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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JUSTIN PRICE and BRENDA PRICE,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

MISTRAS GROUP, INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Lead Case No.: **20STCV22485**

[Consolidated with Case No. 20LBCV00408]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: March 30, 2022

Hearing Time: 10:30 a.m.

[Hearing Set By Order dated Nov. 23, 2021]

Dept.: SS-1

Judge: Hon. Daniel Buckley

Action Filed: June 20, 2020

Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Justin Price and Brenda Price (“Plaintiffs”) respectfully submit this memorandum in
3 support of the unopposed motion for preliminary approval of the proposed class action settlement with
4 Defendant Mistras Group, Inc. (“Defendant”), and seek entry of an order: (1) preliminarily approving
5 the proposed settlement of this class action with Defendant; (2) for settlement purposes only,
6 conditionally certifying the Class, which is comprised of “individuals who are or previously were
7 employed by Defendant Mistras Group, Inc. in California and who were classified as non-exempt
8 employees at any time during the Class Period”; (3) provisionally appointing Plaintiffs as the
9 representatives of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug,
10 and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP, as Class Counsel for the
11 Class; (5) approving the form and method for providing class-wide notice; (6) directing that notice of
12 the proposed settlement be given to the class; (7) appointing Simpluris as Settlement Administrator,
13 and (8) scheduling a final approval hearing date to consider Plaintiffs’ motion for final approval of the
14 settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys' fees and
15 expenses.

16 Plaintiffs and Defendant (collectively the “Parties”) have reached a full and final settlement of
17 the above-captioned action, which is embodied in the Class Action Settlement Agreement
18 (“Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
19 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith.

20 As consideration for this Settlement, the Gross Settlement Amount is Two Million Three
21 Hundred Thousand Dollars (\$2,300,000) to be paid by Defendant, as set forth in the Agreement. The
22 Gross Settlement Amount will settle all issues pending in the Actions between the Parties and will be
23 made in full and final settlement of the Released Class Claims. The Gross Settlement Amount includes
24 all payments of Settlement Shares to the Participating Class Members, Settlement Administration
25 Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class
26 Representative Service Payments, and the PAGA Payment. The Gross Settlement Amount does not
27

28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 include the employer's share of payroll taxes which will be separately paid by Defendant. The
2 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl.
3 Nordrehaug at ¶3.

4 On February 16, 2021, the Parties participated in an all-day mediation session presided over by
5 Jeffrey Krivis, Esq., a respected and experienced mediator of wage and hour class actions. Following
6 the mediation, each side, represented by its respective counsel, were able to agree to settle the Actions
7 based upon a mediator's proposal which was memorialized in the form of a Memorandum of
8 Understanding. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should
9 be preliminarily approved because there is a substantial monetary payment, and there are substantial
10 litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant
11 preliminary approval of the Agreement and enter the proposed order submitted herewith.

12 **II. DESCRIPTION OF THE SETTLEMENT**

13 The Gross Settlement Amount is Two Million Three Hundred Thousand Dollars (\$2,300,000).
14 (Agreement at ¶ I(19).) Under the Settlement, the Gross Settlement Amount consists of the following
15 elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class
16 Counsel Litigation Expenses Payment; (3) Settlement Administration Expenses; (4) Class
17 Representative Service Payments to the Plaintiffs; and (5) the PAGA Payment. (Agreement at ¶ I(19).)
18 The Gross Settlement Amount does not include Defendant's share of payroll taxes. (Agreement at ¶
19 I(19).) The Gross Settlement Amount shall be all-in with no reversion to Defendant and shall be paid
20 without the need to submit a claim form. (Agreement at ¶ I(19).) Decl. Nordrehaug at ¶15.

21 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay
22 Defendant's share of payroll taxes within fifteen (15) calendar days of the Effective Date. (Agreement
23 at ¶ III(45).) The Settlement Shares to Participating Class Members will be mailed by the Settlement
24 Administrator within fifteen (15) calendar days after the funding of the Gross Settlement Amount.
25 (Agreement at ¶ III(45).) Decl. Nordrehaug at ¶16.

26 The Net Settlement Amount shall equal the net amount available for payment to the Class after
27 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
28 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the

1 Settlement Administration Expenses. (Agreement at ¶ I(21).) The Net Settlement Amount will be
2 distributed as the Settlement Shares to the Class Members who do not timely request exclusion
3 (“Participating Class Members”). (Agreement at ¶¶ I(24) and III(40)(a).) The Settlement Share will
4 be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by
5 the total number of Qualifying Workweeks for all the Participating Class Members to determine a
6 dollar amount per week (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the
7 number of Qualifying Workweeks worked by each Participating Class Member and multiply it by the
8 Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(40)(b).) Workweeks will be
9 based on Defendant’s records, however Class Members will have the right to challenge the number of
10 workweeks. Decl. Nordrehaug at ¶17.

