

Affidavit of Dominic Oliveira, Exhibit A.²

This message was sent out on Prime's app and was sent to every truck in the New Prime fleet via the Qualcomm system. In other words, it was received by every New Prime driver. Oliveira Aff. Notably, the message explicitly states that it was sent out by a "SUPERVISOR."

Since the original false message went out Monday night, this false information has been spread to current and former New Prime drivers. For example, administrators on Facebook groups for New Prime drivers have posted statements further compounding the problem and reinforcing the false information. These messages include the following:

As per the message from a supervisor in Operations, any emails concerning a settlement asking for you to give any information is a scam. . . all post made in this group about this that isn't something official from Prime will be removed by admin.

Regarding the email that has been going around and the last couple QC messages. I have my personal feeling on if the email is legit or not. However until we can actually confirm that the email is legit we will be removing any further post about it.

Affidavit of Hillary Schwab, Esq., Exhibit A.³

² The same supervisor subsequently sent out a tepid and vague email, purportedly to correct this false information, stating: "**/**/* Fleet Message Please Read **/**/* We've looking [sic] into the email that was mentioned in my previous message and deduced that it is not a phishing attempt. I apologize for any inconvenience my message caused. BE SAFE, DAVID - SUPERVISOR." Schwab Aff., Ex. B.

³ It is unclear whether or not New Prime runs these Facebook groups. However, it is clear that New Prime management does post official statements on these groups, and is in contact with the group administrator, as confirmed by the reference to "something official from Prime" in the first post. Certainly, New Prime is able to contact the administrators of these groups in order to post official corrective statements.

Counsel for Plaintiffs have received several calls and emails from class members who are mistrustful and concerned because they have heard the rumors about the Court-approved notice email being a phishing scam. Schwab Aff. ¶ 4.

To the extent that Defendant makes the argument that this false message was sent out without management's knowledge, that is irrelevant. It was Defendant's responsibility to ensure that its managers (especially those with the authority to send fleetwide messages) knew about the settlement and the fact that notice was going out to more than 40,000 drivers and did nothing to interfere with the Court-approved notice process. If they had notified supervisors about the settlement and properly informed them about their obligations as agents for the company, this never would have occurred.

Immediate corrective action is necessary to remedy this message, which is both entirely false and plays on people's fears about potential email scams. This communication was also coercive because a New Prime supervisor utilized a New Prime official communication channel (and the company's authority as the drivers' employer) to instill mistrust in the settlement process and discourage participation in the settlement. The message also patently interferes with the Court-approved notice process.

Plaintiffs request that the Court order the following corrective action to occur immediately:

1. Defendant's management to inform all managers, supervisors, and staff about the settlement and the notice process and to instruct them not to do anything to

interfere with the notice process or to discourage individuals from participating in the settlement.

2. Defendant's management to instruct all managers, supervisors, and staff that, if drivers have questions about the settlement, they should not provide substantive answers but should instead direct the drivers to www.PrimeTruckingSettlement.com.

3. A message to be sent out on the Prime app and the Qualcomm system stating:

There have been inaccurate messages sent out on the Prime app and the Qualcomm system about the email that many of you received to participate in a class action settlement. The email about the settlement is not a scam or a phishing attempt. It is a legitimate, Court-approved notice informing you of your right to recover money and other relief as part of a lawsuit settlement. Prime, Inc. encourages everyone to participate in the settlement and to claim the money owed to them.

Please visit the website www.PrimeTruckingSettlement.com for more information and to file a claim. All information that individuals share through this website will be protected and will be used only in connection with issuing your payments from the settlement.

If you have any questions about the settlement, please contact the settlement administrator (contact information is available on the website, www.PrimeTruckingSettlement.com).

4. This message to be posted on all New Prime driver Facebook groups (specifically all such groups on which New Prime has posted official messages, regardless of whether the company formally controls the groups).

5. A letter issued on New Prime, Inc.'s letterhead and signed by the owner, Robert E. Low, stating:

Dear Valued Prime Drivers:

I write to apologize about some confusion about a recent class action settlement that Prime reached in a lawsuit that had been filed by Prime drivers. There have been

inaccurate messages sent out on the Prime app and the Qualcomm system about the email that many of you received to participate in a class action settlement. Please disregard these messages. They do not come from Prime management and were sent out without any approval by Prime management.

The email about the settlement is not a scam or a phishing attempt. It is a legitimate, Court-approved notice informing you of your right to recover money and other relief as part of a lawsuit settlement. Prime, Inc. encourages everyone to participate in the settlement and to claim the money owed to them.

