

1 FARZAD RASTEGAR (SBN 155555)
farzad@rastegarlawgroup.com
2 THOMAS S. CAMPBELL (SBN 199014)
tom@rastegarlawgroup.com
3 RASTEGAR LAW GROUP, A.P.C.
22760 Hawthorne Boulevard, Suite 200
4 Torrance, California 90505
Tel. (310) 961-9600
5 Fax. (310) 961-9094

6 Attorneys for Plaintiff Porfiria Yocupicio
individually and on behalf of all others
7 similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PORFIRIA YOCUPICIO,
individually, and on behalf of all other
11 similarly situated,

12 Plaintiff,

13 vs.

14 PAE GROUP, LLC, a limited liability
company; ARCH RESOURCES
15 GROUP LLC, a limited liability
company; PACIFIC PEARL HOTEL
16 MANAGEMENT - SAN DIEGO,
LLC, a limited liability company;
17 PACIFIC PEARL HOTELS, LLC, a
limited liability company; and DOES 3
18 through 10, inclusive,

19 Defendants.

Case No. BC548550
[Assigned for all Purposes to the
Hon. Elihu M. Berle - Dept. 6]

NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
CERTIFICATION OF PROVISIONAL
SETTLEMENT CLASS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF; DECLARATION
OF ELIZABETH KRUCKENBERG ON
BEHALF OF SETTLEMENT
ADMINISTRATOR WITH RESPECT TO
OPT OUTS AND OBJECTIONS
RECEIVED

Declaration of Farzad Rastegar w/ Documents
ISO Motion for Preliminary Approval filed
concurrently herewith.

Date: December 5, 2018
Time: 11:00 a.m.
Dept.: 6

23
24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
25 NOTICE that on December 5, 2018, at 11:00 a.m. in Department 6 of the above-entitled
26 court located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA
27 90012, Named Plaintiff Porfiria Yocupicio will move this Court for an order granting final
28 ///

1 approval of a proposed class action settlement and certifying a provisional settlement class
2 as more particularly set forth in the Memorandum of Points and Authorities.

3 This motion is brought in accordance with California Rule of Court 3.769, and is
4 based upon the Memorandum of Points and Authorities, the Joint Stipulation and
5 Agreement to Settle Class Action Claims, the Declaration of Farzad Rastegar, the
6 Declaration of Elizabeth Kruckenberg on Behalf of Settlement Administrator with Respect
7 to Opt Outs and Objections Received, and upon such evidence and arguments as may be
8 presented at the time of the hearing.

9 Dated: November 1, 2018

Respectfully submitted,

10 RASTEGAR LAW GROUP, APC

11
12 By:



13 Farzad Rastegar
14 Thomas S. Campbell
15 Attorneys for Plaintiff Porfiria Yocupicio,
16 individually and on behalf of all others similarly
17 situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class action brought by Named Plaintiff Porfiria Yocupicio
4 ("Named Plaintiff") against Defendants ARCH RESOURCES GROUP LLC ("ARCH"), PACIFIC
5 PEARL HOTEL MANAGEMENT - SAN DIEGO, LLC and PACIFIC PEARL HOTELS, LLC
6 (collectively referred to as "PPH Defendants"), primarily alleging that Defendants failed to provide
7 legally compliant meal periods and unlawfully required employees to work more than eight hours
8 a day without paying overtime wages, amongst other claims. Named Plaintiff and Defendant
9 ARCH RESOURCES GROUP, LLC ("the Parties") have entered into a Stipulation of Class
10 Action Settlement and Release ("Settlement" or "Settlement Agreement") which provides for a
11 total settlement amount of \$122,500.00. Named Plaintiff now moves for final approval of the
12 Settlement Agreement and for conditional certification of the settlement class.

13 The Settlement Class is defined as:

14 All employees who worked in any hourly paid job position in California and
15 were employed by ARCH to work at the DoubleTree by Hilton Golf Resort -
16 San Diego, located at 14455 Penasquitos Drive, San Diego, CA 92129, any time
during the Class Period from June 13, 2010, until the date of preliminary
approval of the Settlement by the Court.

17 and is comprised of 141 individuals. The proposed settlement class is ascertainable and
18 there is a well-defined community of interest. The approved proposed notice informed
19 class members of the terms of the Settlement and gave them instructions on how to
20 participate, opt-out, or object to the Settlement.

