

1 **DECLARATION OF CAROLYN HUNT COTTRELL**

2 I, Carolyn Hunt Cottrell, declare:

3 1. I have personal knowledge of the facts set forth in this Declaration and, if called upon as a
4 witness, I could and would testify competently as to these facts.

5 2. This Declaration is submitted in support of Plaintiffs’ Unopposed Motion for Attorneys’
6 Fees, Costs, and Enhancement Awards.

7 **CONTENTS AND STRUCTURE OF THIS DECLARATION**

8 3. This declaration is organized into several parts. In the first part, I provide my professional
9 background. Next, I introduce Class Counsel. Then, I provide a general overview of the background
10 and procedural history of the case in which I highlight Class Counsel’s work on the case.

11 4. I then address Class Counsel’s fees and costs. I begin by providing a biographical summary
12 of the attorneys and staff members from my firm who worked on the case. Next, I discuss the
13 reasonableness of our fees. To confirm the reasonableness, I address the lodestar, focusing on both
14 the reasonableness of hourly rates as well as the number of hours expended on this litigation. I
15 provide documentation and a discussion of counsel’s billing rates showing that these billing rates
16 are well within the market range of hourly rates charged by attorneys of comparable skill and
17 experience, working on similar matters. I also provide a summary breakdown of the lodestar, with
18 supporting documentation. I likewise address the reasonableness of the costs incurred in this
19 litigation, and I provide documentation to account for these out-of-pocket costs.

20 5. Lastly, I address the Named Plaintiffs’ enhancement awards.

21 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

22 6. I am an attorney duly licensed to practice law in the State of California (No. 166977). I am a
23 member in good standing of the State Bar of California, I am admitted to the United States District
24 Courts for the Northern, Eastern, Central, and Southern Districts of California. I am a member of
25 the Bar of the United States Supreme Court.

26 7. I am a partner at Schneider Wallace Cottrell Konecky Wotkyns LLP (“SWCKW”). SWCKW
27 specializes in class action litigation in state and federal court.

28 8. SWCKW is regarded as one of the leading private plaintiff’s firms in wage and hour class
actions and employment class actions.

1 9. SWCKW has acted or is acting as class counsel in numerous cases. A partial list of cases
2 which have been certified and/or settled as class actions includes: *Guilbaud, et al. v. Sprint Nextel*
3 *Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California) (final approval of class
4 and collective action settlement for failure to compensate for all hours worked, including overtime,
5 under federal and California law, failure to provide meal and rest breaks, failure to reimburse for
6 necessary business uniforms, failure to pay full wages upon termination to, and failure to provide
7 accurate itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-
8 2015-00180822 (Sacramento Superior Court) (final approval of class action settlement for failure to
9 provide meal and rest breaks and failure to provide accurate itemized wage statements); *Jeter-Polk,*
10 *et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of California)
11 (final approval of class action settlement for failure to provide meal and rest periods, failure to
12 compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting time
13 penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*,
14 (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and
15 collective action settlement for failure to compensate for all hours worked, including overtime,
16 under federal and California law, failure to provide meal and rest breaks, failure to reimburse for
17 necessary business uniforms, failure to pay full wages upon termination to, and failure to provide
18 accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No.
19 BCV-15-10135) (Kern County Superior Court) (final approval of class action settlement for failure
20 to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clocker work, failure to
21 pay full wages upon termination to, and failure to provide accurate itemized wage statements);
22 *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of
23 California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected
24 employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County
25 Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks
26 to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse
27 business expenditures to, failure to pay full wages upon termination to, and failure to provide
28 accurate itemized wage statements to retention specialists working for cable companies); *Glass*
Dimensions, Inc., et al. v. State Street Corp. et al., (Case No. 1:10-cv-10588) (District of

1 Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and
2 self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-
3 052222) (Northern District of California) (settlement of claims that rental car company
4 misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to
5 provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-
6 465052) (San Francisco County Superior Court) (final approval of class action settlement for
7 overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on
8 behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the
9 Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action
10 settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of*
11 *Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action
12 settlement on behalf of a class of individuals with mobility disabilities denied access to various
13 facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First*
14 *American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class
15 action settlement in action challenging unfair discrimination by title insurance company); *Perez v.*
16 *Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval
17 of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work
18 performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*,
19 (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action
20 settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a
21 class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos.
22 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf
23 of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska*
24 *Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action
25 settlement for off-the-clock work by, and failure to provide overtime compensation to, production-
26 line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504)
27 (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide
28 overtime compensation to, production-line employees of meat-packing plant); *Barlow, et al. v. PRN*
Ambulance Inc. (Case No. BC396728) (Los Angeles County Superior Court) (final approval of

1 class action settlement for failure to provide meal and rest breaks to and for off-the-clock work by
2 certified emergency medical technicians); *Espinosa, et al. v. National Beef, et al.* (Case No.
3 ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock
4 work by, and failure to provide overtime compensation to, production-line employees of meat-
5 packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-
6 479518 and CGC-09-489635) (San Francisco Superior Court) (final approval of class action
7 settlement for failure to provide meal and rest breaks to, and for off-the-clock work by, employees
8 at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County
9 Superior Court) (final approval of class action settlement on behalf of gays and lesbians who were
10 denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-
11 00605-LJO-GSA) (Eastern District of California) (final approval of class action settlement for off-
12 the-clock work by production-line employees of meat-packing plant); *Elkin v. Six Flags* (Case No.
13 BC342633) (Los Angeles County Superior Court) (final approval of class action settlement for
14 missed meal and rest periods on behalf of hourly workers at Six Flags amusement parks); *Jimenez*
15 *v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County Superior Court) (final approval
16 of class action settlement for misclassification of hospital clerical workers); *Chau v. CVS RX*
17 *Services, Inc.* (Case No. BC349224) (Los Angeles County Superior Court) (final approval of class
18 action settlement for failure to pay overtime to CVS pharmacists); *Reed v. CALSTAR* (Case No.
19 RG04155105) (Alameda County Superior Court) (certified class action on behalf of flight nurses);
20 *National Federation of the Blind v. Target* (Case No. C 06-01802 MHP) (N.D. Cal.) (certified class
21 action on behalf of all legally blind individuals in the United States who have tried to access
22 Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL 2370633) (N.D. Cal.) (certified
23 national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.* (Case
24 No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination
25 within FedEx); *Siddiqi v. Regents of the University of California* (Case No. C-99-0790 SI) (N.D.
26 Cal.) (certified class action in favor of deaf plaintiffs alleging disability access violations at the
27 University of California); *Lopez v. San Francisco Unified School District* (Case No. C-99-03260
28 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action against school district for
widespread disability access violations); *Campos v. San Francisco State University* (Case No. C-

1 97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled plaintiffs for widespread
 2 disability access violations); *Singleton v. Regents of the University of California* (Case No. 807233-
 3 1) (Alameda County Superior Court) (class settlement for women alleging gender discrimination at
 4 Lawrence Livermore National Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No.
 5 RG04173735) (Alameda County Superior Court) (final approval of class action settlement for
 6 drive-time required of Coca-Cola account managers); *Portugal v. Macy's West, Inc.* (Case No.
 7 BC324247) (Los Angeles County Superior Court) (California statewide wage and hour
 8 "misclassification" class action resulting in a class-wide \$3.25 million settlement); *Taormina v.*
 9 *Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County Superior Court) (final approval of
 10 class action settlement for misclassification of Siebel's inside sales employees); *Joseph v. The*
 11 *Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior Court) (final approval of
 12 class action settlement for failure to provide meal and rest periods to employees of The Limited
 13 stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final approval of class
 14 action settlement for failure to pay accrued vacation pay upon end of employment); *DeSoto v.*
 15 *Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and *Lenahan v.*
 16 *Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class action
 17 settlement for failure to pay Sears drivers for all hours worked); among many others.

18 10. I have been a member of this firm since 1995. Nearly my entire legal career has been
 19 devoted to advocating for the rights of individuals who have been subjected to illegal pay policies,
 20 discrimination, harassment and retaliation and representing employees in wage and hour and
 21 discrimination class actions. I have litigated hundreds of wage and hour, employment
 22 discrimination and civil-rights actions, and I manage many of the firm's current cases in these
 23 areas. I am a member of the State Bar of California, and have had memberships with Public
 24 Justice, the National Employment Lawyers Association, the California Employment Lawyers
 25 Association and the Consumer Attorneys of California. I served on the Board of Directors for the
 26 San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of
 27 the "Top Women Litigators for 2010" by the Daily Journal. In 2012 I was nominated for Woman
 28 Trial Lawyer of the Year by the Consumer Attorneys of California. I earned my Bachelor's degree

1 from the University of California, and I am a graduate of the University of the Pacific, McGeorge
2 School of Law.

