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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

EDWARD ALCANTAR, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

AEROJET ROCKETDYNE, INC., an Ohio
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 31-2020-00281224

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: August 25, 2021

Time: 9:00 a.m.

Dept.: 54

Reservation No.: 2574248

Complaint Filed: June 29, 2020

FAC Filed: July 12, 2021

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

2 **PLEASE TAKE NOTICE** that on August 25, 2021, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Christopher E. Krueger, judge presiding, in
4 Department 54 of the above referenced Court, located at 720 9th Street, Sacramento, California
5 95814, Plaintiff Edward Alcantar (“Plaintiff”) will and hereby does move this Court for the
6 following relief with respect to the Settlement Agreement and Release (“Settlement Agreement”
7 or “SA”) entered into by Plaintiff and Defendant Aerojet Rocketdyne, Inc. (“Defendant”)
8 (together with Plaintiff, the “Parties”):

9 1. That the Court approve the Settlement Agreement referenced above;

10 2. That the Court conditionally certify the following Class for settlement purposes
11 only: all current and former non-exempt employees employed by Defendant in California who
12 received shift differential wages and/or any form of additive pay from April 6, 2019 through
13 September 10, 2020 (the “Class”);

14 3. That Plaintiff Edward Alcantar be appointed as the Class Representative and
15 Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. and William L. Marder of
16 Polaris Law Group LLP be appointed as Class Counsel;

17 4. That the Court preliminarily approve the Settlement Agreement and the total
18 Class Settlement Amount of Four Hundred Fifty Thousand Dollars (\$450,000.00);

19 5. That the Court finds on a preliminary basis that the Settlement Agreement appears
20 to be within the range of reasonableness of a settlement, including the amount of the PAGA
21 penalties, allocation of payments to Settlement Class Members, Incentive Award to Plaintiff,
22 Attorneys’ Costs and Fees, and Settlement Administrator’s Costs, that could ultimately be given
23 final approval by this Court;

24 6. That the Court approve the mailing of the proposed Notice of Class Action
25 Settlement (“Settlement Class Notice”) to be sent to Class Members;

26 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
27 Administrator; and

28 8. That the Court schedule the matter for a Final Fairness and Final Approval

1 hearing.

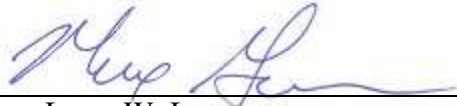
2 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
3 provides for court approval of the settlement of a purported class action and allows the Court to
4 preliminarily certify a class for settlement purposes.

5 The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and
6 reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of
7 Class Members to participate in, opt-out of, or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Settlement Agreement and the proposed Settlement Class Notice, and the supporting
10 Declarations of Larry W. Lee, Max W. Gavron, William L. Marder, and Plaintiff Edward
11 Alcantar, upon the oral arguments of counsel (should there be any), and on the complete records
12 and file herein.

13
14 DATED: August 3, 2021

DIVERSITY LAW GROUP, P.C.

15
16 By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff, the Class, and Aggrieved
Employees

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1 **I. INTRODUCTION**

2 Plaintiff Edward Alcantar (“Plaintiff”) brings class and representative Private Attorneys
3 General Act (“PAGA”) claims against Defendant Aerojet Rocketdyne, Inc. (“Defendant”) under
4 the California Labor Code (Plaintiff and Defendant shall be jointly referred to as the “Parties”).
5 Plaintiff alleges in this lawsuit that Defendant failed to provide accurate itemized wage
6 statements to its employees. Specifically, Plaintiff contends that Defendant failed to specify the
7 rate of pay and number of hours worked for shift differential wages and/or additive pay on wage
8 statements issued by Defendant to its employees. Based on this violation, Plaintiff asserts class
9 and PAGA claims for violation of Labor Code § 226(a).

10 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
11 to the class and PAGA claims alleged in the Complaint and engaged in a thorough study of the
12 legal principles applicable to the claims asserted against Defendant. Through the exchange of
13 information in advance of mediation, Defendant provided necessary data pertaining to the
14 number of putative class members and the number of wage statements at issue, as well as
15 information pertaining to Defendant’s wage statement policies and practices. Thereafter, the
16 Parties attended a full day of private mediation with Steven Serratore, Esq., and after further
17 extended negotiations, the Parties reached the current settlement. The terms of the Settlement
18 Agreement provide that Defendant pay a Class Settlement Amount of Four Hundred Fifty
19 Thousand Dollars (\$450,000.00) to resolve the class and PAGA claims. Significantly, the entire
20 Class Settlement Amount will be distributed to the class on a **non-reversionary** basis, **such that**
21 **no remaining monies will revert to Defendant.** Further, no claim forms are required.