21 On September 7, 2018, Notice was mailed to the 141 Class Members. *See*,
22 Declaration of Elizabeth Kruckenberg on Behalf of Administrator With Respect to Opt
23 Outs and Objections Received ("Kruckenberg decl") ¶ 5, attached hereto.

24 Class Members had 60 days from the mailing of the Notice to object to or opt-out
25 from the Settlement. Class Members automatically receive a Settlement payment unless
26 they opt out.

27 The Settlement surpasses the test of reasonableness and adequacy. Named Plaintiff
28 therefore respectfully requests that this Court grant final approval of the Settlement.

1 **II. SUMMARY OF THE CASE**

2 Plaintiff was employed by Defendants as non-exempt employee at the DoubleTree
3 by Hilton Golf Resort - San Diego, located at 14455 Penasquitos Drive, San Diego, CA
4 92129. Plaintiff worked for defendants from approximately October 12, 2012 to
5 September 30, 2013. Declaration of Farzad Rastegar in Support of Plaintiff's Motion for
6 Final Approval of Class Action Settlement and Certification of Provisional Settlement
7 Class ("Rastegar decl"), ¶ 5.

8 On June 13, 2014, Plaintiff filed a class action complaint in the Superior Court of
9 California for the County of Los Angeles, Case No. BC548550. On August 21, 2014,
10 Plaintiff filed her First Amended Class Action Complaint ("FAC") against ARCH
11 RESOURCES GROUP, LLC, a limited liability company. On or about October 3, 2017,
12 Plaintiff amended the complaint to add PACIFIC PEARL HOTEL MANAGEMENT -
13 SAN DIEGO, LLC, a limited liability company; PACIFIC PEARL HOTELS, LLC, a
14 limited liability company as Doe defendants. Rastegar decl, ¶ 3.

15 Defendant ARCH removed the action to federal court. The case was subsequently
16 remanded to Superior Court. *Id.*

17 On June 16, 2016, ARCH filed a cross-complaint against PPH, which is not a
18 subject of the Settlement Agreement. *Id.*

19 The FAC alleged the following seven causes of action, respectively: 1) "Failure To
20 Provide Meal Periods"; 2) "Failure To Authorize and Permit Rest Breaks"; 3) "Failure to
21 Pay Minimum Wage And Straight Time Wages"; 4) "Failure To Pay Overtime
22 Compensation"; 5) "Failure to Pay Vested Vacation time"; 6) "Failure To Timely Pay
23 Temporary Service Employee"; 7) "Failure to Timely Pay All Wages Upon Termination
24 Of Employment"; 8) "Failure to Provide Accurate Itemized Wage Statements"; 9)
25 "Unfair Business Practices"; and 10) "Representative Action Under the Private Attorneys
26 General Act of 2004 for Civil Penalties, Labor Code §§ 2698-2699.5 ['PAGA']"
27 (collectively, the "Action"). Rastegar decl, ¶ 4.

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1 Plaintiff is a former housekeeper at the DoubleTree by Hilton Golf Resort in San
2 Diego ("DoubleTree") who worked during a portion of the relevant class period. Rastegar
3 decl, ¶ 5. This Court appointed Plaintiff as the class representative ("Class
4 Representative"). Rastegar decl, ¶ 6.

5 Plaintiffs' counsels are Messrs. Farzad Rastegar and Thomas S. Campbell of the
6 Rastegar Law Group, APC, whom the Court appointed as class counsel ("Class Counsel").

7 Pursuant to an agreement between ARCH and PPH, ARCH maintains it employed
8 Plaintiff and certain other individuals (the "DoubleTree Employees"), solely for purposes
9 of providing PPH with ministerial human resources and payroll functions for such
10 individuals, which DoubleTree Employees worked at the DoubleTree.

