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

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

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

12 Plaintiff,

13 vs.

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

19 Defendants.
20
21

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

) **DECLARATION OF FARZAD
RASTEGAR IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; DOCUMENTS IN
SUPPORT THEREOF**

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

22 **DECLARATION OF FARZAD RASTEGAR**

23 I, Farzad Rastegar, respectfully declare as follows:

24 1. I am now and have been at all times relevant to this Declaration an Active Member
25 of the State Bar of California, the principal of Rastegar Law Group, A Professional
26 Corporation ("Rastegar Law Group"), and counsel of record for Named Plaintiff Porfiria
27 Yocupicio ("Named Plaintiff") in the above-captioned action, filed in the Superior Court of
28 the County of Los Angeles. I make this declaration on the basis of personal firsthand

1 knowledge unless another source of information or belief clearly appears from the context,
2 and as to all such matters I believe them to be true. If called as a witness, I could and
3 would readily and competently testify to all matters stated within.

4 2. I make this declaration in support of Named Plaintiff's Motion for Final
5 Approval of Class Action Settlement and Certification of Provisional Settlement Class.

6 3. On June 13, 2014, Plaintiff filed a class action complaint in the Superior
7 Court of California for the County of Los Angeles, Case No. BC548550. On August 21,
8 2014, Plaintiff filed her First Amended Class Action Complaint ("FAC") against ARCH
9 RESOURCES GROUP, LLC, a limited liability company. On or about October 3, 2017,
10 Plaintiff amended the complaint to add PACIFIC PEARL HOTEL MANAGEMENT -
11 SAN DIEGO, LLC, a limited liability company; PACIFIC PEARL HOTELS, LLC, a
12 limited liability company as Doe defendants. Defendant ARCH removed the action to
13 federal court. The case was subsequently remanded to Superior Court. On June 16, 2016,
14 ARCH filed a cross-complaint against PPH, which is not a subject of the Settlement
15 Agreement. Named Plaintiff's claims are typical of other class members and are not based
16 on unique circumstances that might jeopardize the class claims. There is no antagonism
17 between the interests of Named Plaintiff and those of the class.

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

27 5. Plaintiff was employed by Defendants as a non-exempt employee at the
28 DoubleTree by Hilton Golf Resort - San Diego, located at 14455 Penasquitos Drive, San

1 Diego, CA 92129. Plaintiff worked for defendants from approximately October 12, 2012,
2 to September 30, 2013.

3 6. Pursuant to an agreement between ARCH and PPH, ARCH maintains it
4 employed Plaintiff and certain other individuals (the "DoubleTree Employees"), solely for
5 purposes of providing PPH with ministerial human resources and payroll functions for such
6 individuals, which DoubleTree Employees worked at the DoubleTree. The Court
7 appointed Plaintiff ("Class Representative") as the class representative.

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

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

22 9. This settlement contemplated (i) entry by the Court of an Order preliminarily
23 approving the settlement and certifying the proposed settlement class, as hereinafter
24 described, solely for purposes of settlement, (ii) entry by the Court of Order ruling that this
25 agreement constitutes a good faith settlement between ARCH and the putative class
26 pursuant to Code of Civil Procedure §§ 877 et seq.; and (iii) entry by the Court of an Order
27 granting final approval of the settlement as of the date of the final approval order. This
28 Court granted preliminary approval and found a good faith settlement.

1 10. The Settlement Agreement was reached following extensive negotiations
2 following a full day of mediation with Jeffrey Krivis. The settlement negotiations were at
3 arm's length and, although conducted in a professional manner, were adversarial. The
4 Parties went into the mediation willing to explore the potential for a settlement of the
5 dispute, but each side was also committed and prepared to litigate through trial and appeal
6 if a settlement had not been reached. In fact, the settlement did not occur on the first day
7 of mediation. Rather over the following weeks, the parties continued to negotiate with the
8 assistance of Mr. Krivis. Eventually, the proposed Settlement obtained by the mediator's
9 assistance at the end of a process was neither fraudulent nor collusive. To the contrary,
10 counsel for the Parties vigorously advanced their respective positions throughout the
11 settlement negotiations.

12 11. Prior to the mediation, my office conducted an investigation into the claims
13 alleged by Named Plaintiff. My office met with Named Plaintiff, obtained discovery from
14 Defendant, and conducted legal research regarding the application of the applicable Labor
15 Code Sections. My office conservatively calculated the damages of the class members for
16 meal and rest period damages to be approximately \$412,911.00, and believes this amount
17 will be the damage potential should the case proceed to trial. This estimate is based on an
18 analysis of Defendant's payroll data, its rest break and meal break and overtime policies,
19 the average class size at any given time, as well as anecdotal evidence from Named
20 Plaintiff. We carefully analyzed the information we had prior to mediation and, based on
21 this information, were able to act intelligently and effectively in negotiating the proposed
22 settlement.

23 **The Proposed Settlement Is Reasonable**

24 12. The proposed Settlement Agreement is a fair, reasonable, and adequate
25 settlement for Named Plaintiff and the members of the Settlement Class. There is no doubt
26 that litigation of Named Plaintiff's claims would be lengthy and expensive for both sides.
27 There was risk that at the end of the litigation process, Class Members might have received
28 nothing. Even if a class was certified and the class prevailed at trial, Class Members would

1 have had to wait several years to receive any relief. In contrast, through the proposed
2 Settlement, Class Members will receive timely relief and will not have to bear the risk of
3 an unfavorable judgment.

4 13. My office and Named Plaintiff remain confident of the merits of this case.
5 We considered several factors in reaching the decision to settle at this point in the
6 litigation. My office has calculated the maximum damages of the class members for meal
7 period and overtime violations to be approximately \$412,911.00, and believe this amount
8 will be the damage potential should the case proceed to trial. The figure does not include
9 the other claims (i.e., failure to maintain required records, failure to pay all wages due to
10 discharged and quitting employees, etc.) because these claims are largely derivative from
11 the meal period and overtime claims, and are difficult to quantify from the analysis of
12 timekeeping and payroll records and therefore were excluded from the damages analysis.
13 Additionally, while the meal period violations analysis contributed to the overall damage
14 analysis, the potential to not succeed on that issue regarding class certification weighed in
15 on the minds of counsel during the mediation.

16 14. Given the maximum potential damages, the \$122,500.00 Gross Settlement
17 Amount is reasonable given the substantial risks entailed by this case. The result is a fair,
18 reasonable, and adequate settlement for Named Plaintiff and the members of the Class,
19 considering the period ARCH was involved at the hotel was from May 13, 2012 to October
20 27, 2013. Although Named Plaintiff and I are confident of the merits of this case, we still
21 had to balance the strengths of this case against the risks in further litigating this action. In
22 my experience, a significant risk that the Settlement obviates is whether this action would
23 be deemed suitable for class treatment. *Brinker Restaurant Corp. v. Superior Court*
24 (2012) 53 Cal. 4th 1004 presents a large hurdle in terms of class certification in regard to
25 the meal and rest period claims. Although *Brinker* is favorable to Plaintiff in many aspects,
26 it established a "provide" standard for meal periods as opposed to an "ensure" standard,
27 creating a higher bar relating to certification of meal period claims. Based on my
28 experience, trial courts frequently have interpreted *Brinker* to find that common issues are

1 outweighed by individual inquiries related to why an employee may not have taken a
2 compliant meal period.

