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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES**

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

17 Plaintiff,

18 v.

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

22 Defendants.
23

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**

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Hearing Information

Date: August 12, 2022

Time: 11:00 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 seeks preliminary approval of a \$650,000 non-reversionary wage and hour class and
3 Private Attorney Generals Act (“PAGA”) settlement with Defendant Q Tech Corporation.
4 (“Defendant” or “Q Tech”) for an estimated 185 non-exempt California individuals employed by
5 Defendant at any time during the Class Period of May 17, 2017 to March 13, 2022. Declaration of
6 Kristina De La Rosa, (“KDLR Decl.”), ¶10, Exhibit 1 – Class Action and PAGA Settlement
7 Agreement and Release of Claims (“Agreement” or “SA”).

8 **II. THE PARTIES**

9 **A. Plaintiff**

10 Plaintiff Sunny K. Tam was employed by Defendant as a non-exempt, hourly employee from
11 approximately 1988 to November 2, 2020. KDLR Decl. ¶11; Tam Decl. ¶2.

12 **B. Defendant**

13 Q Tech is a leading supplier of crystal oscillators for space, military, avionics and high
14 temperature related services and applications. KDLR Decl. ¶12.

15 **C. The Class and Aggrieved Employees**

16 The Class is defined as all current and former non-exempt, hourly paid employees of Q Tech
17 Corporation who worked in California at any time from May 17, 2017 to March 13, 2022. KDLR
18 Decl. ¶13; SA ¶¶9, 39. PAGA “Aggrieved Employees” are all Class Members who were employed
19 during the PAGA time period of March 4, 2020 to March 13, 2022. KDLR Decl. ¶14; SA ¶¶3, 27.

20 Based on Defendant’s records, there are 185 class members who worked an estimated 30,000
21 workweeks during the Class Period. KDLR Decl. ¶15; SA ¶51(b). Of this amount, 147 are estimated
22 to be Aggrieved Employees who worked an estimated 11,629 workweeks during the PAGA period.
23 Each pay period consisted of one workweek. KDLR Decl. *Id.*; SA¶41.

24 **III. PROCEDURAL HISTORY**

25 On March 4, 2021, Plaintiff served notice on the Labor Workforce and Development Agency
26 and Defendant of these allegations and his intention to seek penalties pursuant to the Private
27 Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.* KDLR Decl. ¶16, Exh. 2.

28 After waiting the requisite 65-day notice period, Plaintiff filed a class action complaint in the

1 above-captioned Court on May 17, 2021 alleging: (1) failure to pay minimum wages (Labor Code §§
2 1194, 1197, *et seq.* and the applicable IWC Wage Order); (2) failure to pay overtime wages (Labor
3 Code §§ 510, 1194, *et seq.* and the applicable IWC Wage Order); (3) failure to provide timely, off-
4 duty meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and the applicable
5 IWC Order); (4) failure to provide or authorize paid 10-minute, off-duty rest periods or compensation
6 in lieu thereof (Labor Code § 226.7 and the applicable IWC Order); (5) failure to provide accurate
7 wage statements (Labor Code §§ 226, 1174); (6) failure to timely pay wages to terminated or resigned
8 employees (Labor Code §§ 201, 202 and 203); (7) Violation of the Unfair Competition Law (Business
9 & Professions Code §§ 17200, *et seq.* KDLR Decl. ¶17. On May 25, 2022, Plaintiff filed a separate
10 action seeking recovery civil penalties under PAGA arising out of the same causes of action, as well
11 as civil penalties for violations of Labor Code § 204, 1174 and 1198. KDLR Decl. ¶18. These actions
12 were deemed related by Court order on July 12, 2021, with the class complaint being designated as
13 the lead case. A stipulation to file a consolidated complaint is submitted concurrently with this
14 Motion. KDLR Decl. ¶19.

