

1 FARZAD RASTEGAR (State Bar No. 155555)
2 farzad@rastegarlawgroup.com
3 THOMAS S. CAMPBELL (State Bar No. 199014)
4 tom@rastegarlawgroup.com
5 RASTEGAR LAW GROUP, A.P.C.
6 22760 Hawthorne Boulevard, Suite 200
7 Torrance, California 90505
8 Tel. (310) 961-9600
9 Fax. (310) 961-9094

10 Attorneys for Plaintiff Porfiria Yocupicio
11 individually and on behalf of all others
12 similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 PORFIRIA YOCUPICIO, individually,
16 and on behalf of all other similarly
17 situated,

18 Plaintiff,

19 vs.

20 PAE GROUP, LLC, a limited liability
21 company; ARCH RESOURCES GROUP
22 LLC, a limited liability company;
23 PACIFIC PEARL HOTEL
24 MANAGEMENT - SAN DIEGO, LLC, a
25 limited liability company; PACIFIC
26 PEARL HOTELS, LLC, a limited liability
27 company; and DOES 3 through 10,
28 inclusive,

Defendants.

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

) **NOTICE OF MOTION AND**
) **MOTION FOR ATTORNEY'S FEES,**
) **ENHANCEMENT AWARD AND**
) **COSTS**

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

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
22 NOTICE that on December 5, 2018, at 11:00 a.m. in Department 6 in the Spring Street
23 Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, Named
24 Plaintiff Porfiria Yocupicio will move the Court for an Order:

- 25 1. Approving payment of \$42,875.00, in attorney's fees, which is 35 percent of the
26 settlement fund, and costs of \$21,500.00 for litigating this action to Class Counsel;
27 2. Approving payment to Named Plaintiff the amount of \$5,000.00.

28 ///

1 The motion will be based upon this notice, the memorandum of points and authorities and
2 Declarations of Farzad Rastegar and Porfiria Yocupicio, the records and files in this action, and
3 any other further evidence or argument that the Court may properly receive at or before the
4 hearing.

5 Dated: November 5, 2018

Respectfully submitted,

RASTEGAR LAW GROUP, APC

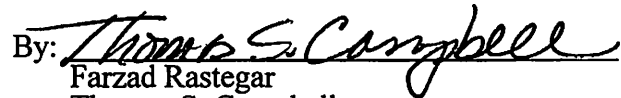
6
7
8 By: 
9 Farzad Rastegar
10 Thomas S. Campbell
11 Attorneys for Plaintiff Porfiria Yocupicio
12 individually and on behalf of all others
13 similarly situated
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1		
2	I.	INTRODUCTION 1
3	II.	FACTUAL AND PROCEDURAL BACKGROUND 1
4	III.	THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS
5		OF FEES, COSTS AND AN ENHANCEMENT PAYMENT 6
6	A.	Counsel Request An Award Of Fees Based On The "Common Fund" Method 6
7	1.	The Standard Fee Award In Class Actions Has Resolved Itself As Between 30
8		And 40 Percent Of The Recovery In Common Fund Cases 8
9	2.	The Experience, Reputation and Ability of Class Counsel Support the Fee
10		Award. 9
11	B.	While the Lodestar Method is Not Necessary in Common Fund Cases, Courts
12		May Perform a Cross-Check to Award Fees 9
13	1.	Class Counsel's Rates Have Been Approved by Several Courts 11
14	2.	Multiple Factors Support An Upward Adjustment of the Lodestar. 11
15	3.	Multipliers of Two or More are Commonplace. 13
16	C.	The Awards Payments to the Plaintiffs Are Reasonable 13
17	D.	Costs Are Reasonable in the Amount of \$21,500 14
18	IV.	CONCLUSION 14

