

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' EMERGENCY MOTION FOR CORRECTIVE NOTICE TO CLASS
MEMBERS TO ADDRESS FALSE INFORMATION BEING SENT OUT BY
DEFENDANT'S EMPLOYEES ABOUT SETTLEMENT NOTICE AND
MEMORANDUM IN SUPPORT THEREOF**

Yesterday, the Court-approved notice was sent out. The notice was sent to approximately 40,000 individuals, the vast majority of whom received notice by electronic mail, per the parties' agreement and the Court-approved notice plan. On the same day that notice was set to go out and on which the settlement website went live, New Prime employees sent out the following communication to truck drivers:

*/ */ 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 an 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.

Affidavit of Dominic Oliveira, Exhibit A.

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.

Immediate corrective action is necessary to remedy this message, which is both entirely false and plays on people's fears about potential email scams. 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.PrimeTruckingLawsuit.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.PrimeTruckingLawsuit.com).

4. This message to be posted on all of New Prime, Inc.'s Facebook groups as well.

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.PrimeTruckingLawsuit.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.PrimeTruckingLawsuit.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.¹ 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.

¹ 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
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Dated: October 6, 2020

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 6, 2020.

/s/ Hillary Schwab
Hillary Schwab

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DOMINIC OLIVEIRA,
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all others similarly situated,

Plaintiffs,

v.

NEW PRIME INC.,

Defendant.

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

**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


 / 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

SEND

4 MINUTES AGO