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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

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

18 Plaintiff,

19 vs.

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

23 Defendants.

CASE No. **20STCV29967**

**DECLARATION OF NORMAN BLUMENTHAL
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: June 30, 2022

Hearing Time: 9:00 a.m.

*[Hearing scheduled by Order dated January 14,
2022]*

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

Action Filed: August 7, 2020

Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiffs Sarah Armstrong and Robert Wallace ("Plaintiffs") in this
4 matter. As such, I am fully familiar with the facts, pleadings and history of this matter. The following
5 facts are within my own personal knowledge, and if called as a witness, I could testify competently to
6 the matters stated herein. This declaration is being submitted in support to the Plaintiffs' motion for
7 final approval of the class settlement.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter
12 at Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience
13 in the areas of employment class actions, unfair business practices and other complex litigation. The
14 attorneys at my firm have extensive experience in cases involving labor code violations and overtime
15 claims. Class Counsel has litigated similar overtime cases against other employers on behalf of
16 employees, including cases against Securitas, See's Candies, Okta, HealthNet, El Pollo Loco, Total
17 Renal, Panda Express, Walt Disney Resorts, Pharmaca, Nortek Security, California Fine Wine,
18 Solarcity, Space Exploration, Union Bank, Verizon, Apple, Wells Fargo, Kaiser, Universal Protection
19 Services, and California State Automobile Association. Class Counsel have been approved as
20 experienced class counsel during contested motions in state and federal courts throughout California.
21 It is this level of experience which enabled the firm to undertake the instant matter and to successfully
22 combat the resources of the defendants and their capable and experienced counsel. Class Counsel have
23 participated in every aspect of the settlement discussions and have concluded the settlement is fair,
24 adequate and reasonable and in the best interests of the Class.

25
26 3. Summary of the Proposed Settlement.

27 (a) A true and correct copy of the Second Amended Class Action Settlement Agreement (the
28

1 “Agreement”) between the parties is attached hereto as Exhibit #2.¹ Plaintiffs and Defendant Prometric
2 LLC. ("Defendant") reached a full and final settlement of the above-captioned action, which is
3 embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement,
4 the Maximum Gross Settlement Amount to be paid by Defendant is Eight Hundred Eighty Thousand
5 Dollars (\$880,000). (Agreement at ¶ I(T).) Under the Settlement, the Maximum Gross Settlement
6 Amount consists of the following elements: (1) payment of the Individual Settlement Payments to the
7 Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement
8 Administration Expenses; (4) Class Representative Service Payments to Plaintiffs; (5) the PAGA
9 Payment. (Agreement at ¶ III(B)-(C).)

10 (b) The Maximum Gross Settlement Amount does not include Defendant's share of payroll
11 taxes. (Agreement at ¶ I(T).) The Maximum Gross Settlement Amount shall be all-in with no
12 reversion to Defendant. (Agreement at ¶ III(A).)

13 (c) Following final approval, Defendant shall fund the Maximum Gross Settlement Amount
14 within fifteen (15) calendar days of the Effective Date. (Agreement at ¶ III(E)(9).) The Individual
15 Settlement Payments to Participating Class Members will be mailed by the Settlement Administrator
16 within thirty (30) calendar days after the funding of the Gross Settlement Amount. (Agreement at ¶
17 III(E)(10).)

18 (d) The Net Settlement Amount shall equal the net amount available for payment to the Class
19 after deducting the Court-approved amounts for the (1) the Class Counsel Fees Payment; (2) Class
20 Counsel Litigation Expenses Payment; (3) the PAGA Payment; (4) the Class Representative Service
21 Payments; and, (5) the Settlement Administration Expenses. (Agreement at ¶ I(V).) The Net Settlement
22 Amount will be distributed as the Individual Settlement Payments to the Class Members who do not
23 timely request exclusion ("Participating Class Members"). (Agreement at ¶¶ I(Z) and III(C)(1).) The
24 Individual Settlement Payment will be calculated as follows: (a) the Net Settlement Amount shall be
25 divided by the total Workdays for all Participating Class Members to determine the "Workday Payment
26 Amount"; and (b) the gross amount of each Participating Class Member's Individual Settlement
27

28 ¹ Capitalized terms are defined in the Agreement.

1 Payment shall be calculated by multiplying the Participating Class Member's individual Workday total
2 by the Workday Payment Amount. (Agreement at ¶ III(C)(1).) Workdays will be based on Defendant's
3 records, however Class Members had the right to challenge the number of Workdays before the
4 Response Deadline.

5 (e) Class Members were sent the Court approved Class Notice using the procedure approved
6 by the Court by mailing the notice packets after updating class members' addresses using the National
7 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
8 notices to any forwarding address provided or updated address located. Declaration of Christina Fowler
9 ("Fowler Decl.") ¶ 7. Class Members were provided with the opportunity to exclude themselves or "opt
10 out" if they did not want to participate in the settlement. (Agreement at ¶ III(E)(3).) Fowler Decl. ¶ 5,
11 Exh. A. No Class Members submitted requests for exclusion. Polites Decl. ¶ 11. Thus, all Class
12 Members are deemed Participating Class Members who are bound by the Settlement and will be
13 entitled to receive an Individual Settlement Payment. (Agreement at ¶ III(E)(3)(c).) All Aggrieved
14 Employees will be paid their allocation of the PAGA Payment and will remain bound by the release
15 of the Released PAGA Claims regardless of whether the Aggrieved Employee is a Non-Participating
16 Class Member. (Agreement at ¶ III(E)(3)(c).) The Class Notice also advised Class Members of their
17 right to object to the Settlement and/or dispute their Workdays. (Agreement at ¶ III(E)(3)(a) and (b);
18 Fowler Decl. ¶ 5, Exh. A.)

19 (f) A Participating Class Member must cash his or her Individual Settlement Payment check
20 within 180 days after it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within
21 180 days will be voided and any funds from such uncashed checks will be paid cy pres to two
22 recognized 501(c)(3) tax-exempt charities: (1) 50% to Bet Tzedek Legal Services and (2) 50% to Legal
23 Aid at Work (the "Cy Pres Recipients"). Such cy pres payments will be made in compliance with Code
24 of Civil Procedure section 384. (Agreement at ¶ III(E)(12).) The Parties have verified that they do not
25 have and connection or relationship with the Cy Pres Recipients. (Agreement at ¶ III(F)(10).)

26 (g) Simpluris was appointed by the Court as the Settlement Administrator for the Settlement.
27 (Agreement at ¶ III(E)(12).) From the Maximum Gross Settlement Amount, the Settlement
28 Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed

1 \$15,000. (Agreement at ¶ III(D).) As set forth in the Fowler Decl. at ¶ 15, the Settlement
2 Administration Expenses, including fees and costs incurred to-date, as well as anticipated fees and costs
3 for completion of the settlement administration, are \$6,500.

4 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
5 not to exceed one-third of the Maximum Gross Settlement Amount, as the Class Counsel Fees Payment.
6 (Agreement at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an award of
7 Class Counsel Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶
8 III(B)(2).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
9 to each Plaintiff as their Representative Service Payments. (Agreement at ¶ III(B)(1).) In support of
10 this separate motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel
11 is providing evidentiary support, for these requests, including lodestar.

12 (i) Subject to Court approval, Thirty Thousand Dollars (\$30,000) will be paid out of the
13 Maximum Gross Settlement Amount for PAGA penalties under the California Private Attorneys
14 General Act, Cal. Labor Code Section 2698, et seq. ("PAGA"). Pursuant to the express requirements
15 of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: \$22,500 to the LWDA (the
16 "LWDA Payment") as the LWDA's share of the settlement of civil penalties pursuant to the PAGA, and
17 \$7,500 will be distributed to the Aggrieved Employees based on their respective pay periods worked
18 during the PAGA Period. (Agreement at ¶ III(B)(3).) The Aggrieved Employees are defined the same
19 as the Class but are limited to the applicable PAGA Period of June 3, 2019 to July 3, 2021. (Agreement
20 at ¶¶ I(B) and I(Y).) The Released PAGA Claims are appropriately tethered to the allegations of the
21 complaint. As set forth in the accompanying proof of service, the LWDA has been served with this
22 motion and the Agreement.

23 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
24 for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the
25 settlement is "fair, adequate and reasonable". (Preliminary Approval Order at § V.) In sum, the
26 Settlement valued at \$880,000 is an excellent result for the Class. This result is particularly favorable
27 in light of the fact that liability and class certification in this case were far from certain in light of the
28 defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, the

1 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
2 settlement is fair, reasonable and adequate, and should be finally approved.

3
4 4. Procedural status of the settlement - In accordance with the Preliminary Approval
5 Order dated January 14, 2022 ("Preliminary Approval Order"), the approved Class Notice has been
6 disseminated to the Class. The reaction of the Class unequivocally supports approval of the Settlement.
7 On February 11, 2022, the Settlement Administrator mailed the Court-approved Class Notice to the
8 Class Members, which provided each class member with the terms of the Settlement, including notice
9 of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and
10 service award that were being sought, how individual settlement awards would be calculated, and the
11 specific, estimated payment amount to that individual. See Fowler Decl. ¶ 5, Exh. A. In disseminating
12 the notice, the Settlement Administrator followed the notice procedures authorized by the Court in its
13 Preliminary Approval Order. Significantly, there have been no objections and no requests for
14 exclusion. Fowler Decl. ¶¶ 11-13. As a result, the entire Class will participate in the Settlement and
15 will be sent a settlement check. See Fowler Decl. at ¶¶ 8-13.

16
17 5. Description of Plaintiffs' claims - The Action generally alleges that Plaintiffs and other
18 Class Members were not properly paid all overtime wages for hours worked, were not provided meal
19 and rest periods, were not timely paid earned wages, and were not provided accurate itemized wage
20 statements. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other
21 equitable or legal relief allegedly due and owing to Plaintiffs and the other Class Members by virtue
22 of the foregoing claims.

23
24 6. Procedural History of the Litigation

25 (a) On May 7, 2020, Plaintiff Sara Armstrong sent a letter to the Labor Workforce and
26 Development Agency ("LWDA") alleging that Defendant purportedly violated various provisions of
27 the California Labor Code. On July 30, 2020, Plaintiffs Armstrong and Wallace sent an amended letter
28 to the LWDA, alleging that Defendant purportedly violated additional provisions of the California

1 Labor Code. On August 7, 2020, Plaintiffs filed a Class Action Complaint against Defendant in the
2 Superior Court of the State of California, County of Los Angeles (the "Action"). The Action asserts
3 class claims for: (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (2)
4 failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (3)
5 failure to pay overtime wages in violation of Cal. Labor Code § 510; (4) failure to provide required
6 meal periods in violation of Cal. Labor Code §§ 226.7, 512 and the applicable IWC Wage Order; (5)
7 failure to provide required rest periods in violation of Cal. Labor Code §§ 226.7, 512 and the applicable
8 IWC Wage Order; (6) failure to provide accurate wage statements in violation of Cal. Labor Code § 226;
9 (7) failure to reimburse employees for required expenses in violation of California Labor Code § 2802;
10 (8) and failure to provide wages when due at termination in violation of Cal. Lab. Code § 201, 202, and
11 203.

12 (b) As part of this settlement, on August 10, 2021, Plaintiffs filed a First Amended Complaint
13 which alleges factual predicates and causes of action for alleged violations of the minimum wage,
14 overtime and recordkeeping provisions of the FLSA and PAGA claims and alleged PAGA violations
15 based on all of the factual and legal allegations asserted in the Action, or that could have been asserted
16 in the Action, based on the facts and claims alleged in the Class Action Complaint and the PAGA
17 notices served by Plaintiffs on Defendant and the LWDA on May 7, 2020 and July 30, 2020. The
18 FLSA and PAGA allegations are entirely overlapping with the Class claims.