22 The Parties and their respective counsel believe that the settlement for the consideration
23 and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate in light
24 of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff
25 and his counsel are confident that they can prevail on class certification, as well as on the merits,
26 they recognize the inherent risks in drawn-out litigation and the specific risks that a class might
27 not be certified and/or that Plaintiff could fail to establish liability.

28 Therefore, the Parties respectfully request that the Court grant this Motion for

1 Preliminary Approval of Class Action Settlement.

2 **II. PROCEDURAL HISTORY**

3 **A. The Allegations Set Forth in the PAGA Notice and Complaint**

4 On June 16, 2020, Plaintiff submitted his written notice under Labor Code § 2699.3 (the
5 “PAGA Notice”) to the California Labor & Workforce Development Agency (“LWDA”) and
6 Defendant. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 3. As set forth in the PAGA
7 Notice, Plaintiff alleges that Defendant failed to adhere to Labor Code § 226(a)’s mandate that
8 employers identify all applicable hourly rates in effect during the pay period and corresponding
9 number of hours worked on the wage statements issued to hourly employees. *Id.* More
10 specifically, Plaintiff alleges that, when shift differential wages or any form of additive pay were
11 paid, Defendant’s wage statements did not identify the applicable hourly rate or number of hours
12 worked used to calculate shift differential wages. *Id.* Rather, Plaintiff alleges that the wage
13 statements only identified the amount paid. *Id.*

14 On June 29, 2020, Plaintiff filed a complaint in this Action in the Sacramento County
15 Superior Court. Gavron Decl. ¶ 4. The complaint alleges class and representative PAGA claims
16 for violation of Labor Code § 226(a), and violation of California Labor Code §§ 2698, *et seq.*,
17 based on the same facts. *Id.* Plaintiff seeks statutory and civil penalties under the California
18 Labor Code and the PAGA, as well as attorneys’ fees and costs. *Id.*

19 On July 12, 2021, Plaintiff filed a First Amended Complaint broadening his Labor Code
20 § 226(a) claims against Defendant. Gavron Decl. ¶ 5. Specifically, Plaintiff alleged that
21 Defendant also failed to identify the applicable rate of pay and number of hours worked
22 whenever any form of additive pay was disbursed to employees. *Id.* The First Amended
23 Complaint is the operative complaint (“Complaint”). *Id.*

24 **B. The Parties Participate in Private Mediation**

25 In advance of the mediation, the Parties engaged in informal discovery, which allowed
26 Plaintiff to conduct a full damage analysis. Gavron Decl. ¶ 6. Defendant provided informal data
27 and information pertaining to the putative class size, the number of aggrieved employees, and the
28 number of wage statements at issue.

1 On January 19, 2021, the Parties participated in an all-day mediation session with neutral
2 Steve Serratore, Esq. Gavron Decl. ¶ 7. After a full day of negotiation, the Parties were not
3 initially able to resolve their dispute. *Id.* Thereafter, with the aid of continuing discussions, the
4 Parties were able to reach an agreement for settlement and the key terms with the assistance of a
5 mediator's proposal. *Id.* ¶ 7.

6 C. Summary of the Proposed Settlement

7 The material terms of the settlement are memorialized in the Settlement Agreement and
8 Release ("Settlement Agreement" or "SA"), a true and correct copy of which is attached as
9 **Exhibit A** to the Declaration of Max W. Gavron.

10 The proposed Class consists of "all current and former non-exempt employees employed
11 by Defendant in California who received shift differential wages and/or any form of additive pay
12 from April 6, 2019 through September 10, 2020." SA ¶ A.5. Defendant represents that there are
13 382 Class Members. SA ¶ B.29. Class Members received 8,932 wage statements reflecting the
14 payment of shift differential and/or additive pay wages during from April 6, 2019 through
15 September 10, 2020. SA ¶ B.29. If the number of wage statements during that period increases
16 by more than 10%, so too will the total settlement amount by the same number of percentage
17 points, up to a maximum of \$25,000.00, after which the Parties will meet and confer. *Id.*

18 The Settlement Agreement provides for the Class Settlement Amount of Four Hundred
19 Fifty Thousand Dollars (\$450,000.00). SA ¶ A.6. The amount allocated to each Class Member
20 will be based on the number of pay periods during which the employee received shift
21 differential or additive pay through preliminary approval. SA ¶ B.18.b and ¶ A.31. This is fair,
22 as it directly allocates greater recovery to individual Class Members who have allegedly
23 suffered greater harm. Gavron Decl. ¶ 14.

