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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

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 14, 2022

Time: 1:30 PM

Judge: Honorable Katherine Bacal

Dept.: C-69

1 This matter having come before the Honorable Judge Katherine Bacal of the Superior Court of
2 the State of California, in and for the County of San Diego, at 1:30 p.m. on October 14, 2022, with
3 Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, Shani O. Zakay, Esq. of the Zakay Law
4 Group, APLC and Marcus J. Bradley, Esq. of Bradley/Grombacher LLP as counsel for plaintiffs
5 GABRIEL GUZMAN and JAMES SANCHO (“Plaintiffs”), and D. Andrew Quigley, Esq. of Hunton
6 Andrews Kurth LLP appearing for defendants VULCAN MATERIALS COMPANY and CALMAT
7 CO. (hereinafter “Defendants”). The Court, having carefully considered the briefs, argument of counsel
8 and all the matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs’
9 Motion for Preliminary Approval of Class and PAGA Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
12 Action Claims and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct
13 copy of which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the
14 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
15 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendants shall pay is One Million Two Hundred Seventy Thousand Dollars (\$1,270,000.00). It
20 appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and
21 reasonable as to all Class Members when balanced against the probable outcome of further litigation
22 relating to certification, liability, and damages issues. It further appears that investigation and research
23 have been conducted such that counsel for the Parties are able to reasonably evaluate their respective
24 positions. It further appears to the Court that settlement at this time will avoid substantial additional
25 costs by all Parties, as well as avoid the delay and risks that would be presented by the further
26 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
27 intensive, serious, and non-collusive arms-length negotiations.

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
3 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
4 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
5 reasonable when balanced against the probable outcome of further litigation relating to certification,
6 liability, and damages issues.

7 5. Plaintiffs seek an award of Attorneys' Fees and Costs in the amount of up-to one-third
8 of the Gross Settlement Amount for attorneys' fees, currently estimated at Four Hundred Twenty-Three
9 Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$423,333.33), an award of
10 litigation expenses incurred not to exceed Twenty-Five Thousand Dollars (\$25,000.00), and proposed
11 Class Representative Service Awards to the Class Representatives, Gabriel Guzman Jr. and James
12 Sancho, in amounts not to exceed Ten Thousand Dollars (\$10,000) each. While these awards appear to
13 be within the range of reasonableness, the Court will not approve the Class Counsel Award or Class
14 Representative Service Awards until the Final Approval Hearing.

15 6. The Court recognizes that Plaintiffs and Defendants stipulate and agree to certification
16 of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any
17 other proceeding should this Settlement not become final. For settlement purposes only, the Court
18 conditionally certifies the following Class:

19 "All of Defendants' current and former non-exempt employees employed
20 in California during the period from June 3, 2017 to February 11, 2022."

21 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
22 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
23 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
24 common questions of law and fact predominate, and there is a well-defined community of interest
25 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
26 Class Representatives are typical of the claims of the Class Members; (d) the Class Representatives
27 will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to
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1 other available methods for the efficient adjudication of this controversy; and (f) Class Counsel are
2 qualified to act as counsel for the Class Representatives in their individual capacity and as the
3 representatives of the Class Members.

4 8. The Court provisionally appoints plaintiffs GABRIEL GUZMAN JR. and JAMES
5 SANCHO as the representatives of the Class.

6 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
7 APC, Shani Zakay, Esq. of Zakay Law Group, APLC and Marcus J. Bradley, Esq. of
8 Bradley/Grombacher LLP as Class Counsel for the Class Members.

9 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
10 Class Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit “A”**. The Court finds
11 that the notice appears to fully and accurately inform the Class Members and Aggrieved Employees of
12 all material elements of the proposed Settlement, including right of any Class Member to be excluded
13 from the Class by submitting a written request for exclusion, and of each Class Member’s right and
14 opportunity to object to the Settlement. The Court further finds that the distribution of the notice
15 substantially in the manner and form set forth in the Agreement and this Order meets the requirements
16 of due process, is the most reasonable notice under the circumstances, and shall constitute due and
17 sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class
18 mail, pursuant to the terms set forth in the Agreement.

