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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

VALERIA RODRIGUEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

JOHN BEAN TECHNOLOGIES
CORPORATION, a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: BCV-20-101913-JEB

[Assigned for all purposes to the Hon. J. Eric
Bradshaw, Dept. J]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Date: June 6, 2022

Time: 8:30 a.m.

Dept.: J

Complaint Filed: August 17, 2020

FAC Filed: August 18, 2021

Trial Date: None

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT, on June 6, 2022 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable J. Eric Bradshaw, judge presiding in Department J of
4 the above-referenced Court, Plaintiff Valeria Rodriguez (“Plaintiff”) will seek an Order:

5 (1) Granting final approval to the Joint Stipulation of Class Action and PAGA Settlement
6 and Release (“Stipulation” or “Settlement Agreement”) in this action;

7 (2) Approving distribution of the settlement funds to the Class Members pursuant to the
8 terms of the Settlement Agreement;

9 (3) Approving Plaintiff’s request for an award of the Class Representative service award of
10 \$10,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

11 (4) Approving Class Counsel’s request for an award of attorneys’ fees of approximately
12 one-third of the \$133,333.34 maximum settlement amount, and reimbursement of actual litigation
13 costs of \$12,302.82, pursuant to the terms of the Settlement Agreement;

14 (5) Approving Plaintiff’s request for payment of the settlement administration costs to
15 Phoenix Settlement Administrators in the amount of \$5,000.00 pursuant to the terms of the
16 Settlement Agreement;

17 (6) Approving Plaintiff’s request for payment to the LWDA for \$30,00.00 pursuant to the
18 PAGA and the terms of the Settlement Agreement; and

19 (7) Entering final judgment as to all members of the Class in this action.

20 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
21 provides for court approval of the settlement of a purported class action and allows the Court to
22 grant final certification of a class for settlement purposes. The basis for this unopposed Motion is
23 that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
24 Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or
25 object to the settlement. In light of the overwhelmingly positive response, as shown by the lack of
26 objections to the settlement and high percentage of class members participating in the settlement,
27 there is no question that the settlement is fair, reasonable and adequate and thus should be granted
28 final approval.

1 This Motion will be based on the attached Memorandum of Points and Authorities and the
2 supporting Declarations of Larry W. Lee, Mai Tulyathan, William L. Marder, Plaintiff Valeria
3 Rodriguez, and Kevin Lee of Phoenix Settlement Administrators, upon the oral arguments of
4 counsel (should there be any), and on the complete records and file herein.

5
6 DATED: May 12, 2022

DIVERSITY LAW GROUP

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8 By: 
9 Larry W. Lee
10 Mai Tulyathan
11 Attorneys for Plaintiff Valeria Rodriguez
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1 **I. INTRODUCTION**

2 Plaintiff Valeria Rodriguez (“Plaintiff”) now seeks the Court’s final approval of the Joint
3 Stipulation of Class Action and PAGA Settlement and Release (“Stipulation” or “Settlement
4 Agreement”). The Settlement Agreement provides for a \$400,000.00 **non-reversionary** fund to
5 be created for the benefit of the Class¹, from which attorneys’ fees, litigation costs, service
6 payment to the named Plaintiff, payment to the California Labor and Workforce Development
7 Agency (“LWDA”), employer payroll taxes, and costs of settlement administration are to be
8 paid. The entire Net Settlement Amount after these deductions will be paid to all Class Members
9 who did not opt-out of the Settlement.

10 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
11 Approval of Class Action Settlement. The Court preliminary approved this settlement on
12 February 14, 2022, directing distribution of class notice and scheduling the hearing for final
13 approval of the settlement (the “Preliminary Approval Order”).

14 As directed by the Court, the Settlement Administrator selected by the Parties—Phoenix
15 Settlement Administrators—distributed the Class Notice to 215 Class Members. (Declaration of
16 Kevin Lee on behalf of Phoenix Settlement Administrators (“Phoenix Decl.”) at ¶ 5.) All 215
17 Class Notices have been deemed by the Settlement Administrator to have been delivered to the
18 Class Members. (*Id.* at ¶ 7.) To date, only one request for exclusion has been submitted to the
19 Settlement Administrator. (*Id.* at ¶ 8.) Zero objections to the settlement have submitted by any
20 Class Members. (*Id.* at ¶ 9.) As such, the settlement has a significantly high participation rate of
21 **99.53 percent**. In light of this positive response from Class Members, an inference can be made
22 that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
23 Agreement is fair and reasonable. (Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 6.)

