

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DOMINIC OLIVEIRA,
on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

V.

NEW PRIME INC.,

Defendant.

Civil Action No. 1:15-cv-10603-PBS

PLAINTIFFS' ASSENTED-TO MOTION FOR PRELIMINARY SETTLEMENT APPROVAL

This case has been brought on behalf of truck drivers for Defendant New Prime, Inc. (“Prime”). Plaintiff Dominic Oliveira alleges that Prime has failed to compensate its drivers properly for classroom orientation and for driving (both when classified as employees and when classified as independent contractors) and that Prime’s pay practices violate the Fair Labor Standards Act (“FLSA”) and, for classroom orientation occurring in Missouri, the Missouri minimum wage laws and common law. After more than five years of litigation, including trips to the United States Court of Appeals for the First Circuit and the United States Supreme Court relating to the applicability of Prime’s arbitration agreement to drivers classified as independent contractors, extensive discovery, full briefing and argument on class and collective certification and Defendant’s motion to compel arbitration under Missouri law, and months of arm’s length negotiations with a mediator, the parties have reached a proposed settlement. Specifically, the parties propose to resolve this case, as well as the related case Haworth

et al. v. New Prime, Inc., W.D. Mo. Civil Action No. 6:19-cv-03025-RK, now pending in the United States District Court for the Western District of Missouri, on a class and collective action basis pursuant to Federal Rule of Civil Procedure 23(e) and 29 U.S.C. § 216(b), on behalf of the following class and collective:

All individuals who have attended training to become truck drivers for Prime and/or have driven for Prime either as employee drivers or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time from March 4, 2010, to May 8, 2020, except two individuals who served as named plaintiffs in another class settlement against New Prime, Inc., in the case of Montgomery v. New Prime, Inc., C.D. Cal. Civil Action No. 8:17-cv-00321, and signed full releases as part of that settlement.

The parties have agreed to settle this matter on behalf of the proposed class/collective for up to \$28,000,000, as well as significant non-monetary relief, as described in further detail in Section I.A, *infra*. A copy of the parties' Settlement Agreement is attached as Exhibit 1.

This proposed settlement is a fair, reasonable, and adequate result for the Class, as discussed in more detail below. In addition to affording each settlement class member significant monetary and non-monetary recovery for the claims in this case, it will avoid the risks, uncertainties, and delays inherent in further litigation.

Accordingly, Plaintiffs respectfully ask that the Court:

1. Preliminarily certify the proposed class/collective for settlement purposes;
2. Approve the notice procedure and authorize Plaintiffs to issue notice and claim forms to the settlement class members in the forms attached as Exhibit 2-A (electronic) and Exhibit 2-B (paper);

3. Approve the distribution formula and claim procedure set forth in the parties' Settlement Agreement and this motion;

4. Order that, once the Haworth court has preliminarily approved the settlement on behalf of the B/C seat class, this Court shall preside over the consolidation of the two cases for purposes of final settlement approval; and

5. Schedule a final fairness and approval hearing for a date in approximately October 2020, at which time Plaintiffs will report to the Court the results of the notice process and explain why this settlement should be given final approval and the settlement fund distributed.

A proposed preliminary settlement approval order is attached as Exhibit 3.

BACKGROUND

Plaintiffs filed this lawsuit on March 4, 2015, alleging that Prime has failed to compensate its truck drivers as required by the FLSA and, as to classroom orientation in Missouri, as required by the Missouri minimum wage laws and common law. Prime moved to compel arbitration of Plaintiff Oliveira's claims. In October 2015, this Court denied Prime's motion to compel arbitration without prejudice and ordered the parties to conduct factual discovery on the preliminary question of Plaintiff's status as an employee or an independent contractor (for purposes of determining whether the Federal Arbitration Act's exemption for "contracts of employment" of workers in interstate commerce, 9 U.S.C. § 1, applied). Prime immediately filed a Notice of Appeal, pursuant to the FAA's provision allowing interlocutory appeal of orders denying motions to compel arbitration, 9 U.S.C. § 16. This case was stayed pending appeal.

The First Circuit issued a decision in Plaintiff's favor on May 12, 2017, affirming this Court's decision and holding that Prime's arbitration agreement was not covered by the FAA. 857 F.3d 7 (1st Cir. 2017). Prime then sought certiorari before the United States Supreme Court. While Prime's petition for certiorari was pending, the parties engaged in some discovery. The Supreme Court granted Prime's petition on September 6, 2017. This matter was then stayed pending the Supreme Court's decision. The Supreme Court issued a decision affirming the First Circuit on January 15, 2019.

Once the case was remanded from the Supreme Court, the parties undertook extensive discovery. Prime produced approximately 50,000 pages of written discovery. Plaintiffs conducted a Rule 30(b)(6) deposition, two other depositions of Prime managerial employees, and a site inspection of Prime's corporate headquarters in Springfield, Missouri. Prime conducted the deposition of named plaintiff Dominic Oliveira. Plaintiff Oliveira and the other opt-in Plaintiffs also responded to written discovery requests and produced documents in discovery.

The parties also engaged in substantive motion practice after remand from the Supreme Court. Prime moved to compel arbitration of the claims of individuals who had filed opt-in consent forms which was fully briefed and argued and which motion the Court denied on December 9, 2019. Plaintiffs filed a motion for class and collective certification, for which opposition and reply briefs were also filed, and the Court heard oral argument on that motion on December 18, 2019. There was also discovery motion practice, which was referred to Magistrate Judge Donald L. Cabell and as to which the parties negotiated a resolution.

On January 22, 2019, Rocky Haworth filed an action styled Haworth et al. v. New Prime, Inc., W.D. Mo. Civil Action No. 6:19-cv-03025-RK, in the United States District Court for the Western District of Missouri, on behalf of himself and similarly situated individuals who drove for Prime as B seat and C seat drivers and alleged that Prime had failed to pay those drivers at least minimum wage for all hours worked. The case included counts under the FLSA and the Missouri minimum wage laws and common law.

The Haworth case was heavily litigated, including written discovery and depositions and the production of millions of lines of electronic data pertaining to the Class members. Plaintiffs filed a motion for conditional certification under the FLSA which was fully briefed. Prime filed a motion to stay the case because the Oliveira case was pending. At that point, the undersigned counsel joined as counsel in Haworth. The Haworth court heard argument on Plaintiffs' motion for conditional certification and Prime's motion to stay proceedings and ultimately granted Plaintiffs' motion for conditional certification and denied Prime's request for a stay on March 23, 2020. See Haworth v. New Prime, Inc., __ F. Supp. 3d __, 2020 WL 1430478 (W.D. Mo. Mar. 23, 2020). After that, the parties engaged in motion practice regarding the method of sending notice to potential opt-in plaintiffs. Pursuant to the parties' settlement agreement, the parties notified the Haworth court of a proposed settlement. Pending deadlines in Haworth have been stayed, and a preliminary settlement approval hearing (at which time Plaintiffs will request that Haworth be transferred to this Court and

consolidated with this case for final settlement approval purposes) is to be scheduled in early August 2020.

While these cases were being litigated, the parties also were engaging in ongoing settlement negotiations. The parties engaged in a full-day mediation with mediator D. Charles Stohler on November 14, 2020. Prior to that mediation, Prime turned over extensive data from which Plaintiffs were able to conduct calculations of potential damages. The parties also engaged in data production for settlement purposes and a full-day mediation in the Haworth matter. The matters did not settle at mediation, but Mr. Stohler continued to conduct settlement negotiations over the course of several months, including exchange of data, damages calculations, etc. Finally, with Mr. Stohler's assistance, the parties have reached an agreement to settle this case pursuant to the terms set forth herein. The proposed settlement includes resolution of both this matter and the Haworth matter and consolidation of both cases after preliminary approval before this Court for final settlement approval.¹

BACKGROUND

I. THE PROPOSED SETTLEMENT TERMS, PLAN FOR NOTICE, AND DISTRIBUTION OF THE SETTLEMENT FUND.

A. Settlement terms and proposed distribution of settlement funds.

The total settlement fund is up to \$28,000,000, of which \$14,000,000 is non-reversionary, meaning it will all be distributed, and \$14,000,000 is to be distributed only

¹ Pursuant to the terms of the Settlement Agreement, if the settlement is finally approved, this Court shall dismiss the consolidated actions with prejudice as part of final settlement approval. If the settlement is not finally approved, this Court shall transfer *Haworth* back to the United States District Court for the Western District of Missouri for further proceedings.

to the extent that it is claimed. Per the Settlement terms the following allocation is to be made among the various claims in the case:

- **Classroom orientation fund:** \$7,000,000 in non-reversionary funds to resolve the claims relating to unpaid classroom orientation;
- **B/C seat driving fund:** \$3,500,000 in non-reversionary funds and \$5,000,000 in claims-made funds to resolve the claims relating to B seat or C seat driving;
- **A seat driving fund:** \$3,500,000 in non-reversionary funds and \$5,000,000 in claims-made funds to resolve the claims relating to employee A seat (post final/upgrade orientation) driving; and
- **Independent contractor driving fund:** \$4,000,000 in claims-made funds to resolve the claims relating to independent contractor driving (*i.e.*, driving while classified as an independent contractor).

Additionally, per the terms of the Settlement Agreement: up to 33% of the total settlement fund as attorneys' fees to Plaintiffs' counsel (up to \$9,240,000 total); incentive payments of up to \$50,000 for named plaintiff Dominic Oliveira and up to \$25,000 for Rocky Haworth, the named plaintiff in the Haworth case, to be drawn equally (\$25,000 each) from the classroom orientation fund, the non-reversionary portion of the B/C seat driving fund, and the non-reversionary portion of the A seat driving fund; reasonable litigation costs, including costs of settlement administration, of up to \$225,000, to be drawn half (up to \$112,500) from the classroom orientation fund, 25% (up to \$56,250) from the non-reversionary portion of the B/C seat driving fund, and 25% (up to \$56,250) from the non-reversionary portion of the A seat driving fund; and a fund of up

to \$200,000 to resolve disputes and pay reasonable late claims to be drawn 25% (up to \$50,000) from the claims-made portion of the B/C seat driving fund, 25% (up to \$50,000) from the non-reversionary portion of the A seat driving fund, and 50% (up to \$100,000) from the independent contractor driving fund. If the Court were to reduce any amounts proposed for attorneys' fees, incentive payments, litigation costs, or the dispute fund, those amounts would be distributed to class members to the extent that they come from non-reversionary funds and would revert to Defendant to the extent that they come from claims-made funds.

The amounts above are to be distributed to class/collective members as follows:

Minimum payments: Minimum payments of \$100 each would be distributed all class/collective members, regardless of whether or not they submit Consent to Join Forms. These amounts will be paid out from the non-reversionary funds in proportion to the individual class/collective member's entitlement to receive funds from each of the non-reversionary funds.

Orientation fund: Individuals' shares from the orientation fund shall be distributed proportionate to their attendance at orientation, except that different orientations shall be assigned different weights or shares, specifically 2 shares for attending D seat orientation since March 2012, and 1 share for D seat orientation attended in Missouri before March 2012, 1 share for individuals who have worked as A seat drivers or independent contractor drivers (and who therefore attended a classroom orientation in connection therewith), and 1.25 shares for individuals who have worked as both A seat drivers and independent contractor drivers. Additionally, there shall be a 1.5 multiplier

for each D seat orientation attended in Missouri since March 2012. The shares are in recognition of the differing damages available for each orientation (because of varying lengths of orientation), and the multipliers are in recognition of the higher Missouri minimum wage and the fact that the pre-March 2012 claims are based on common law theories only, for which the potential damages are lower. All amounts from the orientation fund shall be distributed to claiming class members in proportion to their relative shares from the fund.

B and C seat driving funds: Individuals' shares from the B and C seat driving funds shall be distributed proportional to each individual's total number of weeks worked as a B and/or C seat driver multiplied by the number of miles driven as a B and/or C seat driver and divided by gross earnings while employed as a B and/or C seat driver. This formula takes into account length of employment as a B and/or C seat driver, miles driven/hours worked, and wages earned. All amounts from the non-reversionary portion of the B and C seat driving fund shall be distributed to claiming class members in proportion to their relative shares from the fund. Amounts from claims-made portion of the B and C seat driving fund shall be distributed to the extent that they are claimed.

A seat driving funds: Individuals' shares from the A seat driving funds shall be distributed proportional to each individual's total number of weeks worked as an A seat employee driver multiplied by the number of miles driven as an A seat driver and divided by gross earnings while employed as an A seat driver. This formula takes into account length of employment as an A seat driver, miles driven/hours worked, and

wages earned. All amounts from the non-reversionary portion of the A seat driving fund shall be distributed to claiming class members in proportion to their relative shares from the fund. Amounts from the claims-made portion of the A seat driving fund shall be distributed to the extent that they are claimed.

Independent contractor driving fund: Individuals' shares from the independent contractor driving fund shall be distributed proportional to each individual's total number of weeks worked as an independent contractor driver multiplied by the number of miles driven as an independent contractor driver and divided by gross earnings minus 50% of deductions taken while employed as an independent contractor driver. This formula takes into account length of employment as an independent contractor driver, miles driven/hours worked, wages earned, and allegedly unlawful deductions taken from pay. Amounts from the independent contractor driving fund shall be distributed to the extent that they are claimed.

Individuals who participated as class members in the class settlement in Montgomery v. New Prime, Inc., C.D. Cal. Civil Action No. 8:17-cv-00321 shall be entitled to receive 50% of what would be their total settlement share in this case if they had not participated in that settlement; accordingly, their resulting numerators and/or settlement shares will be decreased by 50%. Any amounts not distributed to Montgomery plaintiffs and/or class members from this settlement shall be proportionally redistributed to other eligible class members.

Claiming class/collective members will be entitled to receive amounts from all funds that apply to them and shall also receive the \$100 minimum payment.

For more explanation of the formulas for calculating individuals' shares from each fund, *see* Settlement Agreement (Exhibit 1), Section C.

Plaintiffs' proposed allocation formula is fair, reasonable, and adequate in that it takes into account each individual's potential damages from the case and allocates the settlement monies accordingly. Courts routinely hold that such formulas are fair, reasonable, and adequate. Indeed, a distribution formula that reimburses class members based on the type and extent of their injuries is presumptively reasonable. *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 328 (3d Cir. 2011) ("Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable") (citations omitted); *Walsh v. Popular, Inc.*, 839 F. Supp. 2d 476, 482 (D.P.R. 2012) (approving methodology for calculating shares from class settlement based on "each class member's losses relative to those of the class as a whole"); *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 110 (D. Mass. 2010) (holding that plan of allocation was reasonable because it was based on class members' losses); *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008) ("It is reasonable to allocate the settlement funds to class members based on the extent of their injuries"); *In re Citric Acid Antitrust Litigation*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001) (allocation plan that "reimburses class members based on the type and extent of their injuries is generally reasonable").

Prime shall deposit \$21,000,000 into a Qualified Settlement Fund established by the Settlement Administrator² within sixty days after the Court grants preliminary

² The parties have agreed to use JND Class Action Administration as the Settlement Administrator in this case.

settlement approval. Prime shall deposit any remaining amounts owed within thirty days after the close of the claim period. Settlement payments shall be made by check within thirty days after final approval of the settlement (including exhaustion of appeals, if any). Individuals shall have 180 days to deposit or cash checks from the settlement. After the expiration of the checks, the Settlement Administrator shall deliver any uncashed or uncollected but claimed funds to the appropriate state Unclaimed Property Division. Reversionary funds not allocated to claiming Class Members shall be returned to Defendant.

In addition to these monetary amounts, members of the class/collective are receiving significant non-monetary relief. Specifically, Prime has agreed to a release of monies that it asserts that employee drivers owe to Prime and has agreed not to seek those monies from the drivers in post-employment collection efforts (including both internal collection efforts, wage deductions, and collection efforts by third-party collection companies). Prime has agreed to discontinue these collections as to all monies that Prime asserts are owed to it by employee drivers in the class/collective, regardless of whether or not they submit claim forms to participate in the settlement.

Prime has also agreed to a release of monies that it asserts that independent contractor drivers owe to Prime and has agreed not to seek those monies from the drivers in post-employment collection efforts (including both internal collection efforts, wage deductions, and collection efforts by third-party collection companies), with two conditions. First, this release only applies to independent contractor drivers who submit claim forms to participate in the settlement. Second, the release only applies as

to independent contractor drivers who have not destroyed, damaged, or stolen Prime's property. The parties have agreed to an extensive process for determining whether or not Prime claims that a driver has destroyed, damaged, or stolen Prime's property, including an opportunity to cure and an opportunity for the driver to challenge Prime's assertion, which challenge shall be decided by the Settlement Administrator in the first instance and ultimately, if the challenge is not capable of resolution by the Settlement Administrator, by binding arbitration before D. Charles Stohler, whose fees for these services shall be paid out of the dispute fund. If a dispute is resolved in whole or in part in favor of the driver, then Prime shall release entitlement to monies as to such driver (in whole or in part, depending on the resolution of the dispute).

For all individuals for whom Prime has agreed to release entitlement to monies (described above), Prime has also agreed to the following upon final approval of the settlement:

- After final approval of the settlement, Prime will use its best efforts to request that the national credit reporting agencies (Experian, Equifax and TransUnion delete any reporting of the trade line(s) with respect to the drivers' accounts with Prime in connection with the purported debts released;
- If a driver requests by letter to HireRight that records of a default to Prime and/or related entities be corrected in accordance with the release of Prime's entitlement to monies, and to the fullest extent permitted by law, Prime agrees to provide a timely letter to HireRight with a copy to the requesting driver that any

defaults owing to Prime and/or related entities have been rescinded by mutual agreement; and

- Prime and related entities shall give no new or additional negative references to any driver for having allegedly defaulted on any amounts released.

B. Settlement notice and claim process.

If this Court, as well as the Haworth Court, preliminarily approve this settlement, Plaintiffs will send the attached notice and claim form to members of the proposed class/collective. The parties have agreed to notice being sent by email to all individuals for whom Prime has email addresses and by first-class mail (with return envelope provided) for all individuals for whom Prime does not have email addresses and/or as to whom the emails are returned as undeliverable. The Settlement Administrator shall make all reasonable efforts to follow up on undeliverable addresses and to resend the notice and claim form to updated addresses (including all addresses provided by Plaintiffs' counsel and/or class members). The Settlement Administrator shall establish a website with the notice, contact information for the Settlement Administrator and Plaintiffs' counsel, and the claim form which may be submitted electronically (*inter alia*). A reminder shall go out approximately halfway through the claim period to those who have not claimed. The reminder shall go out by email to those with valid email addresses and by a postcard by first-class mail for others. The reminder shall include the address of the website, as well as contact information for the Settlement Administrator and Plaintiffs' counsel.

Class/collective members shall have sixty days from initial mailing to submit claim forms, object, or request exclusion from the settlement, except that those deadlines shall be extended for those whose original notice packet is resent because of undeliverable addresses so that the individuals have no less than thirty days to submit a claim form, object, or request exclusion. Class/collective members may submit claim forms electronically (using electronic signature) via the class settlement website and may also submit claim forms by mail (including FedEx, UPS, etc.), email, or facsimile, sent or postmarked by the claim deadline.

The proposed notice constitutes sufficient class notice. “Notice is satisfactory ‘if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’” Nat’l Ass’n of Deaf v. Massachusetts Inst. of Tech., No. 3:15-CV-30024-KAR, 2020 WL 1495903, at *4 (D. Mass. Mar. 27, 2020) (approving notice which “includes a clear and comprehensive summary of the provisions of the proposed settlement,” “defines the relevant terms, explains what content will be captioned, when the captioning will occur, and ‘explains to class members their right to object and be heard in open court’”); Wallace v. Powell, 288 F.R.D. 347, 367 (M.D. Pa. 2012) (adequate class settlement notice “detailed the nature of the action, the definition of [the classes], the claims of the Settlement Classes, the terms of the Settlement Agreement, and the right to object or request exclusion from the terms of the Settlement”). Substantively, the notice clearly informs settlement class/collective members about the terms of the settlement, their options with respect to the settlement, the monetary and non-monetary relief to which they are entitled if they participate, the

release of claims, relevant deadlines and dates, and contact information for the Settlement Administrator and Plaintiffs' counsel. The settlement agreement will also be available on the settlement website.

The plan for dissemination of the notice is reasonable as well. Notice will be sent to class/collective members by email or by mail for those for whom Prime does not have email addresses or for whom emails are returned as undeliverable and will also be available on the settlement website. A reminder will be sent by mail and/or email as well to those who have not yet claimed approximately halfway through the claim period. Class/collective members are able to submit claim forms electronically or by mail, fax, or email. This notice and method for submission of claim forms is unquestionably reasonable and the best practicable, particularly for a population of truck drivers who are often away from home but usually have frequent access to email.

Indeed, courts routinely approve notice dissemination plans similar to this one. See Romero v. Clean Harbors Surface Rentals USA, Inc., 368 F. Supp. 3d 152, 163 (D. Mass. 2019) ("[T]he Court agrees with Romero that email notice is appropriate in this case because it is likely to be more effective than alternative methods."); Graham v. Hall's S. Kitchens, LLC, No. 2:18-CV-02621-RMG, 2018 WL 6177971, at *2 (D.S.C. Nov. 27, 2018) ("[T]he Court finds that notice via email is appropriate in today's mobile society."); see also In re Solodyn (Minocycline Hydrochloride) Antitrust Litig., 2017 WL 5710424, at *1 (D. Mass. Nov. 27, 2017) (approving notice to individual class members by first-class mail plus posting notice on settlement website); In re Asacol Antitrust Litig., 2017 WL 4118967, at *3-4 (D. Mass. Sept. 14, 2017) (same).

For the reasons set forth above, Plaintiffs' proposed notice and plan for dissemination of notice and submission of claim forms are fair, reasonable, and adequate and should be preliminarily approved.

C. Releases of claims.

As part of the settlement (and subject to its approval by the Courts), Dominic Oliveira, Rocky Haworth, and Defendant will execute general, mutual releases in favor of each other. All class and collective members shall release state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in the Oliveira and/or Haworth cases to the fullest extent allowed by law. All persons who opt out of the settlement will not release any claims. The notice to class/collective members informs them that, unless they opt out, they are subject to a release of state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in the Oliveira and/or Haworth cases to the fullest extent allowed by law. The notice also separately informs class/collective members that individuals who opt out will not be bound by the release. As part of the notice and claim form, collective/class members are reminded again of their release of claims. As to those who receive only the \$100 minimum payment, checks issued pursuant to this settlement agreement will further contain the language of this release.

II. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THIS SETTLEMENT.

