar days before the hearing, Class Counsel and the Settlement Administrator shall submit a summary accounting of the Net Settlement Amount identifying distributions made as ordered herein, the number and value of any uncashed checks, the status of the redistributed funds, the status of any unresolved issues, and any other matters appropriate to bring to the Court's attention. Counsel may appear at the compliance hearing remotely.

IT IS SO ORDERED AND JUDGMENT IS HEREBY ENTERED.

Dated: May 9, 2024



Honorable Theodore C. Zayner
Judge of the Superior Court