19 (c) Defendant denies all of Plaintiffs' claims asserted in the Action, and denies that Plaintiffs
20 have been injured or damaged in any sum or manner. Defendant contends that at all times, Defendant
21 has fully complied with all of its obligations under the California Labor Code and the applicable Wage
22 Orders, and has properly compensated all Class Members, Collective Members and Aggrieved
23 Employees.

24 (d) Over the course of litigation, the Parties engaged in the investigation of the claims,
25 including production of documents, class data, and other information, allowing for the full and
26 complete analysis of liabilities and defenses to the claims in this Action. The information obtained by
27 Plaintiff included: (1) data as to employees and workdays worked; (2) Payroll data for employees; (3)
28 work time data concerning hours worked and time punch data; (4) Defendant's employee wage and

1 hour policies; (5) the employment files for the Plaintiffs; and, (6) samples of wage statements provided
2 by Defendant. Plaintiffs and Defendant agreed to discuss resolution of the Action through a mediation.

3 (e) Prior to mediation, the Parties engaged in the above investigation and the exchange of
4 documents and information in connection with the Action. On March 3, 2021, the Parties participated
5 in an all-day mediation presided over by David Rotman, a highly experienced and respected mediator
6 of wage and hour representative and class actions. Following the mediation, the Parties, represented
7 by their respective counsel, were able to reach agreement on the terms of a settlement of the Action,
8 with the settlement terms memorialized in a Memorandum of Understanding signed on or about April
9 2, 2021. At all times, the negotiations were arm's length and contentious.

10 (f) The Parties continued to negotiate the terms of the settlement and prepared the final
11 Agreement which was signed by the Parties and was preliminarily approved by the Court.
12 Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals employed by
13 Defendant in California as non-exempt employees at any time during the Class Period, but excluding
14 individuals who released Defendant from wage and hour claims for the Class Period, including those
15 wage and hour claims released as part of a general release of claims." (Agreement at ¶ I(C).) The
16 "Class Period" is from August 7, 2016 to July 3, 2021. (Agreement at ¶ I(I).) The Class consists of 250
17 Class Members.

18 (g) Although a settlement has been reached, Defendant denies any liability or wrongdoing of
19 any kind associated with the claims alleged in the Action and further denies that, for any purpose other
20 than settlement, the Action is appropriate for class treatment. Defendant contends, among other things,
21 that it has correctly compensated the Class Members and complied at all times with the California
22 Labor Code, applicable Wage Order, and all other laws and regulations. Further, Defendant contends
23 that class certification would be inappropriate for any reason other than for settlement. Plaintiff
24 contends that Defendant violated California wage and hour laws. Plaintiff further contends that the
25 Action is appropriate for class certification on the basis that the claims meet the requisites for class
26 certification. Without admitting that class certification is proper, Defendant has stipulated that the
27 above Class may be certified for settlement purposes only. (Agreement at ¶ II(G).) The Parties agree
28 that certification for settlement purposes is not an admission that class certification would be proper

1 if the class certification issue were litigated. Further, the Agreement is not admissible in this or any
2 other proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes
3 of settling the Action, the Parties stipulate and agree that the requisites for establishing class
4 certification with respect to the Class are satisfied.

5 (h) Class Counsel has conducted a thorough investigation into the facts of the class action.
6 Over the course of more than a year, Class Counsel has diligently evaluated the Class Members' claims
7 against Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel
8 with access to necessary information for the Class. In addition, Class Counsel previously negotiated
9 settlements with other employers in actions involving nearly identical issues and analogous defenses.
10 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
11 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
12 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
13 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
14 appellate issues.

15
16 7. History of Settlement Discussions

17 (a) This Settlement is the result of extensive and hard-fought litigation as well as negotiations
18 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
19 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
20 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
21 Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to
22 evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and
23 settlement, and Class Counsel are experienced in wage and hour employment law class actions, as Class
24 Counsel has previously litigated and certified similar claims against other employers.

25 (b) The Parties attended an arms-length mediation session with David Rotman, a respected and
26 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
27 for the mediation, Defendant provided Class Counsel with necessary information for the members of
28 the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs

1 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
2 a mediation brief and damage valuation to the Mediator. At the conclusion of the all-day mediation, the
3 Parties agreed to this Settlement.

4 (c) From May 2021 to July 2021, the initial settlement agreement and exhibits thereto were
5 finalized and executed, and then presented by motion to this Court for preliminary approval. Plaintiffs
6 filed their motion for preliminary approval, and the Court identified some issues to correct. The Parties
7 prepared a First Amended Class Action Settlement Agreement and then the Second Amended Class
8 Action Settlement Agreement to address the Court's issues. On January 14, 2022, the Court issued its
9 Order granting preliminary approval of the settlement as fair and reasonable to the Class.

10 (d) Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate. In
11 my judgment as experienced Class Counsel, this Settlement should be finally approved.

12
13 8. The outcome of this case would have been uncertain and fraught with risks.

14 (a) Here, a number of defenses asserted by Defendant present serious threats to the claims of
15 the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied
16 with all applicable Labor laws. Defendant argued that all work time was paid for and argued against
17 the off the clock claiming computers will always on so there would be no boot up time and that at the
18 end of the day there were videos showing any time spent after clocking out and before setting the alarm
19 would have been mere seconds. Defendant contends that its meal and rest period policies fully complied
20 with California law and that Defendant's timekeeping system recorded meal periods, and was not
21 required to record rest periods. Finally, Defendant argued that the recent Supreme Court decision in
22 *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and
23 class certifiability as to the meal and rest period claims. Defendant also argues that based on its facially
24 lawful practices, it acted in good faith and without willfulness, which if accepted would negate the
25 claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of
26 the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal
27 and rest period violations. Finally, Defendant also contends that the use of a smartphone application
28 for correspondence did not require it to reimburse employee for personal cell phones. If successful,

1 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs
2 believe that these defenses could be overcome, Defendant maintains these defenses have merit and
3 therefore present a serious risk to recovery by the Class.

4 (b) There was also a significant risk that, if the Action was not settled, Plaintiffs would be
5 unable to obtain class certification and thereby not recover on behalf of any employees other than
6 themselves. Defendant argued that the individual experience of each putative class member varied with
7 respect to the claims. Defendant could also contest class certification by arguing injury and good faith
8 were case by case determinations that precluded class certification. Plaintiffs are aware of cases where
9 class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
10 (2019) (denying certification of meal and rest break claims). Defendant also contended that individual
11 differences in work experiences not only impacted damages but would also impact certification.
12 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
13 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
14 overcome for a class wide recovery even where the class has been certified. While other cases have
15 approved class certification in wage and hour claims, class certification in this action would have been
16 hotly disputed and was by no means a foregone conclusion.

17 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further
18 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the
19 event of an adverse judgment. A post-judgment appeal by Defendant would have required many more
20 years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then
21 the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
22 outweigh an uncertain result three or more years in the future. Plaintiffs and Class Counsel recognize
23 the expense and length of a trial against Defendant through possible appeals which could take at least
24 another two or three years. Class Counsel also have taken into account the uncertain outcome, the risk
25 of litigation, especially in complex actions such as this one. Class Counsel are also mindful of and
26 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
27 Action. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
28 mounted and recovery would have been delayed if not denied, thereby reducing the benefits of an

1 ultimate victory. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits
2 upon the Class. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the
3 Settlement set forth in the Agreement is in the best interest of the Class.

4 (d) The calculations to compensate for the amount due to the Class Members at the time this
5 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
6 mediation. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data for
7 putative class members and determined the potential maximum damages for the class claims. For the
8 Class, Plaintiffs determined that the potential underpaid overtime due to the miscalculation of the
9 regular rate was \$2,203, the off-the-clock damages for preliminary activities were \$280,373, the
10 maximum potential meal period damages were estimated to be \$632,368 based on a maximum potential
11 61% violation rate observed in the time records, the maximum rest period damages were estimated to
12 be \$961,950 based upon a 100% violation rate for every shift, and the unreimbursed business expenses
13 were calculated to be a maximum of \$146,026 at \$30 per month for cell phone usage. In total, the
14 damages for the Class were calculated to have a maximum total value of \$2,022,920. In addition,
15 Plaintiffs calculated that the maximum value of the waiting time penalties were from \$65,769 to
16 \$328,847 and the maximum value of the wage statement penalties were from \$150,450 to \$307,000,
17 however, these wage statement and waiting time penalties claims potentially have a much smaller
18 value, even if damages were awarded, to the extent that they are derivative of the meal and rest break
19 claims. The valuation of the FLSA claim is subsumed within the class claims. Consequently, the
20 Maximum Gross Settlement Amount of \$880,000 represents more than 43% of the value of the
21 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
22 proven in full at trial.² The above maximum calculations should then be adjusted in consideration for
23 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
24 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
25

26 ² Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included the
27 PAGA claim in this discussion of the class claims. The PAGA claim valuation was detailed in
28 paragraph 33 of the initial Declaration of Nordrehaug filed in support of the motion for preliminary
approval on July 27, 2021.

1 certainly fair and reasonable. Even greater detail as to the valuation of the class claims was presented
2 in the Supplemental Declaration of Kyle Nordrehaug submitted in support of preliminary approval.

3 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a
4 significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious
5 and substantial defenses both to liability and to class certification. The maximum and average class
6 member allocations are \$12,239.07 and \$2,020.67, respectively. See Fowler Decl. ¶ 16. Given the
7 complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed
8 Settlement is fair, reasonable and adequate, and should be finally approved.

9 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiffs
10 would prevail against the Defendant's factual and legal defenses. While Plaintiffs and Class Counsel
11 believe in the merits of the claims, Defendant has asserted real and substantial defenses to these claims
12 and to class certification. Settlement in this case clearly benefits the Class when measuring the strengths
13 of Plaintiffs' case and the risk of establishing class wide liability and damages.

14
15 I declare under penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct. Executed this 3rd day of May, 2022, at San Diego, California.

17
18 /s/ Norman Blumenthal
19 NORMAN B. BLUMENTHAL
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FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

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Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

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Scott Blumenthal

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

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Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90,411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

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County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior Court, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

SECOND AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Second Amended Class Action Settlement Agreement (“Agreement”) is made by and between plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) and defendant Prometric LLC (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the lawsuit filed by Plaintiffs against Defendant in the Superior Court of the State of California, County of Los Angeles, captioned *Armstrong, et al. v. Prometric, LLC* Case No. 20STCV29967, including the complaint and any amendments thereto filed in the Action.
- B. “Aggrieved Employees” means all individuals employed by Defendant in California as non-exempt employees at any time during the PAGA Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- C. “Class” means all individuals employed by Defendant in California as non-exempt employees at any time during the Class Period, but excluding individuals who released Defendant from wage and hour claims for the Class Period, including those wage and hour claims released as part of a general release of claims.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, the Class Member’s name, last-known mailing address, Social Security number, employee identification number, personal email address (if known), dates of employment, Workdays worked during the Class Period as a Class Member, Workdays worked as a Collective Member, and Workdays worked during the PAGA Period.
- G. “Class Member” means a member of the Class.

- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto, other than formatting changes to facilitate printing by the Settlement Administrator, as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. “Class Period” means August 7, 2016 to July 3, 2021.
- J. “Class Representative Service Payment” means the service award authorized by the Court and paid to each Plaintiff for serving as a representative of the Class, initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiffs were unsuccessful in the prosecution of the Action, and the general release of all claims in favor of Defendant in this Agreement.
- K. “Collective Members” means all individuals employed by Defendant in California as non-exempt employees at any time during the Collective Period, but excluding individuals who released Defendant from FLSA claims for the Collective Period, including those wage and hour claims released as part of a general release of claims.
- L. “Collective Period” means August 7, 2017 to July 3, 2021.
- M. “Court” means the Superior Court of the State of California, County of Los Angeles.
- N. “Defense Counsel” means Robin Samuel and Teresa H. Michaud of Baker & McKenzie LLP.
- O. “Effective Date” means the date by which this Settlement is finally approved by the Court on the terms and conditions set forth in this Agreement and the Judgment has been entered and becomes irrevocable and binding, upon the later of: (i) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final affirmance of the Judgment on appeal; (ii) in the event of a timely appeal filed by a Participating Class Member who has moved to intervene in the Action and/or moved to set aside the Judgment, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; (iii) five days after the expiration date of the time for the filing or noticing of any appeal from the Judgment if any objections are served on the Settlement Administrator; or (iv) if no Participating Class Member has objected to the Settlement, moved to intervene, or moved to set aside the Judgment, the date of entry of the Judgment. For purposes of clarity, the Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent the Settlement and this Agreement from becoming final and binding.

- P. “Election Not to Participate in Settlement” means a valid and timely written request by a Class Member, submitted in accordance with the instructions in the Class Notice, to exclude himself or herself from the Settlement.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to grant final approval to, and implement the terms of, the Settlement in this Agreement.
- R. “FLSA” means the Fair Labor Standards Act.
- S. “Individual Settlement Payment” shall mean the payment made to each Plaintiff, Participating Class Member, Participating Collective Member, and Aggrieved Employee for his or her share of the Net Settlement Amount.
- T. “Maximum Gross Settlement Amount” means the gross amount of Eight Hundred Eighty Thousand Dollars (\$880,000), which is the maximum amount to be paid by Defendant for the Settlement. The Maximum Gross Settlement Amount is a non-reversionary, “all in” payment that shall satisfy Defendant’s obligation to make any and all payments and disbursements associated with the Settlement, except for the employer’s share of payroll taxes on the Wage Portion of the Individual Settlement Payments, which shall be paid by Defendant in addition to the Maximum Gross Settlement Amount. The Maximum Gross Settlement Amount includes, but is not limited to, all Individual Settlement Payments, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and PAGA Payment.
- U. “Judgment” means the final approval order and judgment entered by the Court in the Action following the Final Approval Hearing substantially in the form attached hereto as Exhibit C.
- V. “Net Settlement Amount” means the Maximum Gross Settlement Amount less all Court-approved Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Payment, and Settlement Administration Expenses.
- W. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- X. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*
- Y. “PAGA Period” means June 3, 2019 to July 3, 2021.
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. “Participating Collective Members” means all Collective Members who timely sign, cash, deposit or otherwise negotiate a settlement check.

- BB. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- CC. “Released Parties” means Defendant and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters.
- DD. “Response Deadline” means the forty-fifth (45th) calendar day after the Settlement Administrator mails the Class Notice. If a Class Notice is re-mailed by the Settlement Administrator, the Response Deadline for that Class Member will be the later of 15 days from the date of remailing of the Class Notice or the original Response Deadline.
- EE. “Settlement” means the settlement of the Action and all related claims in accordance with this Agreement.
- FF. “Settlement Administrator” means the third party settlement administrator jointly selected by the Parties, as approved by the Court.
- GG. “Settlement Administration Expenses” means the Settlement Administrator’s reasonable fees and expenses to carry out administration of the Settlement in an amount not to exceed \$15,000.
- HH. “Workday” means all hours of work between 12:00 a.m. and 11:59 p.m. of each day, regardless of whether Class Members took breaks or worked a continuous block of time within that day.

II. RECITALS

- A. On May 7, 2020, Plaintiff Sara Armstrong sent a letter to the Labor Workforce and Development Agency (“LWDA”) alleging that Defendant purportedly violated various provisions of the California Labor Code.
- B. On July 30, 2020, Plaintiffs Armstrong and Wallace sent an amended letter to the LWDA, alleging that Defendant purportedly violated additional provisions of the California Labor Code.
- C. On August 7, 2020, Plaintiffs filed a “Class Action Complaint” initiating the Action against Defendant in the Court. Plaintiffs asserted in the Class Action Complaint that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;

3. Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226;
 7. Failed to reimburse employees for required expenses in violation of California Labor Code § 2802; and,
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.
- D. Defendant denies all of Plaintiffs' claims asserted in the Action, and denies that Plaintiffs have been injured or damaged in any sum or manner. Defendant contends that at all times, Defendant has fully complied with all of its obligations under the California Labor Code and the applicable Wage Orders, and has properly compensated all Class Members, Collective Members and Aggrieved Employees.
- E. On March 3, 2021, the Parties participated in an all-day mediation presided over by David Rotman, a highly experienced and respected mediator of wage and hour representative and class actions. Following the mediation, the Parties, represented by their respective counsel, were able to reach agreement on the terms of a settlement of the Action, with the settlement terms memorialized in a Memorandum of Understanding.
- F. Before seeking Preliminary Approval of the Settlement, Plaintiffs will file and serve a First Amended Complaint in the Action pursuant to a stipulation of the Parties. In addition to the facts, causes of action, and claims asserted in the Class Action Complaint, the First Amended Complaint will assert factual predicates and causes of action for alleged violations of the minimum wage, overtime and recordkeeping provisions of the FLSA. The First Amended Complaint also will assert PAGA claims and alleged PAGA violations based on all of the factual and legal allegations asserted in the Action, or that could have been asserted in the Action, based on the facts and claims alleged in the Class Action Complaint and the PAGA notices served by Plaintiffs on Defendant and the LWDA on May 7, 2020 and July 30, 2020. Plaintiffs will file and serve the First Amended Complaint within ten (10) court days from the execution by all Parties of this Agreement.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of wrongdoing or liability for the claims asserted in the

Action, or that any of the asserted claims or causes of action have legal or factual merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, Defendant shall deposit the Maximum Gross Settlement Amount into the QSF established by the Settlement Administrator within fifteen (15) days of the Effective Date. All of the Maximum Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Maximum Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Maximum Gross Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will make the following payments from the Maximum Gross Settlement Amount after the Effective Date:
 - 1. **To Plaintiffs:** In addition to the Individual Settlement Payments to be paid to each Plaintiff as a Participating Class Member, each Plaintiff will apply to the Court for, and Defendant will not oppose, an award of a Class Representative Service Payment in the amount of \$10,000, which is combined total of \$20,000 in Class Representative Service Payments. The Settlement Administrator will pay the Class Representative Service Payments awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards Class Representative Service Payments of less than \$10,000 for each Plaintiff, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Representative Service Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to each Plaintiff on a Form 1099. Each Plaintiff shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Representative Service Payments. Each Plaintiff acknowledges and agrees that the Class Representative Service Payments serve as consideration for the general release of all claims, including a waiver of unknown claims and similar rights under California Civil Code section 1542, granted by each Plaintiff to Defendant under this Agreement.
 - 2. **To Class Counsel:** Class Counsel will apply to the Court for, and Defendant will not oppose, an award of not more than one third (33%) of the Maximum Gross Settlement Amount, as the Class Counsel Fees Payment. Class Counsel also will apply to the Court for an award of not

more than \$25,000 for all expenses incurred in the Action and documented in Class Counsel's records as the Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment awarded by the Court out of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date. If the Court awards a Class Counsel Fees Payment of less than one third of the Maximum Gross Settlement Amount, or a Class Counsel Litigation Expenses Payment of less than \$25,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments will be made by the Settlement Administrator without tax withholding or deductions, and will be reported by the Settlement Administrator to Class Counsel on a Form 1099. Class Counsel shall be exclusively and solely responsible for any and all taxes and withholdings owed on the Class Counsel Fees Payments and Class Counsel Litigation Expenses Payments.

3. **To the Aggrieved Employees and LWDA.** Plaintiffs will seek approval from the Court to allocate \$30,000 of the Maximum Gross Settlement Amount (the "PAGA Payment") to the settlement of the PAGA claims asserted in the First Amended Complaint. The PAGA Payment approved by the Court shall be allocated and paid by the Settlement Administrator within thirty (30) days of the Effective Date as follows: (a) seventy five percent (75%) to the LWDA as the LWDA's share of civil penalties paid under this Agreement pursuant to the PAGA and (b) Twenty five percent (25%) to the Aggrieved Employees, to be distributed pro rata based on their respective Workdays during the PAGA Period. If the Court approves a PAGA Payment of less than \$30,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members. The Settlement Administrator will determine, in its sole discretion, how to classify and report the PAGA Payments to Aggrieved Employees for tax purposes. The PAGA Payments will be made to the Aggrieved Employees regardless of whether they are Participating Class Members.
4. **To the Settlement Administrator.** Plaintiffs will seek approval from the Court for authorization to pay the Settlement Administration Expenses from the Maximum Gross Settlement Amount. The Settlement Administrator will deduct the Settlement Administration Expenses approved by the Court from of the Maximum Gross Settlement Amount within thirty (30) days of the Effective Date, and will report the payment to the Settlement Administrator on a Form 1099. If the Court approves Settlement Administration Expenses of less than \$15,000, the difference will remain part of the Net Settlement Amount that will be distributed pro rata to Participating Class Members and Collective Members.

C. **Payments from the Net Settlement Amount.** Subject to the terms and conditions of this Agreement and Court approval, the Settlement Administrator will calculate and pay the Individual Settlement Payment for each Participating Class Member from the Net Settlement Amount after the Effective Date.

1. **Calculation.** Each Participating Class Member's Individual Settlement Payment will be calculated as follows:

- a. The Net Settlement Amount shall be divided by the total Workdays for all Participating Class Members to determine the "Workday Payment Amount."
- b. 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.

2. **Taxes and Withholding.**

- a. Twenty five percent (25%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portion shall be subject to tax withholdings and deductions and reported by the Settlement Administrator to each Participating Class Member on a Form W-2. The Settlement Administrator shall be responsible for calculating, withholding and remitting to the relevant tax authorities all tax withholdings and deductions on the Wage Portion, including the employer's share and employee's share of such taxes and withholdings.
- b. Seventy five percent (75%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of claims for non-wage interest and statutory penalties (the "Non-Wage Portion"). The Non-Wage Portion will not be subject to tax withholdings or deductions, and will be reported by the Settlement Administrator to each Participating Class Member on a Form 1099.
- c. Plaintiffs, Class Counsel, and Participating Class Members shall be solely responsible for all taxes associated with the their Individual Settlement Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, their share of the PAGA Payment, and Class Representative Service Payments, except for the employer's share of payroll taxes on the Wage Portion of the Individual Settlement Payments.
- d. The employee portion of applicable income taxes for the Wage Portion and any tax responsibility for the Non-Wage Portion or other payments shall be the sole responsibility of each

Participating Class Member. The Class Notice shall advise Class Members to seek tax advice regarding any tax consequences of the Settlement.

- e. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defense Counsel for any tax liability, including penalties and interest, arising out of or relating to any Participating Class Member's failure to report or pay taxes on any amounts paid pursuant to this Settlement.
- f. The Settlement Administrator shall be solely responsible for making required and proper tax withholdings and complying with tax reporting obligations.

3. **Class Members Who Opt Out Of Settlement.** Non-Participating Class Members will not receive an Individual Settlement Payment. The portion of the Net Settlement Amount that would have been allocated to Non-Participating Class Members but for their submission of an Election Not to Participate in Settlement will remain part of the Net Settlement Amount available for distribution to Participating Class Members.

4. **Collective Members Who Do Not Cash or Negotiate Checks.** If, for any reason, Collective Members do not cash or negotiate their Individual Settlement Payments, such Individual Settlement Payments shall be voided by the Settlement Administrator and shall not be redistributed to Class Members, but shall instead be donated to the Cy Pres Recipients pursuant to section III(E)(10) of this Agreement.

