

**BRADLEY & GROMBACHER, LLP**

Marcus J. Bradley, Esq. (SBN 174156)  
Kiley L. Grombacher, Esq. (SBN 245960)  
31365 Oak Crest Dr., Suite 240  
Westlake Village, CA 91361  
Telephone: (805) 270-7100  
Facsimile: (805) 270-7589  
mbradley@bradleygrombacher.com  
kgrombacher@bradleygrombacher.com

Attorneys for Plaintiff James Sancho

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

GABRIEL GUZMAN JR., an individual, in his  
representative capacity on behalf of the State of  
California and fellow Aggrieved Employees;  
JAMES SANCHO, an individual, in his  
representative capacity on behalf of the State of  
California and fellow Aggrieved Employees

Plaintiffs,

v.

VULCAN MATERIALS COMPANY, a New  
Jersey Corporation; CALMAT CO., a Delaware  
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No.: 37-2021-00024583-CU-OE-CTL

*[Assigned for all purposes to Hon.  
Katherine Bacal, Dept. C-69]*

**DECLARATION OF MARCUS J.  
BRADLEY IN SUPPORT OF  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**Date: October 14, 2022**

**Time: 1:30 PM**

**Dept.: C-69**

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- 1 a. *Gutierrez v. State Farm Mutual*, Los Angeles Superior Court (BC236552). Class action  
2 mis-classification case seeking overtime compensation for approximately 2,600 insurance  
3 claims adjusters employed by State Farm. The class was certified and summary  
4 adjudication was granted as to liability in favor of the class. The case settled for \$135  
5 million just prior to trial, with final approval granted with no objections filed.
- 6 b. *Bednar v. Allstate Insurance Company*, Los Angeles Superior Court (BC240813). Class  
7 action mis-classification case seeking overtime compensation for approximately 1,200  
8 insurance claims adjusters employed by Allstate. The class was certified and summary  
9 adjudication was granted as to liability in favor of the class. The case settled for \$120  
10 million just prior to trial, with final approval granted with no objections filed.
- 11 c. *Roberts v. Coast National Insurance*, Orange County Superior Court (01CC08478). Class  
12 action mis-classification case seeking overtime compensation for insurance claims  
13 adjusters employed by Coast National Insurance. Certification granted, and then the  
14 matter was tried before a binding arbitrator. The case settled during the arbitration for in  
15 excess of \$18 million.
- 16 d. *CNA Class Action Litigation*, Los Angeles Superior Court Class (JCCP 4230). Class  
17 action mis-classification case seeking overtime compensation for insurance claims  
18 adjusters employed by the defendant. Case settled for \$33 million, with final approval  
19 granted with no objections filed.
- 20 e. *Dotson v. Royal & SunAlliance*, Orange County Superior Court (02CC01787). Class  
21 action mis-classification case seeking overtime compensation for insurance claims  
22 adjusters employed by Royal & SunAlliance. Case settled for \$12.3 million, with final  
23 approval granted with no objections filed.
- 24 f. *Parris v. Lowe's Home Improvement*, Los Angeles County Superior Court (BC260702).  
25 Class action seeking payment of "off-the-clock" hours worked by all hourly employees of  
26 Lowe's Home Improvement stores in the State of California. The class was certified by  
27 the Court of Appeal and remanded to the trial court for further proceedings. Shortly  
28 thereafter, a \$29.5 million settlement was reached and approved without objection.

- 1 g. *Pardo v. Toyota Motor Sales, et al.*, Los Angeles County Superior Court (BC372781).  
2 Class action misclassification of workers with claims for overtime and missed meal and  
3 rest breaks. The case settled for \$7.75 million and was approved with no objections.
- 4 h. *Smith/Ballard v. Wal-Mart Stores, Inc.*, United States District Court for the Northern  
5 District of California (Case No. 4:06-cv-05411-SBA). Wage and hour class action seeking  
6 unpaid vacation and personal time, unpaid wages, and related penalties on behalf of over  
7 245,000 employees. The action was certified and settled for \$86 million while defendant's  
8 appeal of the certification was pending in the Ninth Circuit Court of Appeals.
- 9 i. *Hoyng v. AON*, Los Angeles County Superior Court (BC377184). Wage and hour class  
10 action seeking overtime and related compensation for misclassification on behalf of  
11 Relationship and Account Specialists. The case settled for \$10.5 million, which was  
12 approved with no objections filed.
- 13 j. *In RE Bank of America Wage and Hour Employment Practices Litigation*, MDL 2138,  
14 United States District Court for the District of Kansas. California state and FLSA wage  
15 and hour litigation for various violations including unpaid overtime and "off-the-clock"  
16 work. Settled for \$73 million.
- 17 k. *Lemus v. H & R Block Litigation*, United States District Court for the Northern District of  
18 California (Case No. 3:09-cv-03179-SI) Class certified, and settlement reached prior to  
19 trial. Total settlement of \$35 million.
- 20 l. *Harris v. Vector Marketing Corporation*, United States District Court for the Northern  
21 District of California (Case No. 3:08-cv-05198-EMC). Class action case on behalf of  
22 approximately 70,000 employees misclassified as "trainees."
- 23 m. *Bickley v. Schneider National Trucking*, United States District Court for the Northern  
24 District of California (Case No. 4:08-cv-05806-JSW). Wage and hour class action on  
25 behalf of approximately 6,000 truck drivers. Settled for \$29.5 million.
- 26 n. *Roberts v. TJX*, United States District Court for the Northern District of California (Case  
27 No. 13-CV-04731-MEJ). Wage and hour violations on behalf of approximately 82,000  
28 employees. Settled for \$8.5 million.