24 Additionally, the Settlement Agreement allocates Forty Thousand Dollars (\$40,000.00)
25 of the Class Settlement Amount to PAGA penalties. SA ¶ A.20. Pursuant to the PAGA, 75% of
26 this amount, i.e. the sum of Thirty Thousand Dollars (\$30,000.00), shall be paid to the LWDA.
27 *Id.* The remaining 25%, i.e. the sum of Ten Thousand Dollars (\$10,000.00), shall be distributed
28 to Class Members. *Id.*

As part of the Settlement Agreement, Defendant does not object to Plaintiff's Counsel's request for attorney's fees up to thirty-five percent of the Class Settlement Amount, i.e. the sum of One Hundred Fifty-Seven Thousand Five Hundred Dollars (\$157,500.00), plus up to Twenty Thousand Dollars (\$20,000.00) for reimbursement of actual litigation costs, subject to the Court finally approving this Settlement. SA ¶ B.5. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for an Incentive Award of Ten Thousand Dollars (\$10,000.00). SA ¶ B.4. Both Plaintiff and Class Counsel expressly acknowledge that the Court has final discretion in any fee award or Class Representative Incentive Award. *See* SA ¶¶ B.4., B.5.

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. SA ¶ B.6. The Parties have received a quote from Phoenix Settlement Administrators for a fee of approximately Seven Thousand, Nine Hundred and Fifty Dollars (\$7,950.00) to administer the settlement. *Id.* Should the actual costs incurred exceed \$7,950.00, any excess amount shall be paid from the Class Settlement Amount. *Id.*

III. THE PROPOSED SETTLEMENT WARRANTS COURT APPROVAL

A. Two-Step Approval Process

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections.

The *Manual for Complex Litigation, Third* § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995). Thus, the preliminary approval by the trial court is simply a

conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002).

The procedures for the parties’ submission of a proposed settlement for preliminary approval by the court also are discussed in *Newberg on Class Actions*:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint Settlement Agreement of settlement, which is submitted to the court for preliminary approval. The Joint Settlement Agreement should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Settlement Agreement fully setting forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Class Members’ individual settlement payments. *See* SA ¶ 18.b.

B. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F.Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F.Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*

1 *Antitrust Litig.*, 472 F.Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
2 *& Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

3 While the recommendations of counsel proposing the settlement are not conclusive, the
4 Court can properly take them into account, particularly where, as here, they have been involved
5 in significant discovery and negotiations for some period of time, appear to be competent, have
6 experience with this type of litigation, and have exchanged substantial evidence from the
7 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat’l Rural Telecomms. Coop.*,
8 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125
9 (S.D.N.Y. 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved,
10 however, a strong initial presumption of fairness attaches to the proposed settlement...[citations]
11 and ‘great weight’ is accorded to the recommendations of counsel, who are most closely
12 acquainted with the facts of the underlying litigation”)).

13 Here, both Class Counsel and Defense Counsel have a great deal of experience in wage
14 and hour class action litigation. Gavron Decl. ¶ 28. Class Counsel has been approved as class
15 counsel in a number of wage and hour class actions and have extensive litigation experience.
16 Gavron Decl. ¶¶ 31-37; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of
17 William Marder (“Marder Decl.”) ¶¶ 4-11. Moreover, as discussed above, Class Counsel
18 conducted a very extensive investigation of the allegations involved in this case since its
19 inception. Gavron Decl. ¶¶ 2-10. Each side has apprised the other of their respective factual
20 contentions, legal theories and defenses, resulting in extensive arm’s length negotiations taking
21 place among the Parties. *Id.* ¶¶ 6-10.

