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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SUNNY K. TAM, on behalf of himself and
other similarly-situated employees

Plaintiff,

v.

Q TECH CORPORATION, a California
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS REPRESENTATIVE
SERVICE PAYMENT**

Hearing Information

Date: March 22, 2023

Time: 9:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff Sunny K. Tam seeks final approval of a \$650,000 non-reversionary wage and hour
3 class action and Private Attorneys General Act (PAGA) Settlement with Q Tech Corporation
4 (Defendant), paying an estimated \$327,789.02 to 180 current and former non-exempt, hourly-paid
5 employees of Defendant who worked in California at any time during the time period of May 17, 2017,
6 to March 13, 2022.

7 Plaintiff has achieved an excellent result in this litigation, embodied in the Settlement
8 Agreement. The proposed Settlement provides substantial benefits to the Class and is the product of
9 aggressive litigation of Class Counsel to obtain the best possible result for the Class Members.

10 As there is no reversion to Defendant, 100% of the money will be paid out, and no Class
11 Member has, to date, opted out or objected. The estimated average payment of over \$1,800 per Class
12 Member is an excellent result.

13 The Settlement of this Action is fair, reasonable, and adequate and in the best interests of the
14 Class as demonstrated by the incredible response and approval by the Class. Accordingly, final
15 approval should be granted.

16 **II. RELEVANT BACKGROUND**

17 **A. Litigation History**

18 On May 17, 2021, Plaintiff filed a putative class action complaint against Q Tech Corporation
19 alleging: (1) failure to pay minimum wages (Labor Code §§ 1194, 1197, et seq. and the applicable
20 IWC Wage Order); (2) failure to pay overtime wages (Labor Code §§ 510, 1194, et seq. and the
21 applicable IWC Wage Order); (3) failure to provide timely, off-duty meal periods or compensation in
22 lieu thereof (Labor Code §§ 226.7, 512, and the applicable IWC Order); (4) failure to provide or
23 authorize paid 10-minute, off-duty rest periods or compensation in lieu thereof (Labor Code § 226.7
24 and the applicable IWC Order); (5) failure to provide accurate wage statements (Labor Code §§ 226,
25 1174); (6) failure to timely pay wages to terminated or resigned employees (Labor Code §§ 201, 202
26 and 203); (7) Violation of the Unfair Competition Law (Business & Professions Code §§ 17200, et
27 seq.) On May 25, 2022, Plaintiff filed a separate action seeking recovery civil penalties under PAGA
28 arising out of the same causes of action, as well as civil penalties for violations of Labor Code §§ 204,

1 1174, and 1198. These actions were deemed related by Court order on July 12, 2021, with the class
2 complaint being designated as the lead case. Declaration of Michael D. Singer, (“Singer Decl.”), ¶12.

3 **B. The Settlement**

4 Plaintiff and Defendant attended a full day of mediation on December 13, 2021, with Steven
5 J. Rottman. After a full day of arms’-length negotiations, the Parties reached an agreement,
6 memorialized in the Settlement Agreement, the amended version of which the Court preliminarily
7 approved. Singer Decl. ¶13.

8 The Parties agreed the Action may be settled for the Gross Settlement Amount of \$650,000
9 (GSA). The GSA includes, subject to Court approval: (a) attorneys’ fees up to \$216,666.67; (b) actual
10 costs of \$ 15,544.31; (c) Service Payment to Plaintiff up to \$5,000; (d) Settlement Administration
11 expenses up to \$10,000; (e) PAGA Payment to the Labor Workforce and Development Agency
12 (“LWDA”) of \$56,250 (75% of the \$75,000 PAGA Penalty); and (f) PAGA Payment of \$18,750 to
13 PAGA Members (25% of the PAGA Penalty). Singer Decl. ¶14.

14 A payment will be made to the estimated 147 PAGA members based on the number of pay
15 periods worked during the PAGA period, regardless of whether they opt out of the Class Settlement.
16 Singer Decl. ¶15.