24 In addition to the results of the notice process, for the same reasons as set forth earlier in
25 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represents
26

27
28 ¹ The “Class” as preliminarily approved by the Court consists of all current and former non-exempt
hourly employees who performed work in California for the FoodTech division of John Bean
Technologies Corporation during the period from April 6, 2016 through August 18, 2021.

the basic points supporting final approval of the settlement:

- The settlement provides a total settlement sum of \$400,000.00, which is **non-reversionary**;

- The settlement is fair given that participating Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money—on average, approximately \$899.15 to each participating Class Member, with the estimated highest individual settlement payment being \$1,403.87 (*See Phoenix Decl. at ¶ 13*);

- Class Members did **not** need to submit claim forms to participate in the settlement, but will automatically receive a check for their individual share of the settlement;

- The allocation reflects that payment of individual settlement amounts will be paid to Class Members on a *pro rata* basis, based on the number of workweeks worked by each respective Class Member between April 6, 2016 through August 18, 2021 (the “Class Period”), as compared to the total number of workweeks worked by all Class Members during the Class Period.

- Plaintiff’s counsel conducted significant investigation in this case, including conducting informal discovery and significant exchanges of information regarding class data, payroll data for the class, sample wage statements and timekeeping records for class members, and Defendant’s various policy documents regarding payment of overtime wages, bonus payments, shift differentials, sick leave, and meal periods necessary for Plaintiff to fully evaluate this case;

- A highly regarded settlement administrator, Phoenix Settlement Administrators, was retained to administer the settlement for approximately \$5,000.00 (*See Phoenix Decl. at ¶ 16*); and

- The State of California’s LWDA will also be the beneficiary of this settlement, as it will receive \$30,000.00 pursuant to the PAGA, should this settlement be granted final approval. Timely notice of the PAGA settlement was provided to the California Labor and Workforce Development Agency (“LWDA”) pursuant to Cal. Lab. Code section 2699(l)(2) and no objections to the Settlement by the LWDA were received by Plaintiff’s Counsel. (Tulyathan

Decl.) at ¶ 8.)

Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Class Members. Specifically, the Preliminary Approval Order contemplated that the Notice of Class Action Settlement (“Class Notice”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that Phoenix Settlement Administrators would serve as the Settlement Administrator.

As clearly stated in the Declaration of Kevin Lee on behalf of Phoenix Settlement Administrators, notice was provided to all Class Members. On February 28, 2022, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 215 Class Members. (Phoenix Decl. at ¶ 3.) Prior to mailing the Class Notice, the Settlement Administrator conducted a National Change of Address (NCOA) search to correct and/or update the class list in case of any address changes. (*Id.* at ¶ 4.) On March 9, 2022, the Settlement Administrator mailed the Class Notice in English and Spanish to all Class Members on the mailing list via U.S. first class mail. (*Id.* at ¶ 5.) From the date of mailing, three Class Notice packets were returned to the Settlement Administrator due to incorrect addresses. (*Id.* at ¶ 6.) The Settlement Administrator conducted skip tracing to identify updated addresses for the three Class Notice packets, and subsequently re-mailed them via U.S. first class mail. (*Id.*) As of the date of this filing, **zero** Class Notices remain undeliverable. (*Id.* at ¶ 7.) Further, the Class Notice provided Class Members with Class Counsel’s and the Settlement Administrator’s contact information and website, where they could further seek information regarding the settlement, ask questions, review pleadings in the case, and update their address.

The provision of sending the notice to Class Members as described above meets the requirements for the “best notice practicable” in this case as necessary to protect the due process

1 rights of Class Members. (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12
2 (provision of “best notice practicable” with description of the litigation and explanation of opt-
3 out rights satisfies due process); *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75
4 (individual notice must be sent to class members who can be identified through reasonable
5 means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314 (best
6 practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise
7 interested parties of the pendency of the action and afford them an opportunity to present their
8 objections”).)