TABLE OF AUTHORITIES

Cases	Page
<i>Bell v. Farmers Insurance Exchange</i> (2004) 115 Cal.App.4th 715	13
<i>Brinker Rest. Corp. v. Super. Ct.</i> (2012) 53 Cal.4th 1004	11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	7
<i>Craft v. County of San Bernardino</i> (C.D. Cal. 2008) 624 F.Supp.2d 1113	13
<i>D'Amico v. Board of Medical Examiners</i> (1974) 11 Cal. 3d 1	6
<i>In re Activision Securities Litigation</i> (N.D. Cal 1989) 723 F. Supp. 1373	7, 8
<i>In re California Indirect Purchases</i> (Cal. Super. Ct. Oct. 22, 1998) 1998 WL 1031494	13
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal. App. 4th 545	10
<i>In re Pacific Enterprises Securities City and Cty of San Francisco Litig.</i> (9th Cir. 1994) 47 F.3d 373	8
<i>Ketchum v. Moses</i> (2001) 24 Cal. 4th 1122	11, 12
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal. App. 4th 19	9, 10
<i>Quinn v. State of California</i> (1995) 15 Cal. 3d 162	7
<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25	6, 11
<i>United Steelworkers of America v. Phelps Dodge Corp.</i> (1990) 896 F.2d 403	11
<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F. Supp. 294	8
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	6, 7
TREATISES	
Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 14.03	8

1 **I. INTRODUCTION**

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

11 Plaintiff seeks approval of the Settlement's award of attorney's fees, enhancement
12 awards and costs, which this motion addresses.

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 Plaintiff was employed by Defendants as non-exempt employee at the DoubleTree
15 by Hilton Golf Resort - San Diego, located at 14455 Penasquitos Drive, San Diego, CA
16 92129. Plaintiff worked for defendants from approximately October 12, 2012 to
17 September 30, 2013. Declaration of Farzad Rastegar in Support of Plaintiff's Motion for
18 Final Approval of Class Action Settlement and Certification of Provisional Settlement
19 Class ("Rastegar decl"), ¶ 5.

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

27 ///

28 ///

1 Defendant ARCH removed the action to federal court. The case was subsequently
2 remanded to Superior Court following a denied motion to remand and a successful appeal
3 before the Ninth Circuit Court of Appeals. *Id.*

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

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

15 Plaintiff is a former housekeeper at the DoubleTree by Hilton Golf Resort in San
16 Diego ("DoubleTree") who worked during a portion of the relevant class period. Rastegar
17 decl, ¶ 5.

18 Pursuant to an agreement between ARCH and PPH, ARCH maintains it employed
19 Plaintiff and certain other individuals (the "DoubleTree Employees"), solely for purposes
20 of providing PPH with ministerial human resources and payroll functions for such
21 individuals, which DoubleTree Employees worked at the DoubleTree. This Court
22 appointed Plaintiff as the class representative ("Class Representative"). Rastegar decl, ¶ 6.

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

25 Prior to settlement, the parties conducted pre-mediation discovery which involved
26 the production of a substantial amount of payroll and wage records relating to the claims in
27 this litigation. Rastegar decl, ¶ 7. Class Counsel and ARCH's counsel expended a
28 significant amount of time and resources reviewing electronic data and business records

1 relating to worker time data, payroll summaries, ARCH's meal and rest period policies and
2 signed acknowledgments, as well as other ARCH policies and procedures relevant to the
3 claims in this Action. *Id.*

4 On July 19, 2017, the parties participated in a full-day mediation with Jeffrey Krivis
5 at First Mediation Corporation. Rastegar decl, ¶ 8. The parties thereafter continued
6 mediating the case with Mr. Krivis and, after considering all of the various factors at issue,
7 the parties eventually agreed to settle the entire Action and entered into a Memorandum of
8 Understanding (MOU) setting forth the material economic and non-economic terms of the
9 settlement, with the understanding that a long-form settlement agreement would be
10 executed by the parties. *Id.*

11 This settlement contemplated (i) entry by the Court of an Order preliminarily
12 approving the settlement and certifying the proposed settlement class, as hereinafter
13 described, solely for purposes of settlement, (ii) entry by the Court of Order ruling that the
14 agreement constitutes a good faith settlement between ARCH and the putative class
15 pursuant to Code of Civil Procedure §§ 877 et seq.; and (iii) entry by the Court of an Order
16 granting final approval of the settlement as of the date of the final approval order.
17 Rastegar decl, ¶ 9.

