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

IVAN OCHOA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MEGGITT SAFETY SYSTEMS, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 56-2021-00555117-CU-OE-VTA

*[Assigned for all purposes to Hon. Benjamin
Coats, Dept. 43]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 10, 2024
Time: 8:30 a.m.
Dept.: 43

Complaint Filed: January 29, 2021
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 10, 2024, at 8:30 a.m. in Department 43 of the above-entitled Court, located at 800 South Victoria Avenue, Ventura, California 93009, Plaintiffs Ivan Ochoa and Gene Caplinger (“Plaintiffs”) individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All current and former non-exempt employees employed by Defendant Meggitt Safety Systems, Inc. in California from August 4, 2016 through the date of preliminary approval of the Settlement (the “Class Period”).
3. Preliminary appointment of Plaintiffs Ivan Ochoa and Gene Caplinger as Class Representatives;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit Class Representative Service Awards to Plaintiffs, civil penalties payable to the LWDA, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
2 Authorities; the declarations of Paul K. Haines, Sean M. Blakely, Alexandra R. McIntosh, and
3 any exhibits attached thereto; the declarations of Plaintiffs Ivan Ochoa and Gene Caplinger; the
4 declaration of Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
5 thereto; the Settlement Agreement; the pleadings and other papers filed in this action; and on any
6 further oral or documentary evidence or argument presented at the time of hearing.

7 Defendant does not intend to oppose this Motion, and given the multiplicity of issues
8 addressed in this Motion, has indicated its approval of Plaintiffs' expressed need to exceed the
9 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiffs request the
10 Court's consideration of Plaintiffs' memorandum of points and authorities, which is 29 pages in
11 length.

12
13 Dated: December 15, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

14
15 By:



16 Paul K. Haines
17 Sean M. Blakely
18 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ivan Ochoa and Gene Caplinger (hereinafter “Plaintiffs”) brought this class and
4 representative action for various wage and hour violations on behalf of current and former non-
5 exempt employees of Defendant Meggitt Safety Systems, Inc. (“Meggitt”) in California from
6 August 4, 2016 through the date of preliminary approval (the “Class Period”). Plaintiffs’ primary
7 allegations are that Meggitt: (1) failed to pay all overtime wages; (2) failed to pay all minimum
8 wages, (3) failed to provide all legally compliant meal periods, and (4) failed to authorize and
9 permit all legally compliant rest periods. Based on these alleged wage and hour violations,
10 Plaintiffs also brought derivative claims for alleged waiting time penalties, Meggitt’s alleged
11 failure to issue accurate and compliant wage statements, and for civil penalties under the Private
12 Attorneys General Act (“PAGA”).¹

13 Plaintiffs now respectfully request that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Meggitt has agreed to pay Five
15 Million Dollars and Zero Cents (\$5,000,000.00) to the following Settlement Class:

16 All current and former non-exempt employees employed by Defendant
17 Meggitt Safety Systems, Inc. in California from August 4, 2016 through
18 the date of preliminary approval of the Settlement (the “Class Period”).

19 If the Settlement is approved, Meggitt will pay a non-reversionary Gross Settlement
20 Amount of \$5,000,000.00. After deducting estimated settlement administration costs, Plaintiffs’
21 requested Class Representative Service Awards, the amount designated as PAGA civil penalties,

22 ¹ Plaintiffs’ proposed Third Amended Class and Representative Action Complaint (“TAC”)
23 pleads the following causes of action: (1) failure to pay all overtime wages; (2) meal period
24 violations; (3) rest period violations; (4) wage statement penalties; (5) unfair competition; (6)
25 civil penalties under the PAGA; (7) waiting time penalties; (8) minimum wage violations; (9)
26 failure to issue payment with a compliant instrument; and (10) failure to reimburse employees for
necessary business expenditures.

27 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit A**. The proposed Class Notice and Notice of Estimated Settlement Award are attached
to the Settlement as **Exhibits 1** and **2**, respectively. All defined terms in this motion have the same
definition as that in the Settlement.

1 and requested attorneys' fees and costs, the Net Settlement Amount ("NSA") of approximately
2 \$2,918,833.34 will be distributed to all Settlement Class members who do not opt out of the
3 Settlement based on the proportionate number of workweeks worked by each Settlement Class
4 member during the Class Period. Former employees with standing for waiting time penalties, and
5 employees with standing for wage statement and PAGA civil penalties (subject to a one-year
6 statute of limitations) will receive additional consideration for their release of these penalty
7 claims.

8 Significantly, Settlement Class members do not need to file a claim to reap the financial
9 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
10 unless they affirmatively opt-out. There are approximately 610 Settlement Class members, and
11 **the average payment to participating Settlement Class members is projected to be**
12 **approximately \$4,784.97.** This is an excellent result for Settlement Class members, especially
13 in light of the defenses Meggitt presented and the risks of continued litigation.

14 The proposed Settlement is well within the range of possible approval in light of the
15 significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation,
16 and the tangible monetary benefits to be received by Plaintiffs and the Settlement Class. For the
17 reasons discussed herein, Plaintiffs respectfully request that this Court grant preliminary approval
18 of the Settlement.

19 **II. SUMMARY OF THE LITIGATION**

20 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

21 In operation for more than sixty (60) years, Meggitt is one of the world's leading producers
22 of fire protection and safety systems for aircraft, spacecraft, boats, trains, and missiles. *See*
23 Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff Ivan Ochoa worked for Meggitt
24 as a non-exempt "Repair Technician" and/or "Production Assembler" from approximately
25 November 2016 until approximately August 13, 2021. *See* Declaration of Ivan Ochoa in Support
26 of Approval of Class Action Settlement ("Ochoa Decl."), ¶ 2. Plaintiff Gene Caplinger worked
27 for Meggitt as a non-exempt "Production Worker" from approximately October 14, 1996 until
28 approximately June 11, 2019. *See* Declaration of Gene Caplinger in Support of Approval of Class

1 Action Settlement (“Caplinger Decl.”), ¶ 2.

2 On January 29, 2021, Plaintiff Ochoa filed a Class Action Complaint against Meggitt in
3 Los Angeles County Superior Court, Case No. 21STCV03610, alleging causes of actions for: (1)
4 failure to pay all overtime wages; (2) meal period violations; (3) rest period violations; (4) wage
5 statement penalties; and (5) unfair competition in violation of California Business & Professions
6 Code § 17200 *et seq.* Blakely Decl., ¶ 9. On February 1, 2021, Plaintiff Ochoa sent his PAGA
7 notice letter to the Labor & Workforce Development Agency (“LWDA”). *Id.*; **Exhibit B** (Ochoa
8 LWDA Letter). On April 9, 2021, Plaintiff Ochoa filed a First Amended Class and Representative
9 Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private
10 Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* *Id.* Blakely Decl., ¶ 9. On May
11 28, 2021, pursuant to stipulation by the Parties, this matter was transferred to Ventura County
12 Superior Court and assigned case number 56-2021-00555117-CU-OE-VTA. *Id.* On September
13 19, 2022, Plaintiff Ochoa filed a Second Amended Class and Representative Action Complaint
14 (“SAC”) to add a cause of action for waiting time penalties pursuant to Labor Code §§ 201-203.
15 *Id.*