3 15. If the Court denied the motion for class certification, Defendant would end
4 up paying only a tiny fraction of the amount it is agreeing to pay pursuant to this
5 Settlement, with nothing going to the absent class members.

6 16. There is a further risk that, for at least part of their employment, some of the
7 class members were not improperly denied meal periods. Obtaining the cooperation of
8 current employees would also be difficult, given the likely reluctance to aid the prosecution
9 of a lawsuit against a current employer. On the other hand, Defendant would likely be able
10 to obtain the cooperation of its employees. Moreover, even if Named Plaintiff obtained
11 class certification, the following trial and possible appeal would substantially delay any
12 recovery by the class members. In contrast, through the proposed Settlement, Class
13 Members greatly benefit by receiving timely relief and avoiding the risk of an unfavorable
14 judgment.

15 17. When the risks of litigation, the uncertainties involved in achieving class
16 certification, the burdens of proof necessary to establish liability, and the probability of
17 appeal of a favorable judgment are balanced against the merits of Named Plaintiff's claims,
18 it is clear that the settlement amount is fair, adequate, and reasonable.

19 **Enhancement Award and General Release Payment for Named Plaintiff**

20 18. Throughout this litigation, Named Plaintiff cooperated immensely with my
21 office and took many actions to protect the interests of the class. Named Plaintiff provided
22 valuable information regarding the alleged wage and hour violations, kept herself informed
23 of the developments in this action, informed my office of developments and information
24 relevant to this action, participated in decisions concerning this action, participated in the
25 mediation, provided my office with the names and contact information of potential
26 witnesses in these actions, and attended her deposition. The information and
27 documentation provided by Named Plaintiff was instrumental in establishing the wage and
28 hour violations alleged in this action, and the recovery provided for in the Settlement

1 Agreement would have been impossible to obtain without her participation. Named
2 Plaintiff has and will vigorously, adequately and fairly represent the interests of the class,
3 bringing this case from this Court, to the District Court, to the Ninth Circuit Court of
4 Appeals and back to this Court on remand. Because Named Plaintiff's claims are typical
5 of other class members and are not based on unique circumstances that might jeopardize
6 the class claims, there is no antagonism between the interests of Named Plaintiff and those
7 of the class.

8 19. At the same time, Named Plaintiff faced many risks in adding herself as a
9 class representative in this matter. Named Plaintiff faces actual risks with her future
10 employment, as putting herself on the public record in an employment lawsuit could very
11 well affect her chances for future employment. Named Plaintiff also placed herself at
12 substantial risk because if Defendant was to prevail in this action, she could be liable for
13 Defendant's attorneys' fees under California Labor Code § 218.5 and costs.

14 20. In turn, approximately 122 class members will now have the opportunity to
15 participate in the settlement, reimbursing them for wage violations they may have never
16 known about on their own or been willing to pursue on their own. If these class members
17 would have each tried to pursue their legal remedies on their own, that would have resulted
18 in each having to expend a significant amount of their own monetary resources and time,
19 which were obviated by Named Plaintiff acting as a representative on behalf of these other
20 class members.

21 21. In the final analysis, this Class Action would not have been possible without
22 the aid of Named Plaintiff, who put her own time and effort into this litigation, sacrificed
23 the value of her own individual claims, and placed herself at risk for the sake of the class
24 members. An Enhancement Award of \$5,000.00 is a relatively small amount of money
25 when the time and effort put into the litigation are considered, and are fair and reasonable
26 to compensate Named Plaintiff for her active participation in this lawsuit.

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Attorneys Fees and Costs

22. The Settlement Agreement provides for attorney's fees payable to Class Counsel in an amount up to 35% of the Settlement Amount, for a maximum fees award of \$42,875.00, plus actual costs and expenses not to exceed \$21,500.00. The proposed award of attorneys fees in this case can be justified under either method - lodestar or percentage recovery.

23. I am informed and believe that the fee and costs provision is reasonable. The fee percentage requested is less than that charged by my office for most employment cases. My office invested significant time and resources into the case, with payment deferred to the end of the case, and then, of course, contingent on the outcome. My office's efforts have resulted in substantial benefits to the settlement Class, in the form of substantial settlement funds established to compensate settlement Class Members for Defendant's alleged unlawful wage and hour practices. Without the efforts of my office, the claims as alleged in the Complaint would almost certainly have gone completely unremedied.

24. I received a B. A. in Economics in 1986 from UCLA. I received my J.D. from Southwestern University School of Law in 1991. I became an Active Member of the State Bar of California in December 1991, and have been an Active Member in good standing continuously since then. I am a lifetime sustaining member of the Consumer Attorneys Association of Los Angeles (CAALA), a current member of the National Employment Lawyers Association (NELA), and a current member of the California Employment Lawyers Association (CELA). I have also been named as one of the Super Lawyers of Southern California.

25. I founded Rastegar Law Group, A Professional Corporation ("Rastegar Law Group") in 2011. Prior to starting Rastegar Law Group, I was a founding partner of Rastegar & Matern, Attorneys at Law, A Professional Corporation ("Rastegar & Matern") which was founded in 1999. In 1992, I founded the general partnership which was the predecessor of Rastegar & Matern, Attorneys at Law, A Professional Corporation, where I acted as the managing partner of the firm since its inception.

1 26. During the approximately twenty-six years since I began practicing law, I
2 have built my practice to have a heavy emphasis on employment and related litigation. I
3 have been heavily, successfully, and continuously involved in active litigation and trial
4 work, including without limitation, wage and hour class action litigation, employees' rights,
5 civil rights, discrimination, and sexual harassment claims, and other forms of employment
6 litigation.

7 27. Including myself, Rastegar Law Group includes ten attorneys, all of whom
8 are actively and continuously practicing in employment litigation, representing almost
9 entirely employee plaintiffs, in both individual and class actions, in this Superior Court,
10 and other Superior Courts throughout the State, in the Court of Appeal, and in various
11 Federal courts. The attorneys at Rastegar Law Group have litigated hundreds of cases
12 against the largest firms in the country, including but not limited to Gibson Dunn &
13 Crutcher, O'Melveny & Myers, Morrison & Foerster, Littler Mendelson, Jackson Lewis
14 LLP, Kecker & Van Nest, DLA Piper and Skadden Arps. Because of the unique history and
15 nature of our practice, all of the attorneys at my firm have a high level of knowledge and
16 experience in areas of wage and hour class actions, and labor and employment law.
17 Currently, more than one third of Rastegar Law Group's active caseload includes wage and
18 hour class action cases. Besides myself, my firm includes attorneys with the following
19 qualifications:

20 a. Douglas W. Perlman, University of California, Davis School of Law, over 22
21 years of litigation experience;

22 b. Thomas S. Campbell, Southwestern University School of Law, over 19 years
23 of litigation experience;

24 c. S. Emi Ikeda Minne, UCLA School of Law, over 9 years of litigation
25 experience;

26 d. Sharon W. Lin, UCLA School of Law, over 8 years of litigation experience;

27 e. Joshua N. Lange, UCLA School of Law, over 7 years of litigation
28 experience;

- 1 f. Kieran Hartley, University of Virginia School of Law, over 3 litigation
2 experience
3 g. Rose Sorial, Trinity Law School, over 5 years litigation experience;
4 h. Amir Seyedfarshi, UCLA School of Law, LLM, Forham Law School, over 2
5 years litigation experience;
6 i. Nida Siddiqui, UC Davis School of Law, over 1 year litigation experience.