11 Class Members may choose to opt-out of the Settlement by following the directions in the Class
12 Notice. (Agreement at ¶ III(42)(c), Ex. A.) All Class Members who do not "opt out" will be deemed
13 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
14 Settlement Share. Aggrieved Employee who opt out the Settlement will still be paid their allocation
15 of the PAGA Payment, respectively, and will remain bound by the release of the Released PAGA
16 Claims, regardless of their request for exclusion. (Agreement at ¶ III(42)(c).) Finally, the Class Notice
17 will also advise the Class Members of their right to object to the Settlement and/or dispute their
18 workweeks. (Agreement at ¶ III(42)(c), Ex. A.) Decl. Nordrehaug at ¶18.

19 A Participating Class Member must cash his or her Settlement Share check within 180 days
20 after it is mailed. (Agreement at ¶III(46).) The Settlement Administrator will send a reminder to
21 Participating Class Members who have not cashed their checks within 120 days after its last mailing
22 to the affected individual. (Agreement at ¶ III(46).) Any settlement checks not cashed within 180 days
23 will be voided and any funds from such uncashed checks will be paid to the California State
24 Controller’s Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at
25 ¶ III(46).) Decl. Nordrehaug at ¶19.

26 Based upon the lowest bid received from qualified vendors, the Parties have agreed to use
27 Simpluris as the Settlement Administrator. (Agreement at ¶ 1.) From the Gross Settlement Amount,
28 the Settlement Administrator shall be paid for the expenses of administering the Settlement in an

1 amount not to exceed \$20,000. (Agreement at ¶ III(39)(d).) Decl. Nordrehaug at ¶20.

2 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
3 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
4 at ¶ III(39)(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
5 Litigation Expenses Payment in an amount not to exceed \$30,000. (Agreement at ¶ III(39)(b).) Subject
6 to Court approval, the Agreement provides for a payment of no more than \$10,000 to each Plaintiff as
7 the Class Representative Service Payment. (Agreement at ¶ III(39)(a).) Decl. Nordrehaug at ¶21.

8 The Parties will seek approval from the Court for the PAGA Payment of \$50,000 out of the
9 Gross Settlement Amount, which shall be allocated 75% (\$37,500) to the LWDA as the LWDA's share
10 of the PAGA Payment pursuant to PAGA and 25% (\$12,500) will be distributed to the Aggrieved
11 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at ¶
12 III(39)(c).) All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject
13 to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
14 at ¶ III(39)(c).) As set forth in the accompany proof of service, the LWDA has been served with this
15 motion and the Agreement. Decl. Nordrehaug at ¶22.

16 **III. CASE BACKGROUND**

17 The description of the case and claims, along with the procedural history is set forth in the
18 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in an investigation and the exchange
19 of documents and information in connection with the Action over more than two years which permitted
20 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
21 Parties participated in mediation on February 16, 2021 with Jeffrey Krivis, Esq., which after arm's
22 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

23 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO** 24 **GRANT PRELIMINARY APPROVAL**

25 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
26 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
27 California "[p]ublic policy generally favors the compromise of complex class action litigation."
28 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*

1 Cases, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
2 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
3 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
4 denied, 459 U.S. 1217 (1983)).

5 Preliminary approval is the first of three steps that comprise the approval procedure for
6 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
7 members. The third step is a final settlement approval hearing, at which evidence and argument
8 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
9 members may be heard regarding the settlement. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
10 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

11 The primary question presented on an application for preliminary approval of a proposed class
12 action settlement is whether the proposed settlement is "within the range of possible approval."
13 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
14 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed
15 settlement... may be submitted to members of the prospective Class for their acceptance or rejection."
16 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
17 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
18 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
19 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
20 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
21 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
22 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
23 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
24 settlement is given to the class members and a final settlement hearing is held by the Court.

25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

2 The approval of a proposed settlement of a class action suit is a matter within the broad
3 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk* , 48 Cal.App.4th 1794.
4 Preliminary approval does not require the trial court to answer the ultimate question of whether a
5 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
6 of the settlement has been given to the class members and after they have been given an opportunity
7 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
8 *Federal Practice* §§23.80 - 23.85 (2003).