3 **CLASS COUNSEL**

4 11. Plaintiffs' Counsel in this case is comprised of SWCKW, Marlin & Saltzman, LLP ("MS"),
5 and United Employees Law Group, P.C. ("United"). The firms are highly-regarded members of the
6 wage and hour and employment class and collective action bar, with extensive experience in this
7 highly-specialized type of litigation.

8 12. The qualifications and experience of Plaintiffs' Counsel as well as their firms' staff who
9 worked on the cases and their costs and fees are respectively set forth in the supporting declarations
10 submitted in support of this motion.

11 **SUMMARY OF FEES AND COSTS SOUGHT**

12 13. Class Counsel now seek, as their reasonable attorneys' fees, 33 1/3% the total Gross
13 Settlement award, or \$2,000,000.00, and \$44,575.02¹ as reimbursement for the actual costs of
14 bringing this suit. As of December 7, 2016, the total combined lodestar for the firms prosecuting
15 and resolving the class and collective claims in this action is approximately \$1,242,107.00. A true
16 and correct summary of Class Counsel's lodestar is attached as **Exhibit 1**. The portion of this total
17 lodestar attributable to SWCKW is approximately \$735,497.00 and is documented more fully
18 below. The portion of the total lodestar attributable to MS is \$506,610.00. This amount is
19 documented in the declaration of Stan Saltzman.

20 14. Class Counsel has together incurred actual, out-of-pocket costs of \$44,575.02. *See Exhibit*
21 **2**. The portion of the total costs attributable to the SWCKW is approximately \$32,447.33 and is
22 documented more fully below. The portion of the total costs attributable to MS is \$12,127.69. This
23 amount is documented in the declaration of Stan Saltzman.

24 **PROCEDURAL HISTORY**

25 15. The brief in support of this Motion contains a detailed section entitled "Procedural History
26 and Work Performed by Class Counsel." As its title suggests, this section of the brief details the

27 ¹ In their preliminary approval motion, Plaintiffs noted their costs to be approximately \$42,000.00. Class
28 Counsel's actual costs to date are now \$44,575.69.

1 major billable projects that took place over the course of this lawsuit, and also provides a summary
2 of the necessary work performed by Class Counsel with respect to each project. Class Counsel
3 compiled this section of the brief by: (1) reviewing the documents entered into the Court's record,
4 along with any discovery propounded by either Party, to determine the major billable events that
5 took place in this case; and (2) reviewing any correspondence and billing related to a particular
6 billable event to determine the specific work performed by Class Counsel. In my opinion, and in the
7 opinion of Class Counsel, this section truly and correctly summarizes the major billable events in
8 this case for which (with a few exceptions) Plaintiffs seek recovery of their fees and costs, along
9 with the work performed by Class Counsel to warrant such an award.

10 **Lodestar Breakdown by Major Billable Projects/Categories of Activities**

11 16. The major billable projects/categories of activities are as follows:

- 12 ▪ Early litigation communications with class members
- 13 ▪ Pleadings
- 14 ▪ Tolling agreement
- 15 ▪ Case management/conferences/status reports
- 16 ▪ Discovery
- 17 ▪ Class outreach
- 18 ▪ Settlement negotiations and mediation
- 19 ▪ Settlement approval motions
- 20 ▪ Communicating with administrator
- 21 ▪ Analysis/strategy
- 22 ▪ Administrative communications
- 23 ▪ Correspondence with counsel
- 24 ▪ Administrative filings/matters
- 25 ▪ Travel

25 //

26 //

27 //

28 //

1 A true and correct summary of Class Counsel's total hours worked by the above categories is
 2 attached as **Exhibit 3**². In addition, a true and correct summary of SWCKW's lodestar broken down
 3 by the above categories is attached as **Exhibit 4**.

4 **Early Litigation Communications with Class Members**

5 17. Class Counsel conducted initial investigations and completed intake interviews of workers,
 6 including the Named Plaintiffs, who were interested in understanding their legal rights. These
 7 communications, intakes, and investigations were necessary to support filing an action against
 8 Defendant and inform litigation strategy.

9 18. **The total amount of hours expended by Class Counsel on these communications was**
 10 **31.60. The total lodestar for SWCKW on these communications is \$9,535.50.** A true and correct
 11 summary of SWCKW's lodestar for this project is attached as Exhibit 5.

12 **The Pleadings**

13 19. On April 13, 2015, Plaintiff Edgar Vicerál filed a class action complaint against Defendant
 14 Mistras Group, Inc. in the San Francisco County Superior Court, entitled *Edgar Vicerál, et al. v.*
 15 *Mistras Group, Inc., et al.*, No. CGC-15-545291. (Cal. Super. Ct., San Francisco filed April 13,
 16 2015) ("*Vicerál*"). Defendant removed the *Vicerál* action to the United States District Court for the
 17 Northern District of California, on May 15, 2015. Defendant thereafter filed a Notice of Other
 18 Action or Proceeding on May 27, 2015, alerting the Court and Parties of a related class action:
 19 *David Krueger v. Mistras Group, Inc.*, No. 2:15-cv-01069 (E.D. Cal. 2015) proceeding before the
 20 Honorable Morrison C. England, Jr., in the United States District Court for the Eastern District of
 21 California ("*Krueger*"). *Krueger* was filed on April 10, 2015 in the Kern County Superior Court.
 22 On May 18, 2015, Defendant removed the *Krueger* action to the United States District Court for the
 Eastern District of California.

23 20. On May 27, 2015, Defendant filed notices alerting each Plaintiff to the parallel proceedings.
 24 On June 10, 2015, Plaintiff Krueger filed oppositions to both notices. Counsel for Plaintiff Vicerál,
 25 Plaintiff Krueger, and Defendant met and conferred on numerous occasions to coordinate the two

26 _____
 27 ² This Exhibit provides the breakdown through December 7, 2016. Plaintiffs are amenable to providing the
 28 Court with their updated lodestar in advance of the final approval hearing, should the Court request it.

1 cases. Ultimately, the Parties agreed to combine the proceedings in this Court by way of an
2 amended complaint. To that end, Plaintiff Krueger requested dismissal of his class claims in the
3 separate *Krueger* action, without prejudice, on September 4, 2015. Plaintiff Krueger's request was
4 granted by Order dated September 9, 2015. Plaintiffs filed their First Amended Complaint on
5 November 24, 2015 pursuant to this Court's Order of November 20, 2015.

6 **21. The total hours expended by Class Counsel on the pleadings total 152.50. The total**
7 **lodestar for SWCKW on these matters is \$40,739.50.** A true and correct summary of SWCKW's
8 lodestar for this project is attached as **Exhibit 6.**

9 **Tolling Agreement**

10 22. The Parties negotiated a tolling agreement with respect to FLSA Class Members, who had
11 not yet opted in to the litigation, to preserve their statute of limitations. To memorialize their
12 agreement, the Parties executed a Stipulation on Tolling on December 31, 2015.

13 **23. The total hours expended by Class Counsel on the tolling agreement total 20. The total**
14 **lodestar for SWCKW on this matter is \$4,196.50.** A true and correct summary of SWCKW's
15 lodestar for this project is attached as **Exhibit 7.**

16 **Case Management/ Conferences/ Status Reports**

17 24. Coordination of both cases in a single proceeding required the Parties to work together to
18 manage the case. The Parties to the proceedings in the Eastern District of California entered two
19 separate stipulations to continue the filing of a joint status report before entering a stipulation to
20 vacate all deadlines upon Plaintiff Krueger's request for voluntary dismissal of that action on
21 September 4, 2016. Similarly, the Parties to the proceedings in this action entered into two
22 stipulations to continue the initial case management conference. The Parties ultimately prepared a
23 Joint Case Management Statement in advance of the November 24, 2015 Case Management
24 Conference in this Court. Following the Case Management Conference, the Parties submitted a
25 Joint Proposed Schedule.