Please visit the website www.PrimeTruckingSettlement.com for more information and to file a claim. All information that individuals share through this website will be protected and will be used only in connection with issuing your payments from the settlement.

If you have any questions about the settlement, please contact the settlement administrator (contact information is available on the website, www.PrimeTruckingSettlement.com).

Sincerely,

Robert E. Low, President and Founder
New Prime, Inc.

6. The posting of the letter by Mr. Low on the settlement website.
7. A statement on the New Prime, Inc. website homepage (www.primeinc.com) stating "Click here for important message from Robert E. Low about class action settlement" and linking to the letter.
8. A link on the settlement website to this statement on the New Prime website homepage and to Mr. Low's letter.
9. The sending of the Court-approved settlement notice by first-class mail, with a postage prepaid envelope, to all members of the settlement class, at Defendant's expense.
10. Any other relief that the Court deems just and proper.

This corrective action is necessary in light of the severity of this issue and its likely impact on class members' participation in the settlement.⁴ The severity of the misinformation sent out to all New Prime drivers can only be remedied with swift and comprehensive action. Indeed, Plaintiffs are concerned that this false message may have long-lingering effects on the settlement claim rate and therefore reserve the right to request additional relief as the claim period progresses – such as advertising about the settlement, an extended claim deadline, etc.

The subsequent message that New Prime's supervisor does not come close to doing enough to correct the original false message for several reasons. First, it is vague and clearly designed to be as inobtrusive as possible and is likely not to catch people's attention. Second, it does not explicitly reference the lawsuit or the settlement website and leaves open the prior suggestion that the settlement process is illegitimate. Third, it still leaves drivers with the impression that Prime management does not support the settlement and creates the concern that there will be consequences if people submit claim forms to participate. Fourth, the original message – which was shocking and concerning – was likely distributed widely, including to former drivers. It is quite likely that many drivers will have heard the rumors and concerns stirred up by the first message but will never hear about this second low-key message.

⁴ Courts often order corrective notice when there has been interference with the notice process and/or misleading or inaccurate communications. *See, e.g., Gortat v. Capala Bros., Inc.*, 2010 WL 1879922, at *4 (E.D.N.Y. May 10, 2010) (collecting cases). Indeed, "[c]ourts have ordered a variety of remedial measures for misleading and improper communications, including prohibiting further *ex parte* communications, issuing corrective notices, extending the opt-in period, and awarding attorneys' fees and costs." *Stransky v. HealthONE of Denver, Inc.*, 929 F. Supp. 2d 110, 1109 (D. Colo. 2013).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this motion be granted.

Respectfully submitted,

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

By their attorneys,

/s/ Hillary Schwab
Hillary Schwab (BBO #666029)
Brant Casavant (BBO #672614)
Rachel Smit (BBO #688294)
FAIR WORK P.C.
192 South Street, Suite 450
Boston, MA 02111
Tel. (617) 607-3261
Fax. (617) 488-2261
hillary@fairworklaw.com
brant@fairworklaw.com
rachel@fairworklaw.com

Andrew Schmidt, Esq.
Admitted *pro hac vice*
Andrew Schmidt, PLLC
97 India St.
Portland, ME 040101
Tel. (207) 619-0320
Fax. (207) 221-1029
Andy@MaineWorkerJustice.com

Virginia Stevens Crimmins, MO #53139
Admitted *pro hac vice*
Matthew R. Crimmins, MO #53138
Admitted *pro hac vice*
CRIMMINS LAW FIRM LLC
214 S. Spring Street
Independence, Missouri 64050
(816) 974-7220 Telephone
(855) 974-7020 Facsimile
m.crimmins@crimminslawfirm.com
v.crimmins@crimminslawfirm.com

Garrett M. Hodes, MO #50221
Admitted *pro hac vice*
900 Westport Road, 2nd Floor
HODES LAW FIRM, LLC
Kansas City, Missouri 64111
(816) 931-1718 Telephone
(816) 994-6276 Facsimile
garrett@hodeslawfirm.com

Dated: October 7, 2020

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for Defendant about the relief requested in this motion on October 6 and October 7, 2020, but we were not able to agree on the relief requested herein. The parties are still conferring on some of the relief requested herein, but Defendant has confirmed that it will not agree to all of the relief requested.

/s/ Hillary Schwab
Hillary Schwab

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of this document to be served by means of the Court's electronic filing system on all counsel of record on October 7, 2020.