7 28. My office is qualified to handle this litigation because we are experienced in
8 litigating Labor Code violations in both individual and class actions. I and the other
9 attorneys at my office have served as lead counsel in numerous wage and hour class
10 actions, and have successfully negotiated several settlements, including multiple
11 seven-figure cases, amounting to over \$100 million in settlements.

12 29. In 2017, the judges of the Los Angeles Superior Court, Central Civil West
13 Courthouse selected me as a member of the Los Angeles County Bar Association's
14 Complex Litigation, Wage & Hour Class Action Sub-Committee. The committee is
15 comprised of approximately 11 plaintiff and defense attorneys that practice wage and hour
16 class action litigation in Southern California from the following law firms: Rastegar Law
17 Group; Kingsley & Kingsley; Sheppard, Mullin, Richter & Hampton; Morrison &
18 Foerster; Proskauer Rose; Haines Law Group; Humphrey & Rist; Tharpe & Howell;
19 Littler Mendelson; Desai Law Firm; and Hadsell, Stormer & Renick.

20 30. My predecessor firm, Rastegar & Matern, had a number of published
21 appellate victories including several published opinions - *Franco v. Athens Disposal*
22 *Company, Inc.* (March 10, 2009) 171 Cal. App. 4th 1277; *Gutierrez v. California*
23 *Commerce Club* (August 2, 2010) 187 Cal. App. 4th 969; *Pantoja v. Anton* (August 9,
24 2011) 198 Cal. App. 4th 87; *Fuentes v. Autozone, Inc.* (November 16, 2011) 200 Cal. App.
25 4th 1221; *Ventura v. ABM Industries, Inc.* (2012) 212 Cal. App. 4th 258; *Franco v.*
26 *Arakelian Enterprises, Inc.* (2012) 211 Cal. App. 4th 314 - and other non-published
27 appellate victories. Moreover, Rastegar & Matern was successful in procuring class
28 ///

1 certification of several wage and hour class action lawsuits, including *Domonique Hines v.*
2 *KFC U.S. Properties, Inc.*, Case No. 09cv2422JM (POR) (Southern District of California).

3 31. Class Counsel's efforts in this case included, without limitation, the
4 following: extensive motion and appellate practice; interviews with Named Plaintiff;
5 review of documents produced by Named Plaintiff; legal research and investigation
6 regarding the Defendant's practices at numerous points in the litigation; preparation of
7 multiple drafts of the complaint; appearances at numerous status conferences; discovery,
8 including correspondence with Defendant's counsel to obtain relevant documents and
9 information; in-depth analysis and review of Named Plaintiff's timekeeping and payroll
10 records; review of Defendant's relevant wage and hour policies; research and preparation
11 of Named Plaintiff's mediation brief; attendance at mediation; drafting the Settlement
12 Agreement and attachments; and preparation of the motion for preliminary approval.
13 Class Counsel's lodestar for the completed and anticipated work on this case is well above
14 the total amount of attorney fees agreed to by the Parties.

15 32. It is further estimated that my office will need to expend at least another 50
16 hours to monitor the process leading up to the final approval and payments made to the
17 class. My office also bears the risk of taking whatever actions are necessary if Defendant
18 fails to pay. In two cases, that has meant over 500 hours spent post final approval in efforts
19 to collect on behalf of the class.

20 33. The risk to my office has been very significant, particularly if we would not
21 be successful in pursuing this class action. In that case, we would have been left with no
22 compensation for all the time taken in litigating this case. Indeed, we have taken on a
23 number of class action cases that have resulted in thousands of attorney hours being
24 expended and ultimately having certification denied or the defendant company going
25 bankrupt. The contingent risk in these types of cases is very real and they do occur
26 regularly. Furthermore, we were precluded from focusing on, or taking on, other cases
27 which could have resulted in a larger, and less risky, monetary gain.

28 ///

1 34. Because most individuals cannot afford to pay for representation in litigation
2 on an hourly basis, Rastegar Law Group represents virtually all of its employment law
3 clients on a contingency fee basis. Pursuant to this arrangement, we are not compensated
4 for our time unless we prevail at trial or successfully settle our clients' cases. Because
5 Rastegar Law Group is taking the risk that we will not be reimbursed for our time unless
6 our client settles or wins his or her case, we cannot afford to represent an individual
7 employee on a contingency basis if, at the end of our representation, all we are to receive is
8 our regular hourly rate for services. It is essential that we recover more than our regular
9 hourly rate when we win if we are to remain in practice so as to be able to continue
10 representing other individuals in civil rights employment disputes.

11 35. I am informed and believe that the efforts of my office have resulted in
12 substantial benefits to the settlement class, in the form of a substantial settlement fund
13 established to compensate settlement class members for missed meal and rest periods,
14 among the other wage and hour violations noted above. Through the efforts of my office
15 and Named Plaintiff in this case, a fair and reasonable resolution has been reached that
16 includes a settlement payment by Defendant of \$122,500.00. I am informed and believe
17 that, without the efforts of my office, the Labor Code and Wage Order violations alleged in
18 the Complaint would have gone completely unremedied. The \$42,875.00 fees award
19 provided for in the settlement is therefore reasonable given the result achieved.

20 36. The Class Action Settlement Agreement marked as Exhibit 1 and attached
21 hereto is a true and correct copy.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on November 2, 2018, at Torrance, California.

25
26 
27 _____
28 Farzad Rastegar

Exhibit 1

1 **RASTEGAR LAW GROUP, APC**
2 **FARZAD RASTEGAR (CA Bar No. 155555)**
3 **farzad@rastegarlawgroup.com**
4 **THOMAS S. CAMPBELL (CA Bar No. 199014)**
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10 **Attorneys for Plaintiff, Porfiria Yocupicio**

11 **BOUTIN JONES INC.**
12 **Bruce M. Timm (State Bar No.199679)**
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16 **Kimberly A. Lucia (State Bar No. 266503)**
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18 **555 Capitol Mall, Suite 1500**
19 **Sacramento, CA 95814-4603**
20 **Tel: (916) 321-4444**
21 **Fax: (916) 441-7597**

22 **Attorneys for Defendants ARCH RESOURCES GROUP**

23
24
25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
26 **FOR THE COUNTY OF LOS ANGELES**

27 **PORFIRIA YOCUPICIO, individually, and on**
28 **behalf of all other similarly situated,**

Plaintiff,

vs.

ARCH RESOURCES GROUP LLC, ET AL.,
a limited liability company; and DOES 1
through 10, inclusive,

Defendants

CASE NO. BC548550

Assigned to the Hon. Elihu M. Berle
Dept. 6

AMENDED CLASS ACTION
SETTLEMENT AGREEMENT

Complaint Filed: June13, 2014

First Amended
Complaint Filed: August 21, 2014

Trial Date: None

1 This Amended Class Action Settlement Agreement ("Settlement Agreement") is made by
2 and between Plaintiff Porfiria Yocupicio ("Plaintiff"), on behalf of herself and other similarly
3 situated employees of Defendant Arch Resources Group LLC (hereinafter referred to as
4 "ARCH"), a Delaware limited liability company, and ARCH (hereinafter, collectively referred to
5 as "parties" or individually as "party"), in regard to the civil action filed against Arch Resources
6 Group LLC, *et al* on June 13, 2014, in the Superior Court of California for the County of Los
7 Angeles, captioned *PORFIRIA YOCUPICIO, individually, and on behalf of all others similarly*
8 *situated, Plaintiff, vs. ARCH GROUP, LLC, a limited liability company* Case No. BC548550. On
9 August 24, 2014, Plaintiff filed a First Amended Complaint naming PAE Group, LLC as a
10 defendant. PAE Group, LLC was subsequently dismissed because it had renamed itself ARCH.
11 Plaintiff subsequently amended her complaint to add Pacific Pearl Hotel Management - San
12 Diego and Pacific Pearl Hotels, LLC, who are not parties to this agreement (collectively, "PPH").
13
14

15 **I. BACKGROUND AND RECITALS**

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

22 2. On June 16, 2016, ARCH filed a cross-complaint against PPH, which is not a
23 subject of this Agreement.