11 Prior to settlement, the parties conducted pre-mediation discovery which involved
12 the production of a substantial amount of payroll and wage records relating to the claims in
13 this litigation. Rastegar decl, ¶ 7. Class Counsel and ARCH's counsel expended a
14 significant amount of time and resources reviewing electronic data and business records
15 relating to worker time data, payroll summaries, ARCH's meal and rest period policies and
16 signed acknowledgments, as well as other ARCH policies and procedures relevant to the
17 claims in this Action. *Id.*

18 On July 19, 2017, the parties participated in a full-day mediation with Jeffrey Krivis
19 at First Mediation Corporation. Rastegar decl, ¶ 8. The parties thereafter continued
20 mediating the case with Mr. Krivis and, after considering all of the various factors at issue,
21 the parties eventually agreed to settle the entire Action as to PAE Group and ARCH and
22 entered into a Memorandum of Understanding (MOU) setting forth the material economic
23 and non-economic terms of the settlement, with the understanding that a long-form
24 settlement agreement would be executed by the parties.

25 This settlement contemplated (i) entry by the Court of an Order preliminarily
26 approving the settlement and certifying the proposed settlement class, as hereinafter
27 described, solely for purposes of settlement, (ii) entry by the Court of Order ruling that the
28 agreement constitutes a good faith settlement between ARCH and the putative class

1 pursuant to Code of Civil Procedure §§ 877 *et seq.*; and (iii) entry by the Court of an Order
2 granting final approval of the settlement as of the date of the final approval order.

3 Rastegar decl, ¶ 9.

4 This Court granted preliminary approval and found the settlement was in good faith.

5 **III. THE SETTLEMENT AGREEMENT**

6 **A. Definition of The Proposed Settlement Class**

7 For purposes of settlement only, the Parties have agreed that the proposed Settlement Class
8 shall consist of the following class of individuals:

9 All employees who worked in any hourly paid job position in California and were
10 employed by ARCH to work at the DoubleTree by Hilton Golf Resort - San Diego,
11 located at 14455 Penasquitos Drive, San Diego, CA 92129, any time during the Class
Period from June 13, 2010, until the date of preliminary approval of the Settlement by
the Court.

12 There are 141 potential Class Members who worked for ARCH during the Class Period at
13 the DoubleTree hotel. Kruckenberg decl, ¶ 3.

14 **B. Settlement Amount**

15 The gross amount of settlement compensation to be paid by Defendant under the
16 Settlement Agreement is One Hundred Twenty Two Thousand Five Hundred Dollars
17 (\$122,500.00), which is referred to herein as the Gross Settlement Value ("GSV"), inclusive of,
18 and in full and final settlement of, Plaintiff's individual and representative claims as well as all
19 Settlement Class claims, PAGA claims, attorneys' fees, costs (including expert witness fees and
20 related costs), and expenses and interest. [Settlement Agreement § II(12)(B)]. The Gross
21 Settlement Amount shall be allocated as follows:

22 i. Enhancement Payment: Class Representative Plaintiff shall be paid the total
23 sum of Five Thousand Dollars (\$5,000.00), without deductions, as an Enhancement
24 Payment for serving diligently and responsibly as the Class Representative in
recognition of the additional time and resources expended by Plaintiff. This sum shall
be deducted from the GSV.

25 ii. LWDA Payment. The Parties recognize and agree that, as a result of the claim
26 for penalties pursuant to PAGA, \$3,750.00 represents seventy-five percent (75% of
27 \$5,000.00 of the PAGA penalties) which must be paid to the LWDA, as mandated by
Labor Code Section 2699(i). The \$1,250 portion of the PAGA penalties will be
included in the Net Settlement Amount for distribution to eligible Class Members.

28 iii. Attorneys' Fees: Subject to Court approval, ARCH has agreed not to object to
a request by Class Counsel to be designated as Class Counsel and to be paid any

accounts for a reasonable lodestar which the Court may grant, but in no event shall the total payment of attorneys' fees exceed the sum of 35% of the GSV, i.e., Forty-Two Thousand Eight Hundred Seventy Five Dollars (\$42,875.00), which sum shall be deducted from the GSV.

iv. Attorneys' Costs: Subject to Court approval, ARCH has agreed not to object to a request by Class Counsel to be paid any accounts for reasonable costs, but in no event shall the total payment of attorneys' costs exceed the sum of Twenty-One Thousand Five Hundred Dollars (\$21,500.00), which sum shall be deducted from the GSV.

v. Class Administrative Costs: The class administrative costs (the "Administrative Costs"), including without limitation the fees paid to a settlement administrator, shall be deducted from the GSV.