17 After all Court-approved deductions from the GSA, the remaining sum, the Net Settlement
18 Amount, estimated at \$327,789.02 will be distributed to Settlement Class Members (those Class
19 Members who did not opt-out). Submission of a claim form is not required. Payments are allocated
20 one-fifth to wages and four-fifths to interest and penalties. Form 1099 will be issued for interest and
21 penalties and Form W-2 for wages. Singer Decl. ¶16.

22 **C. Preliminary Approval**

23 On August 31, 2022, Plaintiff moved for Preliminary Approval and, per the Court’s request,
24 submitted supplemental briefing and an amended Settlement Agreement on October 28, 2022. The
25 Court granted preliminary approval on November 21, 2022. Singer Decl. ¶17.

26 The Order conditionally certified the Settlement Class, appointed Class Counsel and the Class
27 Representative, approved ILYM Group, Inc. (“ILYM”) as Settlement Administrator, preliminarily
28 approved the Settlement Agreement, and set March 22, 2023, for the Final Approval Hearing. Singer

Decl. ¶18.

D. Dissemination of Court-Approved Class Notice

On December 21, 2022, ILYM mailed the Notice Packet to the Class Members, informing them they had until February 21, 2023, to postmark and return a written objection or request exclusion. Declaration of McKenna Snow, on behalf of the administrator ILYM Group, Inc., (“ILYM Decl.”), ¶7, Ex. A.

To date, no Class Members have objected or requested exclusion from the Settlement. ILYM Decl. ¶¶11-12. An updated declaration from an ILYM representative will be filed before the Final Approval hearing with updated numbers on these issues. Singer Decl. ¶36.

Each Class Member will receive an estimated average gross payment of \$1,821.05, with the estimated highest gross payment being \$2,937.93 and the estimated lowest gross payment being \$23.32. ILYM Decl. ¶14.

III. ARGUMENT

A. The Settlement is Fair, Adequate, and Reasonable.

“[A] Class Action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the Court directs.” (Code Civ. Proc. §1781(f).) In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure § 382, the Court’s overriding concern is whether the proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

In practical terms, the Settlement of a Class Action follows three parts: 1) Preliminary Approval of the Proposed Settlement; 2) Notice to Class Members; and 3) a Final Approval Hearing or “Fairness Hearing” at which evidence and argument may be heard on the fairness, adequacy, and reasonableness of the Settlement. Here, the Court has given Preliminary Approval of the Settlement and Notice has been sent to all Class Members.

A presumption of fairness exists where: 1) the settlement is reached through arm’s length bargaining; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small.

1 (*Dunk v. Ford Motor Company, supra*, 48 Cal.App.4th at p. 1802.)

2 To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a class
3 action requires court approval. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
4 Cal.App.3d 573, 578-579.) The purpose of the requirement is the protection of those class members,
5 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
6 parties. (*Officers for Justice v. Civil Serv. Com'n of City and County of San Francisco* (1982) 688 F.2d
7 615, 624.) The trial court has broad powers to determine whether a proposed settlement in a class action
8 is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.)

9 At the final approval hearing, the court should consider the relevant factors, such as the strength
10 of the plaintiff's case, the risk, expenses, complexity, and likely duration of further litigation, the risk
11 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
12 completed and the stage of the proceedings, the experience and views of counsel, and the reaction of
13 the class members to the proposed settlement. (*Officers for Justice, supra*, 688 F.2d at p. 624.) "This
14 list is not exhaustive and should be tailored to each case. Due regard should be given to what is
15 otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Company, supra*,
16 48 Cal.App.4th at p. 1801.)