24 3. The FAC alleged the following seven causes of action, respectively: (1) "Failure
25 To Provide Meal Periods"; (2) "Failure To Authorize and Permit Rest Breaks"; (3) "Failure to
26 Pay Minimum Wage And Straight Time Wages"; (4) "Failure To Pay Overtime Compensation";
27 (5) "Failure to Pay Vested Vacation time"; (6) "Failure To Timely Pay Temporary Service
28

Employee”; (7) “Failure to Timely Pay All Wages Upon Termination Of Employment”; (8) “Failure to Provide Accurate Itemized Wage Statements”; (9) “Unfair Business Practices”; and (10) “Representative Action Under the Private Attorneys General Act of 2004 for Civil Penalties, Labor Code §§ 2698-2699.5 [‘PAGA’]” (collectively, the “Action”).

4. Plaintiff is a former housekeeper at the DoubleTree by Hilton Golf Resort in San Diego (“DoubleTree”) who worked during a portion of the relevant class period. Pursuant to an agreement between ARCH and PPH, ARCH employed Plaintiff and certain other individuals (the “DoubleTree Employees”), solely for purposes of providing PPH with ministerial human resources and payroll functions for such individuals, which DoubleTree Employees worked at the DoubleTree. The parties agree that Plaintiff may be appointed by the Court as the class representative (“Class Representative”).

5. Plaintiff’s counsels are Messrs. Farzad Rastegar and Thomas S. Campbell of the Rastegar Law Group, APC, whom the parties agree may be appointed by the Court as class counsel (“Class Counsel”).

6. Prior to settlement, the parties conducted pre-mediation discovery which involved the production of a substantial amount of payroll and wage records relating to the claims in this litigation. Class Counsel and ARCH’s counsel expended a significant amount of time and resources reviewing electronic data and business records relating to worker time data, payroll summaries, ARCH’s meal and rest period policies and signed acknowledgments, as well as other ARCH policies and procedures relevant to the claims in this Action.

7. On July 19, 2017, the parties participated in a full-day mediation with Jeffrey Krivis at First Mediation Corporation. The parties thereafter continued mediating the case with Mr. Krivis and, after considering all of the various factors at issue, the parties eventually agreed to settle the entire Action and entered into a Memorandum of Understanding (MOU) setting forth the material economic and non-economic terms of the settlement, with the understanding that a long-form settlement agreement would be executed by the parties. This document is the long-form settlement agreement contemplated by the MOU, and it supersedes the MOU upon the approval of the Court of the settlement.

1 8. Plaintiff and Class Counsel concluded, after taking into account the sharply
2 disputed factual and legal issues involved in this Action, the risks attendant to further prosecution
3 and the substantial benefits to be received pursuant to the compromise and settlement of the
4 Action as set forth in this Agreement, that settlement on the terms set forth herein is in the best
5 interests of Plaintiff and the putative Class and is fair and reasonable.

6 9. Similarly, ARCH concluded, after taking into account the sharply disputed factual
7 and legal issues involved in the Action, the expense and burden of protracted litigation and its
8 desire to put the controversy to rest, that settlement on the terms set forth in this Agreement is in
9 ARCH's best interest and is fair and reasonable.

10 10. Each of the parties understands and acknowledges that each party is waiving legal
11 rights or claims by signing the Agreement, and that each party voluntarily enters into the
12 Agreement with a complete understanding of its terms and with the intent to be bound thereby.

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

19 **NOW, THEREFORE,** in consideration of the mutual covenants and promises contained
20 herein, and for other good and valuable consideration, receipt of which is hereby acknowledged,
21 the parties agree as follows:

22 **II. CONSIDERATION FOR THE SETTLEMENT AND RELEASE OF CLAIMS**

23 12. Subject to and conditioned upon Court approval pursuant to Section 382 of the
24 California Code of Civil Procedure and Rule 3.769, *et seq.* of the California Rules of Court, and
25 an Order of this Court determining this agreement constitutes a good faith settlement as set forth
26 in paragraph 25 below, Plaintiff and ARCH have mutually agreed to settle the Action upon the
27 terms and conditions, release of claims with prejudice, and other consideration set forth in this
28 Agreement. A summary of the terms of the Settlement is as follows:

1 A. The parties stipulate to certification of a provisional settlement class ("Settlement
2 Class"), for purposes of this settlement only. The putative class members also be referred to
3 herein collectively as "Members of the Settlement Class" or individually as "Member of the
4 Settlement Class." The Settlement Class shall consist of:

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

10 B. Gross Settlement Value: On behalf of ARCH and the ARCH Released Parties,
11 ARCH will pay a maximum of One Hundred Twenty Two Thousand Five Hundred Dollars
12 (\$122,500.00), which is referred to herein as the Gross Settlement Value ("GSV"), inclusive of,
13 and in full and final settlement of, Plaintiff's individual and representative claims as well as all
14 Settlement Class claims, PAGA claims, attorneys' fees, costs (including expert witness fees and
15 related costs), and expenses and interest. The parties agree that the following sums may be
16 deducted from the GSV, to attain a Net Settlement Amount ("NSA"):

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

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

28 iii. Attorneys' Fees: Subject to Court approval, ARCH has agreed not to

1 object to a request by Class Counsel to be designated as Class Counsel and
2 to be paid any accounts for a reasonable lodestar which the Court may
3 grant, but in no event shall the total payment of attorneys' fees exceed the
4 sum of 35% of the GSV, *i.e.*, Forty-Two Thousand Eight Hundred Seventy
5 Five Dollars (\$42,875.00), which sum shall be deducted from the GSV.

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

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

14 C. Net Settlement Amount: The NSA is estimated to be Forty-Three Thousand One
15 Hundred and Twenty-Five Dollars (\$43,125.00), *i.e.*, GSV minus PAGA Penalties, Enhancement
16 Payment, Attorneys' Fees, Attorneys' Costs, and Administrative Costs. The parties agree that the
17 NSA shall be allocated and paid to Members of Settlement Class, as follows:

18 13. Other than payment of the GSV, under the terms and conditions set forth herein,
19 Plaintiff and the putative members of the settlement identified herein acknowledge and agree that
20 no other payment(s), including without limitation for wages, piece rates, overtime, bonus,
21 vacation pay, premium pay for alleged missed meal or rest breaks, travel, expenses, failure to
22 provide meal or rest periods, failure to provide accurate itemized wage statements and to maintain
23 records, failure to timely pay wages upon termination, restitution, PAGA penalties, and civil or
24 statutory penalties, interest, attorneys' fees, or benefits, are or shall be due and owing from ARCH
25 or any of the ARCH Released Parties, individually or as members of an identified settlement
26 class, or to Class Counsel, for the relevant period of time covered by the FAC, or for any other
27 period.