18 This Court granted preliminary approval and found the settlement was in good faith.
19 *Id.*

20 **III. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED**
21 **AMOUNTS OF FEES, COSTS AND AN ENHANCEMENT PAYMENT**

22 Under the Settlement, subject to the Court's approval, Defendant has agreed to pay
23 Class Counsel reasonable attorneys' fees in the amount of \$42,875.00, in attorney's fees,
24 which is 35 percent of the settlement fund, and costs up to \$21,500.00 for litigating this
25 action. Amended Class Action Settlement Agreement, § II(12)(B), marked as Exhibit 1
26 and attached to Rastegar declaration. And, Plaintiff asks for an Enhancement Award in the
27 amount of \$5,000. *Id.*

28 ///

1 Defendant does not oppose the Class Representative award. The proposed
2 attorneys' fees, awards and expenses were disclosed to the Class Members in the proposed
3 Notice of Proposed Class Action Settlement.

4 "In general, questions whether a settlement was fair and reasonable, whether
5 certification of the class was proper, and whether the attorney fee award was proper are
6 matters addressed to the trial court's broad discretion." *Wershba*, 91 Cal. App. 4th at
7 234-235.) "Courts recognize two methods for calculating attorney fees in civil class
8 actions: the lodestar/multiplier method and the percentage of recovery method." *Id.* at
9 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

10 **A. Counsel Request An Award Of Fees Based On The "Common Fund"**
11 **Method.**

12 California courts have long awarded attorneys' fees as a percentage of the benefit
13 created by counsel in pursuing claims on behalf of a class. The California Supreme Court
14 held that "when a number of persons is entitled in common to a specific fund, and an action
15 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or
16 preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of
17 the fund." *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 (quoting *D'Amico v. Board of*
18 *Medical Examiners* (1974) 11 Cal. 3d 1).

19 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/
20 common fund" theory. The purpose of the common fund/percentage approach is to "spread
21 litigation costs proportionally among all the beneficiaries so that the active beneficiary
22 does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977)
23 557 F.2d 759, 769.)

24 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme
25 Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from
26 which others derive benefits may require those passive beneficiaries to bear a fair share of
27 the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12
28 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine

1 has been applied "consistently in California when an action brought by one party creates a
2 fund in which other persons are entitled to share." The reasons for applying the common
3 fund doctrine include:

4 [F]airness to the successful litigant, who might otherwise receive no benefit
5 because his recovery might be consumed by the expenses; correlative prevention
6 of an unfair advantage to the others who are entitled to share in the fund and
7 who should bear their share of the burden of its recovery; encouragement of the
8 attorney for the successful litigant, who will be more willing to undertake and
9 diligently prosecute proper litigation for the protection or recovery of the fund
10 if he is assured that he will be properly and directly compensated should his
11 efforts be successful.

12 *Id.*

13 Several courts have expressed frustration with the alternative "lodestar" approach
14 for deciding fee awards, which usually involves wading through voluminous and often
15 indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn
16 Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp.
17 1373, 1375:

18 This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit
19 analysis, the answer would be a resounding, 'No!' Not only do the Lindy
20 Kerr-Johnson analyses consume an undue amount of court time with little
21 resulting advantage to anyone, but in fact, it may be to the detriment of the class
22 members. They are forced to wait until the court has done a thorough,
23 conscientious analysis of the attorneys' fee petition. Or, class members may
24 suffer a further diminution of their fund when a special master is retained and
25 paid from the fund. Most important, however, is the effect the process has on
26 the litigation and the timing of settlement. Where attorneys must depend on a
27 lodestar approach, there is little incentive to arrive at an early settlement.

28 The percentage approach is preferable to the lodestar because: (1) it aligns the
interests of class counsel and absent class members; (2) it encourages efficient resolution
of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it
reduces the demands on judicial resources. *Id.* at 1378-79. The Ninth Circuit now
routinely uses the percentage of the common fund approach to determine the award of
attorney's fees. *See e.g., In re Pacific Enterprises Securities City and County of San*
Francisco Litigation (9th Cir. 1994) 47 F.3d 373, 378-79 (approving attorney's fee of 33
1/3 %.)

///

1 **1. The Standard Fee Award in Class Actions Runs Between 30 And**
2 **40 Percent of The Recovery In Common Fund Cases.**

3 According to a leading treatise on class actions, "[n]o general rule can be articulated
4 on what is a reasonable percentage of a common fund. Usually 50% of the fund is the
5 upper limit on a reasonable fee award from a common fund in order to assure that the fees
6 do not consume a disproportionate part of the recovery obtained for the class, although
7 somewhat larger percentages are not unprecedented." *See, Conte & Newberg, Newberg on*
8 *Class Actions* (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are
9 typically considered the upper limit, with thirty to forty percent commonly awarded in
10 cases where the settlement is relatively small. *Id; see also Van Vranken v. Atlantic*
11 *Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 (stating that most cases where 30-50
12 percent was awarded involved "smaller" settlement funds of under \$10 million.)