A. The Court should certify the proposed settlement class/collective pursuant to Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b).

For settlement purposes, and as required by Rule 23(e), the proposed settlement class/collective meets the requirements of Rule 23(a) and Rule 23(b)(3) for certification. Plaintiffs incorporate by reference their motion for class and collective action certification and reply brief in support of the motion, Dkt. Nos. 198, 199, 216, which explain in detail why the proposed class/collective meets the requirements for certification. Significantly, the settlement class/collective is substantially similar to the class and collective for which Plaintiffs originally sought certification. Specifically, Plaintiffs sought FLSA collective certification of the following collective: “All individuals who have attended training to become truck drivers for Prime and/or have driven for Prime either as employee drivers or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012.” Dkt. No. 198 at 1. They sought Rule 23 certification of the following class: “All individuals who have attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010.” *Id.*

The individuals in the proposed class/collective are similarly situated workers who have suffered the same alleged violation of their wage rights, namely the failure to pay workers at least minimum wage for all hours worked. Moreover, the class is numerous, comprised of over 40,000 individuals. Notably, this Court has already granted class and collective certification on nearly identical claims. In Montoya v. CRST

Expedited, Inc., the Court granted class and collective certification on claims for unpaid orientation and failure to pay truck drivers at least minimum wage for driving time (because of the mileage-based pay system, allegedly unlawful deductions from wages, and failure to compensate drivers for time in the sleeper berth in excess of eight hours per day). 311 F. Supp. 3d 411 (D. Mass. 2018). Also, significantly, the Haworth court has already granted conditional FLSA certification for some of the claims in this case, holding that individuals who had driven for Prime as B and C seat drivers were similarly situated with respect to their claims that they were not properly compensated for all hours worked under the FLSA. Haworth, 2020 WL 1430478.

This Court and other courts in this District have also granted class or collective certification in numerous unpaid wages claims on behalf of truck drivers who had been classified as independent contractors. See, e.g., Ouadani v. Dynamex Operations E., LLC, No. CV 16-12036-PBS, 2019 WL 4384061, at *7 (D. Mass. Sept. 13, 2019) (granting class certification on delivery drivers' claims for independent contractor misclassification and unpaid wages, because the central question is "[w]hether or not the . . . Drivers were properly classified as independent contractors rather than employees," and Plaintiffs' evidence about common policies and practices suffices to ensure that this determination may be made on a classwide basis); Romero v. Clean Harbors Surface Rentals USA, Inc., 368 F. Supp. 3d 152, 156 (D. Mass. 2019) (granting FLSA classification based on the plaintiffs' allegations that: "Clean Harbors directed his rate of pay; he reported directly to Clean Harbors, which coordinated his work and set his schedule; Clean Harbors dictated his work locations; he was required to follow

Clean Harbors' policies and procedures; and Clean Harbors prohibited him from working for other employers or subcontracting his work for Clean Harbors"); DaSilva v. Border Transfer of MA, Inc., 296 F. Supp. 3d 389, 400 (D. Mass. 2017) ("Examining the standard terms [of the contract] to determine the extent of Border Transfer's contractual control is an exercise that appears to lead to common answers."); Vargas v. Spirit Delivery & Distribution Services, Inc., 245 F. Supp. 3d 268, 282 (D. Mass. 2017) (common issues predominated in independent contractor misclassification claim on behalf of delivery drivers, where "answers to [] inquiries [about liability] should be readily ascertainable through a common source—Spirit's corporate records").

For the reasons set forth in Plaintiffs' motion for class certification and reply brief in support of the motion, and as held in the cases cited above, this case is appropriately certified as a class and collective action for settlement purposes.

B. The proposed settlement is fair, reasonable, and adequate.

It is well-established that courts prefer settlements of lawsuits over continued litigation. See, e.g., In re: Google Inc. Cookie Placement Consumer Privacy Litig., 934 F.3d 316, 326 (3d Cir. 2019) ("[W]e favor the parties reaching an amicable agreement and avoiding protracted litigation."). "[S]ettlements spare the judicial system and the litigants the expense and time associated with the full panoply of pretrial, trial and post trial proceedings.'" Vermont Pure Holdings, Ltd. v. Berry, 23 Mass. L. Rptr. 33, 2010 WL 1665258, *11 (Mass. Super. 2010), quoting 2 McLaughlin on Class Actions § 6:3. Moreover, "[c]ourts have consistently noted that the public interest favoring the settlement of litigation is even stronger in the context of class action litigation, where

one proceeding can resolve many thousands or even millions of claims that might otherwise threaten to swamp the judiciary.’” Id.

A class action may not be compromised without court approval, and the court must decide whether the settlement is “fair, reasonable, and adequate.” See Fed. R. Civ. P. 23(e); see also In re Relafen Antitrust Litig., 360 F. Supp. 2d 166, 195 (D. Mass. 2005). At the preliminary approval stage, the court applies a “less rigorous standard” and “need only determine whether the settlement ‘appears to fall within the range of possible final approval.’” Sesto v. Prospect CharterCARE, LLC, No. CV 18-328 WES, 2019 WL 2394251, at *1 (D.R.I. June 6, 2019); In re JPMorgan Chase Mortg. Modification Litig., No. 1:11-MD-02290-RGS, 2014 WL 2205493, at *1 (D. Mass. May 28, 2014) (preliminarily approving settlement “as being fair, reasonable, and adequate, and within the range of possible approval”).

“A settlement is presumed to be reasonable when it is achieved by arm’s length negotiations conducted by experienced counsel.” Nat’l Ass’n of Deaf, 2020 WL 1495903, at *4. Moreover, when the following “procedural guidelines have been followed,” there is a “presumption that the settlement is within the range of reasonableness”: ““(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.’” In re M3 Power Razor System Marketing & Sales Practice Litig., 270 F.R.D. 45, 62-63 (D. Mass. 2010) (quoting In re Lupron Mktg. and Sales Prac. Litig., 345 F. Supp. 2d 135, 137 (D. Mass. 2004)).

Each of these elements is satisfied here.³ First, the proposed settlement resulted from extensive arms' length negotiations that occurred over the course of several months, and which included extensive data production and analysis and a full-day mediation and numerous follow-up conversations facilitated by an experienced mediator.⁴

Second, substantial litigation and discovery has taken place. *See* Background section, *supra*, which describes the litigation and negotiation history in detail. Thus, all parties were familiar with the factual record underlying the claims in this case.

Third, the parties' attorneys are experienced in this type of litigation. Plaintiffs' lead counsel Hillary Schwab and Rachel Smit of Fair Work, P.C. have extensive experience litigating and settling wage class actions. Indeed, they focus their practice exclusively on wage and employment matters, and they have been appointed class counsel in several wage cases. *See, e.g., Montoya*, 311 F. Supp. 3d at 424 (holding that undersigned counsel satisfied adequacy element for class certification); *Dvornikov v. Landry's Inc.*, No. 15-CV-13286-ADB, 2017 WL 1217110, at *10 (D. Mass. Mar. 31, 2017) ("Plaintiffs' counsel [including Hillary Schwab as lead counsel] is clearly qualified, experienced, and able to undertake this litigation."); *Chebotnikov v. LimoLink, Inc.*, No. CV 14-13475-FDS, 2017 WL 2909808, at *2 (D. Mass. July 6, 2017) ("[P]laintiffs' chosen lead counsel, Hillary Schwab, appears to be a qualified and experienced attorney in the

³ Because notice has not yet gone out, the fourth factor – number of objectors – is irrelevant. To the extent that any class member objects to this settlement after receiving notice, Plaintiffs will address that objection in their final settlement approval briefing.

⁴ The parties in *Haworth* also engaged in another full-day mediation with a different experienced mediator, although that did not result in settlement..

areas of employment law and class action litigation.”). They are experienced in this area of the law and have used the knowledge derived from that experience to achieve a fair and reasonable result for the settlement class.

Counsel in the Haworth case are similarly experienced in wage and hour class action litigation, and other types of class actions, and their expertise contributed to the negotiated resolution of this case. Garrett M. Hodes, with the Hodes Law Firm, LLC, has over twenty years’ experience representing plaintiffs in class actions in mortgage lending and consumer protection matters, insurance coverage disputes, products liability and toxic tort matters, and wage and hour matters. He has been appointed as class counsel in several actions and multidistrict proceedings in Kansas and Missouri state and federal courts, and the United States District Court for the Western District of Pennsylvania, on behalf of classes ranging in size from less than twenty to over 14 million, and has been involved in dozens of class action settlements, a class action jury trial, a 13-day class arbitration, and numerous appeals.⁵

Virginia Stevens Crimmins and Matthew Crimmins of the Crimmins Law Firm, LLC also have extensive experience in class and collective action employment litigation and a history of the successful prosecution of such claims. Ms. Crimmins has had an emphasis in her career in complex and nationwide employment litigation, including for example acting as co-lead counsel in nationwide class and collective actions related to

⁵ See, e.g., Hopkins v. Kansas Teachers Cmty. Credit Union, 265 F.R.D. 483, 487 (W.D. Mo. 2010); Landrum v. Meadows Credit Union, 08-441-CV-W-DW, 2012 WL 12957387, at *1 (W.D. Mo. Mar. 16, 2012); In re Cmty. Bank of N. Virginia Mortg. Lending Practices Litig., 03CV0425, 2013 WL 3972458, at *8 (W.D. Pa. July 31, 2013), aff’d, 795 F.3d 380 (3d Cir. 2015).

employment matters, such as the Bank of America MDL wage and hour litigation, In re: Bank of Am. Wage & Hour Employment Practices Litig., 706 F. Supp. 2d 1369 (U.S. Jud. Pan. Mult. Lit. 2010). Mr. Crimmins has had a similar emphasis in complex and class litigation since beginning his practice at a large defense firm and has extensive experience in the prosecution and settlement of class and collective wage and hour litigation. Mr. and Mrs. Crimmins have been appointed as counsel for class or collective actions in employment cases on many occasions, by numerous courts.⁶ The experience of the Hodes Law Firm and the Crimmins Law Firm in the areas of class and collective actions and employment litigation assisted in obtaining the fair and reasonable result for the settlement class.

Plaintiffs' counsel take very seriously their obligation and duty to unnamed settlement class members and will agree to a settlement only when they are convinced that it is in the best interest of the settlement class. In this case as well, the named plaintiffs have been committed to obtaining a fair resolution of the case for their fellow settlement class members as well as themselves, and has supported Plaintiffs' counsel's commitment to negotiating on behalf of the interest of the entire class.

⁶ See, e.g., Kafka v. Melting Pot Restaurants, Inc., No. 4:17-cv-00683-HFS, 2019 WL 718830 (W.D. Mo. Jan. 9, 2019); Sylvester v. Wintrust Fin. Corp., No. 12 C 01899, 2013 WL 5433593 (N.D. Ill. Sept. 30, 2013); Rottman v. Old Second Bancorp., Inc., 735 F.Supp.2d 988 (N.D. Ill. Aug. 25, 2010); Perry v. Nat'l City Mortg., Inc., No. 05-CV-891 DRH, 2007 WL 1810472 (S.D. Ill. June 21, 2007); Gieseke v. First Horizon Home Loan Corp., 408 F. Supp. 2d (W.D. Mo. Jan. 10, 2006); Gieseke v. First Horizon Home Loan Corp., 408 F. Supp. 2d 1164 (D. Kan. 2006); Davis v. NovaStar Mortg., Inc., 408 F. Supp. 2d 811 (W.D. Mo. 2005).

C. The proposed incentive awards are fair and reasonable.

In their motion for final settlement approval, Plaintiffs will also request that the Court approve an incentive award of \$50,000 for named plaintiff Dominic Oliveira and \$25,000 for Rocky Haworth, the named plaintiff in the Haworth case. These proposed incentive awards are fair and reasonable, given that it was the named plaintiffs who not only initiated this lawsuit on behalf of their coworkers, but who obtained this recovery. The named plaintiffs were vital to the prosecution of this matter. Not only did Dominic Oliveira participate in discovery, including responding to written discovery and sitting for a full day deposition, but he assisted counsel strategically in the case and served an important role as class representative throughout the case's journey to the United States Supreme Court and back. Public Justice awarded Dominic Oliveira its 2019 Change Maker Award for his work as named plaintiff in this case. Mr. Oliveira's role as spokesperson and champion for the rights of workers during this case's five-year history was invaluable. Rocky Haworth also participated in written discovery, a full day deposition in Iowa and an all-day mediation in Kansas City, Missouri, and helped counsel prepare several Declarations throughout the course of the Haworth proceedings and assisted in the final settlement negotiations. His participation in the Haworth matter was vital to protecting the interests of the B and C seat drivers, and the Class as a whole.

Courts have widely recognized that efforts such as those undertaken by Mr. Oliveira and Mr. Haworth are deserving of incentive awards, which serve an important function in promoting enforcement of state and federal law by private individuals while

encouraging class settlements. See In re Relafen Antitrust Litig., 231 F.R.D. 52, 82 (D. Mass. 2005) (“Incentive awards are recognized as serving an important function in promoting class action settlements, particularly where as here, the named plaintiffs participated actively in the litigation”), quoting In re Lupron, 228 F.R.D. 75, 98 (D. Mass. 2005).⁷ “Service awards [aka incentive payments] are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs. . . It is important to compensate plaintiffs for the time they spend and the risks they take.” Beckman v. KeyBank, N.A., 85 Fed. R. Serv. 3d 593 (S.D.N.Y. Apr. 29, 2013).

The incentive payments requested here are well within the range of those approved in other class actions and are less than 0.3% of the total monetary recovery available to the Class. See, e.g., In re Asacol Antitrust Litig., 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017) (approving service awards of \$100,000 each for five named plaintiffs); In re Flonase Antitrust Litig., 951 F. Supp. 2d at 751 (awarding incentive awards of \$50,000 and \$40,000); Brotherton v. Cleveland, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) (awarding \$50,000 incentive payment to named plaintiff who “has been

⁷ See also, e.g., In re Compact Disc Min. Adver. Price Antitrust Litig., 292 F. Supp. 2d 184, 189 (D. Me. 2003) (“Because a named plaintiff is an essential ingredient of any class action, an incentive award can be appropriate to encourage or induce an individual to participate in the suit”); Savett, et al., “Consumer Class Actions: Class Certification Issues, Including Ethical Considerations and Counsel Fees and Incentive Payments to Named Plaintiffs,” 936 PLI / Corp. 321, 340 (“It has become commonplace for the named representatives to request a special payment for having borne the flag and headed a class action. Most courts are receptive to this because they feel that private attorneys general should be encouraged, and such incentives further the goals of federal and state laws”); Sheppard v. Consol. Edison Co. of New York, Inc., 2002 WL 2003206, at *5-6 (E.D.N.Y. 2002) (collecting cases approving incentive payments).

instrumental in bringing this lawsuit forward” and “has performed numerous tasks in association with this litigation”); McCoy v. Health Net, Inc., 569 F. Supp. 2d 448, 479–80 (D.N.J. 2008) (awarding \$60,000 incentive awards to each named plaintiff where “the Class Representatives spent a significant amount of their own time . . . litigating these cases for the benefit of the absent members of the settlement class. . .”).

Indeed, in other wage and hour class actions in the trucking industry, courts have awarded incentive payments in the range requested here. In Van Dusen v. Swift Transportation Co., the court awarded “Service Awards to Named Plaintiffs in the amount of \$50,000 per Named Plaintiff as the reasonable value of the services provided by each of the Named Plaintiffs to the Class Members in litigating and resolving this Action.” D. Ariz. Civil Action No. 2:10-cv-00899, Dkt. No. 1158. In Browne v. P.A.M. Transport, Inc., the court has granted preliminary approval of the parties’ proposed settlement, including \$50,000 incentive payments for each of three named plaintiffs (for a total of \$150,000). W.D. Ark. Civil Action No. 5:16-cv-5366, Dkt. Nos. 279, 282.

Plaintiffs’ requested incentive payments are appropriate, and Plaintiffs respectfully request that they be preliminarily approved.

III. THE REQUESTED ATTORNEYS’ FEES AWARD IS FAIR AND REASONABLE, AND SUPPORTED BY APPLICABLE PRECEDENT.

In the motion for final settlement approval, Plaintiffs will also request that the Court approve distribution of a 33% share of the settlement proceeds (up to \$9,240,000, up to half of which would come from reversionary funds) to Plaintiffs’ counsel for attorneys’ fees, as well as up to \$225,000 in litigation costs, including the costs of settlement administration. The proposed settlement notice informs the settlement class

members that Plaintiffs' counsel will request up to 33% of the settlement proceeds as attorneys' fees.

Courts generally favor an award of fees from a common fund, as called for by the proposed settlement in this case. As the Supreme Court has explained:

[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted). See also Blum v. Stenson, 465 U.S. 886, 900 n.16 (1984); In re Thirteen Appeals, 56 F.3d 295 (1st Cir. 1995) (awarding attorneys' fees of \$68 million out of a \$220 million settlement fund).

When awarding fees from a common fund, the "percentage of the fund" method is preferred over the lodestar method. As the First Circuit observed, the percentage method is less burdensome to administer than the lodestar method. In re Thirteen Appeals, 56 F.3d at 307. The court also endorsed the percentage method because it is result-oriented, and therefore promotes a more efficient use of attorney time – a lodestar method may give attorneys an incentive to spend as many hours as possible on the litigation and may discourage early settlements. Id. When using the percentage method, courts routinely approve fee awards that represent approximately one-third of the settlement fund.⁸

⁸ There are numerous examples of cases in which a one-third fee was approved, including: Wilensky v. Digital Equipment Corp., C.A. No. 94-10752-JLT (D. Mass. July 11, 2001); Chalverus v. Pegasystems, Inc., C.A. No. 97-12570-WGY (December 19, 2000) (awarding as an attorneys' fee one-third of a more than \$5 million recovery); In re Peritus Software Services, Inc. Sec. Litig., C.A. No. 98-10578-

An award of 33 percent of the fund is consistent with the vital role that contingency arrangements play in making legal counsel available to individuals who cannot afford hourly fees. Unlike traditional firms that receive hourly fees on a monthly basis, employment counsel who take cases on contingency often spend years litigating cases (typically while incurring significant out-of-pocket expenses for experts, transcripts, travel, etc.), without receiving any ongoing payment for their work. Sometimes fees and expenses are recovered; other times, despite hundreds of hours of work, nothing is recovered. This type of practice is viable only if attorneys, having received nothing for their work on some cases, receive more in other cases than they would if they charged hourly fees. Courts have long recognized this reality. See, e.g., Hensley v. Eckerhart, 461 U.S. 424, 448 (1983) (noting that “[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate”); In re Union Carbide Corp. Consumer Products Business Securities Litig., 724 F. Supp. 160, 168 (S.D.N.Y. 1989) (“Contingent fee arrangements implicitly recognize the risk factor in litigation and that the winning cases must help pay for the losing ones if a lawyer who represents impecunious plaintiffs, or those plaintiffs not so fully committed as to put their own money where their mouth is, will remain solvent and available to serve the

WGY (D. Mass. Feb. 28, 2000); Zeid v. Open Environment Corp., C.A. No. 96-12466-EFH (D. Mass. June 24, 1999) (awarding a fee of one-third of a \$6 million settlement); In re Pictoretel Corp. Sec. Litig., C.A. No. 97-12135-DPW (D. Mass. Nov. 4, 1999) (approving award of one-third of a \$12 million settlement fund); Morton v. Kurzweil Applied Intelligence, Inc., C.A. No. 10829-REK (D. Mass. Feb. 4, 1998); In re Copley Pharmaceutical, Inc. Sec. Litig., C.A. No. 94-11897-WGY (D. Mass. Feb. 8, 1996) (awarding one-third of a \$6.3 million settlement fund); In re Gillette Securities Litig., C. A. No. 88-1858-REK (D. Mass. Mar. 30, 1994).

public interest.”). Contingency fee arrangements not only make access to the judiciary feasible for most private individuals, it also incentivizes parties to discuss settlement early, thus unburdening the trial courts. See Frank v. Eastman Kodak Co., 228 F.R.D. 174, 188 (W.D.N.Y. 2005) (contingency fees “directly align[] the interests of the class and its counsel and provide[] a powerful incentive for the efficient prosecution and early resolution of litigation”).

By permitting clients to obtain attorneys without having to pay hourly fees, the contingency fee system provides critical access to the courts for people who otherwise would not be able to find competent counsel to represent them. That access is particularly important for the effective enforcement of public protection statutes, such as the wage laws at issue in this case. It is well recognized that “private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations.” Reiter v. Sonotone Corp., 442 U.S. 330, 344 (1979).

In this case, Plaintiffs’ counsel have expended extensive time and resources. The case has been fought heavily over more than five years, including an appeal to the First Circuit, a fully briefed petition for certiorari to the United States Supreme Court, and ultimately full briefing and argument to the Supreme Court. Moreover, the case was not simply settled after the Supreme Court’s decision in Plaintiffs’ favor on the arbitration issue. The parties continued to litigate extensively over another year and a half, including full-blown discovery, as well as substantive briefing and argument on class and collective certification and Prime’s motion to compel arbitration under

Missouri law, etc. The Haworth case was hard-fought as well, with thorough discovery, and briefing, argument, and decisions favorable to Plaintiffs on Plaintiffs' motion for conditional certification under the FLSA and Defendant's motion for a stay of the case, and with Defendant's withdrawal of its motion to compel arbitration after briefing.

Moreover, in support of their final fee petition in their motion for final settlement approval, Plaintiffs intend to submit information about their lodestar rates, so that the Court may perform a lodestar crosscheck.

Accordingly, Plaintiffs respectfully request that the Court preliminarily approve Plaintiffs' request for attorneys' fees.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court grant preliminary approval of the settlement and the proposed plan of distribution as fair, reasonable, and adequate, and authorize Plaintiffs to send the proposed notice of settlement and claim form to the settlement class. Specifically, Plaintiffs request that the Court issue a preliminary approval order in the form attached to this motion as Exhibit 3.