15 Immediately upon learning about the filing of the complaints, counsel for Defendant reached
16 out to Plaintiff's counsel to discuss mediation. The parties agreed to formally stay the actions and
17 attend mediation with mediator Steven J. Rottman Esq. KDLR Decl. ¶20.

18 **IV. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES**

19 Specifically, Plaintiff alleged that Defendant failed to pay all wages due to an unlawful
20 rounding policy which systematically and over time undercompensated employees. Additionally,
21 Plaintiff alleged that Defendant did not pay its employees all overtime wages due to an incorrect
22 calculation of the overtime regular rate of pay that failed to incorporate all wages owed. Plaintiff also
23 alleged that Defendant failed to adequately provide an opportunity for employees to take at least 30-
24 minute meal periods prior to the fifth hour of work and failed to provide second meal periods on shifts
25 longer than ten hours in length. Similarly, Defendant failed to provide timely, off-duty rest periods
26 of at least ten minutes. When employees were not provided with compliant meal periods and rest
27 periods, Defendant did not pay meal or rest period premium wages. Finally, Plaintiff alleged
28 derivative claims for failure to provide adequate wage statements and failing to pay wages timely

1 both during employment and upon termination of employment.

2 **V. MEDIATION**

3 In preparation of the mediation which took place on December 13, 2021, Defendant produced
4 time and payroll records for 168 employees as well as the titles of job positions and the number of
5 employees who worked in each position. Defendant also produced applicable policies and the
6 employee handbook. KDLR Decl. ¶21. Using this data and information, Plaintiff assessed Class-wide
7 damages and exposure to PAGA civil penalty liability based on each of the claims asserted by
8 Plaintiff. The data provided was detailed and allowed calculation, by year, of the length of shifts
9 worked, the amount of wages owed, the number of rest and meal periods owed, and the amount of
10 rest and meal period premium wages that should have been paid based on the theories advanced by
11 Plaintiff. All data and information was used to calculate a class-wide damage and PAGA civil
12 penalties model. KDLR Decl. ¶22.

13 With significant investigation, research, informal discovery, and analysis of the data and
14 information by Plaintiff and her damages consultant, the Parties mediated with Mr. Rottman on
15 December 13, 2021. After a full day of arms'-length negotiations, the Parties reached an agreement,
16 memorialized in the proposed Settlement Agreement presented for preliminary approval. KDLR
17 Decl. ¶23, Exh. 1 - Agreement.

18 **VI. SUMMARY OF PROPOSED SETTLEMENT**

19 **A. Settlement Terms.** The Parties agreed, subject to Court approval, Defendants will
20 pay \$650,000, the Gross Settlement Amount ("GSA") in two separate installments, which includes:
21 (a) attorneys' fees up to \$216,666.67 (one-third of GSA) to compensate Class Counsel for work
22 performed and work remaining to secure final Court approval (Plaintiff consented to apportion fees:
23 60% to Cohelan, Khoury & Singer, and 40% to Stonebrook Law). KDLR Decl. ¶25); (b) litigation
24 costs up to \$20,000; (c) Class Representative Payment of \$5,000 to Mr. Tam, in recognition of
25 bringing the case, work performed, risks undertaken for costs if the case had not successfully
26 concluded, and substantial benefits conferred on absent Class Members and aggrieved employees;
27 (d) PAGA Payment of \$75,000 [\$56,250 to the LWDA (75%)/\$18,750 to Aggrieved Employees
28 (25%)]; and (e) ILYM, Inc.'s ("Settlement Administrator") costs not to exceed \$10,000. Defendant

1 will pay employer's share of payroll taxes in addition to GSA. After these deductions, the estimated
2 amount to be distributed directly to employees is \$323,333.33. KDLR Decl. ¶24.