9 Here, all Class Members were provided with a mailing that explained the settlement and
10 allowed Class Members to seek information, ask questions, and exclude themselves and/or object
11 to the settlement, if so desired. Additionally, the Class Notice was provided to the Class
12 Members in both English and Spanish. As such, proper notice has been given to the Class
13 Members. Thus, the Court may determine the fairness and adequacy of the Settlement and enter
14 its Order granting final approval, secure in the knowledge that all absent Class Members have
15 been given the opportunity to participate fully in the settlement, exclusion, and the approval
16 process.

17 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE,**
18 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

19 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

20 In order to proceed as a class, there are two requirements which must be met—
21 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695,
22 704; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 809 (there are two basic requirements
23 which must exist to sustain a class action: “[t]he first is existence of an ascertainable class, and
24 the second is a well-defined community of interest in the questions of law and fact involved.”).)
25 “The community of interest requirement embodies three factors: (1) predominant common
26 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
27 (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Industries*
28 (1981) 29 Cal. 3d 462, 470.)

//

1 **1. The Class is Ascertainable**

2 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section
3 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means
4 available for identifying the class members.” (*Reyes v. San Diego County Board of Supervisors*
5 (1987) 196 Cal.App.3d 1263, 1271.)

6 Here, the Class consists of “all current and former non-exempt hourly employees who
7 performed work in California for the FoodTech division of John Bean Technologies Corporation
8 between April 6, 2016 and August 7, 2021.” Based on Defendant’s records, there are 215
9 individuals that comprise the Settlement Class. (Phoenix Decl. at ¶ 3.) This is more than the
10 minimum required to certify a class.

11 Within the context of manageability, the issue is whether there exists sufficient means for
12 identifying class members at the remedial stage. (*Reyes*, 196 Cal.App.3d at pp. 1274-75.) Class
13 Members have already been identified by Defendant and notice was provided to all of the above
14 Class Members. (Phoenix Decl. at ¶¶ 3, 5-6.)

15 **2. There is a Community of Interest**

16 The “community of interest” requirement embodies three separate factors: (1)
17 predominant common questions of law or fact; (2) class representatives whose claims are typical
18 of the class; and (3) class representatives who can adequately represent the class. (*Richmond*, 29
19 Cal.3d at p. 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234.)

20 **a. There Are Predominant Common Questions of Law and Fact**

21 “The ultimate question in every case of this type [class actions] is whether...the issues
22 which may be jointly tried, when compared with those requiring separate adjudication, are so
23 numerous and substantial that the maintenance of a class action would be advantageous to the
24 judicial process and to the litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29
25 Cal.4th 1096, 1104-05.)

26 In the present case, Plaintiff alleges that Defendant is liable to the Class for (i) failure to
27 pay overtime wages at the correct regular rate of pay in violation of Labor Code §§ 510, 558, and
28 1194, (ii) failure to pay sick pay at the correct regular rate of pay in violation of Labor Code §§

201-203 and 246, (iii) failure to provide compliant meal periods and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 226.7, 512, and 558, and (iv) failure to provide accurate itemized wage statements to its employees in violation of Labor Code § 226(a). With respect to Plaintiff's claims under Labor Code §§ 201-203, 246, 510, 558, and 1194, Plaintiff contends that Defendant failed to pay overtime wages and sick pay wages at the correct regular rate of pay. In this regard, Plaintiff contends that Defendant failed to factor non-discretionary remuneration, including shift premiums, shift differentials, and annual bonuses, into the calculation of the regular rate for purposes of paying overtime and sick pay wages, and thus Plaintiff and employees were underpaid overtime and sick pay wages. With respect to Plaintiff's claims under Labor Code §§ 226.7, 512, and 558, Plaintiff alleges that Defendant failed to provide compliant meal periods to Plaintiff and employees, and/or failed to pay additional meal premium compensation in lieu of the missed and/or noncompliant meal periods.