Respectfully submitted,

DOMINIC OLIVEIRA,
on behalf of himself
and all others similarly situated,

By their attorneys,

/s/ Hillary Schwab
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Dated: July 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Hillary Schwab
Hillary Schwab

SETTLEMENT AGREEMENT

AND

RELEASE OF CLAIMS

Dominic Oliveira, et al. v. New Prime, Inc.,
D. Mass. Civil Action No. 1:15-cv-10603

and

Haworth, et al. v. New Prime, Inc.,
W.D. Mo. Civil Action No. 6:19-03025-CV-RK

The Parties to this Settlement Agreement and Release of Claims (“**Agreement**”) are Defendant New Prime, Inc. (“**Prime**” or “**Defendant**”), and Named Plaintiffs Dominic Oliveira and Rocky Haworth (collectively the “**Named Plaintiffs**,” “**Class Representatives**” or “**Plaintiffs**” and, collectively with the Defendant, the “**Parties**”), for themselves and on behalf of other similarly situated class members in *Dominic Oliveira, et al. v. New Prime, Inc.*, Case No. 1:15-cv-10603, filed in the United States District Court for the District of Massachusetts (“**the Oliveira Matter**”) and *Rocky Haworth, et al. v. New Prime, Inc.*, Case No. 6:19-03025-CV-RK, filed in the United States District Court for the Western District of Missouri (“**the Haworth Matter**” and collectively with the *Oliveira* Matter, the “**Litigation**”).

RECITALS

WHEREAS, Named Plaintiff Dominic Oliveira filed the *Oliveira* Matter as a Rule 23 putative class action and Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) collective action seeking recovery of unpaid wages against Defendant on behalf of himself and similarly situated individuals who attended training to become a truck driver for Prime and/or who have driven for Prime as an employee driver and/or independent contractor, and asserted claims that are set forth in the operative complaint (*Oliveira*, Dkt. 33);

WHEREAS, Named Plaintiff Rocky Haworth filed the *Haworth* Matter as a Rule 23 putative class action and FLSA collective action seeking recovery of unpaid wages against Defendant on behalf of himself and similarly situated individuals who drove for Prime as junior or B / C seat drivers, and asserted claims that are set forth in the operative complaint (*Haworth*, Dkt. 1);

WHEREAS, Defendant filed Answers denying the material allegations in the *Oliveira* Matter and *Haworth* Matter, denying all liability, and setting forth additional affirmative and other defenses (*Oliveira*, Dkt. 117; *Haworth*, Dkt. 17);

WHEREAS, the Parties engaged in significant discovery during the prosecution of the Litigation, including the exchange of Rule 26 disclosures, service of formal document requests and interrogatories, the production of millions of lines of electronic data pertaining to the class members, as well as multiple depositions;

WHEREAS, the parties understand that their counsel, counsel for the Named Plaintiffs (who are set forth as proposed Class Counsel in the respective actions under this agreement, hereinafter, "Class Counsel") and Defendant's Counsel respectively have thoroughly investigated the facts relating to the claims alleged in the Litigation, including the events and transactions underlying the Litigation, through formal and informal discovery, and have made a thorough study of the legal principles applicable to the claims being asserted against Defendant and a comprehensive analysis of the electronic data produced by Defendant;

WHEREAS, the *Haworth* Court granted conditional certification, under the FLSA, as to a portion of the proposed classes, on March 23, 2020 (Dkt. 84);

WHEREAS, the Parties have engaged in lengthy arm's length negotiations via formal mediation with two separate mediators, D. Charles Stohler, Esq. (in *Oliveira*), and John Phillips, Esq. (in *Haworth*), and have further engaged in lengthy and extensive settlement discussions overseen by D. Charles Stohler, Esq. concerning the settlement of the claims and causes of action being asserted against Defendant in the Litigation;

WHEREAS, as a product of such negotiations, the Parties arrived at an agreement to settle the Litigation on the basis described herein, subject to Court approval;

WHEREAS, Defendant denies all of the allegations in the Litigation and any and all liability and damages of any kind to anyone with respect to these alleged facts or causes of action asserted in the Litigation, but nonetheless, without admitting or conceding any liability or damages

whatsoever, has agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing the Litigation;

WHEREAS, the Parties recognize that the outcome in the Litigation is uncertain and that achieving a final result through the litigation process would require substantial additional risk, discovery, time, and expense;

WHEREAS, the Named Plaintiffs through Class Counsel have conducted an investigation and evaluation of the facts and law relating to the claims asserted in the Litigation to determine how best to serve the interests of all potential class members and believe, in view of the costs, risks, and delay of continued litigation balanced against the benefits of settlement, that the settlement as provided in this Agreement is in the best interests of putative class members and that the settlement provided in this Agreement represents a fair, reasonable, and adequate resolution of the Litigation;

WHEREAS, the Parties have agreed to settle this Litigation as to all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020 , and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except two individuals who served as named plaintiffs in another class settlement against Prime in the case of *Montgomery v. New Prime, Inc.*, C.D. Cal. Civil Action No. 8:17-cv-00321, and signed full releases as part of that settlement.

NOW THEREFORE, the Parties, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth herein, do hereby agree as follows:

DEFINITIONS

1. **“Class Counsel”** or **“Named Plaintiffs/Class Counsel”** means Fair Work, P.C., Crimmins Law Firm, LLC and Hodes Law Firm, LLC who are designated as Class Counsel for purposes of this settlement upon entry of the Order granting preliminary approval.
2. **“Defendant”** means New Prime, Inc.
3. **“Defendant’s Counsel”** means Gibson, Dunn & Crutcher LLP.
4. **“Final Approval Order”** means an Order of the Court finally approving this Agreement and the settlement pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b) and Federal Rule of Civil Procedure 23(b)(3).
5. **“Named Plaintiffs”** means the plaintiffs who filed the *Oliveira* and *Haworth* Matters. **“Plaintiff Oliveira”** or **“Named Plaintiff Oliveira”** means Plaintiff Dominic Oliveira, who filed the *Oliveira* Matter. **“Plaintiff Haworth”** or **“Named Plaintiff Haworth”** means Plaintiff Rocky Haworth, who filed the *Haworth* Matter.
6. **“Putative Class/Collective Members”** means all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, C.D. Cal. Civil Action No. 8:17-cv-00321.
 - a. **“A Seat Class”** means those Putative Class/Collective Members who were employee drivers who drove as A seat drivers for Defendant at any time since October 2, 2012 through May 8, 2020.

b. **“B/C Seat Class”** means those Putative Class/Collective Members who were employed by Defendant as a B or C seat driver at any time since October 2, 2012 through May 8, 2020.

c. **“Independent Contractor Class”** means those Putative Class/Collective Members who drove for Defendant as an Independent Contractor at any time since October 2, 2012 through May 8, 2020.

d. **“Orientation Class”** means those Putative Class/Collective Members who participated in orientation for prospective A, B, C, or D seat drivers through Defendant at any time since October 2, 2012 through May 8, 2020 and/or participated in orientation for prospective A, B, C, or D seat drivers through Defendant in Missouri at any time since March 4, 2010 through May 8, 2020.

7. **“Settlement Class” or “Participating Class Members”** means Named Plaintiffs and those Putative Class/Collective Members who do not exclude themselves from the settlement.

a. **“Claiming Class Members”** means Named Plaintiffs and any Putative Class/Collective Member who has filed a Claim/Consent to Join Form.

b. **“Minimum Participation Class Member”** means any Putative Class Member who does not submit a Claim/Consent to Join Form and does not exclude himself or herself from the settlement. Minimum Participation Class Members shall also be considered “Participating Class Members” for all purposes.

8. **“Settlement Effective Date”** means the first day after the last of the following occurrences: (i) the issuance of the Final Approval Order, (ii) if an objection has been made to final approval of the settlement, the date on which the objector’s time to appeal the Final Approval Order has expired with no appeal or other judicial review having been taken or sought, or (iii) if

an appeal of the Final Approval Order has been timely filed, the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review, or the date the appeal(s) or other judicial review are finally dismissed with no possibility of subsequent appeal or other judicial review.

9. “**Settlement Fund**” means the common settlement fund described in Paragraph A below.

EXHIBITS

The following exhibits are attached to this Agreement.

1. Exhibit A: Notice of Class and Collective Action Settlement (Electronic Version)
2. Exhibit B: Notice of Class and Collective Action Settlement (Paper Version)
3. Exhibit C: Claim/Consent to Join Form
4. Exhibit D: Proposed Preliminary Approval Order in the *Haworth* Matter
5. Exhibit E: Proposed Preliminary Approval Order in the *Oliveira* Matter
6. Exhibit F: Proposed Final Approval Order

SETTLEMENT TERMS

A. Settlement Fund. Defendant agrees that a common settlement fund in the amount of Twenty Eight Million Dollars and No Cents (\$28,000,000.00) will be established to resolve any and all state, federal (FLSA), and common law-related wage and hour claims of Named Plaintiffs and all Putative Class/Collective Members against Defendant.

1. This Settlement Fund is inclusive of any and all alleged unpaid wages, liquidated damages, penalties, attorneys’ fees, costs, expenses, including reasonable settlement administration costs, and any reasonable service awards. Defendant’s share of payroll taxes, if any, will be borne separately from the Settlement Fund. The Parties are to each pay their own

fees, costs, and expenses, other than those approved by the Court to come from the Settlement Fund.

2. Only the Named Plaintiffs and Putative Class/Collective Members who receive a notice of settlement (the “Notice Packet”) pursuant to Paragraph F and who do not exclude themselves pursuant to Paragraph D.4 are entitled to participate in the settlement (all of whom shall be considered Participating Class Members).

3. Fourteen Million Dollars and No Cents (\$14,000,000.00) of the Settlement Fund shall be non-reversionary (“**Non-Reversionary Settlement Fund**”). Fourteen Million Dollars and No Cents (\$14,000,000.00) of the Settlement Fund shall be considered reversionary (“**Reversionary Settlement Fund**”).

4. The Settlement Fund, including the Non-Reversionary Settlement Fund and the Reversionary Settlement Fund shall be allocated in accordance with Paragraph C.

B. Settlement Classes.

1. **Orientation Class:** Seven Million Dollars and No Cents (\$7,000,000.00) from the Non-Reversionary Settlement Fund has been allocated to the Orientation Class (“**Orientation Class Fund**”).

2. **B and C Seat Class:** Eight Million Five Hundred Thousand Dollars and No Cents (\$8,500,000.00) has been allocated to the claims of the B/C Seat Class, of which \$3,500,000.00 shall come from the Non-Reversionary Settlement Fund (“**B/C Seat Class Non-Reversionary Fund**”) and \$5,000,000.00 shall come from the Reversionary Settlement Fund (“**B/C Seat Class Reversionary Fund**”).

3. **A Seat Class:** Eight Million Five Hundred Thousand Dollars and No Cents (\$8,500,000.00) has been allocated to the claims of the A Seat Class, of which \$3,500,000.00 shall

come from the Non-Reversionary Fund (“**A Seat Class Non-Reversionary Fund**”), and \$5,000,000.00 shall come from the Reversionary Settlement Fund (“**A Seat Class Reversionary Fund**”).

4. **Independent Contractor Class:** Four Million Dollars and No Cents (\$4,000,000.00) has been allocated to the claims of the Independent Contractor Class from the Reversionary Settlement Fund. (“**Independent Contractor Class Fund**”).

C. Settlement Fund Allocation.

1. **Minimum Allocation.** Each Putative Class Member shall be allocated a minimum settlement amount of \$100.00 (“Minimum Allocation”). The Notice shall advise the Putative Class/Collective Members that this is the maximum amount they shall receive from the Settlement Fund if they do not exclude themselves from the Settlement and do not submit a Claim/Consent to Join Form. The Minimum Allocation shall be paid from the Settlement Fund out of the **Non-Reversionary Settlement Fund**. If the Putative Class Member is a member of all of the sub-classes or is a member of the Orientation Class, B/C Seat Class and A Seat Class, \$34.00 of the Minimum Allocation will be paid from the Orientation Class Fund, \$33.00 of the Minimum Allocation will be paid from the B/C Seat Class Non-Reversionary Fund and \$33.00 of the Minimum Allocation will be paid from the A Seat Class Non-Reversionary Fund. If the Putative Class Member is a member of only the Orientation Class and the B/C Seat Class, \$50.00 of the Minimum Allocation will be paid from the Orientation Class Fund, and \$50.00 of the Minimum Allocation will be paid from B/C Seat Class Non-Reversionary Fund. If the Putative Class Member is a member of only the Orientation Class and the A Seat Class, \$50.00 of the Minimum Allocation will be paid from the Orientation Class Fund, and \$50.00 of the Minimum Allocation will be paid from the A Seat Class Non-Reversionary Fund. If the Putative Class Member is a member of only

the Orientation Class and the Independent Contractor Class, \$100.00 of the Minimum Allocation will be paid from the Orientation Class Fund.

2. **Settlement Share.** Each Putative Class Member shall be allocated a proportionate share of the Settlement Fund as follows:

a. Each Putative Class Member shall be assigned to each Settlement Class in which he or she is a member as set forth in Paragraph B. Each participant will be a member of at least one Settlement Class.

b. The following settlement formula will be applied to each Settlement Class fund as follows:

i. **Orientation Class Settlement Allocation:** The Orientation Class Fund shall be reduced by the minimum allocations as set forth in Paragraph C.1, attorneys' fees as set forth in Paragraph C.5, the service award to Named Plaintiff Oliveira, and reasonable settlement and litigation costs as set forth in Paragraphs C.6 and C.7. The Orientation Class Fund, as reduced by the foregoing amounts, shall be referred to as the "**Remaining Orientation Class Fund.**" The Remaining Orientation Class Fund shall be allocated among the Putative Class/Collective Members who are members of the Orientation Class and who submit a Claim/Consent to Join Form as follows:

a) Each Orientation Class Member is assigned numerical shares of the settlement fund based on the following parameters ("**Individual Orientation Class Member Numerator**"): 1 share for attending D seat orientation in Missouri before March 2012; 2 shares for attending D seat orientation since March 2012; 1 share if the class member has worked as an A seat driver or an independent contractor driver; and/or 1.25 shares if the class member has worked as both an A seat driver and an independent contractor driver. Once the shares are

allocated, a there will be a 1.5 multiplier for each share connected with any D seat orientation attended in Missouri since March 2012. Additionally, individuals who have zero miles as either a B/C seat, A seat, or independent contractor driver but do not otherwise appear in the data will receive 1 orientation share.

b) The Individual Orientation Class Member Numerators for all Orientation Class Members will be added to obtain the “**Total Orientation Class Member Denominator.**”

c) To determine the “**Orientation Fund Resulting Decimal**” for each Orientation Class Member, the Orientation Class Member’s Individual Orientation Class Member Numerator will be divided by the Total Orientation Class Member Denominator.

d) To determine the settlement share from the Remaining Orientation Class Fund for each Orientation Class Member, the Orientation Fund Resulting Decimal will be multiplied by the Remaining Orientation Class Fund. (“**Orientation Class Member Settlement Share**”).

e) Orientation Class Members who submit Claim/Consent to Join Forms shall receive their Orientation Class Member Settlement Shares. Additionally, any amounts that are not claimed from the Remaining Orientation Class Fund shall be redistributed among Orientation Class Members who submit Claim/Consent to Join Forms in proportion to their allocated amounts from the Remaining Orientation Class Fund. No amount from the Orientation Class Fund shall revert to the Defendant.

ii. B/C Seat Class Settlement Allocation: The B/C Seat Class Settlement Allocation shall be composed of payments from the B/C Seat Class Non-Reversionary Fund and the B/C Seat Reversionary Fund.

a) Each class member shall be assigned a B/C Seat Decimal as follows, which shall determine their allocations from the B/C Seat Class Non-Reversionary Fund and the B/C Seat Reversionary Fund:

1) Each B/C Seat Class Member's total number of weeks employed as a B or C seat driver will be multiplied by the number of miles driven as a B or C seat driver and divided by gross earnings while employed as a B or C seat driver. The resulting calculation for each B/C Seat Class Member is the "**Individual B/C Seat Class Member Numerator.**"

2) The Individual B/C Seat Class Member Numerators for each B/C Seat Class Member will be added to obtain the "**Total B/C Seat Class Member Denominator.**"

3) To determine the "**B/C Seat Resulting Decimal**" for each B/C Seat Class Member, the B/C Seat Class Member's Individual B/C Seat Class Member Numerator will be divided by the Total B/C Seat Class Member Denominator.

b) B/C Seat Reversionary Settlement Allocation: The B/C Seat Class Reversionary Fund shall be reduced by the dispute fund amount as set forth in Paragraph C.8, and attorneys' fees as set forth in Paragraph C.5. The B/C Seat Class Reversionary Fund, as reduced by the foregoing amounts, shall be referred to as the "**Remaining B/C Seat Class Reversionary Fund.**" The Remaining B/C Seat Class Reversionary Fund shall be allocated among the Putative Class/Collective Members who are members of the B/C Seat Class by multiplying each B/C Seat Class Member's B/C Seat Resulting Decimal by the Remaining B/C Seat Class Reversionary Fund. The resulting amount shall be the "**B/C Seat Class Reversionary Fund Settlement Share**" for each B/C Seat Class Member.

c) B/C Seat Non-Reversionary Settlement Allocation: The B/C Seat Class Non-Reversionary Fund shall be reduced by the minimum allocations as set forth in Paragraph

C.1, attorneys' fees as set forth in Paragraph C.5, the service award to Named Plaintiff Haworth, and reasonable settlement and litigation costs as set forth in Paragraphs C.6 and C.7. The B/C Seat Class Non-Reversionary Fund, as reduced by the foregoing amounts, shall be referred to as the **"Remaining B/C Seat Class Non-Reversionary Fund."** The Remaining B/C Seat Class Non-Reversionary Fund shall be allocated among the Putative Class/Collective Members by multiplying each B/C Seat Class Member's B/C Seat Resulting Decimal by the Remaining B/C Seat Non-Reversionary Fund (**"B/C Seat Class Non-Reversionary Fund Settlement Share"**).

d) B/C Seat Class Members who submit a Claim/Consent to Join Form shall be entitled to their B/C Seat Class Reversionary Fund Settlement Share plus their B/C Seat Class Non-Reversionary Fund Settlement Share (**"B/C Seat Class Settlement Share"**). B/C Seat Class Members who do not exclude themselves and do not submit a Claim/Consent to Join Form shall only be entitled to receive their Minimum Allocation. Amounts allocated from the Remaining B/C Seat Class Member Reversionary Fund to the B/C Seat Class Members who do not submit a Claim/Consent to Join Form shall revert to Defendant. Amounts allocated from the Remaining B/C Seat Class Member Non-Reversionary Fund to B/C Seat Class Members who do not submit a Claim/Consent to Join Form shall be distributed proportionately to those who do submit Claim/Consent to Join Forms by multiplying each B/C Seat Class Member's Resulting Decimal by the unclaimed B/C Seat Class Non-Reversionary Fund.

iii. **A Seat Class Settlement Allocation:** The A Seat Class Settlement Allocation shall be composed of payments from the A Seat Class Non-Reversionary Fund and the A Seat Reversionary Fund.

a) Each class member shall be assigned an A Seat Decimal as follows, which shall determine their allocations from the A Seat Class Non-Reversionary Fund and the A Seat Reversionary Fund:

1) Each A Seat Class Member's total number of weeks employed as an A seat driver will be multiplied by the number of miles driven as an A seat driver and divided by gross earnings while employed as an A seat driver. The resulting calculation for each A Seat Class Member is the "**Individual A Seat Class Member Numerator.**"

2) The Individual A Seat Class Member Numerators for each A Seat Class Member will be added up to obtain the "**Total A Seat Class Member Denominator.**"

3) To determine the "**A Seat Resulting Decimal**" for each A Seat Class Member, the A Seat Class Member's Individual A Seat Class Member Numerator will be divided by the Total A Seat Class Member Denominator.

b) **A Seat Reversionary Settlement Allocation:** The A Seat Class Reversionary Fund shall be reduced by the dispute fund amount as set forth in Paragraph C.8, and attorneys' fees as set forth in Paragraph C.5. The A Seat Class Reversionary Fund, as reduced by the foregoing amounts, shall be referred to as the "**Remaining A Seat Class Reversionary Fund.**" The Remaining A Seat Class Reversionary Fund shall be allocated among the Putative Class/Collective Members who are members of the A Seat Class by multiplying each A Seat Class Member's A Seat Resulting Decimal by the Remaining A Seat Class Reversionary Fund. The resulting amount shall be the "**A Seat Class Reversionary Fund Settlement Share**" for each A Seat Class Member.

c) **A Seat Non-Reversionary Settlement Allocation:** The A Seat Class Non-Reversionary Fund shall be reduced by the minimum allocations as set forth in Paragraph C.1,

attorneys' fees as set forth in Paragraph C.5, the service award to Named Plaintiff Oliveira, and reasonable settlement and litigation costs as set forth in Paragraphs C.6 and C.7. The A Seat Class Non-Reversionary Fund, as reduced by the foregoing amounts, shall be referred to as the **"Remaining A Seat Class Non-Reversionary Fund."** The Remaining A Seat Class Non-Reversionary Fund shall be allocated among the Putative Class/Collective Members who are members of the A Seat Class by multiplying each A Seat Class Member's A Seat Resulting Decimal by the Remaining A Seat Non-Reversionary Fund (**"A Seat Class Non-Reversionary Fund Settlement Share"**).

d) A Seat Class Members who submit a Claim/Consent to Join Form shall be entitled to their A Seat Class Reversionary Fund Settlement Share plus their A Seat Class Non-Reversionary Fund Settlement Share (**"A Seat Class Settlement Share"**). A Seat Class Members who do not themselves and do not submit a Claim/Consent to Join Form shall only be entitled to receive their Minimum Allocation. Amounts allocated from the A Seat Class Member Reversionary Fund to the A Seat Class Members who do not submit a Claim/Consent to Join Form shall revert to Defendant. Amounts allocated from the Remaining A Seat Class Member Non-Reversionary Fund to A Seat Class Members who do not submit a Claim/Consent to Join Form shall be distributed proportionately to those who do submit Claim/Consent to Join Forms by multiplying each B/C Seat Class Member's Resulting Decimal by the unclaimed B/C Seat Class Non-Reversionary Fund.

iv. **Independent Contractor Class Settlement Allocation:** The Independent Contractor Class Settlement Fund shall be reduced by the dispute fund amount as set forth in Paragraph C.8, and attorneys' fees as set forth in Paragraph C.5. The Independent Contractor Class Fund, as reduced by the foregoing amounts, shall be referred to as the **"Remaining**

Independent Contractor Class Fund.” The Remaining Independent Contractor Class Fund shall be allocated among the Putative Class/Collective Members who are members of the Independent Contractor Class and who submit a Claim/Consent to Join Form as follows:

a) Each Independent Contractor Class Member’s total number of weeks worked as an Independent Contractor driver will be multiplied by the number of miles driven as an Independent Contractor driver and divided by 65% of gross earnings. The resulting calculation for each Independent Contractor Class Member is the **“Individual Independent Contractor Class Member Numerator”** for each Independent Contractor Class Member.

b) The Individual Independent Contractor Class Member Numerators for each Independent Contractor Class Member will be added to obtain the **“Total Independent Contractor Class Member Denominator.”**

c) To determine the **“Independent Contractor Resulting Decimal”** for each Independent Contractor Class Member, the Independent Contractor Class Member’s Individual Independent Contractor Numerator will be divided by the Total Independent Contractor Class Member Denominator.

d) To determine the settlement share from the Independent Contractor Class Settlement Fund for each Independent Contractor Class Member, the Independent Contractor Resulting Decimal will be multiplied by the Remaining Independent Contractor Class Settlement Fund. (**“Independent Contractor Class Settlement Share”**).

e) Independent Contractor Seat Class Members who submit a Claim/Consent to Join Form shall be entitled to their Independent Contractor Class Settlement Share. Independent Contractor Class Members who do not exclude themselves and do not submit a Claim/Consent to Join Form shall be entitled to receive their Minimum Allocation. Amounts allocated from the

Independent Contractor Class Fund to the Independent Contractor Class Members who do not submit a Claim/Consent to Join Form shall revert to Defendant.

v. Two individuals who served as named plaintiffs in *Montgomery v. New Prime, Inc.*, C.D. Cal. Civil Action No. 8:17-cv-00321 (who signed full releases of claims which would include the claims in this case as part of the settlement), shall not be entitled to receive monies as part of this settlement and shall be excluded from the class. Individuals who participated as class members in the class settlement in *Montgomery v. New Prime, Inc.*, C.D. Cal. Civil Action No. 8:17-cv-00321 shall be entitled to receive 50% of what would be their total settlement share in this case if they had not participated in that settlement, and their resulting numerators and/or settlement shares will be decreased by 50%. Any amounts not distributed to *Montgomery* plaintiffs and/or class members from this settlement shall be proportionally redistributed to other eligible class members.

vi. The respective settlement allocations for each Claiming Class Member shall be the sum of his or her respective Class settlement shares as set forth in Paragraph C.2, plus the \$100.00 minimum flat payment as set forth in Paragraph C.1. Minimum Participation Class Members shall receive only the \$100.00 Minimum Allocation. In either circumstance, the total allocation will be referred to as the “**Settlement Allocation.**”

vii. Putative Class/Collective Members who exclude themselves will not be entitled to receive amounts from the Settlement Fund and will not be entitled to a Settlement Allocation.