26 **25. The total hours expended by Class Counsel on case management matters total 125.00.**
27 **The total lodestar for SWCKW on these matters is \$30,553.50.** A true and correct summary of
28 SWCKW's lodestar for this project is attached as **Exhibit 8.**

1 **Discovery**

2 26. The Parties engaged in extensive and contentious discovery in this action, including formal
3 written discovery, depositions, and informal discovery to facilitate mediation.

4 27. To facilitate discovery, the Parties Stipulated to a Protective Order, which the Court entered
5 on March 11, 2016.

6 28. Plaintiffs propounded a combined total of four sets of Special Interrogatories, with a
7 combined total of 42 Special Interrogatories. In addition, Plaintiffs propounded one Set of Requests
8 for Production of Documents, with a total of 80 Requests. Defendant made numerous objections to
9 Plaintiffs' written discovery. This necessitated numerous meet and confer sessions, which resulted
10 in the production of additional documents and supplemental interrogatory responses. Defendant
11 produced thousands of pages of documents in this action.

12 29. Plaintiff deposed Defendant pursuant to F.R.C.P. 30(b)(6), including taking the depositions
13 of Julie Marini (Mistras Group Vice President of Human Resources) and Dennis Bertolotti (Mistras
14 President of Group Services/Interim CEO). These depositions required significant preparation and
15 coordination.

16 30. Plaintiffs also responded to written discovery propounded by Defendant in this action.
17 Moreover, Defendant deposed Plaintiff Krueger. Defendant also noticed the deposition of Plaintiff
18 Viceral, causing Class Counsel to conduct the initial pre-deposition preparation. However, the case
19 resolved at mediation before Plaintiff Viceral was deposed.

20 31. In addition to formal discovery efforts, the Parties coordinated an informal exchange of
21 information in connection with the mediation. To facilitate mediation, Defendant produced specific
22 Class Member payroll and financial information, as well as, time records. In particular, Defendant
23 provided Plaintiffs with state-by-state information for the statutory period(s) regarding the total
24 number of California Class and the FLSA Class Members, their work locations, the number of
25 weeks worked cumulatively by the California Class and FLSA Class Members, and their average
26 hourly rate. Defendant further provided payroll and timekeeping data for Plaintiffs and all other
27 Class Members.

28 32. Specifically, Defendant produced the Class and Collective lists on January 15, 2016, and
February 19, 2016, respectively. In addition, Defendant produced: (1) the two Named Plaintiffs'

1 timekeeping documents, wage statements, training logs, and personnel files; (2) a list of the Mistras
 2 offices throughout the U.S.; (3) AWS documents; and (4) numerous handbooks and policies, including:
 3 its U.S. Employee Handbook, job descriptions, document retention polices, California meal and rest
 4 break policies, payroll policies, dispute resolution policy, meal period waiver, and examples of training
 5 materials; and numerous complaints filed against Mistras. Defendant also produced a sampling of
 6 information and documents for Class and Collective Members. Defendant produced: a sample of
 7 training logs, the number of hours worked by day, the number of days worked by year, and payroll data
 8 for Class and Collective Members³; and examples of weekly time summaries, handwritten timecards,
 9 pre-EPIP reports by employees, weekly payroll reports, timecard reports, punch cards, Mistras daily
 10 work reports, Mistras non-billable timesheets, earning statements, weekly customer timecards, weekly
 11 timesheets, vacation/PTO notification, Mistras weekly T&M reports, and training logs.

12 33. To engage in meaningful settlement negotiations, Class Counsel reviewed the discovery and
 13 conducted a damages analysis based on the discovery described above. This involved significant entry of
 14 data contained within the documents. This process was time-intensive, requiring input of information
 15 from thousands of documents for analysis. Once the information was inputted in a useable format, Class
 16 Counsel used the data to compute an hourly rate, the average number of work shifts in the relevant class
 17 periods, the average number of work weeks in the relevant class periods, and the average amount of
 18 overtime worked under both California law and the FLSA. Class Counsel also used this data to
 19 approximate the number of missed meal and rest periods under California law. Class Counsel used these
 20

21 _____
 22 ³ Data Reviewed

23 Mistras 001933 - FLSA EE Training	Date Range: 4/11/2012 - 3/15/2016
24 Mistras 001934 - FLSA EE hours by day	Date Range: 4/2/2012 - 3/13/2016
25 Mistras 001935 - FLSA EE days worked by year	Date Range: 2011 - 2016
26 Mistras 001936 - CA EE Training	Date Range: 4/11/2011 - 3/15/2016
27 Mistras 001937 - CA EE hours by day	Date Range: 4/1/2011 - 3/13/2016
28 Mistras 001938 - CA EE days worked by year	Date Range: 2011 - 2016
MISTRAS008540 Combined Payroll Data 2011-2015	Date Range: 1/7/2011 - 12/31/2015
MISTRAS008541 Payroll Data_Mistras_2012-2015_FLSA	Date Range: 1/6/2011 - 12/31/2015
California Class List	
FLSA Collective Class List	

1 figures to calculate total damages for missed meal periods and rest breaks, Labor Code § 226 penalties,
2 PAGA penalties, waiting time penalties, and overtime under both California law and the FLSA.

3 **34. The total hours expended by Class Counsel on discovery total 428.60. The total lodestar for**
4 **SWCKW on these matters is \$118,479.50.** A true and correct summary of SWCKW's lodestar for this
5 project is attached as **Exhibit 9.**

6 **Class Outreach**

7 35. Class Counsel spent extensive time communicating with putative California Class Members
8 and FLSA Class Members in this case. In addition to the pre-filing investigation addressed above,
9 this included substantial outreach efforts during the course of litigation in which Class Counsel
10 conducted detailed interviews addressing the uniformity of job duties, daily work descriptions, pay
11 policies and practices, overtime policies and practices, off the clock policies and practices, meal and
12 rest break policies and practices, as well as other relevant areas of inquiry.

13 36. Class Counsel completed a substantial number of interviews. This was time-consuming,
14 intensive, and a critical aspect of the case. This data informed Class Counsel's analysis of the
15 damages in this action. Ultimately, this information was instrumental in negotiating a Settlement of
16 this action. Moreover, this information would have been used in support of a certification motion as
17 well as in response to a possible decertification motion filed by Defendant.

18 37. In addition, Class Counsel has engaged in continued communications with the California
19 Class and FLSA Class responding to inquiries regarding the Settlement.

20 **38. The total hours expended by Class Counsel on class outreach and communications total**
21 **255.60. The total lodestar for SWCKW on these matters is \$132,618.50.** A true and correct
22 summary of SWCKW's lodestar for this project is attached as **Exhibit 10.**

23 **Settlement Negotiations and Mediation**

24 39. After analysis of the responsive discovery as well as other gathered data, and believing that
25 this case was appropriate for consensual resolution given the high level of risk present for both sides,
26 the Parties agreed to attend mediation. Thereafter, the Parties engaged in further in-depth informal
27 discussions in anticipation of the mediation.
28

1 40. On April 5, 2016, the Parties attended a formal mediation in San Francisco with Mark S.
 2 Rudy, Esq. – a well-respected mediator who specializes in wage and hour class actions. After over
 3 10 hours of extensive negotiations, the mediation concluded without a settlement, but with clear
 4 progress having been made. Thereafter, through Mr. Rudy’s ongoing efforts, the Parties continued
 5 to discuss possible resolution of the Action. After over a month of such discussions, the Parties
 6 eventually agreed to broad settlement terms. The Parties then drafted and executed the Settlement.

7 **41. The total hours expended by Class Counsel on mediation and negotiations total 139.90.**
 8 **The total lodestar for SWCKW on these matters is \$38,703.50.** A true and correct summary of
 9 SWCKW’s lodestar for this project is attached as **Exhibit 11.**

10 **Settlement Approval Motions**

11 42. On May 4, 2016, Class Counsel submitted a Joint Notice of Settlement, and Stipulation and
 12 [Proposed] Order to Vacate All Pending Deadlines. The Court set a briefing schedule on May 6,
 13 2016. The Court subsequently modified the briefing schedule upon subsequent stipulations.

