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

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

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

1 The motion of Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for an order
2 finally approving the Second Amended Class Action Settlement Agreement (“Agreement”) with
3 Defendant Prometric LLC (“Defendant”), attorneys’ fees and costs, service payments, and the fees
4 and expenses of the Settlement Administrator duly came on for hearing on June 30, 2022 before
5 the Honorable Maren E. Nelson.

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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
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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 January 14, 2022, 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 February 11, 2022, 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 March 28, 2022, 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
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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. No
24 objections were received. No requests for exclusion were received.

25 (f) The participation rate was high. 250 Class Members will be mailed a
26 settlement payment, representing 100% 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 \$293,333 for attorneys' fees, representing one-third of the Maximum
18 Gross Settlement Amount, and \$20,754.72 for litigation costs and expenses, is reasonable, in light
19 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the
20 results achieved by Class Counsel. The requested award has been supported by Class Counsel's
21 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 \$10,000
26 to each of the Plaintiffs is reasonable in light of the risks and burdens undertaken by the Plaintiffs
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1 in the litigation, for the time and effort in bringing and prosecuting this matter on behalf of the
2 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 \$6,500 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.

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24 **II.**

25 **ORDERS**

26 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
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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 as
15 there were no individuals who submitted a valid and timely Election Not to Participate in
16 Settlement.

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 \$293,333 and costs in
20 the amount of \$20,754.72. Class Counsel shall not seek or obtain any other compensation or
21 reimbursement from Defendant, Plaintiffs or members of the Class.

22 5. The payment of the Class Representative Service Payments in the amount of
23 \$10,000 to each of the Plaintiffs is approved.

24 6. The payment of \$6,500 to the Settlement Administrator for its fees and expenses is
25 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 11. Plaintiffs shall file and serve a report/declaration summarizing all distributions
25 made 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.**

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10 Dated: _____

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