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

D. **Appointment of Settlement Administrator.** The Parties will obtain three quotes from mutually acceptable and qualified settlement administrators to choose the Settlement Administrator. In the Motion for Preliminary Approval, the Parties will ask the Court to appoint the Settlement Administrator to administer the Settlement. As a condition of appointment, the selected Settlement Administrator will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members;

conducting a National Change of Address search to update Class Member addresses before mailing the Class Notices; re-mailing Class Notices that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notices and receipt of completed Elections Not to Participate in Settlement; calculating Individual Settlement Payments; issuing the checks to effectuate the payments due under the Settlement; making proper tax withholdings and complying with tax reporting obligations, including preparing, delivering and filing all necessary tax forms, returns, notices and reports required to effectuate the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Maximum Gross Settlement Amount.

The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1 and Employer Identification Number for the Settlement in order to calculate payroll withholdings for taxes, and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. Within twenty one (21) days of execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court to seek an order preliminarily approving the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval").
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a proposed "Order Granting Preliminary Approval of the Settlement" substantially in the form evidenced by Exhibit B to this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed.

2. Notice to Class Members. After the Court enters an Order Granting Preliminary Approval of the Settlement, each Class Member will be sent

the Class Notice revised to conform to the Order Granting Preliminary Approval of the Settlement as follows:

- a. No later than 14 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. The Settlement Administrator will maintain the confidentiality of the Class Data, and will not disclose the information to anyone, except (i) as required to applicable taxing authorities; (ii) in order for the Settlement Administrator to carry out the reasonable efforts described in section III(E)(2)(b) and III(E)(2)(c); or (iii) pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and administration only. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.
- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice. The Settlement Administrator will send the Class Notice via first-class regular United States mail to all Class Members using the updated mailing address information and no later than 14 days after receiving the Class Data.
- c. If a Class Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will promptly, and no later than fourteen (14) days from receipt of the returned Class Notice, conduct one skip-trace address search for a more current address for the Class Member and re-mail the Class Notice to the Class Member if a new address is found. If a Class Notice is returned as undeliverable but with a forwarding address, the Settlement Administrator will promptly, and no later than seven (7) business days from receipt of the returned Class Notice, re-mail the Class Notice to the Class Member using the forwarding address. If the Class Notice is re-mailed, the Response Deadline for that Class Member will be extended by 15 days from the date of the original Response Deadline, and the extended Response Deadline will be set forth in the re-mailed Class Notice and the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.
- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defense Counsel of the number of

valid and deficient Elections Not to Participate in Settlement it receives and number and content of each objection received.

- e. Not later than 10 days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections Not to Participate) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Allocated Workdays; Elections Not to Participate in Settlement.** Class Members may submit objections to the Settlement, disputes as to the number of Workdays allocated to Class Members, and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** Only Participating Class Members may object to the Settlement, including but not limited to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments specified in the Settlement. The Class Notice shall inform Class Members that Participating Class Members may object to the Settlement either in writing or orally at the Final Approval Hearing. Written objections must be submitted to the Settlement Administrator by the Response Deadline, and if mailed, must be postmarked no later than the Response Deadline. Written objections shall set forth the grounds for each objection and comply with the instructions in the Class Notice, however a written objection shall not be per se invalid simply because it does not contain all of the information requested. Written objections may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. Participating Class Members may appear at the Final Approval Hearing to orally object to the Settlement. Non-Participating Class Members shall not be entitled or eligible to comment on or object to the Settlement.
- b. **Disputes as to Workday Allocation.** Each Class Member may dispute the number of Workdays allocated to the Class Member in the Class Notice. Any notice of dispute must be received by Settlement Administrator by the Response Deadline, and shall be resolved by the Settlement Administrator in its discretion with input and assistance from Defense Counsel as needed. A dispute

may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.

c. **Election Not to Participate in Settlement.** Class Members who wish to exclude themselves from the Settlement may do so by mailing a valid Election Not to Participate in Settlement to the Settlement Administrator by the Response Deadline. To be valid and effective, an Election Not to Participate in Settlement must be complete, signed by the Class Member, postmarked by the Response Deadline, and otherwise submitted in compliance with the instructions in the Class Notice, however an Election Not to Participate in Settlement shall not be per se invalid simply because it does not contain all of the information requested. An Election Not to Participate may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. Each Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that each Aggrieved Employee will still be paid his or her allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of whether the Aggrieved Employee is a Non-Participating Class Member. Notwithstanding any other provision of this Agreement, Defendant is free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense that Defendant may assert against such a claim. Every Class Member who does not submit a valid Election Not to Participate in Settlement in the manner specified in this section will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the release of the Released Class Claims. Non-Participating Class Members shall not be permitted or entitled to submit objections to the Settlement or appear at the Final Approval Hearing.

d. **Report.** Not later than ten (10) calendar days after the Response Deadline, the Settlement Administrator will provide Class Counsel and Defense Counsel with a complete and accurate list of all Non-Participating Class Members.

4. **Right to Terminate Settlement.** If the number of Non-Participating Class Members exceeds five percent (5%) of the Class, Defendant, in its sole discretion, shall have the right but not the obligation to terminate the Settlement and rescind this Agreement. Defendant shall exercise its revocation rights, if at all, within twenty one (21) days of the Response Deadline, as extended for Class Notice remailings, by providing written

notice of revocation to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, and Defendant shall have no obligation to pay any portion of the Maximum Gross Settlement Amount or any other amount under this Agreement.

5. **No Solicitation.** The Parties, Class Counsel and Defense Counsel shall not encourage any Class Member to opt out of the Settlement, object to the Settlement, or appeal from the Judgment. Class Counsel shall not initiate any contact or other communications with Class Members, but may respond to inquiries received from Class Members. Additionally, to the extent any Class Members are current employees of Defendant, Defendant shall be free to communicate with those individuals regarding their employment duties in the ordinary course of business.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiffs file the motion for final approval, with such motion scheduled to be heard by the Court at the Final Approval Hearing.
 - b. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, Plaintiffs and/or Defendant may file a reply in support of the motion for final approval, and Plaintiffs and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court, including whether the proposed Settlement should proceed. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees

Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this section.

- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.
- 8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then the Parties shall work together in good faith to address any concerns raised by the reviewing court, including whether the proposed Settlement should proceed. The vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this section, provided that Defendant's obligation to make payments under this Settlement will remain limited to the Maximum Gross Settlement Amount.
- 9. **Timing of Settlement Funding and Provision of Individual Settlement Payments and Other Payments.** Defendant shall fund the Settlement by depositing the Maximum Gross Settlement Amount into the QSF

established by the Settlement Administrator. The QSF will be established and controlled by the Settlement Administrator after the Court grants final approval of the Settlement, subject to the terms of this Agreement and the Court's orders. Interest, if any, earned on the QSF shall be donated to the *Cy Pres* Recipients as set forth below. Defendant shall deposit the Maximum Gross Settlement Amount into the QSF no later than fifteen (15) days after the Effective Date. For purposes of clarity, if the Effective Date does not or cannot occur, Defendant will not be obligated to fund the Settlement.

10. **Uncashed Individual Settlement Payment and PAGA Payment Checks.** Within thirty (30) days from the funding of the Settlement, the Settlement Administrator will print and mail the Individual Settlement Payments to Participating Class Members and the employees' shares of the PAGA Payment to Aggrieved Employees, along with required tax reporting forms. A Participating Class Member or Aggrieved Employee must cash his or her Individual Settlement Payment and/or PAGA Payment check within 180 days of mailing of the checks. If a check is returned as undeliverable to the Settlement Administrator within 120 days of the original mailing, the Settlement Administrator will make a reasonable but not excessive effort to resend the check to the Participating Class Member and/or Aggrieved Employee at a corrected address. All Individual Settlement Payment and/or PAGA Payment checks that have not been cashed or negotiated by the 180-day deadline shall be deemed stale and voided by the Settlement Administrator.
11. **Individual Settlement Payments to Collective Members.** The Settlement Administrator shall ensure that each check sent to a Collective Member contains, on the back of the check, a limited endorsement stating that by endorsing, negotiating and/or cashing the check, the Collective Member is affirmatively consenting to opt into the lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the FLSA that arise out of or relate to the Released Class Claims during the Collective Period.
12. ***Cy Pres* Recipients.** The funds from all voided Individual Settlement Payment checks and/or PAGA Payment checks, as well as all interest from the QSF and all other unclaimed amounts from the Maximum Gross Settlement Amount will be paid *cy pres* to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work (the "*Cy Pres* Recipients"). Such *cy pres* payments will be made in compliance with Code of Civil Procedure section 384. Pursuant to Code of Civil Procedure section 382.2, counsel for the Parties will submit declarations in conjunction with the Motion for Preliminary Approval affirming that they have no relationship with or connection to the *Cy Pres* Recipients that could create an appearance of impropriety.

13. **Final Report by Settlement Administrator to Court.** Within ten (10) days from disbursement of the Maximum Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration containing a final report on the disbursement of all funds from the Maximum Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Class Members, including but not limited to Participating Collective Members, shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the "Released Class Claims"). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint that the Class Members and Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

2. **Participating Collective Members.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Participating Collective Members shall expressly and irrevocably release, acquit, and forever discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint. that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."
3. **Aggrieved Employees.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, the Aggrieved Employees, on their own behalf, on behalf of their heirs, assigns and estates, and in their representative capacities on behalf of the State of California, shall release any and all claims under the PAGA that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA (the "Released PAGA Claims"). The release and extinguishment of the Released PAGA Claims shall be effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

4. **Plaintiffs.** Upon full funding of the Maximum Gross Settlement Amount by Defendant, in addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released PAGA Claims, as set forth above, and in consideration for the Class Representative Service Payments, Plaintiffs, on behalf of themselves and on behalf of each of their heirs, executors, administrators, successors and assigns, voluntarily release and forever discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, judgments, obligations, union grievances, claims, charges, complaints, appeals and demands whatsoever, in law or equity, which they may have against Released Parties, from the beginning of time through July 3, 2021, whether known or unknown, asserted or unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state, city, or local human rights, civil rights, wage and hour, wage payment, pension, employee benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any contract (whether oral or written, express or implied) or tort laws; any claim arising under the common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful termination, constructive discharge, pain and suffering, mental anguish, intentional and/or negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including attorneys' fees or any other action against Released Parties, based upon any conduct occurring up to and including July 3, 2021 (the "Plaintiffs' Released Claims").

Plaintiffs acknowledge that they may discover facts or law different from, or in addition to the facts or law that they know or believe to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claims, and the Plaintiffs' Released Claims. Plaintiffs agree, nonetheless, that this Agreement and the releases contained in it shall be binding and remain effective in all respects, notwithstanding such different or additional facts or law, or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, fraud or duress, and that the releases in this Agreement are full and complete releases, and that they intend that the releases in this Agreement to be final, binding and complete in all respects.

5. **Plaintiffs' Waiver of Rights under California Civil Code Section 1542.** Each Plaintiff acknowledges that he or she has read Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Plaintiff understands that Section 1542 gives him or her the right not to release existing claims of which each Plaintiff is not now aware, unless each Plaintiff voluntarily chooses to waive this right. **Even though each Plaintiff is aware of this right, each Plaintiff nevertheless hereby voluntarily waives the right described in Section 1542 and any other statutes of similar effect, and elects to assume all risks for claims that now exist in each Plaintiff's favor, whether known or unknown, arising from the subject matter of the releases in this Agreement.** Each Plaintiff acknowledges that different or additional facts or legal claims may be discovered in addition to what Plaintiff now knows or believes to be true with respect to the Released Class Claims, Released FLSA Claims, Released PAGA Claim, and Plaintiffs' Released Claims extinguished by this Agreement, and each Plaintiff agrees that this Agreement will be and remain in effect in all respects as a complete and final release of such released claims, notwithstanding any such different or additional facts or legal claims.

6. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to expenses, costs or attorneys' fees against Defendant arising from or related to the Action.
- G. No Effect on Other Benefits.** The Individual Settlement Payments will not result in any additional benefit payments (such as 401(k) contributions or incentive compensation) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, Participating Collective Members, or Aggrieved Employees, and all Plaintiffs, Participating Class Members, Participating Collective Members, and Aggrieved Employees will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. Limitation on Public Statements about Settlement.** At no time before or after Plaintiffs file their Motion for Preliminary Approval shall the Parties, Class Counsel, or Defense Counsel (i) hold any press conference or issue any press release or public statement, including without limitation via the Internet, social media or other communication channels, with respect to the Action or the Settlement (except as necessary to comply with legal reporting requirements, such

as Securities and Exchange Commission filings, reports or disclosures); (ii) characterize the Action or Settlement in a manner that disparages any party, their counsel, or the Released Parties; or (iii) otherwise publicize the Action or the Settlement, provided that Class Counsel may refer to the Settlement in adequacy of counsel declarations and may post publicly available documents on their website. If the Parties, Class Counsel, or Defense Counsel are contacted by the media or third parties regarding the Settlement, they shall not comment in any way, except to point to publicly available filings, which Class Counsel may post on Class Counsel's website.

I. Collateral Attack. Plaintiffs agree to participate in, and Class Counsel agree to join Defendant in, defending the Settlement and its approval from any collateral attack in the three (3) year period after the Effective Date by providing a declaration or declarations in support of the Settlement. The Parties and their counsel shall enter into a common interest agreement for the purpose of sharing information necessary to the defense of the Settlement.

J. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiffs, Class Members, or any other person, and Defendant and the Released Parties specifically disclaim any such liability or wrongdoing. The Settlement and this Agreement are not, and it should not be construed as, an admission of fact or law in the Action or any other proceeding or matter. The Parties have entered into this Settlement with the intention of avoiding further disputes and litigation.
- b. Whether or not the Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as,

offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement, enforcing any and all terms of the Agreement, or for purposes of establishing the release and bar of, or defending against, the Released Class Claims, the Released FLSA Claims, the Released PAGA Claims, or the Plaintiffs' Released Claims.

2. **Integrated Agreement.** This Agreement replaces and supersedes the Memorandum of Understanding signed by the Parties on or about April 2, 2021, and any other agreements, understandings, or representations between the Parties regarding the Settlement, the Action, or any other matter relating or arising out of this Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to its subject matter, and no oral or written representation, warranty, covenant, or inducement will be binding on any Party to this Agreement, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute advice regarding taxes

or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement.** Except as set forth in section III(J)(3) above, this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after Defendant fully funds the Maximum Gross Settlement Amount, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal

Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Teresa H. Michaud
BAKER & MCKENZIE LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067
Telephone: (310) 201-4728
Facsimile: (310) 201-4721
E-Mail: Teresa.michaud@bakermckenzie.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement, the Action shall be stayed, except to effectuate the terms of this Agreement.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under Code of Civil Procedure section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement, and that the time within which to bring this Action to trial under Code of Civil Procedure Section 583.310 shall be extended from the date of the signing of this Agreement by all Parties until the entry of the final approval order and Judgment, or if not entered the date this Agreement shall no longer be of any force or effect.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

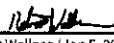
Dated: Jan 5, 2022



Sarah Call Armstrong (Jan 5, 2022 11:20 PST)

Plaintiff Sarah Armstrong

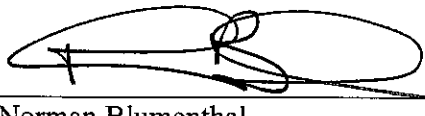
Dated: Jan 5, 2022


Robert Wallace (Jan 5, 2022 11:29 PST)
Plaintiff Robert Wallace

Dated: _____

[name]
For Defendant Prometric, LLC

Dated: 1/5/22


Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT:

Dated: _____

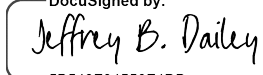
Teresa H. Michaud
BAKER & MCKENZIE LLP
Attorney for Defendant

Dated: _____

Plaintiff Robert Wallace

1/7/2022

Dated: _____

DocuSigned by:

Jeffrey B. Dailey - CFO [name]
For Defendant Prometric, LLC

Dated: _____

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

APPROVED AS TO FORM AND CONTENT:

Dated: 1/07/2022

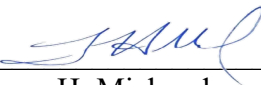

Teresa H. Michaud
BAKER & MCKENZIE LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

**NOTICE OF PROPOSED SETTLEMENT OF PAGA, CLASS AND COLLECTIVE
ACTION AND HEARING DATE FOR FINAL COURT APPROVAL**

**(Armstrong, et al. v. Prometric LLC, Superior Court of the State of California,
County of Los Angeles, Case No. 20STCV29967)**

**If you worked for Prometric in California as a non-exempt employee between August 7,
2016 and July 3, 2021, you may be entitled to a payment from a settlement.**

**YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT, AND YOU
HAVE A CHOICE TO MAKE. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW, RECEIVE AND CASH A SETTLEMENT CHECK	If you do nothing, you will remain a part of this case and will be sent a settlement payment of approximately \$<<[REDACTED]>>. The actual amount you receive will be less because of deductions for applicable taxes and due to other factors. If you do not exclude yourself from the Settlement, you will release the Released Class Claims defined in Section 5 below. Collective Members who sign or cash the settlement check also will release the Released FLSA Claims defined in Section 5 below. Aggrieved Employees also will released the Released PAGA Claims defined in Section 5 as part of this Settlement. If the Court approves the Settlement, the settlement check will be mailed to the same address as this notice. It is therefore important that you immediately notify the Settlement Administrator if your address has changed by following the instructions in Section 10 below.
EXCLUDE YOURSELF	If you do not want to participate in the Settlement and instead wish to retain your right to sue Prometric for wage and hour claims under California law, you must submit a written “Election Not to Participate in Settlement” to the Settlement Administrator by following the instructions in Section 7 below. If you elect not to participate in the Settlement, you will not receive any money from the Settlement, you will not be eligible to object to the Settlement, and you will not be bound by the Settlement or the releases. If you are an Aggrieved Employee as defined in Section 1 below, you will receive a PAGA Payment and you will release the Released PAGA Claims even if you exclude yourself from the Settlement.
OBJECT	You may write to the Settlement Administrator about why you object to Settlement or you may appear at the Final Approval Hearing to make an oral objection. If you submit an Election Not to Participate in Settlement, you cannot object to the Settlement. More information about objecting is provided in Section 8 below.

Your options are explained in this Notice. To exclude yourself from or object to the Settlement, you must take action **by the deadlines listed below**. If you are in favor of the Settlement, you

don't need to do anything to obtain your settlement payment. Prometric will not retaliate against you for any actions you take with respect to the Settlement.

1. Why did I get this Notice?

Plaintiffs Sarah Armstrong and Robert Wallace ("Plaintiffs") and Defendant Prometric LLC ("Defendant") have reached a proposed settlement (the "Settlement") of a class, collective, and PAGA lawsuit pending in Los Angeles County Superior Court (the "Court"). The Court authorized the parties to send this Notice to you to inform you about the proposed terms of the Settlement and about all of your options, before the Court decides whether to approve the Settlement.

Defendant's records show you were employed by Defendant in California as a non-exempt employee at some time between August 7, 2016 and July 3, 2021 (the "Class Period") and you have not already released Defendant from wage and hour claims for the Class Period in another matter. You are therefore a member of the Class.

If you worked for Defendant in California as a non-exempt employee at some time between August 7, 2017 and July 3, 2021 (the "Collective Period"), you are also a Collective Member. If you were employed by Defendant in California as a non-exempt employee at some time between June 3, 2019 and July 3, 2021 (the "PAGA Period"), you are also an "Aggrieved Employee."

This Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this lawsuit about?

This lawsuit is about whether Defendant properly paid its California non-exempt employees for minimum wages and overtime, provided meal periods and rest breaks, reimbursed employees for business expenses, provided accurate wage statements, and timely paid wages owed during employment and upon separation. Defendant denies the claims made in the lawsuit and believes that its California non-exempt employees received all wages, payments, breaks, and wage statements to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in the lawsuit.

This lawsuit has been filed as a class action. In a class action, one or more people called "class representatives" sue not only for themselves, but also on behalf of other people who have similar claims. The other people are called "class members" and together are the "Class." Similarly, in a collective action, one or more people can seek to represent a "Collective" of similarly situated people. The individuals who initiated this class/collective action are called the "Plaintiffs." In a class/collective action, the Plaintiffs ask the court to resolve the issues for every member of the Class and Collective. Here, the Court has approved Plaintiffs as the Class Representatives, and the Class/Collective Members are represented by Class Counsel, the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP.

On August 7, 2020, Plaintiffs filed a class action complaint in the Superior Court of the State of California, County of Los Angeles (the "Complaint"), alleging the following claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to timely

pay wages, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to pay wages at termination. As part of this Settlement, Plaintiff is filing a First Amended Complaint to assert factual predicates and causes of action on behalf of a collective of similarly situated people for alleged violations of the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act (“FLSA”), and a claim under the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”) with respect to the Aggrieved Employees based upon the above alleged violations. This lawsuit is referred to as the “Action.”

3. What are the terms of the Settlement?

Subject to Court approval, Defendant has agreed to pay up to Eight Hundred Eighty Thousand Dollars (\$880,000) (the “Maximum Gross Settlement Amount”) to resolve the claims of all Participating Class Members, Collective Members, and Aggrieved Employees. The Maximum Gross Settlement Amount will be used to pay: (1) the Individual Settlement Payments to Class/Collective Members; (2) attorneys’ fees of up to \$293,333 (one-third of the Maximum Gross Settlement Amount) plus reimbursement of actual litigation expenses and costs of up to \$25,000; (3) Class Representative Service Payments of \$10,000 for each Plaintiff (for a total of \$20,000); (4) a PAGA Payment of \$30,000, of which \$22,500.00 will be paid to the California Labor & Workforce Development Agency and \$7,500 will be paid to the Aggrieved Employees; and (5) the Settlement Administrator’s fees and costs of up to \$15,000. The Settlement is conditioned upon the Court granting final approval of the Settlement and entering an order and judgment.

4. How much will my settlement payment be and how was it calculated?

Calculation of Individual Settlement Payments. The Court has approved the formula used to calculate your settlement payment. The formula considers the number of days you worked (“Workdays”) as a non-exempt employee in California during the Class Period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at www.XXXX.com.

Defendant’s records reflect that you worked << [REDACTED] >> Workdays during the Class Period. Based on the formula preliminary approved by the Court, your settlement payment is estimated to be << [REDACTED] >>.

The Settlement Administrator used information from Defendant’s records to calculate your payment. If you have questions about your calculation, you may contact the Settlement Administrator using the contact information in Section 10 below. If you dispute the number of Workdays and/or the calculation of your settlement payment, you must submit a written, signed dispute challenging the information, along with any documentation supporting your contention, to the Settlement Administrator no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

Calculation of PAGA Payments. To settle the PAGA Released Claims, \$30,000 of the Maximum Gross Settlement Amount will be distributed according to PAGA’s requirements: 75% (\$22,500) will be paid to the California Labor & Workforce Development Agency and 25% (\$7,500) be paid to the Aggrieved Employees (together, the “PAGA Payment”). If you are an Aggrieved

Employee, your share of the PAGA Payment is determined by a formula that considers the total Workdays worked by Aggrieved Employees during the PAGA Period and your individual Workday count during that same period. Your PAGA Payment is in addition to any Individual Settlement Payment you receive as a Participating Class Member. The PAGA Payment shall be allocated and paid to Aggrieved Employees regardless of whether they request exclusion from the Settlement.