14 43. Class Counsel drafted and prepared appropriate moving papers and filed them on July 19,
 15 2016. Thereafter, on August 2, 2016, the Court issued an order, requesting supplemental briefing on
 16 Plaintiffs’ preliminary approval motion. The Court requested that the Parties address ten topics: (1)
 17 attorneys’ fees, including submitted *ex parte* and under seal their billing records with a detailed
 18 description; (2) expected recovery per Class Member; (3) full verdict value of the case; (4)
 19 distribution of the settlement fund; (5) risks of litigation; (6) FLSA affirmative opt-in; (7) notice to
 20 FLSA Class Members; (8) response to objections from Class Members; (9) CAFA notice; and (10)
 21 Class notice for California Class. Class Counsel worked diligently to research and draft responses to
 22 the Court’s inquiries. Class Counsel drafted a supplemental brief, revised Class notices and
 23 accompanying documents, and corresponding declarations as well as briefing and documentation
 24 supporting their fee request. These materials were filed with the Court on August 9, 2016. Class
 25 Counsel supplemented their preliminary approval motion on August 12, 2016, filing a Statement of
 26 Recent Decision to present the case *Laffitte v. Robert Half Int’l Inc.*, No. S222966, 2016 WL
 27 4238619 (Cal. Aug. 11, 2016) to the Court’s attention. The Court then held a hearing on Plaintiffs’
 28 motion on August 17, 2016, which Class Counsel attended and at which Class Counsel responded to

1 the Court's further inquiries. On August 23, 2016, the Court issued an order requesting further
2 supplemental briefing regarding the PAGA recovery in this action. Plaintiffs drafted and filed a
3 supplemental brief on August 30, 2016. On October 11, 2016, the Court issued an order granting
4 Plaintiffs' motion, and also requested that the Parties submit a proposed order regarding the timeline
5 for the remaining settlement motions and approval procedure in the matter. Class Counsel worked
6 with Defendant to finalize a schedule. The proposed schedule was submitted to the Court on October
7 18, 2016, and the Court signed off on the schedule the next day.

8 44. Class Counsel also spent significant time preparing this fee motion. Beyond drafting this
9 motion and researching applicable case law, Class Counsel also conferred with each other regarding
10 the arguments to include herein and the most effective way to present Class Counsel's fees and costs
11 to the Court. In addition, Class Counsel undertook the time-consuming project of reviewing each
12 individual bill, or time entry, for this case and determining whether each entry warranted a request
13 for recovery. Finally, rather than present a large, disorganized file of time entries to the Court, Class
14 Counsel reasoned that the most effective way for the Court to review Class Counsel's attorneys' fees
15 is on a project-by-project basis. Accordingly, Class Counsel assigned each time entry a "project
16 code," which allowed them to filter from all of the time entries only those assigned to a particular
17 project. For example, based on their coding system, Class Counsel was able to filter all the time
18 entries associated with pleadings. Class Counsel also undertook the same time-consuming project to
19 submit their billing records in obtaining preliminary approval.

20 45. Class Counsel is likewise obligated to request that the Court finally approve the Settlement
21 following the administration process detailed in the Settlement. Class Counsel is drafting and
22 preparing final approval papers that will be submitted to the Court by December 29, 2016.

23 46. **To date, the total hours expended by Class Counsel on settlement approval total 275.3.**
24 **The total lodestar for SWCKW on these matters is \$65,996.50.** A true and correct summary of
25 SWCKW's lodestar for this project is attached as **Exhibit 12**. Both the hours expended on settlement
26 approval and Class Counsel's lodestar will continue to increase through the finalization of this
27 litigation.
28

1 **Communications with Administrator**

2 47. To facilitate the administration of the Settlement, Class Counsel needed to secure an
3 administrator. In addition to the time already spent communicating with the Administrator, Class
4 Counsel must work with the Administrator regarding the distribution of notices, deadlines called for
5 by the Settlement, and the disbursement of funds to the California Class and FLSA Class should the
6 Court grant final approval.

7 48. **The total hours expended by Class Counsel communicating with the administrator total**
8 **19.00. The total lodestar for SWCKW on these matters is \$4,499.50.** A true and correct summary
9 of SWCKW's lodestar for this project is attached as **Exhibit 13.**

10 **Analysis/Strategy**

11 49. Class Counsel regularly spent time strategizing regarding litigation tactics. This is necessary
12 to succeed in contested and complex litigation.

13 50. **The total hours expended by Class Counsel on strategy and analysis total 111.20. The**
14 **total lodestar for SWCKW on these matters is \$34,458.50.** A true and correct summary of
15 SWCKW's lodestar for this project is attached as **Exhibit 14.**

16 **Administrative Communications**

17 51. Administrative communications includes those in-person and telephonic communications
18 between Class Counsel and their staff to facilitate the progression of the litigation.

19 52. **The total hours spent by Class Counsel on such communications total 408.55. The total**
20 **lodestar for SWCKW on these communications is \$196,895.00.** A true and correct summary of
21 SWCKW's lodestar for this project is attached as **Exhibit 15.**

22 **Correspondence with Counsel**

23 53. Correspondence with Counsel includes those in-person and telephonic communications
24 between Class Counsel as well as Class Counsel's communications with Counsel for Defendant.
25 These communications were necessary litigation efforts.

26 54. **The total hours spent by Class Counsel on such communications total 209.60. The total**
27 **lodestar for SWCKW on these communications is \$48,638.00.** A true and correct summary of
28 SWCKW's lodestar for this project is attached as **Exhibit 16.**

1 **Administrative Filings/Matters**

2 55. Several administrative filings were required to litigate this action. This includes drafting and
3 filing letters to the California Labor and Workforce Development Agency to pursue Private
4 Attorneys General Act claims, completing a certificate of interested entities, completing a
5 consent/declination to proceed before a United States Magistrate Judge, updating Class Counsel's
6 address, noticing appearances and changes in counsel, completing ADR certification, and
7 completing a stipulation and proposed order to continue the ADR deadline.

8 **56. The total number of hours expended by Class Counsel on administrative filings and**
9 **matters are 31.80. The total lodestar for SWCKW on these matters is \$9,084.00.** A true and
10 correct summary of SWCKW's lodestar for this project is attached as **Exhibit 17.**

11 **Travel**

12 57. Class Counsel was required to travel to litigate this action. This includes cross-country travel
13 to depose Defendant through Ms. Marini and Mr. Bertolotti. This also includes travel to attend
14 mediation and hearings.

15 **58. The total number of hours expended on travel are 32.70. The total lodestar for**
16 **SWCKW on travel is \$1,099.00.** A true and correct summary of SWCKW's lodestar for this project
17 is attached as **Exhibit 18.**

18 **ATTORNEYS' FEES AND COSTS**

19 59. This case was difficult to litigate and was work-intensive not only because of the scope of
20 issues in dispute, but also because of Defendant's stalwart defense. This section discusses efforts by
21 Class Counsel to minimize duplication of efforts and to assign attorneys to discrete tasks. In
22 addition, I address litigation costs and attorney rates.

23 **SWCKW firm partners and their role in the case**

24 60. I was the lead partner on this case for SWCKW. I directed and supervised the work of the
25 associates at my firm, conducted legal analysis of the facts presented by this case, and assisted in
26 presenting legal arguments to opposing counsel. I was significantly involved in all aspects of the
27 case, dictating the litigation strategy. I reviewed and revised all pleadings, submissions, and
28 correspondence in this action, including the complaint and the motions; spearheaded discovery
efforts, including the meet and confer process; took the 30(b)(6) depositions and defended Plaintiff

1 Krueger's deposition; managed the damages analysis to value the claims in the case and to facilitate
2 certification as well as settlement negotiations; acted as the primary negotiator of mediation and
3 settlement negotiation efforts; and attended and participated in all hearings and conferences before
4 the Court. I also oversaw the Class Member outreach/interview process and reviewed the results of
5 the interviews. My hourly rate is \$795.00 per hour, which is line with that of attorneys with similar
6 qualifications and experience.

7 61. Below is a partial list of the biographies of those attorneys and paralegals from my firm, who
8 worked on the case.