9 In considering a potential settlement for preliminary approval purposes, the trial court does not
10 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
11 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
12 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
13 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688
14 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
15 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
16 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
17 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
18 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
19 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
20 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

21 With regard to class action settlements, the opinions of counsel should be given considerable
22 weight both because of counsel’s familiarity with this litigation and previous experience with cases
23 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
24 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
25 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
26 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
27 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
28 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

1 **B. Factors To Be Considered In Granting Preliminary Approval**

2 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
3 approval. In determining whether to grant preliminary approval, the court considers whether the "(1)
4 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
5 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
6 or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust*
7 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather
8 all factors should be considered. The analysis has been summarized as follows:

9 If the proposed settlement appears to be the product of serious, informed, noncollusive
10 negotiations, has no obvious deficiencies, does not improperly grant preferential
11 treatment to class representatives or segments of the class, and falls within the range of
12 possible approval, then the court should direct that notice be given to the class members
of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

13 *Manual of Complex Litigation, Second* § 30.44, at 229.

14 Here, the Settlement meets all of these criteria for preliminary approval.

15 **1. The Settlement is the Product of Serious, Informed and**
16 **Arm's Length Negotiations by Experienced Counsel**

17 This settlement is the result of extensive and hard-fought litigation as well as negotiations
18 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
19 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
20 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
Class Claims of the Class in accordance with this Settlement upon full funding of the Settlement.³

21
22 ³ The release applicable to the Class is tethered to allegations in the Action and the "Released Class
23 Claims" are "all claims that were or could have been alleged in the Complaints and/or Amended
24 Complaints filed in the Actions under any state law, federal law, common law, equity or other theory
25 arising in any way from the facts alleged in the Complaints and/or Amended Complaints filed in the
26 Actions regarding the provision (or alleged non-provision) of wages, compensation, remuneration,
27 expense reimbursements, premium payments, meal and/or rest breaks (or timing or length of any breaks
28 provided), pre-shift or post-shift work, commute time, and/or wage statements provided to those class
members (or the content or lack of content of any wage statements received), during the Class Period,
and expressly excluding all other claims, including claims for wrongful termination, unemployment
insurance, disability, social security, and workers' compensation, and claims outside of the Class
Period." (Agreement at ¶ III(48)(a).)

1 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
2 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
3 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
4 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
5 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
6 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
7 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
8 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

9 The Parties attended an arms-length mediation session with Jeffrey Krivis, a respected and
10 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
11 for the mediation, Defendant provided Class Counsel with necessary information for the members of
12 the Class, including a sampling of handwritten punch cards, time and payroll data, and data concerning
13 the composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger
14 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. At
15 the conclusion of the all-day mediation, the Parties agreed to this Settlement based upon the Mediator's
16 proposal. The final settlement terms were negotiated and set forth in the Agreement now presented for
17 this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that
18 this Settlement is fair, reasonable and adequate.

19 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
20 Two Million Three Hundred Thousand Dollars (\$2,300,000). The Settlement is all-in with no
21 reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

22 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
23 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
24 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
25 access to necessary information for the Class. In addition, Class Counsel previously negotiated
26 settlements with other employers in actions involving nearly identical issues and analogous defenses.
27 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
28 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,

1 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
2 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
3 appellate issues. Decl. Nordrehaug at ¶ 14.

4 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
5 trying these Action against Defendant through possible appeals which could take several years. Class
6 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
7 class actions such as these Action. Class Counsel is also mindful of and recognize the inherent
8 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
9 evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement
10 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

11 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
12 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
13 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
14 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
15 influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

16 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
17 **the Range for Approval**

18 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
19 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
20 receive payment according to the same formula. (Agreement at ¶ III(40)(b).) For the 1,251 individuals
21 in the Class who collectively worked 133,575 weeks, the Gross Settlement Amount provides an average
22 value of \$1,838 per Class Member and \$17 per workweek, and after deductions, the Net Settlement
23 Amount provides an average recovery of \$1,129 per Class Member and \$10 per work week. Decl.
24 Nordrehaug, ¶6.

