

1 HEATHER L. RICHARDSON, SBN 246517
hrichardson@gibsondunn.com
2 BRADLEY J. HAMBURGER, SBN 266916
bhamburger@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
4 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
5 Facsimile: 213.229.7520

MICHELE L. MARYOTT, SBN 191993
mmaryott@gibsondunn.com
MEGAN COONEY, SBN 295174
mcooney@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612-4412
Telephone: 949.451.3800
Facsimile: 949.451.4220

6 *Attorneys for Defendant PRIME NOW LLC*

7 GRAHAM S.P. HOLLIS, SBN 120577
ghollis@grahamhollis.com
8 VILMARIE CORDERO, SBN 268860
vcordero@grahamhollis.com
9 HALI M. ANDERSON, SBN 261816
handerson@grahamhollis.com
10 DAWN M. BERRY, SBN 292335
dberry@grahamhollis.com
11 3555 Fifth Avenue Suite 200
San Diego, California 92103
12 Telephone: 619.692.0800
Facsimile: 619.692.0822

13 *Attorneys for Plaintiff SIMA ADAMI*

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA CLARA
17

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

21 Plaintiff,

22 v.

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

25 Defendants.
26
27
28

CASE NO. 21CV382938

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

ASSIGNED FOR ALL PURPOSES TO:
HON. THEODORE C. ZAYNER
DEPARTMENT 19

CLASS ACTION SETTLEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Plaintiff Sima Adami (the “Named Plaintiff”), on behalf of herself, the Settlement Class, as defined below, the State of California, and the PAGA Settlement Members, as defined below, on the one hand, and Defendant Prime Now LLC (“Defendant” or “Prime Now”) on the other.

Named Plaintiff and Defendant (collectively, the “Parties”) enter into this Agreement to effectuate a full and final settlement and preclusive judgment resolving completely and to the fullest extent permitted by law the Released Class Claims and Released PAGA Claims, as defined below, and brought against Prime Now in *Adami v. Prime Now LLC* (Santa Clara County Sup. Ct. Case No. 21CV382938) and *Adami v. Prime Now LLC* (Northern District of Cal. Case No. 3:21-cv-03764-JSC). This Agreement is intended to fully and finally compromise, resolve, discharge, and settle the Released Class Claims and Released PAGA Claims, as defined and on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court.

I. RECITALS

WHEREAS, on April 8, 2021, Sima Adami filed a putative class action in Santa Clara County Superior Court against Prime Now alleging various wage-and-hour violations, *Adami v. Prime Now LLC* (Santa Clara County Sup. Ct. Case No. 21CV379287) (the “Class Action”);

WHEREAS, on May 19, 2021, Prime Now removed the Class Action to the United States District Court for the Northern District of California, *Adami v. Prime Now LLC* (Northern District of Cal. Case No. 3:21-cv-03764-JSC);

WHEREAS, on June 11, 2021, Sima Adami filed a PAGA action in Santa Clara County Superior Court against Prime Now alleging various wage-and-hour violations, *Adami v. Prime Now LLC* (Santa Clara County Sup. Ct. Case No. 21CV382938) (the “PAGA Action”) (collectively with the Class Action, the “Actions”);

WHEREAS, on April 27, 2023, Named Plaintiff and Prime Now attended a mediation session with experienced professional mediator Lisa Klerman, and, in preparation for the mediation, engaged in written discovery and informal exchanges of information, documents, and voluminous data, which

1 enabled a thorough evaluation of the claims, and the likely outcomes, risks, and expense of pursuing
2 litigation;

3 WHEREAS, following mediation, the Parties reached an agreement in principle to resolve the
4 Actions;

5 WHEREAS, for the purposes of this settlement only, the Parties jointly requested that the Santa
6 Clara County Superior Court allow the Named Plaintiff to file an amended complaint in the PAGA
7 Action, *Adami v. Prime Now LLC*, Case No. 21CV382938, that includes all of the putative class and
8 PAGA claims currently alleged in the Actions; and

9 WHEREAS, the Parties desire to fully, finally, and forever settle, compromise, and discharge
10 all disputes and claims that exist between them arising from the factual allegations that underlie the
11 Actions concerning any and all claims asserted therein, including:

12 Named Plaintiff's Class Claims for: (1) failure to timely pay all minimum, regular and/or
13 overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and 1198; (2) failure to
14 pay all wages due upon separation of employment in violation of Labor Code §§ 201, 202, 203, and
15 210; (3) failure to furnish accurate itemized wage statements in violation of Labor Code § 226; (4)
16 failure to maintain accurate employment records in violation of Labor Code §§ 226 and 1174; and (5)
17 violations of Business and Professions Code § 17200 *et seq.*,

18 Named Plaintiff's PAGA Claims for: (1) failure to timely compensate for all hours worked,
19 including minimum, regular, and/or overtime wages in violation of Labor Code §§ 204, 210, 510, 558,
20 1194, 1197, and 1198; (2) failure to pay all wages due and owing upon separation of employment
21 and/or the mandatory waiting time penalties in violation of Labor Code §§ 201, 202, 203, and 210; (3)
22 failure to furnish accurate itemized wage statements in violation of Labor Code § 226; (4) failure to
23 maintain accurate records in violation of Labor Code §§ 226 and 1174; and (5) retaliation for use of
24 sick leave in violation of Labor Code §§ 98, 246, 248, and 1198.

25 To achieve a full and complete release of Prime Now (and the "Released Parties" as defined in
26 this Agreement) of such disputes and claims, the Named Plaintiff and Participating Settlement Class
27 Members, as defined in this Agreement (which include any legal heirs and/or successors-in-interest of
28 all Participating Settlement Class Members), through execution of the Agreement, acknowledge that

1 this Settlement Agreement is intended to include in its effect the entirety of the Released Claims, as
2 more fully described in Paragraphs 28, 29, 59, and 78 of this Agreement.

3 **II. DEFINITIONS**

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

6 1. “Actions” means *Adami v. Prime Now LLC* (Santa Clara County Sup. Ct. Case No.
7 21CV382938) and *Adami v. Prime Now LLC* (Northern District of Cal. Case No. 3:21-cv-03764-JSC).

8 2. “Attorneys’ Fees and Costs” means attorneys’ fees sought by Class Counsel for
9 litigation and resolution of the Actions, and all reasonable costs incurred by Class Counsel in the
10 Actions as outlined in this Agreement. Subject to review and approval by the Court, Class Counsel
11 may request attorneys’ fees of not more than one third (1/3) of the Gross Settlement Fund, or One
12 Million Four Hundred Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-
13 Three Cents (\$1,433,333.33) plus reasonable costs and expenses in an amount not to exceed Twenty-
14 Five Thousand Dollars (\$25,000.00), which shall be paid from the Gross Settlement Fund.

15 3. “Class Counsel” means and includes Graham S.P. Hollis, Vilmarie Cordero, Hali
16 Anderson, and Dawn M. Berry of Graham Hollis, A.P.C.

17 4. “Class Counsel Award” means any attorneys’ fees, expenses or costs awarded to Class
18 Counsel by the Court.

19 5. “Class List” means a confidential list of all Settlement Class Members and PAGA
20 Settlement Members that Prime Now will diligently and in good faith compile from its records and
21 provide to the Settlement Administrator within thirty (30) calendar days after entry of an order granting
22 Preliminary Approval of this Settlement. The Class List will include each Class Member’s full name;
23 most recent mailing address and telephone number contained in Prime Now’s personnel records; social
24 security number; dates of employment; information sufficient to calculate the number of “weeks
25 worked” or “workweeks” that each Settlement Class Member worked during the Class Period and the
26 number of “weeks worked” or “workweeks” that each PAGA Settlement Members worked during the
27 PAGA Period according to Prime Now’s records; and any other information needed to calculate
28 Individual Settlement Payments. The data provided to the Settlement Administrator will be treated as

1 confidential and will not be disclosed to anyone, except as may be required to applicable tax authorities,
2 pursuant to Defendant’s express written consent, by order of the Court, or to carry out the reasonable
3 steps described in this Settlement to locate missing Settlement Class Members. The data provided to
4 the Settlement Administrator will not be shared with Class Counsel.

5 6. “Class Period” means the period from March 18, 2020 through and including July 5,
6 2021.