17 This Court considered several of these factors in its Order granting the Motion for Preliminary
18 Approval of Class Action Settlement. (Order dated 11/21/22, ¶ 3.) The Court preliminarily determined
19 that the settlement amount is fair and reasonable to the Class Members when balanced against the
20 probable outcome of further litigation relating to class certification, liability, and damages issues, and
21 potential appeals; significant investigation, research, and informal discovery have been conducted
22 such that counsel are able to reasonably evaluate their respective positions; settlement will avoid
23 substantial costs, delay, and risks that would be presented by the further prosecution of the litigation;
24 and the proposed Settlement has been reached as the result of intensive, serious, and non-collusive
25 negotiations facilitated by an experienced mediator. (*Ibid.*) Because there has been no material change
26 regarding these factors since that Order, the Court should adopt its reasoning and find that the strength
27 of Plaintiff's case and risk of further litigation, the consideration offered, the extent of discovery
28 completed and stage of the proceedings, and the experience and views of Counsel all militate in favor

1 of granting the Motion for Final Approval of Class Action Settlement.

2 Regarding the reaction of the class members, no Class Member has objected or opted-out to
3 date. The lack of objections supports the presumption that the Settlement is fair, adequate, and
4 reasonable. (*In re: Omnivision Techs.* (N.D. Cal. 2007) 559 F. Supp.2d 1036, 1043 [“By any standard,
5 the lack of objection of the Class Members favors approval of the Settlement.”].)

6 Nothing has changed since the Court granted preliminary approval of the settlement to negate
7 the presumption of fairness. With the Class’s favorable reaction to the Settlement thus far, Class
8 Counsel remain convinced the Settlement is in the Class’s best interest based on detailed knowledge of
9 the issues presented and the negotiations. The length and risks of trial and the perils of litigation that
10 affect the value of the claims were all carefully weighed. The affirmative defenses asserted by
11 Defendant, the uncertainty of obtaining and maintaining certification, the prospect of an adverse
12 summary judgment ruling, the difficulties of complex litigation, the lengthy process of establishing
13 damages, and the risks and delays of appeals, were all carefully considered by Class Counsel in arriving
14 at the Settlement. In sum, the Settlement is fundamentally fair, adequate, and reasonable. Singer Decl.
15 ¶19.

16 **B. The Court should approve the PAGA portion of the Settlement.**

17 The settlement of a PAGA claim requires court approval. (Labor Code § 2699(l)(2) [“The
18 superior court shall review and approve any settlement of any civil action pursuant to this part”].)
19 However, a PAGA claim is not considered a class action but a law enforcement action, and,
20 accordingly, the settlement thereof does not have to meet the requirements of a class action. (See *Arias*
21 *v. Superior Court* (2009) 46 Cal.4th 969, 980-988 [affirming lower court’s holding that “plaintiff need
22 not satisfy class action requirements” to assert a PAGA claim]; *Gutilla v. Aerotek, Inc.* (E.D. Cal. Mar.
23 22, 2017) No. 115CV00191DADBAM, 2017 WL 2729864, at *3; *Pedroza v. PetSmart, Inc.* (C.D. Cal.
24 Jan. 28, 2013) 2013 WL 1490667, at *15.) A court reviewing a PAGA settlement need only “ensur[e]
25 that a negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531,
26 549.)

27 Here, the Parties apportioned \$75,000 for resolution of Plaintiff’s PAGA claims. Of this
28 amount, 25%, or \$18,750, will be distributed to PAGA Members and 75%, or \$56,250, will be

distributed to the LWDA.

The settlement amount of PAGA penalties here provides an even bigger benefit to the LWDA than allocations that have been approved in other settlements. (See, e.g., *Viceral v. Mistras Grp. Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869, at *8 [approving an allocation of \$20,000 of a \$6,000,000 settlement to the PAGA civil penalties]); *In re Uber FCRA Litig.* (N.D. Cal. June 29, 2017, No. 14-CV-05200) 2017 WL 2806698, at *2 [approving an allocation of \$7,500 of a \$7,500,000 settlement to the PAGA civil penalties].)

