

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Juliann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3500
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
juliann@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR., on behalf of himself
and on behalf of all persons similarly situated,

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

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: October 14, 2022

Time: 1:30 PM

Judge: Honorable Katherine Bacal

Dept.: C-69

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiffs GABRIEL GUZMAN JR. and JAMES SANCHO (hereafter "Plaintiffs") in this wage and
6 hour class action filed against VULCAN MATERIALS COMPANY and CALMAT CO. (hereinafter
7 "Defendants").

8 2. This declaration is being submitted in support of Plaintiffs' Motion for Preliminary
9 Approval of Class and PAGA Action Settlement.

10 **I. EXHIBITS**

11 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Stipulation
12 of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement
13 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
14 Class Notice.

15 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
16 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
17 and Motion for Preliminary Approval of Class and PAGA Action Settlement evidencing Class
18 Counsel's compliance with California Labor Code Section 2699(l)(2).

19 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement
20 administration submitted by ILYM Group, Inc., in the amount of \$19,550.

21 **II. INTRODUCTION**

22 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
23 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
24 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
25 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
26 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
27 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
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1 denied or of Defendants prevailing at trial. Given that there are approximately 1,216 Class Members,
2 the average gross recovery is approximately \$601.69 (Net Settlement Amount divided by Class
3 Members).

4 7. As discussed below, the proposed Settlement satisfies all criteria for preliminary
5 settlement approval and falls within the range of reasonableness. The average Individual Settlement
6 Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions.
7 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,
8 Plaintiffs respectfully request the Court grant preliminary approval of the Settlement.

9 **III. FACTS AND PROCEDURE**

10 **A. Overview of the Litigation**

11 8. Defendants operate businesses that produce construction aggregates like crushed stone,
12 sand, gravel, asphalt, and ready-mixed concrete. Defendants operate facilities throughout California,
13 including in the counties where Plaintiffs worked. This action asserts claims on behalf of Defendants'
14 non-exempt employees who are or previously were employed in California. Plaintiff Guzman worked
15 for Defendants as a non-exempt employee in California from April of 2020 to November of 2020.
16 Plaintiff Sancho worked for Defendants as a non-exempt employee in California from 1990 to August
17 of 2019. At all times during their employment, Plaintiffs earned hourly wages and were entitled to
18 legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
19 worked. Throughout their employment, Plaintiffs were subject to Defendants' written policies and
20 procedures contained in, among other documents, the Employee Handbook and Hourly Employee
21 Bulletins and Policies.

22 9. Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to
23 provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed
24 to reimburse for required business expenses. Defendants forcefully deny liability for each of Plaintiffs'
25 claims. Further, Defendants assert that they fully complied with all applicable employment laws and
26 raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially
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1 compliant meal and rest period polices, compliant wage statements, and reimbursed for all required
2 business expenses.

3 10. On March 30, 2021, Plaintiff Guzman served Defendants and the Labor and Workforce
4 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”) and served the same
5 on Defendants. Plaintiff Guzman’s PAGA Notice set forth the facts and theories supporting
6 Defendants’ alleged violations of various provisions of the California Labor Code and applicable
7 Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under
8 California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”).

9 11. On June 3, 2021, Plaintiff Guzman filed a class action complaint in the San Diego
10 Superior Court, Case Number 37-2021-00024583-CU-OE-CTL (the “*Guzman* Class Action”). The
11 *Guzman* Class Action alleged nine causes of action against Defendants for: (1) Unfair Competition in
12 Violation of Bus. and Prof. Code sections 17200 et seq; (2) Failure to pay minimum wages in violation
13 of California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation
14 of California Labor Code sections 510 et seq; (4) Failure to provide required meal periods in violation
15 of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to
16 provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the
17 applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of
18 California Labor Code section 226; (7) Failure to reimburse employees for required expenses in
19 violation of Cal. Lab. Code § 2802; (8) Failure to provide wages when due in violation of California
20 Labor Code sections 201, 202 and 203; and (9) Violation of Private Attorneys General Act [Labor Code
21 §§ 2698, et seq.]. On December 9, 2021, Plaintiff Guzman filed the First Amended Complaint (“FAC”)
22 against Defendants dismissing the cause of action for violations of PAGA. On December 13, 2021,
23 Plaintiff Guzman filed a representative action complaint in San Diego Superior Court, Case Number
24 37-2021-00052064-CU-OE-CTL (the “*Guzman* PAGA Action”). The *Guzman* PAGA Action alleges
25 a single cause of action for Violations of the Private Attorney General Act at Labor Code Sections 2698
26 et seq.

12. On May 20, 2020, Plaintiff Sancho filed a Notice of Violations with the LWDA and served the same on Defendant Vulcan Materials Company.

13. On May 20, 2020, Plaintiff Sancho filed the *Sancho* Action against Defendant Vulcan Materials Company for: (1) Failure to pay all wages; (2) Failure to furnish an accurate, itemized wage statement upon payment of wages in violation of California Labor Code § 226; (3) Failure to pay all wages owed at termination in violation of California Labor Code § 203; and (4) Violations of California Business & Professions Code §§ 17200, et. seq. On June 26, 2020, the *Sancho* Action was removed to the United States District Court for the Eastern District of California. On October 28, 2020, Plaintiff Sancho filed a First Amended Complaint adding a claim for penalties pursuant to California Labor Code § 2698, et seq. (PAGA)). On February 18, 2022, the *Sancho* action was dismissed.

14. To facilitate the Settlement, and review by this Court, the Parties stipulated to the filing of a Second Amended Complaint in the *Guzman* Class Action to incorporate the claims and factual allegations asserted in the *Guzman* PAGA Action and the *Sancho* Action as well as to add Plaintiff James Sancho as a named plaintiff in the *Guzman* Class Action. The Second Amended Complaint is in the format reflected as Exhibit B in the Settlement Agreement.

15. Plaintiff Guzman commenced written discovery in January of 2021. Prior to Defendants’ deadline to respond to Plaintiff Guzman’s discovery, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Desmond, Marcello & Amster (“DMA”) to analyze Defendants’ time and payroll data.

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

1 of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
2 form settlement agreement, which is the subject of the instant motion.

3 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

4 17. Months before filing any one of the Actions, Class Counsel began its pre-filing
5 investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy
6 interviews with Plaintiffs. As part of the interview process, the Plaintiffs produced documents related
7 to their employment, including time and payroll records. At the conclusion of the interviews, Class
8 Counsel determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claim that
9 Defendants failed to, among other things, pay for all time worked and to provide compliant meal and
10 rest periods.

11 18. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
12 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
13 mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims and
14 Defendants' liability exposure to the Class Members. In response to Class Counsel's request,
15 Defendants produced the time records for the Class Members, aggregate workweek and pay period data
16 for the Class Members, and time records and payroll data for the Class Members. In total, Defendants
17 produced more than 8.9 million unique cells of time and payroll data for Class Counsel to analyze.

18 19. Class Counsel then retained the statisticians and economists at DMA to evaluate the Class
19 Members' payroll and time data. DMA provides data analysis and damage modeling consulting
20 services specializing in wage and hour class actions. DMA's team of financial and data analysts are
21 credentialed and experienced experts in their fields and have provided their expertise on thousands of
22 cases. Stated differently, the DMA is uniquely qualified to analyze Defendants' time and payroll data.

23 20. DMA analyzed Defendants' time and payroll data to assist in the development of various
24 damage models. Among other things, DMA determined the approximate number of workweeks, pay
25 periods and average hourly rate during the Class Period. DMA also estimated the number of meal and
26 rest period violations, the amount of paid missed meal period premiums paid during the Class Period,
27 and the amount of off-the-clock work performed by the Class Members during the Class Period. DMA
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1 calculated and created a damage model for Defendants' potential liability exposure while accounting
2 for the uncertainties of continued litigation. The damage model informed and guided Class Counsel
3 during the mediated settlement discussions.

4 21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
5 determining Plaintiffs' suitability as putative class representatives through interviews, background
6 investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims;
7 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
8 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
9 Defendants' labor policies and practices; (6) researching settlements in similar cases as well as
10 outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and
11 estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9)
12 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
13 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
14 independent assessment of the reasonableness of the terms to which the Parties have agreed.

15 22. Class Counsel conducted a very thorough investigation into the factual and legal issues
16 in dispute. In addition to informal discovery, witness interviews, document review, data analysis and
17 legal research, Class Counsel also researched similar wage and hour actions. The investigation allowed
18 to Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel
19 in settlement discussions that culminated in the proposed settlement now before the Court.

20 23. Class Counsel only agreed to enter the Settlement following their thorough investigation
21 and evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and
22 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
23 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
24 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
25 reasonable, and adequate, the Court should preliminarily approve the Settlement.

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24. On November 2, 2021, the Parties participated in a full day mediation presided over by
er Ortman, Esq., a well-respected wage and hour class action mediator. Mediator Ortman helped
ge the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties
nged information regarding their respective claims and defense, including their respective
ation of the damages. The mediation concluded without a settlement. However, following the
tion, each side, represented by its respective counsel, continued arms-length settlement
iations and bargaining, with the assistance of Mediator Ortman, until they agreed to settle the
n which was memorialized in the form of a Memorandum of Understanding. The complete and
terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the
ment constitutes a fair, adequate, and reasonable compromise of the claims at issue.

25. Once the Parties agreed to a settlement which was subsequently memorialized in the form of a Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the terms of the class action settlement. The Parties maintained the arm's length, non-collusive and non-coercive negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

26. The Gross Settlement Amount of \$1,270,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.” *See, e.g., In re Visa U.S.A. Inc. Litigation*, 2007 WL 1359912, at *10 (S.D. Cal. 2007) (quoting *Walton v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 1116, 1133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the range of reasonableness.” (Id. (emphasis added).) For this analysis, courts do “not require any such

1 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
2 is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*
3 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
4 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
5 have received if they had succeeded at trial.¹ Indeed, “[t]he determination whether a settlement is
6 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank*
7 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
8 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).).

9 27. In conclusion, the settlement of \$1,270,000.00 represents approximately 11.2% of the
10 value of the maximum potential *damages* at issue. Even when including the penalties for Plaintiffs’
11 claims for wage statement violations and waiting time penalties under *Labor Code* Sections 203 and
12 226, the settlement represents up to 7.1% of the maximum potential liability, assuming all of these
13 amounts could be proved at trial. This is well within the bounds of reasonableness. (*See Visceral v.*
14 *Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour
15 settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet*
16 *Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour
17 settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W.*
18 *Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at * 4 (Approving California wage and hour
19 misclassification settlement where the class received approximately 7.3% of the estimated trial award
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22 ¹ Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
23 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
24 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
25 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
26 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
27 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
28 460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather
than the individual component parts, that must be examined for overall fairness”).