3. **Settlement Allocation.** For purposes of Notice, Class Members shall be advised of the specific minimum amount that they will receive from the settlement if they submit a Claim/Consent to Join Form, as well as the fact that their total award from the Non-Reversionary

Funds may increase depending on the number of claimants. One-half of the Settlement Allocation to each Participating Class Member shall represent settlement of that Participating Class Member's claims for alleged unpaid wages pursuant to the FLSA, Missouri Minimum Wage Law and other wage laws, and common laws, which shall be reported on an IRS Form W-2, less applicable taxes and other wage withholdings. The remaining one-half of each Participating Class Member's Settlement Allocation shall represent settlement of that Participating Class Member's claims for alleged liquidated damages pursuant to the FLSA and Missouri Minimum Wage Law, which shall be reported on an IRS Form 1099 as "other income" (reported in Box 3) without any deduction for taxes or other withholdings.

4. **Payroll Taxes.** Each side shall bear their own share of any payroll taxes. The Defendant will bear the employer's share of payroll taxes which shall be paid separately from the Settlement Fund. The Settlement Administrator will withhold the employees' share of any payroll taxes, which will be borne from the Settlement Fund. Each side shall bear the liability as to their shares of any taxes owed, and the parties shall not be responsible or liable for taxes owed by other parties.

5. **Attorneys' Fees.** Named Plaintiff's Counsel/Class Counsel will apply for an award of attorneys' fees, costs, and expenses in a total amount not to exceed thirty-three percent (33%) of the Settlement Fund. These amounts will be borne out of the reversionary and non-reversionary funds as determined by the Court, except that the Parties agree that under no circumstance shall more than \$4,620,000.00 in attorneys' fees be borne out of the Reversionary Settlement Fund. Amounts for attorneys' fees that are not awarded out of the non-reversionary funds shall be reallocated to the non-reversionary funds (for allocation to Putative Class/Collective Members). Amounts for attorneys' fees that are not awarded out of the reversionary funds shall revert to

Defendant. The Parties agree and understand that the Court has ultimate authority to accept, reject, or modify the attorneys' fees, and the settlement is not contingent on the Court's approval of the amounts requested for attorneys' fees.

6. **Service Awards.** Named Plaintiff's Counsel/Class Counsel will apply for reasonable service awards in a total amount not to exceed Seventy-Five Thousand Dollars and No Cents, allocating no more than Fifty Thousand Dollars and No Cents (\$50,000.00) for Dominic Oliveira and no more than Twenty-Five Thousand Dollars and No Cents (\$25,000.00) for Rocky Haworth, both of whom materially participated in the prosecution of this Litigation ("Service Award"). Of the total Service Award amount, Twenty-Five Thousand Dollars and No Cents (\$25,000.00) of the service awards shall be awarded from the Orientation Fund, Twenty-five Thousand Dollars and No Cents (\$25,000.00) of the service awards shall be awarded from the A Seat Class Non-Reversionary Fund and Twenty-Five Thousand Dollars and No Cents (\$25,000.00) of the service awards shall be awarded from the B/C Seat Class Non-Reversionary Fund. Payment of any Service Award to Named Plaintiffs shall be treated as a non-wage payment for payroll tax purposes. In exchange for the Service Award and other agreements herein, the Named Plaintiffs and Defendant agree to a general and global, mutual release of all known and unknown claims that any party may have against another, or that Named Plaintiffs may have against any subsidiary or affiliate of Defendant, or that any subsidiary or affiliate of Defendant may have against Named Plaintiffs. Amounts from the service awards that are not awarded will be reallocated to the Orientation Class Fund, the A Seat Class Non-Reversionary Fund or the B/C Seat Class Non-Reversionary Fund in shares proportionate to the total amount of each Non-Reversionary Fund (i.e., 50% to the Orientation Class Fund, 25% to the A Seat Class Non-Reversionary Fund, and 25% to the B/C Seat Class Non-Reversionary Fund). The Parties agree

and understand that the Court has ultimate authority to accept, reject, or modify the Service Awards, and the settlement is not contingent on the Court's approval of the amounts requested for Service Awards.

7. **Costs and Settlement Administration Fees.** If the Court grants preliminary approval of this Agreement, the settlement will be administered by a Settlement Administrator as set forth below in Paragraph F, who will be responsible for establishing a Qualified Settlement Fund ("QSF"), administering the settlement, issuing Settlement Allocation checks, issuing tax forms, calculating taxes, answering Putative Class Member inquiries, sending any necessary follow-up correspondence to Putative Class/Collective Members, and other administration duties necessary to administer the settlement. Reasonable costs and settlement administration fees shall not exceed \$225,000.00, which shall be split proportionately between the Orientation Class Fund (50%), the A Seat Class Non-Reversionary Fund (25%) and the B/C Seat Class Non-Reversionary Fund (25%). The Parties agree and understand that the Court has ultimate authority to accept, reject, or modify the award of costs, and the settlement is not contingent on the Court's approval of the amounts requested for the award of costs.

8. **Dispute Fund.** A fund of \$200,000.00 shall be set aside to resolve disputes and reasonable late claims. Named Plaintiffs/Class Counsel shall make determinations about who is to be paid (with approval of Defendant's counsel, which approval shall not be unreasonably withheld). Fifty percent of the Dispute Fund shall be taken from the Independent Contractor Class Fund, and twenty-five percent shall be taken from the B/C Seat Class Reversionary Fund, and twenty-five percent shall be taken from the A Seat Class Reversionary Fund. Any funds ultimately left over from this fund shall revert to Defendant.

D. Settlement Approval Process:

1. ***Haworth Matter.*** The Parties agree to seek the Missouri Court's preliminary approval of the Agreement with respect to the claims of the B/C Seat Class. Named Plaintiff Haworth will file a Motion for Preliminary Approval of Settlement with the Missouri Court and a Motion to Transfer for Settlement Purposes Only, which is subject to review and approval by Defendant, which approval shall not be unreasonably withheld. Named Plaintiff Haworth will simultaneously submit a Proposed Order Preliminarily Approving Settlement in the same form as Exhibit D (or, with Defendant's agreement, a Proposed Order in substantially the same form), and that Proposed Order will include:

- a. granting Preliminary Approval to the Settlement for the B/C Seat Class, adjudging the terms to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. confirming certification of the *Haworth Matter* as an FLSA collective action for settlement purposes;
- c. certification of the *Haworth Matter* as a class action under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only;
- d. designating Named Plaintiff Rocky Haworth as a Class Representative for the B/C Seat Class;
- e. appointing the Crimmins Law Firm, LLC, Hodes Law Firm, LLC and Fair Work, P.C. as Class Counsel pursuant to Rule 23(c)(1)(B) and (g) for settlement purposes only;
- f. approving the Notice substantially in the form of Exhibits A-C for distribution to the B/C Seat Class, and finding that the Notice to be given constitutes the best notice practicable under the circumstances, including individual notice to all Class Members who can be identified

with reasonable effort, and constitutes valid, due and sufficient notice to Class Members in full compliance with the requirements of applicable law, including the due process clause of the United States Constitution;

g. transferring the *Haworth* Matter to the United States District Court for the District of Massachusetts to be consolidated with the case styled *Dominic Oliveira et al. v. New Prime, Inc.*, Civil Action No. 1:15-cv-10603 (D. Mass), for the sole purpose of administering the settlement, including handling any individuals requesting exclusion or objectors, and conducting a Final Fairness Hearing in accordance with the terms of this Agreement; and

h. ordering that the *Haworth* Matter should be transferred back to the United States District Court for the Western District of Missouri in the event that the proposed settlement is not finally approved as set forth in Paragraph D.7.

2. ***Oliveira Matter.*** The Parties agree to seek the Massachusetts Court's preliminary approval of the class and collective action settlement, including the Orientation, B/C Seat, A Seat and Independent Contractor Classes. Named Plaintiff Oliveira will file a Motion for Preliminary Approval of Settlement with the Massachusetts Court and a Motion to Consolidate for Settlement Purposes Only, which is subject to review and approval by Defendant, which approval shall not be unreasonably withheld. Named Plaintiff Oliveira will simultaneously submit a Proposed Order Preliminarily Approving Settlement in substantially the same form as Exhibit E, and that Proposed Order will include:

a. granting Preliminary Approval to the Settlement, adjudging the terms to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. certification of the *Oliveira* Matter case for settlement purposes only as a class action under Federal Rule of Civil Procedure 23(b)(3) and as a collective action under 29 U.S.C. § 216(b) of the Fair Labor Standards Act;

c. designating Named Plaintiff Dominic Oliveira as a class representative;

d. appointing Fair Work, P.C. as Class Counsel pursuant to Rule 23(c)(1)(B) and (g);

e. acknowledging that the parties will request that the *Haworth* Matter be transferred from the United States District Court for the Western District of Missouri to the United States District Court for the District of Massachusetts and consolidated with the *Oliviera* Matter for purposes of final settlement approval and ordering that, once the *Haworth* Matter is transferred, the *Oliveira* Court shall accept transfer and preside over the consolidation of the cases and the final settlement approval of the consolidated cases;

f. acknowledging that the United States District Court for the Western District of Missouri has certified the B/C Seat Class as an FLSA collective action and Rule 23 class action for settlement purposes, appointed Plaintiff Haworth as Class Representative for the B/C Seat Class, and appointing the Crimmins Law Firm, LLC, Hodes Law Firm, LLC and Fair Work, P.C. as Class Counsel for the B/C Seat Class pursuant to Rule 23(g);

g. acknowledging that the parties will ask the United States District Court for the Western District of Missouri to preliminarily approve the settlement as to the B/C Seat Class pursuant to 29 U.S.C. § 216(b) and Rule 23(g) and that the *Oliviera* Court's preliminary approval Order is contingent upon preliminary approval in the *Haworth* Matter as set forth in paragraph D.7 of the Agreement;

h. approving the Notice substantially in the form of Exhibits A-C for distribution to all Putative Class/Collective Members, and finding that the Notice to be given constitutes the best

notice practicable under the circumstances, including individual notice to all Class Members who can be identified with reasonable effort, and constitutes valid, due and sufficient notice to Class Members in full compliance with the requirements of applicable law, including the due process clause of the United States Constitution;

i. directing the Settlement Administrator to distribute the Notice in the form approved by the Court to Putative Class/Collective Members;

j. directing that each Putative Class Member who wishes to be excluded from the Settlement Class must exclude himself or herself per the instructions set forth in the Notice;

k. directing that any Putative Class Member who has not properly and timely requested exclusion from the Settlement Class shall be bound by the Settlement in the event the Court issues a Final Order Approving Settlement;

l. scheduling of a Fairness Hearing to determine whether this Agreement should be approved as fair, reasonable, and adequate and whether the proposed Final Order Approving Settlement should be entered;

m. directing that Class Counsel and/or the Settlement Administrator tabulate communications from Putative Class/Collective Members asking to be excluded from the Settlement Class and shall report the names and addresses of such persons to the Court and to Defendant no less than ten (10) days before the Fairness Hearing;

n. directing that Class Counsel file a Motion for Final Settlement Approval, including a Fee and Expense Application and Class Representatives' Service Award Application seven (7) days prior to the Fairness Hearing (or by another date ordered by the Court), and that the Court shall determine in the final settlement approval order in what amount attorneys' fees and reimbursement of costs and expenses, and service awards shall be awarded;

o. directing that attached to the Motion for Final Settlement Approval shall be a list of all Settlement Class Members who are members of the Independent Contractor Class who have been determined, through the process set forth in Paragraph F.8.c, not to be entitled to a release relating to all monies purportedly owed to Defendant (which list may be filed under seal, but any individuals on that list shall be made aware that they are on the list pursuant to the notice procedures set forth in paragraph F.8 of this Agreement);

p. directing that any Putative Class Member who wishes to object in any way to the proposed Agreement must serve on the Settlement Administrator such written objections per the instructions set forth in the Notice no later than sixty (60) days after mailing of the Notice, together with copies of all papers in support of his or her position;

3. **Objection to Settlement.** Any Class Member who intends to object to the fairness of the Agreement must, by the date specified in the Preliminary Order Approving Settlement (which shall be sixty (60) days after the mailing of the Class Notice and no less than fifteen (15) business days before the Fairness Hearing), serve any such objection on the Settlement Administrator, who shall promptly forward to Class Counsel and Defendant's Counsel. Any objection to the Agreement must include: (i) the objector's full name, address, email address, and telephone number; (ii) the approximate dates during which the objector attended orientation or drove with Defendant; (iii) a written statement of all grounds for the objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based (if applicable); (v) a statement whether the objector intends to appear at the Fairness Hearing; and (vi) the objector's signature. If the objector intends to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the fairness hearing. Any Class Member who does not serve on the Settlement Administrator a timely written objection

to the settlement and notice of his or her intent to appear at the Fairness Hearing shall be foreclosed from seeking any adjudication or review of the settlement by appeal or otherwise.

4. **Request for Exclusion.** Any Putative Class Member who wishes to be excluded from the Settlement Class must submit a request for exclusion from the Settlement by the date specified in the Preliminary Order Approving Settlement (which shall be sixty (60) days after the mailing of the Notice and no less than fifteen (15) business days before the Fairness Hearing). To be effective, the request for exclusion must be sent to the address specified in the Notice and must include (i) the Putative Class Member's full name, address, email address, and telephone number, (ii) approximate dates during which the Putative Class Member attended orientation or drove with Defendant; (iii) a statement that the Putative Class Member requests to be excluded from the settlement and understands that he or she will not be eligible to recover any monies as part of the settlement; and (iv) the Putative Class Member's signature. Any Putative Class Member who fails to submit a timely request to be excluded shall be subject to and bound by this Agreement and every order or judgment entered pursuant to this Agreement.

5. **Fairness Hearing.** On the date set forth in the Preliminary Approval Order, the Court will hold a final Fairness Hearing, at which time the Court will decide (either at the hearing or by subsequent order) (1) whether to certify the Settlement Class, (2) whether to finally approve the Settlement as fair, reasonable, and adequate, and (3) any petitions for attorneys' fees, costs, or service awards.

6. **Final Approval:** If the Agreement is finally approved by the Court, a Final Approval Order shall be entered as follows:

a. directing the entry of judgment pursuant to Federal Rule of Civil Procedure 54(b) and 29 U.S.C. § 216(b) *et seq.*;

- b. granting Plaintiffs' Motion for Final Settlement Approval;
- c. approving the Agreement and dismissing with prejudice all released claims;
- d. declaring that the Agreement is binding on Defendant, the Class Representatives, and all Participating Class Members who have not excluded themselves from the settlement;
- e. dismissing without prejudice the claims of Putative Class/Collective Members who have properly and timely excluded themselves in full accordance with the procedures set forth in this Agreement; and,
- f. indicating the amount of attorneys' fees and expenses to be awarded to Class Counsel and the amount of the Class Representatives' service awards.

7. Effect of No Approval:

- a. If either the Massachusetts or Missouri Court does not preliminarily approve this Agreement, including the settlement approval process, the Parties agree to confer and work cooperatively to take all reasonable steps to obtain final settlement approval.
- b. If the Agreement is not finally approved by the Massachusetts Court (and except in the event that the Court simply modifies or rejects the attorneys' fees, Service Awards, and costs requested pursuant to Paragraphs C.5, C.6, C.7), this Agreement will be null and void, and the *Oliveira* Court shall transfer the *Haworth* action back to the United States District Court for the Western District of Missouri. In the event that occurs, the Parties will bear equally any Settlement Administration costs incurred up to that point. However, the Parties agree to confer and to work cooperatively to take all reasonable steps to determine the best path to final approval of the settlement and attempt to address any concerns that the Court may have with the proposed settlement.

E. Settlement Administrator. If both Courts grant preliminary approval of this Agreement, the settlement will be administered by JND Legal Administration a third-party administrator (“Settlement Administrator”). Fees and expenses of the Settlement Administrator shall be paid out of the Non-Reversionary Settlement Fund.

F. Settlement Administration. The Parties agree to the following procedure for settlement administration:

1. **Class Contact Information.** Within seven (7) business days after execution of this Agreement and in no event later than the date of the preliminary approval hearing in *Oliveira*, Defendant will provide the names, last known addresses, last known email addresses, and all last known phone numbers for the class period to the Settlement Administrator and Settlement Class Counsel (“Contact Information”), to the extent that information has not already been provided.

2. **Class Data.** Defendant’s Counsel shall produce data requested by Class Counsel that is reasonably necessary for Class Counsel to perform the settlement calculations, with unique identifiers for all Putative Class/Collective Members, as well as a list of the unique identifiers used for all Named Plaintiffs and individuals who have opted in to the *Oliveira* Matter to date. The data to be produced will be materially similar to the data initially produced, in terms of number of class members, weeks worked, miles, earnings, etc. Named Plaintiffs/Class Counsel shall perform the calculations for purposes of the amounts to be listed in class members’ notices, within one week after receiving complete data. Class Counsel shall send the preliminary Settlement Allocations to Defendant’s Counsel within seven (7) days of receiving the data from Defendant’s Counsel. Defendant’s Counsel shall notify Class Counsel within three (3) business days of any disputes or issues with the preliminary Settlement Allocations, which shall be resolved promptly.

Immediately after resolution of any disputes or issues, the preliminary Settlement Allocations shall be provided to the Settlement Administrator.

3. **Notice Packet and Notice Website:** The Notice of Settlement (“Notice Packet”) shall consist of a Notice form, in either electronic (Exhibit A) or paper format (Exhibit B) (“Notice”) and Claim/Consent to Join Form (Exhibit C) and shall be issued in the form substantially similar to that attached hereto and made a part of this Agreement as Exhibits A-C. Additionally, pursuant to the drafting and approval procedures set forth in Paragraph F.4 below, the Settlement Administrator shall create a website that contains the contents of the Notice Packet and gives Putative Class/Collective Members the opportunity to submit a Claim/Consent to Join Form online. (“Notice Website”). Putative Class/Collective Members for whom Prime has provided email addresses shall receive the Notice Packet via email. For Putative Class/Collective Members for whom Defendant has not provided email addresses and/or for whom the email addresses are undeliverable, the Notice Packet shall be provided by First-Class Mail.

a. The Notice Packet shall (1) include information about the different categories of funds, (2) inform Putative Class/Collective Members of their right to do nothing, submit a Claim/Consent to Join Form, exclude themselves from, or object to the settlement, (3) inform Putative Class/Collective Members that they are subject to a release of state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in the Litigation, if they do not exclude themselves from the settlement, (4) inform Putative Class/Collective Members of the non-monetary release described in Paragraphs G.4-5 and provide them with information about the potential tax consequences; and (5) list the Minimum Allocation that the individual would receive from the settlement and advise them of their right to claim a larger portion of the Settlement Fund.

The Notice Packet shall advise Putative Class/Collective Members how to submit the Claim/Consent to Join Form, including that it may be completed electronically or sent in by mail, email, or facsimile and shall also include the address of the Notice website. The Notice Packet shall also advise Putative Class/Collective Members of how they can request exclusion from or object to the settlement.

b. The Claim/Consent to Join Form shall request the Putative Class/Collective Member's address, and shall request (but not require) identifying information such as date of birth, last four digits of Social Security Number or Tax Identification Number. In the event that the date of birth, last four digits of the Social Security Number, or tax ID number are not included and are necessary to identify the Putative Class/Collective Member, the settlement administrator shall follow up with the Putative Class/Collective Member to obtain such information (but the lack of that information shall not render the claim form invalid).

c. The Notice Packet shall be made available to Putative Class/Collective Members in English and Spanish and in up to three other languages common to members of the class, as determined by Named Plaintiffs/Class Counsel.

4. **Draft Notice Materials:** Within three weeks of receipt of the Contact Information and Settlement Allocations, the Settlement Administrator shall create a Notice Packet for each Putative Class Member, consistent with Paragraph F.3, as well as a draft of the Notice website, consistent with Paragraph F.3. Each Putative Class Member's Notice Packet shall include the unique identifier referenced in paragraph F.2, *supra*, on both the Notice and the Claim/Consent to Join Form. Copies of said Notice Packets, as well as a draft copy of the Notice website, will be delivered to the Parties' counsel via email in pdf format and via a link to the draft website for review and approval, which shall not be unreasonably withheld. The Parties' counsel shall have

seven (7) business days to advise the Settlement Administrator of any changes or corrections to the Notice Packets, or Notice website, or approve the same. In the event non-substantive changes to any of the Notice Packets, or website, are requested by the Settlement Administrator or the Parties, and provided the changes are consistent with this Agreement, the Parties may edit and shall endeavor to promptly finalize the Notice Packets and website.

