

1 **BLUMENTHAL NORDREHAUG BHOWMIK**  
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: [Kyle@bamlawca.com](mailto:Kyle@bamlawca.com)

11 Website: [www.bamlawca.com](http://www.bamlawca.com)

12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 SARAH ARMSTRONG and ROBERT  
16 WALLACE, individuals, on behalf of  
17 themselves and on behalf of all persons  
18 similarly situated,

19 Plaintiffs,

20 vs.

21 PROMETRIC LLC, a Limited Liability  
22 Company, and DOES 1 through 50,  
23 inclusive,

24 Defendants.

25 **Case No. 20STCV29967**

26 **NOTICE OF ENTRY OF JUDGMENT**

27 Hearing Date: June 30, 2022

28 Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept: SS-17

Action Filed: August 7, 2020

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT on June 30, 2022, the Court entered the Order  
3 Granting Motion for Final Approval, and on July 8, 2022 the Court entered Judgment in the above  
4 entitled action. A true and correct copy of the Order Granting Motion for Final Approval is  
5 attached hereto as Exhibit #1. A true and correct copy of the Judgment is attached hereto as Exhibit  
6 #2.

7 Respectfully submitted,

8  
9 Dated: July 14, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

10  
11 By: /s/ Kyle Nordrehaug  
12 Kyle R. Nordrehaug  
13 Attorneys for Plaintiff  
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1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Kyle Nordrehaug, am employed in the County of San Diego, State of California. I am  
3 over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La  
4 Jolla, California 92037.

5 On July 14, 2022, I served the document(s) described as:

6 **1. NOTICE OF ENTRY OF JUDGMENT**

7 X (BY ELECTRONIC SERVICE): A true and correct copy was electronically served on all  
8 counsel of record in the coordinated proceeding by transmission to Case Anywhere. I uploaded  
9 a PDF file of the above document(s) to Case Anywhere, which provided electronic service to  
10 the persons listed below:

11 [robin.samuel@bakermckenzie.com](mailto:robin.samuel@bakermckenzie.com)  
12 Robin Samuel  
13 BAKER & MCKENZIE LLP  
10250 Constellation Boulevard, Suite 1850  
Los Angeles, California 90067

14 X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the  
15 Labor Workforce Development Agency via online process at the PAGA Filing website in  
16 accordance with the procedure imposed by the LWDA.

17 X (State): I declare under penalty of perjury under the laws of the State of California that the  
18 above is true and correct.

19 Executed on July 14, 2022, at La Jolla, California.

21 /s/ Kyle Nordrehaug

22 Kyle Nordrehaug  
23  
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FILED  
Superior Court of California  
County of Los Angeles

JUN 30 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY MARI EL MARI

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

SARAH ARMSTRONG and ROBERT  
WALLACE, individuals, on behalf of  
themselves and on behalf of all persons  
similarly situated,

Plaintiffs,

v.

PROMETRIC LLC, a Limited Liability  
Company, and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 20STCV29967

ORDER GRANTING  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT

Date: June 30, 2022

Time: 9:00 a.m.

Dept.: SSC-17

**I. BACKGROUND**

Plaintiffs Sarah Armstrong and Robert Wallace sue their former employer,  
Defendant Prometric LLC, for alleged wage and hour violations. Defendant provides  
testing and assessment programs for licensing and certification organizations, academic

1 institutions, and government agencies. Plaintiffs seek to represent a class of  
2 Defendant's current and former non-exempt employees.

3 On August 7, 2020, Plaintiffs filed their initial class action complaint against  
4 Defendant. On August 10, 2021, Plaintiffs filed the operative First Amended  
5 Complaint, asserting causes of action for: (1) unfair competition (Bus & Prof. Code §§  
6 17200, *et seq.*); (2) failure to pay minimum wages (Labor Code §§ 1194, 1197, and  
7 1197.1); (3) failure to pay overtime wages (Labor Code §§ 510, *et seq.*); (4) failure to  
8 provide required meal periods (Labor Code §§ 226.7, 512 and applicable IWC Wage  
9 Order); (5) failure to provide required rest periods (Labor Code §§ 226.7, 512 and  
10 applicable IWC Wage Order); (6) failure to provide accurate wage statements (Labor  
11 Code § 226); (7) failure to reimburse employees for required expenses (Labor Code §  
12 2802); (8) failure to provide wages when due at termination (Labor Code § 201, 202,  
13 and 203); (9) violation of the Fair Labor Standards Act (29 U.S.C. §§ 201, *et seq.*); and  
14 (10) penalties for violation of the Private Attorneys General Act (Labor Code §§ 2698,  
15 *et seq.*) ("PAGA").

16 On March 3, 2021, the parties participated in an all-day mediation before David  
17 Rotman. Following the mediation, the parties were able to reach agreement on a  
18 settlement of the action. The terms were subsequently finalized in the *Class Action*  
19 *Settlement Agreement* ("Settlement Agreement"), a copy of which was filed with the  
20 Court.