1 was within the “range of reasonableness.”.)The following summarizes Defendants’ estimated
2 exposure.

3 28. One of Plaintiffs’ primary claims in the Actions was that Defendants failed to pay for all
4 hours worked. Specifically, Plaintiffs asserted that Defendants required Plaintiffs to work off-the-clock
5 before Plaintiffs’ shifts started and after they ended by requiring Plaintiffs to wear personal protective
6 equipment (“PPE”) in order to perform their job duties for Defendants. The donning and doffing
7 process required Plaintiffs to show up to work before their shift began and after their shift ended.
8 Plaintiffs contend that Defendants maintained a similar policy at its locations throughout California
9 during the Class Period.

10 29. Defendants vigorously denied liability for claim. Defendants asserted that their policies
11 and procedures directed its respective department leadership to ensure all work is conducted while on-
12 the-clock. Defendants asserted that any deviation from these their policies were location specific and,
13 thus, created individualized issues of liability unsuitable for class treatment.

14 30. Notwithstanding Defendants’ arguments, Plaintiffs perceived the off-the-clock as one of
15 the strongest claims in the Actions. Assuming five (5) minutes of unpaid compensable time per day
16 worked by the Class Members during the Class Period, DMA estimated Defendants’ exposure for this
17 claim at \$3,646,919.74.

18 31. Plaintiffs also allege that Defendants failed to provide compliant meal periods. Plaintiffs
19 contended that because of Plaintiffs’ and Class Members’ rigorous work requirements, the Class
20 Members were often denied complaint meal periods.

21 32. Conversely, Defendants again argued that its policies and procedures required
22 uninterrupted, statutorily compliant meal breaks. Similarly, Defendants argued any divergence from
23 these policies were not systematic and, if they existed at all, were location specific. Defendants also
24 asserted that it maintained facially compliant meal period policies and practices throughout the Class
25 Period. Finally, Defendants argued that most of the Class Members were subject to various collective
26 bargaining agreements that preempted the California Labor Code with respect to meal periods, thereby
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1 completely invalidating this claim. Thus, Defendants argued that there was no potential liability for
2 Plaintiffs' alleged meal period violations.

3 33. Plaintiffs' meal period claim (together with the rest period claim) likely represented some
4 of the most factually contested claim in the Actions. Accounting for the strength of Defendants'
5 defenses, and the arguably individualized nature of the claim, Plaintiffs heavily discounted Defendants'
6 potential liability for meal period violations. Plaintiffs estimated the damages for this claim at
7 \$2,992,842.50.

8 34. Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
9 Plaintiffs alleged that because of their rigorous work schedule they were not able to take timely and duty-
10 free rest periods.

11 35. Again, Defendants denied liability and asserted that it maintained legally compliant rest
12 period policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary
13 burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on
14 Class Member testimony, making it a riskier claim at class certification and liability stages. Defendants
15 likely would have argued that only a small number of Class Members missed their rest breaks. Certification
16 likely would have required depositions of Class Members who provided declarations, and Defendants surely
17 would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were
18 voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at
19 *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have
20 an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.");
21 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed,
22 Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Finally,
23 Defendants argued that most of the Class Members were subject to various collective bargaining agreements
24 that preempted the California Labor Code with respect to rest periods, thereby completely invalidating this
25 claim. Accordingly, the rest break claim was heavily discounted in Plaintiffs' valuation of the case and was
26 estimated at \$2,992,842.50.

36. Plaintiffs alleged that Defendants required the Class Members to incur personal expenses for the use of their personal cell phones. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. Specifically, Plaintiffs alleged Defendants required Plaintiffs and Class Members to use their personal cell phones in order to perform work-related tasks, but Defendants failed to reimburse Plaintiffs and Class Members for the required business expenses in violation of Labor Code Section 2802.

37. Again, Defendants vigorously denied any liability for this claim. Defendants argued that on the rare occasions where employees did incur business expenses, these expenses were fully reimbursed. Defendants also offered evidence that it provides all supplies and equipment for employees to do their jobs. This claim was also heavily discounted based on Defendants' defenses. Plaintiffs estimated Defendants' exposure for this claim at \$1,660,800.

38. Plaintiffs alleged that Defendants' alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants could argue that Plaintiffs could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiffs would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). These claims represented Plaintiffs' most legally precarious and uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendants' maximum exposure for these claims at approximately \$6,599,182.40 (approximately \$3,560,582.40 for waiting time and \$3,038,600 for wage statement).

39. Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure was approximately \$11 million dollars.

1 40. Here, the Parties have agreed to allocate \$50,000 to PAGA, which represents
2 approximately 4% of the Gross Settlement Amount. California Courts have held that an allocation to
3 PAGA of an amount equal to 1% of the gross settlement amount is fair, just, and reasonable. *See Andres*
4 *v. Laboratory Corporation of America*, No. 2:13-cv-08773-GW-VBK (C.D. Cal. Nov. 3, 2015) (gross
5 settlement fund of \$520,000, of which \$5,000 (or 1%) was allocated to the settlement of PAGA
6 penalties); *Hightower v. JPMorgan Chase Bank, N.A.*, No. 2:11-cv-01802-PSG-PLA (C.D. Cal. Oct. 5,
7 2015; Judge Philip S. Gutierrez) (gross settlement fund of \$12 million, of which \$25,000 (or 0.2%) was
8 allocated to the settlement of PAGA penalties); *Hicks v. Toys 'R Us, Inc.*, 2:13-cv-01302-DSF-JCG
9 (C.D. Cal. Aug. 4, 2014; Judge Dale S. Fischer) (gross settlement fund of \$4 million, of which \$5,000
10 (or 0.13%) was allocated to the settlement of PAGA penalties); *Valdez v. Kevin Jewelers, No. 502920*
11 (Los Angeles County Superior Court Sept. 24, 2015; Judge John Shepard Wiley, Jr.) (gross settlement
12 fund of \$345,000, of which \$5,000 (or 1.4%) was allocated to the settlement of PAGA penalties);
13 *Mendiola v. Tyco Electronics Corp.*, RIC 1400721 (Riverside County Super. Ct. May 29, 2015; Judge
14 John W. Vineyard) (gross settlement fund of \$495,000, of which \$20,000 (or 4%) was allocated to the
15 settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super.
16 Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which
17 \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties).

18 41. In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each
19 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
20 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
21 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
22 Code by the defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered
23 a violation for each pay period the employee worked. Again, Defendants raised several defenses that
24 presented serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Defendants
25 asserted that its employment practices complied with all applicable Labor Laws. In addition to those
26 arguments discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v.*
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1 *Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and
2 manageability as to the rest period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested.

3 **B. Litigation Risks**

4 42. Although Plaintiff is confident about the strength of her claims, it would be foolish to
5 ignore the most immediate risk to continued litigation, i.e., class certification. With respect to the most
6 immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and
7 hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668.
8 There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer
9 for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of
10 the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
11 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
12 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
13 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that
14 employees might not take their breaks were predominantly individualized questions of fact not
15 susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
16 denial of certification because employees' declarations attesting to having taken meal and rest breaks
17 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
18 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
19 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
20 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
21 period claims based on the predominance of individual issues). Collectively, the examples cited above
22 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
23 through a contested motion is a significant risk factor favoring settlement.

24 43. Plaintiffs recognize that Defendants have factual and legal defenses that, if successful,
25 would potentially defeat or substantially impair the value of Plaintiffs' lawsuit. Collectively, the
26 examples cited in Plaintiffs' brief illustrate the uncertain nature of class litigation. Consequently, the
27
28

1 uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement.

3 44. Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions; which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
7 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
8 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
9 668, the risk of an appeal and subsequent reversal is real.

10 45. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,270,000 that
11 is roughly 11.2% of Defendants' liability exposure for damages, and 7.1% of Defendants' liability
12 exposure for damages and penalties. Given the amount of the settlement here, as compared to potential
13 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
14 reasonable.

15 **B. Proposed Notice Informs the Class About the Case and Settlement**

16 46. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
17 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
18 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
19 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
20 procedure and time period within which to request for exclusions or object to the Settlement, the date
21 for the final approval hearing, the formula used to calculate settlement payments, and the terms and
22 scope of the Released Class Claims. Agreement at §III(N). This method was negotiated by the Parties
23 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
24 effective administration of the Settlement.

25 47. As detailed in the Agreement, the method of disseminating the proposed Class Notice and
26 contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

27 ///

1 **C. The Court Should Preliminarily Approve the Enhancement Award**

2 48. The 1,216 Class Members will share in the Net Settlement Amount due entirely to the
3 effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for
4 Class Representative Service Awards of \$10,000² for each Plaintiff. The service awards are fair and
5 reasonable compensation for the Plaintiffs' efforts bringing the Actions, assisting Class Counsel with
6 the litigation and settlement, regularly conferring with Class Counsel on the status of their cases and
7 the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are
8 fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general
9 release of all claims arising out of their employment.

10 49. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
11 Representative Service Awards once preliminary approval of the Settlement is granted. Plaintiffs
12 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
13 Representative Service Awards.

14 ² The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both
15 federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*,
16 No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue*
17 *v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement
18 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
19 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
20 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
21 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
22 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
23 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528
24 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
25 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
26 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
27 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No.
28 BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC*
Monterey Park Hospital LP, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v.*
Catholic Moray Services, Inc., No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
\$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
\$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
(C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-
cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No.
RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.
CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings,*
Inc., No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security*
Services, LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

D. The Court Should Preliminary Approve the Negotiated Class Counsel Award

50. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable.

51. Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

52. For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate.

53. Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records.

54. The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

55. Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation and evaluating the proposed settlement to assure that it is fair.

56. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Interest in The Selected Cy Pres

57. The Parties agreed to appoint the Children Advocacy Institute (CAI) as the Cy Pres. I do not have any interest in, or relationship or connection with, the Children's Advocacy Institute. Similarly, no attorney in my firm has such interest, relationship or connection. Finally, I have conferred with my co-counsel and the Plaintiffs and confirmed that they do not have any connection to or relationship with the Children's Advocacy Institute. Separate declarations from my co-counsel and Plaintiffs are submitted concurrently herewith.

G. Class Counsel's Experience

58. Plaintiffs, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC (“Firm”), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate Attorney), Tesla Stone (Paralegal), Maria Watters (Paralegal), Jennifer Heming (Legal Assistant), Sara Christensen (Legal Secretary).