16 As part of the Settlement, the Parties stipulated to the filing of a Third Amended Class
17 and Representative Action Complaint (“TAC”), adding Plaintiff Caplinger as a named Plaintiff
18 and class representative, and adding causes of action for minimum wage violations, failure to
19 issue payment with compliant instrument, and failure to reimburse for all necessary business
20 expenditures, and adding factual allegations. Blakely Decl., ¶ 10. On December 8, 2023, the
21 Parties submitted a Joint Stipulation for Leave to File Third Amended Class and Representative
22 Action Complaint. *Id.*³

23 **B. PLAINTIFFS’ CLAIMS AND MEGGITT’S DEFENSES**

24 **1. Meal Period Claims**

25 Plaintiffs allege that due to Meggitt’s scheduling policies/practices, first meal periods
26 were frequently late (commencing after the fifth hour of work) because employees’ first meal
27

28 ³ As of the date of the filing of this Motion, the Court has not yet signed the Parties’ Stipulation.
Blakely Decl., ¶ 10.

1 periods were scheduled to commence exactly five hours after their scheduled start time, even
2 though Plaintiffs and other employees often clocked in and began working prior to their scheduled
3 start times. Blakely Decl., ¶ 19. Because first meal periods were scheduled to start exactly at the
4 5-hour mark, and because employees regularly clocked in and began working a few minutes prior
5 to their scheduled start time, Plaintiffs allege that first meal periods were consistently late. *Id.*
6 Plaintiffs further allege that Meggitt failed to provide for second meal periods when Settlement
7 Class members worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 20.

8 Meggitt counters it maintained compliant written meal period policies throughout the
9 Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 19.
10 Meggitt further contends that it always provides employees the opportunity to take meal periods
11 and is not required to ensure they are taken. *Id.*; see *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th
12 1004, 1034 (2012) (rejecting “ensure” standard). Meggitt further argues that employees had the
13 flexibility to take their meal periods when they wanted and were not required to adhere to any
14 rigid schedule pertaining to meal periods. Blakely Decl., ¶ 19. Thus, Meggitt argues that any non-
15 compliant meal periods resulted from lawful employee waiver or choice, rather than any policy
16 and/or practice of Meggitt. *Id.* Meggitt further argues that any first meal period violations were
17 *de minimis* as first meal periods were only late by a few minutes. *Id.* With respect to second meal
18 periods, Meggitt asserts that many employees chose to waive their second meal periods on shifts
19 over 10.0 hours and under 12.0 hours, as they may do under Labor Code § 512(a), so that they do
20 not need to stay at work for an extra unpaid 30 minutes. *Id.*, at ¶ 20. Finally, Meggitt maintains
21 Plaintiffs’ meal period claim is not suited for class certification since individual inquiries would
22 be needed to assess which employees, if any, took non-compliant or missed meal periods, how
23 many meal periods were non-compliant or missed, the reasons why a particular employee did not
24 take a meal period on a particular shift, and for second meal periods, whether they waived the
25 meal period. *Id.*, ¶¶ 19-20.

26 **2. Rest Period Claims**

27 Plaintiffs allege that during a portion of the Class Period, Meggitt failed to authorize and
28 permit compliant off-duty rest periods because Meggitt required employees to remain on

1 company premises during rest periods. Blakely Decl., ¶ 21; *see Augustus v. ABM Security Svcs.,*
2 *Inc.*, 2 Cal.5th 257, 260, 273 (2016) (“During required rest periods, employers must relieve their
3 employees of all work duties and relinquish any control over how employees spend their break
4 time,” just as an employer must relinquish control over employees during meal periods).
5 Specifically, Plaintiffs allege that in November 2019, Meggitt issued a company-wide directive
6 prohibiting non-exempt employees from leaving Meggitt’s premises during rest periods. Blakely
7 Decl., ¶ 21.

8 Meggitt argues that it always maintained and enforced lawful rest period practices during
9 the Class Period, and has, in fact, authorized and permitted all required rest periods to Settlement
10 Class members. Blakely Decl., ¶ 21. Meggitt further alleges that the November 2019 directive
11 was not enforced and that employees did in fact take rest periods off premises. *Id.* Meggitt further
12 contends that, even if it (or individual managers) had required employees to remain on premises,
13 *Augustus* rejected Plaintiffs’ “on premises” theory when it observed that “one would expect that
14 employees will ordinarily have to remain onsite or nearby. *Id.* This constraint, which is of course
15 common to all rest periods, is not sufficient to establish employer control.” *Id.*; *see Augustus,*
16 *supra*, 2 Cal.5th at 270. Meggitt also asserts this claim is not amenable to class treatment as
17 individualized inquiries would be required to determine which employees failed to take a rest
18 period, and the reasons why. Blakely Decl., ¶ 21. These manageability concerns are especially
19 present with respect to rest period claims, Meggitt argues, given that rest periods are not recorded.
20 *Id.*

21 **3. Unpaid Overtime Due to Invalid Alternative Workweek Schedule**

22 Plaintiffs contend that Meggitt adopted an Alternative Workweek Schedule (“AWS”) for
23 certain non-exempt employees whereby Meggitt represented that it would regularly schedule
24 these employees to work four (4) days a week, ten (10) hours per day. Blakely Decl., ¶ 22.
25 However, Plaintiffs contend that many Settlement Class members worked more than the four
26 scheduled days, in contravention of the express terms of the AWS. *Id.* In addition to requiring
27 AWS employees to consistently work more than four (4) days in a workweek, Plaintiffs claim
28 that Meggitt also failed to pay “short-shift premiums” to AWS employees who only worked

1 between 8.01 – 10.0 hours in a workday. *Id.*; see *Huntington Memorial Hospital v. Superior*
2 *Court*, 131 Cal.App.4th 893, 909 (2005) (“In essence, the employer must pay a ‘short-shift
3 penalty’ if AWS employees are required to work fewer hours than scheduled.”).