[Settlement Agreement § II(12)(B)(i-iv)].

The Gross Settlement Amount, less the payments indicated above, will be the "Net Settlement Amount" available to pay Class Members who do not opt-out of the Settlement.

[Settlement Agreement § II(12)(B)(i-iv)].

The Net Settlement Amount is currently estimated to be \$41,375.00. The Net Settlement Fund will be paid to the Class as follows:

[E]ach individual participating Class Member will be eligible to receive under the settlement will be calculated by dividing each participating Class Member's individual work weeks by the total workweeks of all Class Members and multiplying the resulting fraction by the Net Settlement Fund. Each participating Class Members' individual settlement award will be designated as follows: 1/3 as wages, 2/3 for interest, penalties, and any other damages. The amounts paid as wages shall be subject to all tax withholdings customarily made from the employee's wages and all other authorized and required withholdings shall be reported by W-2 forms. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 form.

[Settlement Agreement § V(28)]. The employer's share of any payroll taxes will not be paid out of the Gross Settlement Amount.

This is a "No-Claims Made" agreement meaning "each Class Member will receive their settlement share if he or she does not object or opt-out of the Settlement. Members of the Settlement Class have one hundred eighty (180) days from the date of the issuance to cash their checks. [Settlement Agreement § V(29)].

The current average estimated individual payment to Participating Class Members is approximately \$293.44. Kruckenberg decl, ¶ 11.

1 In regard to any returned or uncashed checks:

2 Pursuant to Code of Civil Procedure section 384, counsel for Plaintiff shall provide the
3 Court with the Final Report within ten (10) days after receipt from the Class
4 Administrator, and advise the Court of the total amount of uncashed and/or returned
5 checks from the ARCH Class, plus the amount of interest accrued on such amount.
6 After the Final Report is received by the Court, the Court shall amend the judgment
7 to direct the Class Administrator to pay the sum of the uncashed and returned checks,
plus interest accrued on that sum, to the Counsel for Justice, the charitable arm of the
Los Angeles County Bar Association which provides equal access to legal services in
the community by raising funds for, and directly contributing to, projects involving
domestic violence, support of veterans, immigration assistance, and AIDS services.

8 [Settlement Agreement § V(42)].

9 **C. The Class Administration**

10 The Court appointed Phoenix Settlement Administrators ("Class Administrator") as the
11 Class Administrator. [Settlement Agreement § V(30)].

12 **D. The Notice Process Satisfied Due Process.**

13 Notice requirements are set forth in the California Rules of Court. *See*, Cal. Rules
14 of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in
15 fashioning an appropriate notice program. *Cartt v. Super Ct.* (1975) 50 Cal. App. 3d 960,
16 973-74. There is no statutory or due process requirement that all Class Members receive
17 actual notice, but in this matter, the Class Members received direct mailed notice. As the
18 Court of Appeal has explained, "[t]he notice given should have a reasonable chance of
19 reaching a substantial percentage of the Class Members" *Id.* at 974. Here, Plaintiff
20 provided notice of the proposed settlement by direct mail, resulting in 87% of the 141 class
21 members receiving notice, as nineteen (19) packages remain undeliverable. Kruckenberg
22 decl, ¶¶ 3-7.

23 **E. The Notice Was Accurate and Informative.**

24 The Notice of Proposed Class Action Settlement was approved by this Court for
25 dissemination to the Settlement Class Members. It was disseminated through direct First
26 Class mail, to the last known address for each Settlement Class Member. It informed
27 Settlement Class Members of the terms of the Settlement and their right to be excluded
28 from the Settlement. And, if there were Settlement Class Members who wished to object

1 to this proposed class action settlement, they were given the opportunity to file their
2 objections and be heard at the Final Approval Hearing. **To date, no class member has**
3 **objected or requested exclusion.** Kruckenberg decl, ¶¶ 8, 9. However, class members
4 have until November 6, 2018 to opt out or object as indicated in the mailed Notices.

5 Rule 3.769(f) of the California Rules of Court provides as follows:

6 If the court has certified the action as a class action, notice of the final approval
7 hearing must be given to the class members in the manner specified by the court.
8 The notice must contain an explanation of the proposed settlement and
9 procedures for class members to follow in filing written objections to it and in
arranging to appear at the settlement hearing and state any objections to the
proposed settlement.