59. I am qualified to represent the Plaintiffs, Class Members, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiffs, Class Members, the State of California and the Aggrieved Employees throughout this action.

60. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 15 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

61. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage and hour class and PAGA action settlement for, among things, unpaid off-the-clock work.

b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No. CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar wage and hour class and PAGA action for, among other things, inaccurate itemized wage statements, and appointed the JCL Law Firm, APC as Class Counsel.)

c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

1 f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
2 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed
3 the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement
4 for, *inter alia*, missed meal and rest periods.)

5 g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court,
6 Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
7 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
8 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

9 h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
10 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
11 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
12 *inter alia*, off-the-clock work.)

13 i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
14 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
15 Counsel and granted final approval of wage and hour class action for off-the-clock
16 work.)

17 j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case
18 No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm
19 as class counsel and granted final approval of wage and hour class action for meal period
20 violations.)

21 k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
22 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
23 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
24 acted as lead counsel.)

25 l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
26 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
27
28

1 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
2 counsel.)

3 m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
4 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
5 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
6 Class Counsel.)

7 n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
8 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
9 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
10 action settlement arising out of Civil Code Section 1940.1.)

11 o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
12 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
13 class counsel and granted final approval of wage and hour class action for unpaid
14 overtime.)

15 p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
16 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law
17 Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour
18 class action settlement involving nearly 900 current and former employees. Final
19 approval scheduled for October 4, 2019)

20 q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
21 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
22 as Class Counsel and granted final approval for a wage and hour class action settlement
23 for *inter alia*, missed meal and rest periods and independent contractor
24 misclassification.)

25 r. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
26 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
27
28

1 APC, as Class Counsel and granted final approval for a wage and hour wage class action
2 settlement involving misclassified house cleaners.)

3 s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-
4 2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an
5 unlawful housing class action arising under Civil Code Section 1940.2)

6 t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court
7 Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W.
8 Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for
9 a wage and hour class action settlement for meal and rest period violations);

10 u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court
11 Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law
12 Firm, APC, as Class Counsel and granted final approval for a wage and hour class action
13 settlement involving claims for on duty meal and rest periods.);

14 v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court
15 Case No. BC603030 (2018 - certified and settled wage and hour class action.)

16 w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
17 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
18 rest periods)

19 x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-
20 2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
21 misclassification);

22 y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.
23 BC617160 (2017 - Certified and settled wage and hour class action.);

24 z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case
25 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
26
27
28

1 aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-
2 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices
3 arising out of Civil Code Section 1940.1);

4 62. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered
5 in excess of \$75 million on behalf of the Firm's clients.

6 63. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
7 favorable verdict for the firm's clients.

8 64. Finally, I have published appellate experience in *William Blanchette et al., v. The*
9 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

10 65. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising
11 Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising
12 Star list recognizes the top 2.5% of eligible attorneys. (see
13 https://www.superlawyers.com/about/selection_process.html.)

14
15 I declare under the penalty of perjury under the laws of the State of California that the foregoing
16 is true and correct. Executed this 20th day of September 2022, at San Diego, California.

17
18 **JCL LAW FIRM, APC**

19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for Plaintiff
22
23
24
25
26
27

EXHIBIT 1

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR., on behalf of
himself and on behalf of all persons similarly
situated,

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

[Action Filed 06/03/2021]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

Judge: Honorable Katherine Bacal
Dept.: C-69

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between Plaintiffs GABRIEL GUZMAN JR. and JAMES SANCHO (hereinafter
3 collectively “Plaintiffs”), individually and on behalf of the Settlement Class, and in their
4 representative capacity on behalf of the State of California and the Aggrieved Employees, and
5 Defendants VULCAN MATERIALS COMPANY, a New Jersey Corporation and CALMAT CO., a
6 Delaware Corporation (hereinafter collectively “Defendants”).

7 **I. DEFINITIONS**

8 A. “Actions” shall mean the following collectively, *Guzman v. Vulcan Materials*
9 *Company*, San Diego County Superior Court, Case No. 37-2021-00024583-CU-OE-
10 CTL, filed June 3, 2021 (hereinafter the “*Guzman Class Action*”); *Guzman v. Vulcan*
11 *Materials Company*, San Diego Superior Court, Case No. 37-2021-00052064-CU-
12 OE-CTL, filed December 13, 2021 (hereinafter the *Guzman PAGA Action*”); and
13 *Sancho v. Vulcan Materials Company*, United States District Court Eastern District
14 of California, Case No. 1:20-cv-00898- JLT-BAK (hereinafter the *Sancho Action*”).

15 B. “Aggrieved Employees” shall mean all of Defendant’s current and former non-
16 exempt employees employed in California during the PAGA Period.

17 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
18 Class and PAGA Action Claims and Release of Claims.

19 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,
20 Marcus J. Bradley, Esq. of Bradley Grombacher LLP, and Shani Zakay of Zakay Law
21 Group, APLC.

22 E. “Class Counsel Award” means the award of fees and expenses that the Court
23 authorizes to be paid to Class Counsel for the services they have rendered to
24
25
26
27
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1 Plaintiffs and the Class in the Action, consisting of attorneys' fees not to exceed one-
2 third of the Gross Settlement Amount, currently estimated to be \$423,333.33 out of
3 \$1,270,000.00, plus costs and expenses not to exceed \$25,000 and supported by
4 declaration as to the reasonableness of attorney's fees and costs. Class Counsel's
5 award for attorneys' fees will be allocated between Class Counsel as follows: Thirty-
6 Five percent (35%) to the JCL Law Firm, APC; thirty-five percent (35%) to the
7 Zakay Law Group, APLC; and thirty percent (30%) to Bradley Grombacher, LLP.
8

9
10 F. "Class Data" means information regarding Class Members that Defendants will in
11 good faith compile from its records and provide to the Settlement Administrator. It
12 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
13 Member's full name; last known address; Social Security Number; start dates and end
14 dates of employment.
15

16 G. "Class Members" or the "Class" means all of Defendant's current and former non-
17 exempt employees employed in California during the Class Period.
18

19 H. "Class Period" means the period from June 3, 2017 to February 11, 2022.

20 I. "Class Representative Service Awards" means the amount that the Court authorizes
21 to be paid to the Class Representatives, in addition to their Individual Settlement
22 Payments and their pro-rata share of the PAGA Settlement, in recognition of their
23 efforts and risks in assisting with the prosecution of the Actions and in exchange for
24 executing a General Release of Defendants and waiver of Civil Code 1542 from the
25 named Plaintiffs. Defendants do not oppose service awards to Plaintiffs in the amount
26 of \$10,000 to each, in exchange for their releases identified above.
27
28

- 1 J. “Class Representatives” shall mean plaintiffs GABRIEL GUZMAN JR. and JAMES
2 SANCHO.
- 3
- 4 K. “Court” means the Superior Court for the State of California, County of San Diego
5 presiding over the *Guzman* Class Action.
- 6
- 7 L. “Defendants” shall mean VULCAN MATERIALS COMPANY, a New Jersey
8 Corporation and CALMAT CO., a Delaware Corporation.
- 9
- 10 M. “Effective Date” means the earliest date, following entry by the Court of an order and
11 judgment finally approving this Settlement, upon which one of the following have
12 occurred: (i) if no objection is filed to the settlement and no objector appears at the
13 hearing on final approval, the date of the Court’s entry of the order granting final
14 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
15 hearing on final approval, then the earlier of the following: (a) the expiration of all
16 potential appeal periods without a filing of a notice of appeal of the final approval
17 order or judgment; (b) final affirmance of the final approval order and judgment by
18 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
19 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
20 the final approval order and judgment is no longer subject to further judicial review.
- 21
- 22
- 23 N. “Funding Date” shall mean the date on which Defendants transfer the Gross
24 Settlement Amount into the QSF in accord with the terms of this Agreement and shall
25 occur within sixty-five (65) days after the Effective Date.
- 26
- 27 O. “Gross Settlement Amount” means the total sum of One Million Two Hundred
28 Seventy Thousand Dollars (\$1,270,000.00) that Defendants must pay into the QSF in

1 connection with this Settlement, inclusive of the sum of the Individual Settlement
2 Payments, the Class Representative Service Awards, the Class Counsel Award
3 (inclusive of attorneys' fees and costs), PAGA Settlement and the Settlement
4 Administration Costs and *exclusive* of the employer's share of payroll tax, if any,
5 triggered by any payment under this Settlement. The employer's share of payroll
6 taxes, up to a maximum of Thirty Thousand Dollars (\$30,000.00), shall not be paid
7 from the Gross Settlement Amount and shall remain the sole responsibility of
8 Defendants. If the employer's share of payroll taxes exceeds \$30,000.00, the excess
9 shall be paid from the Gross Settlement Amount.
10

11
12 P. "Individual Settlement Payment" means the amount payable from the Net Settlement
13 Amount to each Settlement Class Member and excludes any amounts distributed to
14 Aggrieved Employees pursuant to PAGA.

15
16 Q. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
17 Counsel Award (inclusive of attorneys' fees and costs), Class Representative Service
18 Awards, PAGA Settlement, and Settlement Administration Costs.

19
20 R. "Notice Packet" means the Class Notice to be provided to the Class Members by the
21 Settlement Administrator, as approved by the Court, and in substantially the form set
22 forth as Exhibit A to this Agreement (other than formatting changes to facilitate
23 printing by the Settlement Administrator and/or other changes necessitated by the
24 Court).