The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77, because “it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. The Aggrieved Employees PAGA Members will receive an estimated average payment of \$104.17, with the estimated highest payment being \$167.79 and the estimated lowest payment being \$3.17. ILYM Decl. ¶15.

Accordingly, because it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws, the Court should approve the PAGA settlement.

C. Class Counsel’s Request for Attorneys’ Fees is Reasonable.

1. Attorneys’ fees are properly calculated as a percentage of the total value created for the benefit of the Settlement Class.

Class Counsel seek a fee award calculated as a percentage of the total value of settlement for the successful prosecution and resolution of this action. An appropriate method for determining award of attorneys’ fees is based on a percentage of the total value of benefits to Class Members by the settlement. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.*, *supra*, 557 F.2d at p. 769.)

The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, the court may

1 spread litigation costs proportionally among all the beneficiaries to compensate those who created the
2 fund. “Where the lawsuit results in the recovery of a fund or property benefitting others as well as the
3 plaintiff (e.g., a class action), the court has inherent equitable power to order Plaintiff’s attorney’s fees
4 paid out of the common fund or property.” (*Serrano, supra*, 20 Cal.3d at p. 35.)

5 Such ‘fee spreading’ assures that all those benefited by the litigation pay their fair share of
6 obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.) “Percentage
7 fees have traditionally been allowed in such common fund cases.” (*Id.* at p. 27.) The California
8 Supreme Court has long approved of awarding fees as a percentage of the settlement. (*Serrano, supra*,
9 20 Cal.3d at p. 35.) California courts have been expressly authorized to award attorneys’ fees so as “to
10 ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
11 incomparable litigation.” (*Lealao, supra*, 82 Cal.App.4th at p. 50.) As *Lealao* explained, in a
12 representative action, courts must consider the amount of attorney fees typically negotiated in
13 comparable litigation: “Given the unique reliance of our legal system on private litigants to enforce
14 substantive provisions of law through class and derivative actions, attorneys providing the essential
15 enforcement services must be provided incentives roughly comparable to those negotiated in the
16 private bargaining that takes place in the legal marketplace, as it will otherwise be economic for
17 defendants to increase injurious behavior. It has therefore been urged (most persistently by Judge
18 Richard Posner) that in defining a “reasonable fee” in such representative actions the law should
19 “mimic the market.” (*Id.* at p. 47.)

20 In this case, the fees are being paid from the common fund; accordingly, the fee should be
21 awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund cases
22 under *Lealao*. As *Lealao* acknowledged, in cases like this one, the percentage-of-the-benefit approach
23 should be considered because “it better approximates the workings of the marketplace than the lodestar
24 approach.” (*Lealao, supra*, 82 Cal.App.4th at p. 49; see also *Apple Computer, Inc. v. Superior Court*
25 (2005) 126 Cal.App.4th 1253, 1270 [observing that “attorney fees awarded under the common fund
26 doctrine are based on a ‘percentage-of-the-benefit’ analysis”].)

27 Class Counsel seeks a fee award calculated as a percentage of the total Settlement Amount for
28 the successful prosecution and resolution of this action. For Class Counsel, the fees here were wholly

1 contingent in nature, and the case presented far more risk than the usual contingent fee case. There
2 was the prospect of the enormous cost inherent in class action litigation, as well as a long battle with
3 a corporate defendant. Class Counsel risked not only their time but also money to ensure the successful
4 litigation of this action on behalf of all Class Members.

5 The fee request is in line with awards in similar cases in California and nationwide, consistent
6 with market rates. Within the past several years, Class Counsel has been awarded one-third of a
7 common fund in dozens of cases, a list which are listed in the accompanying declaration. Singer Decl.
8 ¶29.

9 Accordingly, the requested percentage of the common fund is appropriate, and Class Counsel
10 respectfully requests that the Court enter an Order to that effect.