3 The amount of each Class Member's Individual Settlement Amount and each PAGA
4 Aggrieved Employee is tied to the number of workweeks that each Settlement Member worked for
5 Defendant in California during the Class Period and PAGA Periods. KDLR Decl. ¶26; SA ¶51(d)-
6 (e). The Net Settlement amount that is to be allocated to Class Members and the 25% of the PAGA
7 penalties to be paid to Aggrieved Employees will be paid on a proportional basis based on the number
8 of workweeks each employee worked in comparison to the respect group. KDLR Decl. ¶27; SA
9 ¶51(i). Defendant paid its employees every seven days which means that each work week constituted
10 a pay period. One day worked in a given week will be credited as a workweek for purposes of these
11 calculations. KDLR Decl. ¶28; SA ¶41. The method of distribution allocates funds based on weeks
12 worked, and the basis of the claims, and does not give preference to any Class Member. KDLR Decl.
13 ¶29.

14 Average estimated payment to class members for each workweek is \$10.78 (\$323,333.33
15 NSA / 30,000 workweeks). A Class Member working the entire Class Period would receive an
16 estimated \$2,705 (\$10.78 /251 workweeks). KDLR Decl. ¶30.

17 The NSA will be allocated as follows: twenty percent (20%) will be paid as wages subject to
18 withholding of all applicable local, state and federal taxes; forty percent (40%) will be paid as interest
19 from which no taxes will be withheld; and forty percent (40%) will be paid as penalties, including
20 waiting time penalties, from which no taxes will be withheld. KDLR Decl. 31¶; SA ¶51(e). The
21 PAGA Payment, which will be treated entirely as civil penalties, will also be paid as penalties from
22 which no taxes will be withheld. KDLR Decl. ¶32; SA ¶51(i).

23 The information to distribute the Settlement is readily available from Defendant's records,
24 and the Administrator can apply the settlement formula fairly and transparently. KDLR Decl. ¶33.

25 Following Final Approval and the Effective Date of Settlement, each Class member who did
26 not request exclusion will be mailed their Individual Settlement Payment, without the need to submit
27 a claim form. All PAGA Aggrieved Employees will be mailed their PAGA Payment even if they opt-
28 out of the class settlement. KDLR Decl. ¶34.

1 The Settlement Administrator will send a postcard reminding Participating Class Members
2 and/or Aggrieved Employees to negotiate or cash their Individual Settlement Award checks before
3 the void date. Checks will be void 180 days after issuance, and any unclaimed amounts will be
4 distributed to the California State Controller's Office, Unclaimed Property Division in the name of
5 the Class Member or PAGA Aggrieved Employee. KDLR Decl. ¶35; SA ¶74.

6 **B. Settlement Administration and Class Notice.** ILYM, Inc. will update Class
7 Member addresses with the National Change of Address database and mail a Notice of Class Action
8 Settlement ("Class Notice") to each Member identified by Defendant's employment records. KDLR
9 Decl. ¶36; SA ¶65.

10 The proposed Class Notice advises Members of their right, manner and timing to: (1)
11 participate in the Settlement without submitting a claim; (2) dispute the basis of the Individual
12 Settlement Payment; (3) object or opt-out. Class Members are informed of estimated payments,
13 release to be given, date of the Final Approval hearing, and how to obtain further information through
14 class counsel, or ILYM's or the Court's website. KDLR Decl. ¶37; SA ¶8, Exh. A.

15 **C. Released Claims.** In exchange for settlement payments, Class Members will release
16 "any and all claims, demands, rights, liabilities, and causes of action that were or could have been
17 pled under local, state or federal law based on the facts alleged in the Amended Complaint against
18 Defendant arising during the Class Period, including but not limited to claims for (1) failure to pay
19 minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods
20 or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide
21 accurate itemized wage statements, (6) failure to pay wages timely to separated employees, and (7)
22 violations of the Unfair Competition law. KDLR Decl. ¶38; SA ¶32.