25
26 S. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
27 Labor Code § 2698 *et seq.*
28

- 1 T. "PAGA Pay Periods", for purposes of calculating the distribution of the Aggrieved
2 Employee Payment, as defined herein, means the number of pay periods of
3 employment during the PAGA Period that each Aggrieved Employee worked in
4 California.
- 5 U. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period
6 for each Aggrieved Employee divided by the sum total of the Pay Periods for all
7 Aggrieved Employees during the PAGA Period.
- 8 V. "PAGA Period" means the period of May 22, 2019 to February 11, 2022 (the "PAGA
9 Period").
- 10 W. "PAGA Settlement" shall mean Fifty Thousand Dollars (\$50,000.00) to be allocated
11 from the Gross Settlement Amount of which Seventy-Five Percent (75%) will be paid
12 to the LWDA ("LWDA Payment") and Twenty-Five Percent (25%) shall be
13 distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- 14 X. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean either
15 Plaintiffs or Defendants, individually.
- 16 Y. "Payment Ratio" means the respective Workweeks for each Class Member divided
17 by the total Workweeks for all Class Members during the Class Period.
- 18 Z. "Plaintiffs" shall mean GABRIEL GUZMAN JR. and JAMES SANCHO.
- 19 AA. "QSF" means the Qualified Settlement Fund established, designated and maintained
20 by the Settlement Administrator to fund the Gross Settlement Amount.
- 21 BB. "Released Class Claims" means any and all wage and hour claims, rights, debts,
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demands, damages, liabilities and causes of action that were asserted or could have been asserted based on the factual allegations in the Second Amended Complaint in the *Guzman* Class Action including all claims for unpaid wages, including failure to pay minimum wage, straight time compensation, overtime compensation, and interest; payment for all hours worked, including off-the-clock work; premium payments for meal period or rest break violations; waiting time penalties; reimbursement for all necessary business expenses; failure to keep accurate records; damages or penalties for inaccurate wage statements; unfair business practices pursuant to Business & Professions Code, section 17200, et seq.; claims for restitution, disgorgement, and other equitable relief, liquidated damages, or punitive damages; and attorneys' fees and expenses, and shall include claims arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 205, 210, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and/or the applicable California Industrial Welfare Commission Wage Order(s). Notwithstanding any limitation discussed below, the release of claims for waiting-time penalties and inaccurate itemized wage statement penalties shall encompass such claims regardless of the underlying theory.

CC. "Released PAGA Claims" means a release from the Aggrieved Employees of all PAGA claims, rights, debts, demands, damages, liabilities and causes of action for civil penalties that were alleged, or could have been alleged based on the facts alleged in the Second Amended Complaint in the *Guzman* Class Action or Plaintiffs' PAGA notices to the LWDA which occurred during the PAGA Period, including those based on alleged violations of California Labor Code sections 201, 202, 203, 204, 205, 210,

218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and the applicable California Industrial Welfare Commission Wage Order(s), whether for penalties, attorneys' fees and costs, and expressly excluding all other claims.

DD. "Plaintiffs' Releases" means all claims they have or may have against the Released Parties (as defined below), including a waiver of any and all provisions of California Civil Code section 1542.

EE. "Released Parties" shall mean Defendants and each of their respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendants.

FF. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections by the Response Deadline.

GG. "Settlement" means the disposition of the Actions pursuant to this Agreement.

HH. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,

1 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
2 Administrator establishes, designates and maintains a QSF under Internal Revenue
3 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
4 of the Gross Settlement Amount is deposited for the purpose of resolving the claims
5 of Settlement Class Members. The Settlement Administrator shall maintain the funds
6 until distribution in an account(s) segregated from the assets of Defendants and any
7 person related to Defendants. *All accrued interest shall be paid and distributed to*
8 *the Cy Pres (the Children Advocacy Institute).*
9

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11 II. “Settlement Class Members” or “Settlement Class” means all Class Members who
12 have not submitted a timely and valid request for exclusion by the response deadline
13 as provided in this Agreement.

14
15 JJ. “Workweeks”, for purposes of calculating the distribution of the Net Settlement
16 Amount, means the number of weeks of employment during the Class Period that
17 each Class Member was employed by Defendants in California.

18
19 **II. RECITALS**

20 A. On March 30, 2021, Plaintiff *Guzman* filed a Notice of Violations with the Labor and
21 Workforce Development Agency (LWDA) and served the same on Defendants.

22
23 B. On June 3, 2021, Plaintiff *Guzman* filed the *Guzman* Class Action for:

- 24 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
25
26 2. Failure to pay minimum wages in violation of California Labor Code sections
27 1194, 1197 and 1197.1;
28

1 3. Failure to pay overtime wages in violation of California Labor Code sections
2 510 et seq;

3
4 4. Failure to provide required meal periods in violation of California Labor Code
5 sections 226.7 and 512 and the applicable IWC wage order;

6
7 5. Failure to provide required rest periods in violation of California Labor Code
8 sections 226.7 and 512 and the applicable IWC wage order;

9
10 6. Failure to provide accurate itemized wage statements in violation of California
11 Labor Code section 226;

12 7. Failure to reimburse employees for required expenses in violation of Cal. Lab.
13 Code § 2802;

14
15 8. Failure to provide wages when due in violation of California Labor Code
16 sections 201, 202 and 203; and

17
18 9. Violation of Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]

19
20 C. On December 9, 2021, Plaintiff *Guzman* filed the First Amended Complaint (“FAC”)
21 against Defendants dismissing the cause of action for violations of PAGA.

22 D. On December 13, 2021, Plaintiff *Guzman* filed the *Guzman* PAGA Action.

23
24 E. On May 20, 2020 Plaintiff *Sancho* filed a Notice of Violations with the Labor and
25 Workforce Development Agency (LWDA) and served the same on Defendant Vulcan
26 Materials Company.
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28

1 F. On May 20, 2020, Plaintiff *Sancho* filed the *Sancho* Action against Defendant Vulcan
2 Materials Company for:

3
4 1. Failure to pay all wages;

5
6 2. Failure to furnish an accurate, itemized wage statement upon payment of
7 wages in violation of California Labor Code § 226;

8
9 3. Failure to pay all wages owed at termination in violation of California Labor
10 Code § 203; and

11 4. Violation of California Business & Professions Code §§ 17200, et. seq.
12

13 G. On June 26, 2020 the *Sancho* action was removed to U.S. District Court for the
14 Eastern District of California.

15
16 H. On October 28, 2020, Plaintiff *Sancho* filed a First Amended Complaint adding a
17 claim for penalties pursuant to California Labor Code § 2698, et seq. (PAGA).

18
19 I. On February 18, 2022 the *Sancho* action was dismissed.

20
21 J. The Class Representatives believe they have meritorious claims based on alleged
22 violations of the California Labor Code, and the Industrial Wage Commission Orders,
23 and that class certification is appropriate because the prerequisites for class
24 certification can be satisfied in the Actions, and this action is manageable as a PAGA
25 representative action.

26
27 K. Defendants deny any liability or wrongdoing of any kind associated with the claims
28 alleged in the Actions, dispute any wages, damages and penalties claimed by the Class

Representatives are owed, and further contend that, for any purpose other than settlement, the Actions is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times they complied with the California Labor Code and the Industrial Wage Commission Orders.

L. The Class Representatives are represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Actions, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendants pursuant to informal requests for information to prepare for mediation. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendants are agreeing to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

M. On November 2, 2021, the Parties participated in mediation presided over by Tripper Ortman, Esq., a well-respected wage and hour class action mediator. The mediation concluded without a settlement. However, following the mediation, each side, represented by its respective counsel, continued settlement negotiations, with the

1 assistance of Mediator Ortman, until they agreed to settle the Action which was
2 memorialized in the form of a Memorandum of Understanding (“MOU”).
3

4 N. This Agreement replaces and supersedes the MOU and any other agreements,
5 understandings, or representations between the Parties. This Agreement represents a
6 compromise and settlement of highly disputed claims. Nothing in this Agreement is
7 intended or will be construed as an admission by Defendants that the claims in the
8 Actions of Plaintiffs or the Class Members or Aggrieved Employees have merit or
9 that Defendants bear any liability to Plaintiffs or the Class or Aggrieved Employees
10 on those claims or any other claims, or as an admission by Plaintiffs that Defendants’
11 defenses in the Actions have merit. The Parties agree to certification for the Class for
12 purposes of this Settlement only. If for any reason the settlement does not become
13 effective, Defendants reserve the right to contest certification of any class for any
14 reason and reserves all available defenses to the claims in the Actions.
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16

17 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
18

19 **III. TERMS OF AGREEMENT**

20 A. Settlement Consideration and Settlement Payments by Defendants.

21 1. Settlement Consideration. In full and complete settlement of the Actions, and
22 in exchange for the releases set forth below, Defendants and the Released
23 Parties will pay the sum of the Individual Settlement Payments, the Class
24 Representative Service Awards, the Class Counsel Award, the PAGA
25 Settlement, and the Settlement Administration Costs, as specified in this
26 Agreement, equal to the total sum of the Gross Settlement Amount of One
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1 Million Two Hundred Seventy Thousand Dollars (\$1,270,000.00). The Parties
2 agree that this is a non-reversionary Settlement and that no portion of the
3 Gross Settlement Amount shall revert to Defendants. Other than the
4 Defendants' share of employer payroll taxes (further described in Section
5 III(A)(4) below), if any, Defendants shall not be required to pay more than the
6 Gross Settlement Amount.
7

8 2. Class Size. At the time of mediation, Defendants estimated that the Settlement
9 Class was comprised of 1,216 individuals who collectively worked
10 approximately 170,686 workweeks from June 3, 2017 through October 14,
11 2021. Defendants subsequently estimated that Class Members worked
12 approximately 182,945 Workweeks ("Projected Workweeks") during the
13 Class Period. In regard hereto, Defendants will provide a declaration under
14 penalty of perjury before the deadline for filing the motion for preliminary
15 approval of the settlement, confirming the number of applicable Class
16 Members and workweeks they worked during the applicable Class Period and
17 confirming the number of Projected Workweeks. If the number of Projected
18 Workweeks increases by more than 10% of the estimate stated herein, the
19 Class Period will be truncated back to the date on which the number of
20 workweeks reached 110% of the estimated Projected Workweeks provided
21 herein (201,240 Workweeks).
22

23 3. Settlement Payment. Defendants, and each of them, are jointly and severally
24 liable for payment of the Gross Settlement Amount. Defendants shall pay, via
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wire transfer, the Gross Settlement Amount to the Settlement Administrator on the Funding Date:

4. Defendants' Share of Payroll Taxes. Defendants' share of employer side payroll taxes, up to Thirty Thousand Dollars (\$30,000.00) is in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount. If the employer's share of payroll taxes exceeds \$30,000.00, the excess shall be paid from the Gross Settlement Amount.
- B. Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.
- C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiffs, the Aggrieved Employees, the LWDA and the State of California release the Released Parties from the PAGA Released Claims for the PAGA Period.
- D. General Release by Plaintiffs. As of the Funding Date, for the consideration set forth in this Agreement, Plaintiffs waive, release, acquit and forever discharge the Released Parties from any and all claims, whether known or unknown, which exist or may exist on either Plaintiffs' behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance,

1 including, but not limited to claims for violation of the Fair Labor Standards Act, the
2 California Labor Code, the Wage Orders of California's Industrial Welfare
3 Commission, other state wage and hour laws, the Americans with Disabilities Act, the
4 Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
5 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
6 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
7 California's Whistleblower Protection Act, California Business & Professions Code
8 Section 17200 et seq., and any and all claims arising under any federal, state or other
9 governmental statute, law, regulation or ordinance. Plaintiffs also waive and relinquish
10 any and all claims, rights or benefits that they may have under California Civil Code
11 § 1542, which provides as follows:
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14 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
15 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
16 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
17 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
18 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
19 ***DEBTOR OR RELEASED PARTY.***
20