4 In response, Meggitt maintains that it fully complied with the requirements of the Wage
5 Order and adopted and registered a valid AWS. Blakely Decl., ¶ 22. Meggitt further argues that
6 employees working pursuant to the AWS voluntarily worked additional overtime hours beyond
7 ten (10) hours in a workday, and therefore, Meggitt’s AWS is lawful and no additional overtime
8 wages are owed. *Id.* Furthermore, Meggitt asserts that the AWS claim is not suitable for class
9 certification since individual inquiries would be required to determine which employees are owed
10 unpaid overtime due to the AWS. *Id.*

11 **4. Underpaid Overtime Based on Failure to Include Incentive Pay in**
12 **“Regular Rate” of Pay**

13 Plaintiffs allege that Meggitt failed to pay Settlement Class members all overtime wages
14 owed as a result of its failure to incorporate “President’s Bonus” payments, shift differentials, gift
15 cards, and other payments into employees’ “regular rate” of pay for purposes of calculating
16 overtime wages. Blakely Decl., ¶ 23; see, e.g., *Huntington Memorial Hospital v. Superior Court*,
17 131 Cal.App.4th 893, 902-903 (2005) (discussing regular rate calculation requirements).

18 Meggitt argues that it properly included all forms of remuneration when calculating the
19 regular rate of pay, and therefore, paid all overtime wages to Settlement Class members. Blakely
20 Decl., ¶ 23. Meggitt contends the vast majority of additional payments at issue are discretionary
21 bonuses and/or discretionary end-of-year gifts and thus need not be included in the regular rate.
22 *Id.*; see also 29 C.F.R. § 778.211 (discretionary bonuses need not be included in regular rate); 29
23 C.F.R. § 778.200(a)(1) (excluding from regular rate “sums paid as gifts; payments in the nature
24 of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts
25 of which are not measured by or dependent on hours worked, production, or efficiency.”). Meggitt
26 further argues that Settlement Class members received different types of bonuses and incentive
27 payments throughout the Class Period, creating substantive differences among the Settlement
28 Class members with respect to the incentives received, making class certification unlikely.

Blakely Decl., ¶ 23.

5. Unpaid Wages Due to COVID Temperature Screenings

Plaintiffs allege that following the outbreak of COVID-19, Meggitt implemented a policy of requiring its employees to undergo off-the-clock temperature checks and/or completing symptom questionnaires. Blakely Decl., ¶ 24. Plaintiffs allege that time spent undergoing temperature checks and/or completing symptom questionnaires constitutes “hours worked,” and must be compensated. *Id.*

In response, Meggitt maintains it accurately recorded all time worked by its non-exempt employees and has properly paid all wages owed for all hours worked. Blakely Decl., ¶ 24. Meggitt argues that temperature checks occurred near the time clocks and entrances and resulted in little, if any, off-the-clock time. *Id.* Meggitt also points out that mandatory temperature checks ended in June 2021, thereby cutting off liability for this claim. *Id.* Further, Meggitt asserts individualized inquiries would be required into whether any employee underwent a COVID-19 related temperature check while off-the-clock on any given day, making class certification unlikely. *Id.* This is especially true as any off-the-clock time was not recorded. *Id.*

6. Failure to Reimburse for Necessary Business Expenditures

Plaintiffs allege that Meggitt required Settlement Class members to use their personal cellular phones to communicate with supervisors and other staff. Blakely Decl., ¶ 25. Despite requiring Plaintiffs and Settlement Class members to incur these expenses on a daily basis, Plaintiffs allege that Meggitt failed to reimburse Settlement Class members for these necessary business expenses, in violation of Labor Code § 2802(a) (“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”) *Id.*; *see also Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse use of personal cell phone, even where employee already has “unlimited” plan).

Meggitt maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 25. Meggitt further argues that any expenses incurred by Settlement Class members were extremely minimal, given the wide availability of

low-cost cellular phone plans. *Id.* Meggitt further contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*; see also, e.g., *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”).

7. Wage Statement Violations

Plaintiffs allege that as a result of the unpaid minimum and overtime wages, as well as the unpaid meal and rest period premium wages described above, Meggitt is liable for wage statement penalties. Blakely Decl., ¶ 26. However, Meggitt argues that any alleged wage statement violations were not “knowing and intentional,” and Plaintiffs cannot show that they or other employees “suffer[ed] injury” due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. *Id.* Further, Meggitt contends its wage statements always accurately reflected hours worked and amounts paid as well as all other required information, precluding liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they correctly reflected the hours worked and the pay received...The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 26.

8. Waiting Time Penalties

Plaintiffs allege that as a further result of its failure to pay all wages earned, as well as its failure to pay all meal and rest period premiums, Meggitt is liable for waiting time penalties pursuant to Labor Code §§ 201-203. Blakely Decl., ¶ 27. Meggitt argues that it possesses strong, good-faith defenses to Plaintiffs’ underlying claims, thus precluding recovery of waiting time penalties, which are only available for the “willful” failure to pay wages. *Id.*; see also 8 Cal. Code

1 Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting
2 time penalties under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when
3 an employer presents a defense, based in law or fact which, if successful, would preclude any
4 recovery on the part of the employee.”). Meggitt further asserts that Plaintiffs’ waiting time
5 penalty exposure was grossly inflated as not every former employee experienced the alleged
6 Labor Code violations. Blakely Decl., ¶ 27. Moreover, because the waiting time claim is
7 derivative of Plaintiffs’ underlying wage claims, Plaintiffs would need to overcome Meggitt’s
8 defenses, both as to class certification and on the merits, as to their underlying claims. *Id.*

9 **9. PAGA Civil Penalties**

10 As a result of the foregoing Labor Code violations, Plaintiffs allege that Meggitt is liable
11 for civil penalties under the PAGA. Blakely Decl., ¶ 28. Since Plaintiffs’ PAGA claim is
12 derivative of Plaintiffs’ underlying wage claims, Meggitt asserts the PAGA claim would fail with
13 those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because the
14 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Meggitt further
15 maintains that, given its good-faith defenses, this Court would exercise its discretion to
16 substantially reduce any PAGA penalties if it were to find Meggitt liable for any of Plaintiffs’
17 claims. Blakely Decl., ¶ 28.; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
18 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
19 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
20 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
21 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
22 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

23 **10. Arbitration Agreements**

24 Meggitt contends that approximately 269 Settlement Class members signed arbitration
25 agreements with class action waivers. Blakely Decl., ¶ 29. Therefore, in addition to Meggitt’s
26 defenses as to class certification and on the merits of Plaintiffs’ claims, Meggitt maintains the
27 existence of arbitration agreements for a significant portion of the Settlement Class would further
28 limit Plaintiffs’ classwide recovery. *Id.*

1 **C. DISCOVERY AND MEDIATION**

2 Prior to reaching the Settlement, the Parties engaged in extensive formal discovery.
3 Blakely Decl., ¶ 11. The Parties agreed to attend a mediation with David A. Lowe, a well-
4 respected wage and hour class action mediator. *Id.* In connection with this first mediation, Meggitt
5 provided Plaintiffs with a sampling of timekeeping and payroll records for the putative class, its
6 relevant wage and hour written policies and procedures, as well as a detailed Class List which
7 included all Settlement Class members' hire date, termination date (if applicable), and rate of pay.
8 *Id.* Plaintiffs hired a labor economist with a Ph.D. in economics to assist Plaintiffs in conducting
9 a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by
10 Meggitt to calculate class-wide damages for each of Plaintiffs' claims. *Id.*