22 The settlement for each Class Member is fair, reasonable, and adequate, given the
23 inherent risks of litigation, including the substantial risks relative to class certification, and the
24 costs of pursuing such litigation. *See* Section III-C, *infra*. Despite the asserted fairness of the
25 settlement terms, as set forth in the Notice of Class Action Settlement (“Settlement Class
26 Notice”), should any Class Member wish to pursue his or her own case for the claims being
27 released herein, each Class Member has the right to submit a request for exclusion (*i.e.*, opt-out)
28 from the settlement. *See* SA, Ex. A. Moreover, as set forth in the Settlement Class Notice, Class

Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the proposed Settlement Agreement. *See id.*

C. The Settlement Meets the *Kullar* Factors

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. 168 Cal.App.4th 116, 130, 133 (2008). As discussed herein, Class Counsel have conducted meaningful investigation and, in light of the strength and weaknesses of the Class' claims, counsel submits that this settlement is fair pursuant to *Kullar*.

1. Strengths and Weaknesses of the First Cause of Action for Violation of Labor Code § 226(a)

Although Plaintiff believes that a class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the theories alleged in the operative Complaint, the possibility of non-certification and potential for appeals. Gavron Decl. ¶ 27; Lee Decl. ¶ 3; Marder Decl. ¶ 3.

Among other things, Defendant has argued that any alleged omission of information from the wage statements was not a "knowing and intentional failure" by Defendant to comply with Labor Code § 226(a), and penalties are therefore unwarranted. Gavron Decl. ¶ 8; *see Harris v. Vector Mktg. Corp.*, 656 F.Supp.2d 1128, 1145-46 (N.D. Cal. 2009) (summary adjudication warranted on Section 226(e) claim where record lacked evidence that conduct was knowing or willful); *Woods v. Vector Mktg. Corp.*, 2015 U.S. Dist. LEXIS 67303, at *8-9, *12-14 (N.D. Cal. May 22, 2015) (finding that when the defendant made a good faith claim that the employee was properly classified as exempt its failure to provide accurate wage statements was not knowing and intentional). Defendant also argued that it was not required to identify the rate or hours for shift differentials and/or additive pay. *See, e.g., Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 680 (9th Cir. 2021) (addressing whether employer was required to identify rate and hours for overtime adjustment payment).

1 **2. Strengths and Weaknesses of the Second Cause of Action for PAGA**
2 **Penalties**

3 For the purpose of PAGA liability, a plaintiff need not establish the “knowing and
4 intentional” and “injury” elements of Labor Code § 226(e) to prevail. *See Lopez v. Friant &*
5 *Associates, LLC*, 15 Cal.App.5th 773, 784-85 (2017). Nonetheless, the trial court has the
6 discretion to reduce PAGA civil penalties “if, based on the facts and circumstances of the
7 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
8 or confiscatory.” *See* Cal. Labor Code § 2699(e)(2); *Delgado v. New Albertson’s, Inc.*, 2010 WL
9 11507599 at *7 (C.D. Cal. Mar. 15, 2010) (explaining that court’s discretion to reduce penalties
10 under PAGA protects defendants from unconstitutionally excessive penalties); *Carrington*, 30
11 Cal.App.5th at 529 (affirming reduction of PAGA penalties where the trial court found the
12 reduction was warranted based on the employer’s “good faith attempts” to comply with the
Labor Code and “because the court found the violations were minimal”).¹

13 Plaintiff further recognizes that Defendant could make a persuasive argument at trial that
14 the penalties herein should be substantially reduced. Gavron Decl. ¶ 25. Thus, for comparison
15 purposes, the following are some examples of PAGA awards, which were awarded after an
16 actual trial. Just very recently, in the matter of *Magadia v. Wal-Mart Assocs. et al.*, while the trial
17 court imposed substantial PAGA penalties upon the defendant, such amount still represented
18 reductions of 67% and 80% of the potential PAGA penalties at issue. 384 F.Supp.3d 1058, 1069
19 (N.D. Cal. 2019), *reversed* *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 680 (9th Cir.
20 2021). Thereafter, on appeal, the Ninth Circuit reversed the award completely. *Magadia*, 999
21 F.3d at 680. Similarly, in *Fleming v. Covidien, Inc.*, while plaintiff ultimately prevailed in a
22 PAGA trial predicated on a violation of Labor Code § 226(a), the Court assessed only 17% of the
23 maximum penalties. 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011). Gavron Decl. ¶

24
25
26 ¹ As the California Supreme Court and Court of Appeal have held, the purpose of PAGA is not to
27 seek wages or recovery for the individual employees. *Arias v. Superior Court*, 46 Cal.4th 969,
28 986 (2009) (holding that an action to recover civil penalties “is fundamentally a law enforcement
action designed to protect the public and **not** to benefit private parties”) (emphasis added);
Brown v. Ralphs Grocery Co., 197 Cal.App.4th 489, 1499 (2011).