21 Thus, notwithstanding the provisions of section 1542, and to implement a full and
22 complete release and discharge of the Released Parties, Plaintiffs expressly
23 acknowledge this Settlement Agreement is intended to include in its effect, without
24 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the
25 time of signing this Settlement Agreement, and that this Settlement Agreement
26 contemplates the extinguishment of any such claims. Plaintiffs warrant that Plaintiffs
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1 have read this Settlement Agreement, including this waiver of California Civil Code
2 section 1542, and that Plaintiffs have consulted with or had the opportunity to consult
3 with counsel of Plaintiffs' choosing about this Settlement Agreement and specifically
4 about the waiver of section 1542, and that Plaintiffs understand this Settlement
5 Agreement and the section 1542 waiver, and so Plaintiffs freely and knowingly enter
6 into this Settlement Agreement. Plaintiffs further acknowledge that Plaintiffs later may
7 discover facts different from or in addition to those Plaintiffs now know or believe to
8 be true regarding the matters released or described in this Settlement Agreement, and
9 even so Plaintiffs agree that the releases and agreements contained in this Settlement
10 Agreement shall remain effective in all respects notwithstanding any later discovery of
11 any different or additional facts. Plaintiffs expressly assume any and all risk of any
12 mistake in connection with the true facts involved in the matters, disputes, or
13 controversies released or described in this Settlement Agreement or with regard to any
14 facts now unknown to Plaintiffs relating thereto.
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18 E. Amended Pleading: To facilitate the settlement, and review by the Court, the Parties
19 will stipulate to the filing of a Second Amended Complaint in the matter of the *Guzman*
20 Class Action to incorporate the claims and factual allegations asserted in the *Guzman*
21 PAGA Action and the *Sancho* Action as well as add James Sancho as a named plaintiff
22 in the *Guzman* Class action. The Second Amended Complaint shall be in the format
23 reflected as **Exhibit B** hereto.
24

25 F. Dismissal of the *Guzman* PAGA Action and *Sancho* Action: Upon the Effective Date,
26 and prior to the Funding Date, Class Counsel will take all steps necessary to dismiss
27 the *Guzman* PAGA Action and *Sancho* Action with prejudice.
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1 G. Conditions Precedent: This Settlement will become final and effective only upon the
2 occurrence of all of the following events:

- 3 1. The Court enters an order granting preliminary approval of the Settlement;
- 4 2. The Court enters an order granting final approval of the Settlement and a Final
5 Judgment;
- 6 3. If an objector appears at the final approval hearing, the time for appeal of the
7 Final Judgment and Order Granting Final Approval of Class Action
8 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
9 any appeal from the Judgment and Order Granting Final Approval of Class
10 Action Settlement; and
- 11 4. Defendants fully fund the Gross Settlement Amount.

12 H. Nullification of Settlement Agreement. If this Settlement Agreement is not
13 preliminarily or finally approved by the Court, fails to become effective, is reversed,
14 withdrawn or modified by the Court, or is revoked by any of the Parties:

- 15 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
16 and shall not be admissible in any judicial, administrative or arbitral
17 proceeding for any purpose or with respect to any issue, substantive or
18 procedural;
- 19 2. The conditional class certification (obtained for any purpose) shall be void *ab*
20 *initio* and of no force or effect, and shall not be admissible in any judicial,
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1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and
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4 3. None of the Parties to this Settlement will be deemed to have waived any
5 claims, objections, defenses or arguments in the Action, including with respect
6 to the issue of class certification.
7

8 4. The Party who revokes this Settlement Agreement shall bear the sole
9 responsibility for any cost to issue or reissue any curative notice to the
10 Settlement Class Members and all Settlement Administration Costs incurred
11 to the date of nullification. If the Settlement is not preliminarily or finally
12 approved by the Court, fails to become effective, is reversed, withdrawn or
13 modified by the Court, the Parties shall bear equal responsibility for any cost
14 to issue or reissue any curative notice to the Settlement Class Members and
15 all Settlement Administration Costs incurred to the date of nullification.
16

17 I. Certification of the Settlement Class. The Parties stipulate to conditional class
18 certification of the Class for the Class Period for purposes of settlement only. In the
19 event that this Settlement is not approved by the Court, fails to become effective, or is
20 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
21 Defendants from obtaining a complete resolution of the Released Claims and Released
22 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
23 void *ab initio* and of no force or effect, and shall not be admissible in any judicial,
24 administrative or arbitral proceeding for any purpose or with respect to any issue,
25 substantive or procedural.
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1 J. Tax Liability. The Parties make no representations as to the tax treatment or legal effect
2 of the payments called for, and Class Members and/or Aggrieved Employees are not
3 relying on any statement or representation by the Parties in this regard. Class Members
4 and/or Aggrieved Employees understand and agree that they will be responsible for
5 the payment of any taxes and penalties assessed on the Individual Settlement Payments
6 and/or Aggrieved Employees' individual shares of the PAGA Settlement described
7 and will be solely responsible for any penalties or other obligations resulting from their
8 personal tax reporting of Individual Settlement Payments and/or Aggrieved
9 Employees' individual shares of the PAGA Settlement.
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11
12 K. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
13 the "acknowledging party" and each Party to this Agreement other than the
14 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
15 of this Agreement, and no written communication or disclosure between or among the
16 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
17 such communication or disclosure constitute or be construed or be relied upon as, tax
18 advice within the meaning of United States Treasury Department circular 230 (31 CFR
19 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
20 her or its own, independent legal and tax counsel for advice (including tax advice) in
21 connection with this Agreement, (b) has not entered into this Agreement based upon
22 the recommendation of any other Party or any attorney or advisor to any other Party,
23 and (c) is not entitled to rely upon any communication or disclosure by any attorney
24 or adviser to any other party to avoid any tax penalty that may be imposed on the
25 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
26 any limitation that protects the confidentiality of any such attorney's or adviser's tax
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1 strategies (regardless of whether such limitation is legally binding) upon disclosure by
2 the acknowledging party of the tax treatment or tax structure of any transaction,
3 including any transaction contemplated by this Agreement.
4

5 L. Preliminary Approval Motion. Class Counsel shall draft and file the motion for
6 preliminary approval within sixty (60) calendar days of execution of this Agreement,
7 or within the statutory timeframe as determined by the Court's setting of the
8 preliminary approval hearing. The Parties agree that Plaintiffs will seek approval of
9 the Settlement in San Diego Superior Court where the *Guzman* Class Action case was
10 filed.
11

12 M. Settlement Administrator. The Settlement Administrator shall be responsible for:
13 establishing and administering the QSF; calculating, processing and mailing payments
14 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
15 mailing the Notice Packets to the Class Members as directed by the Court; receiving
16 and reporting the objections and requests for exclusion; calculating, deducting and
17 remitting all legally required taxes from Individual Settlement Payments and
18 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
19 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
20 Settlement; processing and mailing tax payments to the appropriate state and federal
21 taxing authorities; providing declaration(s) as necessary in support of preliminary
22 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
23 or the Court orders the Settlement Administrator to perform. The Settlement
24 Administrator shall keep the Parties timely apprised of the performance of all
25 Settlement Administrator responsibilities by among other things, sending a weekly
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1 status report to the Parties' counsel stating the date of the mailing, the number of
2 requests for exclusion it receives (including the numbers of valid and deficient
3 requests), and number of objections received.
4

5 N. Notice Procedure.

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7 1. Class Data. No later than ten (10) business days after the Preliminary
8 Approval Date, Defendants shall provide the Settlement Administrator with
9 the Class Data for purposes of preparing and mailing Notice Packets to the
10 Class Members.
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12 2. Notice Packets.

13 a) The Notice Packet shall contain the Notice of Class Action Settlement
14 in a form substantially similar to the form attached as Exhibit A. The
15 Notice of Class Action Settlement shall inform Class Members and
16 Aggrieved Employees that they need not do anything in order to
17 receive an Individual Settlement Payment and/or Aggrieved
18 Employees' individual shares of the PAGA Settlement and to keep the
19 Settlement Administrator apprised of their current mailing address, to
20 which the Individual Settlement Payments and/or Aggrieved
21 Employees' individual shares of the PAGA Settlement will be mailed
22 following the Funding Date. The Notice of Class Action Settlement
23 shall set forth the release to be given by all members of the Class who
24 do not request to be excluded from the Settlement Class in exchange
25 for an Individual Settlement Payment and/or Aggrieved Employees'
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1 individual shares of the PAGA Settlement, the number of Workweeks
2 worked by each Class Member during the Class Period and PAGA
3 Period, if any, the number of PAGA Pay Periods worked by each
4 Aggrieved Employee during the PAGA Period, and the estimated
5 amount of their Individual Settlement Payment if they do not request
6 to be excluded from the Settlement and each Aggrieved Employee's
7 share of the PAGA Settlement, if any. The Settlement Administrator
8 shall use the Class Data to determine Class Members' Workweeks and
9 PAGA Pay Periods. The Notice will also advise the Aggrieved
10 Employees that they will release the Released PAGA Claims and will
11 receive their share of the PAGA Settlement regardless of whether they
12 request to be excluded from the Settlement.
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15 b) The Notice Packet's mailing envelope shall include the following
16 language: "IMPORTANT LEGAL DOCUMENT - YOU MAY BE
17 ENTITLED TO PARTICIPATE IN A CLASS ACTION
18 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
19 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
20 NOTICE."
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23 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
24 the Settlement Administrator will perform a search based on the National
25 Change of Address Database to update and correct any known or identifiable
26 address changes. No later than fourteen (14) calendar days after receiving the
27 Class Data from Defendants, the Settlement Administrator shall mail and
28

1 email copies of the Notice Packet to all Class Members via regular First-Class
2 U.S. Mail and electronic mail. The Settlement Administrator shall exercise its
3 best judgment to determine the current mailing address for each Class
4 Member. The address identified by the Settlement Administrator as the current
5 mailing address shall be presumed to be the best mailing address for each
6 Class Member.
7