11 On January 13, 2022, the Parties participated in a full-day mediation with Mr. Lowe,
12 however, the Parties were not able to reach a settlement. Blakely Decl., ¶ 12. Following the
13 unsuccessful mediation, Plaintiffs propounded multiple sets of written discovery on Meggitt
14 seeking, among other items, contact information for the putative class, timekeeping and payroll
15 records for putative class members, and Meggitt's written policies and procedures. *Id.* The Parties
16 extensively met and conferred regarding Plaintiffs' discovery and Plaintiffs also engaged in
17 motion practice with respect to their discovery requests, which ultimately was resolved without a
18 ruling from the Court. *Id.* The Parties participated in a *Belaire-West* opt-out notice process, and
19 Plaintiffs were provided with the contact information for those employees who did not opt-out of
20 the *Belaire-West* notice process. *Id.* Thereafter, Plaintiffs' Counsel interviewed dozens of
21 employees regarding their work experiences at Meggitt. *Id.* In response to Plaintiffs' formal
22 discovery requests, Meggitt also produced timekeeping and payroll records for a sampling of the
23 putative class, its written wage and hour policies/procedures, and its employee handbooks. *Id.*

24 On March 1, 2023, Plaintiffs took the deposition of Meggitt's Person Most
25 Knowledgeable ("PMK") on a wide array of topics relating to Plaintiffs' claims and Meggitt's
26 wage and hour policies and practices. Blakely Decl., ¶ 13. Additionally, Meggitt served written
27 discovery requests to Plaintiff Ochoa, and Meggitt took a full-day deposition of Plaintiff Ochoa
28 on April 3, 2023. *Id.*

1 After completing this formal discovery, the Parties agreed to attend a second mediation.
2 Blakely Decl., ¶ 14. In connection with this second mediation, Meggitt produced an updated Class
3 List which included employees' hire date and termination date (if applicable). *Id.* Plaintiffs again
4 hired a labor economist with a Ph.D. in economics to assist Plaintiffs in conducting a
5 comprehensive analysis and extrapolation of the payroll and timekeeping data produced by
6 Meggitt to calculate class-wide damages for each of Plaintiffs' claims. *Id.* This discovery allowed
7 the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of
8 Plaintiffs' claims, and Meggitt's potential defenses. *Id.*

9 On May 18, 2023, the Parties participated in a second mediation with Jeffrey A. Ross,
10 Esq., a preeminent wage and hour class action mediator. Blakely Decl., ¶ 15. During mediation,
11 the Parties vigorously debated their opposing legal positions, the likelihood of certification of
12 Plaintiffs' claims, and the legal basis for the claims and defenses. *Id.* Following the second
13 mediation, Mr. Ross made a mediator's proposal for a classwide settlement, which was ultimately
14 accepted by the Parties in July 2023. *Id.* During the months that followed, the Parties finalized
15 the terms of the Settlement and executed the long-form Settlement Agreement now before the
16 court. *Id.* As part of the Settlement, the Parties stipulated to the filing of the TAC, which adds
17 Plaintiff Caplinger as a named Plaintiff and class representative and adds additional causes of
18 action and factual allegations. *Id.*

19 **III. THE PROPOSED SETTLEMENT**

20 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

21 If the Court preliminarily approves the Settlement, Meggitt will pay a Gross Settlement
22 Amount of \$5,000,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary,
23 and no Settlement Class member will have to submit a claim form to receive an Individual
24 Settlement Award. *Id.*, at ¶¶ 3-4. Each Settlement Class member will automatically receive an
25 Individual Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The
26 monetary terms of the Settlement are summarized below:

- | | | |
|----|--|----------------|
| 27 | • Gross Settlement Amount: | \$5,000,000.00 |
| 28 | • Minus Court-approved attorneys' fees: | \$1,666,666.66 |
| | • Minus Court-approved verified costs (up to): | \$80,000.00 |

• Minus Court-approved Service Awards:	\$22,500.00
• Minus amount set aside as PAGA penalties:	\$300,000.00
• <u>Minus estimated Settlement Administration costs:</u>	<u>\$12,000.00</u>
Net Settlement Amount (“NSA”):	\$2,918,833.34
• PLUS 25% “Individual PAGA Amount”:	\$75,000.00
Total Amount Paid to Settlement Class members:	\$2,993,833.34

1. The Settlement Provides for Significant Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, the Class Representative Service Awards to Plaintiffs, the amount designated as PAGA civil penalties, and Settlement Administrator’s fees and expenses, the Settlement requires Meggitt to pay a Net Settlement Amount (“NSA”) of at least \$2,918.833.34 to all Settlement Class members who do not timely opt out. *See* Settlement, ¶ 4(A). The NSA shall be distributed to participating Settlement Class members as follows: Ninety percent (90%) of the NSA shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period. *See* Settlement, ¶ 4(C)(i). Five percent (5%) of the NSA shall be designated the “Waiting Time Amount” and distributed as equal, pro-rata shares to each participating Settlement Class member whose employment with Meggitt ended at any time from August 4, 2017 through the date of preliminary approval of the Settlement. *Id.*, at ¶ 4(C)(ii). Five percent (5%) of the NSA shall be designated as the “Wage Statement Amount” and shall be distributed to each participating Settlement Class member based on their proportionate number of workweeks that he or she worked during the period from August 4, 2019 through the date of preliminary approval. *Id.*, at ¶ 4(C)(iii). In addition to the NSA, Seventy-Five Thousand Dollars (\$75,000.00) of the Gross Settlement Amount has been designated as the “Individual PAGA Amount,” and shall be distributed to those Settlement Class members (including those who submit a valid and timely Request for Exclusion from the class action settlement) who worked for Meggitt from February 1, 2020 through the date of preliminary approval (“PAGA Period”) proportionally based on the number of workweeks worked during the PAGA Period. Settlement, ¶ 4(B).

Based on information from Meggitt, there are approximately 610 Settlement Class members. Blakely Decl., ¶ 18. Therefore, the average Individual Settlement Amount from the

1 NSA is projected to be approximately **\$4,784.97**. *Id.* There are approximately 442 “Aggrieved
2 Employees” who worked during the PAGA Period. *Id.* Therefore, the average payment from the
3 Individual PAGA Amount is estimated to be approximately \$169.68. *Id.*

4 Settlement Class members will have forty-five (45) calendar days from the mailing of the
5 Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the
6 Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C), (D). Settlement
7 Class members who do not opt out of the Settlement will be bound by its terms and will release
8 all claims against Meggitt included within the Settlement. *See Id.*, at ¶ 2(A).