7 7. “Class Representative Enhancement Payment” means the amounts to be paid to Named
8 Plaintiff, subject to final approval by the Court, in recognition of her effort and work in prosecuting the
9 Actions on behalf of Settlement Class Members, and for her general release of claims under Civil Code
10 section 1542. Subject to the Court granting final approval of this Settlement Agreement and subject to
11 the exhaustion of any and all appeals, Named Plaintiff will request Court approval of a Class
12 Representative Enhancement Payment of Ten Thousand Dollars (\$10,000.00).

13 8. “Court” or “Santa Clara County Superior Court” means the Superior Court of California
14 for the County of Santa Clara.

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

21 10. “Final Approval” means the entry of an order that the Named Plaintiff and Prime Now
22 will jointly seek from the Court, and the entry of which shall reflect the Court’s Judgment finally
23 approving the Settlement Agreement.

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

1 application by Class Counsel for Attorneys’ Fees and Costs and Named Plaintiff’s Class Representative
2 Enhancement Payment.

3 12. “Funding Date” means thirty (30) calendar days after the Effective Date.

4 13. “Gross Settlement Fund” means the non-reversionary amount of Four Million Three
5 Hundred Thousand Dollars (\$4,300,000.00), to be paid by Prime Now in full satisfaction of all
6 Released Claims, which includes all Individual Settlement Payments to Participating Settlement Class
7 Members, Participating Settlement Class Members’ shares of applicable payroll tax payments
8 (including FICA, FUTA, and SDI contributions), the Class Representative Enhancement Payment to
9 Named Plaintiff, the PAGA Settlement Amount for release of all Private Attorneys’ General Act
10 claims, Attorneys’ Fees and Costs, and Settlement Administration Costs. In addition to the amount
11 provided as part of the Gross Settlement Fund, Prime Now agrees to pay the employer’s share of
12 applicable payroll tax payments (“Employer’s Payroll Tax Payments”). Other than the Employer’s
13 Payroll Tax Payments and as contemplated by the Escalator Clause in Paragraph 62, in no event will
14 Prime Now be liable for more than the Gross Settlement Fund set forth in this Paragraph.

15 14. “Individual Settlement Payment” means each Participating Settlement Class Member’s
16 respective share of the Net Settlement Amount.

17 15. “Individual PAGA Payment” means each PAGA Settlement Member’s respective share
18 of the 25% of the PAGA Settlement Amount allocated to PAGA Settlement Members.

19 16. “Net Settlement Amount” means the portion of the Gross Settlement Fund remaining
20 after deducting the Class Representative Enhancement Payment, the Class Counsel Award, Settlement
21 Administration Costs, and the PAGA Settlement Amount. The entirety of the Net Settlement Amount
22 will be distributed to Participating Settlement Class Members pro rata, on a per “weeks worked” or
23 “workweek” basis. There will be no reversion of the Net Settlement Amount to Prime Now.

24 17. “Notice of Objection” means a Settlement Class Member’s valid and timely written
25 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the
26 objector’s full name, address, and signature; (ii) the case name and case number; (iii) a written
27 statement of the grounds for the objection; and (iv) a statement whether the objector intends to appear
28 at the Final Approval Hearing. Unless the Court orders otherwise, any Settlement Class Member who

1 does not submit a timely written objection to the Settlement, who fails to appear at the Final Approval
2 Hearing to lodge his or her objection, or who fails to otherwise comply with the specific and technical
3 requirements of this Paragraph, will be foreclosed from objecting to the Settlement and seeking any
4 adjudication or review of the Settlement, by appeal or otherwise.

5 18. “Notice Packet” means the Notice of Class Action Settlement, substantially in the form
6 attached as **Exhibit A**.

7 19. “PAGA Period” means the period from April 7, 2020 through and including July 5,
8 2021.

9 20. “PAGA Settlement Amount” means the amount that the Parties agree to allocate to the
10 PAGA Settlement Members and the Labor and Workforce Development Agency (“LWDA”) in
11 connection with resolution of the PAGA claims in the Actions. The Parties agree that Two Hundred
12 Fifteen Thousand Dollars (\$215,000.00) of the Gross Settlement Fund will be allocated to the
13 resolution of PAGA Settlement Members’ claims arising under PAGA. As required by PAGA,
14 Seventy-Five Percent (75%), or One Hundred and Sixty-One Thousand and Two Hundred and Fifty
15 Dollars (\$161,250.00), of the PAGA Settlement Amount will be paid to the California LWDA
16 (“LWDA Payment”), and Twenty-Five Percent (25%), or Fifty-Three Thousand and Seven Hundred
17 and Fifty Dollars (\$53,750.00), of the PAGA Settlement Amount will be distributed to PAGA
18 Settlement Members on a pro rata basis based on their respective number of “weeks worked” or
19 “workweeks” during the PAGA Period.

20 21. “PAGA Settlement Members” means all non-exempt employees of Prime Now in
21 California during the PAGA Period who underwent one or more COVID-19 temperature screenings.

22 22. “Participating Settlement Class Members” means all Settlement Class Members who do
23 not submit timely and valid Requests for Exclusion.

24 23. “Parties” means Named Plaintiff and Prime Now, collectively.

25 24. “Named Plaintiff” means Sima Adami.

26 25. “Preliminary Approval” means the Court order granting preliminary approval of this
27 Settlement Agreement.

28 26. “Prime Now” means Defendant Prime Now LLC.

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

4 28. “Released Class Claims” means all claims, actions, demands, causes of action, suits,
5 debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and
6 legal theories asserted in the operative complaint, or which relate to the primary rights asserted in the
7 operative complaint, including without limitation claims for (1) failure to timely pay all minimum,
8 regular, and /or overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and
9 1198; (2) failure to pay all wages due and owing upon separation of employment and/or the mandatory
10 waiting time penalties in violation of Labor Code §§ 201-203, and 210; (3) failing to furnish accurate
11 itemized wage statements in violation of Labor Code § 226; (4) failure to maintain accurate records in
12 violation of Labor Code §§ 226 and 1174; and (5) engaging in unlawful, unfair and/or fraudulent
13 business practices in violation of Business & Professions Code § 17200 *et seq.* The period of the
14 Released Class Claims shall extend to the limits of the Release Period. The *res judicata* effect of the
15 Judgment will be the same as that of the Release.

16 29. “Released PAGA Claims” means all claims for civil penalties pursuant to the Private
17 Attorneys General Act (codified in Labor Code § 2698 *et seq.*) based on the facts and legal theories
18 asserted in the operative complaint, or which relate to the primary rights asserted in the operative
19 complaint, including without limitation PAGA claims for (1) failure to timely compensate for all hours
20 worked, including minimum, regular, and /or overtime wages in violation of Labor Code §§ 204, 210,
21 510, 558, 1194, 1197, and 1198; (2) failure to pay all wages due and owing upon separation of
22 employment and/or the mandatory waiting time penalties in violation of Labor Code §§ 201-203, and
23 210; (3) failure to furnish accurate itemized wage statements in violation of Labor Code § 226; (4)
24 failure to maintain accurate records in violation of Labor Code §§ 226 and 1174; and (5) retaliation for
25 use of sick leave in violation of Labor Code §§ 98, 246, 248, and 1198. The period of the Released
26 PAGA Claims shall extend to the limits of the Release Period. The *res judicata* effect of the Judgment
27 will be the same as that of the Release. Named Plaintiff’s LWDA notice is attached as **Exhibit B** to
28 this Settlement Agreement.

1 30. “Released Claims” means the Released Class Claims and the Released PAGA Claims.

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

6 32. “Request for Exclusion” means a timely letter submitted by a Settlement Class Member
7 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth
8 the name and address of the Settlement Class Member requesting exclusion; (ii) include the case name
9 and case number (iii) be signed by the Settlement Class Member; (iv) be returned to the Settlement
10 Administrator; (v) clearly state that the Settlement Class Member does not wish to be included in the
11 Settlement; and (vi) be faxed or postmarked on or before the Response Deadline.

12 33. “Response Deadline” means the deadline by which Settlement Class Members must
13 postmark or fax to the Settlement Administrator Requests for Exclusion, Notices of Objection, or
14 disputes to workweeks. The Response Deadline will be sixty (60) calendar days from the initial mailing
15 of the Notice Packet by the Settlement Administrator, unless the sixtieth (60th) day falls on a Sunday
16 or federal holiday, in which case the Response Deadline will be extended to the next day on which the
17 U.S. Postal Service is open.