/s/ Hillary Schwab
Hillary Schwab

**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,)	Civil Action No. 1:15-cv-10603-PBS
v.)	
)	
NEW PRIME INC.,)	
)	
Defendant.)	
_____)	

**AFFIDAVIT OF DOMINIC OLIVEIRA IN SUPPORT OF PLAINTIFFS’
EMERGENCY MOTION FOR CORRECTIVE NOTICE TO CLASS MEMBERS TO
ADDRESS FALSE INFORMATION BEING SENT OUT BY DEFENDANT’S
EMPLOYEES ABOUT SETTLEMENT NOTICE**

I, Dominic Oliveira, do state and depose the following:

1. I am the named plaintiff in this action. This affidavit is based on my personal knowledge.
2. Yesterday, I was informed by several New Prime drivers that a message had been sent out on the Prime app and by Qualcomm that stated that the settlement notice was a phishing scam and telling people not to click on the website link.
3. A copy of the message is attached to this affidavit as Exhibit A.
4. This message was sent to every truck in the New Prime fleet, meaning that it was received by every New Prime driver.
5. The Prime app and Qualcomm are how New Prime sends official messages to its truck drivers.

Signed under the pains and penalties of perjury.

DocuSigned by:
Dominic Oliveira
A721E4E936E74D9...
Dominic Oliveira

Dated: October 06, 2020

← PRIME



Today, 9:24 PM

← ***/*/ Fleet Message Please Read */*/** There is currently a scam happening with an email phishing attempt to gather your personal information claiming to be apart of a lawsuit. Please do not click the link in the email. This is a n attempt to snatch your personal info . Any and all lawsuit settlements would need to be sent by official mail out let, not an email from a stranger. **BE SAFE, DAVID - SUPERVISOR**

[redacted] New Free Form Message

SEND

4 MINUTES AGO



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

<hr/>)	
DOMINIC OLIVEIRA,)	
on his own behalf and on behalf of)	
all others similarly situated,)	
	Plaintiffs,)	Civil Action No. 1:15-cv-10603-PBS
v.)	
)	
NEW PRIME INC.,)	
	Defendant.)	
<hr/>)	

AFFIDAVIT OF HILLARY SCHWAB, ESQ.

I, Hillary Schwab, Esq., do state and depose the following:

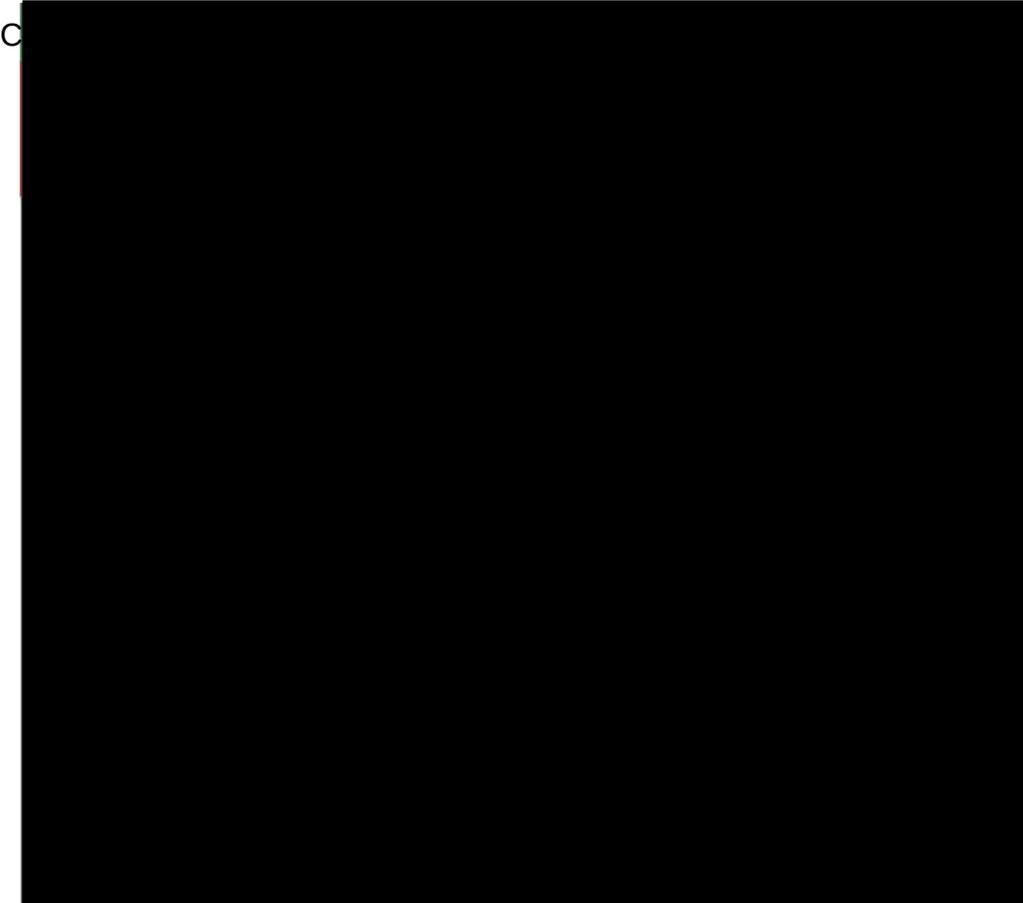
1. I am one of the attorneys for Plaintiffs in this action. This affidavit is based on my personal knowledge.
2. Since Monday evening, several messages have been posted by administrators for Facebook groups for New Prime truck drivers concerning the settlement and reinforcing the false information that the Court-approved notice email is a scam.
3. Copies of some of these posts are attached as Exhibit A.
4. Additionally, counsel for Plaintiffs have been receiving calls and emails from class members expressing concern and distrust about the authenticity of the Court-approved notice and stating that they have heard rumors about it being a phishing scam.