9 **2. Attorneys’ Fees and Costs, Service Awards, and PAGA Amount**

10 Plaintiffs will apply for Class Representative Service Awards at the time of seeking final
11 approval of the proposed class action settlement in the amount of \$15,000 for Plaintiff Ochoa and
12 \$7,500 for Plaintiff Caplinger, for their service to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3),
13 6. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate
14 class representatives for work done on behalf of the class [and] to make up for financial or
15 reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186
16 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval,
17 Plaintiffs’ requested Service Awards are intended to recognize the time and effort Plaintiffs
18 expended on behalf of the Settlement Class, including providing substantial factual information
19 and documents to Class Counsel, discussing the claims and theories at issue in the litigation,
20 actively participating in the prosecution of their claims, as well as the significant risks Plaintiffs
21 undertook by agreeing to serve as the named plaintiffs in this case, and the fact that Plaintiffs
22 agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Settlement,
23 ¶¶ 2(C), 6; Blakely Decl., ¶ 33.; *see also* Ochoa and Caplinger Decs.

24 Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross
25 Settlement Amount, which is currently estimated to be \$1,666,666.66, and up to \$80,000.00 in
26 verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4)-(5), 5; Blakely Decl., ¶ 32. Plaintiffs
27 submit the requested fee is fair compensation for undertaking complex, risky, expensive, and
28 time-consuming litigation on a purely contingent fee basis, and in light of the extensive litigation

1 and formal discovery conducted in this Action. Blakely Decl., ¶ 32. Class Counsel has incurred
2 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims,
3 conducting legal research, propounding to and responding to formal discovery, meeting and
4 conferring regarding discovery, drafting and filing a motion to compel further discovery
5 responses, taking Meggitt's PMK deposition, defending Plaintiff Ochoa's deposition,
6 interviewing Settlement Class members regarding their work experiences with Meggitt, analyzing
7 Settlement Class members' timekeeping and payroll records with the help of a retained expert,
8 creating a comprehensive damages model, preparing for and attending two mediations,
9 negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and
10 otherwise litigating the case. *Id.* Class Counsel expect to expend additional attorney time in
11 attending the hearing on this Motion, overseeing the Notice process and fielding questions from
12 Settlement Class members, preparing the final approval papers, and attending the Final Approval
13 hearing. *Id.*

14 California courts recognize an appropriate method for awarding attorneys' fees in class
15 actions is to award a percentage of the "common fund" created as a result of a settlement. *See*
16 *e.g., Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund
17 method survives in California class action cases"). Class Counsel's request for fees of one-third
18 of the Gross Settlement Amount is well within the range of reasonableness, and indeed is
19 considered the typical rate for common fund settlements. Historically, courts have awarded
20 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See*
21 *Newberg on Class Actions* § 14.6 (4th Ed. 2013).

22 Class Counsel submit their request for attorneys' fees is reasonable when viewed as an
23 overall percentage of the Settlement and in light of the substantial risks and significant work
24 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
25 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
26 and verified costs upon seeking final approval.

27 Additionally, the Parties have agreed to designate \$300,000.00 of the Gross Settlement
28 Amount as PAGA civil penalties, of which \$225,000.00 (75%) will be paid to the LWDA, with

the remaining \$75,000.00 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, ¶ 3(C)(6). Plaintiffs submit this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund settlement).

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the

1 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
2 “The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
3 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
4 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
5 reasonable in light of the overall balance of factors in this case.

6 **a. The Strength of Plaintiffs’ Case**

7 Although Plaintiffs steadfastly maintain that their claims are meritorious, they also
8 acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As
9 described above, Meggitt presented multiple defenses to Plaintiffs’ claims, both on the merits and
10 with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims
11 through class certification, and ultimately trial, success was far from certain.

12 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

13 Although the Parties engaged in significant discovery prior to the second mediation, the
14 Parties still had discovery to complete had the matter not settled. Blakely Decl., ¶ 31. This would
15 have required expenditure of substantial time and resources by both Parties that would have very
16 likely spanned several more years. *Id.* Even if Plaintiffs were to certify the classes, the Parties
17 would incur considerably more attorneys’ fees and costs through a possible decertification
18 motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying
19 expense. *Id.*

20 **c. Risk of Maintaining Class Action Status**

21 Absent settlement, there is a risk that the class would not be certified prior to trial, or, if it
22 were certified, a risk that the class definition would be narrowed and the value of the case
23 diminished accordingly. This would potentially be accomplished either due to a narrowing of the
24 class definition in a Court order on a contested motion for class certification, or through settlement
25 agreements entered into by Meggitt with individual class members by way of *Pick-up-Stix* type
26 settlement agreements, and the expected recovery could be significantly reduced, given the
27 settlement amounts that are typically offered through the *Pick-up-Stix* process. *See Chindarah v.*
28 *Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009). Thus, this factor, too, supports preliminary

1 approval of the settlement.

2 **d. Amount Offered in Settlement Given Realistic Value of Claims**

3 The Settlement provides a positive recovery for the Settlement Class in the face of hotly
4 disputed claims. Plaintiffs, with the help of their retained expert, conducted an analysis of
5 underpaid wages, potential meal and rest period premiums owing, wage statement penalties,
6 waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiffs' exposure
7 analysis are discussed below:

8 First Meal Period Violations: \$1,758,406

9 Based on Plaintiffs' expert's review and extrapolation of Meggitt's timekeeping records,
10 there were approximately 277,523 non-compliant first meal periods during the Class Period.
11 Blakely Decl., ¶ 19. Plaintiffs further calculated that the average hourly rate of pay for Settlement
12 Class members during the Class Period at approximately \$23.52. *Id.* Plaintiffs' analysis further
13 reflected that Meggitt paid approximately 626 meal period premiums during the Class Period. *Id.*
14 Therefore, Plaintiffs estimated total maximum damages for first meal period violations at
15 approximately \$6,512,617 ([277,523 non-compliant meal periods * \$23.52 average meal period
16 premium] - \$14,724 in meal period premiums paid). *Id.*

17 However, as noted above, Meggitt argues that it maintained compliant meal period
18 policies throughout the Class Period and that under *Brinker* it is only required to provide
19 employees the opportunity to take meal periods, not *ensure* that they are taken. Blakely Decl., ¶
20 19. Furthermore, Meggitt argues that Plaintiffs' meal period claim is not suited for class treatment,
21 as individual inquiries would be needed as to which employees took non-compliant meal periods
22 or missed meal periods, how many meal periods were non-compliant or missed, and why a
23 particular employee did not take a compliant meal period on a particular shift. *Id.* Based on these
24 defenses, Plaintiffs discounted the maximum exposure by 40% for risk of non-certification and
25 an additional 55% for risk of losing on the merits or failing to recover the full amount sought, to
26 arrive at an estimated exposure of approximately \$1,758,406. *Id.*