21 On August 18, 2021, the Court issued a "checklist" to the parties pertaining to  
22 deficiencies in Plaintiffs' motion for preliminary approval. In response, the parties filed  
23 further briefing, including the First Amended Settlement Agreement attached to the  
24 Supplemental Declaration of Kyle Nordrehaug ("Nordrehaug Decl.") as Exhibit 1.  
25

1 The matter came on for hearing on January 5, 2022. Further revisions to the  
2 proposed settlement were discussed. On January 12, 2022, Plaintiffs filed a fully  
3 executed Second Amended Class Action Settlement Agreement, attached to the Second  
4 Supplemental Declaration of Kyle Nordrehaug as Exhibit 1. All references below are to  
5 the Second Amended Class Action Settlement Agreement.

6 The settlement was preliminarily approved on January 14, 2022. Notice was  
7 given to the Class Members as ordered (see Declaration of Christina Fowler). Now  
8 before the Court is Plaintiff's motion for final approval of the Settlement Agreement,  
9 including for payment of fees, costs, and a service award to the named plaintiff. For the  
10 reasons set forth below, the Court grants final approval of the settlement.

## 11 12 **II. THE TERMS OF THE SETTLEMENT**

### 13 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

14 "Class" means all individuals employed by Defendant in California as non-  
15 exempt employees at any time during the Class Period, but excluding individuals who  
16 released Defendant from wage and hour claims for the Class Period, including those  
17 wage and hour claims released as part of a general release of claims. (§I.C) "Class  
18 Period" means August 7, 2016 to July 3, 2021. (§I.I)

19 "Participating Class Member" means a Class Member who does not submit a  
20 valid and timely Election Not to Participate in Settlement. (§I.Z)

21 "Collective Members" means all individuals employed by Defendant in  
22 California as non-exempt employees at any time during the Collective Period, but  
23 excluding individuals who released Defendant from FLSA claims for the Collective  
24 Period, including those wage and hour claims released as part of a general release of  
25 claims. (§I.K) "Collective Period" means August 7, 2017 to July 3, 2021. (§I.L)

1 “Participating Collective Members” means all Collective Members who timely  
2 sign, cash, deposit or otherwise negotiate a settlement check. (§I.AA)

3 “Aggrieved Employees” means all individuals employed by Defendant in  
4 California as non-exempt employees at any time during the PAGA Period, but  
5 excluding individuals who released Defendant from wage and hour claims for the Class  
6 Period, including those wage and hour claims released as part of a general release of  
7 claims. (§I.B) “PAGA Period” means June 3, 2019 to July 3, 2021. (§I.Y)

## 8 9 **B. THE MONETARY TERMS OF SETTLEMENT**

10 The essential monetary terms are as follows:

11 The Maximum Gross Settlement Amount is **\$880,000** (§I.T). This includes  
12 payment of a PAGA penalty of **\$30,000** to be paid 75% to the LWDA (\$22,500) and 25%  
13 to the Aggrieved Employees (\$7,500) (§III.B.3).

14 Class Size Modification: According to Defendant’s records, there are  
15 approximately 241 Class Members who worked an estimated 63,500 Workdays during  
16 the Class Period. Defendant will provide a declaration in conjunction with the filing of  
17 the Motion for Preliminary Approval confirming the number of Class Members and  
18 estimated Workdays during the Class Period. In no event shall the total payments to the  
19 Class Members exceed the Net Settlement Amount. However, should the total number of  
20 Workdays in the Class Period increase by more than ten percent (10%) above 63,500,  
21 Defendant will pay an additional amount on top of the Net Settlement Amount so that the  
22 Net Settlement Amount shall increase by a percentage equal to the percentage increase in  
23 total Workdays over 63,500 less ten percent (10%). (§III.C.5)

24 The Net Settlement Amount (“Net”) (**\$496,667**) is the Maximum Gross  
25 Settlement Amount less:

- Up to **\$293,333** (1/3) for attorney fees (§III.B.2);
- Up to **\$25,000** for attorney costs (*Ibid.*);
- Up to **\$20,000 total [\$10,000 each]** for service awards to the proposed class representatives (§III.B.1); and
- Maximum **\$15,000** for settlement administration costs (§I.GG).
- Employer-side payroll taxes will be paid in addition to the Maximum Gross Settlement Amount (§I.T).
- Assuming the Court approves all maximum requested deductions, approximately \$496,667 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$1,963.11. ( $\$496,667 \text{ Net} \div 253 \text{ class members} = \$1,963.11$ ). In addition, each Aggrieved Employee will receive a portion of the PAGA penalty, estimated to be \$52.08 per Aggrieved Employee. ( $\$7,500 \text{ or } 25\% \text{ of } \$30,000 \text{ PAGA penalty} \div 144 \text{ Aggrieved Employees} = \$ 52.08$ )
- There is no Claim Requirement (Notice pg. 1).
- The settlement is not reversionary (§I.T).
- Individual Settlement Share Calculation: Each Participating Class Member's Individual Settlement Payment will be calculated as follows: The Net Settlement Amount shall be divided by the total Workdays for all Participating Class Members to determine the "Workday Payment Amount." (§III.C.1.a) The gross amount of each Participating Class Member's Individual Settlement Payment shall be calculated by multiplying the Participating Class Member's individual Workday total by the Workday Payment Amount. (§III.C.1.b)
  - Non-Participating Class Members will not receive an Individual Settlement Payment. The portion of the Net Settlement Amount that