11 **2. An Optional Lodestar Cross-Check Confirms the Reasonableness of**
12 **Class Counsel's Attorneys' Fees.**

13 California courts have been expressly authorized to award attorneys' fees so as "to ensure that
14 the fee awarded is within the range of fees freely negotiated in the legal marketplace incomparable
15 litigation." (*Lealao, supra*, 82 Cal.App.4th at p. 50.) Specifically, *Lealao* holds that if the court sets
16 fees under a lodestar, the multiplier should consider what counsel would have earned on the free
17 market. The free market is determined by the percentage of the common fund, not the lodestar amount.
18 (*Ibid.*) Accordingly, whatever method the court uses to set fees, the court should look to what the free
19 market would bear under any circumstances. Even if the court awards fees under the lodestar method,
20 under *Lealao*, the lodestar fees can be adjusted by a multiplier to reflect the percentage of the fund.
21 (*Id.* at pp. 19, 50.)

22 Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier
23 in order to make an appropriate fee award. (*Serrano, supra*, 20 Cal. 3d at p. 48.) The pertinent factors
24 include the difficulty of the questions involved and the skill in presenting them, the contingent nature
25 of the fee award, the extent to which the litigation precluded other employment, and the percentage-
26 of-the-fund the attorney would have received on the fair market. (*Ibid.*; *Lealao, supra*, 82 Cal.App.4th
27 at p. 49.) However, this list is not exhaustive and the Court can consider other factors it deems
28 important in setting the multiplier. (*Id.* at p. 40.)

1 In the present case, Class Counsel has expended a total of approximately 110.6 hours and a
2 lodestar of approximately \$62,132.00 through the date of submission of this Motion (i.e., exclusive of
3 the final approval motion and hearing and post-settlement administration activities). Class Counsel
4 requests a fee of \$216,666.67, which is a multiplier of approximately 3.49. This multiplier is
5 appropriate for several reasons. Singer Decl. ¶¶21, 22, 26, Ex. 1 - Consolidated Summary of Class
6 Counsel’s Time & Costs; Declaration of Joseph Tojarieh, (“Tojarieh Decl.”), ¶10.

7 First, calculating attorney fees in this case based on the lodestar method (without a multiplier)
8 instead of as a percentage of the common fund would discourage early resolution of litigation. In other
9 words, because of Class Counsel’s swift and effective advocacy, the action settled early in the
10 litigation, saving the resources of the Court and the parties, and awarding Class Members payments in
11 a timely manner. (See Stern, William L., *Business & Professions Code Section 17200 Practice*, Ch.
12 8-A, § 8:130 (Rutter 2023).) Thus, public policy supports a multiplier of the lodestar.

13 This multiplier is also appropriate because this complex action involved specialized issues, the
14 fee award was contingent on the success of the action, which at all times posed a risk to Class Counsel
15 and whose outcome was uncertain, Class Counsel nevertheless achieved exceptional results for Class
16 Members, and Class Counsel’s 1/3 contingency percentage is routinely accepted on the open market.
17 Singer Decl. ¶ 23.

18 Further, courts in similar cases have awarded multipliers higher than that requested here (See,
19 e.g., *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 [affirming lodestar cross-check
20 with a multiplier of 3.65, and explaining that that multiple “was within the range of multipliers applied
21 in common fund cases”]; *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust*
22 *Litig.* (9th Cir. 2019) 768 F. App’x 651, 653 [lodestar cross-check with multiplier of 3.66]; see also
23 *Craft v. Cty. of San Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1125 [lodestar cross-check
24 with a multiplier of 5.2, noting that “there is ample authority for such awards resulting in multipliers
25 in this range or higher.”].)

26 As such, and, the efficiency with which settlement was reached, the results and quality of the
27 settlement, the contingent risk, and comparator cases further support the reasonableness of Class
28 Counsel’s request.

1 **a. Class Counsel's Hourly Rates are Reasonable**

2 Class Counsel's hourly rates, detailed in the accompanying Declaration of Michael Singer, are
3 fair and reasonable and have been approved by courts in connection with class action and individual
4 settlements. Singer Decl. ¶¶24, 28, 29.