27 Second Meal Period Violations: \$857,998

28 Plaintiffs' analysis and extrapolation of the timekeeping data showed that during the Class

1 Period there were approximately 227,997 total shifts of over 10.0 hours that did not reflect a
2 legally compliant second meal period. Blakely Decl., ¶ 20. Therefore, Plaintiffs estimated total
3 maximum damages for second meal period violations at approximately \$5,362,489 (227,997 non-
4 compliant second meal periods * \$23.52 average meal period premium). *Id.*

5 However, Plaintiffs' theory of liability carried significant risks, based on Meggitt's
6 arguments that they provided employees the opportunity for second meal periods and that
7 Settlement Class members voluntarily waived their second meal period on shifts in excess of 10.0
8 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512(a). Blakely
9 Decl., ¶ 20. Meggitt further argues that Plaintiffs' second meal period exposure is grossly inflated
10 as Plaintiffs already seek a meal period premium for first meal period violations on the majority
11 of all shifts, and Plaintiffs cannot recover more than one meal period premium for each workday.
12 *Id.*; see *United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011)
13 ("[E]mployees in this case may recover up to two additional hours of pay on a single work day
14 for meal period and rest period violations – one for failure to provide a meal period and another
15 for failure to provide a rest period"). In addition, as with first meal periods, Meggitt argues this
16 claim would not be certified as requiring individualized inquiries into both the merits and
17 damages. Blakely Decl., ¶ 20. In light of these risks, Plaintiffs discounted the maximum exposure
18 by 60% for risk of non-certification and an additional 60% for risk of losing on the merits or
19 having exposure reduced to account for Meggitt's waiver arguments, to arrive at an estimated
20 exposure of approximately \$857,998. *Id.*

21 Rest Period Violations: \$756,093

22 Plaintiffs allege that Meggitt failed to authorize and permit off-duty rest periods because
23 it required employees to remain on company premises during rest periods. Blakely Decl., ¶ 21
24 Specifically, Plaintiffs allege that in November of 2019, Meggitt issued a company-wide directive
25 prohibiting non-exempt employees from taking rest periods off premises. *Id.* Based on Plaintiffs'
26 expert's analysis of Meggitt's timekeeping records, Plaintiffs estimate there were approximately
27 229,620 shifts in excess of 3.5 hours from November 25, 2019 to May 2022, when Meggitt revised
28 its rest period policies to explicitly allow employees to leave the premises during rest periods. *Id.*

1 Therefore, Plaintiffs estimate Meggitt's maximum potential exposure for rest period violations at
2 approximately \$5,400,662 (229,620 shifts * \$23.52 average rest period premium). *Id.*

3 However, Meggitt argues that it has always maintained and enforced lawful rest period
4 practices during the Class Period, and has, in fact, authorized and permitted all required rest
5 periods to Settlement Class members. Blakely Decl., ¶ 21. Meggitt further alleges that the
6 November 2019 directive was not enforced and that employees did take rest periods off premises.
7 *Id.* Meggitt further argues that Plaintiffs' rest period claim is not amenable to class treatment,
8 since individual inquiries would be required to determine which employees failed to take rest
9 periods, how many rest periods they failed to take, and whether employees left Meggitt's premises
10 for rest period(s) on each particular shift. *Id.* In light of these defenses, Plaintiffs discounted the
11 maximum exposure by 60% for risk of non-certification and an additional 65% for a risk of being
12 unsuccessful on the merits or of failing to recover the full amount sought, to arrive at an estimated
13 realistic exposure of approximately \$756,093. *Id.*

14 Unpaid Overtime Due to Invalid Alternative Workweek Schedule: \$1,037,509

15 Plaintiffs contend that Meggitt used an Alternative Workweek Schedule ("AWS") to
16 avoid paying a significant amount of daily overtime for Settlement Class members scheduled on
17 a "4 days per week, 10 hours per day" schedule. Blakely Decl., ¶ 22. Based on Plaintiffs' expert's
18 review of employee timekeeping and payroll records during the Class Period, Plaintiffs estimate
19 that AWS employees were paid for approximately 193,347 hours of overtime hours (i.e., hours
20 worked over 8 in a workday) at straight time rather than time-and-a-half. *Id.* Plaintiffs therefore
21 calculate Meggitt's maximum exposure for this theory at approximately \$2,273,761 (193,347
22 hours * \$23.52 avg. rate of pay * 0.5 OT premium). *Id.* Furthermore, Plaintiffs estimate that AWS
23 employees worked approximately 296,784 hours between 8.01 and 10.0 hours for which they
24 were only paid straight time, and where Meggitt failed to pay "short-shift" premiums. *Id.*
25 Therefore, Plaintiffs calculate Meggitt's liability for "short shift" premiums as \$3,490,180
26 (296,784 hours * \$23.52 avg. rate of pay * 0.5 OT premium). *Id.* In total, Plaintiffs estimate that
27 Meggitt's maximum exposure on their AWS claim is approximately \$5,763,941. *Id.*

28 However, as indicated above, Meggitt presented multiple defenses to this claim, including

1 its argument that employees working pursuant to the AWS voluntarily worked additional
2 overtime hours, and therefore, Meggitt's AWS is lawful and no additional overtime wages are
3 owed. Blakely Decl., ¶ 22. Based on Meggitt's defenses, Plaintiffs discounted the maximum AWS
4 exposure by 55% for risk of non-certification and an additional 60% for risk of losing on the
5 merits or failing to recover the full amount sought, to arrive at an estimated exposure of
6 approximately \$1,037,509. *Id.*

7 Unpaid Overtime Due to Regular Rate Miscalculations: \$70,109

8 Plaintiffs allege that Meggitt failed to pay all overtime as a result of its failure to
9 incorporate various payments into the "regular rate" of pay. Blakely Decl., ¶ 23. Based on
10 Plaintiffs' expert's analysis and extrapolation of the payroll data, Plaintiffs calculate the total
11 overtime underpayment as a result of Meggitt's regular rate miscalculations to be approximately
12 \$155,797. *Id.*

13 However, Meggitt argues it included all forms of remuneration in the regular rate of pay
14 and compensated employees properly for all overtime. Blakely Decl., ¶ 23. Meggitt further argues
15 that Settlement Class members received different types of bonuses and payments throughout the
16 Class Period, creating substantive differences among the Settlement Class members with respect
17 to the incentives received, making class certification unlikely. *Id.* In light of these defenses,
18 Plaintiffs discounted the maximum exposure by 25% for the risk of non-certification, and an
19 additional 40% for risk of losing on the merits, and/or not receiving the maximum penalties
20 sought, to arrive at an estimated exposure of approximately \$70,109. *Id.*