18 34. “Settlement Administration Costs” means the reasonable fees and expenses payable
19 from the Gross Settlement Fund to the Settlement Administrator for administering this Settlement,
20 including, but not limited to, printing, distributing, and tracking forms for this Settlement, calculating
21 estimated amounts per Settlement Class Member, tax reporting, distributing the LWDA Payment,
22 Gross Settlement Fund and Class Counsel Award, and providing necessary reports and declarations,
23 and other duties and responsibilities set forth herein to process this Settlement, as requested by the
24 Parties. The Parties have agreed to allocate up to One Hundred and Thirty Thousand Dollars
25 (\$130,000.00) to Settlement Administration Costs. The Settlement Administration Costs will be paid
26 from the Gross Settlement Fund. In the event the allocated Settlement Administration Costs exceed
27 the actual costs incurred by the Settlement Administrator, the difference shall be a part of the Net
28 Settlement Amount and distributed the Participating Settlement Class Members.

1 Thousand Dollars (\$4,300,000.00) plus the Employer's Share of Payroll Taxes into a Qualified
2 Settlement Fund to be established by the Settlement Administrator in exchange for the promises set
3 forth in this Settlement Agreement, including the Releases by the Participating Settlement Class
4 Members, PAGA Settlement Members, and Named Plaintiff for the Released Claims. The Individual
5 Settlement Payments are not being made for any other purpose and will not be construed as
6 compensation for purposes of determining eligibility for any health and welfare benefits or
7 unemployment compensation. After the Effective Date, the Gross Settlement Fund will be used to pay:
8 (i) Individual Settlement Payments; (ii) the PAGA Settlement Amount; (iii) the Class Representative
9 Enhancement Payment; (iv) the Class Counsel Award; and (v) Settlement Administration Costs. Prime
10 Now will deposit the Gross Settlement Fund and the Employer's Share of Payroll Taxes into a Qualified
11 Settlement Fund by the Funding Date.

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

23 42. Attorneys' Fees and Costs. Class Counsel shall apply to the Court for attorneys' fees
24 of not more than one-third (1/3) of the Gross Settlement Fund, or One Million Four Hundred Thirty-
25 Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$1,433,333.33) plus
26 reasonable costs and expenses in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000.00)
27 subject to proof by Class Counsel. The Settlement Administrator (and not Prime Now) shall issue an
28 IRS Form 1099 to Class Counsel reflecting the Class Counsel Award.

1 43. Class Representative Enhancement Payment. In exchange for general releases of all
2 known and unknown claims that she may have against Prime Now and Released Parties based on her
3 employment with Prime Now (including a waiver of claims under Civil Code section 1542), and in
4 recognition of her service to the class, Named Plaintiff shall apply for Class Representative
5 Enhancement Payment of Ten Thousand Dollars (\$10,000.00). The Class Representative
6 Enhancement Payment will be paid from the Gross Settlement Fund and will be in addition to Named
7 Plaintiff's Individual Settlement Payments paid pursuant to the Settlement Agreement. The Settlement
8 Administrator (and not Prime Now) shall issue an IRS Form 1099 to Named Plaintiff reflecting her
9 Class Representative Enhancement Payment. Named Plaintiff agrees to assume responsibility of
10 remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant
11 taxing authority the amounts required by law, if any, from her Class Representative Enhancement
12 Payment. In addition, Named Plaintiff shall hold Prime Now and the Released Parties harmless and
13 indemnify and defend Prime Now and the Released Parties for all taxes, interest, penalties, and costs
14 incurred by Prime Now or the Released Parties by any reason of any claims relating to their non-
15 withholding of taxes from the Class Representative Enhancement Award.

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

26 45. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
27 of Two Hundred Fifteen Thousand Dollars (\$215,000.00) from the Gross Settlement Fund will be
28 designated for satisfaction of Named Plaintiff's and PAGA Settlement Members' PAGA claims.

1 Pursuant to PAGA, Seventy-Five Percent (75%), or One Hundred and Sixty-One Thousand and Two
2 Hundred and Fifty Dollars (\$161,250.00), of the PAGA Settlement Amount will be paid to the
3 California LWDA, and Twenty-Five Percent (25%), or Fifty-Three Thousand and Seven Hundred and
4 Fifty Dollars (\$53,750.00), will be distributed on a pro rata basis to the PAGA Settlement Members
5 based on the number of “weeks worked” or “workweeks” during the PAGA Period. This amount will
6 not revert to Prime Now.

7 46. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
8 Participating Settlement Class Members as provided in Paragraphs 17 and 40. No portion of the Net
9 Settlement Amount will revert to or be retained by Prime Now.

10 Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and
11 apportioned from the Net Settlement Amount to Settlement Class Members on a pro rata basis
12 depending on the number of “weeks worked” or “workweeks” (defined as any calendar week during
13 the Class Period) in which a Settlement Class Member performed at least one day of work for Prime
14 Now. Settlement Class Members do not need to submit a claim to participate and receive their
15 Individual Settlement Payment. Members of the Waiting Time Sub-Class will be credited with an
16 additional six workweeks towards the calculation of their total workweeks worked. Such workweeks
17 shall be treated as penalties for tax purposes and shall not be counted as additional workweeks for
18 purposes of the Escalation Clause set forth in Paragraph 62.

19 47. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated
20 and apportioned from the 25% portion of the PAGA Settlement Amount allocated to PAGA Settlement
21 Members on a pro rata basis depending on the number of “weeks worked” or “workweeks” in which a
22 PAGA Settlement Member performed at least one day of work for Prime Now during the PAGA Period.
23 PAGA Settlement Members do not need to submit a claim to participate in the PAGA portion of the
24 Settlement and also may not opt out of the resolution of the PAGA claim.

25 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
26 Participating Settlement Class Members and Individual PAGA Payments made to PAGA Settlement
27 Members under this Settlement, as well as any other payments made pursuant to this Settlement, will
28 not be utilized to calculate any additional benefits under any benefit plans to which any Settlement

1 Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k)
2 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
3 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
4 contributions, or amounts to which any Settlement Class Members may be entitled under any benefit
5 plans. For the avoidance of doubt, no Settlement Class Member shall be entitled to any additional
6 right, contribution, or amount under any benefit plan as a result of this Settlement or payments made
7 hereunder.

8 49. Administration Process. The Parties agree to cooperate in the administration of the
9 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred
10 in the administration of the Settlement.

11 50. Notice to Labor and Workforce Development Agency. Within ten (10) calendar days
12 of the entry of the Court's order granting Preliminary Approval, Class Counsel will notify the LWDA
13 of that order consistent with Paragraph 29 of this Agreement and Labor Code sections 2699(1)(2)–(3).

14 51. Preparation of the Class List. Within thirty (30) calendar days of the entry of the Court's
15 order granting Preliminary Approval, Prime Now will provide the Class List to the Settlement
16 Administrator. Within fifteen (15) calendar days after the Response Deadline, the Settlement
17 Administrator will provide to counsel for Prime Now the list of Participating Settlement Class
18 Members, which, unless the Court orders otherwise, shall exclude individuals who filed a timely
19 Request for Exclusion.

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

24 53. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
25 Administrator will perform a search based on the National Change of Address Database for information
26 to update and correct for any known or identifiable address changes. Any Notice Packets returned to
27 the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent
28 promptly via regular First-Class U.S. Mail within three (3) business days of receipt to the forwarding

1 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the
2 Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly
3 attempt to determine the correct address using a skip-trace or other search using the name, address,
4 and/or Social Security number of the Settlement Class Member involved, and will then perform a single
5 re-mailing within three (3) business days of receipt. Settlement Class Members will have until the later
6 of ten (10) calendar days from the date of the re-mailing or the Response Deadline, to submit a Notice
7 of Objection, Request for Exclusion, or workweeks dispute.

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

21 55. Disputed Information in Notice Packets. Settlement Class Members will have an
22 opportunity to dispute the individualized information provided in their Notice Packets. To the extent
23 Settlement Class Members dispute their employment dates or the number of workweeks on record,
24 Settlement Class Members may produce evidence to the Settlement Administrator showing that such
25 information is inaccurate by the Response Deadline. The Settlement Administrator will decide the
26 dispute. Prime Now's records will be presumed correct, but the Settlement Administrator will evaluate
27 the evidence submitted by the Settlement Class Member and will make the final decision as to the
28

1 merits of the dispute. All disputes will be decided by the Settlement Administrator within fifteen (15)
2 business days of the Response Deadline.