25. Thus, the possibility of a reduction or complete reversal of PAGA penalties is real and substantial.

3. The Maximum Penalties

Based on the class data provided by Defendant, Plaintiff estimated that Defendant would face potential liability of up to approximately \$893,200 for Plaintiff's class claims, pursuant to Labor Code § 226(e) if Plaintiff succeeded at trial (8,932 wage statements x \$100 per violation). Gavron Decl. ¶ 22. Plaintiff was able to estimate the potential damages and penalties based on data provided by Defendant, including the number of employees in the putative class and the number of wage statements at issue. *Id.* Specifically, the amount of Labor Code § 226(e) penalties is based on 8,932 deficient wage statements. *Id.*

With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated that Defendant could face civil penalties of up to a maximum of approximately \$2.2 million if Plaintiff were successful at trial, which is premised on a \$250 penalty per wage statement. *Id.* ¶ 24. However, even assuming Plaintiff ultimately prevailed on his PAGA claim, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal.App.5th 504 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see also Magadia*, 999 F.3d at 680 (entirely reversing award of PAGA penalties on appeal).

Thus, based on the class data provided by Defendant, Plaintiff's counsel estimated total penalties to be approximately \$3 million. Gavron Decl. ¶ 26. Therefore, Plaintiff's settlement of \$450,000.00 is approximately 15% of the total estimated liability, which is an outstanding result and consistent with other class settlements.

Numerous courts have held that **gross** settlements approximating between only 8 and

25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24% was reasonable).

D. An Analysis of the Terms of the Settlement Agreement

1. Nature of Any Injunctive Relief

The Settlement Agreement does not provide for any injunctive relief.

2. Amount and Manner of Distribution of the Compensation to be Provided to Class Members, Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement Agreement provides for a Class Settlement Amount of \$450,000.00. The Net Settlement Amount (calculated after deduction of the approved Incentive Award, LWDA’s portion of the PAGA Allocation, Settlement Administrator’s Costs, and Attorneys’ Fees and Costs) will be paid to all Class Members who do not opt out of the settlement. SA ¶ A.18. Class Counsel estimates that the Net Settlement Amount will be approximately \$224,550.00. Gavron Decl. ¶ 19.

1 Based on the anticipated Net Settlement Amount, on a pure raw average, each Class
2 Member will receive approximately \$587.83 each. Gavron Decl. ¶ 20. The amount allocated to
3 each Class Member will be based on the number of qualifying pay periods during which the
4 individual received shift differential or additive pay during the Settlement Class Period. *See* SA ¶
5 B.18.b. The amount any particular Class Member will be entitled to recover will be greater or
6 lower than this average, depending on his or her number of qualifying pay periods and the
7 number of opt-outs received.

8 **3. Whether, and Under What Circumstances, Amounts Available for**
9 **Payment in Settlement Might Not Be Paid to Class Members or Might**
10 **Revert to the Defendant**

11 This is a non-reversionary settlement as the entirety of the settlement amount will be fully
12 paid out. *See* SA ¶ B.2. Any individual settlement payments to Settlement Class Members that
13 remain un-cashed within one hundred eighty (180) days of the mailing of settlement payment
14 checks by the Settlement Administrator will be distributed to *cy pres* recipient Legal Aid at
15 Work. *See* SA ¶¶ A.32., B.2., B.18.f. Prior to the expiration date, the Settlement Administrator
16 shall mail a reminder postcard to the Settlement Class Members to ensure they cash the
17 settlement check. SA ¶ B.18.e.

18 **4. Scope of the Release of Class Members' Claims**

19 The scope of the release, as listed below, is identified in the Settlement Agreement at
20 Paragraph B.20., as well as in the Settlement Class Notice that will be sent to Class Members:

21 any claims, causes of action, damages, wages, benefits, expenses, penalties, debts,
22 liabilities, demands, obligations, attorney's fees, costs, and any other form of
23 relief or remedy in law or equity arising from the Action and any claims asserted
24 or that could have been asserted based on the factual allegations contained in the
25 Complaint, during the Released Claims Period as described in Sections B.20 and
26 B.21, including claims for (1) failure to furnish accurate itemized wage statements
27 or provide fully and accurately itemized wage statements pursuant to Labor Code
28 § 226; and (2) civil penalties premised on a violation of Labor Code § 226
pursuant to the California Private Attorney Generals Act, California Labor Code §
2698, *et seq.* ("PAGA").