5. The message that Prime sent out after the initial false message is attached hereto as Exhibit B.

Signed under the pains and penalties of perjury.

/s/ Hillary Schwab
Hillary Schwab, Esq.

Dated: October 7, 2020



 Live

 Photo

 Recommend

New Activity

[SORT](#)



Michael C Hess



 Admin • 7m • 

As per the message from a supervisor in Operations, any emails concerning a settlement asking for you to give any information is a scam.... all post made in this group about this that isn't something official from Prime will be removed by admin.

 2

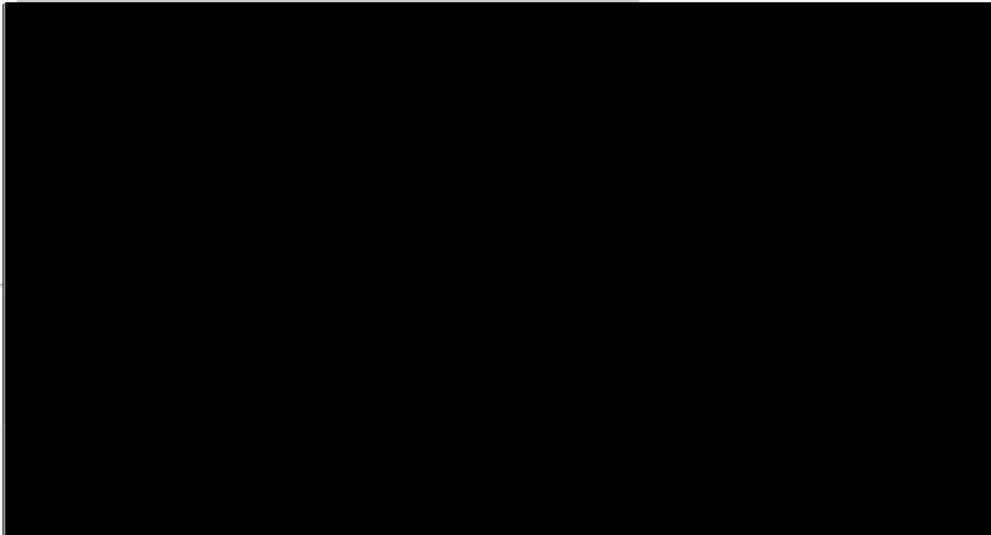
[9 Comments](#)



Like



Comment



 Saved · [See saved items](#) · [Add to a Collection](#)



John Purlee

 Admin · 10h

Regarding the email that has been going around and the last couple QC messages. I have my personal feeling on if the email is legit or not. However until we can actually confirm that the email is legit we will be removing any further post about it.

   16

38 Comments

Announcements See All (12)

 **Thomas E. Miller** ⋮
Admin · 1h

ALL MEMBERS: In light of the recent email that has went out about eligibility for claim in the Oliveira v New Prime Inc. lawsuit, rumors, conjecture, and opinion seems to be the flavor of the week. The admins of this page will never cast judgement on those for or against their opinions on this matter, but we **ABSOLUTELY** and respectfully ask that those opinions be kept off of this page, please.

Opinions on the settlement, and the lawsuit itself, can become hotly contested and turn into arguing, fighting, and eventually being very disrespectful towards one another. Something we simply won't tolerate.

So, please, again, keep the post out of the page. The attorneys handling it will make sure all info will get to those who need it. We **WILL** delete the post when it occurs. Thank You for your help in this.

   7 3 Comments

 Like  Comment

//* Fleet Message Please Read */*/*
We've looking into the email that was
mentioned in my previous message and
deduced that it is not a phishing
attempt. I apologize for any inconveni-
ence my message caused.

BE SAFE, DAVID - SUPERVISOR