Settlement checks that are not cashed within 180 days of issuance will be null and void.

Tax Matters. Twenty-five percent (25%) of each Participating Class Member's Individual Settlement Payment shall be allocated to the settlement of wage claims (the "Wage Portion") and the remaining seventy-five percent (75%) will be allocated to interest and penalties (the "Non-Wage Portion"). The PAGA Payment (if any) is allocated entirely to penalties.

The Wage Portion of each Individual Settlement Payment is subject to payroll deductions or applicable taxes and withholdings, for which you will receive a Form W-2. The Non-Wage Portion and PAGA Payment (if any) are not subject to deductions and will be reported on a Form 1099. Neither Class Counsel nor Defense Counsel can advise you regarding the tax consequences of the Settlement. You may wish to consult with your own tax advisor about the tax consequences of the Settlement.

5. What am I giving up by participating in the Settlement?

Regardless of whether you cash a settlement check, if you do not exclude yourself from the Settlement (as described in Section 7 below), you will release the Released Class Claims.

This means that you cannot sue, continue to sue, or be part of any other legal action against Defendant (Prometric) and its current or past predecessors, successors, affiliates, subsidiaries, parent companies, divisions, current and past employees, insurers, agents, consultants, legal representatives, and any other related entities, and all of their past, present and future officers, shareholders, owners, members, directors, partners, agents, managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, and underwriters (the "Released Parties") asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Class Period for Class Members, and that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of any federal, state, city, or local law (the "Released Class Claims"). The Released Class Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, double time, or premium pay of any other kind, meal period violations, rest break violations, wage statement violations, the failure to keep accurate payroll records, suitable seating violations, the failure to timely pay wages during employment and upon termination of employment, the failure to reimburse employees for business expenses, all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, all claims under PAGA that could have been premised on the Released Class Claims, all claims under the California Business & Professions Code section 17200 *et seq.* that could have been premised on the Released Class Claims, all claims under the Fair Labor Standards Act, the California Labor Code, the applicable

IWC Wage Orders, and any other federal, state, city, or local law regarding wages and hours, including any and all claims arising from the factual allegations in the First Amended Complaint that the Class Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The Released Class Claims exclude all other claims, including claims for vested benefits other than wages, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any of the Released Parties about the Released Class Claims. It also means that all of the Court's orders in the Action will apply to you and legally bind you.

If you are a Collective Member and you cash your settlement check, you also will release the Released FLSA Claims. Collective Members who cash their settlement checks will not be able to sue, continue to sue, or be part of any other legal action asserting any claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys' fees, damages, liquidated damages, actions or causes of action, whether known or unknown, contingent or accrued, against the Released Parties that accrued during the Collective Period, and that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint, that are asserted in the First Amended Complaint, or that could have been asserted in the First Amended Complaint based on the allegations in the First Amended Complaint, whether in contract or based on putative violations of the Fair Labor Standards Act or its interpreting regulations (the "Released FLSA Claims"). The Released FLSA Claims include all claims arising from the factual allegations in the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during employment and upon termination of employment, and all related claims for civil and statutory penalties, interest, liquidated damages, attorneys' fees, costs, and expenses, including any and all claims arising from the factual allegations in the First Amended Complaint that the Participating Collective Members do not know or suspect to exist in their favor, which if known by them, would have materially affected the Settlement and the release of the Released Parties. The settlement check to the Participating Collective Members shall contain, on the back of the check, the following language: "By endorsing, negotiating, or cashing this check, I affirmatively consent to join and opt into the *Armstrong, et al. v. Prometric, LLC* lawsuit pursuant to 29 U.S. Code Section 216(b) for the purpose of becoming a party and releasing all claims against the Released Parties under the Fair Labor Standards Act that arise out of or relate to the Released Class Claims during the Collective Period."

The PAGA Released Claims will be released. If you are an Aggrieved Employee, you also will release any and all claims under the Labor Code Private Attorneys General Act of 2004 that were asserted or alleged in Plaintiffs' letters to the LWDA and the First Amended Complaint or that reasonably relate to factual allegations in Plaintiffs' letters to the LWDA or the First Amended Complaint, including all claims for penalties, interest, attorneys' fees, costs and expenses, and other remedies available under PAGA (the "Released PAGA Claims"). The release and extinguishment of the Released PAGA Claims is effective and binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating Class Members.

6. How can I get my settlement payment?

If you wish to participate in the Settlement, you do not need to take any action now. You will receive a check for your settlement payment by mail to the same address as this Class Notice. If your mailing address has changed, please contact the Settlement Administrator.

The Court will hold a hearing on [REDACTED], at [REDACTED] to decide whether to give final approval to the Settlement. If the Court grants final approval and there are no objections or appeals, settlement payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient and update the Settlement Administrator if your address changes.

7. What if I don't want to be a part of the Settlement?

If you do not wish to release your Released Class Claims, then you must take steps to exclude yourself from the Settlement. This is sometimes referred to as “opting out” of the Settlement.

If you wish to exclude yourself from the Settlement, you must submit a written “Election Not to Participate in Settlement.” **If you exclude yourself, you will not receive an Individual Settlement Payment and you will not be bound by the Settlement terms, which means you will retain the right to sue Defendant for the Released Class Claims and Released FLSA Claims.** However, if you are an Aggrieved Employee, you will receive a PAGA Payment and you will release all Released PAGA Claims even if you exclude yourself from the Settlement. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

To exclude yourself from the Settlement, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated Election Not to Participate in Settlement. The Election Not to Participate in Settlement must be postmarked by or received no later than [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing]. The Election Not to Participate in Settlement should state in substance that you wish to be excluded from the Class in the *Armstrong v. Prometric* lawsuit and that you understand that by excluding yourself you will not receive a settlement payment from the class settlement in this Action. You should include your full name, address, and telephone number on the Election Not to Participate in Settlement. Please also include the name and number of the case, which is *Armstrong v. Prometric*, Case No. 20STCV29967. You can only personally sign and submit a Election Not to Participate in Settlement for yourself. No other person may sign or submit an Election Not to Participate in Settlement on your behalf.

The Settlement Administrator's address and telephone number are:

[REDACTED]
[REDACTED]

Elections Not to Participate in Settlement that are postmarked after [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], are incomplete, or are unsigned will be rejected, and Class Members who submit deficient Elections Not to Participate in Settlement will remain bound by the Settlement and the releases described above.

8. How do I tell the Court that I disapprove of the Settlement?

If you have not submitted an Election Not to Participate in Settlement, you can object to any portion the Settlement which you disapprove. You can give reasons why you think the Court should not approve the Settlement, including any of its proposed terms, the attorneys' fees and expenses, or the Class Representative Service Payments. You may object to the Settlement either in writing or in person.

All written objections must be submitted to the Settlement Administrator by [45 days after the mailing of the Notice or 60 days after the original mailing date in the case of re-mailing], and if mailed, must be postmarked or otherwise received by that date. The Settlement Administrator's address is : _____ You also may send written objections to the Settlement Administrator via email at _____, or by fax at _____. Written objections should explain the grounds for each objection and describe why you do not agree with the Settlement. Include your name, current address, and telephone number on your objections. Write the name and number of the lawsuit on all objections or other correspondence: *Armstrong v. Prometric, LLC*, Los Angeles Superior Court Case No. 20STCV29967.

Alternatively, you may appear remotely at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. The hearing will take place remotely. To appear at the hearing, you must schedule a remote appearance through LA CourtConnect at <https://www.lacourt.org/lacc/>. Check the Court's website for the most current information. Class Counsel can assist you if you would like to appear at the hearing.

You cannot object to the Settlement if you have excluded yourself from the Settlement. If the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will be mailed a settlement check.

The addresses for Parties' counsel are as follows:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw
LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
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9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012, in Department 17 before Judge Maren E. Nelson. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate, and will consider

any properly submitted objections. The Court will determine whether to grant final approval to the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. This hearing may be rescheduled by the Court without further notice to you. If you are interested in participating the Final Approval Hearing, you should confirm the date, time and location by contacting Class Counsel. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely using the LA CourtConnect procedure at <https://www.lacourt.org/lacc/>. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. In addition, hearing dates are posted on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles (<http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>) and entering the Case No. 20STCV29967.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at [REDACTED] or write to *Armstrong v. Prometric, LLC* Settlement Administrator, c/o [REDACTED].

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Armstrong v. Prometric*. You may also get more details by examining the Court's file on the Internet via the Case Access page for the California Superior Court for the County of Los Angeles and entering the Case No. 20STCV29967. If you wish to view the Court files in person, you must make an appointment with the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

The Court encourages persons seeking services from the Clerk's Office, court support services, and/or the Self-Help Centers to schedule an appointment. The telephone numbers to schedule appointments for each courthouse are listed at courthouse entrances and are posted on the Court's website, www.lacourt.org.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Settlement Administrator shall pay all unclaimed funds *cy pres* to two recognized 501(c)(3) tax-exempt charities as follows: (1) 50% to Bet Tzedek Legal Services and (2) and 50% to Legal Aid at Work, as approved by the Court pursuant to California Code of Civil Procedure section 384.
- If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

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] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

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

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

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable _____ of the Superior Court of
2 the State of California, in and for the County of Los Angeles, on _____[DATE], for the
3 motion by Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for preliminary approval
4 of the class settlement with Defendant Prometric LLC (“Defendants”). The Court, having
5 considered the briefs, argument of counsel and all matters presented to the Court and good cause
6 appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action
7 Settlement.

8
9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the First Amended Class Action Settlement
11 Agreement (“Agreement”) as revised and submitted as Exhibit #1 to the Supplemental Declaration
12 of Kyle Nordrehaug in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
13 Settlement. The Court finds that the Settlement set forth in the Agreement appears fair, reasonable
14 and adequate, and within the range of possible approval, pursuant to the provisions of California
15 Code of Civil Procedure Section 382 and Rule 3.769 of the California Rules of Court.

16 2. This Order incorporates by reference the definitions in the Agreement, and all
17 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. The Maximum Gross Settlement Amount is Eight Hundred Eighty Thousand
19 Dollars (\$880,000). It appears to the Court on a preliminary basis that the settlement amount and
20 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
21 the probable outcome of further litigation and the significant risks relating to certification, liability
22 and damages issues. It further appears that investigation and research have been conducted such
23 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
24 appears to the Court that settlement at this time will avoid substantial additional costs by all
25 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
26 the Action. It further appears that the Settlement has been reached as the result of serious and
27 non-collusive, arms-length negotiations. The Court therefore preliminarily finds that the

1 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of
2 further litigation and the significant risks relating to certification, liability, and damages issues.

3 4. The Agreement provides that Class Counsel may seek attorneys' fees in an amount
4 not to exceed one-third of the Maximum Gross Settlement Amount, an award of litigation
5 expenses incurred, in an amount not to exceed \$25,000, and Class Representative Service
6 Payments for each Plaintiff in an amount not to exceed \$10,000, for a combined total of \$20,000.
7 The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service
8 award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting
9 these requests, including lodestar, prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. The Court
13 finds that the prerequisites and considerations of Code of Civil Procedure Section 382 and Rule
14 3.769 of the California Rules of Court appear to be satisfied, and provisionally certifies, for
15 settlement purposes only, the class of all individuals employed by Defendant in California as non-
16 exempt employees at any time during the Class Period, but excluding individuals who released
17 Defendant from wage and hour claims for the Class Period, including those wage and hour claims
18 released as part of a general release of claims. The Class Period is August 7, 2016 to July 3, 2021.