5 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
6 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)
7 The court may consider other factors when determining a reasonable hourly rate, such as the nature of
8 the work performed, the relevant area of expertise, and the attorney's customary billing rates.
9 (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.) One difficulty in
10 determining the hourly rate of attorneys of similar skill and experience in the relevant community is
11 the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any
12 consumers pay attorneys' fees on an hourly basis for such extensive litigation, thus retainer agreements
13 in such cases are based on a contingency fee relationship. Although there is no customary billing rate,
14 the nature of class action work should be strongly considered by the court.

15 Class Counsel's skill and experience support the hourly rates requested. These rates are in line
16 with those approved in wage and hour class action litigation in California and have been approved by
17 numerous California state and federal courts. Singer Decl. ¶¶24, 29.

18 As leading attorneys in the field, Class Counsel continually monitors prevailing market rates
19 of defense and plaintiff law firms and set the billing rates to follow those attorneys and staff of
20 comparable skill, qualifications, and experience. Other wage and hour attorneys working as Class
21 Counsel before California courts charge comparable if not higher rates. Singer Decl. ¶ 25, Ex. 2 -
22 Laffey Matrix.

23 **b. Class Counsel's Hours Were Necessary and Reasonable**

24 Courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time
25 records are *not* required. "Testimony of an attorney as to the number of hours worked on a particular
26 case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time
27 records." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)

28 Reasonable hours include, in addition to time spent during litigation, the time spent before the

1 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
2 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.)
3 Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim.
4 (*Serrano v. Unruh*, (1982) 32 Cal.3d 621, 639.)

5 Here, Class Counsel's hours are fair and reasonable. Class Counsel have spent approximately
6 110.6 hours litigating this case and bringing the settlement to fruition and expect to expend
7 approximately 30 additional hours in drafting the motion at bar and supplementing it after the opt-out
8 period has expired, administering the Settlement, preparing for and attending the Final Approval
9 Hearing, and distributing the Settlement funds. Class Counsel requests that the Court find that these
10 hours were reasonably expended in this litigation. Singer Decl. ¶¶21, 22, 26, Ex 1 - Consolidated
11 Summary of Class Counsel's Time & Costs; Tojarieh Decl. ¶10.

12 **D. Litigation Costs are Reasonable and Reimbursable.**

13 The request for reimbursement of costs is fair and reasonable. Class Counsel seeks
14 reimbursement of \$15,544.31 in litigation expenses. This is almost \$5,000.00 less than the cost
15 estimate that was preliminarily approved. Singer Decl. ¶ 33, Ex. 3 – Itemization of Costs; Tojarieh
16 Decl. 10, Ex. 3 – Itemization of Costs.

17 These costs are all necessary to the litigation and are approved in the Parties' Settlement
18 Agreement. As such, these requests should be approved.

19 **E. The Settlement Administration Costs Are Reasonable.**

20 ILYM Group, Inc., the appointed Settlement Administrator, has capped its costs at \$10,000 for
21 its work noticing the Class and administering the Settlement. The Parties have no objection to this
22 payment, and no objections have been asserted by any Class Member. ILYM Decl. ¶16.

23 ILYM has administered and will continue to administer, the Settlement following final
24 approval through the effective date of settlement by calculating Settlement Payments to all
25 Participating Class Members, printing and mailing settlement checks, reporting taxes, responding to
26 inquiries, voiding uncashed checks, and forwarding the sum represented by uncashed checks to the
27 State Controller in the names of Class Members. ILYM Decl. ¶16.