1 14. Pursuant to the IRS Circular 230 Disclaimer, the parties acknowledge and agree
2 that (1) no provision of this Agreement, and no written communication or disclosure between or
3 among the parties or their attorneys and other advisers, is or was intended to be, nor shall any
4 such communication or disclosure constitute or be construed or be relied upon as, tax advice
5 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
6 amended); (2) the acknowledging part(ies) (a) has relied exclusively upon his, her or its own,
7 independent legal and tax advisers for advice (including tax advice) in connection with this
8 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
9 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
10 communication or disclosure by any attorney or advisor to any other party to avoid any tax
11 penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any
12 other party has imposed any limitation that protects the confidentiality of any such attorney's or
13 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
14 by the acknowledging party of the tax treatment or tax structure of any transaction, including any
15 transaction contemplated by this Agreement.

16 **III. RELEASE OF CLAIMS**

17 15. The term "ARCH Released Parties" means and shall include the following: ARCH
18 (as defined herein), ARCH RESOURCES GROUP, LLC, a limited liability company, each of its
19 current or former owners, officers, directors, shareholders, investors, partners, members,
20 employees, servants, managing agents, partnerships, trustees, predecessors, successors, assigns,
21 parent corporations, and/or subsidiaries (whether or not wholly owned); any other entity or
22 company operated, controlled by, or under common control with any one of the foregoing; each
23 of their respective trustees, directors, officers, attorneys, insurers or reinsurers, accountants,
24 lenders, investors, agents, servants, representatives, employees and former employees (in their
25 respective capacities as such, in their individual and personal capacities, and in any and all other
26 capacities).

27 16. The term "Class Released Claims" means any and all liabilities, demands, claims,
28 causes of action, complaints and obligations arising during June 13, 2010 through the Settlement

Effective Date (as defined herein) that were alleged or which could have been alleged in the FAC, and each and every material allegation alleged therein, including without limitation the following: 1) "Failure To Provide Meal Periods"; (2) "Failure To Authorize and Permit Rest Breaks"; (3) "Failure To Pay Minimum Wage And Straight Time Wages"; (4) "Failure To Pay Overtime Compensation"; (5) "Failure To Pay Vested Vacation Time"; (6) "Failure To Timely Pay Temporary Service Employee"; (7) "Failure To Timely Pay All Wages Upon Termination Of Employment"; (8) "Failure To Provide Accurate Itemized Wage Statements"; (9) "Unfair Business Practices"; and (10) "Representative Action Under the Private Attorneys General Act of 2004 for Civil Penalties, Labor Code §§ 2698-2699.5 ['PAGA']" (collectively, the "Action").

17. The term "Plaintiff Released Claims" means any and all Class Released Claims and claims under the California Fair Employment and Housing Act ("FEHA"), California Family Rights Act ("CFRA") (Cal. Gov't Code section 12940 *et seq.*), Title VII of the 1964 Civil Rights Act, as amended ("Title VII") (42 U.S.C. section 2000e *et seq.*), the Consolidated Omnibus Benefits Reconciliation Act of 1985 ("COBRA"), the Americans with Disabilities Act ("ADA") (42 U.S.C. section 12101 *et seq.*), as amended, the Vocational Rehabilitation Act of 1973 (29 U.S.C. section 701, *et seq.*), the California Labor Code; claims for disputed wages and penalties under federal or state law; claims for compensation, severance, employee benefits and vacation pay (*excluding* workers' compensation or unemployment insurance claims); attorneys' fees, costs, expenses and expert witness fees and expenses; tort damages or personal injury damages; breach of implied or express contract; failure to accommodate; failure to engage in an interactive process; wrongful termination in violation of public policy; breach of fiduciary duty; declaratory relief; injunctive relief; public policy breach; intentional or negligent infliction of emotional distress; breach of employment contract (whether express, implied in law or fact, oral or written); breach of implied covenant of good faith and fair dealing; interference with contract; intentional or negligent interference with prospective economic advantage; intentional or negligent misrepresentation, promissory fraud, or fraud; conversion; defamation; libel or slander; discrimination, retaliation, harassment or hostile work environment on the basis of any statutorily protected class including but not limited to disability, engagement in protected activity; failure to

1 prevent discrimination, retaliation, harassment or hostile work environment; negligent hiring;
2 constructive discharge; disparagement of any kind or nature; invasion of privacy; civil assault;
3 malicious prosecution; abuse of process; declaratory or injunctive relief, whether known or
4 unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, at law or in
5 equity, which Plaintiff ever had or held, now has or holds, or hereafter can, shall, or may have or
6 hold at any time in the future, in any capacity, individually or as a member of a class, collective or
7 representative action, or an action for the public good or as a private attorneys general, with
8 respect to Plaintiff's employment with ARCH, the terms and conditions and working environment
9 of her employment, and the termination thereof, the compensation paid to Plaintiff, the subject
10 matter of the Agreement, or any other matters with, by, between or among ARCH, or any of the
11 ARCH Released Parties, and Plaintiff from the beginning of the World through the Settlement
12 Effective Date.

13 18. In consideration of the terms and provisions of the Agreement, the Members of the
14 Settlement Class shall and do hereby and forever fully, finally and forever generally remise,
15 release, waive and discharge, with prejudice, ARCH and the ARCH Released Parties, and each of
16 them, from any and all known or unknown, suspected or unsuspected, whether or not concealed
17 or hidden, claims, rights, actions and causes of action, at law or in equity, *relating to the Class*
18 *Released Claims only*, which the Members of the Settlement Class ever had or held, now have or
19 hold, or hereafter can, shall, or may have or hold against ARCH and the ARCH Released Parties
20 or any one of them, based on any occurrences, transactions, events, acts, or omissions of any kind
21 whatsoever from the beginning of the World through the Settlement Effective Date. Any eligible
22 Class Member who does not elect to exclude himself or herself from the Settlement Class will be
23 deemed to have entered into this release of claims and to have released the claims.

24 19. In consideration of the terms and provisions of the Agreement, and without
25 limiting the foregoing release in Paragraph 16, Plaintiff shall and does hereby and forever fully,
26 finally and forever generally remise, release, waive and discharge, with prejudice, ARCH and the
27 ARCH Released Parties, and each of them, from any and all known or unknown, suspected or
28 unsuspected, whether or not concealed or hidden, claims, rights, actions and causes of action, at

1 law or in equity, including but not limited to the Plaintiff Released Claims, which Plaintiff ever
2 had or held, now has or holds, or hereafter can, shall, or may have or hold against ARCH and the
3 ARCH Released Parties or any one of them, based on any occurrences, transactions, events, acts,
4 or omissions of any kind whatsoever from the beginning of the World through the Settlement
5 Effective Date.

6 20. ARCH shall not reinstate, re-hire, or hire Plaintiff. Plaintiff shall not apply for
7 employment with ARCH. Plaintiff understands and agrees that, should she apply for
8 employment, ARCH shall have the right to terminate the processing of his application, and
9 Plaintiff shall have no rights, claims or causes of action against ARCH as a result.