As shown, the scope of the release is narrow and is limited to the claims asserted in the operative
Complaint.

1 **5. Tax Treatment of Settlement Amounts**

2 The Settlement Agreement provides that all settlement payments to Class Members shall
3 be treated as 100% non-wage penalties. *See* SA ¶ B.19.b. The Settlement Administrator will
4 issue distribute appropriate IRS tax forms. *Id.*

5 **6. Affirmative Obligations to be Undertaken by Class Members or Class**
6 **Counsel and the Reasons for Any Such Obligations**

7 Class Members do not need to do anything should they wish to receive their share of the
8 Net Settlement Amount. SA ¶ B.3. Thus, this substantially decreases the burden each Class
9 Member must bear to receive his/her settlement share. If a Class Member does not wish to take
10 part in this settlement and be bound by the release, he/she must submit Request for Exclusion.
11 SA ¶ B.13. Such obligations are thoroughly identified in the Settlement Class Notice. *See* SA,
12 Ex. A.

13 **7. Notice to Class Members**

14 Within fourteen (14) calendar days of preliminary approval of this Settlement by the
15 Court, Defendant will transmit to the settlement administrator for each Class Member (i) full
16 name; (ii) last known mailing address; (iii) telephone number; (iv) Social Security Number; and
17 (v) number of pay periods during which shift differential or additive pay was paid during the
18 Class Period (“Class List). *See* SA ¶ B.12.a. After receipt of the Class List and prior to mailing,
19 the Settlement Administrator shall perform a search based on the National Change of Address
20 Database or other similar service for information to update and correct for any known or
21 identifiable address changes. *Id.* ¶ B.12.c. Within fourteen (14) business days after receiving the
22 Class Data, the Settlement Administrator shall mail a Notice of Class Action Settlement
23 (“Settlement Class Notice”) to all Class Members via regular First-Class U.S. Mail, using the
24 most current, known mailing address. *Id.* Class Members will be provided forty-five (45)
25 calendar days to opt out or object to the settlement. SA ¶¶ B.13.a., B.14.b. Further, Class
26 Members will be notified of the final approval hearing and will have an opportunity to appear at
27 the Fairness hearing. SA, Ex. A.
28

1 **E. Attorneys’ Fees and Litigation Costs**

2 California state and federal courts have recognized that an appropriate method for
3 determining award of attorneys’ fees is based on a percentage of the total value of benefits to
4 Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
5 (2001); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*,
6 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
7 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread
8 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
9 bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

10 Under California law, the award of attorneys’ fees in common fund wage and hour class
11 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1
12 Cal.5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state
13 courts in holding that when class action litigation establishes a monetary fund for the benefit of
14 the class members, and the trial court in its equitable powers awards class counsel a fee out of
15 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
16 percentage of the fund created”). Under the percentage of the fund method, the Court’s objective
17 remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
18 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is
19 to set it at a level that will approximate what the market will set....The judge, in other words, is
20 trying to mimic the market in legal services”).

21 An award of 35% of the fund in attorneys’ fees mimics the marketplace as it “is
22 supported by the fact that typical contingency fee agreements provide that class counsel will
23 recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*
24 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. Jul. 21, 2008) (citing
25 *Brickman, Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
26 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, “empirical studies [that]
27 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*
28 *Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008).

1 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
2 percent of the fund. 1 Cal.5th at 506. And this was based on a lodestar amount that required a
3 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high
4 or low [should] the trial court [] consider whether the percentage method should be adjusted so
5 as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

6 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
7 percent of the common fund is consistent with, and in the range of, awards in other class action
8 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal.App.4th 860, 871 (2014). Here, the fee award
9 representing 35% of the fund clearly falls within that range and is consistent with other
10 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An Empirical*
11 *Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
12 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were
13 between 25 percent and 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action*
14 *Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010)
15 (independent studies of class action litigation nationwide conclude that fees representing one-
16 third of the total recovery is consistent with market rates).