9 62. Nicole N. Coon is a sixth-year associate at SWCKW. Ms. Coon's practices focuses on
10 employment and civil rights individual and class actions, including wage and hour class actions. Ms.
11 Coon is admitted to practice law in the states of California, Illinois, Wisconsin, and Massachusetts
12 and before the United States District Court of Northern District of California, the United States
13 District Court of the Eastern District of California, and the United States District Court of the
14 Central District of California. Ms. Coon was a member of the Lawyers' Club of San Francisco - Inns
15 of Court, where she served as MCLE Program Co-Chair. She was also a member of and Queen's
16 Bench Bar Association and served as the Amicus Briefs Committee Co-Chair. Ms. Coon also held
17 memberships with the San Francisco Trial Lawyers Association and the American Bar Association.
18 She served as a mentor for adolescent girls in Juvenile Hall. Ms. Coon also regularly volunteers as a
19 Moot Court Judge and Coach at local law schools. Ms. Coon graduated with Pro Bono Honors from
20 the University of Iowa College of Law in 2010. She received her Bachelor of Arts in English and
21 Legal Studies, with Comprehensive Honors, from the University of Wisconsin-Madison in 2006.
22 Prior to joining Schneider Wallace Cottrell Konecky Wotkyns LLP, Ms. Coon was a judicial law
23 clerk for the Honorable Maxine A. White, Milwaukee County Circuit Court. She also was a judicial
24 law clerk for the San Francisco Superior Court in the Civil, Probate, and Appellate Divisions for
25 Superior Court Presiding Judges Katherine Feinstein and Cynthia Ming-mei Lee and Appellate
26 Division Presiding Judges Curtis E.A. Karnow and Anne-Christine Massullo. Ms. Coon's rate is
27 \$650.00 per hour, which is line with that of attorneys with similar qualifications and experience. Ms.
28 Coon was the primary associate who researched and drafted pleadings and motions, drafted and

1 responded to discovery, communicated with Class Members regarding the status of the case as well
2 as to prepare for settlement negotiations, and attended conferences and hearings.

3 63. Keenan Klein is a fourth-year associate at SWCKW. Mr. Klein's practice focuses on
4 employment individual and class actions, including wage and hour class actions. Mr. Klein
5 graduated from the University of California, Berkeley School of Law in 2012, where he is a member
6 of the Order of the Coif. Mr. Klein received his B.A. from the University of California, Berkeley in
7 2008. Mr. Klein was a judicial law clerk for Magistrate Judge Joseph C. Spero in the United States
8 District Court for the Northern District of California. Mr. Klein also served as a legal research
9 assistant for Judge Curtis E.A. Karnow in the complex litigation department of the San Francisco
10 County Superior Court. Mr. Klein's rate is \$550.00 per hour. Mr. Klein assisted with drafting
11 pleadings and discovery, communicating with Class Members, and preparing for settlement
12 negotiations.

13 64. A. Chowning Poppler was formerly an associate at SWCKW. Ms. Poppler's practice focused
14 on wage and hour class actions. Ms. Poppler received her B.A. from University of Southern
15 California. In 2010, she received her Juris Doctor from University of San Diego School of Law. Ms.
16 Poppler's rate was \$475.00 per hour, which is in line with that of attorneys with similar
17 qualifications and experience.

18 65. Vincent Fisher was formerly as associate at SWCKW. Mr. Fisher's practice focused on wage
19 and hour class actions. Mr. Fisher received his B.A. from San Francisco State University. In 2010,
20 he received his Juris Doctor from John F. Kennedy School of Law. In 2014, Mr. Fisher also earned
21 an LLM from Santa Clara University School of Law. Mr. Fisher's rate was \$450.00 per hour, which
22 is in line which that of attorneys with similar qualifications and experience. Mr. Fisher assisted with
23 early stage investigations and research as well

24 66. Krishna Desai is a contract attorney at SWCKW. She graduated from University of Illinois-
25 College of Law in 2010, and obtained her Illinois Bar license the same year. She assists with
26 document review and class outreach. Ms. Desai's rate is \$650.00 per hour, which is in line which
27 that of attorneys with similar qualifications and experience. Ms. Desai assisted with preparing for
28 mediation as well as the settlement motions.

1 67. Justin Schultz is a contract attorney at SWCKW. He graduated from University of California
2 Hastings College of Law in May 2015, and was admitted to the California Bar in 2016. Mr.
3 Schultz's rate is \$500.00 per hour, which is in line which that of attorneys with similar qualifications
4 and experience. Mr. Schultz assisted with preparing for mediation as well as the settlement motions.

5 68. Sintia Saenz was a staff attorney/paralegal at SWCKW. She graduated from St. Thomas
6 University School of Law, and obtained her Florida Bar license in 2008. She was a staff
7 attorney/paralegal at our firm for over two years, and assisted in document review and has prepared
8 declarations and pleadings in numerous class action matters, including several wage and hour cases.
9 Our firm seeks the rate of \$400.00 per hour for her work.

10 69. Christine Knowles was formerly a contract attorney at SWCKW. She graduated from Santa
11 Clara University School of Law in 2013, and obtained her California Bar license the same year. She
12 was a contract attorney at our firm for over one year. Our firm seeks the rate of \$350.00 for her
13 work.

SWCKW firm paralegals and staff

14 70. John Hwang is the Office Manager at SWCKW. He is a 1994 graduate of the State
15 University of New York at Binghamton. Mr. Hwang previously worked as a paralegal for eighteen
16 years. Mr. Hwang has experience in all aspects of class actions, including document review, class
17 outreach, declaration preparation, opt-in consent form processing, damages analysis, and mediation
18 preparation – among other experience. Mr. Hwang also speaks fluent Spanish, is conversant in
19 Korean, and assists with Spanish translations for the firm's Spanish-speaking clients. Mr. Hwang
20 also has extensive experience with data management, IT, and with project management. Our firm
21 seeks the rate of \$250.00 per hour for his work. In this matter, Mr. Hwang assisted with and oversaw
22 class outreach, assisted with preparing for mediation and settlement negotiations, and helped with
23 this fee motion.

24 71. Rebecca Rosales was an Office Manager at SWCKW. She attended City of College of San
25 Francisco. Prior to working for SWCKW, she worked as a legal assistant for two years at another
26 San Francisco law firm. Ms. Rosales has worked at SWCKW for approximately seven years. She
27 has assisted with document review, conducted outreach, and prepared declarations in numerous class
28 action matters, including several wage and hour cases. Ms. Rosales is also fluent in Spanish and

1 assists with Spanish translations for the firm's Spanish-speaking clients. Our firm seeks the rate of
2 \$250.00 per hour for her work.

3 72. Scott Gordon is a paralegal at SWCKW. He earned his B.S from the University of Colorado,
4 Boulder in 2000. He is a 2010 graduate of Temple University, Beasley School of Law. He has
5 worked at SWCKW for several years, and has assisted in document review and has prepared
6 declarations in numerous class action matters, including several wage and hour cases. Our firm seeks
7 the rate of \$250.00 per hour for his work in this matter. Mr. Gordon assisted with legal research,
8 document review, and other administrative matters.

9 73. Sam Marks is a law clerk at SWCKW. Our firm seeks the rate of \$225.00 per hour for his
10 work in this matter. In this matter, Mr. Marks conducted class outreach.

11 74. Tracy Eastman is a law clerk at SWCKW. Our firm seeks the rate of \$150.00 per hour for her
12 work in this matter. In this matter, Ms. Eastman conducted class outreach.

13 75. Rachel Steyer was formerly a law clerk at SWCKW. Our firm seeks the rate of \$175.00 per
14 hour for her work in this matter. In this matter, Ms. Steyer conducted class outreach.

15 76. Elizabeth Cheung is a member of SWCKW's clerical staff. Our firm seeks the rate of
16 \$200.00 per hour for her work in this matter.

17 77. Lourdes Castro is a member of SWCKW's clerical staff. Our firm seeks the rate of \$200.00
18 per hour for her work in this matter.

19 **The Court should apply the common fund doctrine to award attorneys' fees.**

20 78. A common fund award of attorneys' fees and costs is appropriate here because Plaintiffs
21 have created an ascertainable common fund from which reasonable attorneys' fees can be recovered.
22 The proposed Settlement creates a common fund of \$6,000,000.00 that will substantially benefit
23 5,140⁴ Class Members. Each participating Class Member will receive an ascertainable, *pro-rata*
24 share of the Settlement. In addition, Plaintiffs' requested fee award constitutes a fair charge to the

25 _____
26 ⁴ In their preliminary approval motion, Plaintiffs noted that the class size was approximately 4,732. Based on
27 the records produced by Defendant to the Administrator, the total number of Class Members is actually 5,140.
28 There are 1,324 California Class Members. Not all California Class Members are FLSA Class Members: 111
are only California Class Members, 1,123 are both California and FLSA Class Members. 3,826 are only
FLSA Class Members.

