

**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
SEPARATE AND FINAL 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 (ECF Dkt. No. 279). This motion applies to all claims of the approximately 40,000 individuals who were part of the original notice process pursuant to the parties' Settlement Agreement. Plaintiffs have also filed a Motion for Supplemental Notice to Certain Individuals in Settlement Class and for Preliminary Approval of Settlement for Newly Discovered Individuals (ECF Dkt. No. 280), in which, *inter alia*, Plaintiffs request preliminary approval and notice for a newly discovered group of 1,242 individuals who should have been included in the original notice process but were not. As set forth below, this Order and Judgment enters separate and final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure for the claims of the individuals who were part of the original notice process pursuant to the parties' Settlement Agreement.

In the motion for final settlement approval, Plaintiffs request an order finally approving settlement of the above-captioned action for the individuals who were part of the original notice process 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 January 13, 2021, 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 a one-third award of attorneys' fees based on the amount of the common fund actually claimed by and distributed to class members (*i.e.*, if \$13,500,000 were to be distributed to class members after deduction of the 1/3 attorneys' fee award, the attorneys' fee award would be \$6,750,000) and an award of costs of up to \$225,000. The Court orders that the attorneys' fee award shall be paid proportionately out of amounts actually claimed/distributed from the Reversionary Settlement Fund and the Non-Reversionary Settlement Fund. The Court further approves \$30,000.00 as an incentive award to Plaintiff Dominic Oliveira and \$20,000.00 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. The Dispute Fund shall be \$100,000.

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

7. The Court overrules the objection filed at Docket No. 273 and denies the "Motion to Appeal," and related "Request for Waiver of Mandatory Fee Reduction," and motion to proceed *in forma pauperis* filed at Docket Nos. 274 and 275.

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

9. 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 against Prime released as part of this settlement.

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

11. 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.

12. Pursuant to Fed. R. Civ P. 54(b), the Court hereby enters separate and final judgment for all claims of the individuals who were part of the original notice process pursuant to the parties' Settlement Agreement.

13. This separate and final judgment provides an ultimate disposition on a cognizable claim for relief, namely all claims asserted in this action for the individuals who were part of the original notice process pursuant to the parties' Settlement Agreement. There are no remaining claims or issues outstanding for this group of individuals that are outside of the scope of the parties' Settlement Agreement (and the dispute resolution processes therein), including outstanding issues with respect to individuals for whom Prime challenges entitlement to a release pursuant to Paragraph F.8.c of the parties' Settlement Agreement.

14. The Court determines that there is no just reason for delay in the entry of final judgment for the claims of the individuals who were part of the original notice

process pursuant to the parties' Settlement Agreement. Specifically, entering separate and final judgment now will ensure finality for the vast majority of individuals affected by this case and will facilitate expeditious payment of settlement monies (and other relief from the settlement) to those individuals. There is no just reason for these individuals to wait several additional months to receive the benefits from this settlement while the settlement notice process proceeds as to the much smaller group of individuals who are receiving notice for the first time pursuant to paragraphs 2-9 of the Court's Order Allowing Supplemental Notice to Certain Individuals in Settlement Class and for Preliminary Approval of the Settlement for Newly Discovered Individuals, because the claims are entirely separate.

15. 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.

16. Excluded from this judgment are the claims of those individuals who are receiving notice for the first time pursuant to paragraphs 2-9 of the Court's Order Allowing Supplemental Notice to Certain Individuals in Settlement Class and for Preliminary Approval of the Settlement for Newly Discovered Individuals.

17. The Court retains jurisdiction as to the claims of those individuals who are receiving notice for the first time pursuant to paragraphs 2-9 of the Court's Order

Allowing Supplemental Notice to Certain Individuals in Settlement Class and for Preliminary Approval of the Settlement for Newly Discovered Individuals, including the notice and settlement approval process for these individuals.

ENTERED this 26th day of January, 2021.

/s/ PATTI B. SARIS

The Honorable Patti B. Saris