17 The results delivered by Class Counsel also support the requested percentage of the fund.
18 Here, the Parties have agreed to a payment of a maximum of 35% of the Class Settlement
19 Amount for payment to Class Counsel as attorneys’ fees. The Parties have agreed to a payment
20 of the foregoing attorney’s fees and, thus, this payment should be presumed to be fair. Further, it
21 is not uncommon for courts to award attorneys’ fees of approximately one-third of the settlement
22 amount in wage and hour class action settlements. For example, in *McKinnon v. Best Buy Co.,*
23 *Inc.*, (Alameda Superior Court Case No. RG03082294), the court awarded over \$9 million as
24 attorneys’ fees, which was 33% of the Class Settlement Amount of \$26.9 million. The requested
25 fee amount here is reasonable given the favorable outcome, and the authorities cited above.

26 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs.
27 Class Counsel have, at their own risk, expended costs, for example, to file this instant action,
28 effect service of process, and pay other litigation related costs. Lee Decl. ¶ 5. Based on the

1 foregoing, the Court should preliminarily approve the attorney’s fees and costs being requested
2 by the Parties.

3 **F. The Settlement Administration Fees**

4 The Parties have agreed to payment of \$7,950.00 to the Settlement Administrator,
5 Phoenix Settlement Administrators, to send notices and to administer this settlement. SA ¶ A.28;
6 Gavron Decl. ¶ . Phoenix Settlement Administrators is a well-recognized class action settlement
7 administrator. The Parties believe that the administration fee is reasonable and should be
8 approved. Gavron Decl. ¶ 18.

9 **G. Proposed Payment to Class Representative**

10 Plaintiff requests an incentive award of Ten Thousand Dollars (\$10,000.00). *See* SA ¶
11 A.16. Plaintiff met with Class Counsel to discuss the case, provide documents and information to
12 Class Counsel, and review the Settlement Agreement. *See* Declaration of Edward Alcantar
13 (“Alcantar Decl.”) ¶ 4. In addition to the invaluable services that Plaintiff provided, he also took
14 significant risks, both professionally and monetarily, in acting as the Class Representative and
15 seeking benefits on behalf of the Class. Furthermore, because the claims alleged by the class
16 representative involved the payment of costs to the prevailing party, Plaintiff could have possibly
17 faced paying the fees and costs of Defendant, had he not prevailed in this action.

18 Further, given that future employers are much less likely to hire individuals who have
19 filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
20 prejudice in the future from other potential employers. Plaintiff took this risk upon himself and
21 the whole class benefited from these risks taken by Plaintiff. Class Members did not have to file
22 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did
23 they have to face the potential for retaliation and not getting future employment had they filed a
24 public lawsuit.

25 Notably, courts have routinely granted approval of representative enhancements for far
26 greater amounts than the \$10,000.00 sought by Plaintiff in this case. *See, e.g., Van Vranken v.*
27 *Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
28 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)

(two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in ERISA case). Here, Plaintiff requests an incentive award of \$10,000.00, which is reasonable and consistent with case law.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASS

A. Procedures for Settlement Before Class Certification

The Parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class—conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001); *Accord Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).² As further explained by Professor Newberg:

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal...may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary Settlement Class Members, the proposed settlement, and the class counsel’s application for fees and expenses.

4 Newberg on Class Actions § 11.26.

In addition to such terms as class identification, settlement amount, and payment

² In determining the fairness and reasonableness of a proposed settlement, California courts may look to federal cases for guidance. *See Wershba*, 91 Cal.App.4th at 239-40.

1 procedures, the Settlement Agreement reached among the Parties contains a provision pursuant
2 to which the Parties stipulate to the Court’s provisional certification of the Class, but do so for
3 the purposes of this settlement only. SA ¶ B.9.

4 **B. The Proposed Class Meets all Certification Requirements**

5 **1. The Class is Ascertainable and Sufficiently Numerous**

6 The Class that Plaintiff seeks to conditionally certify is ascertainable. “Class members are
7 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
8 reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334 (2008); *see also*
9 *Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal.App.4th 220, 240 (2013) (same). Here, members of
10 the Class are readily identifiable. Defendant has determined that there are approximately 382
11 individuals that comprise the Class. Gavron Decl. ¶ 12. Furthermore, the Class is sufficiently
12 numerous. Courts generally find that numerosity is satisfied if the class includes forty or more
13 members. *See Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014); *see*
14 *also Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir.) (noting, in dicta, that the court
15 “would be inclined to find the numerosity requirement...satisfied solely on the basis of [39]
16 ascertained class members”), *vacated on other grounds*, 459 U.S. 810 (1982).