25 The calculations to compensate for the amount due to the Class Members at the time this
26 Settlement was negotiated were calculated by Plaintiffs’ expert, Berger Consulting, in advance of
27 mediation. For the individuals whose claims are at issue in this Actions, Plaintiffs analyzed the data for
28 putative class members and determined the potential maximum damages for the class claims. For the

1 Class, Plaintiffs determined that the unpaid wages due to the alleged miscalculation of the regular rate
2 was \$385,102, the potential off-the-clock damages were \$6,184,474, the maximum potential meal
3 period damages were estimated to be \$3,909,067 based on a violation rate affecting 31% of all shifts,
4 and rest period damages were estimated to be \$6,142,972.60 based on the same violation rate as with
5 meal periods, and, the maximum damages for unreimbursed expenses were estimated to be \$2,136,086
6 estimating unreimbursed expenses at \$50 a month. In total, the damages for the Class were calculated
7 to have a maximum total value of \$16,523,796. In addition, Plaintiffs calculated that the maximum
8 value of the waiting time penalties were between \$848,737 and \$3,492,880, depending on the predicate
9 violation for the penalties, and the maximum value of the wage statement penalties to be \$2,329,950.
10 These claims for wage statement and waiting time penalties, however, potentially have a much smaller
11 value, even if damages were awarded, to the extent that they are only derivative of the meal and rest
12 break claims.⁴ Decl. Nordrehaug, ¶6.

13 Consequently, the Gross Settlement Amount represents more than 13.9% of the value of the
14 potential maximum damages at issue for the Class in this case, assuming these amounts could all be
15 proven in full at trial.⁵ The above maximum calculations should then be adjusted in consideration for
16 both the risk of certification and the risk of establishing class-wide liability on all claims. Given the
17 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
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19

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21 ⁴ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
22 226, Plaintiffs recognized that these claims were subject to various defenses asserted by Defendant,
23 including, but not limited to, a good faith dispute defense as to whether any premium wages for meal
24 or rest periods or other wages were owed given Defendant's position that Plaintiffs were properly
25 compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no
26 willful failure to pay wages if the employer and employee have a good faith dispute as to whether and
27 when the wages were due."). Additionally, Courts have held that violations of the meal and rest period
28 regulations, which require payment of a "premium wage" for each improper meal period, do **not** give
rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal. App.
4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018).
As a result, the viability of Plaintiffs' claims on these theories is uncertain.

⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiffs have not included
the PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

1 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

2 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
3 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
4 Defendant present serious threats to the claims of the Plaintiffs and the other Class Members.
5 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
6 argued that all work time was paid for and that the regular rate calculation was lawful. Defendant
7 contend that their meal and rest period policies fully complied with California law and that although
8 Defendant's timekeeping system recorded meal periods, all meal periods were provided. Further,
9 Defendant argued that Defendant was not required to record rest periods. Finally, Defendant could
10 argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened
11 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
12 Defendant also argues that based on their facially lawful practices, they acted in good faith and without
13 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
14 wage statements. In fact, under the current state of the law, it is questionable whether these penalties
15 could be awarded at all based upon the alleged meal and rest period violations. If successful,
16 Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While
17 Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit
18 and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

19 There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable
20 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
21 Defendant argued that the individual experience of each putative class member varied with respect to
22 the claims. Defendant could also contest class certification by arguing injury and good faith were case
23 by case determinations that precluded class certification. Plaintiffs are aware of cases where class
24 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885, 256

25
26 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
27 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
28 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
been awarded had they succeeded at trial.")

1 Cal. Rptr. 3d 547 (2019) (denying certification of meal and rest break claims). Defendant also
2 contended that individual differences in work experiences not only impacted damages but would also
3 impact certification. Finally, even if class certification was successful, as demonstrated by the
4 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there
5 are significant hurdles to overcome for a class wide recovery even where the class has been certified.
6 While other cases have approved class certification in wage and hour claims, class certification in this
7 action would have been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug,
8 ¶ 25.

9 After arm's length negotiations between experienced and informed counsel, the Parties
10 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
11 \$2,300,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

12 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
13 and likely duration of further litigation likewise favors the settlement. Regardless of
14 how this Court might have ruled on the merits of the legal issues, the losing party likely
15 would have appealed, and the parties would have faced the expense and uncertainty of
16 litigating an appeal. 'The expense and possible duration of the litigation should be
17 considered in evaluating the reasonableness of [a] settlement.'"

18 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
19 (9th Cir. 2000)).

20 **3. The Settlement Does Not Improperly Grant Preferential Treatment To** 21 **Class Representatives or Segments Of The Class**

22 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
23 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
24 Members are all determined under a neutral methodology. Each Participating Class Member will
25 receive the same opportunity to participate in and receive payment through a neutral formula that is
26 based upon the weeks worked by that individual. Decl. Nordrehaug, ¶4.