1 would have been allocated to Non-Participating Class Members but for  
2 their submission of an Election Not to Participate in Settlement will  
3 remain part of the Net Settlement Amount available for distribution to  
4 Participating Class Members. (§III.C.3)

- 5 ○ PAGA Payments to Aggrieved Employees: \$7,500, or 25% of the  
6 \$30,000 PAGA Payment, will be distributed to Aggrieved Employees pro  
7 rata based on their respective Workdays during the PAGA Period.

8 (§III.B.3)

- 9 • Tax Withholdings: 25% as wages, 75% as interest and penalties (§III.C.2).
- 10 • Uncashed Settlement Payment Checks: All Individual Settlement Payment  
11 and/or PAGA Payment checks that have not been cashed or negotiated by the  
12 180-day deadline shall be deemed stale and voided by the Settlement  
13 Administrator. (§III.E.10) The funds from all voided Individual Settlement  
14 Payment checks and/or PAGA Payment checks, as well as all interest from the  
15 QSF and all other unclaimed amounts from the Maximum Gross Settlement  
16 Amount will be paid *cy pres* to two recognized 501(c)(3) tax-exempt charities as  
17 follows: (1) 50% to Bet Tzedek Legal Services and (2) 50% to Legal Aid at  
18 Work (the “Cy Pres Recipients”). Such *cy pres* payments will be made in  
19 compliance with Code of Civil Procedure section 384. (§III.E.12)

- 20 ○ Defendant’s counsel represents they have no connection or relationship to  
21 these *cy pres* beneficiaries. (Declaration of Robin Samuel ¶4.) At hearing  
22 on January 5, 2022, counsel represented that the parties also have no such  
23 affiliation.

- 24 • Funding of Settlement: Defendant shall deposit the Maximum Gross Settlement  
25 Amount into the QSF established by the Settlement Administrator within fifteen

1 (15) days of the Effective Date (§III.A), which is defined as the date by which  
2 this Settlement is finally approved by the Court on the terms and conditions set  
3 forth in the Agreement and the Judgment has been entered and becomes  
4 irrevocable and binding (§I.O).

5  
6 **C. TERMS OF RELEASES**

- 7 • Participating Class Members: Upon full funding of the Maximum Gross  
8 Settlement Amount by Defendant, the Participating Class Members, including  
9 but not limited to Participating Collective Members, shall expressly and  
10 irrevocably release, acquit, and forever discharge, on their own behalf and on  
11 behalf of their heirs, assigns and estates, any and all claims, debts, liabilities,  
12 demands, obligations, guarantees, penalties, costs, liens, charges, complaints,  
13 expenses, attorneys' fees, damages, liquidated damages, actions or causes of  
14 action, whether known or unknown, contingent or accrued, against the Released  
15 Parties that accrued during the Class Period for Class Members, and that arise  
16 out of or relate to the allegations asserted in the First Amended Complaint, that  
17 are asserted in the First Amended Complaint, or that could have been asserted in  
18 the First Amended Complaint based on the allegations in the First Amended  
19 Complaint, whether in contract or based on putative violations of any federal,  
20 state, city, or local law (the "Released Class Claims"). (§III.F.1)

- 21 ○ The Released Class Claims include all claims arising from the factual  
22 allegations in the First Amended Complaint for unpaid wages, minimum  
23 wages, overtime, double time, or premium pay of any other kind, meal  
24 period violations, rest break violations, wage statement violations, the  
25 failure to keep accurate payroll records, suitable seating violations, the

1 failure to timely pay wages during employment and upon termination of  
2 employment, the failure to reimburse employees for business expenses,  
3 all related claims for civil and statutory penalties, interest, liquidated  
4 damages, attorneys' fees, costs, and expenses, all claims under PAGA  
5 that could have been premised on the Released Class Claims, all claims  
6 under the California Business & Professions Code section 17200 et seq.  
7 that could have been premised on the Released Class Claims, all claims  
8 under the Fair Labor Standards Act, the California Labor Code, the  
9 applicable IWC Wage Orders, and any other federal, state, city, or local  
10 law regarding wages and hours, including any and all claims arising from  
11 the factual allegations in the First Amended Complaint that the Class  
12 Members and Participating Collective Members do not know or suspect  
13 to exist in their favor, which if known by them, would have materially  
14 affected the Settlement and the release of the Released Parties. The  
15 Released Class Claims exclude all other claims, including claims for  
16 vested benefits other than wages, wrongful termination, unemployment  
17 insurance, disability, social security, workers' compensation, and class  
18 claims outside of the Class Period, and PAGA claims outside of the  
19 PAGA Period. (*Ibid.*)