1 Class Members for excellent result obtained by the Settlement. The requested one-third of the fund
 2 is actually equal to the fee that Class Counsel would have expected if they had negotiated individual
 3 retainer agreements with each Class Member, which is typical in order to attract competent counsel
 4 in the marketplace for representation in wage and hour class actions of this nature. Thus, the award
 5 ensures that Class Counsel receive an appropriate fee award for the actual benefit conferred to the
 6 Class.

7 **Class Counsel’s fee award is reasonable under the circumstances of this case.**

8 **The fee request is justified by the excellent monetary results.**

9 79. Plaintiffs recognize that the “benchmark” rate for attorneys’ fees in class actions in the Ninth
 10 Circuit is 25%; however, the facts in this case support an upward adjustment to 33 1/3%.

11 80. The approximate Net Settlement Amount being disbursed to the Class Members is
 12 \$3,885,984.63⁵. A California Class Member will receive approximately \$1,248.00 for each year
 13 worked. Thus, a California Class Member that was employed the entire class period of 5.5 years
 14 stands to recover \$6,864.00. A FLSA Class Member will receive approximately \$263.00 for each
 15 year worked, and if employed for the entire class period of 4.5 years stands to receive \$1,183.00. In
 16 addition, The Gross Settlement Fund to the California Class is approximately 12% of the estimated
 17 combined value of the California class claims. Further, the Gross Settlement Fund to the FLSA
 18 Class is approximately 5% of the combined value of the FLSA Class claims. The compensation that
 19 Class Members will receive under the settlement is reasonable in comparison to what they may have
 20 recovered at trial, assuming that the proposed class was able to obtain certification of these claims,
 21 and recognizing the other risks involved as well as Defendant’s defenses – further discussed below.
 22 Moreover, because this is a non-reversionary settlement, the Court is assured that the entire net
 23 settlement amount will be distributed to the Class Members. A fee award of one-third of the
 24 common fund is appropriate in the context of the relief obtained on behalf of the Class Members
 25 here.

26 _____
 27 ⁵ This approximate amount is based on Simpluris’s total current estimate of \$45,904.35 (but not to exceed
 28 \$50,000.00) and Class Counsel’s actual costs to date of \$44,575.02.

1 **The risks associated with this litigation justified the fee request.**

2 81. Class Counsel considered the uncertainty and risks of further litigation, the expense and
3 duration of further litigation, and the burdens of proof necessary to achieve certification of the case,
4 establish liability against Defendant, and defeat its defenses.

5 82. First, litigating this action would not only delay recovery, but also would be expensive, time-
6 consuming and involve substantial risk. If this case were to go to trial as a class and collective
7 action, Class Counsel estimate that fees and costs would well exceed \$2,000,000.00. Litigating the
8 class and collective action claims would require substantial additional preparation and discovery. It
9 would require depositions of experts, the presentation of percipient and expert witnesses at trial, as
10 well as the consideration, preparation, and presentation of voluminous documentary evidence and
11 the preparation and analysis of expert reports. There is also the delay and duration of further
12 litigation. The litigation was filed in April 2015. The matter has been pending for nearly one and a
13 half years. Certification and dispositive motions have yet to be filed. The Court's previous Case
14 Management and Pretrial Order for Jury Trial (ECF Doc. No. 43) scheduled nearly a year between
15 class certification and trial. In light of the current posture of the case, Class Counsel would still need
16 to prepare and file a class certification motion. Thus, the litigation would likely remain pending for
17 nearly another year and a half, and potentially longer taking into consideration unforeseen delays
18 and scheduling issues.

19 83. The risks of maintaining class action status in this case as well as demonstrating Defendant's
20 ultimate liability at trial are also significant. Recovery of the damages and penalties would require
21 complete success and certification of all of Plaintiffs' claims, a questionable feat in light of recent
22 developments in wage and hour and class and collective action law as well as the legal and factual
23 grounds that Mistras has asserted to defend this action. Specifically, Mistras has asserted numerous
24 complete liability defenses against Plaintiffs' claims, many of which were supported by the
25 declarations gathered by Defendant. See generally Defendant's Answer to Consolidated First
26 Amended Complaint (ECF Doc. No. 42); the declarations are discussed in detail below. For
27 example, Mistras raised several defenses to Plaintiffs' off-the-clock claims, including that (1) Class
28 Members did not perform work off-the-clock; (2) any off-the-clock work was de minimis; (3)
Mistras properly paid Class Members for compensable training time; (4) Mistras properly provided

1 Class Members with legally compliant meal and rest breaks ; (5) Mistras paid Class Members for all
2 hours worked, including overtime; and (5) Mistras properly implemented alternative workweek
3 schedules in California, avoiding any overtime liability. Mistras also intended to raise several
4 defenses against class certification, including (1) that individualized determinations regarding the
5 type and amount of off-the-clock work, if any, completed by Class Members would overwhelm
6 common issues; (2) that individualized determinations regarding the amount of wages owing, if any,
7 would overwhelm common issues; and (3) whether Class Members actually took meal and rest
8 breaks would overwhelm any common issues. If Mistras succeeded on any of these or other defenses
9 to class certification, Mistras would likely further argue that its success would necessarily impact
10 Plaintiffs' derivative claims. In the end, Plaintiffs would then be left with only their individual
11 claims and the Class and Collective would potentially recover nothing.

12 84. Thus, the risks of litigation are significant. This is particularly true since Defendant has
13 represented to Class Counsel that the declarations it has collected support its defenses. In particular,
14 defense counsel has explained that the California Class Members and FLSA Class Members
15 generally and overwhelmingly stated in individualized and non-cookie-cutter declarations that they:
16 recorded all hours worked; were paid their standard and/or overtime rates for all hours recorded as
17 worked; never worked unrecorded hours; were never instructed to work "off the clock"; recorded all
18 mandatory online training; were paid for all such training; were paid overtime for all overtime
19 recorded; that to the extent they attended voluntary trainings, they did so outside of their regularly
20 scheduled work hours, they did not perform any other work duties during such training, that
21 voluntary training involved topics related to new skills for a job other than their current job; and that
22 they attended such trainings of their own accord and not at the behest of any supervisor; were not
23 required to commute to work in any specific manner or vehicle; were allowed but not required to
24 carpool; and did not perform work before or during commute to/from worksites. In addition,
25 California Class Members also stated that they: were aware of Mistras's meal and rest break policy;
26 were able to take meal periods according to the policy; were never prevented from taking breaks;
27 were able to take breaks throughout a workday as desired; never reported missing a meal period or
28 rest break; and regularly and personally reviewed their wage statements and found them correct.

1 85. Defendant further argues that an arbitration agreement distributed to employees in California
2 removes from the lawsuit approximately one half of the California Class and the corresponding
3 members of the FLSA Collective CLASS, irrespective of other defenses related to certification or
4 liability. This further demonstrates the reasonableness of the total settlement value and the risks of
5 further litigation.

6 **Class Counsel's skill and quality of work justify the fee request.**

7 86. Class Counsel have demonstrated substantial skill, diligence, and high quality of work in
8 achieving the Settlement and its creation of a Settlement of \$6,000,000.00. Moreover, Class Counsel
9 are highly-regarded members of the Bar.

10 87. The case also raises complicated legal and factual issues that require intensive and careful
11 analysis under the law, particularly as related to Plaintiffs' claims regarding compensation for
12 training time and the adoption of and compensation for the time worked during alternative
13 workweek schedules. Additionally, assessing the implementation of and compensation for time
14 worked during alternative workweek schedules under California law is complex and requires
15 extension work. With respect to this litigation, these questions raise difficult and complicated issues
16 between the Parties that will not be quickly and easily decided because they have serious
17 implications on overtime compensation and Defendant's potential exposure to liability.

18 **The contingency nature of the fee and financial burden carried by Class Counsel justifies the
19 fee request.**

20 88. Class Counsel have worked on the present case since before April 2015, and in effect have
21 loaned their services to the Class Members since that time. Class Counsel have prosecuted this case
22 on a wholly contingent basis, and done so at a risk of never receiving any compensation due to the
23 risky nature of class action litigation in general, and due to the developing law in this Circuit with
24 respect to work "off-the-clock" and missed break claims, especially in the class action context.