27 Plaintiffs will apply to the Court for a Class Representative Service Payment in consideration
28 for the service and for the risks undertaken on behalf of the class. (Agreement at ¶ III(39)(a).)
29 Plaintiffs performed their duty admirably by working with Class Counsel. Decl. Nordrehaug at ¶27.
30 At this stage, the requested service award of \$10,000 is well within the accepted range of awards for
31 purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS

1 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman*
2 *v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
3 service award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*,
4 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in
5 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding
6 \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements). As
7 explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
8 employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing
9 an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of
10 all employees. 2007 WL 221862 at *16-17.

11 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
12 **Preliminary Approval Of The Settlement**

13 The stage of the proceedings at which this Settlement was reached also militates in favor of
14 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
15 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
16 Members' claims before the Action was filed. Class Counsel conducted a review and analysis of the
17 relevant documents and data. Class Counsel was also experienced with the claims at issue here, as
18 Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the
19 agreement to settle did not occur until Class Counsel possessed sufficient information to make an
20 informed judgment regarding the likelihood of success on the merits and the results that could be
21 obtained through further litigation. Decl. Nordrehaug at ¶28.

22 Based on the foregoing data and their own independent investigation and evaluation, Class
23 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
24 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
25 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
26 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
27 parties possessed sufficient information to make an informed judgment regarding the likelihood of
28 success on the merits and the results that could be obtained through further litigation. Decl.

1 Nordrehaug at ¶29.

2 In *Glass*, the Northern District of California granted final approval of an overtime wage action
3 although in *Glass* no formal discovery had been conducted prior to the settlement:

4 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
5 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
6 a necessary ticket to the bargaining table' where the parties have sufficient information
7 to make an informed decision about settlement.'"

8 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
9 213 F.3d at 459).

10 Here, Class Counsel was in at least an equal position to evaluate the fairness of this Settlement
11 because Class Counsel received all necessary information which was evaluated with the assistance of
12 an expert, and also performed independent investigations and due diligence to confirm the accuracy of
13 the information supplied by Defendant.

14 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

15 Plaintiffs contend that the proposed settlement meet all of the requirements for class
16 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
17 Court may appropriately approve the Class as defined in the Agreement. This Court should
18 conditionally certify the Class for settlement purposes only, defined as follows:

19 All individuals who are or previously were employed by Defendant Mistras Group, Inc.
20 in California and who were classified as non-exempt employees at any time during the
21 Class Period.

22 (Agreement at ¶ I(3).)

23 The "Class Period" is from "June 10, 2016 through July 31, 2021".⁷ (Agreement at ¶ I(10).)

24 **A. California Code of Civil Procedure § 382**

25 Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil
26 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
27 class certification is appropriate as follows:

28 ⁷ For Class members who were part of the prior California settlement class of *Viceral and Krueger, et al. v. Mistras Group, Inc., et al.*, N.D. Cal. Case No. 3:15-cv-02198-EMC ("*Viceral*"), their Class Period is limited to February 18, 2017 through July 31, 2021. (Agreement at ¶ I(10).)

1 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
2 of a common or general interest, of many persons, or when the parties are numerous,
3 and it is impracticable to bring them all before the court...” The party seeking
4 certification has the burden to establish the existence of both an ascertainable class and
5 a well-defined community of interest among class members. (*citations omitted*). The
6 “community of interest” requirement embodies three factors: (1) predominant common
7 questions of law or fact; (2) class representatives with claims or defenses typical of the
8 class; and (3) class representatives who can adequately represent the class.

9 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

10 While Defendant reserve all rights to dispute that the Plaintiffs can satisfy these requirements,
11 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
12 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
13 settlement only. (Agreement at ¶ III(36).)

14 **B. The Proposed Class Is Ascertainable and Numerous**

15 Plaintiffs bring this action on behalf of a Class of individuals during the applicable Class Period.
16 Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be
17 determined through examination of Defendant’s files. Given that the Class consists of approximately
18 1,251 members, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*,
19 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
20 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs
21 assert that the 1,251 current and former employees that comprise the Class can be identified based on
22 Defendant’s records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

23 **C. Common Issues of Law and Fact Predominate**

24 Predominance of common issues of law or fact does not require that the common issues be
25 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
26 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
27 necessity for class members to individually establish eligibility and damages does not mean individual
28 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

Commonality exists if there is a predominant common legal question regarding how an
employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its

1 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
2 certification stage since the question is “essentially a procedural one that does not ask whether an action
3 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

4 Here, Plaintiffs contend that common questions of law and fact are present, and specifically the
5 common questions of whether Defendant properly calculated the regular rate, whether the Defendant
6 failed to provide meal and rest periods, whether class members were lawfully compensated for all hours
7 worked, whether Defendant failed to provide required expense reimbursement, and whether Class
8 Members are entitled to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30.
9 Defendant disputes that common questions predominate but will not oppose such a finding for purposes
10 of this Settlement only.