3 56. Request for Exclusion Procedures. Any Settlement Class Member wishing to opt out
4 of the Settlement Agreement must sign and fax or mail a written Request for Exclusion to the
5 Settlement Administrator by the Response Deadline. In the case of Requests for Exclusion that are
6 mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine
7 whether a Request for Exclusion has been timely submitted. Consistent with California law, PAGA
8 Settlement Members may not opt out of the Settlement Agreement. Any Settlement Class Member
9 who timely submits a Request for Exclusion will still receive an Individual PAGA Payment
10 representing their portion of the PAGA Settlement Amount. All signatories and their counsel must not
11 encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through
12 any means. Objective statements to Settlement Class Members who call Class Counsel with inquiries
13 regarding the Settlement Agreement, or the exercise of Class Counsel's ethical obligations, shall not
14 be deemed a violation of the prohibitions contained herein.

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

24 58. Cancellation of Settlement Agreement. Within fourteen (14) calendar days of the
25 Response Deadline, as defined in the Court's Order granting Preliminary Approval of the Settlement,
26 Prime Now will have the option, in its sole discretion, to void the Settlement Agreement in its entirety
27 if five percent (5%) or more of all individuals eligible to become members of the Settlement Class
28 submit timely and valid Requests for Exclusion or are otherwise deemed by the Court not to be bound

1 by the Settlement. If Prime Now exercises this option, it shall be responsible for all Settlement
2 Administration Costs incurred to the date of cancellation.

3 59. Releases.

4 59(a) Release of Class Claims by Settlement Class Members. The Parties agree that
5 upon the Effective Date and Defendant’s full funding of the Gross Settlement
6 Fund, it is their intent that the terms set forth in this Settlement Agreement will
7 release any further attempt by lawsuit, administrative claim or action,
8 arbitration, demand, claims for civil penalties, or other action of any kind by
9 each and all of the Participating Settlement Class Members, who shall release
10 their right to pursue any and all claims against the Released Parties for the
11 Released Class Claims, as fully described in Paragraph 28, arising during the
12 Class Period.

13 59(b) Release of PAGA Claims by PAGA Settlement Members. The Parties agree
14 that upon the Effective Date and Defendant’s full funding of the Gross
15 Settlement Fund, it is their intent that the terms set forth in this Settlement
16 Agreement will release any further attempt by lawsuit, administrative claim or
17 action, demand, claims for civil penalties, or other action of any kind by each
18 and all of the PAGA Settlement Members, who shall release their right to pursue
19 any and all claims against the Released Parties for the Released PAGA Claims,
20 as fully described in Paragraph 29, arising during the PAGA Period.

21 59(c) Release of Claims by Named Plaintiff. Upon the Effective Date and Defendant’s
22 full funding of the Gross Settlement Fund, in addition to the claims being
23 released by all Participating Settlement Class Members and PAGA Settlement
24 Members, Named Plaintiff will release and forever discharge the Released
25 Parties, to the fullest extent permitted by law, of and from any and all claims,
26 known and unknown, asserted and not asserted, which Named Plaintiff has or
27 may have against the Released Parties based in any way on, or otherwise related
28 to or arising from, her employment with Prime Now as of the date of execution

1 of this Settlement Agreement. The releases include, but are not limited to, all
2 disputes relating to or arising out of any state, local, or federal statute, ordinance,
3 regulation, order, or common law, including, but not limited to, Title VII of the
4 Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000(e), *et seq.*; the Civil
5 Rights Act of 1866, as amended, 42 U.S.C. §§ 1981, *et seq.*; the Equal Pay Act,
6 as amended, 29 U.S.C. § 206(d); the Fair Labor Standards Act of 1939, as
7 amended, 29 U.S.C. §§ 201, *et seq.* and Code of Federal Regulations; the Orders
8 of the California Industrial Welfare Commission regulating wages, hours and
9 working conditions; the California Fair Employment & Housing Act, as
10 amended, Cal. Govt. Code §§ 12900, *et seq.*; the California Family Rights Act
11 of 1991, as amended; Cal. Govt. Code § 12945.2; the California Unruh Civil
12 Rights Act, as amended, Cal. Civ. Code §§ 51, *et seq.*; the California Labor Code
13 (including any claim for civil penalties under the California Labor Code Private
14 Attorneys General Act); the California Government Code; Article 1 of the
15 California Constitution; the Rehabilitation Act of 1973, as amended, 29 U.S.C.
16 §§ 701 *et seq.*; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12100,
17 *et seq.*; the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601, *et seq.*
18 and any state law equivalent; the Employee Retirement Income Security Act of
19 1974, 29 U.S.C. §§ 1001, *et seq.*; the National Labor Relations Act, as amended,
20 29 U.S.C. §§ 151, *et seq.*; California Business and Professions Code §§ 17200,
21 *et seq.*; other statutory and common law claims; statutory or common law rights
22 to attorneys' fees and costs, penalties/fines, and/or punitive damages; any action
23 based on contract, quasi-contract, quantum meruit, implied contract, tort,
24 wrongful or constructive discharge, breach of the covenant of good faith and fair
25 dealing, defamation, libel, slander, immigration issues, infliction of emotional
26 distress, negligence, assault, battery, conspiracy, harassment, retaliation,
27 discrimination on any basis prohibited by statute or public policy, conversion,
28

1 any interference with business opportunity or with contract or based upon any
2 other theory; and/or similar causes of action.

3 59(d) Named Plaintiff General Release. Upon the Effective Date, to the extent allowed
4 by California law, the Named Plaintiff waives all rights and benefits afforded by
5 section 1542 of the California Civil Code as to any Released Claims. Section
6 1542 provides:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
8 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
9 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
10 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
11 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
12 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

23 61. Notice of Objection Procedures. To object to the Settlement Agreement, a Settlement
24 Class Member must mail or fax a valid Notice of Objection to the Settlement Administrator on or
25 before the Response Deadline. The Notice of Objection must be signed by the Settlement Class
26 Member and contain all information required by this Settlement Agreement. The postmark or fax-
27 stamp date will be deemed the exclusive means for determining that the Notice of Objection is timely.
28 The Settlement Administrator will notify any person from whom it receives a Notice of Objection that

1 is not timely and/or valid if, in fact, such Notice of Objection is not timely and/or valid. Any disputes
2 regarding the timeliness, validity or effectiveness of a Notice of Objection shall be decided by the
3 Settlement Administrator consistent with the terms of this Agreement, and with the Parties' input, if
4 appropriate. Settlement Class Members who fail to object in the manner specified above will be
5 deemed to have waived all objections to the Settlement and will be foreclosed from making any
6 objections, whether by appeal or otherwise, to the Settlement Agreement, unless they appear at the
7 Final Approval Hearing and state their objection at that time. Settlement Class Members who submit
8 timely Notices of Objection may appear at the Final Approval Hearing in order to have their objections
9 heard by the Court. If the Court permits, Settlement Class Members who have not submitted a written
10 Notice of Objection in compliance with the Settlement Agreement may still appear at the Final
11 Approval Hearing and present their objections. At no time will any of the Parties or their counsel seek
12 to solicit or otherwise encourage Settlement Class Members to submit written objections to the
13 Settlement Agreement or appeal from the Final Approval Order and Judgment. Class Counsel will not
14 represent any Settlement Class Members with respect to any such objections to this Settlement.

15 62. Escalation Clause. The Gross Settlement Amount was calculated with, and is premised
16 on, the understanding that there are 43,860 Settlement Class Members who worked 707,894 workweeks
17 during the Class Period. The Parties agree that if the total number of workweeks during the Class Period
18 exceeds five percent (5%) of the estimated 707,894 workweeks (or by more than 39,395 workweeks),
19 then this Paragraph shall be triggered and Prime Now shall have the option to either:

20 (a) Increase the Gross Settlement Fund commensurate with the percentage increase in the
21 number of total workweeks beyond five percent (5%). For the avoidance of doubt, if the total
22 workweeks increases to 6% above the estimate provided in this Paragraph, then the Gross
23 Settlement Fund shall increase by 1% or;

24 (b) Modify the Class Period for purposes of calculating the number of workweeks only, to
25 an earlier date so that the total number of workweeks is no more than 5% above 707,894 (i.e.,
26 not above 743,289 workweeks).

27 63. Certification Reports Regarding Individual Settlement Payment Calculations. The
28 Settlement Administrator will provide Prime Now's counsel and Class Counsel a weekly report that

1 identifies the number of Settlement Class Members who have submitted valid Requests for Exclusion,
2 or objected to the Settlement, and whether any Settlement Class Member has submitted a challenge to
3 any information contained in his or her Notice Packet as provided in Paragraph 54. Additionally, the
4 Settlement Administrator will provide counsel for both Parties with any updated reports regarding the
5 administration of the Settlement Agreement as needed or requested, as consistent with the terms of the
6 Settlement Agreement.