10 Cal. Rules of Court, Rule 3.769(f).

11 The Notice also fulfilled the requirement of neutrality in class notices. Conte &
12 Newberg, Newberg on Class Actions (3rd Ed.) § 8.39. It summarized the proceedings to
13 date and the terms and conditions of the proposed Settlement in an informative and
14 coherent manner. It made clear that the Settlement does not constitute an admission of
15 liability by the Defendant, who denies all liability, and recognizes that this Court has not
16 ruled on the merits of the action. It also states that the final settlement approval decision
17 has yet to be made. Accordingly, the Notice complied with the standards of fairness,
18 completeness, and neutrality required of a combined settlement-certification class notice.

19 **IV. STATUS OF THE CLAIMS PROCEDURE**

20 To protect the right of absent class members, the trial court must provide the best
21 notice practicable to class members. *See Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.
22 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175. There is no
23 requirement that all class members receive actual notice, whether by mail or some other
24 means; rather, "individual notice must be provided to those class members who are
25 identifiable through reasonable effort." *Id.* at 175.

26 This Court granted Plaintiffs' Motion for Preliminary Approval finding the
27 Settlement Agreement terms to be within the range of reasonableness of a settlement that
28 ultimately could be granted approval at the Final Fairness Hearing. The Court also

1 approved the language in the class notice letter ("Notice Letter"). The class notice
2 procedure set forth in the Settlement Agreement was the best means practicable of
3 providing notice under the circumstances, and constituted due and sufficient notice of the
4 class action, proposed settlement, and the final approval hearing to all persons affected by
5 and/or authorized to participate in the settlement, in full compliance with due process and
6 the notice requirements of California Code of Civil Procedure § 877.6.

7 On August 17, 2018, Phoenix received data files from Defendant containing the
8 names, last known mailing addresses, telephone numbers, and dates of employment for
9 hourly, non-exempt employee Class Members and the total wages for each Class Member.
10 Kruckenberg decl, ¶ 3. The final mailing list data contained information for 141 Class
11 Members. *Id.*

12 On September 7, 2018, Phoenix conducted a National Change of Address (NCOA)
13 search in an attempt to update the class list of addresses as accurately as possible.
14 Kruckenberg decl, ¶ 4. A search of this database provides updated addresses for any
15 individual who had moved in the previous four years and notified the U.S. Postal Service
16 of their change of address. *Id.*

17 On September 7, 2018, English and Spanish notice packets were enclosed in
18 envelopes with the names and last known addresses printed on them and mailed by U.S.
19 first Class mail on September 7, 2018. Kruckenberg decl, 5.

20 As of the date of this filing, forty-nine (49) Notice Packets have been returned to
21 Phoenix. Kruckenberg decl, ¶ 6. Only one was returned with a forwarding address. *Id.*
22 For the Notice Packets returned from the post office without a forwarding address, Phoenix
23 attempted to locate a current mailing address using TransUnion TLOxp, one of the most
24 comprehensive address databases available for skip tracing and determine updated
25 addresses for thirty-nine (39) Class Members. *Ibid.*

26 Nineteen (19) Notice Packets remain undeliverable with no forwarding address and
27 where no new address could be found through skip trace. Kruckenberg decl, ¶ 7. Ten are

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1 undeliverable because there was no updated address to be found, while the remaining nine
2 were returned a second time. *Id.*

3 As of the date of this filing, Phoenix has not received any written objections to the
4 settlement or opt-outs. Kruckenberg decl, ¶¶ 8, 9. There are no outstanding disputes.
5 Kruckenberg decl, ¶ 10.

6 To date, the Settlement Administrator reports a total of 122 Participating Class
7 Members. Kruckenberg decl, ¶ 15. Pursuant to the Settlement Agreement, the Class
8 Member Payout Fund is to be distributed to all Participating Class Members. Based on the
9 required distribution of the Net Settlement Fund, the highest Individual Settlement Amount
10 is \$644.94, with the lowest individual payment being \$1.71. The average Individual
11 Settlement Amount is \$293.44. Kruckenberg decl, ¶ 11.