11 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

12 The typicality requirement requires the Plaintiffs to demonstrate that the members of the class
13 have the same or similar claims as the Plaintiffs. “The typicality requirement is met when the claims
14 of the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v.*
15 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth
16 Circuit held that “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are
17 reasonably coextensive with those of absent class members; they need not be substantially identical.”

18 In the instant case, Plaintiffs contend that there can be little doubt that the typicality requirement
19 is satisfied. The Plaintiffs, like every other member of the Class, worked for Defendant as non-exempt
20 employees during the Class Period. Plaintiffs contend that, like every other member of the Class, they
21 were subject to the same practices and policies of Defendant and are subject to the same defenses. Thus,
22 Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from the same course of
23 conduct by the Defendant, involve the same employment policies and practices of Defendant, and are
24 based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert
25 that the typicality requirement is met as to the common issues presented in this case. Defendant does
26 not oppose a finding of typicality for purposes of this Settlement only.

27 **E. The Class Representation Fairly and Adequately Protected the Class**

28 Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs

1 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
2 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
3 met here. First, Plaintiffs are well aware of their duties as the representatives and have actively
4 participated in the prosecution of this case to date. They effectively communicated with counsel,
5 provided documents to counsel and participated in the investigation and negotiations in the Action.
6 Second, Plaintiffs retained competent counsel who are experienced in employment class actions and
7 who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests
8 of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief
9 under the same set of facts and legal theories. Defendant disputes that the adequacy requirement is
10 satisfied but will not oppose such a finding for purposes of this Settlement only.

11 **F. The Superiority Requirement Is Met**

12 To certify a class, the Court must also determine that a class action is superior to other available
13 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
14 common issues will reduce litigation costs and promote greater efficiency, a class action may be
15 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
16 1996). As courts have previously observed:

17 Absent class treatment, each individual plaintiff would present in separate, duplicative
18 proceedings the same or essentially the same arguments and evidence, including expert
19 testimony. The result would be a multiplicity of trials conducted at enormous expense
20 to both the judicial system and the litigants. “It would be neither efficient nor fair to
21 anyone, including defendants, to force multiple trials to hear the same evidence and
22 decide the same issues.”

23 *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

24 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
25 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
26 dispute a finding of superiority in this action for purposes of this Settlement only.

27 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

28 The Court has broad discretion in approving a practical notice program. The Parties have
agreed upon procedures by which the Class Members will be provided with written notice of the
Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance

1 with the Agreement, Defendant will provide to the Settlement Administrator an electronic database
2 containing each Class Member's Class Data. (Agreement at ¶ III(42)(b).) Within 14 days after
3 receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
4 Members via first-class U.S. Mail using the most current mailing address information available.
5 (Agreement at ¶ III(42)(b).) The Class Notice, drafted jointly and agreed upon by the Parties through
6 their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit
7 "A" to the Agreement.) The Class Notice will include, among other information: (i) information
8 regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)
9 information to the Class Members regarding how to opt out and how to object to the Settlement; (iv)
10 the estimated Settlement Share for each of the Class Members; (iii) the amount of attorneys' fees and
11 expenses to be sought; (v) the amount of the Plaintiffs' service awards requests; and (vi) the anticipated
12 expenses of the Settlement Administrator. The Parties agree that the Class Notice Packet will also
13 include a Spanish translation of the Class Notice. Decl. Nordrehaug at ¶32.

14 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
15 the Notice is mailed to them to request exclusion (opt-out) or to submit an objection. (Agreement at
16 ¶ III(42)(c).) In the event of a re-mailing, the deadline for responses will be extended by an additional
17 15 days. Class Members shall be given the opportunity to object to the Settlement and/or requests for
18 attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ III(42)(c).)
19 Class Members who do not submit a timely and proper request to opt-out will automatically receive a
20 payment of their Settlement Share. This notice program was designed to meaningfully reach the Class
21 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
22 at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and
23 is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and
24 3.769(f).

25 **VII. CONCLUSION**

26 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
27 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
28 fairness hearing for a date that is at least one hundred twenty (120) days from the date of Preliminary

1 Approval.

2 Dated: February 24, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs

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