- 20 • Participating Collective Members: Upon full funding of the Maximum Gross  
21 Settlement Amount by Defendant, the Participating Collective Members shall  
22 expressly and irrevocably release, acquit, and forever discharge, on their own  
23 behalf and on behalf of their heirs, assigns and estates, any and all claims, debts,  
24 liabilities, demands, obligations, guarantees, penalties, costs, liens, charges,  
25 complaints, expenses, attorneys' fees, damages, liquidated damages, actions or

1 causes of action of whatever kind or nature, whether known or unknown,  
2 contingent or accrued, against the Released Parties that accrued during the  
3 Collective Period, and that arise out of or relate to the allegations asserted in the  
4 First Amended Complaint, that are asserted in the First Amended Complaint, or  
5 that could have been asserted in the First Amended Complaint based on the  
6 allegations in the First Amended Complaint, whether in contract or based on  
7 putative violations of the Fair Labor Standards Act or its interpreting regulations  
8 (the "Released FLSA Claims"). (§III.F.2)

9       ○ The Released FLSA Claims include all claims arising from the factual  
10 allegations in the First Amended Complaint for unpaid wages, minimum  
11 wages, overtime, or premium pay of any other kind, the failure to keep  
12 accurate payroll records, the failure to timely pay wages during  
13 employment and upon termination of employment, and all related claims  
14 for civil and statutory penalties, interest, liquidated damages, attorneys'  
15 fees, costs, and expenses, including any and all claims arising from the  
16 factual allegations in the First Amended Complaint that the Participating  
17 Collective Members do not know or suspect to exist in their favor, which  
18 if known by them, would have materially affected the Settlement and the  
19 release of the Released Parties. (*Ibid.*)

20       ○ The settlement check to the Participating Collective Members shall  
21 contain, on the back of the check, the following language: "By endorsing,  
22 negotiating, or cashing this check, I affirmatively consent to join and opt  
23 into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S.  
24 Code Section 216(b) for the purposes of becoming a party and releasing  
25 all claims against the Released Parties under the Fair Labor Standards Act

1           that arise out of or relate to the Released Class Claims during the  
2           Collective Period.” (§III.F.2)

- 3       • Aggrieved Employees: Upon full funding of the Maximum Gross Settlement  
4       Amount by Defendant, the Aggrieved Employees, on their own behalf, on behalf  
5       of their heirs, assigns and estates, and in their representative capacities on behalf  
6       of the State of California, shall release any and all claims under the PAGA that  
7       were asserted or alleged in Plaintiffs’ letters to the LWDA and the First  
8       Amended Complaint or that reasonably relate to the factual allegations in  
9       Plaintiffs’ letters to the LWDA or the First Amended Complaint, including all  
10      claims for penalties, interest, attorneys’ fees, costs and expenses, and other  
11      remedies available under PAGA (the “Released PAGA Claims”). The release  
12      and extinguishment of the Released PAGA Claims shall be effective and binding  
13      on all Aggrieved Employees, including Aggrieved Employees who are Non-  
14      Participating Class Members. (§III.F.3)

- 15           ○ Each Non-Participating Class Member will not participate in or be bound  
16           by the Settlement and the Judgment, except that each Aggrieved  
17           Employee will still be paid his or her allocation of the PAGA Payment  
18           and will remain bound by the release of the Released PAGA Claims  
19           regardless of whether the Aggrieved Employee is a Non-Participating  
20           Class Member. (§III.E.3.c)

- 21       • “Released Parties” means Defendant and its current or past predecessors,  
22       successors, affiliates, subsidiaries, parent companies, divisions, current and past  
23       employees, insurers, agents, consultants, legal representatives, and any other  
24       related entities, and all of their past, present and future officers, shareholders,  
25       owners, members, directors, partners, agents, managers, lawyers, employees,

1 assigns, insurers, predecessors-in-interest, successors-in-interest, and  
2 underwriters. (§I.CC)

- 3 • The named Plaintiffs will also provide a general release and a waiver of the  
4 protections of Cal. Civ. Code §1542. (§§ III.F.4-III.F.5)
- 5 • The releases are effective upon full funding of the Maximum Gross Settlement  
6 Amount by Defendant (§III.F.1), which will be within fifteen (15) days of the  
7 Effective Date (§III.A).

### 8 9 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

10 “Before final approval, the court must conduct an inquiry into the fairness of the  
11 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the  
12 settlement agreement after the final approval hearing, the court must make and enter  
13 judgment. The judgment must include a provision for the retention of the court's  
14 jurisdiction over the parties to enforce the terms of the judgment. The court may not  
15 enter an order dismissing the action at the same time as, or after, entry of judgment.”  
16 Cal. Rules of Court, rule 3.769(h).

17 As discussed more fully in the Order conditionally approving the settlement, “[i]n  
18 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to  
19 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
20 action. The purpose of the requirement [of court review] is the protection of those class  
21 members, including the named plaintiffs, whose rights may not have been given due  
22 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*  
23 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks  
24 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245  
25 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*

1 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the  
2 extent necessary to reach a reasoned judgment that the agreement is not the product of  
3 fraud or overreaching by, or collusion between, the negotiating parties, and that the  
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal  
5 quotation marks omitted].