25 **Class Members' positive reaction to the requested fee award supports its approval.**

26 89. Here, over 30 days after Notice of the Settlement was mailed to the Class, no Class Member
27 has objected to the Settlement despite being informed of Plaintiffs' requested attorneys' fees and
28

1 costs award.⁶ This positive reaction further underscores its reasonableness.

2 **The Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.**

3 **A multiplier is justified.**

4 90. Based on (1) the risks presented by the contingent nature of the case, (2) the novelty and
5 difficulty of the questions involved and the skill requisite to perform the legal service properly, (3)
6 the nature of the opposition, (4) the preclusion of other employment by the attorney due to the
7 acceptance of the case, and (5) the result obtained and the importance of the lawsuit to the public,
8 the 1.6 multiplier requested here is reasonable.

9 **Class Counsel's hourly rates are reasonable.**

10 91. The hourly rate my law firm seeks for my own legal services in this case is \$795.00. Having
11 reviewed the market, my firm has determined that my rate is within the market range charged by
12 attorneys of comparable experience, expertise, and reputation for similar services in the San
13 Francisco Bay Area.

14 92. The 2015-2016 rates that are sought herein for the work of SWCKW attorneys represent only
15 a modest increase over the rates that were approved by other courts as being reasonable in 2013,
16 2012, 2011, and 2010. Moreover, a Court in this District has granted a fee award based on my
17 firm's 2015-2016 hourly rates.

18 93. The federal and state courts in California have consistently approved the rates charged by the
19 attorneys in this case, including the hourly rates of SWCKW. For example, on June 29, 2016, the
20 Hon. Virginia A. Phillips of the Central District of California issued an Order Approving Class
21 Settlement and Attorneys' Fees and Cost, which granted a fee award sought on the basis of my
22 firm's current 2015-2016 hourly rates. That Order was issued in *Jeter-Polk v. Casual Male, LLC, et*
23 *al.*, Case No. 5:14-cv-00891-VAP-DTB (C.D. Cal.) A true and correct copy of the order is attached
24 as **Exhibit 19**. On May 25, 2016, the Hon. Thelton E. Henderson of the Northern District of
25 California issued an Order Granting Final Approval of Settlement, which granted a fee award sought

26 ⁶ The deadline for California Class Members to postmark requests to opt-out, objections to the Settlement, or
27 dispute the information in the Notice is December 22, 2016. Plaintiffs will provide a further update to the
28 Court after the opt-out, objection, and deadline passes.

1 on the basis of my firm's current 2015-2016 hourly rates. That Order was issued in *Meza v. S.S.*
2 *Skikos, Inc.*, Case No. 3:15-cv-01889-TEH (N.D. Cal.). A true and correct copy of the order is
3 attached as **Exhibit 20**. On March 22, 2013, the California Superior Court, County of Santa Cruz,
4 approved our firm's 2013 hourly rates as within the prevailing range of rates charged by attorneys
5 providing similar services in class action, wage-and-hour cases in California. That Order was issued
6 in the case of *Perez, et al., v. rue21, inc.*, Case No. CISCV167815. A true and correct copy of the
7 order is attached as **Exhibit 21**.

8 94. Class Counsel's hourly rates are reasonable in light of their significant experience, expertise,
9 and skill.

10 95. Even without accounting for contingent risk, Class Counsel's rates are well within the range
11 of rates charged by similarly experienced and qualified attorneys practicing in this area.

12 **The number of hours claimed is reasonable.**

13 96. Class Counsel, to date, have expended 2,331.55 hours of attorney and paralegal time to reach
14 this Settlement and monitor the Settlement. These hours reflect reasonably spent time litigating this
15 case, which Class Counsel sought to efficiently manage, staff, assign, and divide the work between
16 the co-counsel firms and amongst lower and higher-level attorneys and to avoid duplication of
17 effort.

18 97. In the prosecution of this case, my firm and my co-counsel efficiently prosecuted this
19 litigation and conducted relevant discovery. Our firms worked together to divide assignments, avoid
20 duplication of efforts, and accomplish all tasks in the most efficient manner possible.

21 98. Work was also performed efficiently within SWCKW. I managed this case from within
22 SWCKW and personally oversaw and supervised the SWCKW attorneys, paralegal, and staff
23 members who worked on this case. Generally speaking, legal theories, and case strategy were
24 developed by me as the handling partner and then circulated to our associate attorneys for adaption
25 or further development. Time-intensive projects such as written discovery, communicating with
26 Class Members, and developing the factual record was performed for the most part by associates and
27 paralegals. This internal allocation of work ensured that litigation tasks were performed at the
28 appropriate billing rate.

1 99. My personal practice, and the practice at my firm, is to record time in tenth-of-an hour-
2 increments, and to do so as contemporaneously as possible with the expenditure of the time by the
3 attorney. This method of recording time is generally followed in the legal community in the San
4 Francisco Bay Area, and is more accurate than recording time by quarter-hour increments, which
5 tends to inflate the amount of time billed for short telephone conferences and other short tasks.

6 100. It should also be emphasized that Class Counsel's lodestar does not include all of the time
7 they will spend moving for final approval of Settlement, attending the final approval hearing,
8 supervising settlement administration, and communicating with California Class Members and
9 FLSA Class Members in the future about the Settlement.

10 **Class Counsel's claim for attorneys' fees is fully documented.**

11 101. Plaintiffs' claim for attorneys' fees is fully documented by detailed time records that show
12 when and how each hour was spent. Class Counsel's time was carefully recorded in tenth-of-an-hour
13 increments, which is the most precise means of capturing the time expended. These time records are
14 the best evidence of the time that this case has required. As shown in the declarations of Class
15 Counsel submitted herewith, and as documented in billing records that have been prepared for *in*
16 *camera* review that will be filed separately under seal, Class Counsel's hours are fully justified by
17 the tremendous burden of intense litigation.

18 **The lodestar**

19 102. As noted above, the cumulative lodestar of Class Counsel, up to December 7, 2016, is
20 \$1,242,107.00, which is the result of approximately 2,331.55 hours on this litigation. *See Exhibit 1.*

21 **Breakdown of lodestar**

22 103. SWCKW's current lodestar is \$735,497.00 based on 1,474 hours of work. A true and
23 correct summary of the time attorneys, paralegals, and staff members at SWCKW spent on this case,
24 along with their respective hourly billing rates is attached as **Exhibit 22**. The detailed records have
25 not been provided here, but will be provided for the Court's *in camera* review separately under seal.
26 To help illustrate the work that reasonably had to be done in order to achieve the excellent
27 settlement result on behalf of the Class Members, I now summarize our firm's work:
28

	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
<i>Attorneys</i>				
Carolyn H. Cottrell, Partner	1993	292.1	\$795.00	\$232,219.50
Nicole Coon, Associate	2010 IL/2011 WI/2012 CA	401.3	\$650.00	\$260,845.00
Keenan Klein, Associate	2012	118.9	\$550.00	\$71,340.00
Vincent Fisher, Associate	2011	34.30	\$500.00	\$15,435.00
A. Chowning Poppler, Associate	2010	0.10	\$475.00	\$47.50
Christine Knowles, Contract Attorney	2013	37.30	\$375.00	\$13,987.50
Thomas McCarrick, Contract Attorney	2015	5.60	\$350.00	\$1,960.00
Serenity Wang, Contract Attorney	2012	2.40	\$400.00	\$960.00
Justin Schultz, Contract Attorney	2016	28.6	\$500.00	\$14,300.00
Sintia Saenz, Attorney/Paralegal	2008 FL	5.60	\$400.00	\$2,240.00
Krishna Desai, Contract Attorney	2010 IL	20.1	\$650.00	\$13,065.00
David Whitehead, Contract Attorney	2007 MO	2.40	\$650.00	\$1,560.00
<i>Office Manager, Paralegals, Law Clerks & Clerical Staff</i>				
John Hwang, Office Manager/Paralegal	N/A	50.3	\$250.00	\$12,575.00
Rebecca Rosales, Office Manager/Paralegal	N/A	30.5	\$250.00	\$7,625.00
Scott Gordon, Paralegal/Legal Assistant	N/A	70.4	\$250.00	\$17,600.00
Tracy Eastman, Outreach Specialist	N/A	72.70	\$150.00	\$10,905.00
Charles Greenlee, Paralegal	N/A	9.00	\$200.00	\$1,800.00
Tracey McClain, Paralegal	N/A	0.4	\$250.00	\$100.00
Eugenia Gueorguieva, Legal Assistant/Accounts Payable	N/A	9.2	\$175.00	\$2,300.00
Sam Marks, Law Clerk	N/A	63.10	\$225.00	\$14,197.00
Dolores Mayorga, Legal Secretary	N/A	4.30	\$200.00	\$860.00
Francine McGinity, Legal Secretary	N/A	8.10	\$200.00	\$1,620.00
Tejal Naik, Law Clerk	N/A	1.20	\$250.00	\$300.00
Edith Sanchez, Legal Secretary	N/A	10.60	\$200.00	\$2,120.00
Robert Shaw, Paralegal/Legal Assistant	N/A	1.30	\$150.00	\$195.00