5. Issuance of Notice:

a. Within three weeks of approval of the Notice Materials by the Parties, as is set forth in Paragraph F.4, the Settlement Administrator shall issue the Notice Packets and publish the Notice website. The Notice packets shall be delivered to Putative Class/Collective Members via email.

b. For Putative Class/Collective Members whose email bounces back, the Notice Packet shall also be sent by first-class mail (to the last known address and/or the address discovered using skip tracing), along with a postage pre-paid envelope. The Settlement Administrator will make reasonable efforts to obtain valid current addresses for Putative Class/Collective Members through the National Change of Address database, or other similar database, prior to mailing the initial Notice Packets. If any initial Notice Packet to Putative Class/Collective Members is returned via the U.S. Postal Service as undeliverable, the Settlement Administrator shall make reasonable efforts to obtain valid, current addresses for the Putative Class/Collective Members and the Notice Packet will be promptly re-mailed to the updated address. If, an alternate mailing address cannot be located, or if after an email, and a second mailing of the Notice Packet, the Notice Packet is returned by the U.S. Postal Service as undeliverable, the Parties shall be deemed to have satisfied their obligation to provide the applicable notice to that Class Member.

c. When Notice Packets are resent to Putative Class/Collective Members, the Putative Class/Collective Members shall be given at least thirty (30) days from the date on which the Notice Packets are resent to timely submit a Claim/Consent to Join Form.

d. A reminder email or postcard shall go out to Putative Class/Collective Members who have not claimed halfway through the claim period. The reminder shall go out by email only to drivers with email addresses from which the Settlement Administrator did not receive a bounce-back. For those for whom emails bounce back, the reminder shall be sent as a postcard by first-class mail. The reminder shall include the address of the website, as well as contact information for the Settlement Administrator and Named Plaintiffs/Class Counsel. The Settlement Administration shall notify the Parties' counsel upon the emailing of the Notice Packets and reminder emails/postcards.

6. **Claim Deadline.** Putative Class/Collective Members shall have sixty (60) days from emailing of the Notice Packets to submit the Claim/Consent to Join Form. ("Claim Deadline"). Claim/Consent to Join Forms may be submitted electronically or sent by mail, email, or facsimile. Putative Class/Collective Members shall be permitted to use any form of the Claim/Consent to Join Form to submit a valid claim (not just the form sent to them specifically). The Parties may jointly agree in writing to extend the Claim Deadline for one or more Putative Class/Collective Members. All Putative Class/Collective Members who do not request exclusion from the settlement will receive a minimum payment regardless of whether they submit a Claim/Consent to Join Form. Putative Class/Collective Members who submit a Claim/Consent to Join Form will receive payment according to the formula set forth in Paragraph C.2.b.vi. Class Counsel will file with the Court all submitted Claim/Consent to Join Forms, after redaction of any personal identifying information that may appear on the forms.

7. **Settlement Administration Updates.** The Settlement Administrator will provide regular updates about the Settlement Administration process to the Parties' Counsel and/or the Court as may be appropriate in connection with Final Fairness Hearing. The Settlement Administrator will also provide copies of all completed Claim/Consent to Join Forms to the Parties on at least a bi-weekly basis.

8. **Communications with Putative Class/Collective Members and Dispute Resolution Process:**

a. If the Settlement Administrator receives inquiries from any Putative Class/Collective Members who disagrees with, or has concerns about, his or her Settlement Allocation, the Settlement Administrator shall promptly provide this information to Named Plaintiffs/Class Counsel who shall make an initial determination about whether there is an issue that should be resolved via the Dispute Fund. After making an initial determination that an issue should be resolved out of the Dispute Fund, Named Plaintiffs/Class Counsel shall seek approval of the proposed allocation from the Dispute Fund from Defendant's Counsel, which approval shall not be unreasonably withheld.

b. If the Settlement Administrator receives a late Claim/Consent to Join Form from any Putative Class Member, the Settlement Administrator shall promptly provide this information to Named Plaintiffs/Class Counsel who shall make an initial determination about whether the late Consent to Join/Claim Form should be resolved via the Dispute Fund. After making an initial determination that an issue should be resolved out of the Dispute Fund, Named Plaintiffs/Class Counsel shall seek approval on the proposed allocation from the Dispute Fund from Defendant's Counsel, which approval shall not be unreasonably withheld.

c. Within fourteen (14) days of Defendant being provided completed Claim/Consent to Join Forms pursuant to Paragraph F.6 for any Putative Class/Collective Member who is an Independent Contractor Class Member, Defendant will advise the Settlement Administrator and Named Plaintiffs/Class Counsel if Defendant believes that the Claiming Class Member destroyed, damaged or stole Prime property, and provide sufficient detail regarding the alleged damage or theft such that the Settlement Administrator and/or Named Plaintiffs/Class Counsel can investigate and communicate with the Claiming Class Member about (1) a possible cure (i.e., return and/or repair of Prime property), in which case the Claiming Class Member shall be entitled to the release under this section; and/or (2) any dispute regarding Prime's claim that the Claiming Class Member has destroyed, damaged or stolen Prime property.

d. After the Settlement Administrator and/or Named Plaintiffs/Class Counsel has conferred with the Claiming Class Member, Named Plaintiffs/Class Counsel will confer with Defendant's Counsel about whether a dispute exists regarding the alleged damage or theft and/or whether a cure can be implemented. If the Parties cannot resolve the disputes among themselves, the Settlement Administrator shall make a determination. If the dispute cannot be resolved by the Settlement Administrator, it shall be resolved by binding arbitration before D. Charles Stohler, Esq. Mr. Stohler's fees shall be paid out of the Dispute Fund. If a dispute is resolved in whole or in part in favor of the Independent Contractor Class Member, then Defendant shall release entitlement to monies as to such Independent Contractor Class Member (in whole or in part, depending on the resolution of the dispute).

e. The Settlement Administrator shall keep a list of these individuals' names and the outcome of the dispute, including specifically identifying who is entitled to the release set forth in

Paragraph G.5 and who is not entitled to the release set forth in Paragraph G.5. This list shall be provided to the Court in connection with final approval of the settlement.

9. **Qualified Settlement Fund:** The settlement administrator shall be responsible for establishing a Qualified Settlement Fund. Defendant shall deposit \$21,000,000 of the Settlement Fund into a Qualified Settlement Fund established by the Settlement Administrator within sixty (60) days after an order granting preliminary approval by the United States District Court for the District of Massachusetts. Defendant shall deposit the remaining amounts owed, if any, based upon claims made, within 30 days after the close of the claim period.

10. **Final Settlement Allocations:** Within ten (10) business days after the Effective Date, Named Plaintiffs/Class Counsel, in connection with the Settlement Administrator, shall review any remaining non-reversionary funds and calculate the allocation portion of those funds for each Class Member in accordance with the formula set forth in Paragraph C. The Settlement Administrator and/or Named Plaintiffs/Class Counsel will share these final calculations with Defendant's Counsel who shall have five (5) business days to provide any objections to the final allocations.

11. **Settlement Payments.**

a. **Settlement Checks.** The Settlement Administrator shall issue payment from the Settlement Fund to Class Counsel for the Court-approved attorneys' fees and costs, to the Named Plaintiffs for the Court-approved service awards, and for the final settlement allocations to Participating Class Members within thirty (30) days after the Effective Date. The payments may be made via check.

b. **Reissuing of Payments.** If any settlement checks are returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the person (including using the Social

Security Number of that Participating Class Member). Upon request by a Participating Class Member, the Settlement Administrator will promptly reissue checks that were mailed but not cashed by the Participating Class Member, during the 180-day time period to deposit/cash checks from the settlement. Any settlement check that remains undeliverable or is not cashed after the 180 days following its issuance shall be cancelled and voided, and the Settlement Administrator shall deliver any uncashed or uncollected but claimed funds to the appropriate state Unclaimed Property Division. Within ten (10) business days of the transfer of any unclaimed funds of Participating Class Members to an Unclaimed Property Fund, the Settlement Administrator will notify Defendant and Class Counsel, identifying the Participating Class Members who did not cash or collect their Settlement Allocation checks, along with the amount of unclaimed funds remitted and identification of the specific state Unclaimed Property Fund to which the funds were remitted.

c. Unclaimed reversionary funds shall be returned to Defendant within sixty (60) days after Class Members' checks are issued.

G. Release.

1. Upon the Effective Date, and in consideration for the service awards, Named Plaintiffs and Defendant hereby release each other from any and all legal, equitable or other claims, counterclaims, actions, causes of action or damages, and any past, present or future duties, responsibility, or obligations, known or unknown, existing at any time prior to May 8, 2020, including but not limited to any claims or counterclaims that were or could have been filed in the Litigation.

2. Upon the Effective Date, the release of claims of Participating Class Members shall become effective to the fullest extent allowed by law. Participating Class Members will release all federal and state unpaid wage claims, contract and quasi-contract claims, and any other claims

related to unpaid wages or compensation that were or could have been brought against Prime (or its subsidiaries and affiliates) in the *Oliveira* and/or *Haworth* cases to the fullest extent allowed by law. This release will be limited to claims that arose in the course of the Participating Class Members' relationship with Defendant at any time prior to this Agreement through May 8, 2020.

3. The Claim/Consent to Join form will advise Class Members of this release. Furthermore, within thirty (30) days of the Effective Date, Minimum Participation Class Members will be sent their minimum allocation check, as set forth in Paragraph C.2.b.vi. Checks issued pursuant to this Paragraph will further contain release language on the back of the check in substantially the same form as the following "By endorsing this check, I agree to be bound by the *Oliveira* and *Haworth* settlement and release all federal and state unpaid wages claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in the *Oliveira* and/or *Haworth* cases against New Prime and its subsidiaries and/or affiliates."

4. Upon the Effective Date, Defendant shall release entitlement to and shall not pursue (and/or shall discontinue) any collection efforts relating to all monies purportedly owed to Defendant by Named Plaintiffs or Participating Class Members who are members of the Orientation, A or B/C Seat Classes and, either currently or at the time of their departure from Prime, were in orientation, a B/C seat position, or an A seat company position. This includes Defendant taking all action to cease any collection of these monies by third party collection agencies and/or any collection of these monies through deductions from drivers' pay (for work for Defendant or for any other entities).

5. Upon the Effective Date, Defendant shall release entitlement to and shall not pursue (and/or shall discontinue) any collection efforts relating to all monies purportedly owed to

Defendant by Claiming Class Members who are members of the Independent Contractor Class, file a Claim/Consent to Join Form, and were in an independent contractor driving position either currently or at the time of their departure from Prime, unless the individual Claiming Class Member participated in the dispute resolution process and, through that process, it was determined that Prime retains its rights to pursue some or all monies and property owed. The individuals for whom Prime is not releasing entitlement to monies purportedly owed shall be included as an attachment to the Motion for Final Settlement Approval.

6. It is the intention of the Parties and their Counsel that these releases be fully enforceable in accordance with this Agreement.

7. Putative Class/ Collective Members who request exclusion from the settlement will not release any federal or state wage and hour claims, if any.

H. Representations: In furtherance of Paragraphs G.4 and G.5, Prime further represents that (1) it is not an “applicable entity” pursuant to 26 U.S.C. § 6050P(c) and 26 C.F.R. §§ 1.60P-1(b)(2)(i)(E) and 1.605P-2(c) because it is not a financial institution and/or a direct or indirect subsidiary of a financial institution and lending money is not a significant part of its business and (2) its agreement to release drivers from the monies described in Paragraphs G.4 and G.5 is not an “identifiable event” triggering reporting requirements because the Parties’ agreement in Paragraphs G.4 and G.5 is not a discharge of debt but instead is an agreement not to enforce certain contractual provisions. Moreover, the parties agree and acknowledge that the Named Plaintiffs, on behalf of the putative class and collective, dispute the validity and enforceability, as well as the amount of, any debts or monies purportedly owed to Prime.

I. Other Non-Monetary Relief.

1. Credit Reporting by Defendant. After final approval of this Agreement, Defendant will use its best efforts to request that the national credit reporting agencies (Experian, Equifax and TransUnion) delete any reporting of the trade line(s) with respect to Participating Class Members' drivers' accounts with Prime in connection with the release pursuant to Paragraphs G.4 and G.5.

2. Hire Right Reporting. If a driver requests by letter to HireRight that records of a default to Prime and/or related entities be corrected in accordance with the release of Prime's entitlement to monies, and to the fullest extent permitted by law, Prime agrees to provide a timely letter to HireRight with a copy to the requesting driver that any defaults owing to Prime and/or related entities (as described in Paragraphs G.4 and G.5) have been rescinded by mutual agreement.

3. Driver References. Prime and related entities shall give no new or additional negative references to any driver for having allegedly defaulted on any amounts released pursuant to Paragraphs G.4 and G.5.

J. Tax Treatment.

1. For tax purposes, one-half of each Participating Class Member's Settlement Allocation shall be deemed payment of alleged unpaid wages, subject to all legally required garnishments, liens, wage withholding orders, regular withholding, and similar obligations, and reported on an IRS Form W-2. The remaining one-half of the settlement amount shall be deemed compensation for interest, penalties, and liquidated damages, shall not be subject to payroll withholdings, and shall be reported on an IRS Form 1099.

2. Attorneys' fees and costs paid pursuant to Paragraph C.5 shall be paid without withholding and shall be reported to the IRS and Class Counsel on an IRS Form 1099 under Class

Counsel's names and taxpayer identification numbers, which Class Counsel shall provide for this purpose.

3. Prime shall not issue 1099 forms or other tax forms to the drivers for the releases provided above in Paragraphs G.4 and G.5 because no compensatory payment will issue. This provision shall be enforceable to the fullest extent allowable by law.

4. Defendant will bear the employer's share of payroll taxes separately from the Settlement Fund.

5. Each side shall bear the liability as to their share of any taxes owed, and the parties shall not be responsible or liable for taxes owed by other parties.

K. Service or Notice. Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Defendant, Defendant's Counsel or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below:

As to Class Counsel or Plaintiffs:

Hillary Schwab
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
(617) 607-3261 Telephone
(617) 488-2261 Facsimile
hillary@fairworklaw.com

Virginia Stevens Crimmins
Matthew Crimmins
CRIMMINS LAW FIRM LLC
214 S. Spring Street
Independence, MO 64050
(816) 974-7220 Telephone
(855) 974-7020 Facsimile
v.crimmins@crimminslawfirm.com
m.crimmins@crimminslawfirm.com

Garrett M. Hodes
HODES LAW FIRM, LLC

900 Westport Rd., 2nd Floor
Kansas City, MO 64111
(816) 931-1718 Telephone
(816) 994-6276 Facsimile
garrett@hodeslawfirm.com
As to Defendant:

Michele L. Maryott
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612
(949) 451-3945 Telephone
(949) 475-4668 Facsimile
mmaryott@gibsondunn.com

Amanda C. Machin
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
(202) 887-3705 Telephone
(202) 530-4244 Facsimile
amachin@gibsondunn.com

L. No Admission of Liability. By entering into this Agreement, Defendant admits no liability of any kind, and Defendant expressly denies any liability or wrongdoing. Accordingly, the Parties agree that none of them has prevailed, nor shall this Agreement be construed as evidence that any party has prevailed in this matter or that any alleged damages exist. This Agreement shall not be admissible in any court or other proceeding except as necessary in connection with a claim of breach of this Agreement or an effort to enforce this Agreement.

M. Choice of Law. The enforcement of this Agreement shall be governed and interpreted by and under the laws of the Commonwealth of Massachusetts whether or not any party is or may hereafter be a resident of another state.

N. Extension of Time. The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice to the Court, subject to Court approval as to Court dates.

O. No Waivers, Modifications, Amendments. This Agreement constitutes the entire agreement of the Parties concerning the subjects contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

P. Court Retains Jurisdiction To Enforce Agreement. The United States District Court for the District of Massachusetts shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, to the extent permitted by law, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Agreement.

Q. Agreement to Cooperate. The Parties acknowledge that it is their intent to consummate this settlement, and they agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

R. Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Class Representatives and Defendant had signed the same instrument. Any signature made electronically and/or transmitted by facsimile

for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the signing party.

S. Corporate Signatories. Each party executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so. Any person executing this Agreement or any such related documents on behalf of a corporate signatory hereby warrants and promises for the benefit of all Parties hereto that such person is duly authorized by such corporation to execute this Agreement or any such related documents.

T. Captions. The captions or headings of the Paragraphs in this Agreement are inserted for convenience or reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Named Plaintiff

DocuSigned by:
Dominic Oliveira
By: A721E4E930E74D9
Name: Dominic Oliveira
Date: 7/20/2020

New Prime, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Named Plaintiff

By: _____
Name: Rocky Haworth
Date: _____

for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the signing party.

S. Corporate Signatories. Each party executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so. Any person executing this Agreement or any such related documents on behalf of a corporate signatory hereby warrants and promises for the benefit of all Parties hereto that such person is duly authorized by such corporation to execute this Agreement or any such related documents.

T. Captions. The captions or headings of the Paragraphs in this Agreement are inserted for convenience or reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Named Plaintiff

New Prime, Inc.

By: _____

Name: Dominic Oliveira

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Named Plaintiff

By: Rocky Haworth

Name: Rocky Haworth

Date: Jul 20 2020

for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the signing party.


S. Corporate Signatories. Each party executing this Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so. Any person executing this Agreement or any such related documents on behalf of a corporate signatory hereby warrants and promises for the benefit of all Parties hereto that such person is duly authorized by such corporation to execute this Agreement or any such related documents.

T. Captions. The captions or headings of the Paragraphs in this Agreement are inserted for convenience or reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Named Plaintiff

By: _____
Name: Dominic Oliveira
Date: _____

New Prime, Inc.

By: 
Name: STEVE CRAWFORD
Title: GENERAL COUNSEL
Date: 1/20/20

Named Plaintiff

By: _____
Name: Rocky Haworth
Date: _____

Exhibit A

NOTICE OF SETTLEMENT

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE
ENTITLED TO MONEY FROM A SETTLEMENT WITH NEW PRIME, INC.**

**YOU MUST TAKE ACTION BY [INSERT DATE] TO RECEIVE YOUR
MAXIMUM SHARE**

This Notice affects your rights. Please read it carefully.

AVISO IMPORTANTE A MIEMBROS POTENCIALES DEL COLECTIVO – Para español, haga clic [aquí](#).

This is not a solicitation from a lawyer. The United States District Courts (the “Courts”) for the District of Massachusetts and the Western District of Missouri authorized this Notice.

TO: «First_Name» «Last_Name»
 <<Class Settlement Driver Code >>

RE: **Settlement of Claims for Alleged Unpaid Wages and All Related Claims for Relief**

- A settlement has been reached between Dominic Oliveira and Rocky Haworth (“Class Representatives”) and New Prime, Inc. (“Prime”) regarding Plaintiffs’ claims that Prime improperly paid drivers, in violation of the Fair Labor Standards Act (“FLSA”), Missouri Minimum Wage Law (“MMWL”) and related laws.
- For settlement purposes, the Courts have preliminarily certified a class and collective action of all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321(C.D. Cal.).
- You are receiving this Notice because you have been identified as a Class Member. This Notice is to inform you about the settlement and your rights related to the same.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
JOIN THE SETTLEMENT AND RECEIVE YOUR MAXIMUM SHARE	If you wish to receive your maximum share of the settlement, you must fill out and return or submit online the attached Claim/Consent to Join Form no later than [insert date 60 days] . By doing so, you will receive a minimum settlement payment of <<Settlement_Amount>>, which has been calculated as described in Section 3 below.
DO NOTHING	If you choose to do nothing, you will be eligible to receive a minimum settlement payment, described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you choose to exclude yourself from the settlement by [insert date] , you will not receive any payment and will not be considered a part of this settlement.
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the settlement.

For more information about the settlement, please visit the website: [insert website address].

1. What is this litigation about?

Plaintiff Dominic Oliveira filed a lawsuit in United States District Court for the District of Massachusetts on March 4, 2015 on behalf of himself and other similarly situated trainees and drivers for Prime in a case entitled *Oliveira v. New Prime, Inc.*, Case No. 1:15-CV-10603. This lawsuit alleged violations of the FLSA and state wage and hour laws. Specifically, the lawsuit alleged that Prime failed to properly pay trainees during orientation at Prime, and that Prime's pay practices with respect to employee drivers and independent contractors violated federal and state wage and hour laws. Plaintiff Rocky Haworth filed a lawsuit in the United States District Court for the Western District of Missouri on January 22, 2019 on behalf of himself and other similarly situated B and C seat drivers employed at Prime in a case entitled *Haworth v. New Prime, Inc.*, Case No. 6:190-CV-003025-RK. This lawsuit alleged that Prime's compensation of B and C seat drivers violated the FLSA and Missouri wage laws. Prime denied and continues to deny the allegations in these cases. However, Prime wishes to settle these cases to avoid continued costly and time-consuming litigation.

2. Who is included in the Settlement Class?

The following class and collective action has been certified for settlement purposes: all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time from March 4, 2010, to May 8, 2020 (the "Class Period"), except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321 (C.D. Cal.).

3. What are the Benefits and Terms of the Settlement?

To settle this case, Prime has agreed to pay a total of up to \$28,000,000.00 (the "Settlement Fund"), inclusive of all alleged unpaid wages, liquidated damages, penalties, interest, costs, and attorneys' fees.

If the Court approves the settlement, you are eligible to receive a portion of the Settlement Fund, after payment of attorneys' fees and costs and Service Awards to the Class Representatives. If the Court approves the settlement and you do nothing, you shall receive a minimum payment of \$100, less applicable tax withholdings, in exchange for releasing your claims (See Section 6). If the Court approves the settlement and you file a Claim/Consent to Join Form, you will be entitled to receive an additional amount. The parties have endeavored to divide the Settlement Fund in a fair way. The Settlement Fund will be allocated in the following ways:

- **Orientation Class Fund:** Individual allocations of this fund will be based on the type of training or orientation you attended and the location where you attended it.
- **B/C Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in B or C seat status, compared to the gross earnings during that time.
- **A Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an employee driver (also known as "company driver"), compared to the gross earnings during that time.
- **Independent Contractor Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an independent contractor, compared to 65% of the gross revenues earned during that time.

Additionally, individuals who have already received monies as part of another class action settlement in California against New Prime, Inc. will receive a 50% share from this settlement. Under these formulas, if the settlement is approved by the Court and you join the settlement, you will receive a settlement payment no less than the estimated gross amount of «**Settlement_Amount**». You may also be eligible to be paid additional amounts from the settlement depending on how many individuals submit forms to participate in the settlement.

