

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdeltatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR. and JAMES
SANCHO, individuals, on behalf of themselves
and on behalf of all persons similarly situated,
and in their representative capacity on behalf of
the State of California and fellow Aggrieved
Employees,

Plaintiff,

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

**DECLARATION OF GABRIEL
GUZMAN JR. IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES**

Complaint Filed: June 3, 2021

Hearing Date: May 19, 2023

Hearing Time: 1:30 p.m.

Dept.: 69

Judge: Katherine A. Bacal

1 I, GABRIEL GUZMAN JR., declare as follows:

2 1. I am over the age of eighteen, a California resident, Plaintiff and Proposed Class
3 Representative in the above-entitled matter. I submit this declaration in support of Plaintiff's Motion
4 for Final Approval of Class Settlement and in support Plaintiff's Motion for Final Approval of
5 Settlement and Motion for Award of Attorneys' Fees. I have personal knowledge of all the facts stated
6 herein. I could and would competently testify under oath to these facts in court if requested to do so.

7 2. I retained Class Counsel in December 2020 and filed the lawsuit on June 3, 2021. I filed
8 the case on behalf of myself and a class of all non-exempt union production employees (covered by the
9 collective bargaining agreement) who are or previously were employed by Defendant in California
10 during the period between June 3, 2017, through February 11, 2022.

11 3. I worked for Defendant as a non-exempt employee, paid on an hourly basis, in San Diego
12 County, from April of 2020 to November of 2020.

13 4. I filed the case because I believed my rights as an employee were violated by Defendant
14 and also the rights of other employees that worked for Defendant. Among other claims, I believe
15 Defendant failed to pay me minimum wages, failed to provide legally compliant meal and rest periods,
16 failed to provide accurate itemized wage statements, failed to pay vacation wages at the time of
17 termination, and failed to pay all wages due at the time of his separation.

18 5. Before I initiated the case as a Plaintiff and Class Representative, I spoke at length with
19 my attorneys. We discussed my work experience and how company policies were applied to me and
20 other employees. I provided the attorneys with documents they requested. We reviewed the documents
21 together and asked and answered many questions regarding my experience working for Defendant, the
22 litigation process, and about class actions generally.

23 6. During these conversations, I learned about my responsibilities as a plaintiff in the lawsuit
24 and as proposed a Class Representative. I understood that pursuing this action as a class action rather
25 than merely seeking my individual claims substantially increased the risk to me. Those risks included
26 the possibility of being held liable for Defendant's attorneys' fees and costs in a complex class action if
27 I lost the case. I also understood that as a Class Representative, I would be under increased scrutiny by
28 the attorneys and the Court because I needed to prove that I was an adequate class representative.

1 Further, I understood that I would lose some autonomy over my individual claims that I could not make
2 decisions for my sole benefit and that I needed to make every litigation decision with the best interests
3 of the Settlement Class in mind.

4 7. I also understood that the pursuing this litigation created a very public record of my
5 grievances with Defendant which produced the risk that a future employer could hold it against me that
6 I sued a former employer.

7 8. I also knew that I was making a sacrifice in that I could have pursued my claims only on
8 an individual basis, likely obtaining a recovery greater than the portion of the class settlement I stand to
9 receive from this settlement. My attorneys explained to me that the net settlement value of my individual
10 claims may be greater than my ultimate recovery from the net class settlement amount.

11 9. Notwithstanding these risks and sacrifices, I decided to go through with the case because
12 I believed violations occurred and most employees would not know what their rights are and even if
13 they did, they would be apprehensive to file a lawsuit against their employer for fear of retaliation.

14 10. During the lawsuit I communicated on a regular basis with my attorneys. I reviewed status
15 updates from my attorneys and court filings on a regular basis, and spoke to my attorneys on the phone,
16 because I wanted to keep up with developments in the case, which I understood was one of my duties
17 as a class representative.

18 11. **Review and Approval of Settlement:** A mediation was held on November 2, 2021. Even
19 though I could not attend, I was available by telephone to speak with my attorneys and did speak with
20 them regarding the mediation before it took place, as well as during the mediation itself. I also spoke
21 with my attorneys after the mediation and discussed the mediator's proposal which was ultimately
22 accepted. I was very satisfied with the terms of the settlement that was agreed to by the parties. When
23 the settlement papers were ready, I again spoke with my attorneys and reviewed the settlement
24 agreement which I signed on September 16, 2022.

25 12. **Broad General Release:** I understand that the Service Award is intended, in part, to
26 compensate me for my release of the Released Claims. Additionally, unlike the other Class Members,
27 I also granted Defendant and the Released Parties a broad general release and waiver of claims pursuant
28 to California Civil Code section 1542 and released the Released Parties from all claims, demands, rights,

1 liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted
2 or that might have been asserted, whether in tort, contract, or for violation of any state or federal statutes,
3 rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part
4 of any of the Released Parties committed or omitted prior to the execution hereof. The release also
5 includes any unknown claims that I do not know or suspect to exist in my favor at the time of the General
6 Release.

7 13. **Participation:** Since I retained Class Counsel approximately twenty-seven months ago, I
8 have been actively involved with this class action lawsuit performing the duties described above. While
9 I did not keep formal time records, I was in regular contact with my attorneys, attended hearings,
10 reviewed important court filings, and spent considerable time on the issues presented during the
11 litigation and in the settlement process. I estimate that I spent approximately 30-40 hours working on
12 this case.

13 14. Also, my attorneys explained to me that the settlement process involved a two-step review
14 by the Court to determine whether the settlement was fair before ordering that the settlement be funded
15 and paid. I knew this process also involved notifying all class members of the settlement terms and of
16 their rights to make a claim for their settlement share, to opt out of the settlement or to object to the
17 settlement.

18 15. Ultimately, I believe I did the right thing in pursuing this case on behalf of the class who
19 now stand to receive substantial monetary payments as a result of this case and settlement. I also believe
20 that the requested Service Award in the amount of \$10,000 from the settlement is fair compensation for
21 the (1) the broad general release I executed, (2) the work I performed, (3) the sacrifices made not
22 pursuing this case individually, and (4) the risks I undertook.

23 16. In light of all the time and effort I have spent on this case, the sacrifice I have made, the
24 risks I undertook by suing a former employer, the exposure to being responsible for paying Defendant's
25 costs in the event we did not win the case, and in light of the size of the settlement, I believe the request
26 for \$10,000 as a service award is fair and reasonable.
27
28

17. Further, I support my attorneys' application for a Class Counsel Award in the amount of \$448,333.33, comprised of \$423,333.33 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$25,000 for reimbursement of actually incurred litigation expenses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on Apr 25, 2023, at San Diego (City/Location), California.

By: Gabriel Guzman (Apr 25, 2023 4:41 PDT)

GABRIEL GUZMAN JR.