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

10 64(a) Class Counsel Award and Class Representative Enhancement Payments:
11 Within twenty-one (21) calendar days of the Funding Date, the Settlement
12 Administrator will issue payments to Class Counsel of the Class Counsel
13 Award and Class Representative Enhancement Payments in the amounts
14 awarded by the Court.

15 64(b) Individual Settlement Payment and PAGA Settlement Amount: Within
16 twenty-one (21) calendar days of the Funding Date, the Settlement
17 Administrator will issue the LWDA Payment to the LWDA, the Individual
18 Settlement Payments to the Participating Settlement Class Members, and the
19 Individual PAGA Payments to the PAGA Settlement Members. The
20 Settlement Administrator will also issue a payment to itself for Court-
21 approved services performed in connection with the Settlement in the amount
22 approved by the Court. The Settlement Administrator will also issue Prime
23 Now's share of applicable employer payroll tax payments and penalties to the
24 appropriate government authorities.

25 65. Un-cashed Settlement Checks. Individual Settlement Payment and/or Individual PAGA
26 Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after
27 issuance will be void. Funds from the uncashed checks shall be distributed to the Controller of the
28 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section

1 1500 *et seq.*, for the benefits of those Participating Settlement Class Members and PAGA Settlement
2 Members who did not cash their checks, until such time they claim their property. The Parties agree
3 that this disposition results in no “unpaid residue” under California Civil Procedure Code Section 384,
4 as the entire Net Settlement Amount (plus the PAGA Settlement Amount) will be paid to the
5 Participating Settlement Class Members and PAGA Settlement Members, whether or not they all cash
6 their Individual Settlement Payment and/or Individual PAGA Payment checks.

7 66. Certification of Completion. Upon completion of the administration of the Settlement,
8 the Settlement Administrator will provide a written declaration under oath to certify such completion
9 to the Court and counsel for all Parties.

10 67. Treatment of Individual Settlement Payments. For tax purposes, the Individual PAGA
11 Payments from the PAGA Settlement Amount will be treated as 100% penalties and will be reported
12 on IRS Form 1099. Individual Settlement Payments will be allocated as follows: (i) Fifty Percent
13 (50%) to settlement of wage claims and (ii) Fifty Percent (50%) to settlement of claims for interest and
14 statutory penalties. The portion allocated to wages shall be reported on an IRS Form W-2 and the
15 portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement
16 Administrator. Plaintiff and Participating Settlement Class Members shall be solely responsible for
17 taxes associated with the 1099 and W-2 payments, with the exception of employer payroll taxes.
18 Participating Settlement Class Members shall be responsible for remitting to state and/or federal taxing
19 authorities any applicable other taxes due. Neither this Agreement, nor any of its attachments, should
20 be interpreted to contain or constitute representations or advice regarding any U.S. federal or state tax
21 issue. Settlement Class Members and PAGA Settlement Members will be specifically informed that
22 neither Prime Now nor Class Counsel make any representations regarding the tax implications of any
23 amounts paid under this Settlement Agreement and that if Settlement Class Members or PAGA
24 Settlement Members have any questions regarding those implications, they can and should consult a
25 tax expert.

26 68. Administration of Taxes by the Settlement Administrator. The Settlement
27 Administrator will be responsible for issuing to Named Plaintiff, Participating Settlement Class
28 Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all

1 amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for
2 forwarding Prime Now's share of applicable employer payroll tax payments and penalties to the
3 appropriate government authorities. All Settlement Class Members, including Participating Settlement
4 Class Members and PAGA Settlement Members, shall be solely and exclusively responsible for
5 remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold Prime
6 Now and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, and expenses
7 caused by any such taxing authority relating in any way to the PAGA Settlement Members', Settlement
8 Class Members' and Participating Settlement Class Members' tax treatment of payments made to them
9 pursuant to this Stipulation or failure to timely or properly pay any taxes owed on their respective
10 Individual Settlement Payment.

11 69. Tax Liability. Prime Now makes no representation as to the tax treatment or legal effect
12 of the payments called for hereunder, and Named Plaintiff and Participating Settlement Class Members
13 are not relying on any statement, representation, or calculation by Prime Now or by the Settlement
14 Administrator in this regard.

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

1 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
2 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
3 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY
4 HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY
5 SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER
6 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
7 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
8 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
9 AGREEMENT.

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

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

19 73. Termination of Settlement Agreement. Named Plaintiff and Prime Now will each have
20 the right to unilaterally terminate this Settlement Agreement by providing written notice of their
21 election to do so (“Termination Notice”) to all other Parties hereto within ten (10) business days of any
22 of the following occurrences; provided, however, that the Parties agree to cooperate in good faith to
23 address any issues the Court raises in connection with issuing Preliminary and/or Final Approval of the
24 Settlement:

25 73(a) five percent (5%) or more of the Settlement Class Members request exclusion
26 from the Settlement Class;

27 73(b) the Court rejects, materially modifies, materially amends or changes, or
28 declines to issue a Preliminary Approval Order or a Final Approval Order with

1 respect to the Settlement Agreement and the Parties are not permitted to
2 remedy any deficiencies the Court identifies;

3 73(c) an appellate court reverses the Final Approval Order, and the Settlement
4 Agreement is not reinstated without material change by the Court on remand;
5 or

6 73(d) any court incorporates terms into, or deletes or strikes terms from, or modifies,
7 amends, or changes the Preliminary Approval Order, the Final Approval
8 Order, or the Settlement Agreement in a way that Named Plaintiff or Prime
9 Now reasonably consider material, unless the modification or amendment is
10 accepted in writing by all Parties, except that, as provided above, the Court's
11 approval of Attorneys' Fees and Costs, Class Counsel Awards, and Class
12 Representative Enhancement Payments, or their amounts, is not a condition of
13 the Settlement Agreement.

14 74. Reversion Nunc Pro Tunc. If this Settlement Agreement is terminated pursuant to its
15 terms, or the Effective Date for any reason does not occur: (a) all Orders certifying the Settlement
16 Class for purposes of effecting this Settlement, and all preliminary and/or final findings regarding the
17 Settlement Class, shall be void *ab initio* and automatically vacated upon notice to the Court, (b) the
18 Actions shall proceed as though the Settlement Class had never been certified pursuant to this
19 Settlement Agreement and such findings had never been made, and (c) Named Plaintiff will file an
20 amended complaint that dismisses the class action claims and reverts to the operative complaint that
21 was in place immediately prior to the filing of the amended complaint. The Parties further agree that,
22 by assenting to the filing of the amended complaint for purposes of this Settlement only, Prime Now
23 does not admit any facts or waive any defenses.

24 75. Preliminary Approval Hearing. Named Plaintiff will obtain a hearing date before the
25 Court to request the Preliminary Approval of the Settlement Agreement and the entry of an order:
26 (i) conditionally certifying the Settlement Class for settlement purposes only; (ii) granting preliminary
27 approval to the proposed Settlement Agreement; (iii) setting a deadline for Class Counsel to file an
28 application for attorney's fees and costs and an application for a Class Representative Enhancement

1 Award for Named Plaintiff; and (iv) setting a date for a Final Approval Hearing. The Preliminary
2 Approval Order will provide for the Notice Packet to be sent to all Settlement Class Members as
3 specified herein. In conjunction with the Preliminary Approval hearing, Named Plaintiff will submit
4 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
5 Notice Packet, which will include the proposed Notice of Class Action Settlement, attached as **Exhibit**
6 **A**. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary
7 approval.

8 76. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
9 postmark Requests for Exclusion or Notices of Objection (and no earlier than one hundred (100)
10 calendar days after the date on which Named Plaintiff files her motion for Preliminary Approval) and
11 with the Court's permission, a Final Approval Hearing will be conducted to determine the Final
12 Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual
13 Settlement Payments (including all applicable taxes); (ii) the PAGA Settlement Amount; (iii) the Class
14 Representative Enhancement Payments; (iv) the Class Counsel Award; and (v) all Settlement
15 Administration Costs. Class Counsel will be responsible for drafting all documents necessary to obtain
16 final approval. Class Counsel will also be responsible for drafting the Class Counsel Award and Class
17 Representative Enhancement Payments application to be heard at the Final Approval Hearing, which
18 may be filed concurrently with a motion requesting final approval.