23 Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent permitted by
24 law, and on behalf of the State of California and all Aggrieved Employees, will release claims alleged
25 under the PAGA, as follows: any and all claims for civil penalties for violations of California Labor
26 Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197,
27 and 1198 under PAGA that Plaintiff alleged against the Released Parties on behalf of Aggrieved
28 Employees and the State of California, based on the facts stated in Plaintiff's Amended Complaint

1 and in Plaintiff's March 4, 2021 notice letter to the LWDA (including any amendments thereto),
2 including all PAGA claims seeking civil penalties for (1) failure to pay minimum and regular wages,
3 (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu thereof, (4) failure
4 to provide rest periods or pay in lieu thereof, (5) failure to provide accurate itemized wage statements,
5 (6) failure to timely pay wages due during and upon separation from employment and (7) failure to
6 maintain accurate records arising during the PAGA Period. Any Class Member who is an Aggrieved
7 Employee and who requests timely exclusion from the Settlement Class, will still be subject to the
8 Release of PAGA Claims. KDLR Decl. ¶39; SA ¶33.

9 **VII. ARGUMENT**

10 **A. Class Action Settlements Are Subject to Court Review and Approval**

11 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
12 settlement." California Rules of Court, Rule 3.769(g). Court's should disapprove settlements "only
13 with considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481. (1975).¹

14 At preliminary approval, the Court "limits its inquiry to the extent necessary to reach a
15 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
16 between, the negotiating parties." *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)
17 (citation omitted).

18 **B. The Settlement Is Fair, Reasonable, And Adequate**

19 A Court must find a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford*
20 *Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The trial court considers all relevant factors, such
21 as: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further
22 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
23 the extent of discovery completed and the state of the proceedings, the experience and views of
24 counsel, the presence of a governmental participant, and the reaction of the class members to the
25 proposed settlement." *Id.* The Court's primary function is to determine the Settlement is not the
26

27
28 ¹ California courts may look to federal authority analyzing class issues under the Federal Rules of
Civil Procedure for guidance. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40
(2001).

1 product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate.
2 *Id.* A proposed class action settlement is presumed fair where: (1) the parties’ agreement after
3 extensive arms’-length negotiations; (2) investigation and discovery were sufficient to allow counsel
4 and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
5 percentage of objectors is small. *Id.*, at 1802.

6 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**

7 The parties attended a full day of mediation with an experienced wage and hour class action
8 mediator and through continued negotiations facilitated by Mr. Rottman, the Parties agreed to a
9 settlement in principle that same day, December 13, 2021. All Counsel aggressively pursued their
10 respective positions at all times. KDLR Decl. ¶¶23, 40.

11 **2. Discovery and State of The Proceedings Support Settlement**

12 Plaintiff’s Counsel investigated all claims and defenses before filing the Complaint. When the
13 Parties agreed to mediation, Plaintiff requested, and Defendant produced, data and documents, to
14 allow liability to be assessed and Class-wide damages to be calculated. KDLR Decl. ¶¶20-23, 41.
15 Proof of wage and hour class claims is based, at any stage, almost entirely on written policies and
16 time and pay records. Plaintiff’s counsel obtained nearly all of the time and pay records for 168
17 employees records, and an expert analyzed them, before negotiating a settlement. KDLR Decl. ¶¶21,
18 42.

19 Investigation and informal discovery gave the Parties a clear understanding of their strengths
20 and weaknesses before negotiations. *Id.*, *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
21 186 Cal. App. 4th 399, 410 (2010), (settlement approved where “considerable information from
22 which to assess the strength of the class claims” and risks and expense of litigation).

23 **3. Counsel Are Experienced in Similar Litigation**

24 Plaintiff’s Counsel have significant experience litigating wage and hour employment class
25 actions. KDLR Decl. ¶¶2-9. This allowed Counsel to evaluate settlement of the Class claims
26 compared to the risks of further litigation, including trial, appeals and collection. Defense counsel are
27 highly skilled and sophisticated lawyers, with extensive class action experience. They defended their
28 clients vigorously through all phases of the case, including mediation and subsequent negotiations.