- 1           o. *Oprychal v. New York Life Insurance*, United States District Court for the Central District  
2           of California (Case No. 2:07-cv-00518-VBF). Class action for the failure to pay  
3           commissions pursuant to a compensation plan. Settled for \$10 million.
- 4           p. *Neuvenheim v. Gamestop Corp.*, United States District Court for the Central District of  
5           California (Case No. 2:09-cv-06799-ODW). Class action on behalf of nonexempt  
6           employees for wage and hour violations.
- 7           q. *Hightower v. JP Morgan Chase*, United States District Court for the Central District of  
8           California (Case No. 2:11-cv-01802-PSG). Class action on behalf of nonexempt  
9           employees for wage and hour violations. Settled for \$12 million.

10         6.         On many of the above cases, I was either lead or co-lead counsel, including cases in  
11         multi-district litigation or coordinated proceedings where I worked collaboratively and cooperatively  
12         with co-counsel to bring about an efficient and beneficial resolution for all class members as the above  
13         results demonstrate.

14         7.         I have argued cases in trial courts as well as before courts of appeal. My writings on  
15         legal topics pertaining to litigating wage and hour class and representative actions have appeared in  
16         professional publications and I have been called upon to speak at conferences and seminars for  
17         professional organizations, including a recent presentation titled “Planning for and Executing Trial in  
18         Class and Collective Wage & Hour Cases.”

19         8.         I have also been honored as a Super Lawyer in the area of class actions by Los Angeles  
20         Magazine for multiple years including 2022. I am also a member of a number of professional  
21         organizations, including the Consumer Attorneys of Los Angeles, the Consumer Attorneys of  
22         California, the California Employment Lawyers Association, and the American Association for  
23         Justice.

24                     **CASE BACKGROUND AND PROCEDURAL HISTORY**

25         9.         Plaintiff was employed by Defendant Vulcan Materials Company as non-exempt,  
26         hourly paid employee from approximately 1990 until August 2019 working as a “Plant Operator”.  
27         Defendant Vulcan Materials Company (“Defendant Vulcan”) is a New Jersey corporation and.  
28         Defendant Calmat Co. (“Defendant Calmat”) is a Delaware corporation. Both Defendants conducted

1 and continue to conduct substantial and regular business throughout California. Defendants operate a  
2 business that produces construction aggregates like crushed stone, sand, gravel, asphalt, and ready-  
3 mixed concrete for its clients.

4 10. Plaintiff filed a class action lawsuit on May 20, 2020 (“*Sancho Action*”) along with his  
5 notice letter on the same day to the Labor and Workforce Development Agency and Defendant Vulcan  
6 of his intent to seek penalties under California Labor Code section 2698 *et seq.*

7 11. On June 26, 2020, the *Sancho Action* was removed to Federal Court for the Eastern  
8 District of California and assigned case number 1:20-cv-00898-NONE-JLT.

9 12. Thereafter, Plaintiff filed a First Amended Complaint adding a PAGA cause of action  
10 on October 28, 2020, after exhausting the administrative pre-filing requirements.

11 Specifically, Plaintiff alleged Defendant Vulcan:

- 12 a. Failed to Pay All Wages;
- 13 b. Failed to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in  
14 Violation of California Labor Code section 226;
- 15 c. Failed to Pay All Wages Owed at Termination in Violation of California Labor Code  
16 section 203;
- 17 d. Unfair Business Practices (Business and Professions Code section 17200 *et seq.*)
- 18 e. Penalties Pursuant to Labor Code section 2699 *et seq.*

19 13. On November 2, 2021, the Parties participated in mediation presided over by Tripper  
20 Ortman, Esq., a well-respected wage and hour class action mediator. The mediation concluded without  
21 a settlement. However, following the mediation, each side, represented by its respective counsel,  
22 continued settlement negotiations, with the assistance of Mediator Ortman, until they agreed to settle  
23 the Action which was memorialized in the form of a Memorandum of Understanding.

