

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1 This matter has come before the Honorable Maren E. Nelson of the Superior Court of the
2 State of California, in and for the County of Los Angeles, on August 18, 2021, for the motion by
3 Plaintiffs Sarah Armstrong and Robert Wallace (“Plaintiffs”) for preliminary approval of the class
4 settlement with Defendant Prometric LLC (“Defendants”). The Court, having considered the
5 briefs, argument of counsel and all matters presented to the Court and good cause appearing,
6 hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

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

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

17 3. The Maximum Gross Settlement Amount is Eight Hundred Eighty Thousand
18 Dollars (\$880,000). It appears to the Court on a preliminary basis that the settlement amount and
19 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
20 the probable outcome of further litigation and the significant risks relating to certification, liability
21 and damages issues. It further appears that investigation and research have been conducted such
22 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
23 appears to the Court that settlement at this time will avoid substantial additional costs by all
24 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
25 the Action. It further appears that the Settlement has been reached as the result of serious and
26 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
27
28

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 Notice of Proposed Settlement of PAGA, Class and Collective Action and Hearing Date for Final
24 Court Approval ("Class Notice"), as revised and submitted as Exhibit A to the Class Action
25 Settlement Agreement. The Court finds that the Class Notice appears to fully and accurately
26 inform the Class of all material elements of the proposed Settlement, of the Class Members' right
27 to be excluded from the Class by submitting a written opt-out request, and of each member's right
28

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

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

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

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

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

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

25 15. The Settlement, the Agreement and all exhibits, documents, or instruments related
26 to the Settlement or Agreement shall not be construed as a concession or admission by Defendant
27 in any way that the asserted claims have any merit or that this Action was properly brought as a
28

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

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

1 or any arbitration or other civil or administrative proceeding, for any purpose. Nothing in the
2 foregoing paragraph is intended to alter the terms of the Agreement with respect to the effect of
3 the Settlement if it is not approved.

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

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

10 **IT IS SO ORDERED.**

11
12 Dated: _____

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