13 The Settlement Agreement provides for attorney's fees payable to Class Counsel in
14 an amount up to 35% of the Settlement Amount, for a maximum fees award of \$42,875.00,
15 plus actual costs and expenses not to exceed \$21,500.00. *See, Exhibit 1, Amended Class*
16 *Action Settlement Agreement*, § II(12)(B)(iii) and (iv). This fee percentage is less than
17 Class Counsel's contingency fee percentage charged in other employment cases. Rastegar
18 decl, ¶ 22.

19 The fee is supported by the "common fund theory" where "one who expends
20 attorneys fees in winning a suit which creates a fund from which others derive benefits,
21 may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano*
22 *v. Priest* (1977) 20 Cal.3d 25, 35; *see also Quinn v. State of California* (1975) 15 Cal.3d
23 162; *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284. The
24 settled for 35 percent fee award is consistent with the average fee award in class actions.
25 Indeed, the custom and practice in class actions is to award approximately one-third of a
26 fund as a fee award. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11
27 (stating "[e]mpirical studies show that, regardless whether the percentage method or the
28 lodestar method is used, fee awards in class actions average around one-third of the

1 recovery.") (emphasis added.) Thus, Plaintiffs' fee request is in line with the prevailing
2 guidelines established in California case law and academic literature, and is consistent with
3 awards in California. Accordingly, Plaintiffs request that this Court approve the attorneys'
4 fees negotiated by the Parties and requested herein.

5 **2. The Experience, Reputation and Ability of Class Counsel Support**
6 **the Fee Award.**

7 As demonstrated by their past experience in pursuing class actions on behalf of
8 consumers and employees, Class Counsel possesses considerable expertise in litigating
9 class action matters. Rastegar decl, ¶¶ 23-29. Class Counsel has been involved as lead
10 counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial
11 results to class members in California. Rastegar decl, ¶ 27. Because it is reasonable to
12 compensate class counsel commensurate with their skill, reputation and experience, a fee
13 award of 35 percent of the settlement fund, a percentage within the norm in class action
14 practice, is certainly justified here. Moreover, the extent of attorney work in this case far
15 exceeds the requested \$42,875.00.

16 Class Counsels' experience in wage and hour class actions was integral in evaluating
17 the strengths and weaknesses of the case against Defendant and the reasonableness of the
18 settlement. And, Plaintiff's counsel was successful in not only having the case remanded
19 to this Court, but also resulted in new Ninth Circuit case law regarding the Class Action
20 Fairness Act as it relates to the California 2004 Private Attorney's General Act. Practice in
21 the narrow field of wage and hour litigation requires skill and knowledge concerning the
22 rapidly evolving substantive law (state and federal), as well as the procedural law of class
23 action litigation. Therefore, the requested fee award is that much more reasonable and fair.

24 **B. While the Lodestar Method is Not Necessary in Common Fund Cases,**
25 **Courts May Perform a Cross-Check to Award Fees.**

26 "Despite its primacy, the lodestar method is not necessarily utilized in common fund
27 cases." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 27. Courts have
28 criticized the lodestar method as a drain on the judicial system and a disincentive on

1 attorneys to take on high-risk, challenging cases. *Id.* at 29. Indeed, the lodestar approach:
2 "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently
3 objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of
4 mathematical precision that is unwarranted in terms of the realities of the practice of law,'
5 (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of
6 percentages of the settlement fund or the amounts recovered by the plaintiffs or of an
7 overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and... engage in
8 duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of
9 cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable
10 objectives, such as early settlement, will be fostered,' (8) 'works to the particular
11 disadvantage of the public interest bar,' and (9) results in 'confusion and lack of
12 predictability.'" *Id.*

13 Although California supports the common fund doctrine, the lodestar method can be
14 used to cross-check fee awards. "It may be appropriate in some cases, assuming the class
15 benefit can be monetized with a reasonable degree of certainty, to "cross-check" or adjust
16 the lodestar in comparison to a percentage of the common fund to ensure that the fee
17 awarded is reasonable and within the range of fees freely negotiated in the legal
18 marketplace in comparable litigation." *In re Consumer Privacy Cases* (2009) 175 Cal.
19 App. 4th 545, 557.