24 14. On February 18, 2022 the *Sancho Action* was dismissed.

25 15. As part of the Settlement Agreement, the Parties will stipulate to the filing of a Second  
26 Amended Complaint in the present Action to incorporate the claims and factual allegations asserted  
27 in the Guzman PAGA Action and the Sancho Action as well as add Plaintiff James Sancho as a named  
28 plaintiff in the present Action.

1                   **PLAINTIFF AND HIS COUNSEL ADEQUATELY REPRESENT THE CLASS**

2           16.     Mr. Sancho has retained and is represented by counsel with substantial experience in  
3 wage and hour class action litigation. Additionally, there is no evidence of antagonism between Mr.  
4 Sancho's interests and those of the Class Members. Mr. Sancho has litigated this case in good faith  
5 and his interests are aligned with those of the Settlement Class Members as they both share a common  
6 interest in challenging the legality of Defendants' policies and procedures.

7           17.     Throughout this case, Mr. Sancho has remained available to, and regularly did, consult  
8 with counsel both in person and via telephone. In addition, he reviewed documents and provided  
9 invaluable information regarding the workings of the Defendants' operations. Mr. Sancho was also  
10 actively involved in discussions regarding the resolution of this matter and approved the settlement  
11 terms on behalf of himself and the Class.

12                   **PROPOSED SERVICE AWARD**

13           18.     Plaintiff James Sancho devoted his time and provided an invaluable service to the  
14 prosecution of this case. Mr. Sancho has devoted substantial time and effort to this case by producing  
15 relevant documents, meeting and communicating with and assisting his attorneys in prosecuting the  
16 case, reviewing complex legal documents, and engaging in settlement negotiations for the benefit of  
17 the Class. He also has agreed to a release that is broader than the class release.

18           19.     The Settlement Agreement permits Plaintiffs to seek a service award in an amount not  
19 more than \$20,000 (each receiving \$10,000.) We believe that this amount fairly reflects Plaintiffs'  
20 risks and their contributions to achieve this settlement on behalf of the Class. This will be further  
21 discussed when Plaintiffs file their motion for a service award and supporting declaration in  
22 connection with the final fairness hearing.

23                   **ATTORNEYS' FEES AND COSTS**

24           20.     Plaintiffs' Counsel intends to file a separate motion for attorneys' fees and costs on a  
25 date to be set by the Court. Under the Settlement Agreement, Defendants will not oppose a fee  
26 application one-third of the Gross Settlement Fund, plus reasonable costs and expenses. The separate  
27 motion for attorneys' fees and costs will provide analysis as to the reasonableness of the fees and costs  
28 sought and show how they fall within the range of fees awarded in similar class action cases. Plaintiffs'

1 counsel will also seek reimbursement of incurred costs up to a maximum of \$25,000.00. These include  
2 costs of legal research, mediation fees, filing and service fees, and other litigation costs and will be  
3 further documented in Plaintiff's motion for attorneys' fees and costs.

4 **FEE SPLITTING AGREEMENT**

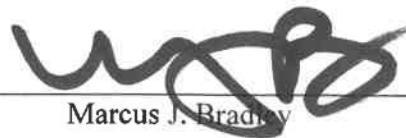
5 21. Three firms will be receiving fees pursuant this settlement—JCL Law Firm, APC;  
6 Zakay Law Group, APLC; and Bradley/Grombacher LLP. The fees shall be split as follows: 35% to  
7 JCL Law Firm; 35% to Zakay Law Group, APLC; 30% to Bradley/Grombacher LLP.

8 22. Pursuant to California Rules of Professional Conduct, Rule 1.5.1, the client was aware  
9 of this in advance and gave written consent.

10 23. Plaintiff has executed a retainer agreement in this action. (This retainer agreement  
11 clearly and plainly explains the division of fees between the law firms which represent Plaintiff—35%  
12 to JCL Law Firm; 35% to Zakay Law Group, APLC; 30% to Bradley/Grombacher LLP. The  
13 agreement further provides that, although the fee is shared between firms, the amount of attorneys'  
14 fees negotiated between Plaintiff Sancho and his counsel does not increase.

15  
16 I declare under penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct and based on my personal knowledge.

18 Executed on September 19, 2022, in Westlake Village, California.

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