6 “The burden is on the proponent of the settlement to show that it is fair and  
7 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is  
8 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to  
9 allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
10 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91  
11 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
12 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
13 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
14 116, 130. “Rather, to protect the interests of absent class members, the court must  
15 independently and objectively analyze the evidence and circumstances before it in order  
16 to determine whether the settlement is in the best interests of those whose claims will be  
17 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In  
18 that determination, the court should consider factors such as “the strength of plaintiffs’  
19 case, the risk, expense, complexity and likely duration of further litigation, the risk of  
20 maintaining class action status through trial, the amount offered in settlement, the extent  
21 of discovery completed and stage of the proceedings, the experience and views of  
22 counsel, the presence of a governmental participant, and the reaction of the class  
23 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and  
24 the court is free to engage in a balancing and weighing of factors depending on the  
25 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

1           **A.     A PRESUMPTION OF FAIRNESS EXISTS**

2           The Court preliminarily found in its Order of January 14, 2022 that the  
3           presumption of fairness should be applied. No facts have come to the Court's attention  
4           that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a  
5           presumption of fairness as set forth in the preliminary approval order.

6           **B.     THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

7           The settlement was preliminarily found to be fair, adequate and reasonable.  
8           Notice has now been given to the Class and the LWDA. The notice process resulted in  
9           the following:

10                   Number of class members: 250

11                   Number of notices mailed: 250

12                   Number of undeliverable notices: 5

13                   Number of opt-outs: 0

14                   Number of objections: 0

15                   Number of participating class members: **250**

16           (Declaration of Christina Fowler ("Fowler Decl.") ¶¶ 3-13.)

17           The Court finds that the notice was given as directed and conforms to due process  
18           requirements. Given the reactions of the Class Members and the LWDA to the proposed  
19           settlement and for the reasons set for in the Preliminary Approval order, the settlement is  
20           found to be fair, adequate, and reasonable.

21           **C.     CLASS CERTIFICATION IS PROPER**

22           For the reasons set forth in the preliminary approval order, certification of the  
23           Class for purposes of settlement is appropriate.

24           **D.     ATTORNEYS' FEES AND COSTS**

1 Class Counsel requests **\$293,333** (1/3) for attorney fees and **\$20,754.72** for costs.  
2 (Motion for Attorneys' Fees at 1:7-9, 2:4-5.)

3 Courts have an independent responsibility to review an attorney fee provision and  
4 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular*  
5 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.) In determining the appropriate  
6 amount of a fee award, courts may use the lodestar method, applying a multiplier where  
7 appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.)  
8 Alternatively, a percentage calculation is permitted in common fund cases. (*Laffitte v.*  
9 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)

10 In the instant case, fees are sought pursuant to the common fund and lodestar  
11 methods. (Motion for Attorneys' Fees at pp. 4-7.) The \$293,333 fee request is one-third  
12 of the Class Settlement Amount.

13 Here, the **\$293,333** fee request represents a reasonable percentage of the total  
14 funds paid by Defendant. Further, the notice expressly advised class members of the fee  
15 request, and no one objected. (Fowler Decl. ¶13, Exhibit A thereto.) Accordingly, the  
16 Court awards fees in the amount of **\$293,333**.

17 Class Counsel requests **\$20,754.72** in costs. This is less than the \$25,000 cap  
18 provided in the settlement agreement (¶III.B.2). The amount was disclosed to Class  
19 Members in the Notice, and no objections were received. (Fowler Decl. ¶13, Exhibit A  
20 thereto.) Costs include: Mediation (\$13,250), Berger Consulting (\$2,700), and Case  
21 Anywhere (\$483.60). (Nordrehaug Decl. ISO Final ¶7, Exhibit 3.)

22 The costs appear to be reasonable and necessary to the litigation, are reasonable  
23 in amount, and were not objected to by the class.

24 For all of the foregoing reasons, costs of **\$20,754.72** are approved.  
25

1           **E.     SERVICE AWARD TO CLASS REPRESENTATIVE**

2           A service (or incentive) fee award to a named class representative must be  
3 supported by evidence that quantifies the time and effort expended by the individual and  
4 a reasoned explanation of financial or other risks undertaken by the class representative.  
5 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;  
6 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395  
7 [“Criteria courts may consider in determining whether to make an incentive award  
8 include: (1) the risk to the class representative in commencing suit, both financial and  
9 otherwise; (2) the notoriety and personal difficulties encountered by the class  
10 representative; (3) the amount of time and effort spent by the class representative; (4) the  
11 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the  
12 class representative as a result of the litigation. (Citations.)”].