One-half of each Settlement Class Member's settlement payment is considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and reported on an IRS Form W-2. The remaining one-half of the settlement payment is considered compensation for interest, penalties and liquidated damages, and will not be subject to payroll withholdings, and will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement, including the non-monetary relief provided pursuant to the settlement, which is described below.

In addition to the monetary relief above, as a part of the settlement, if approved, Prime has agreed (1) to release entitlement to and not pursue any collection efforts relating to all monies purportedly owed to Prime by Class Members who either currently or at the time of their departure from Prime were in orientation, a B/C seat position, or an A seat company position; (2) to release entitlement to and not pursue any collection efforts related to all monies purportedly owed to Prime by Class Members who file a Claim/Consent to Join form and who either currently or at the time of their departure from Prime were in an independent contractor driving position (with the exception of certain independent contractors who may have destroyed, damaged or stolen Prime property); (3) to use best efforts to request that the national credit reporting agencies (Experian, Equifax and TranUnion) delete any reporting of drivers' accounts with Prime in connection with any monies released as described above; and (4) upon a driver's request to HireRight, provide a time letter to HireRight with a copy to the requesting driver that any defaults owing to Prime and/or related entities have been rescinded by mutual agreement. For more information about this additional relief and the extent to which it applies to you, please visit **[INSERT WEBSITE]** or contact the Settlement Administrator (contact information in Section 10, below).

4. Who is Class Counsel?

The Court has appointed Hillary Schwab and Rachel Smit of Fair Work, P.C. of Boston, Massachusetts as Class Counsel to represent the Settlement Class and Virginia Stevens Crimmins, and Matthew R. Crimmins of the Crimmins Law Firm LLC of Independence, Missouri, Garrett M. Hodes of the Hodes Law Firm, LLC of Kansas City, Missouri, and Ms. Schwab as Class Counsel to represent members of the Settlement Class relating to claims for unpaid wages while driving as B and/or C seat drivers. The contact information for Class Counsel is listed below in Section 10.

5. How much are Attorneys' Fees, Expenses and Service Awards to Class Representatives?

Class Counsel pursued these cases on a contingent fee basis and has not received any payment of fees or reimbursement of their out-of-pocket expenses related to litigation or recovery on behalf of the Class. As part of the settlement, subject to approval, Class Counsel will apply for attorneys' fees in an amount not to exceed \$9,240,000.00, which is 33% of the Settlement Fund. Additionally, Class Counsel will apply for reimbursement of litigation costs (including the costs of having a Settlement Administrator administer this settlement) in an amount not to exceed \$225,000.00. The payment for attorneys' fees and litigation costs to Class Counsel will be recovered from the Settlement Fund. Participating Class Members will not be required to make any payments to Class Counsel for attorneys' fees or other litigation costs from their individual settlement amounts. Class Counsel will

also ask the Court to approve Service Awards to the Class Representatives in an amount not to exceed \$50,000.00 to Mr. Oliveira and \$25,000.00 to Mr. Haworth.

6. What happens if the Court Approves the Settlement?

If the Court approves the proposed Settlement, these cases will be dismissed with prejudice on the merits as to all Class Members who do not exclude themselves the settlement. This means that Class Members who do not exclude themselves will be barred from bringing their own lawsuits for recovery against Prime to the fullest extent allowed by law. Specifically, Class Members who do not exclude themselves from the Settlement and/or who endorse their respective settlement check(s), will release all federal and state wage and hour claims, contract and quasi-contract claims, and any other claims that relate to unpaid wages or compensation that arose in the course of such Class Member's attending training to become a truck driver for Prime from March 4, 2010 to May 8, 2020 and/or driving for Prime either as an employee driver, and/or as an independent contractor driver who has leased their trucks through Prime, at any time from October 2, 2012 to May 8, 2020 to the fullest extent allowed by law.

Class Members who validly and timely request exclusion from the Settlement will not be entitled to receive money or other relief as part of this settlement and will not release any claims.

7. What happens if the Court does not approve the Settlement?

If the Court does not approve the proposed settlement, the case will proceed as if no settlement has been attempted, and there can be no assurance that the class will recover more than is provided for in this Settlement, or indeed, anything.

8. When is the Fairness Hearing?

A hearing will be held before the Honorable Patti B. Saris, Chief Judge, in the United States District Court for the District of Massachusetts on [INSERT DATE] at 1 Courthouse Way - Suite 2300, Boston, MA 02210. The purpose of the hearing is for the Court to decide whether the proposed settlement is fair, reasonable, and adequate as to the Class and should be approved and, if so, to determine what amount of attorneys' fees and expenses should be awarded to Class Counsel and what amount should be awarded as a Service Award to the Class Representatives. The time and date of this hearing may be changed without further notice. To confirm that the hearing is going forward on the scheduled date and time and/or to inquire about appearing at the hearing by telephone rather than in person, please contact the Settlement Administrator or Class Counsel (contact information in Section 10, below).

9. What are my options regarding the Settlement?

If you are receiving this Notice, you have the following options:

a. **Do Nothing:** If you choose to do nothing, you will receive the minimum settlement payment of **\$100.00**, and you will release your wage claims against Prime (and its subsidiaries and affiliates) as described herein.

b. **Join the Settlement and Receive your Maximum Settlement Share:** If you wish to join the settlement and receive your maximum share, you must return a Claim/Consent to Join Form no later than [insert date 60 days from mailing].

**CLICK HERE TO JOIN THE
SETTLEMENT**

You may submit your Form by visiting the Administrator's website at **[insert Administrator's website]**. You may also submit your Form to the Administrator via mail, email, or facsimile at the following address: **[Administrator Contact Information]**. If you received this Notice via U.S. Mail, an addressed and postage paid envelope is enclosed for your convenience. Your signed Form must be submitted electronically or by facsimile or postmarked by **[insert date 60 days]**.

c. **Request Exclusion from the Settlement:** If you wish to be excluded from the settlement, you must request exclusion no later than **[insert date 60 days]**. Your request for exclusion from the settlement must contain the following information: (1) your full name, address, email address, and telephone number; (2) the approximate dates of your relationship with Prime; (3) a statement that you request to be excluded from the settlement and understand that you will not be eligible to recover any monies as part of the settlement; and (4) your signature. You may submit a request for exclusion by mail, email, or facsimile at the following address: **[Administrator Contact Information]**. **If you exclude yourself from the settlement, you will not receive any monies from the settlement.**

d. **Object to the Settlement:** If you are a Class Member and you do not request to be excluded, you may object to the terms of the settlement and/or to the Class Counsel's request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives. If you object and the settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in the Litigation, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs.

If you object to the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives, you must, on or before **[INSERT 60 days]**: (1) file with the Clerk of the United States District Court for the District of Massachusetts, and (2) serve upon the Settlement Administrator at **[Administrator Contact Information]**, a written objection including: (a) your full name, address, email address, and telephone number, (b) the approximate dates of your relationship with Prime, (c) a written statement of all grounds for the objection, (d) copies of any papers, briefs, or other documents upon which the objection is based (if applicable), (e) a statement of whether you intend to appear at the Fairness Hearing, and (f) your signature, even if you are represented by counsel. If you intend to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement. If you object to the settlement but would like to receive the full amount to which you are entitled if your objection is overruled by the Court, then you **must** submit a Claim/Consent to Join Form in addition to your objection no later than **[insert date 60 days from mailing]**. If you submit an objection but do not submit a Claim/Consent to Join Form and your objection is overruled, then you will receive only the minimum payment of \$100.00.

10. Are there more details available?

If you have any questions or require additional information, please contact the Administrator at the following contact information: **[Administrator Contact Information]**

You may also contact the Class Counsel at the following contact information:

Hillary Schwab
Rachel Smit
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111
Telephone: 617-607-3261
Email: [insert]@fairworklaw.com

Virginia Stevens Crimmins
Matthew Crimmins
Crimmins Law Firm LLC
214 S. Spring Street
Independence, MO 64050
Telephone: 855-974-0777
Email: [insert]@crimminslawfirm.com

Garrett M. Hodes
Hodes Law Firm, LLC
900 Westport Rd., 2nd Floor
Kansas City, MO 64111
Telephone: 855-635-7890
Email: [insert]@hodeslawfirm.com

PLEASE DO NOT CONTACT THE COURT CLERK REGARDING THIS MATTER

Exhibit B

NOTICE OF SETTLEMENT

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE
ENTITLED TO MONEY FROM A SETTLEMENT WITH NEW PRIME, INC.**

**YOU MUST TAKE ACTION BY [INSERT DATE] TO RECEIVE YOUR MAXIMUM
SHARE**

This Notice affects your rights. Please read it carefully.

This is not a solicitation from a lawyer. The United States District Courts (the “Courts”) for the District of Massachusetts and the Western District of Missouri authorized this Notice.

TO: «First_Name» «Last_Name»
 <<Class Settlement Driver Code >>

RE: Settlement of Claims for Alleged Unpaid Wages and All Related Claims for Relief

- A settlement has been reached between Dominic Oliveira and Rocky Haworth (“Class Representatives”) and New Prime, Inc. (“Prime”) regarding Plaintiffs’ claims that Prime improperly paid drivers, in violation of the Fair Labor Standards Act (“FLSA”), Missouri Minimum Wage Law (“MMWL”) and related laws.
- For settlement purposes, the Courts have preliminarily certified a class and collective action of all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321(C.D. Cal.).
- You are receiving this Notice because you have been identified as a Class Member. This Notice is to inform you about the settlement and your rights related to the same.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
JOIN THE SETTLEMENT AND RECEIVE YOUR MAXIMUM SHARE	If you wish to receive your maximum share of the settlement, you must fill out and return or submit online the attached Claim/Consent to Join Form no later than [insert date 60 days]. By doing so, you will receive a minimum settlement payment of <<Settlement_Amount>>, which has been calculated as described in Section 3 below.
DO NOTHING	If you choose to do nothing, you will be eligible to receive a minimum settlement payment, described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you choose to exclude yourself from the settlement by [insert date], you will not receive any payment and will not be considered a part of this settlement.
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the settlement.

For more information about the settlement, please visit the website: [insert website address].

**AVISO IMPORTANTE A MIEMBROS POTENCIALES DEL COLLECTIVO –
Para español, comuníquese con el administrador al _____.**

EXHIBIT 1

1. What is this litigation about?

Plaintiff Dominic Oliveira filed a lawsuit in United States District Court for the District of Massachusetts on March 4, 2015 on behalf of himself and other similarly situated trainees and drivers for Prime in a case entitled *Oliveira v. New Prime, Inc.*, Case No. 1:15-CV-10603. This lawsuit alleged violations of the FLSA and state wage and hour laws. Specifically, the lawsuit alleged that Prime failed to properly pay trainees during orientation at Prime, and that Prime's pay practices with respect to employee drivers and independent contractors violated federal and state wage and hour laws. Plaintiff Rocky Haworth filed a lawsuit in the United States District Court for the Western District of Missouri on January 22, 2019 on behalf of himself and other similarly situated B and C seat drivers employed at Prime in a case entitled *Haworth v. New Prime, Inc.*, Case No. 6:190-CV-003025-RK. This lawsuit alleged that Prime's compensation of B and C seat drivers violated the FLSA and Missouri wage laws. Prime denied and continues to deny the allegations in these cases. However, Prime wishes to settle these cases to avoid continued costly and time-consuming litigation.

2. Who is included in the Settlement Class?

The following class and collective action has been certified for settlement purposes: all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time from March 4, 2010, to May 8, 2020 (the "Class Period"), except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321 (C.D. Cal.).

3. What are the Benefits and Terms of the Settlement?

To settle this case, Prime has agreed to pay a total of up to \$28,000,000.00 (the "Settlement Fund"), inclusive of all alleged unpaid wages, liquidated damages, penalties, interest, costs, and attorneys' fees.

If the Court approves the settlement, you are eligible to receive a portion of the Settlement Fund, after payment of attorneys' fees and costs and Service Awards to the Class Representatives. If the Court approves the settlement and you do nothing, you shall receive a minimum payment of \$100.00, less applicable tax withholdings, in exchange for releasing your claims (See Section 6). If the Court approves the settlement and you file a Claim/Consent to Join Form, you will be entitled to receive an additional amount. The parties have endeavored to divide the Settlement Fund in a fair way. The Settlement Fund will be allocated in the following ways:

- **Orientation Class Fund:** Individual allocations of this fund will be based on the type of training or orientation you attended and the location where you attended it.
- **B/C Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in B or C seat status, compared to the gross earnings during that time.
- **A Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an employee driver (also known as "company driver"), compared to the gross earnings during that time.
- **Independent Contractor Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an independent contractor, compared to 65% of the gross revenues earned during that time.

Additionally, individuals who have already received monies as part of another class action settlement in California against New Prime, Inc. will receive a 50% share from this settlement. Under these formulas, if the settlement is approved by the Court and you join the settlement, you will receive a settlement payment

no less than the estimated gross amount of «**Settlement_Amount**». You may also be eligible to be paid additional amounts from the settlement depending on how many individuals submit forms to participate in the settlement.

One-half of each Settlement Class Member's settlement payment is considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and reported on an IRS Form W-2. The remaining one-half of the settlement payment is considered compensation for interest, penalties and liquidated damages, and will not be subject to payroll withholdings, and will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement, including the non-monetary relief provided pursuant to the settlement, which is described below.

In addition to the monetary relief above, as a part of the settlement, if approved, Prime has agreed (1) to release entitlement to and not pursue any collection efforts relating to all monies purportedly owed to Prime by Class Members who either currently or at the time of their departure from Prime were in orientation, a B/C seat position, or an A seat company position; (2) to release entitlement to and not pursue any collection efforts related to all monies purportedly owed to Prime by Class Members who file a Claim/Consent to Join form and who either currently or at the time of their departure from Prime were in an independent contractor driving position (with the exception of certain independent contractors who may have destroyed, damaged or stolen Prime property); (3) to use best efforts to request that the national credit reporting agencies (Experian, Equifax and TranUnion) delete any reporting of drivers' accounts with Prime in connection with any monies released as described above; and (4) upon a driver's request to HireRight, provide a time letter to HireRight with a copy to the requesting driver that any defaults owing to Prime and/or related entities have been rescinded by mutual agreement. For more information about this additional relief and the extent to which it applies to you, please visit **[INSERT WEBSITE]** or contact the Settlement Administrator (contact information in Section 10, below).

4. Who is Class Counsel?

The Court has appointed Hillary Schwab and Rachel Smit of Fair Work, P.C. of Boston, Massachusetts as Class Counsel to represent the Settlement Class and Virginia Stevens Crimmins, and Matthew R. Crimmins of the Crimmins Law Firm LLC of Independence, Missouri, Garrett M. Hodes of the Hodes Law Firm, LLC of Kansas City, Missouri, and Ms. Schwab as Class Counsel to represent members of the Settlement Class relating to claims for unpaid wages while driving as B and/or C seat drivers. The contact information for Class Counsel is listed below in Section 10.

5. How much are Attorneys' Fees, Expenses and Service Awards to Class Representatives?

Class Counsel pursued these cases on a contingent fee basis and has not received any payment of fees or reimbursement of their out-of-pocket expenses related to litigation or recovery on behalf of the Class. As part of the settlement, subject to approval, Class Counsel will apply for attorneys' fees in an amount not to exceed \$9,240,000.00, which is 33% of the Settlement Fund. Additionally, Class Counsel will apply for reimbursement of litigation costs (including the costs of having a Settlement Administrator administer this settlement) in an amount not to exceed \$225,000.00. The payment for attorneys' fees and litigation costs to Class Counsel will be recovered from the Settlement Fund. Participating Class Members will not be required to make any payments to Class Counsel for attorneys' fees or other litigation costs from their individual settlement amounts. Class Counsel will also ask the Court to approve Service Awards to the Class Representatives in an amount not to exceed \$50,000.00 to Mr. Oliveira and \$25,000.00 to Mr. Haworth.

6. What happens if the Court Approves the Settlement?

If the Court approves the proposed Settlement, these cases will be dismissed with prejudice on the merits as to all Class Members who do not exclude themselves the settlement. This means that Class Members who do not exclude themselves will be barred from bringing their own lawsuits for recovery against Prime to the fullest extent allowed by law. Specifically, Class Members who do not exclude themselves from the Settlement and/or who endorse their respective settlement check(s), will release all federal and state wage and hour claims, contract and quasi-contract claims, and any other claims that relate to unpaid wages or compensation that arose in the course of such Class Member's attending training to become a truck driver for Prime from March 4, 2010 to May 8, 2020 and/or driving for Prime either as an employee driver, and/or as an independent contractor driver who has leased their trucks through Prime, at any time from October 2, 2012 to May 8, 2020 to the fullest extent allowed by law.

Class Members who validly and timely request exclusion from the Settlement will not be entitled to receive money or other relief as part of this settlement and will not release any claims.

7. What happens if the Court does not approve the Settlement?

If the Court does not approve the proposed settlement, the case will proceed as if no settlement has been attempted, and there can be no assurance that the class will recover more than is provided for in this Settlement, or indeed, anything.

8. When is the Fairness Hearing?

A hearing will be held before the Honorable Patti B. Saris, Chief Judge, in the United States District Court for the District of Massachusetts on [INSERT DATE] at 1 Courthouse Way - Suite 2300, Boston, MA 02210. The purpose of the hearing is for the Court to decide whether the proposed settlement is fair, reasonable, and adequate as to the Class and should be approved and, if so, to determine what amount of attorneys' fees and expenses should be awarded to Class Counsel and what amount should be awarded as Service Awards to the Class Representatives. The time and date of this hearing may be changed without further notice. To confirm that the hearing is going forward on the scheduled date and time and/or to inquire about appearing at the hearing by telephone rather than in person, please contact the Settlement Administrator or Class Counsel (contact information in Section 10, below).

9. What are my options regarding the Settlement?

If you are receiving this Notice, you have the following options:

a. **Do Nothing:** If you choose to do nothing, you will receive the minimum settlement payment of **\$100.00**, and you will release your wage claims against Prime (and its subsidiaries and affiliates) as described herein.

b. **Join the Settlement and Receive your Maximum Settlement Share:** If you wish to join the settlement and receive your maximum share, you must return a Claim/Consent to Join Form no later than **[insert date 60 days from mailing]**.

You may submit your Form by visiting the Administrator's website at **[insert Administrator's website]**. You may also submit your Form to the Administrator via mail, email, or facsimile at the following address: **[Administrator Contact Information]**. If you received this Notice via U.S. Mail, an addressed and postage paid envelope is enclosed for your convenience. Your signed Form must be submitted electronically or by facsimile or postmarked by **[insert date 60 days]**.

c. **Request Exclusion from the Settlement:** If you wish to be excluded from the settlement, you must request exclusion no later than **[insert date 60 days]**. Your request for exclusion from the settlement must contain the following information: (1) your full name, address, email address, and telephone number; (2) the approximate dates of your relationship with Prime; (3) a statement that you request to be excluded from the settlement and understand that you will not be eligible to recover any monies as part of the settlement; and (4) your signature. You may submit a request for exclusion by mail, email, or facsimile at the following address: **[Administrator Contact Information]**. **If you exclude yourself from the settlement, you will not receive any monies from the settlement.**

d. **Object to the Settlement:** If you are a Class Member and you do not request to be excluded, you may object to the terms of the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives. If you object and the settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in the Litigation, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs.

If you object to the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives, you must, on or before **[INSERT 60 days]**: (1) file with the Clerk of the United States District Court for the District of Massachusetts, and (2) serve upon the Settlement Administrator at **[Administrator Contact Information]**, a written objection including: (a) your full name, address, email address, and telephone number, (b) the approximate dates of your relationship with Prime, (c) a written statement of all grounds for the objection, (d) copies of any papers, briefs, or other documents upon which the objection is based (if applicable), (e) a statement of whether you intend to appear at the Fairness Hearing, and (f) your signature, even if you are represented by counsel. If you intend to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement. If you object to the settlement but would like to receive the full amount to which you are entitled if your objection is overruled by the Court, then you **must** submit a Claim/Consent to Join Form in addition to your objection no later than **[insert date 60 days from mailing]**. If you submit an objection but do not submit a Claim/Consent to Join Form and your objection is overruled, then you will receive only the minimum payment of \$100.00.

10. Are there more details available?

If you have any questions or require additional information, please contact the Administrator at the following contact information: **[Administrator Contact Information]**

You may also contact the Class Counsel at the following contact information:

Hillary Schwab
Rachel Smit
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111
Telephone: 617-607-3261
Email: [insert]@fairworklaw.com

Virginia Stevens Crimmins
Matthew Crimmins
Crimmins Law Firm LLC
214 S. Spring Street
Independence, MO 64050
Telephone: 855-974-0777
Email:[insert]@crimminslawfirm.com

Garrett M. Hodes
Hodes Law Firm, LLC
900 Westport Rd., 2nd Floor
Kansas City, MO 64111
Telephone: 855-635-7890
Email:[insert]@hodeslawfirm.com

PLEASE DO NOT CONTACT THE COURT CLERK REGARDING THIS MATTER

Exhibit C

CLAIM/CONSENT TO JOIN FORM

I hereby consent to be a party plaintiff seeking unpaid wages against New Prime, Inc., its subsidiaries, affiliates, and any other related entities (collectively "Prime") in this or any other subsequent action. I understand that, by participating in the settlement, I am releasing all state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in *Oliveira v. New Prime, Inc.* and/or *Haworth v. New Prime, Inc.* (i.e., any such claims that arose in the course of my attending training to become a truck driver for Prime and/or driving for Prime either an employee driver and/or or as an independent contractor driver who has leased a truck through Prime at any time from October 2, 2012 to May 8, 2020, and/or any such claims that arose in the course of attending training to become a truck driver for Prime in Missouri from March 4, 2010 to May 8, 2020.

I hereby designate Class Counsel (as identified in Section 4 of the Notice) as my attorneys for all purposes in connection with this case, including the settlement.

Date: _____
 Print or Type Name: _____

.....
 PLEASE CONFIRM THE INFORMATION BELOW (OR UPDATE AS NEEDED) AND PROVIDE ADDITIONAL INFORMATION
 FOR IDENTIFICATION PURPOSES.
 THIS SECTION WILL NOT BE FILED PUBLICLY

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

PHONE: «PHONE» _____

EMAIL: «EMAIL» _____

DATE OF BIRTH (OPTIONAL): _____

LAST 4 DIGITS OF SS# OR TAX ID (OPTIONAL): _____

Please contact the Settlement Administrator at [insert phone number and email] if your contact information changes.