21 Unpaid Wages Due to COVID Temperature Screenings: \$56,703

22 Plaintiffs allege that following the outbreak of COVID-19, Meggitt implemented a policy
23 of requiring its employees to undergo temperature checks and/or completing symptom
24 questionnaires prior to clocking in for their shifts. Blakely Decl., ¶ 24. Using a conservative
25 estimate of 5 minutes per shift, Plaintiffs contend that Meggitt's failure to pay for time spent
26 undergoing temperature checks resulted in approximately 8,929 hours (approximately 107,153
27 shifts from April 2020 to June 2021 * 5 min / 60) of unpaid overtime wages, resulting in a
28 maximum exposure of approximately \$315,015 (8,929 hours * \$35.28 avg. overtime rate). *Id.*

1 However, Meggitt maintains it accurately recorded all time worked by its non-exempt
2 employees and has properly paid all wages owed for all hours worked. Blakely Decl., ¶ 24.
3 Meggitt argues that temperature checks occurred near the time clocks and entrances and resulted
4 in little, if any, off-the-clock time. *Id.* In light of these defenses, Plaintiffs discounted the
5 maximum exposure by 55% for the risk of non-certification, and an additional 60% for risk of
6 losing on the merits, and/or not receiving the maximum amount sought, to arrive at an estimated
7 exposure of approximately \$56,703. *Id.*

8 Failure to Reimburse for Necessary Business Expenditures: \$72,223

9 Plaintiffs allege that Meggitt failed to reimburse Plaintiffs and other Settlement Class
10 members for necessary business expenditures, including the use of their personal cellular phones
11 for work activities, as required under Labor Code § 2802. Blakely Decl., ¶ 25. Based on the
12 analysis and extrapolation of Meggitt's records, Plaintiffs estimate that Settlement Class members
13 have worked a total of approximately 25,794 aggregate months during the Class Period. *Id.* Using
14 a conservative estimate of \$20 per month reimbursement for personal cellular phone use,
15 Plaintiffs calculate Meggitt's maximum exposure for this claim at approximately \$515,880 (\$20
16 per month * 25,794 months). *Id.*

17 As noted above, Meggitt maintains that Settlement Class members were not required to
18 use their personal cellular phones as part of their job. Blakely Decl., ¶ 25. Meggitt further argues
19 that any expenses incurred by Settlement Class members were minimal, given the wide
20 availability of low-cost cellular phone plans. *Id.* Meggitt further argues that this claim would
21 require individual inquiries into whether Settlement Class members actually used their personal
22 cellular phones for work purposes, how much expense they incurred, whether they submitted a
23 request for reimbursement, and the reasonableness of that expense, thus precluding class
24 certification. *Id.* Based on these defenses, Plaintiffs discounted the estimated maximum amount
25 by 60% for risk of non-certification, and by an additional 65% to account for risk of losing on the
26 merits or failure to recover the maximal amount sought, to arrive at an estimated exposure of
27 approximately \$72,223. *Id.*

28 Wage Statement Penalties: \$318,240

1 Plaintiffs allege that Meggitt faces derivative wage statement liability as a result of its
2 failure to pay all wages as well as its failure to pay all meal and rest period premium wages.
3 Blakely Decl., ¶ 26. Those penalties are calculated as \$50 for each “initial” violation and \$100
4 for each “subsequent” violation, with a maximum of \$4,000 per employee. *See* Labor Code §
5 226(e). *Id.* In calculating potential exposure for this claim, utilizing the “initial” and “subsequent”
6 violation rates resulted in a number greater than the \$4,000 cap per employee. *Id.* Plaintiffs,
7 therefore, calculated potential wage statement exposure at approximately \$1,768,000 (442
8 employees * \$4,000 max. penalty). *Id.*; *see also* Labor Code § 226(e). *Id.*

9 In light of Meggitt’s arguments that no violations occurred, that employees suffered no
10 “injury,” that any alleged violations were not “knowing and intentional,” that the wage statements
11 always accurately reflected hours worked and amounts paid to employees, as well as risks
12 associated with Plaintiffs’ underlying claims discussed above, Plaintiffs discounted the maximum
13 exposure by 55% for risk of non-certification, and by an additional 60% for risk of being
14 unsuccessful on the merits, for an estimated realistic exposure of approximately \$318,240.
15 Blakely Decl., ¶ 26.

16 Waiting Time Penalties: \$241,324

17 Meggitt’s records reflected approximately 190 former Settlement Class members
18 separated from their employment during the relevant time period and are therefore eligible for
19 waiting time penalties. Blakely Decl., ¶ 27. Based on an hourly rate of \$23.52, Plaintiffs estimated
20 the average waiting time penalty per former employee to be \$5,645 (\$23.52 * 8 hours per day *
21 30 days). *Id.* Therefore, Plaintiffs calculated Meggitt’s maximum exposure for potential waiting
22 time penalties to be approximately \$1,072,550 (190 separated employees * \$5,645 average
23 waiting time penalty). *Id.*

24 Meggitt presented several defenses to this claim, most notably its assertion that because
25 they possessed good-faith defenses to the underlying claims, any failure to pay wages was not
26 “willful” as a matter of law. Blakely Decl., ¶ 27. Meggitt further asserts Plaintiffs’ waiting time
27 penalty exposure was grossly inflated as not every former employee experienced the alleged
28 Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of Plaintiffs’

underlying wage claims, Plaintiffs would need to overcome these defenses, both as to class certification and on the merits, as to their underlying claims. *Id.* To account for these defenses, Plaintiffs discounted the maximum exposure by 50% for the risk of non-certification, and an additional 55% for risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$241,324. *Id.*

PAGA Penalties: \$350,056

Plaintiffs estimated a maximum total PAGA exposure at approximately \$2,857,600 (28,576 violations * \$100 “initial” penalty). Blakely Decl., ¶ 28; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Meggitt vigorously disputes. Blakely Decl., ¶ 28; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Meggitt also asserts the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 28; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs discounted the maximum figure by 65% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 65% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$350,056. Blakely Decl., ¶ 28.

Using these estimated figures for each of the claims described above, Plaintiffs predicted that the potential recovery for the Settlement Class would be approximately \$5,518,661. Blakely Decl., ¶ 30. The proposed Settlement of \$5,000,000.00 therefore represents approximately 90.6% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiffs’ counsel believes could have been recovered had the case

1 proceeded through trial.