13           Here, the Class Representatives, Sarah Armstrong and Robert Wallace, each  
14 request an enhancement award of **\$10,000**. (Motion for Attorneys’ Fees at 2:4-6.) They  
15 represent that their contributions to the action include: assisting their attorneys in the  
16 investigation into their claims, providing their attorneys with documents and answering  
17 questions, and reviewing court filings, including the settlement agreement. They each  
18 estimate having spent approximately 40-50 hours on this action. (Declaration of Sarah  
19 Armstrong ISO Final ¶¶ 6-12; Declaration of Robert Wallace ISO Final ¶¶ 6-12.) They  
20 also assert that they assumed the risks of service as class representatives, including the  
21 potential hindrance of their ability to find employment, though they have not shown that  
22 this has occurred. (Both *Id.* at ¶9.) At oral argument counsel urged that in light of the  
23 average payouts in this matter a higher service award should be considered. However,  
24 the payouts are due largely to the rate of pay and number of work weeks of the Class and  
25 not due to particular efforts by the class representatives.

1 In light of the above-described contributions to this action, and in  
2 acknowledgment of the benefits obtained on behalf of the class, a reduced service award  
3 in the amount of **\$5,000** per class representative is reasonable and approved.

#### 4 **F. SETTLEMENT ADMINISTRATION COSTS**

5 The Settlement Administrator, Simpluris, Inc., requests **\$6,500** in compensation  
6 for its work in administering this case. (Fowler Decl. ¶15.) At the time of preliminary  
7 approval, costs of settlement administration were estimated at \$15,000 (¶I.GG). Class  
8 Members were provided with notice of this amount and did not object. (Fowler Decl.  
9 ¶13, Exhibit A thereto.)

10 Accordingly, settlement administration costs are approved in the amount of  
11 **\$6,500.**

#### 13 **IV. CONCLUSION AND ORDER**

14 The Court hereby:

- 15 (1) Grants class certification for purposes of settlement;
- 16 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 17 (3) Awards **\$293,333** in attorney fees to Class Counsel, Blumenthal Nordrehaug  
18 Bhowmik De Blouw LLP;
- 19 (4) Awards **\$20,754.72** in litigation costs to Class Counsel;
- 20 (5) Approves payment of **\$22,500** (75% of \$35,000 PAGA penalty) to the LWDA;
- 21 (6) Awards **\$5,000** as a Class Representative Service Award to both Sarah  
22 Armstrong and Robert Wallace;
- 23 (7) Awards **\$6,500** in settlement administration costs to Simpluris, Inc.;

- 1 (8) Orders class counsel to lodge a revised, proposed Judgment, consistent with this  
2 ruling and containing the class definition, full release language, and a statement  
3 that no class members opted out by July 8, 2022;
- 4 (9) Orders class counsel to provide notice to the class members pursuant to  
5 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor  
6 Code §2699 (1)(3); and
- 7 (10) Sets a Non-Appeal Case Review re: Final Report re: Distribution of  
8 Settlement Funds for March 3, 2023 at 8:30 a.m.. Final Report is to be filed five  
9 court days in advance.

10  
11 Dated:

10/30/2022



MAREN E. NELSON

Judge of the Superior Court



**FILED**  
Superior Court of California  
County of Los Angeles  
**07/08/2022**  
Sherri R. Carter, Executive Officer / Clerk of Court  
By: N. Navarro Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

SARAH ARMSTRONG and ROBERT  
WALLACE, individuals and on behalf of  
themselves and those similarly situated,  
  
Plaintiffs,  
  
v.  
  
PROMETRIC LLC, a Limited Liability  
Company, and DOES 1 through 50, inclusive,  
  
Defendants.

CASE NO.: 20STCV29967

~~PROPOSED~~ JUDGMENT

Hearing Date: June 30, 2022  
Hearing Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson  
Dept.: SS-17

Action Filed: August 7, 2020  
Trial Date: Not set

JUDGMENT

1 The motion of Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for an order  
2 finally approving the Second Amended Class Action Settlement Agreement (“Agreement”) with  
3 Defendant Prometric LLC (“Defendant”), attorneys’ fees and costs, service payments, and the fees  
4 and expenses of the Settlement Administrator duly came on for hearing on June 30, 2022 before  
5 the Honorable Maren E. Nelson. The Court granted the motion. The Court having entered an the  
6 Order Granting Motion for Final Approval of Class Action Settlement on June 30, 2022 and good  
7 cause appearing therefor,

8 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

9 1. The certification of the Class and Collective for purposes of settlement are  
10 confirmed. The Class is defined as follows:

11 All individuals employed by Defendant in California as non-exempt employees at  
12 any time during the Class Period of August 7, 2016 to July 3, 2021, but excluding  
13 individuals who released Defendant from wage and hour claims for the Class  
14 Period, including those wage and hour claims released as part of a general release  
15 of claims.

16 The “Collective Members” are defined as:

17 All individuals employed by Defendant in California as non-exempt employees at  
18 any time during the Collective Period of August 7, 2017 to July 3, 2021, but  
19 excluding individuals who released Defendant from FLSA claims for the Collective  
20 Period, including those wage and hour claims released as part of a general release  
21 of claims.

22 2. All persons who meet the foregoing Class definition are members of the Class as  
23 there were no individuals who submitted a valid and timely Election Not to Participate in  
24 Settlement and there were no objections to the Settlement.