- 8 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
9 Administrator as non-delivered on or before the Response Deadline shall be
10 re-mailed to any forwarding address provided. If no forwarding address is
11 provided, the Settlement Administrator shall promptly attempt to determine a
12 correct address by lawful use of skip-tracing, or other search using the name,
13 address and/or Social Security number of the Class Member involved, and
14 shall then perform a re-mailing, if another mailing address is identified by the
15 Settlement Administrator. In addition, if any Notice Packets, which are
16 addressed to Class Members who are currently employed by Defendants, are
17 returned to the Settlement Administrator as non-delivered and no forwarding
18 address is provided, the Settlement Administrator shall notify Defendants.
19 Defendants will request that the currently employed Class Member provide a
20 corrected address, and transmit to the Administrator any corrected address
21 provided by the Class Member. Class Members who received a re-mailed
22 Notice Packet shall have their Response Deadline extended fifteen (15) days
23 from the original Response Deadline.
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1 5. Disputes Regarding Individual Settlement Payments. Class Members will
2 have the opportunity, should they disagree with Defendants' records regarding
3 the start and end dates of employment to provide documentation and/or an
4 explanation to show contrary dates. If there is a dispute, the Settlement
5 Administrator will consult with the Parties to determine whether an
6 adjustment is warranted. The Settlement Administrator shall determine the
7 eligibility for, and the amounts of, any Individual Settlement Payments under
8 the terms of this Agreement. The Settlement Administrator's determination of
9 the eligibility for and amount of any Individual Settlement Payment shall be
10 binding upon the Class Member and the Parties, except as provided herein
11 below in Paragraph 6.
12

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14 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
15 by the Settlement Administrator concerning the administration of the
16 Settlement will be resolved by the Court under the laws of the State of
17 California. Before any such involvement of the Court, counsel for the Parties
18 will confer in good faith to resolve the disputes without the necessity of
19 involving the Court.
20

21 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
22 Packet shall state that Class Members who wish to exclude themselves from
23 the Settlement must submit a written request for exclusion to the Settlement
24 Administrator by the Response Deadline. The written request for exclusion
25 must state that the Class Member wishes to exclude himself or herself from
26 the Settlement and (1) must contain the name, address, and the last four digits
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1 of the Social Security number of the person requesting exclusion; (2) must be
2 signed by the Class Member; (3) must be postmarked or fax stamped by the
3 Response Deadline and returned to the Settlement Administrator at the
4 specified address or fax telephone number; and (4) contain a typewritten or
5 handwritten notice stating in substance: "I wish to opt out of the settlement of
6 the class action lawsuit entitled *Guzman v. Vulcan Materials Company*,
7 currently pending in Superior Court of San Diego, Case No. 37-2021-
8 0024583. I understand that by requesting to be excluded from the settlement,
9 I will receive no money from the Settlement described in this Notice." The
10 request for exclusion will not be valid if it is not timely submitted, if it is not
11 signed by the Class Member, or if it does not contain the name and address
12 and last four digits of the Social Security number of the Class Member. The
13 date of the postmark on the mailing envelope or fax stamp on the request for
14 exclusion shall be the exclusive means used to determine whether the request
15 for exclusion was timely submitted. Any Class Member who submits a timely
16 request for exclusion shall be excluded from the Settlement Class will not be
17 entitled to an Individual Settlement Payment and will not be otherwise bound
18 by the terms of the Settlement or have any right to object, appeal or comment
19 thereon. However, any Class Member that submits a timely request for
20 exclusion that is also a member of the Aggrieved Employees will still receive
21 his/her pro rata share of the PAGA Settlement, as specified below, and in
22 consideration, will be bound by the Release by the Aggrieved Employees as
23 set forth herein. Settlement Class Members who fail to submit a valid and
24 timely request for exclusion on or before the Response Deadline shall be
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1 bound by all terms of the Settlement and any final judgment entered in this
2 Action if the Settlement is approved by the Court. No later than twenty-one
3 (21) calendar days after the Response Deadline, the Settlement Administrator
4 shall provide counsel for the Parties with a final list of the Class Members
5 who have timely submitted timely requests for exclusion. At no time shall any
6 of the Parties or their counsel seek to solicit or otherwise encourage members
7 of the Class to submit requests for exclusion from the Settlement.
8

- 9
- 10 8. Objections. The Notice of Class Action Settlement contained in the Notice
11 Packet shall state that Class Members who wish to object to the Settlement
12 may submit to the Settlement Administrator a written statement of objection
13 (“Notice of Objection”) by the Response Deadline. The postmark date of
14 mailing shall be deemed the exclusive means for determining that a Notice of
15 Objection was served timely. The Notice of Objection, if in writing, must be
16 signed by the Settlement Class Member and state: (1) the case name and
17 number; (2) the name of the Settlement Class Member; (3) the address of the
18 Settlement Class Member; (4) the last four digits of the Settlement Class
19 Member’s Social Security number; (5) the basis for the objection; and (6) if
20 the Settlement Class Member intends to appear at the Final
21 Approval/Settlement Fairness Hearing. Class Members who fail to make
22 objections in writing in the manner specified above may still make their
23 objections orally at the Final Approval/Settlement Fairness Hearing with the
24 Court’s permission. Settlement Class Members will have a right to appear at
25 the Final Approval/Settlement Fairness Hearing to have their objections heard
26 by the Court regardless of whether they submitted a written objection. At no
27
28

1 time shall any of the Parties or their counsel seek to solicit or otherwise
2 encourage Class Members to file or serve written objections to the Settlement
3 or appeal from the Order and Final Judgment. Class Members who submit a
4 written request for exclusion may not object to the Settlement. Class Members
5 may not object to the PAGA Settlement.
6

7 O. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
8 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
9 share of payroll taxes, if any, as mandated by law within the time specified herein.
10

11 1. Calculation of Individual Settlement Payments. Individual Settlement
12 Payments shall be paid from the Net Settlement Amount and shall be paid
13 pursuant to the formula set forth herein. Using the Class Data, the Settlement
14 Administrator shall add up the total number of Workweeks for all Class
15 Members during the Class Period. The respective Workweeks for each Class
16 Member will be divided by the total Workweeks for all Class Members during
17 the Class Period, resulting in the Payment Ratio for each Class Member. Each
18 Class Member's Payment Ratio will then be multiplied by the Net Settlement
19 Amount to calculate each Class Member's estimated Individual Settlement
20 Payments. Each Individual Settlement Payment will be reduced by any legally
21 mandated employee tax withholdings (e.g., employee payroll taxes, etc.).
22 Individual Settlement Payments for Class Members who submit valid and
23 timely requests for exclusion will be redistributed to Settlement Class
24 Members who do not submit valid and timely requests for exclusion on a pro
25 rata basis based on their respective Payment Ratios.
26
27
28

1 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
2 Class Data, the Settlement Administrator shall add up the total number of
3 PAGA Pay Periods for all Aggrieved Employees during the PAGA Period.
4 The respective PAGA Pay Periods for each Aggrieved Employee will be
5 divided by the total PAGA Pay Periods for all Aggrieved Employees during
6 the PAGA Period, resulting in the “PAGA Payment Ratio” for each Aggrieved
7 Employee. Each Aggrieved Employee’s PAGA Payment Ratio will then be
8 multiplied by the Aggrieved Employee Payment to calculate each Aggrieved
9 Employee’s estimated share of the PAGA Settlement.
10

11
12 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
13 Settlement Payments shall be allocated and treated as follows: 50% as wages
14 (“Wage Portion”); 50% as penalties and interest (“Non-Wage Portion”). The
15 Wage Portion is subject to wage withholdings and shall be reported on IRS
16 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
17 and shall be reported on IRS Form 1099.
18

19 4. Allocation of Aggrieved Employee Payments. For tax purposes, individual
20 shares of the PAGA Settlement to Aggrieved Employees shall be allocated
21 and treated as 100% penalties and shall be reported on IRS Form 1099.
22

23 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
24 individual shares of the PAGA Settlement made to Settlement Class Members
25 and/or Aggrieved Employees under this Settlement Agreement, as well as any
26 other payments made pursuant to this Settlement Agreement, will not be
27 utilized to calculate any additional benefits under any benefit plans to which
28

1 any Class Members may be eligible, including, but not limited to profit-
2 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
3 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
4 Parties' intention that this Settlement Agreement will not affect any rights,
5 contributions, or amounts to which any Class Members may be entitled under
6 any benefit plans.
7

8
9 6. It is the intent of the Parties that Individual Settlement Payments and individual
10 shares of the PAGA Settlement provided for in this Settlement agreement are the
11 sole payments to be made by Defendants to Settlement Class Members and/or
12 Aggrieved Employees in connection with this Settlement Agreement, with the
13 exception of Plaintiffs, and that the Settlement Class Members and/or Aggrieved
14 Employees are not entitled to any new or additional compensation or benefits as
15 a result of having received the Individual Settlement Payments and/or their
16 individual shares of the PAGA Settlement.
17

18 7. Mailing. Individual Settlement Payments and Individual shares of the PAGA
19 Settlement shall be mailed by regular First-Class U.S. Mail to Settlement
20 Class Members' and/or Aggrieved Employees last known mailing address no
21 later than fifteen (15) calendar days after the Funding Date.
22

23 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
24 Employees shall remain valid and negotiable for one hundred and eighty (180)
25 days from the date of their issuance. If a Settlement Class Member and/or
26 Aggrieved Employee does not cash his or her settlement check within 90 days,
27 the Settlement Administrator will send a letter to such persons, advising that
28

1 the check will expire after the 180th day, and invite that Settlement Class
2 Member and/or Aggrieved Employee to request reissuance in the event the
3 check was destroyed, lost or misplaced. In the event an Individual Settlement
4 Payment and/or Aggrieved Employee's individual share of the PAGA
5 Settlement check has not been cashed within one hundred and eighty (180)
6 days, all funds represented by such uncashed checks, plus any interest accrued
7 thereon, shall be distributed consistent with California Code of Civil
8 Procedure Section 384 as follows: to The Children's Advocacy Institute
9 (CAI), founded at the nonprofit University of San Diego School of Law in
10 1989. Class Counsel, Defendants' counsel, Plaintiffs and Defendants do not
11 have any interest, pecuniary or otherwise, in CAI.
12

- 13
- 14 9. Class Representative Service Awards. In addition to the Individual Settlement
15 Payment and their individual share of the PAGA Settlement to be paid to
16 Plaintiffs, Plaintiffs will apply to the Court for an award of not more than
17 \$10,000 each, as the Class Representative Service Award. Defendants do not
18 presently intend to oppose a Class Representative Service Award of not more
19 than \$10,000 for each Plaintiff. In the event the Court reduces or does not
20 approve of the requested Service Award payments, Plaintiffs shall not have
21 the right to revoke the settlement and it will remain binding. Plaintiffs each
22 retain the right to appeal any denial of a requested Service Award. The
23 Settlement Administrator shall pay the Class Representative Service Award,
24 either in the amount stated herein if approved by the Court or some other
25 amount as approved by the Court, to Plaintiffs from the Gross Settlement
26 Amount no later than fifteen (15) calendar days after the Funding Date. Any
27
28