19 77. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the
20 Court or after the Final Approval Hearing, the Parties will present a proposed form of Judgment to the
21 Court for its approval, which Class Counsel shall submit to the Court that (i) approves the Settlement
22 Agreement, adjudging the terms thereof to be fair, reasonable, adequate, and directing consummation
23 of its terms and provisions; (ii) approving Class Counsel's application for an award of attorney's fees
24 and costs; (iii) approving the Class Representative Enhancement Awards; (iv) approving the PAGA
25 Settlement Amount; (v) the Settlement Administrator's fees from the Gross Settlement Amount; and
26 (vi) barring all Participating Settlement Class Members and PAGA Settlement Members from
27 prosecuting against the Released Parties, or any of them, any of the Released Claims. As required by
28 California Rule of Court 3.769(h), after entry of the Judgment, the Court will have continuing

1 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of
2 the Settlement; (ii) Settlement administration matters; and (iii) such post-Judgment matters as may be
3 appropriate under court rules or as set forth in this Settlement Agreement. Named Plaintiff shall also
4 take all necessary steps to voluntarily dismiss with prejudice *Adami v. Prime Now LLC* (Northern
5 District of Cal. Case No. 3:21-cv-03764-JSC) within seven (7) calendar days after the Effective Date.

6 78. Older Workers' Benefit Protection Act Waiver.

7 78(a) Named Plaintiff specifically intends that the claims she is releasing herein
8 include any claims that Named Plaintiff may have under the Age
9 Discrimination in Employment Act of 1967, as amended by the Older
10 Workers' Benefit Protection Act of 1990.

11 78(b) Named Plaintiff is advised to consult with her counsel before signing this
12 Settlement Agreement because Named Plaintiff is permanently giving up
13 significant legal rights. Named Plaintiff acknowledges that she has been so
14 advised.

15 78(c) Named Plaintiff acknowledges that she has been given at least twenty-one (21)
16 calendar days to execute and return this Settlement Agreement and has been
17 advised that, after she executes this Settlement Agreement, Named Plaintiff
18 has seven (7) calendar days to reconsider and revoke the Settlement
19 Agreement, recognizing that Named Plaintiff will not be provided anything
20 under this Settlement Agreement until at least that seven (7)-day revocation
21 period has expired. The general release will then become effective on the
22 eighth (8th) calendar day after it is signed, provided that Named Plaintiff does
23 not revoke it.

24 78(d) In order to effectively revoke this general release, the Parties agree that Named
25 Plaintiff must provide written notice of such revocation within seven (7)
26 calendar days after Named Plaintiff executes this Settlement Agreement to
27 counsel for Prime Now, Bradley Hamburger and Megan Cooney, via email to
28 bhamburger@gibsondunn.com and mcooney@gibsondunn.com.

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

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

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

9 82. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
10 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
11 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
12 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
13 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
14 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
15 unable to reach agreement on the form or content of any document needed to implement the Settlement,
16 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
17 the Parties may seek the assistance of the Court to resolve such disagreement.

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

20 84. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
21 will be governed by and interpreted according to the laws of the State of California.

22 85. Execution and Counterparts. This Settlement Agreement is subject to the execution of
23 all Parties. The Settlement Agreement may be executed in one or more counterparts. All executed
24 counterparts and each of them, including facsimile and scanned copies of the signature page, will be
25 deemed to be one and the same instrument.

26 86. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this
27 Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
28 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into

1 account all relevant factors, present and potential. The Parties further acknowledge that they are each
2 represented by competent counsel and that they have had an opportunity to consult with their counsel
3 regarding the fairness and reasonableness of this Settlement.

4 87. Invalidity of Any Provision. Before declaring any provision of this Settlement
5 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
6 possible consistent with applicable precedents so as to define all provisions of this Settlement
7 Agreement valid and enforceable.

8 88. Waiver of Certain Appeals. With the exception of a right to appeal the reduction of any
9 award of attorneys' fees, costs, and expenses as provided herein, Named Plaintiff and Prime Now
10 hereby waive their right to appeal or seek other judicial review of any order that is materially consistent
11 with the terms of this Settlement Agreement.

12 89. Class Certification for Settlement Purposes Only. The Parties stipulate to class
13 certification of any claims not yet certified for purposes of implementing the Settlement only, and in
14 no way is that an admission by Prime Now that class certification is proper. The Settlement will not
15 be admissible in any proceeding as evidence that (i) a class or collective should be certified as Named
16 Plaintiff has proposed for any claims, including but not limited to any currently non-certified claims;
17 (ii) the Actions should proceed on a representative basis pursuant to PAGA; or (iii) Prime Now is liable
18 to Named Plaintiff or any other individuals she claims to represent in the Actions in connection with
19 any claims that were or could have been asserted in the Actions.

20 90. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
21 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In
22 entering into this Settlement, Prime Now does not admit, and specifically denies, that it violated any
23 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
24 or any other applicable laws, regulations, or legal requirements; breached any contract; violated or
25 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
26 conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or
27 provisions, nor any of the negotiations connected with it, will be construed as an admission or
28 concession by Prime Now of any such violations or failures to comply with any applicable law. Except

1 as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its
2 terms and provisions will not be offered or received as evidence in any action or proceeding to establish
3 any liability or admission on the part of Prime Now or to establish the existence of any condition
4 constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

5 91. Media Restrictions. The Parties and their counsel agree that they will not issue any
6 press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement.
7 Unless required by applicable law, neither the Named Plaintiff nor Class Counsel shall publicize the
8 terms of this Settlement Agreement in any medium, or initiate or issue any press release or have any
9 communications to the press or media concerning the Actions, the Settlement of the Actions, and/or
10 this Settlement Agreement, except as posted by the Settlement Administrator as ordered by the Court.
11 Class Counsel shall not include, and shall affirmatively remove, any reference to any of the foregoing
12 subjects in any advertising, mass mailing, website, or other communication. If counsel for either Party
13 receives an inquiry about the Settlement from the media, counsel may respond only after the motion
14 for Preliminary Approval has been filed and only by confirming the terms of the Settlement.
15 Notwithstanding the foregoing, nothing will prevent Class Counsel from communicating confidentially
16 with Settlement Class Members as necessary to fulfill their obligations as Class Counsel.

17 92. Waiver. No waiver of any condition or covenant contained in this Settlement
18 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
19 imply or constitute a further waiver by such party of the same or any other condition, covenant, right,
20 or remedy.

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

26 94. Disputes Regarding Settlement Agreement. In the event that there are any disputes
27 arising out of or relating to this Settlement Agreement, any such dispute will be submitted to Lisa
28 Klerman, Esq. or a mutually agreeable mediator for mediation.

READ CAREFULLY BEFORE SIGNING

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Dated: 7/13/2023

DocuSigned by:
Sima Adami
By: _____
Sima Adami
Named Plaintiff and Class Representative

Dated:

By: _____
Prime Now LLC

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Dated:

By: _____

Sima Adami
Named Plaintiff and Class Representative

Dated: July 11, 2023

By: _____

DocuSigned by:
Eane Brown
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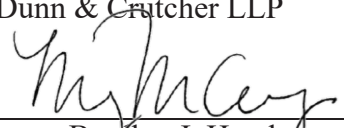
Prime Now LLC

APPROVED AS TO FORM

Dated: July 12, 2023

Gibson, Dunn & Crutcher LLP

By: _____



Bradley J. Hamburger
Megan Cooney
Attorneys for Defendant

Dated:

Graham Hollis, A.P.C.

By: _____

Graham Hollis
Dawn M. Berry
Attorneys for Named Plaintiff

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Dated:

Gibson, Dunn & Crutcher LLP

By: _____

Bradley J. Hamburger
Megan Cooney
Attorneys for Defendant

Dated: July 13, 2023

Graham Hollis, A.P.C.

By: _____

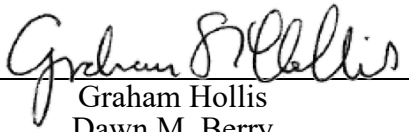

Graham Hollis
Dawn M. Berry
Attorneys for Named Plaintiff

EXHIBIT A

Sima Adami v. Prime Now LLC,
SANTA CLARA COUNTY SUPERIOR COURT, Case No. 21CV382938

NOTICE OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

You are not being sued. This notice affects your rights. Please read it carefully.

To: All current and former non-exempt employees of Prime Now LLC (“Prime Now” or “Defendant”) who performed work for Defendant in the state of California at any time during the period of March 18, 2020 and July 5, 2021.

