

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (SBN 068687)

2 Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

3 2255 Calle Clara

La Jolla, CA 92037

4 Telephone: (858) 551-1223

Facsimile: (858) 551-1232

5 Attorneys for Plaintiffs

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF GLENN**

10
11 FABIAN MARTINEZ, PAUL ADAMS,
MICHAEL RUSH, and RICHARD L. YOUNG,
12 individually on behalf of themselves and on
behalf of all persons similarly situated,

13 Plaintiff,

14 vs.

15 JOHNS MANVILLE, a Corporation; and DOES
16 1 through 50 inclusive,

Defendant.

Case No. **23CV03097**

**DECLARATION OF FABIAN
MARTINEZ IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: TBD

Hearing Time: TBD

Date Filed: March 15, 2023

Trial Date: Not set

1 I, Fabian Martinez, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Settlement and in support of my application for a Class Representative
5 Service Payment.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. During the class period I worked as a HERM Operator for the Defendant Johns Manville,
10 ("Johns Manville" or "Defendant") in California and during that time period I was classified by
11 Johns Manville as a non-exempt employee.
12

13 4. I retained my attorneys who are experienced in both class action and PAGA
14 representative action litigation and claims against employers for violations of the California
15 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
16 Court. I am not aware of having any actual or potential conflicts of interest with another class
17 member in this case nor am I aware of having any actual or potential conflicts of interest with
18 Apex Class Action, the settlement administrator. I am not aware of any other pending matter or
19 action asserting claims that will be extinguished or adversely affected by this settlement.
20

21 5. I decided to pursue this class action lawsuit and be a plaintiff/class representative
22 because I felt that my legal rights as an employee and others like me were violated. For example,
23 I received non-discretionary compensation from time to time, such as bonuses, but these
24 payments during certain pay periods when I worked overtime were not factored into my regular
25 rate. I was underpaid overtime as a result. As another example, I often did not receive compliant
26 meal and rest breaks which were late, interrupted or missed entirely. I also did not receive all the
27

1 meal and rest break premiums I was entitled to and when I did receive premium payments they
2 were often an incorrect amount.

3 6. I spoke to my attorneys several times and discussed how Johns Manville implemented its
4 company policies and procedures. I also assisted my attorneys in their investigation into my
5 claims by providing them documents and answering their questions. I reviewed the complaint
6 before it was filed and after it was filed I was given access to an electronic file sharing program
7 that alerted me via email when important documents were filed so that I could review them and
8 keep up with the developments in the case which I understood was one of my duties as a class
9 representative. I would also contact my attorneys from time to time if I had any questions about
10 the case.
11

12 7. Even though this action is in the process of settling, I was and remain prepared to
13 perform all the duties of a class representative. I understand that as a class representative I have
14 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
15 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
16 benefit of the class members and surrender any right to compromise the group action for an
17 individual gain.
18

19 8. I understood that being a plaintiff/class representative in this case meant that I was
20 seeking damages not only for myself but also other current and/or former non-exempt employees
21 working for Johns Manville in California who make up the class. I felt that these individuals
22 were not aware of their labor law rights and even if they were they would probably be
23 apprehensive about speaking up or even simply because of the time, effort and risk involved in
24 filing a class action lawsuit.
25

26 9. I understood that being a part of this lawsuit involved risks. For example, my attorneys
27

1 explained to me that if the case went to trial and we lost, I could be held responsible to pay for
2 all or part of the attorney fees and costs paid by Johns Manville to defend this lawsuit. Also, I
3 knew there was a risk that future employers, if they ever find out about this lawsuit, could hold
4 it against me or downgrade me as a potential hire. As one of only four named Plaintiffs in this
5 case it would not be difficult for a future employer to become aware that I sued my employer
6 for labor law violations. Ultimately, I decided these risks were worth it and decided to fight for
7 my rights and the rights of others regardless of the risks, time and effort I spent on this case.
8

9 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also kept
10 up to date on important developments by reviewing court filings that were made available to me
11 electronically as I described above.
12

13 11. A mediation took place on May 17, 2024 with David Rotman, a well-respected and
14 experienced mediator of wage and hour class actions. After the mediation, the parties were able
15 to reach an agreement to settle the action. I communicated with my attorneys regarding the
16 terms of the settlement which was reached between the parties and understood that I was
17 representing absent class members and therefore wanted the best possible result to be obtained
18 for the class members and I believe a very positive result was in fact achieved via settlement. I
19 reviewed and signed the Memorandum of Understanding on June 20, 2024 and when the final
20 settlement papers were ready, I closely reviewed the Settlement Agreement which I signed on
21 October 2, 2024.
22

23 12. I have been actively involved with this lawsuit performing the duties described above.
24 Although I did not keep time records, I was in regular contact with my attorneys, reviewed court
25 filings, and spent a significant amount of time on the issues presented during the lawsuit and in
26 the settlement process. I estimate that I spent approximately 30-40 hours working on this case
27

1 up until this point. I believe I have been diligent and have done what is expected of a named
2 plaintiff and a proposed class representative to date and will continue to do so. I have and always
3 will maintain the best interests of the class members.

4
5 13. My attorneys explained to me that the settlement process involves a two-step review by
6 the Court to determine whether the settlement is fair before approving the settlement. I know
7 this process also involves notifying all class members of the settlement terms and of their rights
8 to make a claim for their settlement share, to opt out of the settlement or to object to the
9 settlement.

10 14. I believe I did the right thing by filing this case on behalf of the class members who,
11 subject to court approval, are in line to receive monetary payments as a result of this case and
12 settlement. This is money they may never have ever gotten if I did not pursue this action on their
13 behalf. I feel significant personal satisfaction to know that I played a role in the class members
14 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
15 the requested Class Representative Service Payment of \$10,000 from the settlement is fair
16 compensation for the work I performed and the risks I undertook.

17
18 15. As part of the settlement it was necessary for me to sign a general release of all claims I
19 may have against Johns Manville. I believe the Class Representative Service Payment I have
20 requested provides me with some compensation for this agreed release.

21
22 16. In light of all the time and effort I have spent on this case, the risk I undertook by suing
23 my employer, the exposure to being responsible for paying Defendant's costs in the event we did
24 not win the case, the reputational risk that future employers may hold this lawsuit against me, the
25 general release and in light of the size of the settlement, I believe the request for \$10,000 as a
26 Class Representative service payment is fair and reasonable.

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

3
4 Executed on 10/13/2024, at Hamilton city, CA.
(city, state)

5
6 
Fabian Martinez (Oct 13, 2024 20:09 PDT)
Fabian Martinez