19 6. The Court finds that, for settlement purposes only, the Class meets the
20 requirements for certification under section Code of Civil Procedure Section 382 in that: (a) the
21 Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
22 (b) common questions of law and fact predominate, and there is a well-defined community of
23 interest amongst the members of the Class with respect to the subject matter of the litigation; (c)
24 the claims of the Plaintiffs are typical of the claims of the members of the Class; (d) the Plaintiffs
25 can fairly and adequately protect the interests of the members of the Class; (e) a class action is
26 superior to other available methods for the efficient resolution of this controversy; and (f) counsel

1 for the Class is qualified to act as counsel for the Class and the Plaintiffs are adequate
2 representatives of the Class.

3 7. The Court finds that the prerequisites and considerations necessary for conditional
4 certification of a collective under 29 U.S.C. Section 216(b) of the Fair Labor Standards Act of
5 1938 are satisfied and conditionally certifies, for settlement purposes only, the collective of all
6 individuals employed by Defendant in California as non-exempt employees at any time during the
7 Class Period, but excluding individuals who released Defendant from wage and hour claims for
8 the Class Period, including those wage and hour claims released as part of a general release of
9 claims. The Collective Period is August 7, 2017 to July 3, 2021.

10 8. The Court finds that the prerequisites and considerations necessary for approval of
11 the settlement of the Released PAGA Claims asserted in the Action, including the settlement and
12 release of the Released PAGA Claims, and the payment of Thirty Thousand Dollars (\$30,000)
13 from the Maximum Gross Settlement Amount to resolve the Released PAGA Claims, appear to be
14 satisfied. The Aggrieved Employees will not have the opportunity to opt out of, or object to the
15 PAGA Payment and settlement and release of the Released PAGA Claims. Upon final approval
16 of the Settlement, the payment to the LWDA and the Aggrieved Employees shall be made in
17 accordance with the Agreement. The PAGA Period is June 3, 2019 to July 3, 2021.

18 9. For settlement purposes only, the Court provisionally appoints Plaintiffs as the
19 representatives of the Class. For settlement purposes only, the Court provisionally appoints
20 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
21 Bhowmik De Blouw LLP as Class Counsel for the Class.

22 10. The Court approves the proposed notice plan, including, as to form and content, the
23 revised Notice of Proposed Settlement of PAGA, Class and Collective Action and Hearing Date
24 for Final Court Approval (“Class Notice”), as revised and submitted as Exhibit A to the First
25 Amended Class Action Settlement Agreement. The Court finds that the Class Notice appears to
26 fully and accurately inform the Class of all material elements of the proposed Settlement, of the
27 Class Members’ right to be excluded from the Class by submitting a written opt-out request, and
28

1 of each member's right and opportunity to object to the Settlement. The Court further finds that
2 the distribution of the Class Notice substantially in the manner and form set forth in the
3 Agreement and this Order meets the requirements of due process, is the best notice practicable
4 under the circumstances, and shall constitute due and sufficient notice to all persons entitled
5 thereto. The Court orders the mailing of the Class Notice by first class mail in the manner set
6 forth in the Agreement. The Court has been advised that all Class Members speak and read
7 English with ease. If a Class Notice is returned because of an incorrect address, the Settlement
8 Administrator will promptly search for a more current address for the Class Member and re-mail
9 the Class Notice to the Class Member no later than seven (7) business days after the receipt of the
10 undelivered Class Notice.

11 11. The Court hereby appoints _____ as the Settlement Administrator.
12 No later than fourteen (14) calendar days after preliminary approval of the Settlement by the
13 Court, Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the
14 Class Data. The Settlement Administrator will perform address updates and verifications as
15 necessary prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible,
16 and in no event later than 14 days after receiving the Class information spreadsheet, the Settlement
17 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

18 12. The Court hereby preliminarily approves the proposed procedure for exclusion
19 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
20 from the Class as provided in the Class Notice by following the instructions for requesting
21 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
22 postmarked by no later than the Response Deadline, which is forty-five (45) calendar days after
23 the date of the mailing of the Class Notice. If the Class Notice is re-mailed, the Response
24 Deadline will be extended an additional 15 days. An Election Not to Participate in Settlement
25 may also be faxed or emailed to the Settlement Administrator as indicated in the Class Notice.
26 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
27 any recovery under the Settlement and will not be bound by the Settlement or have any right to
28

1 object, appeal or comment thereon. Class Members who have not requested exclusion shall be
2 bound by all determinations of the Court, the Agreement and the Judgment. Each request for
3 exclusion shall apply to only one individual, and any attempt to effect the exclusion or opt out of a
4 group, class, or subclass of individuals is not permitted and will be deemed invalid.

5 13. Any Class Member who has not opted out may appear at the Final Approval
6 Hearing, may object or express the Class Member's views regarding the Settlement, and may
7 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
8 heard and determined by the Court as provided in the Class Notice. Class Members will have
9 until the Response Deadline to submit their written objections to the Settlement Administrator in
10 accordance with the instructions in the Class Notice. If the Class Notice is re-mailed, the
11 Response Deadline will be extended an additional 15 days. Written objections may also be faxed
12 or emailed to the Settlement Administrator as indicated in the Class Notice. Alternatively, Class
13 Members may appear at the Final Approval Hearing to make an oral objection.

14 14. A Final Approval Hearing shall be held before this Court on _____
15 _____ at _____ in Department 17 at the Spring Street Courthouse of the Los
16 Angeles County Superior Court to determine all necessary matters concerning the Settlement,
17 including: whether the proposed settlement of the Action on the terms and conditions provided for
18 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
19 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
20 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
21 Class Members; and whether the attorneys' fees and costs, the service awards, the expenses of the
22 Settlement Administrator, and the PAGA Payment should be approved. All papers in support of
23 the motion for final approval and the motion for attorneys' fees, costs and service awards shall be
24 filed with the Court and served on all counsel no later than sixteen (16) court days before the
25 hearing.

26 15. The Settlement, the Agreement and all exhibits, documents, or instruments related
27 to the Settlement or Agreement shall not be construed as a concession or admission by Defendant
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1 in any way that the asserted claims have any merit or that this Action was properly brought as a
2 class or representative action. The Settlement, the Agreement and all exhibits, documents, or
3 instruments related to the Settlement or Agreement shall not be used as evidence of, or used
4 against Defendant as, an admission or indication in any way, including with respect to any claim
5 of any liability, wrongdoing, fault, or omission by Defendant or with respect to the truth of any
6 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
7 Settlement, the Agreement, nor any exhibit, document, statement, proceeding or conduct related to
8 the Settlement or Agreement, nor any reports or accounts thereof, shall in any event be construed
9 as, offered or admitted in evidence as, received as or deemed to be evidence for any purpose
10 adverse to the Defendant, including, but not limited to, evidence of a presumption, concession,
11 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or
12 damage.

13 16. If the Settlement is not finally approved, or the Effective Date does not occur, or
14 the Settlement is terminated under its terms, then: (a) the Settlement shall be without force and
15 effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable;
16 (b) the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the
17 day immediately before the Parties entered into the Settlement Agreement, with the Parties to meet
18 and confer regarding any discovery or case management deadlines that were pending at the time;
19 (c) Defendant and/or the Released Parties shall not be obligated to pay any amount of the
20 Maximum Gross Settlement Amount and shall be refunded any amounts paid pursuant to the
21 Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement,
22 including the certification of the Class, shall be vacated without prejudice to any Party's position
23 on the issue of class certification, or any other issue, in this Action or any other action, and the
24 Parties shall be restored to their litigation positions existing on the date of execution of the
25 Agreement; and (e) the Parties shall proceed in all respects as if the Agreement and related
26 documentation and orders had not been executed, and without prejudice in any way from the
27 negotiation or fact of the Settlement or the terms of the Agreement. In such an event, this Court's
28

1 orders regarding the Settlement, including this Order, shall not be used or referred to in litigation,
2 or any arbitration or other civil or administrative proceeding, for any purpose. Nothing in the
3 foregoing paragraph is intended to alter the terms of the Agreement with respect to the effect of
4 the Settlement if it is not approved.

5 17. The Court reserves the right to adjourn or continue the date of the Final Approval
6 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
7 retains jurisdiction to consider all further applications arising out of or connected with the
8 proposed Settlement.

9 18. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
10 further orders of the Court at the Final Approval Hearing.

11 **IT IS SO ORDERED.**

12
13 Dated: _____

HON. MAREN E. NELSON
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

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] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

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

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

FINAL APPROVAL ORDER AND 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 _____
5 before the Honorable _____.

6
7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. This Order hereby adopts and incorporates by reference the definitions, terms and
12 conditions of the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending before
14 the Superior Court for the State of California, County of Los Angeles, and over all Parties to this
15 litigation, including the Class.

16 3. For the reasons set forth in the Preliminary Approval Order, which are adopted and
17 incorporated herein by reference, this Court finds that the requirements of California Code of Civil
18 Procedure section 382 and rule 3.769 of the California Rules of Court have been satisfied.

19 4. Based on a review of the evidence submitted in support of the motion and the
20 applicable law, the Court finds that the Settlement on the terms set forth in the Agreement is fair,
21 reasonable, and adequate.

22 5. The Court further finds that the Settlement is the result of arm’s length negotiations
23 that were conducted after Class Counsel had adequately investigated and made themselves
24 familiar with the claims and defenses in this Action, including the strengths and weaknesses of
25 those claims and defenses. In particular, the amount the Settlement, the significant risks relating
26 to certification, liability, and damages issues, and the assistance of an experienced mediator in the
27
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1 settlement process, among other factors, support the Court’s conclusion that the Settlement is fair,
2 reasonable, and adequate.

3 **Preliminary Approval of the Settlement**

4 6. On _____, the Court granted preliminary approval of the Settlement
5 (“Preliminary Approval Order”). At this same time, the Court approved conditional certification
6 of the Class and the Collective Members for settlement purposes only.

7 **Notice to the Class**

8 7. In compliance with Rule 3.769(f) of the California Rules of Court and the
9 Preliminary Approval Order, on or about _____, the Settlement Administrator
10 delivered the Court-approved Class Notice to the Class by first class U.S. mail using each Class
11 Member’s last known mailing address. The Court finds that delivery of the Class Notice to the
12 Class in this manner was the best notice practicable under the circumstances, and was reasonably
13 calculated to communicate actual notice of the litigation and the proposed settlement to the Class.
14 The Class Notice: (i) fully and accurately informed the Class of all material elements of the
15 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
16 from the Settlement; (ii) constituted valid, due, and sufficient notice to all Class Members and
17 Collective Members; and (iii) fully satisfied and complied with the requirements of notice and due
18 process under California and federal statutory and constitutional law. The Class Notice fairly and
19 adequately described the Settlement and provided Class Members with sufficient information
20 about and notice of their rights and options with respect to the Settlement, provided an explanation
21 of the proposed settlement terms and procedures for Class Members to follow in filing written
22 objections to it and in arranging to appear at the Final Approval Hearing and state any objections
23 to the proposed Settlement, and included notice of a variety of means by which Class Members
24 could obtain additional information.

25 8. The Response Deadline for opting out of the Class or submitting written objections
26 to the Settlement was _____, which deadline was extended by 15 days for any Class
27 Member whose Class Notice was re-mailed to them. There was sufficient time between the
28

1 mailing of the Class Notice and the Response Deadline to permit Class Members to decide
2 whether to opt out of, object to, or participate in the Settlement, and to act on their decision. A
3 full opportunity has been afforded to the Class Members to participate in this hearing, and all
4 Class Members and other persons wishing to be heard have been heard. Class Members also have
5 had a full and fair opportunity to exclude themselves from the proposed Settlement and Class.
6 Accordingly, the Court determines that all Class Members who did not timely and properly submit
7 an Election Not to Participate in Settlement are bound by the Settlement and this Final Approval
8 Order and Judgment.