1 Experienced counsel, operating at arms'-length, weighed the case strengths and examined all
2 issues and risks of litigation and endorse the settlement. The view of attorneys actively conducting
3 the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher*
4 *Bros. v. Cambridge Lee Industries, Inc.*, (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air*
5 *Rework Facility*, (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F. 2d 939 (9th Cir. 1981). "The
6 recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re*
7 *Omnivision Technologies, Inc.*, (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 10432.

8 Plaintiff's Counsel believes the Settlement achieved in this Action is fair, reasonable and in
9 the best interest of the Class in light of the monetary recovery by the Class, complexities and
10 difficulties of this litigation, the state of the law, the potential the case may not have been certified,
11 and adverse summary judgment or decertification ruling, the lengthy process of establishing specific
12 damages, and various possible delays and uncertainty regarding the outcome of appeal. Each of these
13 factors was carefully considered before reaching agreement. KDLR Decl. ¶43.

14 The Settlement satisfies the first three requirements of *Dunk*, the fourth, percentage of
15 objectors, remains unknown until notice is given and the Class has had an opportunity to respond.

16 **C. The Settlement Is A Reasonable Compromise of Claims**

17 "[T]o ensure that the recovery represents a reasonable compromise, given the magnitude and
18 apparent merit of the claims being released, discounted by the risks and expenses of attempting to
19 establish and collect on those claims by pursuing the litigation," information is present to the Court,
20 to review in its role as a fiduciary for absent class members. *Kullar v. Foot Locker Retail, Inc.*, 168
21 Cal. App. 4th 116, 129 (2008).

22 A reasonable compromise of class claims considers actual risks decertification, dispositive
23 motions, and trial, not merely a prediction of Defendant's maximum exposure. An explicit statement
24 of maximum class recovery on all claims is not required, only a record which allows "an
25 understanding of the amount that is in controversy and the realistic range of outcomes of the
26 litigation." *Kullar, supra* at 120.

27 "Kullar is clear that the most important factor 'is the strength of the case for plaintiffs on the
28 merits, balanced against the amount offered in settlement.'" (internal punctuation omitted) *Munoz*,

1 186 Cal. App. 4th at 409. *Munoz* had “no doubt that the trial court had ‘an understanding of the
2 amount . . . in controversy,’” based on number of class members, payroll data, variances in class
3 member experiences, and a companion action alleging damages less than twice the *Munoz* Settlement.
4 *Id.*, at 406. This was “an adequate basis from which to garner a reasonably adequate understanding
5 of the amount that is in controversy within the meaning of *Kullar*.” *Id.*, at 410.

6 Plaintiff’s counsel relied on similar types of data and documents as in *Kullar* and *Munoz*,
7 including time, pay, and employment records. Plaintiff’s counsel and their expert reviewed and
8 analyzed time and pay records to assess liability and extrapolate the data provided for the anticipated
9 Class period before attending mediation. KDLR Decl. ¶¶21-22, 44.

10 Defendant strongly disputed liability and contended, among other things, it properly complied
11 with all of its legal obligations. With respect to the underlying merits, Defendants alleged that all
12 times it maintained compliant policies concerning the rounding of hours worked, prohibition of off-
13 the-clock work, meal periods and rest periods. Defendants argued that all hours worked were fairly
14 compensated and that Plaintiff could not establish that work was actually performed during the
15 rounded windows. Furthermore, time records confirmed that Defendant stopped all rounding in or
16 around March 2021. KDLR Decl. ¶45.

17 With respect to regular rate of pay, Defendant disputed which types of payments qualified as
18 non-discretionary bonuses that needed to be incorporated into the regular rate of pay. Defendant
19 argued that it has focused intently on wage and hour compliance for years. KDLR Decl. ¶46. As part
20 of that effort, employees are reminded to take duty free meal and rest periods any purported violations
21 were a result of personal choice. Defendant argued that even if Plaintiffs prevail on their underlying
22 wage claims, Plaintiffs could not establish the “willfulness” requirement for claims for penalties
23 pursuant to Labor Code § 203. KDLR Decl. ¶47.