12 Phoenix costs amount to \$8,000.00. Kruckenberg decl, ¶ 12.

13 **V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

14 The trial court has broad discretion to determine whether a proposed class action
15 settlement is fair. *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1138;
16 *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434, 438. There is a presumption of
17 fairness of a class action settlement when: 1) The settlement is reached as a result of
18 arm's-length negotiations; 2) There has been sufficient investigation and discovery; 3)
19 Counsel is experienced in similar litigation; and 4) the percentage of objectors is small.
20 *Dunk v. Ford Motor* (1996) 48 Cal. App. 4th 1794, 1802.

21 **A. Settlement Was Achieved Through Arm's-Length Negotiations**

22 The Settlement Agreement was reached following extensive negotiations during a full day
23 of mediation with the Jeffrey Krivis and beyond. Rastegar decl, ¶ 10. The settlement negotiations
24 were at arm's length and, although conducted in a professional manner, were adversarial. *Id.* The
25 Parties went into the mediation willing to explore the potential for a settlement of the dispute, but
26 each side was also committed and prepared to litigate through trial and appeal if a settlement had
27 not been reached. *Id.* In fact, the settlement did not occur on the first day of mediation. Rather,
28 over the following weeks, the parties continued to negotiate with the assistance of Mr. Krivis.

1 Eventually, the proposed Settlement obtained by the mediator's assistance at the end of a process
2 was neither fraudulent nor collusive. *Id.* To the contrary, counsel for the Parties vigorously
3 advanced their respective positions throughout the settlement negotiations. *Id.*

4 **B. Settlement Negotiations Were Based On Sufficient Investigation and**
5 **Discovery.**

6 Prior to the mediation, Class Counsel conducted an investigation into the claims alleged by
7 Named Plaintiff. Rastegar decl, ¶ 8. Class Counsel met with Named Plaintiff, received payroll
8 and time punch data and other documents through formal written discovery on Defendant, deposed
9 Defendants PPH and conducted legal research regarding the application of the relevant Labor Code
10 sections. *Id.* Prior to the mediation, Defendant provided Class Counsel with information
11 regarding the Settlement Class, including the number of putative class members, class members
12 timekeeping and payroll records, employee handbooks describing Defendant's relevant wage and
13 hour practices, and other relevant information. *Id.*

14 Class Counsel carefully analyzed this information prior to mediation. *Id.* Based on the
15 information gathered and provided, Class Counsel was able to act intelligently and effectively in
16 negotiating the proposed settlement. *Id.*

17 **C. Class Counsel Have Extensive Experience in Class Action Wage and**
18 **Hour Litigation.**

19 The settlement negotiations were conducted by highly capable and experienced counsel on
20 both sides. Class Counsel are respected members of the bar with strong records of vigorous and
21 effective advocacy for their clients, and they are experienced in handling complex wage and hour
22 class action litigation. Rastegar decl, ¶¶ 24-30. Named Plaintiff and Class Counsel were prepared
23 to litigate the claims in the action, but they support the proposed Settlement as being in the best
24 interests of the proposed class. Rastegar decl, ¶¶ 12-17.

25 The result is a fair, reasonable, and adequate settlement for Named Plaintiff and the
26 members of the Class, considering the period ARCH was involved at the hotel was from May 13,
27 2012 to October 27, 2013. Rastegar decl, ¶ 14.

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1 There is no doubt that litigation of Named Plaintiff's claims would have been lengthy and
2 expensive for both sides. Rastegar decl, ¶ 12. There was risk that at the end of the litigation
3 process, Class Members might have received nothing. *Id.* Even if a class was certified and the
4 class prevailed at trial, most likely, Class Members would have had to wait several years to receive
5 any relief. *Id.* In contrast, through the proposed Settlement, Class Members will receive timely
6 relief and will not have to bear the risk of an unfavorable judgment. *Id.*

7
8 **D. None Of The Class Members Have Objected to the Settlement Agreement**

9 The response of class members is clearly indicative of the fairness of the settlement.
10 As set forth above, Phoenix mailed notices to 141 class members, with 19 being
11 undeliverable. To date, no one has opted out or objected to the Settlement. This response
12 is a strong indication of the fairness of the settlement.