Additionally, Plaintiff also alleges derivative and independent wage statement claims under Labor Code § 226(a). Specifically, as a result of the regular rate claims above, Plaintiff asserts that the corresponding wage statements issued to Plaintiff and other employees failed to identify the required information under Labor Code § 226(a). With respect to the independent 226(a) claim, Plaintiff asserts that Defendant issued inaccurate wage statements whenever shift premium wages were paid. In this regard, whenever shift premium wages were paid, Defendant allegedly failed to list the hourly rates of pay and corresponding hours worked on wage statements in violation of Labor Code § 226(a).

As these are all uniform corporate policies, practices, and procedures of Defendant as alleged by Plaintiff, the claims can be jointly tried and thus the predominance requirement is satisfied. Defendant denies all of these claims, denies that liability could be established on a class-wide basis, and contends instead that liability and damages, if any, would need to be conducted on a case-by-case basis.

b. Plaintiff's Claims are Typical of the Class Claims

The purported class representative's claim must be "typical" but not necessarily identical to the claims of other class members; it is sufficient that the representative is similarly situated so

1 that he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983)
2 145 Cal.App.3d 27, 45.) Courts look to whether class members have similar injuries, “whether
3 the action is based on conduct which is not unique to the named Plaintiff,” and whether other
4 class members were injured by the same conduct. *Hanon v. Dataproducts Corp.* (9th Cir. 1992)
5 976 F.2d 497, 508.) The purpose of the typicality requirement “is to assure that the interest of
6 the named representative aligns with the interests of the class.” (*Id.* at p. 508.)

7 Plaintiff asserts she was subjected to the same payroll policies and practices as all other
8 Class Members. In this regard, Plaintiff was employed by Defendant as a non-exempt employee
9 from October 2018 until on or about June 10, 2020. (Declaration of Valeria Rodriguez
10 (“Rodriguez Decl.”) at ¶ 2.) Like other members of the Class, Plaintiff alleges she was
11 underpaid overtime and sick pay wages. (*Id.* at ¶ 3.) Additionally, Plaintiff also claims she was
12 not provided with off-duty meal periods and was not paid the meal period premium
13 compensation. (*Id.* at ¶ 4.) Lastly, Plaintiff alleges she was not issued accurate wage statements
14 whenever she was paid shift premium wages. (*Id.* at ¶ 5.)

15 Based on the above, Plaintiff contends she was subjected to the same policies and
16 practices as other Class Members. Accordingly, typicality is satisfied.

17 **c. Plaintiff Adequately Represented the Class**

18 The class representative, through qualified counsel, must be capable of “vigorously and
19 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151
20 Cal.App.3d 834, 846.)

21 Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues
22 been raised or presented. (Rodriguez Decl. at ¶ 7.) Plaintiff has taken all necessary steps to
23 represent the interests of the Class, including providing information and documents to her
24 counsel, discussing the lawsuit with her counsel on several occasions, and reviewing the various
25 pleadings including the complaint, PAGA letter, settlement agreement, and declarations
26 submitted in this case. (*Id.* at ¶¶ 6, 8.) For such reasons, Plaintiff has adequately represented the
27 Class members and will continue to do so.

28 //

1 **B. Risks, Expenses, and Complexity of Further Litigation**

2 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the
3 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
4 involved in not prevailing on one or more of the causes of action or theories alleged in his
5 Complaint, the possibility of non-certification, and potential for appeals. These risks on class
6 certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank*
7 *Nat'l Ass'n* (2014) 59 Cal.4th 1.

8 As stated above, Defendant alleges that Plaintiff would not be able to obtain class
9 certification. Based on the foregoing, there were risks that Plaintiff would not have obtained the
10 total amount of damages and penalties alleged on behalf of the class, and a substantial amount of
11 complex issues that would have necessitated significant expenditure of time and expenses.
12 Therefore, the risks, expenses and complexity of further litigation warrant granting of this
13 Motion.

