

1 **MAYALL HURLEY P.C.**
2 **ROBERT J. WASSERMAN (SBN: 258538)**
3 rwasserman@mayallaw.com
4 **WILLIAM J. GORHAM (SBN: 151773)**
5 wgorham@mayallaw.com
6 **JENNY D. BAYSINGER (SBN: 251014)**
7 jbaysinger@mayallaw.com
8 **2453 Grand Canal Boulevard**
9 **Stockton, California 95207-8253**
10 **Telephone: (209) 477-3833**
11 **Faxsimile: (209) 473-4818**

12 **Attorneys for Plaintiff Amber Pope and the Putative Class**

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **AMBER POPE,**

16 **Plaintiffs,**

17 **vs.**

18 **PRIME NOW, LLC; and DOES 1-100,
19 inclusive,**

20 **Defendants.**

21 **Case No.:**

22 **CLASS AND COLLECTIVE ACTION
23 COMPLAINT**

24 **1. FAILURE TO PAY OVERTIME**
25 **2. FAILURE TO PROVIDE MEAL AND**
26 **REST PERIODS**
27 **3. FAILURE TO FURNISH ACCURATE**
28 **ITEMIZED WAGE STATEMENTS**
1 **4. UNLAWFUL BUSINESS PRACTICES**
2 **5. CIVIL PENALTIES PURSUANT TO**
3 **LABOR CODE SECTION 2698, ET SEQ.**

4 Plaintiff Amber Pope brings this class action against Prime Now, LLC and Does 1 through
5 100, for violations of the Fair Labor Standards Act, the California Labor Code, and the Business and
6 Professions Code.

7 **PARTIES**

8 1. Amber Pope (“Plaintiff”) is and at all times relevant herein was employed in Los
9 Angeles County, California, and was an “employee” as defined by the Fair Labor Standards Act
10 (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California Industrial Wage
11 Commission (“IWC”) Order(s).

12 ///

2. Prime Now, LLC (“Defendant” or “Prime”) is a limited liability company organized and existing under the laws of Delaware, with its principal place of business located at 410 Terry Avenue N, Seattle, Washington, which does business in California and throughout the United States.

3. At all times relevant herein, Prime has been an “employer” as defined by the Fair Labor Standards Act (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California Industrial Wage Commission (“IWC”) Order(s).

4. Prime and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, and 29 U.S.C. § 216(b). This court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337. This Court further has jurisdiction pursuant to 28 U.S.C. § 1332(d) as there is diversity of citizenship between Prime and Pope and the amount in controversy exceeds \$5,000,000. Venue is proper in this court

1 pursuant to 28 U.S.C. § 1331(b) because the unlawful acts alleged herein took place in Los Angeles
 2 County, California and Plaintiff's place of employment with Prime was within this District. Plaintiff
 3 hereby demands a jury trial.

4 **GENERAL ALLEGATIONS**

5 8. Plaintiff was hired by Prime in or around April 2020.

6 9. Throughout her employment, Plaintiff was a non-exempt employee. As such, she was
 7 entitled to be paid at least minimum wage for every hour she worked and overtime as appropriate
 8 based on her "regular rate of pay."

9 10. Throughout her employment, however, Plaintiff and Prime's other non-exempt
 10 employees were not paid for overtime based on the appropriate regular rate.

11 11. Pope and Prime's other California non-exempt employees were often eligible for and at
 12 times received non-discretionary bonuses, commissions, and other items of compensation (such as
 13 "surge premiums" and other shift differentials). **Exhibit A.**

14 12. Specifically, Prime paid Pope an additional \$2.00 per hour for certain shifts she worked
 15 (identified as "Additionalpay" on her wage statements), along with providing "surge premiums" for
 16 certain hours that were worked. These promised amounts were essentially shift premiums paid to
 17 incentivize Plaintiff and Prime's other non-exempt employees to work additional hours and/or less
 18 desirable shifts.

19 13. Throughout Pope's employment, Prime failed to properly calculate and pay the
 20 overtime wages owed to Plaintiff and its other non-exempt employees.

21 14. Specifically, pursuant to its uniform policy, practice and procedure, Prime failed to
 22 include commissions, non-discretionary bonuses and other items of compensation when determining
 23 Plaintiff and its other non-exempt employees' "regular rate of pay" for purposes of overtime.