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

**ROCKY L. HAWORTH, on behalf of
himself and all other similarly situated
persons,**

Plaintiffs,

vs.

NEW PRIME, INC.,

Defendants.

Case No. 6:19-cv-03025-RK

**[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

The above-entitled matter came before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Motion to Transfer (Doc. No. ____) and Memorandum in Support (Doc. No. ____). For the reasons set forth in the motion and memorandum, and upon the good cause shown, it is hereby ORDERED that:

1. Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Motion to Transfer is GRANTED, and the terms of the Settlement Agreement and Release of Claims ("Settlement Agreement") attached as Exhibit 1 to the Motion (Doc. No. __) are preliminarily approved as fair reasonable, and adequate.

2. Solely for purposes of settlement, a Class is hereby certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA"), defined as follows:

All similarly situated current and former "B" or "C" Seat Drivers who worked for New Prime from October 2, 2012 to May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, C.D. Cal. Civil Action No. 8:17-cv-00321.

Excluded from the Class are any Class Members who timely and validly request exclusion from the Class pursuant to the Notice disseminated in accordance with this Order.

3. The Court provisionally, and only for the purposes of this settlement, finds that:

(a) the Class Members consist of 26,489 individuals employed by Defendant as B/C seat drivers, and the requirement of numerosity is satisfied;

(b) the litigation and proposed settlement raise questions of law and fact common to the Class, and these common questions predominate over any questions affecting only individual Class Members;

(c) the claims of Rocky Haworth (the “Class Representative”), a former B/C seat driver employed by Defendant, are typical of the claims of the Class;

(d) in assisting with the litigation and negotiating and entering into the proposed settlement, the Class Representative and his counsel have fairly and adequately protected the interests of the Class, and will adequately represent the Class in connection with the proposed settlement; and

(e) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

4. Pursuant to Rule 23(c)(1)(B) and (g), the Court appoints the Class Representative and his counsel of record, the Crimmins Law Firm LLC, Hodes Law Firm, LLC, and Fair Work, P.C. to act on behalf of the Class in connection with the proposed settlement.

5. The Court further approves the Notice attached as Exhibits A through C to the Settlement Agreement for approval for distribution to the B/C Seat Class, and finds that the proposed notice process constitutes the best notice practicable under the circumstances and is in

full compliance with the requirements of applicable law, including due process under the United States Constitution.

6. Pursuant to the parties' Settlement Agreement, the Court further finds that this case should be transferred to the United States District Court for the District of Massachusetts and consolidated with the case styled *Oliveira v New Prime, Inc.*, 1:15-cv-10603-PBS (D. Mass.), for the purposes of disseminating Notice, administering the settlement, handling any opt-outs or objectors and conducting a Final Fairness Hearing in accordance with the terms of the Settlement Agreement. Given that many of the Putative Class Members are members of both the *Haworth* and *Oliveira* matters, transferring this matter for purposes of settlement administration will decrease litigation costs, and further the interests of justice.

7. If the proposed settlement is not finally approved, or the settlement is terminated or fails to become effective in accordance with the terms of the Settlement Agreement, this settlement certification order shall be vacated without further order of the Court and without prejudice to the right of any party to seek or oppose class certification. Thereafter, this case shall be transferred back to the United States District Court for the Western District of Missouri for further proceedings.

IT IS HEREBY ORDERED that Plaintiffs' Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement and Motion to Transfer is **GRANTED**.

Date: _____

Honorable Roseann A. Ketchmark
United States District Court Judge

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DOMINIC OLIVEIRA,
on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

v.

NEW PRIME INC.,

Defendant.

Civil Action No. 1:15-cv-10603-PBS

PRELIMINARY SETTLEMENT APPROVAL ORDER

Plaintiffs have filed an assented-to motion for preliminary settlement approval pursuant to Federal Rule of Civil Procedure 23 and the federal Fair Labor Standards Act. In that motion, Plaintiffs request an order preliminarily approving settlement of the above-captioned action in accordance with the parties' Settlement Agreement, which sets forth the terms and conditions for a proposed settlement of this matter and its dismissal with prejudice.

Having reviewed the assented-to motion, the Settlement Agreement, and conducting a preliminary approval hearing on July ___, 2020, it is hereby ORDERED that:

1. For purposes of this settlement only, the following Settlement Class is preliminarily certified: All individuals who have attended training to become truck drivers for Prime and/or have driven for Prime either as employee drivers or as independent contractor drivers who have leased their trucks through Prime at any time

from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Defendant New Prime, Inc. at any time from March 4, 2010, to May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, Civil Action No. 8:17-cv-00321 (C.D. Cal.).

2. For purposes of this settlement only, the Settlement Class is preliminarily certified pursuant to Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b), and all Settlement Class Members shall have the right to opt in to the settlement pursuant to 29 U.S.C. § 216(b) and to exclude themselves from the settlement by way of the opt-out procedure set forth in the Notice of Proposed Class Action Settlement, attached to the Settlement Agreement (which is Exhibit 1 to Plaintiffs' motion for preliminary settlement approval) as Exhibits A and B.

3. This Court preliminarily finds, solely for purposes of the settlement, that the Action may be maintained as a class and collective action on behalf of the Settlement Class because: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to Settlement Class Members that predominate over any individual questions; (c) the Named Plaintiff's claims are typical of the claims of the Settlement Class; (d) the Named Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. This Court finds that the Settlement Agreement (attached to Plaintiff's motion for preliminary settlement approval as Exhibit 1) is fair, reasonable, and

adequate, and within the range of possible approval, subject to further consideration at the Final Fairness Hearing as set forth below in Paragraph 8.

5. This Court finds that the Notice of Proposed Class Action Settlement, attached to the Settlement Agreement as Exhibits A and B, satisfies the requirements of due process, the Federal Rules of Civil Procedure, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court approves the form and content of the Notice and Claim Form, attached to the Settlement Agreement as Exhibit C.

6. The Court approves the distribution formula and claim procedure set forth in the Settlement Agreement and in Plaintiffs' motion for preliminary settlement approval.

7. The Court acknowledges that the Honorable Roseann A. Ketchmark, in the United States District Court for the Western District of Missouri, in the matter styled *Haworth et al. v. New Prime, Inc.*, Civil Action No. 6:19-cv-03025-RK (W.D. Mo.) certified the B/C Seat Class as an FLSA collective action and appointed Plaintiff Haworth as Class Representative for the B/C Seat Class and the Crimmins Law Firm, LLC, Hodes Law Firm, LLC and Fair Work, P.C. as Class Counsel for the B/C Seat Class pursuant to 29 U.S.C. § 216(b). The Court further acknowledges that the parties have requested or will request to the presiding judge in *Haworth et al. v. New Prime, Inc.*, Civil Action No. 6:19-cv-03025-RK (W.D. Mo.), that the settlement be preliminarily approved for the B/C Seat Class pursuant to 29 U.S.C. § 216(b) and Rule 23(g) and be transferred from the United States District Court for the Western District of Missouri to this Court and

consolidated with this action for purposes of final settlement approval. If *Haworth* is transferred, this Court shall preside over the consolidation of the cases and the final settlement approval of the consolidated cases. If the settlement is finally approved, the Court shall dismiss the consolidated actions with prejudice as part of final settlement approval. If the settlement is not finally approved, the Court shall transfer *Haworth* back to the United States District Court for the Western District of Missouri for further proceedings.

8. The parties shall provide notice to this Court within seven days of the *Haworth* Court ruling on Plaintiffs' motion for preliminary approval and transfer.

9. The Court directs the Settlement Administrator to distribute the Notice in the form approved by the Court to Putative Class/Collective Members provided that the settlement is approved in *Haworth* and that case is transferred to this Court and consolidated with this case.

10. The Final Fairness Hearing shall take place before the Honorable Patti B. Saris on _____, _____, 2020, at __:00 __.m. at the United States District Court, District of Massachusetts, Courtroom 19 (7th Floor), 1 Courthouse Way, Boston, Massachusetts 02210, to determine: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate as to the Settlement Class Members and should be approved; whether the Action should be dismissed with prejudice on the terms provided for in the Agreement; the amount of fees and costs that should be awarded to Class Counsel; and the amount of the incentive award that should be awarded to Plaintiff, as provided for in the

Agreement. The Court will also hear and consider any properly lodged objections at that time. If the Final Fairness Hearing is conducted via videoconference, then information about how to participate in the videoconference hearing shall be available by contacting the Court.

ENTERED this ____ day of _____, 2020.

The Honorable Patti B. Saris

Exhibit F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DOMINIC OLIVEIRA,
on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

v.

NEW PRIME INC.,

Defendant.

Civil Action No. 1:15-cv-10603-PBS

FINAL SETTLEMENT APPROVAL ORDER AND JUDGMENT

Plaintiffs have filed a motion for final settlement approval pursuant to Federal Rule of Civil Procedure 23 and the federal Fair Labor Standards Act. In that motion, Plaintiffs request an order finally approving settlement of the above-captioned action in accordance with the parties' settlement agreement, which sets forth the terms and conditions for a proposed settlement of this matter and its dismissal with prejudice.

Having reviewed the motion, the settlement agreement, and conducting a final settlement approval hearing on _____, 2020, it is hereby ORDERED that:

1. This Order applies to the consolidated actions of *Oliveira v. New Prime, Inc.*, Civil Action No. 1:15-cv-10603-PBS (D. Mass.), and *Haworth et al. v. New Prime, Inc.*, Civil Action No. 6:19-cv-03025-RK (W.D. Mo.), which was transferred to this Court from the United States District Court for the Western District of Missouri.

2. This settlement is fair, reasonable, and adequate and the Court grants Plaintiffs' motion for final settlement approval.

3. The following Settlement Class is certified pursuant to Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b): All individuals who have attended training to become truck drivers for Prime and/or have driven for Prime either as employee drivers or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Defendant New Prime, Inc. at any time from March 4, 2010, to May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, Civil Action No. 8:17-cv-00321 (C.D. Cal.).

4. This Court finds that the notice provided to Settlement Class Members was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and any other applicable laws.

5. The Court grants Class Counsel's petition for attorneys' fees and costs and approves the amounts for fees and costs set forth in Plaintiffs' motion for final settlement approval. The Court further approves \$50,000.00 as an incentive award to Plaintiff Dominic Oliveira and \$25,000.00 as an incentive award to Plaintiff Rocky Haworth. These amounts shall be paid out of the settlement fund, as set forth in the parties' Settlement Agreement.

6. The Court approves the proposed distribution of settlement funds as set forth in Plaintiffs' motion for final settlement approval and the spreadsheet attached thereto.

7. The Court orders that the payments be made in this matter pursuant to the timetable established in the parties' Settlement Agreement.

8. Judgment is to be entered pursuant to Federal Rule of Civil Procedure 54(b) and 29 U.S.C. § 216(b) *et seq.*, and the Court dismisses with prejudice all claims released as part of this settlement.

9. The parties' Settlement Agreement is binding on Defendant, the Class Representatives, and all Participating Class Members who have not excluded themselves from the settlement.

10. The claims of Putative Class/Collective Members who have properly and timely excluded themselves in full accordance with the procedures set forth in the parties' Settlement Agreement are dismissed without prejudice.

11. Without affecting the finality of this Final Settlement Approval Order and Judgment in any way, this Court retains continuing jurisdiction to implement the Settlement Agreement and to construe, enforce, and administer the Settlement Agreement and this settlement. Class Counsel will continue in their role to oversee all aspects of the Settlement Agreement and settlement, consistent with the terms of the Settlement Agreement.

ENTERED this ____ day of _____, 2020.

The Honorable Patti B. Saris

NOTICE OF SETTLEMENT

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE
ENTITLED TO MONEY FROM A SETTLEMENT WITH NEW PRIME, INC.**

**YOU MUST TAKE ACTION BY [INSERT DATE] TO RECEIVE YOUR
MAXIMUM SHARE**

This Notice affects your rights. Please read it carefully.

AVISO IMPORTANTE A MIEMBROS POTENCIALES DEL COLECTIVO – Para español, haga clic [aquí](#).

This is not a solicitation from a lawyer. The United States District Courts (the “Courts”) for the District of Massachusetts and the Western District of Missouri authorized this Notice.

TO: «First_Name» «Last_Name»
«<Class Settlement Driver Code >»

RE: Settlement of Claims for Alleged Unpaid Wages and All Related Claims for Relief

- A settlement has been reached between Dominic Oliveira and Rocky Haworth (“Class Representatives”) and New Prime, Inc. (“Prime”) regarding Plaintiffs’ claims that Prime improperly paid drivers, in violation of the Fair Labor Standards Act (“FLSA”), Missouri Minimum Wage Law (“MMWL”) and related laws.
- For settlement purposes, the Courts have preliminarily certified a class and collective action of all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321(C.D. Cal.).
- You are receiving this Notice because you have been identified as a Class Member. This Notice is to inform you about the settlement and your rights related to the same.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
JOIN THE SETTLEMENT AND RECEIVE YOUR MAXIMUM SHARE	If you wish to receive your maximum share of the settlement, you must fill out and return or submit online the attached Claim/Consent to Join Form no later than [insert date 60 days] . By doing so, you will receive a minimum settlement payment of <<Settlement_Amount>>, which has been calculated as described in Section 3 below.
DO NOTHING	If you choose to do nothing, you will be eligible to receive a minimum settlement payment, described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you choose to exclude yourself from the settlement by [insert date] , you will not receive any payment and will not be considered a part of this settlement.
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the settlement.

For more information about the settlement, please visit the website: [insert website address].

1. What is this litigation about?

Plaintiff Dominic Oliveira filed a lawsuit in United States District Court for the District of Massachusetts on March 4, 2015 on behalf of himself and other similarly situated trainees and drivers for Prime in a case entitled *Oliveira v. New Prime, Inc.*, Case No. 1:15-CV-10603. This lawsuit alleged violations of the FLSA and state wage and hour laws. Specifically, the lawsuit alleged that Prime failed to properly pay trainees during orientation at Prime, and that Prime's pay practices with respect to employee drivers and independent contractors violated federal and state wage and hour laws. Plaintiff Rocky Haworth filed a lawsuit in the United States District Court for the Western District of Missouri on January 22, 2019 on behalf of himself and other similarly situated B and C seat drivers employed at Prime in a case entitled *Haworth v. New Prime, Inc.*, Case No. 6:190-CV-003025-RK. This lawsuit alleged that Prime's compensation of B and C seat drivers violated the FLSA and Missouri wage laws. Prime denied and continues to deny the allegations in these cases. However, Prime wishes to settle these cases to avoid continued costly and time-consuming litigation.

2. Who is included in the Settlement Class?

The following class and collective action has been certified for settlement purposes: all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time from March 4, 2010, to May 8, 2020 (the "Class Period"), except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321 (C.D. Cal.).

3. What are the Benefits and Terms of the Settlement?

To settle this case, Prime has agreed to pay a total of up to \$28,000,000.00 (the "Settlement Fund"), inclusive of all alleged unpaid wages, liquidated damages, penalties, interest, costs, and attorneys' fees.

If the Court approves the settlement, you are eligible to receive a portion of the Settlement Fund, after payment of attorneys' fees and costs and Service Awards to the Class Representatives. If the Court approves the settlement and you do nothing, you shall receive a minimum payment of \$100, less applicable tax withholdings, in exchange for releasing your claims (See Section 6). If the Court approves the settlement and you file a Claim/Consent to Join Form, you will be entitled to receive an additional amount. The parties have endeavored to divide the Settlement Fund in a fair way. The Settlement Fund will be allocated in the following ways:

- **Orientation Class Fund:** Individual allocations of this fund will be based on the type of training or orientation you attended and the location where you attended it.
- **B/C Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in B or C seat status, compared to the gross earnings during that time.
- **A Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an employee driver (also known as "company driver"), compared to the gross earnings during that time.
- **Independent Contractor Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an independent contractor, compared to 65% of the gross revenues earned during that time.

Additionally, individuals who have already received monies as part of another class action settlement in California against New Prime, Inc. will receive a 50% share from this settlement. Under these formulas, if the settlement is approved by the Court and you join the settlement, you will receive a settlement payment no less than the estimated gross amount of «**Settlement_Amount**». You may also be eligible to be paid additional amounts from the settlement depending on how many individuals submit forms to participate in the settlement.

One-half of each Settlement Class Member's settlement payment is considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and reported on an IRS Form W-2. The remaining one-half of the settlement payment is considered compensation for interest, penalties and liquidated damages, and will not be subject to payroll withholdings, and will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement, including the non-monetary relief provided pursuant to the settlement, which is described below.

In addition to the monetary relief above, as a part of the settlement, if approved, Prime has agreed (1) to release entitlement to and not pursue any collection efforts relating to all monies purportedly owed to Prime by Class Members who either currently or at the time of their departure from Prime were in orientation, a B/C seat position, or an A seat company position; (2) to release entitlement to and not pursue any collection efforts related to all monies purportedly owed to Prime by Class Members who file a Claim/Consent to Join form and who either currently or at the time of their departure from Prime were in an independent contractor driving position (with the exception of certain independent contractors who may have destroyed, damaged or stolen Prime property); (3) to use best efforts to request that the national credit reporting agencies (Experian, Equifax and TranUnion) delete any reporting of drivers' accounts with Prime in connection with any monies released as described above; and (4) upon a driver's request to HireRight, provide a time letter to HireRight with a copy to the requesting driver that any defaults owing to Prime and/or related entities have been rescinded by mutual agreement. For more information about this additional relief and the extent to which it applies to you, please visit **[INSERT WEBSITE]** or contact the Settlement Administrator (contact information in Section 10, below).

4. Who is Class Counsel?

The Court has appointed Hillary Schwab and Rachel Smit of Fair Work, P.C. of Boston, Massachusetts as Class Counsel to represent the Settlement Class and Virginia Stevens Crimmins, and Matthew R. Crimmins of the Crimmins Law Firm LLC of Independence, Missouri, Garrett M. Hodes of the Hodes Law Firm, LLC of Kansas City, Missouri, and Ms. Schwab as Class Counsel to represent members of the Settlement Class relating to claims for unpaid wages while driving as B and/or C seat drivers. The contact information for Class Counsel is listed below in Section 10.

5. How much are Attorneys' Fees, Expenses and Service Awards to Class Representatives?

Class Counsel pursued these cases on a contingent fee basis and has not received any payment of fees or reimbursement of their out-of-pocket expenses related to litigation or recovery on behalf of the Class. As part of the settlement, subject to approval, Class Counsel will apply for attorneys' fees in an amount not to exceed \$9,240,000.00, which is 33% of the Settlement Fund. Additionally, Class Counsel will apply for reimbursement of litigation costs (including the costs of having a Settlement Administrator administer this settlement) in an amount not to exceed \$225,000.00. The payment for attorneys' fees and litigation costs to Class Counsel will be recovered from the Settlement Fund. Participating Class Members will not be required to make any payments to Class Counsel for attorneys' fees or other litigation costs from their individual settlement amounts. Class Counsel will

also ask the Court to approve Service Awards to the Class Representatives in an amount not to exceed \$50,000.00 to Mr. Oliveira and \$25,000.00 to Mr. Haworth.

6. What happens if the Court Approves the Settlement?

If the Court approves the proposed Settlement, these cases will be dismissed with prejudice on the merits as to all Class Members who do not exclude themselves the settlement. This means that Class Members who do not exclude themselves will be barred from bringing their own lawsuits for recovery against Prime to the fullest extent allowed by law. Specifically, Class Members who do not exclude themselves from the Settlement and/or who endorse their respective settlement check(s), will release all federal and state wage and hour claims, contract and quasi-contract claims, and any other claims that relate to unpaid wages or compensation that arose in the course of such Class Member's attending training to become a truck driver for Prime from March 4, 2010 to May 8, 2020 and/or driving for Prime either as an employee driver, and/or as an independent contractor driver who has leased their trucks through Prime, at any time from October 2, 2012 to May 8, 2020 to the fullest extent allowed by law.

Class Members who validly and timely request exclusion from the Settlement will not be entitled to receive money or other relief as part of this settlement and will not release any claims.

7. What happens if the Court does not approve the Settlement?

If the Court does not approve the proposed settlement, the case will proceed as if no settlement has been attempted, and there can be no assurance that the class will recover more than is provided for in this Settlement, or indeed, anything.

8. When is the Fairness Hearing?

A hearing will be held before the Honorable Patti B. Saris, Chief Judge, in the United States District Court for the District of Massachusetts on [INSERT DATE] at 1 Courthouse Way - Suite 2300, Boston, MA 02210. The purpose of the hearing is for the Court to decide whether the proposed settlement is fair, reasonable, and adequate as to the Class and should be approved and, if so, to determine what amount of attorneys' fees and expenses should be awarded to Class Counsel and what amount should be awarded as a Service Award to the Class Representatives. The time and date of this hearing may be changed without further notice. To confirm that the hearing is going forward on the scheduled date and time and/or to inquire about appearing at the hearing by telephone rather than in person, please contact the Settlement Administrator or Class Counsel (contact information in Section 10, below).

9. What are my options regarding the Settlement?

If you are receiving this Notice, you have the following options:

a. **Do Nothing:** If you choose to do nothing, you will receive the minimum settlement payment of **\$100.00**, and you will release your wage claims against Prime (and its subsidiaries and affiliates) as described herein.

b. **Join the Settlement and Receive your Maximum Settlement Share:** If you wish to join the settlement and receive your maximum share, you must return a Claim/Consent to Join Form no later than **[insert date 60 days from mailing]**.

**CLICK HERE TO JOIN THE
SETTLEMENT**

You may submit your Form by visiting the Administrator's website at **[insert Administrator's website]**. You may also submit your Form to the Administrator via mail, email, or facsimile at the following address: **[Administrator Contact Information]**. If you received this Notice via U.S. Mail, an addressed and postage paid envelope is enclosed for your convenience. Your signed Form must be submitted electronically or by facsimile or postmarked by **[insert date 60 days]**.

c. **Request Exclusion from the Settlement:** If you wish to be excluded from the settlement, you must request exclusion no later than **[insert date 60 days]**. Your request for exclusion from the settlement must contain the following information: (1) your full name, address, email address, and telephone number; (2) the approximate dates of your relationship with Prime; (3) a statement that you request to be excluded from the settlement and understand that you will not be eligible to recover any monies as part of the settlement; and (4) your signature. You may submit a request for exclusion by mail, email, or facsimile at the following address: **[Administrator Contact Information]**. **If you exclude yourself from the settlement, you will not receive any monies from the settlement.**

d. **Object to the Settlement:** If you are a Class Member and you do not request to be excluded, you may object to the terms of the settlement and/or to the Class Counsel's request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives. If you object and the settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in the Litigation, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs.