25 3. The Agreement was finally approved as fair, reasonable, adequate, and in the best  
26 interest of the Class and the Collective Members by the Order Granting Motion for Final Approval  
27 of Class Action Settlement on June 30, 2022 and the findings in that Order are incorporated  
28 herein.

4. Notice of entry of this Final Approval Order and Judgment shall be given to all  
Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order

1 and Judgment shall be posted on Class Counsel’s website as set forth in the Class Notice to the  
2 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment  
3 to individual Class Members.

4         5.       If the Agreement does not become final and effective in accordance with the terms  
5 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in  
6 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall  
7 revert to their respective positions as of before entering into the Agreement, and expressly reserve  
8 their respective rights regarding the prosecution and defense of this Action, including all available  
9 defenses and affirmative defenses, and arguments that any claim in the Action could not be  
10 certified as a class action and/or managed as a representative action.

11         6.       Pursuant to Rule 3.769(h) of the California Rules of Court, the Court hereby enters  
12 judgment consistent with and as expressly set forth in the terms of the Settlement, as modified by  
13 the Final Approval Order.

14         7.       Except as set forth in the Agreement, the Order Granting Motion for Final  
15 Approval of Class Action Settlement, and this Judgment, Plaintiffs, and all members of the Class,  
16 shall take nothing in the Action.

17         8.       Without affecting the finality of this Judgment, and pursuant to California Code of  
18 Civil Procedure section 664.6, the Court shall retain jurisdiction to construe, interpret, implement  
19 and enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement  
20 benefits, and to supervise and adjudicate any dispute arising from or in connection with the  
21 distribution of settlement benefits.

22         9.       Each party shall bear its own attorneys’ fees and costs, except as otherwise  
23 provided in the Agreement, the Order Granting Motion for Final Approval of Class Action  
24 Settlement, and this Judgment.

25         10.      As of the date Defendant fully funds the Maximum Gross Settlement Amount, each  
26 “Participating Class Member” shall expressly and irrevocably release, acquit, and forever  
27 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all  
28

1 “Released Class Claims” against the “Released Parties.”

2 11. As used in paragraph 10 above, the quoted terms have the meanings set forth  
3 below:

4 (a) “Participating Class Member” means a Class Member who does not submit  
5 a valid and timely Election Not to Participate in Settlement.

6 (b) “Released Class Claims” means any and all claims, debts, liabilities,  
7 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’  
8 fees, damages, liquidated damages, actions or causes of action, whether known or unknown,  
9 contingent or accrued, against the Released Parties that accrued during the Class Period for Class  
10 Members, including but not limited to Collective Members, and that arise out of or reasonably  
11 relate to the allegations asserted in the First Amended Complaint, that are asserted in the First  
12 Amended Complaint, or that could have been asserted in the First Amended Complaint based on  
13 the allegations in the First Amended Complaint, whether in contract or based on putative  
14 violations of any federal, state, city, or local law. The Released Class Claims include all claims  
15 arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum  
16 wages, overtime, double time, or premium pay of any other kind, meal period violations, rest  
17 break violations, wage statement violations, the failure to keep accurate payroll records, suitable  
18 seating violations, the failure to timely pay wages during employment and upon termination of  
19 employment, the failure to reimburse employees for business expenses, all related claims for civil  
20 and statutory penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, all  
21 claims under PAGA that could have been premised on the Released Class Claims, all claims under  
22 the California Business & Professions Code section 17200 *et seq.* that could have been premised  
23 on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor  
24 Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding  
25 wages and hours, including any and all claims arising from the factual allegations in the First  
26 Amended Complaint that the Class Members and Participating Collective Members do not know  
27 or suspect to exist in their favor, which if known by them, would have materially affected the  
28

1 Settlement and the release of the Released Parties. The Released Class Claims exclude all other  
2 claims, including claims for vested benefits other than wages, wrongful termination,  
3 unemployment insurance, disability, social security, workers' compensation, and class claims  
4 outside of the Class Period, and PAGA claims outside of the PAGA Period.

5 (c) "Released Parties" means Defendant and its current or past predecessors,  
6 successors, affiliates, subsidiaries, parent companies, divisions, current and past employees,  
7 insurers, agents, consultants, legal representatives, and any other related entities, and all of their  
8 past, present and future officers, shareholders, owners, members, directors, partners, agents,  
9 managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest,  
10 and underwriters.

11 12. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each  
12 "Participating Collective Member" shall expressly and irrevocably release, acquit, and forever  
13 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all  
14 "Released FLSA Claims" against the Released Parties. The settlement check to the Participating  
15 Collective Members shall contain, on the back of the check, the following language: "By  
16 endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the  
17 *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the  
18 purpose of becoming a party and releasing all claims against the Released Parties under the Fair  
19 Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective  
20 Period."

21 13. As used in paragraph 12 above, the quoted terms have the meanings set forth  
22 below:

23 (a) "Participating Collective Members" means all Collective Members who  
24 timely sign, cash, deposit or otherwise negotiate a settlement check.