13 **E. Risks Associated by Proceeding with the Action**

14 Plaintiff is confident that any trial would be meritorious and successful. However
15 she is not blind to the significant risk of losing at trial, and the potential hurdle on a
16 possible appeal, i.e., an abuse of discretion standard. Given the legally undetermined and
17 evolving nature of an employer's obligations with regard to providing meal and rest
18 periods, and in connection with potential individualized inquiries pertaining to scheduling
19 practices, the Defendant could conceivably prevail at trial.

20 **VI. THE REQUESTED ADMINISTRATION COSTS ARE REASONABLE**

21 This Court preliminarily approved Phoenix to serve as the Settlement Administrator.
22 The total cost of administration of the Settlement, including fees incurred and future costs
23 for completing administration, is \$8,000.00. Kruckenberg decl, ¶ 12. As set forth in the
24 parties Settlement Agreement, the Settlement Administrator should be reimbursed in full
25 for these costs.

26 **VII. CONCLUSION**

27 The Settlement Agreement is fair and reasonable, and represents an excellent
28 opportunity for the current and former employees of Defendant to obtain recovery for

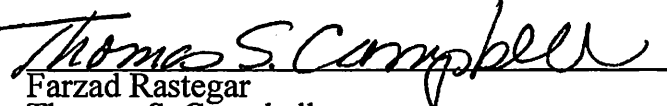
1 Defendant's alleged illegal wage and hour practices, and avoid all of the future risks
2 involved. Moreover, out of 122 completed mailings of the Notice, no one opted out or
3 objected. Therefore, for the reasons set forth above and in the Settlement Agreement on
4 file, Named Plaintiff respectfully requests that the Court grant the Motion for Final
5 Approval of Class Action Settlement.

6 Dated: November 2, 2018

Respectfully submitted,

7 RASTEGAR LAW GROUP, APC

8
9 By:



Farzad Rastegar
Thomas S. Campbell
Attorneys for Plaintiff Porfiria Yocupicio,
individually and on behalf of all others similarly
situated

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the County of Los Angeles, State of California. I am over the age
5 of eighteen (18) years and not a party to the within action. My business address is 22760
Hawthorne Boulevard, Suite 200, Torrance, CA 90505.

6 On November 5, 2018, I served the following document or documents:

7 **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS**
8 **ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
9 **AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF**
ELIZABETH KRUCKENBERG ON BEHALF OF ADMINISTRATOR WITH
RESPECT TO OPT OUTS AND OBJECTIONS RECEIVED.

10 [X] by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

11 **SEE SERVICE LIST**

12 [X] **BY MAIL**

13 [] I caused such envelope(s) to be deposited in the mail at Torrance, California. The
14 envelope(s) was/were mailed with postage thereon fully prepaid.

15 [X] I am "readily familiar" with the firm's practice of collection and processing
16 correspondence for mailing. It is deposited with U.S. postal service on that same day with
17 postage thereon fully prepaid at Torrance, California in the ordinary course of business. I
18 am aware that on motion of party served, service is invalid if postal cancellation date or
19 postage meter date is more than 1 day after the date of deposit for mailing in affidavit.

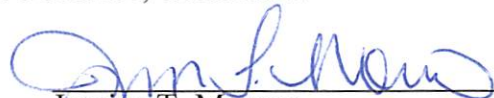
20 [] **BY NEXT BUSINESS DAY DELIVERY**

21 [] **BY EMAIL**

22 [] **BY PERSONAL SERVICE**

23 [X] (State) I declare under the penalty of perjury under the laws of the State of
24 California that the foregoing is true and correct.

25 Executed: November 5, 2018, at Torrance, California.

26 
27 Jessica T. Moreno
28

SERVICE LIST

Michael E. Chase, Esq.
Bruce M. Timm, Esq.
Kimberly A. Lucia, Esq.
David R. Norton, Esq.
BOUTIN JONES INC.
555 Capitol Mall, Suite 1500
Sacramento, California 95814

Attorneys for Defendant Arch Resources Group, LLC

Jennifer Gaaghen, Esq.
PACIFIC PEARL HOTELS, LLC
8910 University Center Lane, Suite 640
San Diego, CA 92122

**Attorney for Defendants and Cross-Defendants Pacific Pearl Hotels,
LLC and Pacific Pearl Hotel Management – San Diego, LLC**