10 **IV. WAIVER OF SECTION 1542 RIGHTS**

11 21. Plaintiff acknowledges and agrees she has been informed of and understands the
12 provision of California Civil Code section 1542 which provides as follows:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
14 **WHICH THE CREDITOR DOES NOT KNOW OR**
15 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
16 **TIME OF EXECUTING THE RELEASE, WHICH IF**
17 **KNOWN BY HER OR HER MUST HAVE MATERIALLY**
AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR.

18 22. Plaintiff expressly waives and relinquishes any and all rights and benefits under
19 Section 1542 of the Civil Code of the State of California and under any statute, rule, or principle
20 of common law or equity, of any jurisdiction, that is similar to Section 1542.

21 23. This waiver of Section 1542 does not extend to Class Members other than
22 Plaintiff.

23 24. Plaintiff further acknowledges and agrees that if the facts or law with respect to
24 which the foregoing releases are given hereafter turn out to be other than or different from the
25 facts or law in that connection not known to be or believed by each of them to be true, Plaintiff
26 expressly assumes the risk of the facts or law turning out to be so different, and agrees that the
27 foregoing releases shall be in all respects effective and not subject to termination or rescission
28 based upon any such differences in facts or law.

1 **V. ADDITIONAL TERMS**

2 25. Good Faith Settlement. The parties agree that this Agreement is expressly
3 conditioned upon the Court granting a good faith settlement motion by ARCH pursuant to Code
4 of Civil Procedure sections 877 *et seq.* The parties further acknowledge that, if the Court denies
5 ARCH's motion, ARCH may waive this condition in its sole discretion.

6 26. Stay of Discovery. The parties agree to stay all discovery between them and the
7 further deposition of Plaintiff pending approval of the Court of this settlement. The parties agree
8 not to serve any discovery requests, subpoenas, or deposition notices to each other following
9 Court approval pursuant to Code of Civil Procedure section 382 and Rule of Court 3.768, *et seq.*

10 27. No Admission of Liability. This Agreement represents a settlement of disputed
11 rights and claims and, by entering into the Agreement, ARCH does not admit or acknowledge the
12 existence of any liability or wrongdoing to Plaintiff or any of the Members of the Settlement
13 Class, all such liability or wrongdoing being specifically and expressly denied.

14 28. Calculation of Class Members Payment/Claims Process. The amount that each
15 individual participating Class Member will be eligible to receive under the settlement will be
16 calculated by dividing each participating Class Member's individual work weeks by the total
17 workweeks of all Class Members and multiplying the resulting fraction by the Net Settlement
18 Fund. Each participating Class Members' individual settlement award will be designated as
19 follows: 1/3 as wages, 2/3 for interest, penalties, and any other damages. The amounts paid as
20 wages shall be subject to all tax withholdings customarily made from the employee's wages and
21 all other authorized and required withholdings shall be reported by W-2 forms. The amounts paid
22 as penalties and interest shall be subject to all authorized and required withholdings other than the
23 tax withholdings customarily made from employees' wages and shall be reported by IRS 1099
24 form. ARCH shall be responsible for paying the employer's portion of any employment taxes
25 attributable to the amounts paid as wages.

26 29. No-Claims Made. The parties agree to a "no-claims made" redemption process
27 whereby each Class Member will receive their settlement share if he or she does not opt-out of the
28 Settlement. Members of the Settlement Class have one hundred eighty (180) days from the date

1 of the issuance to cash their checks.

2 30. Class Administrator: The parties have agreed to appoint Phoenix Settlement
3 Administrators ("Phoenix") as the class administrator for the purpose of administering the
4 settlement contemplated by this Agreement (the "Class Administrator"). The Class
5 Administrator's duties include, but are not limited to, printing, distributing, and tracking notices
6 and forms for this settlement, calculating Individual Settlement Amounts, tax reporting,
7 distributing payments, and providing necessary reports and declarations, and other duties set forth
8 herein to process this Agreement, as requested by the parties. If for any reason Phoenix does not
9 become the Class Administrator, then all references to the Class Administrator and to Class
10 Action Administration in this Agreement shall be deemed to refer to the Class Administrator
11 actually appointed.

12 31. ARCH To Provide Contact Information for Members of the Settlement Class:
13 Within twenty-one (21) calendar days after the Court's preliminary approval of the Settlement,
14 ARCH shall provide on a confidential basis the Class Administrator with the Class List Data
15 consisting of the following: i) a spreadsheet containing the names, most recent known mailing
16 addresses, telephone numbers, and Social Security numbers of the Members of the Settlement
17 Class, to the extent that ARCH has such information in its records.

18 32. Confidentiality of Class List Data: The Class Administrator shall keep
19 confidential all Class List Data provided by ARCH, as well as any other information exchanged
20 between the parties as part of the settlement.

21 33. Class Notice of Settlement: Within twenty-one (21) calendar days after receipt of
22 the Class List Data, the Class Administrator shall mail the class notice in English and in Spanish
23 (the "Class Notice"), attached as Exhibit A and incorporated herein by this reference as though set
24 forth herein, to the Members of the Settlement Class via first-class U.S. Mail. The Class Notice
25 will be in a form substantially identical to Exhibit "A" attached hereto, with any modifications as
26 the Court may order. The purpose of the Class Notice is to, *inter alia*, inform Members of the
27 Settlement Class of the nature of the Action, provide a summary of the proposed settlement,
28 define the Settlement Class, describe how to submit Requests for Exclusion, and describe how to

1 submit Objections.

2 34. Verification of Contact Information: Before the mailing of the Class Notice, the
3 Class Administrator will perform a search based on the National Change of Address Database, or
4 any other similar services available, to correct for any identifiable address changes. After
5 mailing, if a new address is obtained, then the Class Administrator shall promptly forward the
6 original Class Notice to the updated address via first-class U.S. Mail, indicating on the original
7 Class Notice the date of such remailing. ARCH agrees to cooperate with the Class Administrator
8 to locate a more recent address for Members of the Settlement Class where necessary.

9 35. Deadline for Response by Members of the Settlement Class: Members of the
10 Settlement Class will have sixty (60) calendar days from the mailing of the Class Notice (the
11 "Opt-Out Period") to submit Requests for Exclusion or objections to the proposed settlement. As
12 to Members of the Settlement Class whose notices are re-mailed because of a new address, the
13 new deadline for submitting an Exclusion Request or an Objection will be either (i) sixty (60)
14 calendar days from the second mailing or (ii) forty-five (45) calendar days before the hearing on
15 Final Approval, whichever date is earlier.

16 36. Opting Out by Exclusion Request: Within the Opt-Out Period, Members of the
17 Settlement Class who wish to opt-out of the proposed settlement must sign and fax or postmark to
18 the Class Administrator a written Exclusion Request. An Exclusion Request is a writing
19 submitted within the Opt-Out Period that expresses an intent to not participate in the proposed
20 settlement and that (1) is signed by the Member of the Settlement Class requesting exclusion, (2)
21 contains the name, address, telephone number and the last four digits of the Social Security
22 number of the Member of the Settlement Class requesting exclusion, (3) clearly states that the
23 Member of the Settlement Class does not wish to be included in the proposed settlement, (4) is
24 returned by fax or mail to the Class Administrator at the specified address, and (5) is faxed or
25 postmarked on or before the 60-day deadline. The date of the fax or the postmark on the Member
26 of the Settlement Class's mailing envelope shall determine whether an Exclusion Request is
27 timely. A Member of the Settlement Class who does not timely submit an Exclusion Request
28 shall be deemed a Member of the Settlement Class and will benefit by and be bound by all terms

1 of the settlement contemplated by this Agreement, if the Court grants Final Approval.