9 **Fairness of Settlement**

10 9. The Court has considered all relevant factors for determining the fairness of the
11 Settlement and has concluded that all such factors weigh in favor of granting final approval. In
12 particular:

13 (a) The Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
14 *Motor Co.* 48 Cal. App. 4th 1794, 1801 (1996).

15 (b) The settlement was reached through arm's-length bargaining between the
16 parties during an all-day mediation before David Rotman, a respected and experienced mediator of
17 wage and hour class actions. There has been no collusion between the parties in reaching the
18 proposed settlement.

19 (c) Plaintiffs' investigation and discovery have been sufficient to allow the
20 Court and counsel to act intelligently.

21 (d) Counsel for both parties are experienced in similar employment class action
22 litigation. All counsel recommended approval of the Agreement.

23 (e) The percentage of objectors and requests for exclusion is small. ____
24 objections were received. _____ requests for exclusion were received.

25 (f) The participation rate was high. _____ Class Members will be mailed a
26 settlement payment, representing _____ % of the overall Class.

1 10. The consideration to be given to the Class Members under the terms of the
2 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
3 and defenses asserted in this action and is fair, reasonable and adequate compensation for the
4 release of Class Members' claims, the Collective Members' claims, and the Aggrieved
5 Employees' claims, given the uncertainties and significant risks of the litigation and the delays
6 which would ensue from continued prosecution of the action.

7 11. Accordingly, the Court hereby approves the Settlement as set forth in the
8 Agreement and expressly finds that the Settlement is, in all respects, fair, reasonable, adequate,
9 and in the best interests of the Participating Class Members and Participating Collective Members,
10 and the Court hereby directs implementation of all remaining terms, conditions, and provisions of
11 the Agreement. The Court also finds that settlement now will avoid additional and potentially
12 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the
13 case. Additionally, after considering the monetary recovery provided by the Settlement in light of
14 the challenges posed by continued litigation, the Court concludes that the Settlement provides the
15 Participating Class Members and Participating Collective Members with fair and adequate relief.

16 **Attorneys' Fees and Costs**

17 12. An award of \$_____ for attorneys' fees, representing [percentage] of the
18 Maximum Gross Settlement Amount, and \$_____ for litigation costs and expenses, is
19 reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked by Class
20 Counsel, and the results achieved by Class Counsel. The requested award has been supported by
21 Class Counsel's lodestar calculations and billing statements.

22 **Class Representative Service Payment**

23 13. The Agreement provides for Class Representative Service Payments of not more
24 than \$10,000 to each of the Plaintiffs, for a combined total of \$20,000, subject to the Court's
25 approval. The Court finds that a Class Representative Service Payment in the amount of \$_____
26 _____ to each of the Plaintiffs is reasonable in light of the risks and burdens undertaken
27
28

1 by the Plaintiffs in the litigation, for the time and effort in bringing and prosecuting this matter on
2 behalf of the Class, and for the execution of a general release of claims.

3 **Settlement Administration Expenses**

4 14. The Settlement Administrator shall calculate and administer the payments to be
5 made to the Class Members and Collective Members, transmit payment for attorneys' fees and
6 costs to Class Counsel, transmit the Class Representative Service Payments to the Plaintiffs,
7 distribute the PAGA Payment, issue any required tax reporting forms, calculate withholdings and
8 perform the other remaining duties set forth in the Agreement. The Settlement Administrator has
9 documented \$ _____ in fees and expenses, and this amount is reasonable in light of the work
10 performed by the Settlement Administrator.

11 **PAGA Payment**

12 15. The Agreement provides for a PAGA Payment out of the Maximum Gross
13 Settlement Amount of \$30,000, of which \$22,500 shall be allocated to the California Labor &
14 Workforce Development Agency ("LWDA") for the LWDA's 75% share of the settlement of civil
15 penalties paid pursuant to the PAGA and \$7,500 shall be allocated and distributed to the
16 Aggrieved Employees based on their respective Workdays during the PAGA Period. The Court
17 finds this PAGA Payment to be reasonable. All Aggrieved Employees will be sent their share of
18 the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth
19 below, whether or not they opt out of the Settlement. The LWDA was provided notice of the
20 Settlement and a copy of the Agreement and its settlement terms, and has not objected to the
21 proposed Settlement. The Court approves the settlement and release of the PAGA claims for the
22 PAGA Payment.

23
24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
27
28

1 1. The Class and Collective are certified for purposes of settlement. The Class is
2 defined as follows:

3 All individuals employed by Defendant in California as non-exempt employees at
4 any time during the Class Period of August 7, 2016 to July 3, 2021, but excluding
5 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
7 of claims.

8 The “Collective Members” are defined as:

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

14 2. All persons who meet the foregoing Class definition are members of the Class,
15 except for the following individuals who submitted a valid and timely Election Not to Participate
16 in Settlement: [INSERT NAMES OF OPT OUTS].

17 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
18 best interest of the Class and the Collective Members.

19 4. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
20 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
21 compensation or reimbursement from Defendant, Plaintiffs or members of the Class.

22 5. The payment of the Class Representative Service Payments in the amount of \$
23 _____ to each of the Plaintiffs is approved.

24 6. The payment of \$_____ to the Settlement Administrator for its fees and
25 expenses is approved.

26 7. The PAGA Payment of \$30,000 is approved and shall be allocated in accordance
27 with the Agreement.

28 8. The Agreement and this Settlement are not an admission by Defendant, and this
Final Approval Order and Judgment is not a finding, of the validity of any claims asserted in the
Action, of any wrongdoing by Defendant, or that any of the claims asserted in this Action are

1 appropriate for class treatment, other than for settlement purposes. Neither this Final Approval
2 Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to
3 carry out the Agreement is, may be construed as, or may be used as an admission by or against
4 Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of
5 the Agreement, and any negotiations or proceedings related thereto, shall not in any event be
6 construed as, or deemed to be evidence of, an admission or concession with regard to the denials
7 or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or
8 in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other
9 papers and records on file in the Action as evidence of the Settlement to support a defense of res
10 judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense
11 as to the Released Class Claims.

12 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
13 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
14 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
15 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
16 to individual Class Members.

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

24 Plaintiffs shall file and serve a report/declaration summarizing all distributions made
25 pursuant to the approved Settlement on or before _____.

26 12. The Court sets an OSC re Compliance with the terms of the Settlement for
27 _____.

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

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

5 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

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

12 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
13 provided in the Agreement and in this Final Approval Order and Judgment.

14 5. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
15 "Participating Class Member" shall expressly and irrevocably release, acquit, and forever
16 discharge, on their own behalf and on behalf of their heirs, assigns and estates, any and all
17 "Released Class Claims" against the "Released Parties."

18 6. As used in paragraph 4 above, the quoted terms have the meanings set forth below:

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

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

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

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

9 8. As used in paragraph 6 above, the quoted terms have the meanings set forth below:

10 (a) “Participating Collective Members” means all Collective Members who
11 timely sign, cash, deposit or otherwise negotiate a settlement check.

12 (b) “Released FLSA Claims” means any and all claims, debts, liabilities,
13 demands, obligations, guarantees, penalties, costs, liens, charges, complaints, expenses, attorneys’
14 fees, damages, liquidated damages, actions or causes of action, whether known or unknown,
15 contingent or accrued, against the Released Parties that accrued during the Collective Period, and
16 that arise out of or reasonably relate to the allegations asserted in the First Amended Complaint,
17 that are asserted in the First Amended Complaint, or that could have been asserted in the First
18 Amended Complaint based on the allegations in the First Amended Complaint, whether in
19 contract or based on putative violations of the Fair Labor Standards Act or its interpreting
20 regulations. The Released FLSA Claims include all claims arising from the factual allegations in
21 the First Amended Complaint for unpaid wages, minimum wages, overtime, or premium pay of
22 any other kind, the failure to keep accurate payroll records, the failure to timely pay wages during
23 employment and upon termination of employment, and all related claims for civil and statutory
24 penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses, including any and all
25 claims arising from the factual allegations in the First Amended Complaint that the Participating
26 Collective Members do not know or suspect to exist in their favor, which if known by them, would
27 have materially affected the Settlement and the release of the Released Parties.

1 9. As of the date Defendant fully funds the Maximum Gross Settlement Amount, the
2 “Aggrieved Employees,” on their own behalf, on behalf of their heirs, assigns and estates, and in
3 their representative capacities on behalf of the State of California, shall expressly and irrevocably
4 release, acquit, and forever discharge, any and all “Released PAGA Claims” against the Released
5 Parties. The release and extinguishment of the Released PAGA Claims shall be effective and
6 binding on all Aggrieved Employees, including Aggrieved Employees who are Non-Participating
7 Class Members.

8 10. As used in paragraph 8 above, the quoted terms have the meanings set forth below:

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

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

18 11. As of the date Defendant fully funds the Maximum Gross Settlement Amount, in
19 addition to the waiver and release of Released Class Claims, Released FLSA Claims and Released
20 PAGA Claims, as set forth above, and in consideration for the Class Representative Service
21 Payments, each Plaintiff, on behalf of themselves and on behalf of each of their heirs, executors,
22 administrators, successors and assigns, shall expressly and irrevocably release, acquit, and forever
23 discharge the Released Parties of and from any actions, causes of action, suits, debts, dues, sums
24 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,
25 agreements, promises, judgments, obligations, union grievances, claims, charges, complaints,
26 appeals and demands whatsoever, in law or equity, which they may have against Released Parties,
27 from the beginning of time through July 3, 2021, whether known or unknown, asserted or
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1 unasserted, including, but not limited to, any alleged violation of: Title VII of the Civil Rights Act
2 of 1964, 42 U.S.C. § 2000e *et seq.*; the Civil Rights Act of 1991, Pub. L. No. 102-166, Sections
3 1981 through 1988 of Title 42 of the United States Code, 42 U.S.C. §§ 1981-1988; the Fair Labor
4 Standards Act of 1938, 29 U.S.C. § 201 *et seq.*; the Occupational Safety and Health Act of 1970,
5 29 U.S.C. § 651 *et seq.*; the Immigration Reform and Control Act, as amended; the Workers
6 Adjustment Retraining Notification Act, as amended; the Family and Medical Leave Act; the
7 California Fair Employment and Housing Act; the California Family Rights Act; the California
8 Labor Code; the California Industrial Wage Commission Wage Orders, any other federal, state,
9 city, or local human rights, civil rights, wage and hour, wage payment, pension, employee
10 benefits, labor or other laws, rules, regulations and/or guidelines, constitutions or ordinances; any
11 contract (whether oral or written, express or implied) or tort laws; any claim arising under the
12 common law; any other claim for unpaid wages, employment discrimination, retaliation, wrongful
13 termination, constructive discharge, pain and suffering, mental anguish, intentional and/or
14 negligent infliction of emotional distress; any claim for costs, fees, or other expenses, including
15 attorneys' fees or any other action against Released Parties, based upon any conduct occurring up
16 to and including July 3, 2021.

17 12. As of the date Defendant fully funds the Maximum Gross Settlement Amount, each
18 Participating Class Member, Participating Collective Member, and Aggrieved Employee shall be
19 and hereby is forever barred and enjoined from prosecuting the Released Class Claims, the
20 Released FLSA Claims, and the Released PAGA Claims set forth in the Agreement against
21 Defendant and/or the Released Parties, and every such released claim as set forth above of each
22 and every Participating Class Member, Participating Collective Member and Aggrieved Employee
23 is and shall be deemed to be conclusively released and discharged as against the Defendant and the
24 Released Parties. All Participating Class Members, Participating Collective Members and
25 Aggrieved Employees are forever barred from pursuing, or seeking to reopen, any of the Released
26 Class Claims, the Released Collective Claims, and the Released PAGA Claims.

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

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

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

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

9
10 Dated: _____

11 _____
12 HON. MAREN E. NELSON
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
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