

1 Stanley D. Saltzman, Esq. (SBN 090058)
William A. Baird, Esq. (SBN 192675)
2 MARLIN & SALTZMAN, LLP
29229 Canwood Street, Suite 208
3 Agoura Hills, California 91301
Telephone: (818) 991-8080
4 Facsimile: (818) 991-8081
ssaltzman@marlinsaltzman.com
5 tbaird@marlinsaltzman.com

6 Carolyn Hunt Cottrell (SBN 166977)
Nicole N. Coon (SBN 286283)
7 SCHNEIDER WALLACE
COTTRELL KONECKY WOTKYNS LLP
8 2000 Powell Street, Suite 1400
Emeryville, California 94608
9 Telephone: (415) 421-7100
Facsimile: (415) 421-7105
10 ccottrell@schneiderwallace.com
ncoon@schneiderwallace.com

11 Walter Haines, Esq. (SBN 71075)
12 UNITED EMPLOYEES LAW GROUP, P.C.
5500 Bolsa Ave., Suite 201
13 Huntington Beach, California 92649
Telephone: (888) 474-7242
14 Facsimile: (562) 256-1006

15 Attorneys for Plaintiffs
and the Settlement California Class and FLSA Class
16

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 EDGAR VICERAL and DAVID) **CASE NO. 3:15-cv-02198-EMC**
KRUEGER, individually and on behalf of) **(Assigned to Hon. Edward M. Chen)**
20 all others similarly situated,)
) **CLASS ACTION**
21 Plaintiffs,) **DECLARATION OF DAVID KRUEGER IN**
) **SUPPORT OF PLAINTIFFS' UNOPPOSED**
22 v.) **MOTION FOR ATTORNEYS' FEES, COSTS,**
) **AND ENHANCEMENT AWARDS**
23 MISTRAS GROUP, INC.; and DOES 1-50,)
inclusive,)
24 Defendant.) **DATE: February 2, 2017**
) **TIME: 1:30 p.m.**
25) **CTRM: 5**
26)
27)
28)

DECLARATION OF DAVID KRUEGER

I, David Krueger, declare as follows:

1. I am the Named Plaintiff in the above entitled matter, *Viceral and Krueger, et al. v. Mistras Group, Inc., et al.*, Case No. 3:15-cv-02198-EMC, and, if called, am competent to testify to the content of this declaration.

2. I submit this declaration in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, and Enhancement Awards.

3. I, by and through my attorneys, filed the *Krueger* lawsuit on April 10, 2015. I have been closely involved and attentive to this litigation since the beginning.

4. I began my employment with Mistras in August 2013. I worked as an hourly, non-exempt employee in the position of Technician. I was initially employed by Mistras as a Technician in Minot, North Dakota. In April 2014, Mistras offered me the position of Level II Technician in Bakersfield, California. I accepted the position and began working in Bakersfield, California in May 2014 through October 2014.

5. As a Technician, I was responsible for conducting non-destructive testing services for Mistras's clients to test the integrity of energy, industrial, and public infrastructure. I would work on-site of the Mistras customers and conduct the testing on behalf of Mistras. I inspected the piping of Mistras's customers to identify and evaluate defects.

6. I was typically scheduled to work 80 hours every two weeks on an alternative schedule. I was paid at a rate of \$23.00 per hour.

7. Although I was scheduled to begin and end my shifts at particular times, management required me to work beyond my shift. Specifically, during the first week of my alternative workweek schedule, Mistras scheduled me to work nine hours per day on Monday through Thursday and eight hours per day on Friday. During the second week, Mistras scheduled me to work nine hours per day Monday through Thursday. Mistras actually required me to typically work approximately twelve hours per day Monday through Thursday during both weeks and approximately ten hours per day on Fridays. I regularly worked over 40 hours per week, typically between 48 and 60 hours per week.

1 The extra time I worked would get recorded. As a result, I was not always compensated for this
2 time, including the overtime and double time owing to me. Likewise, I was not compensated for all
3 of my travel and training time.

4 8. My scheduled and actual hours worked triggered meal and rest breaks. However, I did not
5 always receive my rest breaks. I also sometimes did not receive my meal breaks or was required to
6 work through them. Although I, at times, had to work through my meal breaks, I do not believe that
7 I was always properly compensated for this time.

8 9. As a result of the some of the issues with my hours and pay, Mistras also failed to provide me
9 with proper wage statements. Often, the wage statements did not accurately reflect my actual hours
10 worked or actual wages earned.

11 10. Mistras also did not pay me right away after my employment ended in October 2014.

12 11. I believe my issues with Mistras are the same as other hourly employees, specifically
13 including Technicians and Examiners. I observed that my co-workers had similar employment
14 experiences to me. I also believe that Mistras's policies and practices have been similar for other
15 Technicians and Examiners regardless of location because Mistras has standardized policies and
16 practices.

17 12. I have spent my own personal time working with my attorneys providing background
18 information about my employment, about Mistras policies and practices, and about the allegations in
19 this lawsuit – including but not limited to the details provided above. My attorneys used this
20 information to identify the claims that could be alleged on a class-wide basis, to understand the
21 inner-workings of Mistras, and to prosecute this case on behalf of the Class.