2 37. Objections: To object to the settlement proposed by this Agreement, a Member of
3 the Settlement Class must file with the Court and serve Plaintiff's counsel and Defendant's
4 counsel, within the Opt-Out Period, an objection to the Agreement. An objection is a written
5 document that is signed by a Member of the Settlement Class who has not filed an Exclusion
6 Request and that includes (a) the objecting Member of the Settlement Class' full name, address,
7 and telephone number, (b) a written statement of factual and legal grounds for the Objection, (c)
8 copies of any papers, briefs, or other documents on which the Objection relies, (d) a list of all
9 persons who will be called to testify in support of the Objection, (e) a statement whether the
10 objector intends to appear at the hearing on Final Approval, and (f) a list of all cases in which the
11 objector or the objector's counsel has filed objections to a class action settlement in the preceding
12 five years. Any Member of the Settlement Class who does not file a timely Objection and a
13 notice of an intention whether to appear at the hearing on Final Approval, or who otherwise fails
14 to substantially comply with the requirements of this paragraph, may be foreclosed from objecting
15 to the proposed settlement and seeking any adjudication or review of the settlement, by appeal or
16 otherwise.

17 38. Class Administrator Responsibilities Before Final Approval: If any Class Notice is
18 returned to the Class Administrator as nondelivered, then the Class Administrator may use skip
19 tracing, address verification of returned mail, or other methodology as the Class Administrator
20 deems to be appropriate to locate Members of the Settlement Class. As soon as practicable after
21 the Opt-Out Period, the Class Administrator shall report simultaneously to the parties' counsel the
22 following information: (1) the number of timely and untimely Exclusion Requests, if any, (2) the
23 name of each Member of the Settlement Class, if any, who submitted an Exclusion Request, (3)
24 the number of timely and untimely Objections, if any, and (4) the name of each Settlement Class
25 Member, if any, who submitted an Objection, and the stated grounds therefor. No later than
26 seven (7) calendar days before the hearing on Final Approval, the Class Administrator shall
27 prepare a Due Diligence Declaration stating the steps the Class Administrator has taken to
28 administer this Agreement, including the dissemination of the Class Notice and the receipt of any

1 Requests for Exclusion or Objections. Class Counsel shall be responsible for filing the Due
2 Diligence Declaration with the Court.

3 39. Motion for Final Approval: Following the expiration of the Opt-Out Period, Class
4 Representative Plaintiff will move for Final Approval ("Motion for Final Approval"), and will
5 submit a proposed order to approve this Agreement, which would adjudge that the terms thereof
6 to be fair, adequate, and reasonable, rule on the request for attorneys' fees, rule on the request for
7 the Enhancement Payment, rule on the request for the PAGA Settlement, and call for judgment to
8 be entered on the Action with a provision for the retention of the Court's jurisdiction over the
9 parties to enforce the terms of the judgment pursuant to Rule 3.769(h) of the California Rules of
10 Court. The Class Representatives shall provide a draft of the Motion for Final Approval for
11 ARCH's review and comment. Upon agreement by the parties as to the language to be included
12 in the Motion for Final Approval, ARCH will file a notice of non-opposition to the Motion for
13 Final Approval.

14 40. Payment of GSV: Within thirty days of the date of the entry of the Final Approval
15 Order, the GSV shall be deposited by ARCH with the Settlement Administrator, who shall keep
16 such funds in an established interest-bearing account.

17 41. Class Administrator Responsibilities After Final Approval: As soon as practicable
18 after the deposit of the GSV with the Class Administrator, but no later than fourteen (14) days
19 thereafter, the Class Administrator shall (1) effect individual settlement payment amounts and
20 issue the appropriate tax reporting, (2) pay the Enhancement Payment to Class Representative
21 Plaintiff and issue the appropriate tax reporting, and (3) pay the award of attorneys' fees and costs
22 to Class Counsel and issue the appropriate tax reporting. The Class Administrator shall monitor
23 the cashing of settlement checks by Members of the Settlement Class. The Class Administrator
24 shall make settlement checks negotiable for 180 days from their issuance and will thereafter have
25 them automatically cancelled if not cashed. As soon as practicable after the 180-day check
26 cashing period, the Class Administrator shall prepare for the parties a Final Report – a document
27 summarizing relevant events to date and advising the total dollar amount paid to Members of the
28 Settlement Class, and the status of any uncashed checks. The Class Administrator shall comply,

1 on behalf of the parties, with any orders of the Court concerning class administration.

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

12 **VII. LIMITATIONS ON USE OF THIS SETTLEMENT**

13 43. **No Admission.**

14 Neither the acceptance nor the performance by ARCH of the terms of this Agreement nor
15 any of the related negotiations or proceedings is or shall be claimed to be, construed as, or
16 deemed a precedent or an admission by ARCH of the truth of any allegations in the Complaint.

17 44. **Non-Evidentiary Use.**

18 Neither this Agreement nor any of its terms, nor any statements or conduct in the
19 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member
20 (including any individual who requested to be excluded from the Class), ARCH, or their
21 respective counsel, in the Action.

22 45. **Nullification.**

23 If the Court for any reason does not approve this Settlement, this Agreement shall be
24 considered null and void and all parties to this settlement shall stand in the same position, without
25 prejudice, as if the settlement had been neither entered into nor filed with the Court.

26 **VIII. MISCELLANEOUS PROVISIONS**

27 46. **Non-Disclosure.**

28 Plaintiff agrees that if asked about this Action or Settlement, Plaintiff shall refer such

1 inquires to Class Counsel. Class Counsel agrees not to publicize this Action or settlement on their
2 website(s) or in a jury, or case reporting service or in any way.

3 **47. Amendments.**

4 The terms and provisions of this Agreement may be amended only by a written agreement
5 which is both (1) signed by named Plaintiff, Class Counsel, ARCH, and Counsel for ARCH; and
6 (2) approved by the Court.

7 **48. Cooperation.**

8 The parties agree to fully cooperate with each other to accomplish the terms of this
9 Agreement, including but not limited to, executing such documents and taking such other action
10 as may reasonably be necessary to implement the terms of this Agreement. The parties to this
11 Agreement shall use their best efforts, including all efforts contemplated by Agreement and any
12 other efforts that may become necessary by order of the Court or otherwise to effectuate this
13 Agreement and the terms set forth herein. As soon as practicable after execution of this
14 Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of ARCH and its
15 counsel, take all necessary steps to secure the Court's preliminary and final approval of this
16 Agreement.

17 **49. No Inducements.**

18 Plaintiff and ARCH acknowledge that each of them is entering into this Agreement as a
19 free and voluntary act without duress or undue pressure or influence of any kind or nature
20 whatsoever with the intent to be bound thereby, and that neither Plaintiff nor ARCH have relied
21 on any promises, representations or warranties regarding the subject matter hereof other than as
22 set forth in this Agreement.

23 **50. No Prior Assignment.**

24 The parties hereto represent, covenant, and warrant that they have not directly or
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights
27 herein released and discharged except as set forth herein.

28 ///

1 **51. Severability.**

2 If any provision (or portion thereof) of the Agreement is declared by an arbitrator or court
3 of competent jurisdiction to be invalid or unenforceable, the remaining provisions (including
4 other
5 portions of a provision having an invalid portion) shall remain in full force and effect and, to the
6 extent possible, the disputed provision shall be construed so that it may be valid and enforceable.