14 **C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the**
15 **Settlement by Class Members All Strongly Support the Conclusion that the**
16 **Settlement is Fair, Adequate, and Reasonable**

17 Without reiterating the Parties' showing that the Settlement Agreement and the
18 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
19 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
20 Settlement Agreement was the product of negotiations between highly able and experienced
21 attorneys on both sides who possessed the relevant data and extensive legal research which they
22 had carefully analyzed. (Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶¶ 3-4.) The
23 Parties engaged in arm's length negotiations at mediation with a highly experienced and known
24 mediation, Michael J. Loeb, Esq., and continued further negotiations facilitated by Mr. Loeb for
25 several months (*Id.*)

26 The results after mailing of the Class Notice support confirmation of the Court's
27 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
28 fact that only one class member opted out and zero class members submitted any written
objections to the settlement. (Phoenix Decl. at ¶¶ 8-9.) With the significantly high rate of

1 participation in the settlement by class members (99.53%), the Court may appropriately infer
2 that the class action settlement is fair, adequate, and reasonable. (*See Class Plaintiffs v. City of*
3 *Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.)

4 **D. Under Well-Established Legal Principles, the Court Should Grant Final**
5 **Approval of the Settlement**

6 **1. Standard of Review**

7 On a motion for final approval of a class action settlement under California Code of Civil
8 Procedure Section 382 and California Rule of Court 3.769, a court's inquiry is whether the
9 settlement is "fair, adequate and reasonable." (*Officers for Justice v. Civil Serv. Comm'n* (9th
10 Cir. 1982) 688 F.2d 615, 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n* (1983) 459 U.S.
11 1217.) A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
12 "the interests of the class are better served by the settlement than by further litigation." (*See*
13 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL").)
14 The law favors settlement, particularly in class actions and other complex cases, where
15 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
16 (*See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (4th ed. 2002);
17 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco*
18 *Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

19 Although the Court possesses "broad discretion" in determining that a proposed class
20 action settlement is fair, the Court's role must be limited to the extent necessary to reach a
21 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
22 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
23 adequate to all concerned. (*See Officers for Justice*, 688 F.2d at p. 625.) Accordingly, the Court
24 should give due regard to what is otherwise a "private consensual agreement" between the
25 parties. (*Id.*; *see also Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL
26 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, *aff'd*
27 *sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 ("The judicial role in reviewing a
28 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
or imposing conditions on it. The judge cannot rewrite the agreement").)

1 A court's approval of a class action settlement will only be reversed for a clear abuse of
2 discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Officers for Justice*,
3 688 F.2d at p. 626 ("reverse only upon a strong showing that the district court's decision was a
4 clear abuse of discretion"); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir.
5 1993) 1993 WL 326453; *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

6 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

7 "It cannot be overemphasized that neither the trial court in
8 approving the settlement nor this Court in reviewing that approval
9 have the right or duty to reach any ultimate conclusions on the
10 issues of fact and law which underlie the merits of the dispute. It is
11 well settled that in the judicial consideration of proposed
12 settlements, 'the [trial] judge does not try out or attempt to decide
13 the merits of the controversy,' [citation] and the appellate court
14 'need not and should not reach any dispositive conclusions on the
15 admittedly unsettled legal issue.'"

16 (*7-Eleven Owners for Fair Franchising v. Southland Corp* (2000) 85 Cal.App.4th 1135, 1146.)

17 **2. The Settlement is Presumed to Be Fair**

18 The Court should begin its analysis with the presumption that the settlement is fair and
19 should be approved:

20 [A] presumption of fairness exists where: (1) the settlement is
21 reached through arm's-length bargaining; (2) investigation and
22 discovery are sufficient to allow counsel and the court to act
23 intelligently; (3) counsel is experienced in similar litigation; and
24 (4) the percentage of objectors is small.

25 (*Dunk*, 48 Cal.App.4th at p. 1802; *accord*, *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980)
26 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, 720 F.Supp. at p. 1387.)

27 The settlement in the case at bar warrants approval and carries a presumption of fairness.
28 As previously noted in the application for Preliminary Approval, this current settlement was
negotiated at arm's length after a full day of mediation and continued settlement discussions
through an experienced wage-and-hour mediator, Michael J. Loeb, Esq. (Tulyathan Decl. at ¶ 3.)