1	Rachel Steyer, Law Clerk	N/A	103.80	\$175.00	\$18,165.00
2	Christopher Walker, Accounts Payable	N/A	19.2	\$200.00	\$3,840.00
3	Elizabeth Cheung, Legal Assistant	N/A	63.7	\$200.00	\$11,860.00
4	Lourdes Castro, Legal Assistant	N/A	7	\$200.00	\$1,400.00
5	Elisa Adams, Clerk	N/A	0.5	\$150.00	\$75.00
6	TOTAL HOURS & LODESTAR:		1,474.0		\$735,497.00

7 **Class Counsel's Costs are Reasonable and Compensable from the Settlement.**

8 104. A true and correct summary of the reasonable and necessary costs and expenses incurred by
9 SWCKW in this matter is attached as **Exhibit 23**. Invoices supporting these costs are also included.

10 105. Class Counsel request the Court to grant their request for taxable costs and other litigation-
11 related expenses reasonably and necessarily incurred in this litigation in the amount of \$44,575.02.
12 Any unclaimed costs will be reallocated to the Settlement and distributed to the CMs.

13 106. Here, Plaintiffs' reimbursable out-of-pocket expenses include the following: (1) filing fees,
14 court fees, and service of process; (2) mediation; (3) legal research; (4) depositions and deposition
15 transcripts; (5) overnight and bulk mail; (6) travel and travel expenses; and (7) copies and postage.
16 The total reimbursable costs incurred by Class Counsel in this case amount to \$44,575.02.

17 SWCKW's total costs are \$32,447.33 and are broken down as follows:

18	Category	Costs
19	Filing Fees/Court Fees/Service of Process	\$2,533.70
20	Mediation	\$3,125.00
21	Legal Research	\$2,211.95
22	Depositions/Deposition Transcripts	\$6,943.30
23	Overnight and Bulk Mail	\$932.25
24	Travel and Travel Expenses	\$6,908.70
25	Copies and Postage	\$9,191.30
26	Firm Total	\$32,447.30

27 107. All of the expenses set forth above were reasonable, were necessary to the prosecution of
28 the case, and are customarily billed to fee-paying clients.

108. **Travel Expenses.** Because Class Counsel's presence was required for court hearings and
other necessary events (*e.g.*, client meetings, mediations, depositions), travel expenses were
necessarily incurred. Class Counsel's travel are reasonable and were necessary to the prosecution of

1 the case. Such expenses are typically billed to fee-paying clients as incident to the representation
2 and, therefore, should be reimbursed.

3 **109. Printing and Reproduction Costs.** Printing and copying costs are reasonable and
4 necessary costs that are typically billed to a fee-paying client. Plaintiffs' copying and printing costs
5 include printing drafts of briefs, memoranda, and court filings for review and editing. These out-of-
6 pocket expenses are reimbursable nontaxable expenses under the FLSA.

7 **110. Postage.** Prosecution of this case required significant postage. Plaintiffs' documents and
8 exchanges between the Parties required use of the mail and other freight services. Therefore, postage
9 and freight delivery services are necessary and appropriate expenses that are customarily billed to
10 fee-paying clients.

11 **111. Computer Legal Research.** Class Counsel's request for reimbursement of out-of-pocket
12 costs for computer legal research is reasonable. This computer legal research, which was utilized to
13 support legal briefs and memoranda and to guide Plaintiffs' legal strategy, was necessary to the
14 effective representation of Plaintiffs. Such costs are not accounted for in Class Counsel's hourly rate
15 and are customarily billed to fee-paying clients. Therefore, Plaintiffs' requested reimbursement of
16 these expenses is appropriate.

17 **112. Mediation Costs.** Plaintiffs' mediation costs consist of amounts paid to the mediator as
18 part of the mediation that led to the settlement of this action. These costs are recoverable under the
19 FLSA because they are reasonable and are customarily billed to a fee paying client.

20 **113.** In summary, Plaintiffs are entitled to an award of all of the above-listed and described
21 costs. These expenses are reasonable and were necessary to the representation of Plaintiffs in these
22 actions. Such expenses should be reimbursed to Class Counsel.

CLASS REPRESENTATIVE ENHAHCMENT AWARDS

23 **114.** The Court should approve the requested enhancement awards in the amount of \$7,500.00 to
24 Named Plaintiff Vical and \$1,000.00 to Named Plaintiff Krueger⁷ because these awards are just,
25 fair, and reasonable.

26 _____
27 ⁷ Named Plaintiff Vical requests an enhancement award of \$7,500.00 and has executed a full release of all
28 claims; named Plaintiff Krueger requests an enhancement award of \$1,000, and will retain his right to
(footnote continued)

1 **Plaintiffs took extraordinary measures and invested substantial time and effort for the benefit**
2 **of the Class Members.**

3 115. Plaintiffs invested well over 250 hours of their time helping to litigate this case. This
4 includes substantial amounts of time: (1) locating and providing extensive documents to Class
5 Counsel; (2) engaging in lengthy interviews with Class Counsel prior to filing; (3) reviewing the
6 Complaint, the Court's Alternative Dispute Resolution Packet, and the Consolidated First Amended
7 Complaint; (4) reviewing and responding to over written discovery; (5) preparing for and/or
8 attending deposition; (6) making themselves available during settlement negotiations; and (7)
9 remaining in continuous contact and communication with Class Counsel throughout this litigation.
10 The extraordinary measures Plaintiffs have taken in their effort to benefit the Class Members weighs
11 in favor of granting the enhancement awards requested.

12 **Class Members received a substantial benefit from Plaintiffs' efforts.**

13 116. The average individual settlement payment for California Class Members is estimated to be
14 \$1,987.31, and the highest is estimated to be \$6,133.59. The average individual settlement payment
15 for FLSA Class Members is estimated to be \$284.45, and the highest is estimated to be \$789.87. The
16 substantial benefit Plaintiffs' efforts have secured for the Class weigh in favor of granting the
17 requested enhancement awards. Here, the enhancement awards here are only approximately 0.14%
18 of the Settlement.

19 //
20 //
21 //
22 //
23 //
24 //
25 //

26 _____
27 continue with a separate individual action ongoing against the Defendant, for claims not included in this class
28 action. The request for these Enhancement Awards are clearly disclosed in the proposed Notices.

1 **Plaintiffs took on substantial risk in bringing this class action.**

2 117. Plaintiffs took on substantial risk in bringing this class action and exposed themselves to
3 notoriety and personal difficulties by serving as the Named Plaintiffs in this lawsuit. Plaintiffs also
4 bore the significant financial risk of Mistras's costs in the event she lost at trial. This financial risk
5 could easily total tens, if not hundreds, of thousands of dollars.

6
7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct and is based upon my own personal knowledge. Executed in
9 Emeryville, California on December 8, 2016.

10 */s/ Carolyn Hunt Cottrell*
11 CAROLYN HUNT COTTRELL

ATTESTATION PER LOCAL RULE 5-1(i)(3)

The e-filing attorney hereby attests that concurrence in the filing of the document has been obtained from each of the other signatories indicated by a conformed signature (/s/) within this e-filed document.

Dated: December 8, 2016

/s/ Nicole N. Coon

NICOLE N. COON

SCHNEIDER WALLACE

COTTRELL KONECKY WOTKYNS LLP

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2016, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

Dated: December 8, 2016

/s/ Nicole N. Coon

NICOLE N. COON

SCHNEIDER WALLACE

COTTRELL KONECKY WOTKYNS LLP