2 **e. The Experience and Views of Counsel**

3 “Parties represented by competent counsel are better positioned than courts to produce a
4 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
5 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented
6 by competent, experienced counsel who possess extensive experience prosecuting and defending
7 wage-and-hour class actions, and who have been appointed as class counsel in numerous cases
8 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines
9 Decl.”), ¶¶ 2-8; Declaration of Alexandra R. McIntosh (“McIntosh Decl.”), ¶¶ 2-5. Class Counsel,
10 with the help of a retained expert, conducted an in-depth review of Meggitt’s timekeeping and
11 payroll records and drew on their extensive experience in similar cases to assess the strengths and
12 weaknesses of Plaintiffs’ case. The Settlement was also reached with the assistance of an
13 experienced and respected wage-and-hour class action mediator. This factor strongly supports
14 preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

15 **2. The Preliminary Approval Standard Is Met**

16 At this stage, the Court can grant preliminary approval of the settlement and direct that
17 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
18 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no
19 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
20 Class Actions § 11:24-25 (4th Ed. 2013).

21 **a. The Settlement Is Within the Range of Possible Approval**

22 The proposed settlement reflects approximately 90.6% of the estimated recovery the
23 Settlement Class could reasonably expect in light of the significant litigation risks, and will
24 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
25 percentage of the liability exposure recovered in this case far exceeds percentages routinely
26 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
27 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
28 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement

representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Settlement Award of approximately **\$4,784.97** far exceeds average payments achieved in other wage and hour class action settlements.⁴ Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from nearly three years of litigation, including extensive formal discovery, depositions, motion practice, an exchange of substantial information in connection with mediation, arm's-length negotiations by counsel, two full-day mediations before experienced wage and hour mediators, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See*

⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

1 *Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiffs carefully vetted the claims
2 at issue, propounded and responded to multiple sets of formal written discovery, took the
3 deposition of Meggitt's Person Most Knowledgeable, and reviewed extensive timekeeping and
4 payroll data and conducted a detailed statistical analysis of the data with the help of a retained
5 expert to arrive at their estimated classwide damages figures. *See* Blakely Decl., ¶¶ 19-30. Thus,
6 this factor supports preliminary approval.

7 **c. The Settlement Is Devoid of Obvious Deficiencies**

8 Preliminary approval of the Settlement is also warranted because there are no obvious
9 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
10 members. The amounts proposed for Class Counsel's attorneys' fees and costs, settlement
11 administration costs, LWDA payment, and Plaintiffs' Class Representative Service Awards, are
12 all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
13 obvious deficiencies, this factor supports preliminary approval.

14 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

15 The Settlement Class satisfies the criteria for certification of a settlement class under
16 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
17 (2) common questions of law and fact predominate over individual questions such that class
18 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs'
19 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiffs and their
20 counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ.
21 Proc. § 382.

22 **1. The Proposed Class Is Ascertainable and Numerous**

23 A class is "ascertainable" where the members "may be readily identified without
24 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
25 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
26 defined as all current and former non-exempt employees employed by Meggitt in California
27 during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be
28 identified from Meggitt's personnel and employment records. Based on information provided by

1 Meggitt, the Settlement Class consists of approximately 610 current and former non-exempt
2 employees. *See* Blakely Decl., ¶ 18. It would therefore be impracticable to bring all Settlement
3 Class members before the Court, or for each Settlement Class member to bring an individual
4 lawsuit. The proposed Settlement Class therefore satisfies numerosity. *See, e.g., Bowles v. Sup.*
5 *Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently
6 numerous).

7 **2. Common Issues of Law and Fact Predominate**

8 The focus in a certification dispute is not the merits, but rather on what types of questions,
9 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
10 *Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiffs’ claims are predicated on, among other
11 issues, Meggitt’s uniform meal and rest period policies and/or practices. These types of claims
12 are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network*
13 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

14 **3. The Claims of the Named Plaintiffs Are Typical**

15 The typicality requirement is satisfied where class representatives have claims that are
16 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
17 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
18 same goods as the putative class in a consumer class action). Here, Plaintiffs’ claims are typical
19 of those held by the Settlement Class members. First, Meggitt employed Plaintiffs as non-exempt
20 employees during the Class Period, and Plaintiffs were subject to Meggitt’s wage and hour
21 policies at issue in this case. *See* Ochoa Decl., ¶ 2; Caplinger Decl., ¶ 2. Second, Plaintiffs were
22 injured by the same challenged policies/practices that allegedly injured the Settlement Class as a
23 whole. For example, Plaintiffs assert that they were deprived of all overtime wages due to
24 Meggitt’s regular rate miscalculations and contend that they were deprived of all legally
25 compliant meal and rest periods. *See generally*, Ochoa and Caplinger Decls. Plaintiffs further
26 assert that they did not receive accurate and compliant wage statements and did not receive all
27 wages at the time of separation of employment. *Id.* Because Plaintiffs have suffered the same
28 injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

1 **4. Plaintiffs and Class Counsel Will Fairly and Adequately Represent the**
2 **Class**

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
5 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the
6 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class,
7 and Plaintiffs possess claims that are in line with those of the Settlement Class. *See McGhee v.*
8 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
9 indication that Class Counsel were not qualified and the named plaintiff had no interests
10 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
11 and hour class action litigation. *See Haines Decl.*, ¶¶ 2-8; *Blakely Decl.*, ¶¶ 2-6.

12 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

13 This Court should order distribution to the Settlement Class of the proposed Class Notice
14 and Notice of Estimated Settlement Award (the “Notice Packet”) by U.S. Mail, postage prepaid,
15 in English and Spanish, using last known mailing address information provided by Meggitt. *See*
16 *Settlement*, ¶ 9. This manner of giving notice is the “best notice practicable” under the
17 circumstances because it provides “individual notice to all members who can be identified through
18 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties
19 have agreed that the Settlement be administered by Phoenix Settlement Administrators
20 (“Phoenix”), an experienced class action settlement administrator. *See generally* Declaration of
21 Jodey Lawrence (“Lawrence Decl.”) and attached exhibits. Settlement Class members’ addresses
22 will be ascertainable through Meggitt’s personnel and payroll records, which Meggitt will provide
23 to Phoenix within thirty (30) days of preliminary approval of the Settlement. *See Settlement*, ¶
24 9(A). Within ten (10) business days from receipt of this information, the Settlement Administrator
25 will run the names of all Settlement Class members through the National Change of Address
26 (“NCOA”) database to determine any updated addresses for Settlement Class members, and mail
27 a Notice Packet to each Settlement Class Member at his or her last known address. *See Settlement*,
28 ¶ 9(B). To the extent that any notices are returned, Phoenix will perform a “skip trace” to track

any Settlement Class member's current mailing address. *Id.*, at ¶ 9(G).

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. 1 and 2 to Exh. A. The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

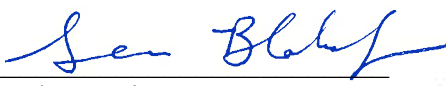
V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the [Proposed] Order submitted concurrently herewith.

Dated: December 15, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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