Second, Class Counsel engaged in extensive factual investigation before settling,
including exchange of informal discovery before mediation. Specifically, Class Counsel
reviewed class data and data pertaining to the number of class members, the number of
workweeks at issue, time and payroll records for the class members, as well as information

1 pertaining to Defendant’s pertinent policies, practices, and procedures. (*Id.* at ¶ 4.) Class
2 Counsel subsequently engaged the services of an expert to evaluate and calculate the potential
3 class and PAGA penalties available in this case. (*Id.*)

4 Further, Class Counsel is highly experienced in this type of litigation. As shown in the
5 supporting declarations, Class Counsel has significant experience in class actions and
6 employment wage and hour matters. (Declaration of Larry W. Lee (“Lee Decl.”) at ¶¶ 8-9;
7 Tulyathan Decl. at ¶¶ 11-13; Declaration of William L. Marder (“Marder Decl.”) at ¶¶ 4-8.)

8 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation**
9 **Favor Final Approval**

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
11 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
12 the risks inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55
13 F.3d 768, 806 (“present value of the damages plaintiffs would likely recover if successful,
14 appropriately discounted for the risk of not prevailing, should be compared with the amount of
15 the proposed settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 1
16 53, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17.)

17 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
18 been potentially responsible for Defendant’s costs. (Rodriguez Decl. at ¶ 10.) As such, should
19 individual current or former employee of Defendant bring individual claims on the same causes
20 of action, they would each face the uncertainty of prevailing and the possibility of paying costs
21 to Defendant. Accordingly, such claims likely would not be brought by many of these current
22 and former employees—thus, this lawsuit achieves a true benefit for the class that they might not
23 otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been
24 reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant’s
25 litigation costs.

26 The risks of this case were weighed by Class Counsel and should be considered a
27 significant factor by the Court in its determination of final approval. Class Counsel obtained a
28 significant settlement for the Class that resulted in a fair recovery which at the same time
provides for finality and no risk of costs by the Class Members or Class Representative.

1 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
2 significant legal and factual battles that otherwise may have prevented the Class from obtaining
3 any recovery at all. While Class Counsel believes the Class Members' claims are meritorious
4 and can be successfully litigated, they are experienced and fully understand the inherent risks
5 and uncertainty involved with such matters as the resolution of class certification, the outcome of
6 a potential trial, and the outcome of any appeals that would inevitably follow should the Class
7 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
8 settlement. Because the settlement provides immediate and substantial relief, without the
9 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
10 costs—Class Counsel believe that the settlement warrants the Court's final approval.

11 **4. The Complexity, Expense, and Likely Duration of Continued** 12 **Litigation Against Defendant Favor Final Approval**

13 Another factor considered by courts in approving a settlement is the complexity, expense,
14 and likely duration of the litigation. (*See Officers for Justice*, 688 F.2d at p. 625; *Girsh*, 521 F.2d
15 at p. 157.) In applying this factor, the Court must weigh the benefits of the settlement against the
16 expense and delay involved in achieving an equivalent or more favorable result at trial. (*Young*
17 *v. Katz* (5th Cir. 1971) 447 F.2d 431, 433-34.)

18 As noted above, continued litigation could have led to appeals on several issues. On the
19 other hand, the settlement that was reached provides to all Class Members—regardless of their
20 means—fair relief in a prompt and efficient manner. Were the Court to deny final approval, the
21 Class Members would be left without a remedy as a practical matter and courts across the State
22 would have to address the issues presented here in a piecemeal, costly, and time-consuming
23 manner. The settlement in this case is therefore consistent with the “overriding public interest in
24 settling and quieting litigation” that is “particularly true in class action suits.” (*See Van*
25 *Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41.) Here, this
26 case could have involved years of litigation, especially given that the sick pay regular rate class
27 claim has never been certified by a California court before.

28 **5. The Opinion of Experienced Counsel Favors Final Approval**

Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best

1 interest of the Class Members as a whole. (Lee Decl. at ¶ 5; Tulyathan Decl. at ¶ 5; Marder
2 Decl. at ¶ 2.) Similarly, counsel for Defendant is in favor of this settlement. The endorsement of
3 qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled
4 to significant weight by the Court in its final approval determination. (*See Officers for Justice*,
5 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F.Supp. at p. 617; *Linney*, 151 F.3d at p.
6 1242.)