24 Defendant presented additional defenses based on procedure. First, Defendant produced an
25 arbitration agreement signed by Plaintiff which would force him to waive class claims and require all
26 individual claims to be arbitrated on an individual basis. Defendant alleged that the majority, if not
27 all, of the class members signed a similar document. KDLR Decl. ¶48. Defendant further alleged that
28 any purported violations arising from a particular deviation from its policies and practices would

1 result in an individualized inquiry unsuitable for class resolution or render a PAGA action
2 unmanageable. KDLR Decl. ¶49.

3 While Plaintiff's counsel believed in the underlying merits of the claims, we had to consider
4 all of Defendant's defenses, including the chance that the arbitration provision could be found to be
5 enforceable. In addition, Plaintiff's counsel had to consider the additional risks associated with
6 certification of class claims and then any subsequent attempts to decertify the class, adverse summary
7 adjudication rulings, manageability at trial, the lengthy process of establishing damages, and the delay
8 and uncertainty of appeals. KDLR Decl. ¶50.

9 **D. Reasonable Maximum Damage Exposure**

10 After considering the strengths of Plaintiff's claims and the potential defense thereto,
11 Plaintiff's counsel calculated that the total maximum reasonable recovery for Class and PAGA claims
12 was \$1,652,175 based off of an estimated 28,756 workweeks during the Class Period. Thus, a
13 recovery of \$650,000 gross settlement is fair and reasonable. KDLR Decl. ¶51.

14 **1. Unpaid Minimum, Regular and Overtime Wages Due To Unlawful Rounding**

15 Based on a review of the actual time records compared to the number of hours paid, Plaintiff
16 calculated that there were 8,010 hours the employees lost due to rounding the beginning and ending
17 time of each shift. Calculated at the applicable regular and overtime rates and to factor in the fact that
18 the average shift was 8.4 hours, this equated to \$236,495 in unpaid wages. KDLR Decl. ¶52.

19 In light of the potential defenses, Plaintiff's counsel believed there only a 50% chance of
20 successfully opposing the motion to compel arbitration, and a 75% probability of certifying the claim
21 and prevailing at trial, which resulted in a realistic exposure of \$88,686. KDLR Decl. ¶53.

22 **2. Unpaid Overtime Wages due to Regular Rate of Pay**

23 After a review of the pay records, Plaintiff's consultant did not find significant number of
24 instances in which an employee worked overtime and earned additional remuneration in the same pay
25 period. Indeed, even after liberally assuming a bonus was earned in the nearest pay period in which
26 overtime was worked, Plaintiff's consultant calculated that there was a maximum of \$5,042 in unpaid
27 overtime wages due to the incorrect calculation of the regular rate of pay. KDLR Decl. ¶54.

28 ///

1 **3. Labor Code § 226.7 Meal Period Premiums**

2 Based on Defendants records and conversations with Plaintiff, Plaintiff's counsel estimated
3 that there were approximately 76,601 shifts of at least five hours in which a meal periods was either,
4 not provided, late or which the shift exceeded ten hours in length and a meal period was not provided.
5 In consideration of Defendant's individualized issues and based on conversations with Plaintiff,
6 Plaintiff assumed any meal periods less than thirty minutes were by employee choice. Plaintiff
7 estimated there was a 50% chance of opposing a motion to compel arbitration and a 50% probability
8 of certifying the class and prevailing at trial, and thus the realistic exposure was no more than
9 \$431,264 (average hourly rate of \$22.52 * 76,601 shifts * 50% success rate * 50% success rate).
10 KDLR Decl. ¶55.

11 **4. Labor Code § 226.7 Rest Period Premiums.**

12 Plaintiff alleged that just as compliant meal periods were not provided, the same must be true
13 for rest periods. There were 134,739 shifts over 3.5 hours, qualifying for rest periods.