22 13. I helped to advance the interests of the Class by participating actively in this litigation.

23 14. To assist with the case, I located and provided employment documents to my attorneys. The
24 documents included: correspondence with management and wage statements. Locating, organizing,
25 and sending this documentation took several hours over several days, probably well over 50 hours.

26 15. I also participated in extensive interviews prior to the filing of the complaint with my
27 counsel. These interviews totaled upwards of 40 hours over several days.

1 16. I then participated in the drafting of the complaint by working with my lawyers. I exchanged
2 several emails with my attorneys, and responded to questions about the complaint during telephone
3 calls. When a draft of the complaint was complete, I carefully read it over. My review of the
4 complaint took about 10 hours. I then approved the final draft of the complaint before it was filed.

5 17. After the complaint was filed, Mistras removed the case to federal court and the *Krueger*
6 action was combined with the *Viceral* action before this Court. My attorneys sent me the Court's
7 Alternative Dispute Resolution packet, which I read and discussed with them.

8 18. After the cases were combined, amendments were made to the complaint, which I approved.
9 The consolidated first amended complaint was filed after that.

10 19. In addition to assisting with drafting the complaints, I also actively participated in and
11 responded to discovery requests from Mistras, including document requests. I went through all of
12 my documents to make sure that I had provided all employment documents in my possession to my
13 attorneys. I also reviewed each discovery request. This included over 20 document requests. It took
14 me a long time to read through all of these discovery requests, about 20 hours. In total, I spent about
15 40 hours working on my responses with the assistance of my attorneys. With my approval, my
16 responses were sent to Mistras. I also helped prepare initial disclosures. I communicated at length
17 with my attorneys to confirmation information about the case. These meetings took about 3 hours.

18 20. Mistras also noticed my deposition during March 2016. I worked with my attorneys to
19 coordinate dates on which I would be available to prepare for as well as attend my deposition.
20 Determining the dates took significant coordination because I had little flexibility in taking time off
21 work, and was concerned about the impacts of my employment on missing work. Ultimately, all of
22 the attorneys worked together to schedule my deposition in San Francisco at the beginning of March
23 2016. The day before my deposition, I flew and met with my attorneys for an all-day deposition
24 preparation. This lasted over 5 hours. The next day was my deposition. This was another long day. I
25 was questioned about my employment with Mistras and the allegations in the complaint. After my
26 deposition, my attorneys forwarded me a copy of my deposition transcript for review. It took me a
27 few hours to review and approve my deposition transcript.

1 21. In the months that I followed, I regularly communicated with my attorneys via email and
2 telephone to discuss the status of the case. We also scheduled mediation in the case to try to
3 negotiate a settlement. I made sure to clear my schedule to be available to respond to settlement
4 negotiations. We corresponded regularly by telephone and email regarding the status of the case and
5 continued settlement negotiation efforts. I provided my attorneys with authority to continue the
6 negotiations and attempt to settle the case.

7 22. Eventually, the Parties recently reached an agreement to settle the case. I reviewed and
8 approved the proposed class settlement agreement.

9 23. As part of the settlement agreement, I have agreed to release the claims I have against
10 Mistras that are the subject of the settlement agreement as set forth in paragraph 60 of the
11 agreement.

12 24. I believe, based upon my participation, and also based upon my knowledge of the facts and
13 the law, as explained to me by my attorneys, that the settlement is fair and reasonable, and that my
14 hard work has led to a beneficial result for the Class.

15 25. I therefore respectfully request that the Court approve the enhancement award agreed to by
16 the Parties in the settlement agreement.

17 26. I estimate that I spent a total of approximately 150 hours working on this case.

18 27. All of the time I spent on this case was time that I could have been involved in other
19 endeavors, or with my family and friends. I was willing to spend this time because I felt strongly
20 about serving as a Class representative and representing my co-workers in this case.

21 28. In fact, I am so committed to this litigation that I turned down an opportunity to move out of
22 state. I wanted to ensure that I was nearby and easily reachable by my attorneys, especially for
23 settlement discussions and/or if the case were to proceed to trial. This decision created financial and
24 personal hardships for me. I took my commitment seriously and wanted to ensure that I was in
25 California to stand up for my co-workers' rights.

26 29. Making a decision to participate in this case as Class representative also placed me at
27 substantial personal risk, including: (a) the risk of my reputation in the community as a result of
28

1 stepping forward publicly in a class action, and the fear of retaliation against me as a result; (b) the
2 risk to my reputation as it concerns my future employment opportunities; (c) the risk that I had to be
3 subject to intrusive discovery by Mistras; (d) the risk that I would have to devote substantial
4 resources, including my own time and expenses, in participating in the case; and (e) the risk that I
5 might have to pay defense costs if I lost the case. I willingly took on these risks and burdens because
6 I felt strongly about serving as a Class representative and representing the Class in this case.

7
8 I declare under penalty of perjury under the laws of the State of California and the United
9 States of America that the foregoing is true and correct and is based upon my personal knowledge.

10
11 Executed this 7th day of December, 2016 in California

12
13 

14 David Krueger
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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