7 **52. Integrated Agreement.**

8 The Agreement constitutes an integrated written contract expressing the entire agreement
9 of Plaintiff and ARCH, and each of them, as to its subject matter. All prior and contemporaneous
10 discussions, negotiations and writings, have been and are merged with and integrated into, and are
11 superseded by, the Agreement. No representations, promises, agreements or understandings,
12 written or oral, not contained herein shall be of any force or effect. The Agreement cannot be
13 modified except by a writing executed by the parties.

14 **53. Governing Law.**

15 Construction and interpretation of the Agreement shall at all times and in all respects be
16 governed by the laws of the State of California, without regard to the rules or principles of
17 conflicts or choice of law that might look to any jurisdiction outside of California.

18 **54. Waiver.**

19 No failure or delay in exercising any right, power or privilege in respect of the Agreement
20 shall act as a waiver to a later demand for full and complete performance.

21 **55. Independent Legal Advice.**

22 The parties have each received prior independent legal advice from their counsel of record
23 with respect to the advisability of entering into the Agreement; and each material term of this
24 Agreement was explained to them in a manner which allowed them to understand the terms of the
25 Agreement and the releases of claims set forth herein to the extent necessary or desirable.

26 **56. Construction of Agreement.**

27 As each of the parties to the Agreement was assisted by their respective attorneys in
28 reviewing and agreeing to the terms hereof, no ambiguity shall be resolved against any of the

1 parties by virtue of having participated in the drafting of the Agreement.

2 **57. Counterparts.**

3 This Agreement, and any amendments hereto, may be executed in any number of
4 counterparts, each of which when executed and delivered shall be deemed to be an original and all
5 of which taken together shall constitute but one and the same instrument.

6 **58. Settlement Effective Date.**

7 The effective date of the Agreement ("Settlement Effective Date") means the date when
8 the following conditions have been satisfied: (1) The Agreement is executed by all parties, Class
9 Counsel, and ARCH's counsel; (2) the Court has given preliminary approval of the Agreement;
10 (3) notice has been given to the Members of the Settlement Class providing them with an
11 opportunity to opt-out of the Agreement; (4) the Court held a final approval hearing and entered a
12 final order and judgment approving the Agreement; (5) in the event there are written objections
13 filed prior to the final approval hearing that are not withdrawn or overruled, the later of the
14 following events: (i) when the period for filing any appeal, writ, or other appellate proceeding
15 opposing the Agreement has elapsed without any appeal, writ or other appellate proceeding
16 having been filed; or any appeal, writ or other appellate proceeding opposing the Agreement has
17 been dismissed finally and conclusively with no right to pursue further remedies or relief, or (ii)
18 any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to
19 pursue further remedies or relief. In this regard, it is the intention of the Parties that the
20 Settlement shall not become effective until the Court's order approving the Agreement is
21 completely final and there is no further recourse by an appellant or objector who seeks to contest
22 the Agreement. In the event that no objections are filed, the Effective Date shall be upon the
23 completion of steps (a) through (d) above. If any foregoing conditions described in this paragraph
24 has failed to occur, then, absent further agreement of the parties, this Agreement shall be null and
25 void.

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1 IN WITNESS WHEREOF, the parties have executed the Agreement on the date and
2 year written below.

3 Dated: July 25, 2018

4 Porfiria Yocupicio
5 Porfiria Yocupicio
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7

8 Dated: July 25, 2018

RASTEGAR LAW GROUP, APC

9 By: [Signature]
10 Farzad Rastegar
11 Thomas Campbell

12 Dated: July 25, 2018

ARCH RESOURCES GROUP LLC

13 By: [Signature]
14 Ulises Muñiz Patiño, Executive Vice President
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1 **PROOF OF SERVICE**

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

5 On July 26, 2018, I served the following document or documents:
6 **AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

7 ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax
8 transmission, I faxed the documents to the persons at the fax numbers listed below. No
9 error was reported by the fax machine that I used. A copy of the record of the fax
10 transmission, which is printed out, is attached.

11 ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package
12 addressed to the persons at the address listed below (specify one):

13 ☐ Deposited the sealed envelope with the United States Postal Service, with the
14 postage fully prepaid.

15 ☒ Placed the envelope for collection and mailing, following our ordinary business
16 practices. I am readily familiar with the business's practices for collecting and
17 processing correspondence for mailing. On the same day that correspondence is
18 placed for collection and mailing, it is deposited in the ordinary course of business
19 with the United States Postal Service, in a sealed envelope with postage fully
20 prepaid.

21 I am a resident or employed in the county where mailing occurred. The envelope or
22 package was placed in the mail at Torrance, California.

23 ☐ **By personal service.** I personally delivered the documents to the persons at the addresses
24 listed below. (1) For a party represented by an attorney, the delivery was made to the
25 attorney or at the attorney's office by leaving all the documents in an envelope or package
26 that was clearly labeled to identify the attorney being served with a receptionist or an
27 individual in charge of the office. (2) For a party, delivery was made to the party or by
28 leaving the documents at the party's residence with some person not less than 18 years of
age between the hours of eight in the morning and six in the evening.

☐ **By messenger service.** I served the documents by placing them in an envelope or package
addressed to the persons at the addresses listed below and providing them to a professional
messenger service for service. A Declaration of Messenger is attached.

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by
an overnight delivery carrier and addressed to the persons at the addresses listed below. I
placed the envelope or package for collection and overnight delivery at an office or a
regularly utilized drop box of the overnight delivery carrier.

☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the
parties to accept service by electronic transmission via One Legal. I caused the documents
to be sent to the person at the e-mail addresses listed below. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

Service List

BOUTIN JONES INC.

Bruce M. Timm (State Bar No. 199679)

btimm@boutinjones.com

Michael E. Chase (State Bar No. 214506)

mchase@boutinjones.com

Kimberly A. Lucia (State Bar No. 266503)

klucia@boutinjones.com

555 Capitol Mall, Suite 1500

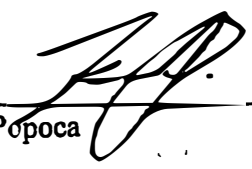
Sacramento, CA 95814-4603

Tel: (916) 321-4444

Fax: (916) 441-7597

Attorneys for Defendant, Arch Resource
Group

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 26, 2018 at Torrance, California.


Karla Popoca

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Service List

BOUTIN JONES INC. Bruce M. Timm (State Bar No. 199679) btimm@boutinjones.com Michael E. Chase (State Bar No. 214506) mchase@boutinjones.com Kimberly A. Lucia (State Bar No. 266503) klucia@boutinjones.com 555 Capitol Mall, Suite 1500 Sacramento, CA 95814-4603 Tel: (916) 321-4444 Fax: (916) 441-7597	Attorneys for Defendant, Arch Resource Group
---	---

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 26, 2018 at Torrance, California.



Karla Popoca

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I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 123 S. Figueroa Street, Suite 115, Los Angeles, CA 90012.

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

DECLARATION OF FARZAD RASTEGAR IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DOCUMENTS IN SUPPORT THEREOF

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

SEE SERVICE LIST

[X] BY MAIL

[] 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.

[] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day with 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.

☐ **BY NEXT BUSINESS DAY DELIVERY**

[] BY EMAIL

[] BY PERSONAL SERVICE

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

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


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 Gaahen, 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**