7 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
8 **SHOULD BE APPROVED**

9 As referenced in the Motion for Preliminary Approval, to the extent any uncashed
10 settlement funds remain after 180 days of the mailing of the individual settlement checks, the
11 Parties have agreed that all such uncashed settlement funds shall be distributed to the *cy pres*
12 recipient Asian Americans Advancing Justice – Los Angeles (AAJC), a legal and civil rights
13 non-profit organization that provides free legal aid to low-income communities with a focus on
14 Asian Americans, Native Hawaiians, and Pacific Islanders, in accordance with C.C.P. § 384.

15 **V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
16 **APPROVED**

17 Class Representative Valeria Rodriguez requests a total enhancement of \$10,000.00.
18 Plaintiff provided significant assistance with the lawsuit, including discussing the case with
19 Class Counsel on multiple occasions, searching for and providing documents and information
20 regarding Defendant’s practices at issue in the case, including her pay records and employment
21 documents, and reviewing the various files and pleadings submitted in this case. (Rodriguez
22 Decl. at ¶ 6.) Accordingly, Plaintiff provided invaluable information, evidence, and documents
23 that resulted in this settlement.

24 In addition to the invaluable services that he provided, Plaintiff also took significant
25 risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on
26 behalf of the Class. (Rodriguez Decl. at ¶ 10.) Because the claims alleged by the Class
27 Representative involved the payment of costs to the prevailing party, Plaintiff could have
28 possibly faced paying the costs of Defendant, had he not prevailed in this action. (*Id.*) Despite
this, however, Plaintiff agreed to pursue this case on behalf of the Class.

1 Also, given that future employers are much less likely to hire individuals who have filed
2 employment-related lawsuits, particularly cases of this nature, the Class Representative also
3 faced significant risk in not being able to find suitable employment and/or face retaliation from
4 prospective employers, all as a result of filing of this case against Defendant. Plaintiff took these
5 risks upon herself to the benefit of the Class. (Rodriguez Decl. at ¶ 10.) Class Members did not
6 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor
7 did they have to face the potential for retaliation and not getting future employment had they
8 filed a lawsuit which is a public record. These are significant benefits that weigh in favor of
9 granting the requested enhancement. Moreover, this litigation has resulted in a significantly
10 valuable benefit to the Class, i.e. average award to class members in the amount of \$899.15 with
11 the highest individual settlement payment to class members at \$1,403.87, and Plaintiff took on
12 substantial risks in helping to get this financial benefit to the Class. As such, the enhancement
13 should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation.

14 Finally, Plaintiff provided a general release and waiver of the protections of Civil Code
15 § 1542, which other Class Members did not have to do. (Settlement Agreement at ¶¶ 46, 74;
16 Rodriguez Decl. at ¶ 11.) This is a more extensive release than that provided by the Class at
17 large, also supporting the request for the enhancement.

18 Courts have routinely granted approval of settlements containing such enhancements.
19 (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300
20 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio
21 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of
22 \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F.Supp.2d 907, 913-14 (granting a
23 \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio
24 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
25 *Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52
26 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th
27 Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 Incentive award to class representative in
28 ERISA case).

1 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

2 Class Counsel seeks a fee award calculated at one-third of the Maximum Settlement
3 Amount, or \$133,333.34, for the successful prosecution and resolution of this action. California
4 state and federal courts have recognized that an appropriate method for determining award of
5 attorneys' fees is based on a percentage of the total value of benefits to Class Members by the
6 settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Serrano v. Priest*
7 (1977) 20 Cal.3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;
8 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this
9 equitable doctrine is to avoid unjust enrichment to the Class and to "spread litigation costs
10 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
11 burden alone." (*Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.)

12 Under California law, the award of attorneys' fees in common fund wage and hour class
13 action settlements is under the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1
14 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that
15 when class action litigation establishes a monetary fund for the benefit of the class members, and
16 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
17 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
18 created").) Under the percentage of the fund method, the Court's objective remains to "mimic
19 the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
20 ("When a fee is set by a court rather than by contract, the object is to set it at a level that will
21 approximate what the market will set...The judge, in other words, is trying to mimic the market
22 in legal services").)

23 Here, the fee award representing approximately one-third of the fund clearly falls within
24 that range and is consistent with other rulings of other courts and comprehensive surveys of class
25 action settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S.
26 Dist. LEXIS 61796, 23 (recognizing that "courts may award attorney's fees in the 30-40% range
27 in wage and hour class actions that result in recovery of a common fund under \$10 million"); *see*
28 *also Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study: 1993-*

2008, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range sought here are consistent with market rates).) The results delivered by Class Counsel also support the requested percentage of the fund. Here, Plaintiff and his counsel secured a \$400,000.00 non-reversionary common fund settlement.

Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant to the... reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically notified Class Members that Class Counsel would be seeking up to \$133,333.34 in attorneys’ fees. To date, no Class Member has objected to the settlement. This strong favorable response also supports the requested fees.

In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

(*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) For Class Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a corporate defendant. As such, the requested fee should be awarded.

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of litigation costs, in the amount of \$12,302.82 is fair and reasonable, especially in light of the fact that the Parties agreed that Plaintiff’s counsel may seek up to \$20,000.00 as reimbursement for litigation costs under the Settlement Agreement. As set

1 forth in Plaintiff's counsel's declaration, the costs were all directly incurred in the prosecution of
2 this action, including but not limited to, filing and service fees, court fees, CourtCall fees,
3 postage fees, costs associated with mediation, and expert fees. (Tulyathan Decl. at ¶ 14, Ex. A.)
4 As such, this requested costs should be approved as fair and reasonable.

5 **VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
6 **APPROVED**

7 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
8 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement
9 funds. As shown on the Declaration of Kevin Lee, the settlement administration fees expended
10 in this matter amount to a total of \$5,000.00, which is the amount that was agreed upon by the
11 Parties. (Phoenix Decl. at ¶ 16, Ex. B.) For such reasons, it is requested that the Settlement
12 Administrator's fees be approved.

13 **IX. CONCLUSION**

14 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
15 respectfully submits that the standards for final approval have been met and the terms of the
16 Settlement Agreement are fair, adequate, and reasonable.

17 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form
18 proposed and submitted:

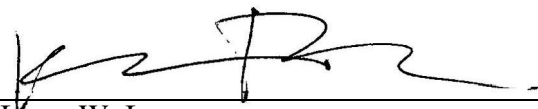
- 19 1. Granting final approval to the proposed Settlement Agreement in this action;
- 20 2. Approving distribution of the settlement funds to the Class Members pursuant to
21 the terms of the Settlement Agreement;
- 22 3. Approving Plaintiff's request for an award of the class representative
23 enhancement of \$10,000.00, with payment pursuant to the terms of the Settlement Agreement;
- 24 4. Approving Class Counsel's request for an award to Class Counsel for
25 \$133,333.34 in attorneys' fees and \$12,302.82.00 in costs, with payment pursuant to the terms of
26 the Settlement Agreement;
- 27 5. Approving Plaintiff's request for payment of the settlement administration costs
28 to Phoenix Settlement Administrators in the amount of \$5,000.00, with payment pursuant to the
terms of the Settlement Agreement;

1 6. Approving Plaintiff's request for payment to the LWDA for \$30,000.00, with
2 payment pursuant to the terms of the Settlement Agreement; and

3 7. Entering final judgment as to all members of the Class in this action.
4

5 DATED: May 12, 2022

DIVERSITY LAW GROUP

6
7 By: 
8 Larry W. Lee
9 Mai Tulyathan
10 Attorneys for Plaintiff Valeria Rodriguez, the
11 Class, and Aggrieved Employees
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On May 12, 2022, I served the following document(s) described as:

- 1. PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 3. DECLARATION OF LARRY W. LEE IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 4. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 5. DECLARATION OF VALERIA RODRIGUEZ IN SUPPORT OF PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 6. DECLARATION OF KEVIN LEE ON BEHALF OF PHOENIX SETTLEMENT ADMINISTRATORS**
- 7. [PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF’S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

Thomas H. Petrides
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Ashley D. Stein
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Vedder Price (CA), LLP
1925 Century Park East, Suite 1900
Los Angeles, CA 90067
Attorney for Defendant John Bean Technologies Corporation

1 X BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to be
2 served through the Odyssey eFileCA E-Filing System at the website
3 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
4 the above-entitled case. The service transmission was reported as complete and a copy of the
5 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
6 in this office.

7 I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct. Executed on May 12, 2022, at Los Angeles, California.

9 
Erika Mejia