You have received this Notice of Class Action Settlement and Release of Claims (“Notice”) because Prime Now’s records identify you as a non-exempt employee of Prime Now who performed work for Defendant in the state of California at any time from March 18, 2020 through July 5, 2021 who underwent one or more COVID-19 temperature screenings. The purpose of this Notice is to explain the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to receive them.

- **READ THIS NOTICE CAREFULLY. YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE**
- **THE COURT HAS NOT DETERMINED THAT DEFENDANT VIOLATED THE LAW. DEFENDANT DENIES THAT IT VIOLATED ANY LAWS OR THAT IT HARMED WORKERS IN ANY WAY. IT IS SETTling THIS LAWSUIT TO AVOID THE EXPENSE AND BURDEN OF FURTHER LITIGATION.**
- **NO SETTLEMENT CLASS MEMBER WILL BE SUBJECT TO RETALIATION IN ANY MANNER RELATED TO THIS LAWSUIT**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

RECEIVE YOUR INDIVIDUAL SETTLEMENT PAYMENT(S)	<p>You do not have to do anything to receive your Individual Settlement Payments other than ensuring that the Settlement Administrator has your current mailing address on file if it changes from the address to which this Notice was mailed. Payments will be mailed to you after the Court grants final approval of the Settlement. (See Pages ## for more information.)</p> <p>If you are a Participating Settlement Class Member, you will be mailed your Individual Settlement Payment in exchange for the release of the Released Class Claims.</p> <p>If you are a PAGA Settlement Member, you will be mailed your Individual PAGA Payment for the release of the Released PAGA claims regardless of whether you request exclusion from the Settlement.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT	<p>Decline your Individual Settlement Payment. Send a letter to the Settlement Administrator by [date] stating that you do not want to participate in the Settlement and do not want to receive your Individual Settlement Payment. (See Page # for more information.) This is the only option that will allow you to bring your own lawsuit against Defendant for the same wrongs settled by this lawsuit. By submitting a request for exclusion, you can only exclude yourself from the Class Settlement and will still be bound by the PAGA Settlement and receive an Individual PAGA Payment.</p>
OBJECT TO THE SETTLEMENT	<p>Write to the Court by [date] if you think the Settlement is not fair. You may also ask to speak in Court about why you think the Settlement is not fair. (See Page # for more information.)</p> <p>NOTE: You cannot object to the Class Settlement if you ask to exclude yourself from the Settlement Class.</p>
DISPUTE THE NUMBER OF WORKWEEKS	<p>If you believe that the number of Workweeks you were credited with working is incorrect, you must notify the Settlement Administrator of your belief and provide any supporting documentation by [date]. (See page # for more information.)</p>
CHANGE/UPDATE YOUR CONTACT INFORMATION	<p>Update your personal information to ensure that your Individual Settlement Payment is mailed to the correct address by contacting the Settlement Administrator at (###) ###-####.</p>

Introduction

The Honorable Theodore C. Zayner of the Superior Court for the State of California, County of Santa Clara, has granted preliminary approval of a proposed settlement (“Settlement”) of this class and representative action (“Action”).

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement. **You have received this Notice because Prime Now’s records indicate that you are a Settlement Class Member (defined below) and you may be entitled to a settlement payment.**

Unless you choose to be excluded from the Settlement by following the procedures described below, you will be deemed a Participating Settlement Class Member and, if the Court grants final approval of the Settlement, you will be mailed a check for your share of the settlement fund. However, all PAGA Settlement Members (as defined below) will receive a pro rata portion of the PAGA Settlement regardless of whether they opt out of the Settlement Class. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at **:00 .m. on _____, 2023** in Department 19 of the Superior Court for the State of California, County of Santa Clara, located at 161 North First Street San Jose, California 95113. You are not required to attend the Final Approval Hearing, but you are welcome to do so. The Court may change the Final Approval Hearing date or time without notice.

Summary of the Litigation

Plaintiff Sima Adami (“Plaintiff”), on behalf of herself and on behalf of other non-exempt employees of Prime Now who performed work for Defendant in the state of California at any time from March 18, 2020 through July 5, 2021 and underwent one or more COVID-19 temperature screenings, claims that Defendant violated California state labor laws by: (1) failing to timely compensate for all hours worked, including minimum, regular, and/or overtime wages; (2) failing to pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties; (3) failing to furnish accurate itemized wage statements; (4) failing to maintain accurate records; (5) violating Business and Professions Code § 17200 et seq.; and (6) violating the Private Attorneys General Act of 2004, Labor Code § 2698 et seq. (“PAGA”).

After the exchange of relevant information and evidence, the Parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On April 27, 2023, the Parties participated in a mediation with Lisa Klerman, Esq., an experienced and well-respected class action mediator. With Ms. Klerman’s guidance, the Parties were able to negotiate a complete settlement of the claims described above.

Counsel for Plaintiff, and the attorneys approved by the Court to represent the Settlement Class, Graham S.P. Hollis, Vilmarie Cordero, Hali M. Anderson, and Dawn M. Berry of GrahamHollis APC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believes that the claims alleged in this lawsuit have merit, Class Counsel also recognizes that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believes the proposed settlement is fair, adequate, reasonable, and in the best interests of Settlement Class Members and PAGA Settlement Members.

Defendant denies that it violated the law in any way. Defendant has denied, and continues to deny, the factual and legal allegations in the case and believe that it has valid defenses to the asserted claims. By agreeing to settle the Action, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class or representative action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of the Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the Action in exchange for a Gross Settlement Fund of \$4,300,000. This amount is inclusive of: (1) Individual Settlement Payments to all Participating Settlement Class Members; (2) a Class Representative Enhancement Payment in an amount up to \$10,000 to Plaintiff; (3) a Class Counsel Award in an amount up to \$1,458,333.33 (\$1,433,333.33 in attorneys’ fees and \$25,000 in litigation costs); (4) the PAGA Settlement Amount of \$215,000, and (5) Settlement Administration Costs not to exceed \$130,000. After deducting the Class Representative Enhancement Payment, the Class Counsel Award, the PAGA Settlement Amount,

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit www.***.com**

and the Settlement Administration Costs, a Net Settlement Amount of approximately \$2,540,416.67 will be allocated to Settlement Class Members who do not opt out of the Settlement Class (“Participating Settlement Class Members”).

Each Participating Settlement Class Member’s settlement payment (“Individual Settlement Payment”) will be based on the number of workweeks the Participating Settlement Class Member worked as a non-exempt employee of Prime Now who performed work for Defendant in the state of California at any time from March 18, 2020 through July 5, 2021 and underwent one or more COVID-19 temperature screenings (“Class Period”). The Net Settlement Amount will be distributed on a pro rata basis according to the number of workweeks worked during the Class Period. Any Participating Class Member whose employment with Prime Now terminated after March 18, 2020 will be credited with an additional six workweeks toward the calculation of their total workweeks worked.

Individual Settlement Payments will be calculated as follows: the number of the Participating Settlement Class Member’s credited workweeks during the Class Period, divided by the total number of credited workweeks worked by all Participating Settlement Class Members during the Class Period, multiplied by the Net Settlement Amount. The Settlement Administrator will calculate the respective number of workweeks worked by each Participating Settlement Class Member, based on information provided by Prime Now. Individual Settlement Payments will be treated as 50% interest and penalties and 50% wages. Participating Settlement Class Members will be responsible for taxes associated with the wages portion of the Individual Settlement Payments. The six additional workweeks credited to those whose employment with Prime Now terminated after March 18, 2020 will be allocated 100% as penalties.

The Parties also will seek approval for a PAGA Settlement from the Gross Settlement Amount in the amount of \$215,000, 75% of which will go to the Labor & Workforce Development Agency (“LWDA”), which enforces the Private Attorneys General Act of 2004, and 25% of which will be paid to all non-exempt employees of Prime Now who performed work for Defendant in the state of California at any time from April 7, 2020 through July 5, 2021 and underwent one or more COVID-19 temperature screenings (“PAGA Settlement Members”). Each PAGA Settlement Member is entitled to a pro rata share of the 25% portion of the PAGA Settlement available for distribution to PAGA Settlement Members based on the number of workweeks he or she worked during the PAGA Period (April 7, 2020 through July 5, 2021). The Individual PAGA Payment is to be calculated as follows: the number of the PAGA Settlement Member’s credited workweeks worked during the PAGA Period, divided by the total number of credited workweeks worked by all PAGA Settlement Members during the PAGA Period, multiplied by 25% of the PAGA Settlement. The full amount will be allocated as penalties. The PAGA Settlement Payment will be paid to all PAGA Settlement Members regardless of whether a Settlement Class Member requests exclusion from the settlement.