25 (b) "Released FLSA Claims" means any and all claims, debts, liabilities,  
26 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys'  
27 fees, damages, liquidated damages, actions or causes of action, whether known or unknown,  
28

1 contingent or accrued, against the Released Parties that accrued during the Collective Period, and  
2 that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint,  
3 that are asserted in the First Amended Complaint, or that could have been asserted in the First  
4 Amended Complaint based on the allegations in the First Amended Complaint, whether in  
5 contract or based on putative violations of the Fair Labor Standards Act or its interpreting  
6 regulations. The Released FLSA Claims include all claims arising from the factual allegations in  
7 the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of  
8 any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during  
9 employment and upon termination of employment, and all related claims for civil and statutory  
10 penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all  
11 claims arising from the factual allegations in the First Amended Complaint that the Participating  
12 Collective Members do not know or suspect to exist in their favor, which if known by them, would  
13 have materially affected the Settlement and the release of the Released Parties.

14         14. As of the date Defendant fully funds the Maximum Gross Settlement Amount, the  
15 "Aggrieved Employees," on their own behalf, on behalf of their heirs, assigns and estates, and in  
16 their representative capacities on behalf of the State of California, shall expressly and irrevocably  
17 release, acquit, and forever discharge, any and all "Released PAGA Claims" against the Released  
18 Parties. The release and extinguishment of the Released PAGA Claims shall be effective and  
19 binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating  
20 Class Members.

21         15. As used in paragraph 14 above, the quoted terms have the meanings set forth  
22 below:

23                 (a) "Aggrieved Employees" means all individuals employed by Defendant in  
24 California as non-exempt employees at any time during the PAGA Period, but excluding  
25 individuals who released Defendant from wage and hour claims for the Class Period, including  
26 those wage and hour claims released as part of a general release of claims.

1 (b) “Released PAGA Claims” means any and all any and all claims under the  
2 PAGA that were asserted or alleged in Plaintiffs’ letters to the LWDA and the First Amended  
3 Complaint or that reasonably relate to factual allegations in Plaintiffs’ letters to the LWDA or the  
4 First Amended Complaint, including all claims for penalties, interest, attorneys’ fees, costs and  
5 expenses, and other remedies available under PAGA.

6 16. As of the date Defendant fully funds the Maximum Gross Settlement Amount, in  
7 addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released  
8 PAGA Claims, as set forth above, and in consideration for the Class Representative Service  
9 Payments, each Plaintiff, on behalf of themselves and on behalf of each of their heirs, executors,  
10 administrators, successors and assigns, shall expressly and irrevocably release, acquit, and forever  
11 discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums  
12 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,  
13 agreements, promises, judgments, obligations, union grievances, claims, charges, complaints,  
14 appeals and demands whatsoever, in law or equity, which they may have against Released Parties,  
15 from the beginning of time through July 3, 2021, whether known or unknown, asserted or  
16 unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act  
17 of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections  
18 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor  
19 Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970,  
20 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers  
21 Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the  
22 California Fair Employment and Housing Act; the California Family Rights Act; the California  
23 Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state,  
24 city, or local human rights, civil rights, wage and hour, wage payment, pension, employee  
25 benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any  
26 contract (whether oral or written, express or implied) or tort laws; any claim arising under the  
27 common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful  
28

1 termination, constructive discharge, pain and suffering, mental anguish, intentional and/or  
2 negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including  
3 attorneys' fees or any other action against Released Parties, based upon any conduct occurring up  
4 to and including July 3, 2021.

5 17. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each  
6 Participating Class Member, Participating Collective Member, and Aggrieved Employee shall be  
7 and hereby is forever barred and enjoined from prosecuting the Released Class Claims, the  
8 Released FLSA Claims, and the Released PAGA Claims set forth in the Agreement against  
9 Defendant and/or the Released Parties, and every such released claim as set forth above of each  
10 and every Participating Class Member, Participating Collective Member and Aggrieved Employee  
11 is and shall be deemed to be conclusively released and discharged as against the Defendant and the  
12 Released Parties. All Participating Class Members, Participating Collective Members and  
13 Aggrieved Employees are forever barred from pursuing, or seeking to reopen, any of the Released  
14 Class Claims, the Released Collective Claims, and the Released PAGA Claims.

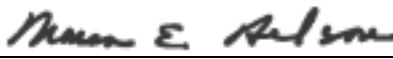
15 18. Class Counsel shall post a copy of this Judgment for thirty (30) calendar days on its  
16 website in compliance with Rule 3.771(b) of the California Rules of Court in order to provide  
17 notice to the Class Members of this Judgment.

18 19. This document shall constitute a judgment (and separate document constituting said  
19 judgment) for purposes of California Rules of Court, Rule 3.769(h).

20 20. This Judgment is intended to be a final disposition of the above-entitled action in  
21 its entirety, and it is intended to be immediately appealable.

22 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

23  
24 Dated: 07/08/2022

25   
26 HON. MAREN E. NELSON  
27 JUDGE, SUPERIOR COURT OF CALIFORNIA  
28

JUDGMENT