20 Applying the lodestar method requires a two-step process. The first step is to
21 multiply the number of hours reasonably expended by a reasonable hourly rate. The
22 second step is to apply a multiplier to the lodestar to take into account various factors.
23 "The purpose of such adjustment is to fix a fee at the fair market value for the particular
24 action. In effect, the court determines, retrospectively, whether the litigation involved a
25 contingent risk or required extraordinary legal skill justifying augmentation of the
26 unadorned lodestar in order to approximate the fair market rate for such services." *Id.* at
27 556-57. "Under certain circumstances, a lodestar calculation may be enhanced on the basis
28 of a percentage-of-the-benefit analysis." *Id.* at 557.

1 The declarations and time sheets submitted to support this motion show the
2 following reasonable hours worked in prosecuting this case:

3 Attorney	Hours Billed
4 Justine Marquez	260.50
5 Farzad Rastegar	43.90
6 Thomas S. Campbell	252.34

7 Rastegar Law Group's current lodestar is \$323,286.50 based on 556.74 hours of
8 work performed by Class Counsel. Rastegar decl, ¶ 32; *see also*, Laffey Matrix marked as
9 Exhibit 2 and attached to Rastegar declaration; Time Sheets marked as Exhibit 3 - Exhibit
10 4, attached to Rastegar declaration.

11 <u>Attorney</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
12 Thomas S. Campbell	252.34	\$600.00	\$151,404.00
13 Justine Marquez	260.50	\$400.00	\$136,762.50
14 Farzad Rastegar	43.90	\$800.00	\$35,120.00
15 Lodestar Fee Amount:			\$323,286.50

16 **1. Class Counsel's Rates Are In Line with Prevailing Market Rates.**

17 Class Counsel provides declarations, time sheets and the Laffey Matrix to support
18 their lodestar hourly rates. *See*, Rastegar decl, Exhibits 2-4. "Affidavits of the plaintiffs'
19 attorney and other attorneys regarding prevailing fees in the community, and rate
20 determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are
21 satisfactory evidence of the prevailing market rate." *United Steelworkers of America v.*
22 *Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407. Class Counsel has received final
23 approval of their hourly rates in other wage and hour class action settlements. Rastegar
24 decl, ¶ 31. These rates are not opposed or challenged.

25 **2. Multiple Factors Would Support An Upward Adjustment of the**
26 **Lodestar if Necessary.**

27 "The lodestar adjustment method, including discretion to award fee enhancements,
28 is well established under California law." *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

1 1137.) The lodestar "may be adjusted by the court based on factors including, as relevant
2 herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in
3 presenting them, (3) the extent to which the nature of the litigation precluded other
4 employment by the attorneys, (4) the contingent nature of the fee award." (*Id.* at 1132,
5 citing *Serrano, supra*, 20 Cal.3d at p. 49.) Here, these factors would support an upward
6 adjustment. i.e., a 1.5 multiplier if necessary.

7 **a) Novelty and Difficulty of the Questions Involved.**

8 Notwithstanding *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, wage-
9 and-hour litigation remains hotly contested. Yet, after knowing and assessing the risks of
10 litigating Plaintiff's wage-and-hour claims, Class Counsel determined that despite difficulty
11 of obtaining class certification and prevailing on the merits, it would advocate Plaintiff's
12 rights and to seek recovery for hundreds of California employees. Moreover, the law
13 regarding CAFA jurisdiction was quite novel and Plaintiff's counsel's appellate work
14 resulted in new case law.

15 **b) Nature of the Litigation Precluded Other Employment**

16 Class Counsel attests that by taking on this lawsuit, it was necessarily precluded
17 from accepting employment from other potential clients. Rastegar decl, ¶ 36. Given the
18 number of attorneys at the firm, the availability of staff, and the hours committed to
19 litigating this class action, this lawsuit demanded substantial resources from Class Counsel.