1 portion of the requested Class Representative Service Awards that are not
2 awarded to the Class Representatives shall be part of the Net Settlement
3 Amount and shall be distributed to Settlement Class Members as provided in
4 this Agreement. The Settlement Administrator shall issue an IRS Form 1099
5 — MISC to Plaintiffs for their Class Representative Service Award. Plaintiffs
6 shall be solely and legally responsible to pay any and all applicable taxes on
7 their Class Representative Service Award and shall hold harmless the
8 Released Parties from any claim or liability for taxes, penalties, or interest
9 arising as a result of the Class Representative Service Awards. The Class
10 Representative Service Award shall be in addition to Plaintiffs' Individual
11 Settlement Payment as a Settlement Class Member. Approval of this
12 Settlement shall not be conditioned on Court approval of the requested amount
13 of the Class Representative Service Award. In the event that the Court reduces
14 or does not approve the requested Class Representative Service Award,
15 Plaintiffs shall not have the right to revoke the Settlement, and it will remain
16 binding.
17
18
19

- 20 10. Class Counsel Award. Defendants understand a motion by Class Counsel for
21 attorneys' fees not to exceed one-third of the Gross Settlement Amount
22 currently estimated to be Four Hundred Twenty-Three Thousand Three
23 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$423,333.33) plus
24 costs and expenses supported by declaration not to exceed Twenty-Five
25 Thousand Dollars (\$25,000), from the Gross Settlement Amount will be filed.
26 Any portion of the requested Class Counsel Award that is not awarded to Class
27 Counsel shall be part of the Net Settlement Amount and shall be distributed
28

1 to Settlement Class Members as provided in this Agreement. The Settlement
2 Administrator shall allocate and pay the Class Counsel Award to Class
3 Counsel from the Gross Settlement Amount no later than fifteen (15) calendar
4 days after the Funding Date. Class Counsel shall be solely and legally
5 responsible to pay all applicable taxes on the payment made pursuant to this
6 paragraph. The Settlement Administrator shall issue an IRS Form 1099 —
7 MISC to Class Counsel for the payments made pursuant to this paragraph. If
8 the Court reduces or does not approve of the requested Class Counsel Award
9 payments, Class Counsel shall not have the right to revoke the settlement and
10 it will remain binding. Class Counsel each retain the right to appeal any denial
11 of any portion of a request for a Class Counsel Award.
12

- 13
- 14 11. PAGA Settlement. Fifty Thousand Dollars (\$50,000) shall be allocated from
15 the Gross Settlement Amount for settlement of claims for civil penalties under
16 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The
17 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
18 Settlement (\$37,500) to the California Labor and Workforce Development
19 Agency no later than twenty-five (25) calendar days after the Funding Date
20 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement
21 (\$12,500) will be distributed to the Aggrieved Employees as described in this
22 Agreement. For purposes of distributing the PAGA Settlement to the
23 Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata
24 share of the Aggrieved Employee Payment using the PAGA Payment Ratio
25 as defined above.
26
27
28

12. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$20,000. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Funding Date.

P. Defendants' Option to Revoke Settlement. Defendants have the right to revoke the Settlement and Defendants shall have the option to void this Settlement if, after the Responsive Deadline, the number of Settlement Class Members who submitted timely and valid written requests for exclusion from the Settlement is at least ten percent (10%) of all Settlement Class Members. If Defendants exercise the option to terminate this Settlement, Defendants shall: (a) provide written notice to Class Counsel within ten (10) calendar days after the Settlement Administrator provides information regarding opt outs (which can occur no later than twenty-one (21) calendar days after the Response Deadline, and (b) pay all Settlement Administration Costs incurred up to the date or as result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed

Q. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiffs will provide Defendants with a draft of the Motion at least seven (7) business days

1 prior to the filing of the Motion to give Defendants an opportunity to propose changes
2 or additions to the Motion.

3
4 1. Declaration by Settlement Administrator. No later than twenty-one (21) days
5 after the Response Deadline, the Settlement Administrator shall submit a
6 declaration in support of Plaintiffs' motion for final approval of this
7 Settlement detailing the number of Notice Packets mailed and re-mailed to
8 Class Members, the number of undeliverable Notice Packets, the number of
9 timely requests for exclusion, the number of objections received, the amount
10 of the average Individual Settlement Payment and highest Individual
11 Settlement Payment, the Settlement Administration Costs, and any other
12 information as the Parties mutually agree or the Court orders the Settlement
13 Administrator to provide.

14
15
16 2. Final Approval Order and Judgment. Class Counsel shall present an Order
17 Granting Final Approval of Class Action Settlement to the Court for its
18 approval, and Judgment thereon, at the time Class Counsel files the Motion
19 for Final Approval.

20
21 R. Cooperation. The Parties and their counsel will cooperate with each other and use
22 their best efforts to implement the Settlement.

23
24 S. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
25 except such proceedings necessary to implement and complete the Settlement, pending the
26 Final Approval/Settlement Fairness Hearing to be conducted by the Court

1 T. Amendment or Modification. This Agreement may be amended or modified only by
2 a written instrument signed by counsel for all Parties or their successors-in-interest,
3 and ultimately approved by the Court.

4
5 U. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
6 Agreement among these Parties, and no oral or written representations, warranties or
7 inducements have been made to any Party concerning this Agreement or its Exhibit
8 other than the representations, warranties and covenants contained and memorialized
9 in this Agreement and its Exhibit.

10
11 V. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendants represents and warrants that he/she is
17 authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and
18 warrant that they are authorized to sign this Agreement and that they have not assigned
19 any claim, or part of a claim, covered by this Settlement to a third-party.

20
21
22 W. No Public Comment: The Parties and their counsel agree that they will not issue any
23 press releases, initiate any contact with the press, respond to any press inquiry, or have
24 any communication with the press about the fact, amount or terms of the Settlement
25 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
26 of its terms for any marketing or promotional purposes. Nothing herein will restrict
27 Class Counsel from including publicly available information regarding this settlement
28

1 in future judicial submissions regarding Class Counsel's qualifications and experience.
2 Further, Class Counsel will not include, reference or use the Settlement Agreement for
3 any marketing or promotional purposes, either before or after the Motion for
4 Preliminary Approval is filed.
5

6 X. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
7 to the benefit of, the successors or assigns of the Parties, as previously defined.
8

9 Y. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
10 shall be governed by and interpreted according to the laws of the State of California.
11

12 Z. Counterparts. This Agreement may be executed in one or more counterparts. All
13 executed counterparts and each of them shall be deemed to be one and the same
14 instrument provided that counsel for the Parties to this Agreement shall exchange
15 among themselves copies or originals of the signed counterparts.
16

17 AA. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
18 is a fair, adequate and reasonable settlement of this Action and have arrived at this
19 Settlement after extensive arms-length negotiations, taking into account all relevant
20 factors, present and potential.
21

22 BB. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
23 respect to the interpretation, implementation and enforcement of the terms of this
24 Agreement and all orders and judgments entered in connection therewith, and the
25 Parties and their counsel submit to the jurisdiction of the Court for purposes of
26 interpreting, implementing and enforcing the settlement and all orders and judgments
27 entered in connection with this Agreement.
28

1 CC. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5
6 DD. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
7 certification for purposes of this settlement only.

8
9 EE. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
10 Released Claims have merit and give rise to liability on the part of Defendants.
11 Defendants claim that the Released Claims have no merit and do not give rise to
12 liability. This Agreement is a compromise of disputed claims. Nothing contained in
13 this Agreement and no documents referred to and no action taken to carry out this
14 Agreement may be construed or used as an admission by or against the Defendants or
15 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
16 than as may be specifically set forth herein, each Party shall be responsible for and
17 shall bear its/his own attorney's fees and costs.
18

19
20 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

21
22 DATED: Sep 16, 2022

23 
24 _____
25 Gabriel Guzman jr (Sep 16, 2022 15:58 PDT)
26 GABRIEL GUZMAN JR.

27 DATED: _____

28 _____
JAMES SANCHO

1 CC. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Court shall first attempt to construe the provisions valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this
4 Agreement valid and enforceable.

5
6 DD. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
7 certification for purposes of this settlement only.

8
9 EE. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
10 Released Claims have merit and give rise to liability on the part of Defendants.
11 Defendants claim that the Released Claims have no merit and do not give rise to
12 liability. This Agreement is a compromise of disputed claims. Nothing contained in
13 this Agreement and no documents referred to and no action taken to carry out this
14 Agreement may be construed or used as an admission by or against the Defendants or
15 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
16 than as may be specifically set forth herein, each Party shall be responsible for and
17 shall bear its/his own attorney's fees and costs.
18

19
20 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

21
22 DATED: _____

23 _____
GABRIEL GUZMAN JR.

24
25 DATED: 9/16/2022 _____

DocuSigned by:

James Sancho

87B9467FDF3B405...
JAMES SANCHO

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: September 19, 2022

DocuSigned by:

DENSON N FRANKLIN III

C793C3924A8049E...

VULCAN MATERIALS COMPANY

DENSON N FRANKLIN III

Printed Name

Senior Vice President & General Counsel

Title

DocuSigned by:

Mark Reardon

A3BA4AA9A850430...

CALMAT CO.

Mark Reardon

Printed Name

Vice President

Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: September 20, 2022

JCL LAW FIRM, A.P.C.

By: 

Attorneys for Plaintiffs and the Settlement Class Members

DATED: September 20, 2022

ZAKAY LAW GROUP, APLC

By: 

Attorneys for Plaintiffs and the Settlement Class Members

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IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

VULCAN MATERIALS COMPANY

Printed Name

Title

DATED: _____

CALMAT CO.

Printed Name

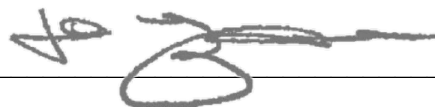
Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: September 16, 2022

JCL LAW FIRM, A.P.C.

By: _____



Attorneys for Plaintiffs and the Settlement Class
Members

DATED: September 16, 2022

ZAKAY LAW GROUP, APLC

By: _____

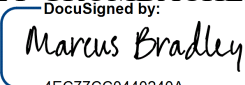


Attorneys for Plaintiffs and the Settlement Class
Members

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1 DATED: 9/17/2022
2 _____

BRADLEY GROMBACHER LLP

By: 
4E6776C0440240A...