17 **2. There are Common Questions of Law and Plaintiff’s Claims are**
18 **Typical of the Class**

19 The commonality requirement is met when there are questions of law and fact common to
20 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
21 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
22 facts couple with disparate legal remedies within the class”). Commonality requires only that
23 some common legal or factual questions exist; the plaintiffs need not show that all issues in the
24 litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 473 (1981)
25 Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior*
26 *Court*, 12 Cal.3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal.3d 800, 812-13 (1971).
27 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the
28 class wide impact of the Defendant’s policies satisfies the commonality requirement. *See*

1 *Stephens v. Montgomery Ward & Co.*, 193 Cal.App.3d 411, 421 (1987).

2 Plaintiff alleges that Defendant, as a matter of its corporate policy and procedure,
3 violated the Labor Code by its uniform policy of furnishing wage statements that do not identify
4 “all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate.” *See* Cal. Lab. Code § 226(a). Plaintiff, like all of the other
6 Class Members, and was not provided compliant wage statements. *See* Alcantar Decl. ¶ 3. Thus,
7 Plaintiff’s claims are typical to those of the Class Members.

8 **3. Plaintiff and Class Counsel Have Adequately Represented the Class**

9 The adequacy requirement is also met. “Adequacy of representation depends on whether
10 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
11 are not antagonistic to the interests of the class.” *McGhee v. Bank of Am.*, 60 Cal.App.3d 442,
12 450 (1976). Here, Plaintiff does not have any interests adverse to the Class, nor have any such
13 issues been raised or presented. Alcantar Decl. ¶ 5. Plaintiff has taken all necessary steps to
14 represent the interests of the Class, by providing information and documents. *Id.* ¶¶ 6-7. For such
15 reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

16 Further, as detailed in their declarations, Class Counsel are experienced and well-
17 qualified class action litigators who have litigated many wage and hour class actions and have
18 each been certified as class counsel in numerous other class actions, particularly wage and hour
19 class actions. Gavron Decl. ¶¶ 28-37; Lee Decl. ¶¶ 6-8; Marder Decl. ¶ 4-11. From the inception
20 of the case, Class Counsel have solely represented the interest of the Class. For example, Class
21 Counsel expended significant time and resources reviewing the pleadings, meeting and
22 conferring with defense counsel, calculating and analyzing the potential range of recoverable
23 penalties, preparing for and attending mediation, negotiating the terms of the Settlement, and
24 drafting the Settlement Agreement. Gavron Decl. ¶¶ 2-26. Finally, the settlement was obtained
25 for the benefit of the Class, not for the individual Plaintiff. *Id.* ¶ 2.

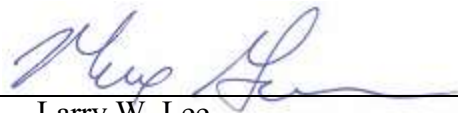
26 **V. CONCLUSION**

27 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
28 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the

1 result of informed, extensive, and arm's length negotiations conducted by counsel for the
2 respective Parties who are experienced in wage and hour class action litigation. For the foregoing
3 reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed
4 settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of
5 Class Action Settlement, and set a date for a final approval hearing.

6
7 DATED: August 3, 2021

DIVERSITY LAW GROUP, P.C.

8
9 By: 
10 Larry W. Lee
11 Max W. Gavron
Attorneys for Plaintiff, the Class, and Aggrieved
Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On August 3, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
- 14 **2. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
15 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
16 **SETTLEMENT**
- 17 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
18 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 19 **4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
- 22 **5. DECLARATION OF EDWARD ALCANTAR IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
- 25 **6. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
26 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

27 on the interested parties in this action as follows:

28 Barbara Antonucci
bantonucci@constangy.com
Sarah K. Hamilton
shamilton@constangy.com
Constangy, Brooks, Smith & Prophete, LLP
601 Montgomery Street, Suite 350
San Francisco, California 94111

1 *Attorney for Defendant Aerojet Rocketdyne, Inc.*

2 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
3 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
4 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
5 indicated above or on the attached mailing list. I certify that said electronic transmission was
6 completed and that all pages were received by the party(ies) identified herein or on the attached
7 mailing list.

8 I declare under penalty of perjury under the laws of the State of California that the
9 above is true and correct. Executed on August 3, 2021, at Los Angeles, California.

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11 Erika Mejia
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