19 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within ten
20 (10) business days of this order, Defendants shall provide, to the Settlement Administrator the Class
21 Data, including information regarding Class Members that Defendants will in good faith compile from
22 its records, including each Class Member’s full name; last known address; Social Security Number;
23 start dates and end dates of employment or work for Defendants in California during the Class Period.
24 Within fourteen (14) calendar days after receiving the Class Data from Defendants, the Settlement
25 Administrator shall mail the Class Notice and Request for Exclusion form to all identified, potential
26 Class Members via first class U.S. Mail using the most current mailing address information available.

27 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
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1 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
2 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
3 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
4 postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date
5 the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than
6 fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt
7 out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment
8 under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or
9 comment thereon. Class Members who have not requested exclusion shall be bound by all
10 determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out
11 that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
12 individuals is not permitted and will be deemed invalid.

13 13. Any Class Member who has not opted out may appear at the final approval hearing and
14 may object or express the Class Member's views regarding the Settlement and may present evidence
15 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
16 by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the
17 Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement
18 Administrator.

19 14. A final approval hearing shall be held before this Court on _____
20 in Department C-69 of the San Diego County Superior Court to determine all necessary matters
21 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
22 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
23 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
24 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
25 to the Class; and to finally approve the Class Counsel Award, Class Representative Service Awards,
26 and the Settlement Administration Costs. All papers in support of the motion for final approval and the
27 motion for Attorneys' Fee and Costs and Class Representative Service Awards shall be filed with the

1 Court and served on all counsel no later than sixteen (16) court days before the hearing.

2 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
3 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
4 evidence of, or used against Defendants as, an admission or indication in any way, including with
5 respect to any claim of any liability, wrongdoing, fault or omission by Defendants or with respect to
6 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
7 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
8 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted
9 in evidence as, received as or deemed to be evidence for any purpose adverse to the Defendants,
10 including, but not limited to, evidence of a presumption, concession, indication or admission by
11 Defendants of any liability, fault, wrongdoing, omission, concession or damage.

12 16. In the event the Settlement does not become effective in accordance with the terms of the
13 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
14 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
15 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
16 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
17 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
18 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

19 17. Pending final determination of whether the Settlement should be approved, Class
20 Representatives and all Class Members are barred and enjoined from filing, commencing, prosecuting,
21 intervening in, instigating or in any way participating in the commencement or prosecution of any
22 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
23 any claims that are, or relate in any way to, the Released Claims, unless and until they submit a timely
24 request for exclusion pursuant to the Agreement.

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EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR., on behalf of
himself and on behalf of all persons similarly
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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
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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.
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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.
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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.
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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.
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- 1 J. “Class Representatives” shall mean plaintiffs GABRIEL GUZMAN JR. and JAMES
2 SANCHO.
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- 4 K. “Court” means the Superior Court for the State of California, County of San Diego
5 presiding over the *Guzman* Class Action.
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- 7 L. “Defendants” shall mean VULCAN MATERIALS COMPANY, a New Jersey
8 Corporation and CALMAT CO., a Delaware Corporation.
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- 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.
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- 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.
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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.

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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.

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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.*
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- 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).*
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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.

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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.

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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.

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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;

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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;

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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;

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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

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

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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.

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

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4 1. Failure to pay all wages;

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

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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.
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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.
15
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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28

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:
12

13
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
27
28

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.
15

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17
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.
28

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
3

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.
10

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.

6
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.
11

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.
13
14

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."
21
22

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

13
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

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

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- 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
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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.
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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
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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

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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
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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
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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.
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- 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
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 11 Defendants claim that the Released Claims have no merit and do not give rise to
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 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 _____
 24 GABRIEL GUZMAN JR.

25 DATED: 9/16/2022 _____

26 DocuSigned by:

James Sancho

87B9467FDF3B405...
 27 JAMES SANCHO
 28

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

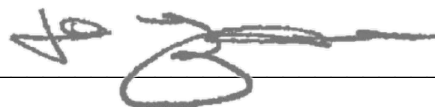
Title

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: _____

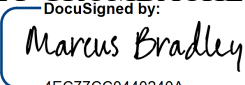


Attorneys for Plaintiffs and the Settlement Class
Members

///

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: _____

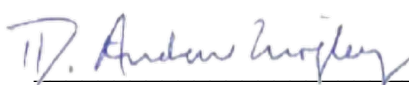
BRADLEY GROMBACHER LLP

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:

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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.