20 **c) Contingent Nature of the Fee Award.**

21 Class Counsel accepted this case on a contingency, knowing that there was a
22 possibility that no recovery and lost litigation costs could result from the high-risk claims.
23 "A lawyer who both bears the risk of not being paid and provides legal services is not
24 receiving the fair market value of his work if he is paid only for the second of these
25 functions. If he is paid no more, competent counsel will be reluctant to accept fee award
26 cases." *Ketchum*, 24 Cal.4th at 1133. "Such fee enhancements are intended to compensate
27 for the risk of loss generally in contingency cases as a class." *Id.* In this case, an upward

28 ///

1 lodestar adjustment is supported due to the financial risks of litigating a putative class
2 action for a narrow set of claims premised on uncertain legal theories:

3 [T]he unadorned lodestar reflects the general local hourly rate for a fee-bearing
4 case; it does not include any compensation for contingent risk, extraordinary skill, or any
5 other factors a trial court may consider under *Serrano III*. The adjustment to the lodestar
6 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not
7 receive payment if the suit does not succeed, constitutes earned compensation...[I]t is
8 intended to approximate market-level compensation for such services, which typically
9 includes a premium for the risk of nonpayment or delay in payment of attorney fees.

10 *Id.* at 1138 (emphasis added.) In the high-risk, high-cost practice of class action litigation,
11 Rastegar Law Group has endured financial losses in several of its cases. Rastegar decl. ¶
12 36. The particular risks of taking on this high-cost, high-risk case would support an
13 upward adjustment of the lodestar calculation.

14 **d) The Amount Involved and the Results Obtained.**

15 Class Counsel obtained a strong recovery of \$122,500 for the 141 member
16 Settlement Class. Thus far, no one has objected to the settlement or asked to be excluded.

17 **e) The Experience, Reputation, and Ability of Lawyers.**

18 Class Counsel has successfully obtained class certification in numerous
19 wage-and-hour class actions. This is remarkable because the rate of certification in
20 contested motions in California, based upon data available through the California Courts
21 website, is well under 20% of all class actions. *See*, Findings of the Study of California
22 Class Action Litigation, 2000-2006, available at
23 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of
24 all class actions were certified either as part of a settlement or as part of a contested
25 certification motion.) Class Counsels' resume of successes and experience contributed to
26 the results obtained for this Settlement Class.

27 ///

28 ///

1 **C. The Enhancement Award to the Plaintiffs is Reasonable.**

2 It is customary and appropriate to provide a payment to named plaintiffs for services
3 as a Class Representative. Courts regularly approve enhancement awards to compensate
4 named plaintiff for their service to the class and the risks they incurred during the course of
5 the litigation. *See, e.g., Bell v. Farmers Insurance Exchange* (2004) 115 Cal. App. 4th 715,
6 726 (upholding "service payments" to named plaintiffs for their efforts in bringing class
7 action.)

8 Subject to the Court's approval, Defendant has agreed to pay an Incentive Award in
9 the amount of \$5,000 to Plaintiff. Class Counsel represents that Ms. Yocupicio devoted a
10 great deal of time and work assisting counsel in the case, communicated with counsel
11 frequently to prepare for mediation and potential class certification, and other motions.

12 Plaintiff Yocupicio had her deposition taken and participated in the mediation. In
13 essence, Plaintiff was indispensable in litigating this case. Rastegar decl, ¶¶ 18-21. The
14 requested award of \$5,000 is extremely reasonable, particularly in light of the substantial
15 benefits she obtained for the class.

16 **D. Costs of \$21,500 Are Reasonable.**

17 Class Counsel requests reimbursement of \$21,500 in expenses. Rastegar decl, ¶ 39.
18 Defendant has agreed that it will not oppose any cost award request up to \$21,500. These
19 costs were both reasonable and necessary. In fact, Plaintiff's costs exceed \$21,500, as
20 shown by the cost sheet attached as Exhibit 5.

21 **IV. CONCLUSION.**

22 Plaintiff respectfully ask this Court to grant her motion and award Plaintiff the full
23 amounts of costs, fees, and incentive award as requested.

24 Dated: November 5, 2018

Respectfully submitted,

25 RASTEGAR LAW GROUP, APC

26 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 6, 2018, I served the following document or documents:

7 **NOTICE OF MOTION AND MOTION FOR ATTORNEY'S FEES,**
8 **ENHANCEMENT AWARD AND COSTS**

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

10 **SEE SERVICE LIST**

11 [X] **BY MAIL**

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

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

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

17 [] **BY EMAIL**

18 [] **BY PERSONAL SERVICE**

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

21 Executed: November 6, 2018, at Torrance, California.

22 
23 Jessica T. Moreno

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**