28 ///

1 **F. The Requested Class Representative Service Payment is Fair and Reasonable.**

2 A class representative is generally entitled to a fee for his or her service. (*Clark v. American*
3 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804.) “Since without a named plaintiff there
4 can be no class action, such compensation as may be necessary to induce him to participate in the suit
5 could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as
6 long-distance phone calls, which are reimbursable.” (*Ibid.*; see, e.g., *Cellphone Termination Fee Cases*
7 (2010) 186 Cal.App.4th 1380, 1393 [approving \$10,000 enhancement for each of four named
8 plaintiffs]; *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1272 [affirmed
9 \$10,000 enhancement for each of two named plaintiffs]; *Glass v. UBS Financial Services, Inc.* (N.D.
10 Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at *17 [awarding \$25,000 enhancement
11 to each of four named plaintiffs].)

12 “[C]riteria courts may consider in determining whether to make an incentive award include: 1)
13 the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety
14 and personal difficulties encountered by the class representative; 3) the amount of time and effort spent
15 by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
16 enjoyed by the class representative as a result of the litigation. [Citation.]” (*Van Vranken v. Atlantic*
17 *Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 299; see *Rodriguez v. West Publishing Corp.* (9th Cir.
18 2009) 563 F.3d 948, 958 [class representative enhancements “are intended to compensate class
19 representatives for work done on behalf of the class, to make up for financial or reputational risk
20 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
21 attorney general”].)

22 A \$5,000 incentive award for a class representative is “**presumptively reasonable.**” (*Lloyd v.*
23 *Navy Fed. Credit Union* (S.D. Cal. Oct. 22, 2018) No. 17-CV-1280-BAS-RBB, 2018 WL 5247367,
24 at *10 (emphasis added).) California State and federal courts frequently award representative plaintiffs
25 service payments higher than the \$5,000 requested here. (See, e.g., *Cellphone Termination Fee Cases*
26 (2010) 186 Cal.App.4th 1380, 1393 [granting request for \$10,000 incentive]; *La Fleur v. Med. Mgmt.*
27 *Int’l, Inc.* (C.D. Cal. June 25, 2014) No. EDCV 13-00398-VAP, 2014 WL 2967475, at *8 [\$15,000
28 for each of two plaintiffs in \$535,000 wage and hour class action settlement].)

1 Here, Plaintiff Tam has worked hard at every step of this litigation, remaining in contact with
2 Class Counsel's offices throughout the litigation and the settlement process. He provided documents
3 and records, signed authorizations, and exchanged emails and had telephone calls about the case from
4 the beginning all the way through to this settlement request. Declaration of Sunny K. Tam, ("Tam
5 Decl."), ¶10.

6 To help prepare for mediation, Mr. Tam spoke with his attorneys and provided information and
7 answers to their questions. Although he was unable to attend the mediation, he made himself available
8 by telephone to answer any questions. He consented to the settlement and reviewed and signed the
9 memorandum of understanding and the settlement agreement memorializing the settlement. After
10 settlement was reached, he continued to be in touch with Class Counsel, monitoring the status of the
11 settlement. He submitted a declaration in support of the preliminary approval motion and another in
12 support of this motion. Overall, Plaintiff Tam spent more than 25-30 hours prosecuting this case. Tam
13 Decl. ¶¶12-13.

14 Further, Plaintiff Tam took on the risk of stigma for bringing this lawsuit. He knew his name
15 would be easily linked, through background checks or even a simple Google search, with the lawsuit
16 filed against an employer. He also assumed the responsibility to remain engaged in a lawsuit could
17 continue for several years and would require his participation, attention, and determination the entire
18 time. Tam Decl. ¶13.

19 **IV. CONCLUSION**

20 Plaintiff respectfully requests the Court enter an order granting Plaintiff's Motion for Final
21 Approval and Entering Judgment, and approve the Class Representative Service Payment, Class
22 Counsel's attorneys' fees and litigation costs, and the administrator's expenses.

23 Respectfully submitted,

24 **COHELAN KHOURY & SINGER**
25 **STONEBROOK LAW**

26 Dated: January 20, 2023

27 By: _____

28 Michael D. Singer
Joseph Tojarieh
Counsel for Plaintiff Sunny Tam