24 15. For example, during the weekly pay period of May 17-23, 2020, Ms. Pope earned
 25 "additional pay of \$2.00 for each of the 37.97 hours she worked, earned a "surge premium" of \$3.00 for
 26 each of 13.50 hours worked, a "surge premium" of \$5.00 for 4.50 hours she worked and a rate of
 27 \$30.00 for 2.83 hours that she worked. **Exh. A.** Pope had a total of \$750.79 in earnings for 37.97 hours
 28 of work, equating to a regular rate of \$19.77 and an overtime premium of \$9.88 per hour. Prime Now,

1 however, only paid Pope at the “overtime premium” rate of \$5.63 per hour, significantly less than the
 2 premium required by her regular rate. *Id.*

3 Pope and Prime’s other non-exempt employees were frequently denied the opportunity to take
 4 off-duty meal periods of at least thirty (30) minutes because job responsibilities would not allow for
 5 such. The fact meal periods were not provided is underscored by Prime’s payment of meal period
 6 premiums to Pope on occasion. Under California law, there is no lawful choice between providing the
 7 opportunity for meal periods and paying meal period premiums. *Kirby v. Immoos Fire Protection, Inc.*
 8 53 Cal.4th 1244 (2012).

9 16. Because of the violations set forth above, and as evidenced in the sample of Plaintiff’s
 10 wage statements attached hereto as **Exhibit A**, the wage statements furnished by Prime to its non-
 11 exempt California employees violated California Labor Code section 226(a) insofar as they failed to
 12 accurately show:

- 13 a. The gross wages earned, in violation of section 226(a)(1);
- 14 b. The total hours worked by the employee in violation of section 226(a)(2);
- 15 c. The net wages earned, in violation of section 226(a)(5); and
- 16 d. All applicable hourly rates in effect during the pay period and the corresponding
 17 number of hours worked at each hourly rate in violation of section 226(a)(9).

18 17. Prime was, at all times relevant herein, aware of the requirements of California Labor
 19 Code section 226.

20 18. Prime has, at all times relevant herein, furnished wage statements to each of its non-
 21 exempt California employees pursuant to an established set of policies, procedures and practices.

22 19. Plaintiff and Prime’s other non-exempt California employees, both current and former,
 23 have suffered injury as a result of Prime’s knowing and intentional failure to comply with California
 24 Labor Code section 226(a).

25 20. Plaintiff and Prime’s other non-exempt California employees, both current and former,
 26 were unable to promptly and easily determine their gross wages earned from the wage statements
 27 furnished by Prime.

28 21. Plaintiff and Prime’s other non-exempt California employees, both current and former,
 29 have suffered injury as a result of Prime’s knowing and intentional failure to furnish wage statements

1 accurately showing the gross wages earned by them in violation of California Labor Code section
2 226(a)(1).

3 22. Plaintiff and Prime's other non-exempt California employees, both current and former,
4 who worked overtime, were unable to promptly and easily determine their total hours worked from the
5 wage statements furnished by Prime.

6 23. Plaintiff and Prime's other non-exempt California employees, both current and former,
7 who worked overtime, have suffered injury as a result of Prime's knowing and intentional failure to
8 furnish wage statements accurately showing their total hours worked in violation of California Labor
9 Code section 226(a)(2).

10 24. Plaintiff and Prime's other non-exempt California employees, both current and former,
11 were unable to promptly and easily determine their net wages earned from the wage statements
12 furnished by Prime.

13 25. Plaintiff and Prime's other non-exempt California employees, both current and former,
14 have suffered injury as a result of Prime's knowing and intentional failure to furnish wage statements
15 accurately showing the net wages earned by them in violation of California Labor Code section
16 226(a)(5).

17 26. Plaintiff and Prime's other non-exempt California employees, both current and former,
18 were unable to promptly and easily determine all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate from the wage statements
20 furnished by Prime.

21 27. Plaintiff and Prime's other non-exempt California employees, both current and former,
22 have suffered injury as a result of Allen Distribution's knowing and intentional failure to furnish wage
23 statements accurately showing all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

25 28. As a result of the failure to properly calculate and pay overtime and doubletime
26 premiums, Prime failed to pay Pope and its other current and former employees whose employment
27 has ended all wages due and owing at the time of separation within the time parameters mandated by
28 Labor Code sections 201 and 202.

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