If you object to the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives, you must, on or before **[INSERT 60 days]**: (1) file with the Clerk of the United States District Court for the District of Massachusetts, and (2) serve upon the Settlement Administrator at **[Administrator Contact Information]**, a written objection including: (a) your full name, address, email address, and telephone number, (b) the approximate dates of your relationship with Prime, (c) a written statement of all grounds for the objection, (d) copies of any papers, briefs, or other documents upon which the objection is based (if applicable), (e) a statement of whether you intend to appear at the Fairness Hearing, and (f) your signature, even if you are represented by counsel. If you intend to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement. If you object to the settlement but would like to receive the full amount to which you are entitled if your objection is overruled by the Court, then you **must** submit a Claim/Consent to Join Form in addition to your objection no later than **[insert date 60 days from mailing]**. If you submit an objection but do not submit a Claim/Consent to Join Form and your objection is overruled, then you will receive only the minimum payment of \$100.00.

10. Are there more details available?

If you have any questions or require additional information, please contact the Administrator at the following contact information: [**Administrator Contact Information**]

You may also contact the Class Counsel at the following contact information:

Hillary Schwab
Rachel Smit
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111

Telephone: 617-607-3261
Email: [insert]@fairworklaw.com

Virginia Stevens Crimmins
Matthew Crimmins
Crimmins Law Firm LLC
214 S. Spring Street
Independence, MO 64050

Telephone: 855-974-0777
Email: [insert]@crimminslawfirm.com

Garrett M. Hodes
Hodes Law Firm, LLC
900 Westport Rd., 2nd Floor
Kansas City, MO 64111
Telephone: 855-635-7890
Email: [insert]@hodeslawfirm.com

PLEASE DO NOT CONTACT THE COURT CLERK REGARDING THIS MATTER

CLAIM/CONSENT TO JOIN FORM

I hereby consent to be a party plaintiff seeking unpaid wages against New Prime, Inc., its subsidiaries, affiliates, and any other related entities (collectively "Prime") in this or any other subsequent action. I understand that, by participating in the settlement, I am releasing all state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in *Oliveira v. New Prime, Inc.* and/or *Haworth v. New Prime, Inc.* (i.e., any such claims that arose in the course of my attending training to become a truck driver for Prime and/or driving for Prime either an employee driver and/or or as an independent contractor driver who has leased a truck through Prime at any time from October 2, 2012 to May 8, 2020, and/or any such claims that arose in the course of attending training to become a truck driver for Prime in Missouri from March 4, 2010 to May 8, 2020.

I hereby designate Class Counsel (as identified in Section 4 of the Notice) as my attorneys for all purposes in connection with this case, including the settlement.

Date: _____
Print or Type Name: _____

.....
PLEASE CONFIRM THE INFORMATION BELOW (OR UPDATE AS NEEDED) AND PROVIDE ADDITIONAL INFORMATION
FOR IDENTIFICATION PURPOSES.
THIS SECTION WILL NOT BE FILED PUBLICLY

NAME: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

PHONE: «PHONE» _____

EMAIL: «EMAIL» _____

DATE OF BIRTH (OPTIONAL): _____

LAST 4 DIGITS OF SS# OR TAX ID (OPTIONAL): _____

Please contact the Settlement Administrator at [insert phone number and email] if your contact information changes.

NOTICE OF SETTLEMENT

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE
ENTITLED TO MONEY FROM A SETTLEMENT WITH NEW PRIME, INC.**

**YOU MUST TAKE ACTION BY [INSERT DATE] TO RECEIVE YOUR MAXIMUM
SHARE**

This Notice affects your rights. Please read it carefully.

This is not a solicitation from a lawyer. The United States District Courts (the “Courts”) for the District of Massachusetts and the Western District of Missouri authorized this Notice.

TO: «First Name» «Last Name»
<<Class Settlement Driver Code >>

RE: Settlement of Claims for Alleged Unpaid Wages and All Related Claims for Relief

- A settlement has been reached between Dominic Oliveira and Rocky Haworth (“Class Representatives”) and New Prime, Inc. (“Prime”) regarding Plaintiffs’ claims that Prime improperly paid drivers, in violation of the Fair Labor Standards Act (“FLSA”), Missouri Minimum Wage Law (“MMWL”) and related laws.
- For settlement purposes, the Courts have preliminarily certified a class and collective action of all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time since October 2, 2012 through May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time since March 4, 2010 through May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321(C.D. Cal.).
- You are receiving this Notice because you have been identified as a Class Member. This Notice is to inform you about the settlement and your rights related to the same.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
JOIN THE SETTLEMENT AND RECEIVE YOUR MAXIMUM SHARE	If you wish to receive your maximum share of the settlement, you must fill out and return or submit online the attached Claim/Consent to Join Form no later than [insert date 60 days]. By doing so, you will receive a minimum settlement payment of <<Settlement_Amount>>, which has been calculated as described in Section 3 below.
DO NOTHING	If you choose to do nothing, you will be eligible to receive a minimum settlement payment, described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you choose to exclude yourself from the settlement by [insert date], you will not receive any payment and will not be considered a part of this settlement.
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the settlement.

For more information about the settlement, please visit the website: [insert website address].

**AVISO IMPORTANTE A MIEMBROS POTENCIALES DEL COLECTIVO –
Para español, comuníquese con el administrador al _____.**

EXHIBIT 2-B

1. What is this litigation about?

Plaintiff Dominic Oliveira filed a lawsuit in United States District Court for the District of Massachusetts on March 4, 2015 on behalf of himself and other similarly situated trainees and drivers for Prime in a case entitled *Oliveira v. New Prime, Inc.*, Case No. 1:15-CV-10603. This lawsuit alleged violations of the FLSA and state wage and hour laws. Specifically, the lawsuit alleged that Prime failed to properly pay trainees during orientation at Prime, and that Prime's pay practices with respect to employee drivers and independent contractors violated federal and state wage and hour laws. Plaintiff Rocky Haworth filed a lawsuit in the United States District Court for the Western District of Missouri on January 22, 2019 on behalf of himself and other similarly situated B and C seat drivers employed at Prime in a case entitled *Haworth v. New Prime, Inc.*, Case No. 6:190-CV-003025-RK. This lawsuit alleged that Prime's compensation of B and C seat drivers violated the FLSA and Missouri wage laws. Prime denied and continues to deny the allegations in these cases. However, Prime wishes to settle these cases to avoid continued costly and time-consuming litigation.

2. Who is included in the Settlement Class?

The following class and collective action has been certified for settlement purposes: all individuals who have attended training to become truck drivers for Prime and/or have driven for Prime as employee drivers and/or as independent contractor drivers who have leased their trucks through Prime at any time from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Prime at any time from March 4, 2010, to May 8, 2020 (the "Class Period"), except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, 8:17-00321 (C.D. Cal.).

3. What are the Benefits and Terms of the Settlement?

To settle this case, Prime has agreed to pay a total of up to \$28,000,000.00 (the "Settlement Fund"), inclusive of all alleged unpaid wages, liquidated damages, penalties, interest, costs, and attorneys' fees.

If the Court approves the settlement, you are eligible to receive a portion of the Settlement Fund, after payment of attorneys' fees and costs and Service Awards to the Class Representatives. If the Court approves the settlement and you do nothing, you shall receive a minimum payment of \$100.00, less applicable tax withholdings, in exchange for releasing your claims (See Section 6). If the Court approves the settlement and you file a Claim/Consent to Join Form, you will be entitled to receive an additional amount. The parties have endeavored to divide the Settlement Fund in a fair way. The Settlement Fund will be allocated in the following ways:

- **Orientation Class Fund:** Individual allocations of this fund will be based on the type of training or orientation you attended and the location where you attended it.
- **B/C Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in B or C seat status, compared to the gross earnings during that time.
- **A Seat Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an employee driver (also known as "company driver"), compared to the gross earnings during that time.
- **Independent Contractor Class Fund:** Individual allocations of this fund will be based on: the miles driven in A seat status as an independent contractor, compared to 65% of the gross revenues earned during that time.

Additionally, individuals who have already received monies as part of another class action settlement in California against New Prime, Inc. will receive a 50% share from this settlement. Under these formulas, if the settlement is approved by the Court and you join the settlement, you will receive a settlement payment

no less than the estimated gross amount of «**Settlement_Amount**». You may also be eligible to be paid additional amounts from the settlement depending on how many individuals submit forms to participate in the settlement.

One-half of each Settlement Class Member's settlement payment is considered wages and shall be subject to the withholding of all applicable local, state, and federal taxes, and reported on an IRS Form W-2. The remaining one-half of the settlement payment is considered compensation for interest, penalties and liquidated damages, and will not be subject to payroll withholdings, and will be reported on an IRS Form 1099. Please consult with your accountant or other tax advisor regarding the tax consequences of the settlement, including the non-monetary relief provided pursuant to the settlement, which is described below.

In addition to the monetary relief above, as a part of the settlement, if approved, Prime has agreed (1) to release entitlement to and not pursue any collection efforts relating to all monies purportedly owed to Prime by Class Members who either currently or at the time of their departure from Prime were in orientation, a B/C seat position, or an A seat company position; (2) to release entitlement to and not pursue any collection efforts related to all monies purportedly owed to Prime by Class Members who file a Claim/Consent to Join form and who either currently or at the time of their departure from Prime were in an independent contractor driving position (with the exception of certain independent contractors who may have destroyed, damaged or stolen Prime property); (3) to use best efforts to request that the national credit reporting agencies (Experian, Equifax and TranUnion) delete any reporting of drivers' accounts with Prime in connection with any monies released as described above; and (4) upon a driver's request to HireRight, provide a time letter to HireRight with a copy to the requesting driver that any defaults owing to Prime and/or related entities have been rescinded by mutual agreement. For more information about this additional relief and the extent to which it applies to you, please visit [**INSERT WEBSITE**] or contact the Settlement Administrator (contact information in Section 10, below).

4. Who is Class Counsel?

The Court has appointed Hillary Schwab and Rachel Smit of Fair Work, P.C. of Boston, Massachusetts as Class Counsel to represent the Settlement Class and Virginia Stevens Crimmins, and Matthew R. Crimmins of the Crimmins Law Firm LLC of Independence, Missouri, Garrett M. Hodes of the Hodes Law Firm, LLC of Kansas City, Missouri, and Ms. Schwab as Class Counsel to represent members of the Settlement Class relating to claims for unpaid wages while driving as B and/or C seat drivers. The contact information for Class Counsel is listed below in Section 10.

5. How much are Attorneys' Fees, Expenses and Service Awards to Class Representatives?

Class Counsel pursued these cases on a contingent fee basis and has not received any payment of fees or reimbursement of their out-of-pocket expenses related to litigation or recovery on behalf of the Class. As part of the settlement, subject to approval, Class Counsel will apply for attorneys' fees in an amount not to exceed \$9,240,000.00, which is 33% of the Settlement Fund. Additionally, Class Counsel will apply for reimbursement of litigation costs (including the costs of having a Settlement Administrator administer this settlement) in an amount not to exceed \$225,000.00. The payment for attorneys' fees and litigation costs to Class Counsel will be recovered from the Settlement Fund. Participating Class Members will not be required to make any payments to Class Counsel for attorneys' fees or other litigation costs from their individual settlement amounts. Class Counsel will also ask the Court to approve Service Awards to the Class Representatives in an amount not to exceed \$50,000.00 to Mr. Oliveira and \$25,000.00 to Mr. Haworth.

6. What happens if the Court Approves the Settlement?

If the Court approves the proposed Settlement, these cases will be dismissed with prejudice on the merits as to all Class Members who do not exclude themselves the settlement. This means that Class Members who do not exclude themselves will be barred from bringing their own lawsuits for recovery against Prime to the fullest extent allowed by law. Specifically, Class Members who do not exclude themselves from the Settlement and/or who endorse their respective settlement check(s), will release all federal and state wage and hour claims, contract and quasi-contract claims, and any other claims that relate to unpaid wages or compensation that arose in the course of such Class Member's attending training to become a truck driver for Prime from March 4, 2010 to May 8, 2020 and/or driving for Prime either as an employee driver, and/or as an independent contractor driver who has leased their trucks through Prime, at any time from October 2, 2012 to May 8, 2020 to the fullest extent allowed by law.

Class Members who validly and timely request exclusion from the Settlement will not be entitled to receive money or other relief as part of this settlement and will not release any claims.

7. What happens if the Court does not approve the Settlement?

If the Court does not approve the proposed settlement, the case will proceed as if no settlement has been attempted, and there can be no assurance that the class will recover more than is provided for in this Settlement, or indeed, anything.

8. When is the Fairness Hearing?

A hearing will be held before the Honorable Patti B. Saris, Chief Judge, in the United States District Court for the District of Massachusetts on [INSERT DATE] at 1 Courthouse Way - Suite 2300, Boston, MA 02210. The purpose of the hearing is for the Court to decide whether the proposed settlement is fair, reasonable, and adequate as to the Class and should be approved and, if so, to determine what amount of attorneys' fees and expenses should be awarded to Class Counsel and what amount should be awarded as Service Awards to the Class Representatives. The time and date of this hearing may be changed without further notice. To confirm that the hearing is going forward on the scheduled date and time and/or to inquire about appearing at the hearing by telephone rather than in person, please contact the Settlement Administrator or Class Counsel (contact information in Section 10, below).

9. What are my options regarding the Settlement?

If you are receiving this Notice, you have the following options:

a. **Do Nothing:** If you choose to do nothing, you will receive the minimum settlement payment of **\$100.00**, and you will release your wage claims against Prime (and its subsidiaries and affiliates) as described herein.

b. **Join the Settlement and Receive your Maximum Settlement Share:** If you wish to join the settlement and receive your maximum share, you must return a Claim/Consent to Join Form no later than **[insert date 60 days from mailing]**.

You may submit your Form by visiting the Administrator's website at **[insert Administrator's website]**. You may also submit your Form to the Administrator via mail, email, or facsimile at the following address: **[Administrator Contact Information]**. If you received this Notice via U.S. Mail, an addressed and postage paid envelope is enclosed for your convenience. Your signed Form must be submitted electronically or by facsimile or postmarked by **[insert date 60 days]**.

c. **Request Exclusion from the Settlement:** If you wish to be excluded from the settlement, you must request exclusion no later than **[insert date 60 days]**. Your request for exclusion from the settlement must contain the following information: (1) your full name, address, email address, and telephone number; (2) the approximate dates of your relationship with Prime; (3) a statement that you request to be excluded from the settlement and understand that you will not be eligible to recover any monies as part of the settlement; and (4) your signature. You may submit a request for exclusion by mail, email, or facsimile at the following address: **[Administrator Contact Information]**. **If you exclude yourself from the settlement, you will not receive any monies from the settlement.**

d. **Object to the Settlement:** If you are a Class Member and you do not request to be excluded, you may object to the terms of the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives. If you object and the settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in the Litigation, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs.

If you object to the settlement and/or to the Class Counsels' request for attorneys' fees and expenses, and/or to the Service Awards for the Class Representatives, you must, on or before **[INSERT 60 days]**: (1) file with the Clerk of the United States District Court for the District of Massachusetts, and (2) serve upon the Settlement Administrator at **[Administrator Contact Information]**, a written objection including: (a) your full name, address, email address, and telephone number, (b) the approximate dates of your relationship with Prime, (c) a written statement of all grounds for the objection, (d) copies of any papers, briefs, or other documents upon which the objection is based (if applicable), (e) a statement of whether you intend to appear at the Fairness Hearing, and (f) your signature, even if you are represented by counsel. If you intend to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement. If you object to the settlement but would like to receive the full amount to which you are entitled if your objection is overruled by the Court, then you **must** submit a Claim/Consent to Join Form in addition to your objection no later than **[insert date 60 days from mailing]**. If you submit an objection but do not submit a Claim/Consent to Join Form and your objection is overruled, then you will receive only the minimum payment of \$100.00.

10. Are there more details available?

If you have any questions or require additional information, please contact the Administrator at the following contact information: **[Administrator Contact Information]**

You may also contact the Class Counsel at the following contact information:

Hillary Schwab
Rachel Smit
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111
Telephone: 617-607-3261
Email: [insert]@fairworklaw.com

Virginia Stevens Crimmins
Matthew Crimmins
Crimmins Law Firm LLC
214 S. Spring Street
Independence, MO 64050
Telephone: 855-974-0777
Email: [insert]@crimminslawfirm.com

Garrett M. Hodes
Hodes Law Firm, LLC
900 Westport Rd., 2nd Floor
Kansas City, MO 64111
Telephone: 855-635-7890
Email: [insert]@hodeslawfirm.com

PLEASE DO NOT CONTACT THE COURT CLERK REGARDING THIS MATTER

EXHIBIT 2-B

CLAIM/CONSENT TO JOIN FORM

I hereby consent to be a party plaintiff seeking unpaid wages against New Prime, Inc., its subsidiaries, affiliates, and any other related entities (collectively “Prime”) in this or any other subsequent action. I understand that, by participating in the settlement, I am releasing all state and federal unpaid wage claims, contract and quasi-contract claims, and any other claims related to unpaid wages or compensation that were or could have been brought in *Oliveira v. New Prime, Inc.* and/or *Haworth v. New Prime, Inc.* (i.e., any such claims that arose in the course of my attending training to become a truck driver for Prime and/or driving for Prime either an employee driver and/or or as an independent contractor driver who has leased a truck through Prime at any time from October 2, 2012 to May 8, 2020, and/or any such claims that arose in the course of attending training to become a truck driver for Prime in Missouri from March 4, 2010 to May 8, 2020.

I hereby designate Class Counsel (as identified in Section 4 of the Notice) as my attorneys for all purposes in connection with this case, including the settlement.

Date: _____
 Print or Type Name: _____

.....
 PLEASE CONFIRM THE INFORMATION BELOW (OR UPDATE AS NEEDED) AND PROVIDE ADDITIONAL INFORMATION
 FOR IDENTIFICATION PURPOSES.
 THIS SECTION WILL NOT BE FILED PUBLICLY

NAME: _____
 ADDRESS: _____
 CITY, STATE, ZIP: _____
 PHONE: «PHONE» _____
 EMAIL: «EMAIL» _____
 DATE OF BIRTH (OPTIONAL): _____
 LAST 4 DIGITS OF SS# OR TAX ID (OPTIONAL): _____

Please contact the Settlement Administrator at [insert phone number and email] if your contact information changes.

from October 2, 2012, to May 8, 2020, and all individuals who have otherwise attended training in Missouri to become truck drivers for Defendant New Prime, Inc. at any time from March 4, 2010, to May 8, 2020, except for the named plaintiffs in *Montgomery v. New Prime, Inc.*, Civil Action No. 8:17-cv-00321 (C.D. Cal.).

2. For purposes of this settlement only, the Settlement Class is preliminarily certified pursuant to Federal Rule of Civil Procedure 23(b)(3) and 29 U.S.C. § 216(b), and all Settlement Class Members shall have the right to opt in to the settlement pursuant to 29 U.S.C. § 216(b) and to exclude themselves from the settlement by way of the opt-out procedure set forth in the Notice of Proposed Class Action Settlement, attached to the Settlement Agreement (which is Exhibit 1 to Plaintiffs' motion for preliminary settlement approval) as Exhibits A and B.

3. This Court preliminarily finds, solely for purposes of the settlement, that the Action may be maintained as a class and collective action on behalf of the Settlement Class because: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to Settlement Class Members that predominate over any individual questions; (c) the Named Plaintiff's claims are typical of the claims of the Settlement Class; (d) the Named Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. This Court finds that the Settlement Agreement (attached to Plaintiff's motion for preliminary settlement approval as Exhibit 1) is fair, reasonable, and

adequate, and within the range of possible approval, subject to further consideration at the Final Fairness Hearing as set forth below in Paragraph 8.

5. This Court finds that the Notice of Proposed Class Action Settlement, attached to the Settlement Agreement as Exhibits A and B, satisfies the requirements of due process, the Federal Rules of Civil Procedure, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court approves the form and content of the Notice and Claim Form, attached to the Settlement Agreement as Exhibit C.

6. The Court approves the distribution formula and claim procedure set forth in the Settlement Agreement and in Plaintiffs' motion for preliminary settlement approval.

7. The Court acknowledges that the Honorable Roseann A. Ketchmark, in the United States District Court for the Western District of Missouri, in the matter styled *Haworth et al. v. New Prime, Inc.*, Civil Action No. 6:19-cv-03025-RK (W.D. Mo.) certified the B/C Seat Class as an FLSA collective action and appointed Plaintiff Haworth as Class Representative for the B/C Seat Class and the Crimmins Law Firm, LLC, Hodes Law Firm, LLC and Fair Work, P.C. as Class Counsel for the B/C Seat Class pursuant to 29 U.S.C. § 216(b). The Court further acknowledges that the parties have requested or will request to the presiding judge in *Haworth et al. v. New Prime, Inc.*, Civil Action No. 6:19-cv-03025-RK (W.D. Mo.), that the settlement be preliminarily approved for the B/C Seat Class pursuant to 29 U.S.C. § 216(b) and Rule 23(g) and be transferred from the United States District Court for the Western District of Missouri to this Court and

consolidated with this action for purposes of final settlement approval. If *Haworth* is transferred, this Court shall preside over the consolidation of the cases and the final settlement approval of the consolidated cases. If the settlement is finally approved, the Court shall dismiss the consolidated actions with prejudice as part of final settlement approval. If the settlement is not finally approved, the Court shall transfer *Haworth* back to the United States District Court for the Western District of Missouri for further proceedings.

8. The parties shall provide notice to this Court within seven days of the *Haworth* Court ruling on Plaintiffs' motion for preliminary approval and transfer.

9. The Court directs the Settlement Administrator to distribute the Notice in the form approved by the Court to Putative Class/Collective Members provided that the settlement is approved in *Haworth* and that case is transferred to this Court and consolidated with this case.

10. The Final Fairness Hearing shall take place before the Honorable Patti B. Saris on _____, _____, 2020, at __:00 __.m. at the United States District Court, District of Massachusetts, Courtroom 19 (7th Floor), 1 Courthouse Way, Boston, Massachusetts 02210, to determine: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate as to the Settlement Class Members and should be approved; whether the Action should be dismissed with prejudice on the terms provided for in the Agreement; the amount of fees and costs that should be awarded to Class Counsel; and the amount of the incentive award that should be awarded to Plaintiff, as provided for in the

Agreement. The Court will also hear and consider any properly lodged objections at that time. If the Final Fairness Hearing is conducted via videoconference, then information about how to participate in the videoconference hearing shall be available by contacting the Court.

ENTERED this ____ day of _____, 2020.

The Honorable Patti B. Saris