Attorneys for Plaintiffs and the Settlement Class
Members

6 DATED: _____
7

HUNTON ANDREWS KURTH LLP

By: _____

Attorneys for Defendants

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DATED: _____

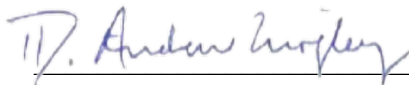
BRADLEY GROMBACHER LLP

By: _____

Attorneys for Plaintiffs and the Settlement Class
Members

DATED: September 19, 2022

HUNTON ANDREWS KURTH LLP

By: 

D. Andrew Quigley
Attorneys for Defendants

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Guzman v. Vulcan Materials Company, San Diego County Superior Court Case No. 37-2021-0024583)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<[REDACTED]>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will not receive the Settlement Share identified above. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved or you may appear at the final approval hearing on [INSERT DATE] AT [INSERT TIME] either in person or remotely. Directions are provided below.

1. Why did I get this Notice?

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Vulcan Materials Company (“Vulcan”) and Calmat Co. (“Calmat”) (collectively, “Defendants”) for alleged wage and hour violations. Vulcan and Calmat deny all allegations and liability and this settlement should not be an indication of any admission of fault. The Action was filed by former employees of Defendants, Gabriel Guzman Jr. and James Sancho (collectively “Plaintiffs”), and seeks payment of (1) back wages for a class of non-exempt employees (“Class Members”) who worked for Defendants during the Class Period June 3, 2017 to February 11, 2022; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for Defendants during the PAGA Period May 22, 2019 to February 11, 2022 (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Settlement Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All of Defendant's current and former non-exempt employees employed in California during the Class Period.

The "Class Period" is the period of time running from June 3, 2017 to February 11, 2022.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 3, 2021, Plaintiff Guzman filed the *Guzman* Class Action Complaint against Defendants in the Superior Court of the State of California, County of San Diego. Plaintiff Guzman asserted claims that Defendants: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (i) Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.* On December 9, 2021, Plaintiff Guzman filed the First Amended Complaint ("FAC") against Defendants dismissing the cause of action for violations of PAGA. On December 13, 2021, Plaintiff Guzman filed the *Guzman* PAGA Action in the Superior Court of the State of California, County of San Diego, seeking monetary penalties for alleged violations of the California Labor Code.

On May 20, 2020, Plaintiff Sancho filed a complaint against Defendant Vulcan Materials Company in the Superior Court of California, County of Kern. Plaintiff Sancho claimed that Vulcan Materials Company: (a) Failed to pay all wages; (2) failed to furnish an accurate, itemized wage statement upon payment of wages in violation of California Labor Code § 226; (c) failed to pay all wages owed at termination in violation of California Labor Code § 203; and (d) violated California Business & Professions Code §§ 17200, *et. seq.*

Defendants deny and dispute all claims asserted in the Action. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendants properly paid members of the class all wages and overtime that was due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants fully reimbursed members of the class for required business expenses; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendants is not liable for any of the penalties claimed or that could be claimed in the Action.

On November 2, 2021, the Parties participated in an all-day mediation with Tripper Ortman, Esq., an experienced mediator of wage and hour class actions. The mediation concluded without a settlement. However, following the mediation, each side, represented by its respective counsel, continued settlement negotiations, with the assistance of Mediator Ortman, until they agreed to settle the Action. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC, Bradley Grombacher LLP and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of One Million Two Hundred Seventy Thousand Dollars (\$1,270,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payments to the Plaintiffs.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$20,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys’ Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$423,333.33) and a Class Counsel Litigation Expenses Payment of not more than \$25,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payments. Class Representative Service Payments of up to Ten Thousand Dollars (\$10,000) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of \$50,000 relating to Plaintiffs’ claim under the Private Attorneys General Act (“PAGA”), \$37,500 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) and the remaining \$12,500 will be distributed to Aggrieved Employees (the “Aggrieved Employee Payment”).
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Settlement Share for each Settlement Class Member will be calculated by dividing each individual Settlement Class Member’s workweeks that occurred during the Class Period by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by the Net Settlement Amount. A “workweek” is defined as a normal seven-day week of work during the Class Period in which, according to Defendants’ records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Aggrieved Employee Payment shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The number of pay periods worked by each respective Aggrieved Employee during the PAGA Period will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then that number will be multiplied by the Aggrieved Employee Payment. “Aggrieved Employees”

means of all of Defendant's current and former non-exempt employees employed in California during the PAGA Period. The PAGA Period means the period between May 22, 2019 to February 11, 2022.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. 50% of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 50% of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in the Settlement Agreement, Plaintiff and the Settlement Class Members release the Defendants and each of their respective past, present and future owners, stockholders, all present and former parent corporations, related or affiliated companies, subsidiaries, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, and their respective successors and predecessors in interest, each of their company-sponsored employee benefit plans of any nature (including, without limitation, profit-sharing plans, pension plans, 401(k) plans, and severance plans) and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and any individual or entity which could be jointly liable with Defendants (the "Released Parties") from any and all wage and hour claims, rights, debts, demands, damages, liabilities and causes of action that were asserted or could have been asserted based on the factual allegations in the Second Amended Complaint in the *Guzman* Class Action including all claims for unpaid wages, including failure to pay minimum wage, straight time compensation, overtime compensation, and interest; payment for all hours worked, including off-the-clock work; premium payments for meal period or rest break violations; waiting time penalties; reimbursement for all necessary business expenses; failure to keep accurate records; damages or penalties for inaccurate wage statements; unfair business practices pursuant to Business & Professions Code, section 17200, et seq.; claims for restitution, disgorgement, and other equitable relief, liquidated damages, or punitive damages; and attorneys' fees and expenses, and shall include claims arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 205, 210, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and/or the applicable California Industrial Welfare Commission Wage Order(s)). Notwithstanding any limitation discussed below, the release of claims for waiting-time penalties and inaccurate itemized wage statement penalties shall encompass such claims regardless of the underlying theory.

Release by the Aggrieved Employees. As of the Funding Date, in exchange for the consideration set forth in the Settlement Agreement, the Plaintiff, the LWDA, the State of California and the alleged Aggrieved Employees release the Released Parties of all PAGA claims, rights, debts, demands, damages, liabilities and causes of action for civil penalties that were alleged, or could have been alleged based on the facts alleged in the Second Amended Complaint in the *Guzman* Class Action or Plaintiffs' PAGA notices to the LWDA which occurred during the PAGA Period, including those based on alleged violations of California Labor Code sections 201, 202, 203, 204,

205, 210, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and the applicable California Industrial Welfare Commission Wage Order(s), whether for penalties, attorneys' fees and costs, and expressly excluding all other claims.

5. How much will my payment be?

Defendants' records reflect that you have << _____ >> Workweeks worked during the Class Period (June 3, 2017 to February 11, 2022).

Based on this information, your estimated Individual Settlement Payment is << _____ >>.

Defendants' records reflect that you have << _____ >> pay periods worked during the PAGA Period (May 22, 2019 to February 11, 2022).

Based on this information, your estimated PAGA Payment Share is << _____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive an Individual Settlement Payment, and you will not be bound by the terms of the Settlement, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," if you are an Aggrieved Employee, you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed, dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Guzman v. Vulcan Materials Company, Case No. 37-2021-0024583*." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be

rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Guzman v. Vulcan Materials Company, San Diego County Superior Court, Case No. 37-2021-00024583***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than [REDACTED]. The address for the Settlement Administrator is ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780.

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** [REDACTED], at the San Diego County Superior Court, Dept. C-69, located at 330 W. Broadway, San Diego, CA 92101 before Judge Katherine Bacal. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-888-250-6810 or write to ***Guzman v. Vulcan Materials Company, San Diego County Superior Court, Case No. 37-2021-00024583***, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. The complete Settlement Agreement may be inspected during normal business hours at the offices of the Clerk, at 330 West Broadway, San Diego, CA 92101.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600 San
Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite
3600 San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com
[Website: www.zakaylaw.com](http://www.zakaylaw.com)

Class Counsel

Marcus J. Bradley, Esq.
Bradley Grombacher, LLP
31365 Oak Crest Dr., Suite 240
Westlake Village, CA 91361
Tel: 805-270-7100
Fax: 805-270-7589
Email:
mbradley@bradleygrombacher.com

Counsel for Defendants:

Roland Juarez, Esq.
D. Andrew Quigley, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Tel.: (213) 532-2000
Fax: (213) 532-2020
E-Mail: rjuarez@huntonak.com
aquigley@huntonak.com

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In the event an Individual Settlement Payment and/or Individual Aggrieved Employee Payment has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be distributed consistent with California Code of Civil Procedure § 384 as follows: to The Children's Advocacy Institute (CAI), founded at the nonprofit University of San Diego School of Law in 1989. Class Counsel, Defendants' counsel, Plaintiffs and Defendant do not have any interest, pecuniary or otherwise, in CAI.

EXHIBIT 2

EXHIBIT 3

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Guzman v. Vulcan

Friday, April 1, 2022

Requesting Attorneys Name:

Eddie Garcia

E-Mail:

EGarcia@jcl-lawfirm.com

ILYM Contact:

Sean Hartranft

E-Mail:

Sean@ilymgroup.com

Contact Number:

714.504.4242

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	1,216
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	5	\$750.00
Programming of Class Database	Hourly	\$175.00	5	\$875.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,625.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	11	\$1,320.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	3	\$210.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	5	\$350.00
Report Processing	Hourly	\$70.00	7	\$490.00
NCOA	Flat Rate	\$350.00	1	\$350.00
Toll Free Customer Service Representative	Flat Fee	\$400.00	1	\$400.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$3,870.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$1.50	1,216	\$1,824.00
USPS First Class Postage	Per Piece	\$0.55	1,216	\$668.80
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	243	\$486.40
Storage, Photocopies, Deliveries	Flat Fee	\$319.80	1	\$319.80

Subtotal **\$3,299.00**

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	8	\$1,200.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	8	\$1,000.00
Check, Stub & Release - Print & Mail (W-2/1099)	Per Check	\$1.50	1,216	\$1,824.00
USPS First Class Postage	Per Piece	\$0.55	1,216	\$668.80
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$2.00	122	\$243.20
Preparation of Taxes	Hourly	\$120.00	18	\$2,160.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal **\$8,596.00**

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	7	\$700.00
Project Manager Final Reporting	Hourly	\$120.00	8	\$960.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal **\$2,160.00**

TOTAL CASE ESTIMATE: **\$19,550.00**

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.