Each settlement payment will be reduced by any required legal deductions.

All checks will be voided 180 days after issuance. After the 180-day period, the associated funds from all uncashed or undeliverable Individual Settlement Payment and Individual PAGA Payment (collectively, “Individual Settlement Payment”) checks will be directed to the California State Controller and held in the name of the individual who did not cash those checks.

According to Prime Now’s records, you were a non-exempt employee in California during the Class Period and performed work for a total of [REDACTED] workweeks. According to Prime Now’s records, you were a non-exempt employee in California during the PAGA Period and performed work for a total of [REDACTED] workweeks.

Accordingly, if the Settlement is finally approved, your estimated payment would be approximately \$ [REDACTED], which includes a \$ [REDACTED] Individual Settlement Payment and a \$ [REDACTED] Individual PAGA Payment. If you believe the information provided above is incorrect, please promptly contact the Settlement Administrator at [REDACTED]. If you dispute the information stated above, Prime Now’s records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to Participating Settlement Class Members and PAGA Settlement Members, and the appropriate taxing authorities, reflecting the payments they receive under the Settlement.

Why is This Being Referred to as a “Class and Representative Action”

The settlement that you are receiving notice about involves a case that was filed as a class action and a representative action. The case and settlement you are being notified about include class action claims under California law for: (1) failure to pay minimum, regular

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit [www.\[REDACTED\].com](http://www.[REDACTED].com)**

and overtime wages, (2) failure to timely pay wages due upon separation of employment, (3) failure to provide accurate itemized wage statements, (4) failure to maintain accurate records, and (5) violation of Business & Professions Code § 17200 et seq. Further, this case includes claims involving the Private Attorneys General Act of 2004 for civil penalties, which is referred to as a “representative action.”

The key distinctions between a “class action” and a “representative action” are their requirements for how you participate in and how or if you can exclude yourself from the settlement.

If you wish to participate in the class action settlement, which is explained in this Notice and the Settlement Agreement, you do not have to do anything. You will receive money under the class action settlement by doing nothing. If you want to request to be excluded from and not be bound by, the class action settlement, then you must submit your intention to be excluded from the settlement in the manner and timeframe described in this Notice and in the Settlement Agreement. If you request exclusion from the Settlement, you still will receive a PAGA Settlement Payment and will be bound by the Released PAGA Claims that are part of the settlement.

If the Court approves the PAGA Settlement you will receive a PAGA Settlement Payment and do not have the option to exclude yourself and you will be bound by the Released PAGA Claims.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your Individual Settlement Payment from the settlement, then no further action is required on your part. You will automatically receive your Individual Settlement Payment and Individual PAGA Payment checks from the Settlement Administrator if and when the Settlement receives final approval by the Court.

Option 2 – Opt Out of the Settlement Class

If you do not wish to participate in the settlement, you may exclude yourself from participating in the Class Action Settlement by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice, decided not to participate in the Class Settlement, and wish to be excluded from the Settlement Class. The written request for exclusion must include: (1) your full name and current mailing address; (2) your signature; and (3) a statement which substantially reads as follows: “I wish to exclude myself from the settlement in *Sima Adami v. Prime Now LLC*, Santa Clara County Superior Court, Case No. 21CV382938, and I understand that by requesting to be excluded from the Settlement Class I will not receive any money from the settlement other than the PAGA Settlement Payment I will receive if I am an eligible PAGA Settlement Member.”

The written request for exclusion must be sent to:

[Settlement Administrator]

c/o _____

The written request to be excluded must be postmarked by _____, 2023. If you submit a request for exclusion that is not postmarked by _____, 2023, your request for exclusion will be rejected, and you will be included in the Settlement Class.

If you do not request exclusion from the settlement but then later do not cash your settlement checks, you will still be bound by the Released Class Claims. If you request exclusion from the settlement, you will still receive an Individual PAGA Payment and will be bound by the Released PAGA Claims that are part of the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find any portion of it unfair or unreasonable, you must submit an objection stating why you object to the settlement. The objection must be signed by the Class Member or his or her counsel and state: (1) the full name, address, and signature of the Settlement Class Member; (2) the case name and case number; (3) the basis for the

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit www._____.com**

objection; and (4) whether the Settlement Class Member intends to appear at the Final Approval Hearing. The objection must be mailed or faxed to the Settlement Administrator at [administrator's address and fax number].

All objections must be postmarked by [redacted] 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for [redacted] at [redacted] a.m./p.m. in Department 19 of the Superior Court for the State of California, County of Santa Clara, located at 161 North First Street San Jose, California 95113, and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing. The Court may change the hearing date or time without notice.

If you choose **Option 1 and do nothing**, and if the Court grants final approval of the Settlement, then you will be mailed a check for your Individual Settlement Payment. In addition, you will be deemed to have released or waived the following claims ("Released Class Claims"):

Upon the Effective Date, and except as to the right to enforce the terms and conditions of the Agreement, each Participating Settlement Class Member will release the Released Parties of all claims, actions, demands, causes of action, suits, debts, obligations, demands, rights, liabilities, or legal theories of relief, that are based on the facts and legal theories asserted in the operative complaint, or which relate to the primary rights asserted in the operative complaint, including without limitation claims for (1) failure to timely pay all minimum, regular, and /or overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and 1198; (2) failure to pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties in violation of Labor Code §§ 201-203, and 210; (3) failing to furnish accurate itemized wage statements in violation of Labor Code § 226; (4) failure to maintain accurate records in violation of Labor Code §§ 226 and 1174; and (5) engaging in unlawful, unfair and/or fraudulent business practices in violation of Business & Professions Code § 17200 et seq. ("Released Class Claims"). The period of the Released Class Claims shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Released Class Claims.

Further, upon approval of the settlement, you will be bound by the Released PAGA Claims, which includes a release of the following:

Upon the Effective Date, and except as to the right to enforce the terms and conditions of the Agreement, each PAGA Settlement Member will release the Released Parties of all claims pursuant to the Private Attorneys General Act (codified in Labor Code §§ 2698 et seq.) based on the facts, legal theories, and primary rights asserted in the operative complaint in the Action, including PAGA claims for (1) failure to timely compensate for all hours worked, including minimum, regular, and /or overtime wages in violation of Labor Code §§ 204, 210, 510, 558, 1194, 1197, and 1198; (2) failure to pay all wages due and owing upon separation of employment and/or the mandatory waiting time penalties in violation of Labor Code §§ 201-203, and 210; (3) failure to furnish accurate itemized wage statements in violation of Labor Code § 226; (4) failure to maintain accurate records in violation of Labor Code §§ 226 and 1174; and (5) retaliation for use of sick leave in violation of Labor Code §§ 98, 246, 248, and 1198 ("Released PAGA Claims"). The period of the Released PAGA Claims shall extend to the limits of the PAGA Period. The res judicata effect of the Judgment will be the same as that of the Release.

Please be advised that if you later decide to bring a claim against any of the Released Parties for any of the claims you released (outlined above), you may be responsible for paying the attorneys' fees and costs of the Released Parties for violating the release provisions of this settlement.

If you choose **Option 2 and request exclusion** then you will no longer be a Settlement Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Class Claims, (2) be barred from filing an

Questions? Contact the Settlement Administrator toll free at 1-*-***-**** or visit [www.\[redacted\].com](http://www.[redacted].com)**

objection to the settlement, and (3) not receive an Individual PAGA Payment. You will, however, receive a PAGA Settlement Payment and will be bound by the Released PAGA Claims.

If you choose **Option 3 and object**, then you will still be entitled to your Individual Settlement Payment and Individual PAGA Payment. If the Court overrules your objection, you will be deemed to have released the Released Class Claims.

Additional Information

“The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara’s Electronic Filing and Service Website at www.sceffiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures. Alternatively, you may contact the Settlement Administrator or Class Counsel. All inquiries by Settlement Class Members regarding this Notice or the Settlement should be directed to the Settlement Administrator or Class Counsel, whose information is below.

Settlement Administrator:

[Settlement Administrator]
[Address]
[Phone Number]

Class Counsel:

Graham S.P. Hollis
Dawn M. Berry
GrahamHollis APC
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Phone: (619) 546-4373 (English)
(619) 798-4528 (Spanish)

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT’S ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-***-***-**** or visit www.***.com