14 Plaintiff recognized that a 100% violation rate did not occur and that time records would not
15 show rest period violations. Accordingly, and based on plaintiff's investigation, Plaintiff assumed a
16 40% violation rate (53,896 affected shifts) but believed that again, there was only a 50% chance of
17 defeating a motion to compel arbitration and no more than a 10% probability of prevailing at class
18 certification and trial, with realistic exposure of approximately \$60,686. KDLR Decl. ¶56.

19 **5. Labor Code § 226 Wage Statement Penalties**

20 Wage statements must show, among other things, total net and gross wages earned, "total
21 hours worked by the employee" and "corresponding number of hours worked at each hourly rate."
22 Labor Code § 226 (a)(2)(9). Plaintiff contended wage statements were non-compliant because they
23 did not show all hours worked due to rounded hours worked and unpaid meal and rest period wages.
24 Plaintiff also alleged that the name was incorrect due to the inclusion of a hyphen in "Q-Tech".

25 It was argued that a minor inclusion of a "hyphen" would not support a claim for an
26 independent wage statement violation, especially where Defendant uses Q Tech and Q-Tech
27 interchangeably.

28 Plaintiff estimated maximum liability for the wage statement claim to be \$535,250, based on

1 Section 226's \$50 violation rate and 10,465 pay periods in the statutory period. KDLR Decl. ¶57.

2 Plaintiff estimated that there was a 50% chance of successfully opposing a motion to compel.
3 However, if Plaintiff overcame any motion to compel arbitration, Plaintiff would recover wage
4 statement penalties if he prevailed on any one of these claims for unpaid wages. Accordingly, Plaintiff
5 estimated that there was a 75% probability of succeeding at trial. This resulted in a realistic exposure
6 of approximately \$392,438. KDLR Decl. ¶58.

7 **6. Labor Code § 203 Waiting Time Penalties**

8 An employer must pay all wages due to an involuntarily terminated employee at the time of
9 termination, or within 72 hours to an employee voluntarily terminating. Labor Code § 203. If failure
10 to pay final wages is willful, they continue at the same rate for up to 30 days.

11 There was an estimated 57 former employees. The average day was 8.4 hours and the average
12 daily wages earned was \$193.61 (8 hours * \$22.52 + .4 hours *\$33.63). Maximum liability was
13 estimated at \$331,077 (57 x 30 days * \$193.61). KDLR Decl. ¶59.

14 Defendant argued that all hours worked were properly paid and it would be unlikely a court
15 would find its failure to pay wages willful. Plaintiff's counsel believed there was only a 50% chance
16 of defeating a motion to compel arbitration. If successful, Plaintiff believed there was a 75%
17 probability of prevailing based on difficulties in certifying and proving the underlying violation and
18 particularly showing willfulness and estimated realistic exposure for this claim at \$124,154. KDLR
19 Decl. ¶60.

20 **7. PAGA Penalties**

21 Plaintiff sought recovery of civil penalties for violations of Labor Code 201-203, 204, 226,
22 226.7, 510, 512, 1174, 1197 and 1198. Assuming violation rates that mirrored the class damages, for
23 all the potentially affected the 11629 pay periods during the PAGA period, Plaintiff calculated the
24 total maximum and reasonable exposure for civil penalties would be \$549,906. KDLR Decl. ¶61.

25 The total amount of PAGA penalties calculated, before any discount was applied, was
26 \$6,799,985 (\$3,600 [§201-203] +\$1,162,900 [§204] + \$2,907,250 [§226] + \$450,760 [§226.7] +
27 \$249,950[§510] + \$290,725 [§512] + \$72,000 + [§1174] +\$499,900 [§1197] + \$1,162,900 [§1198]).
28 KDLR Decl. ¶62.

1 In evaluating the total value of the PAGA penalties we had to consider that the award of
2 PAGA penalties is uncertain, particularly in light of the fact that the actual award is within the Court's
3 discretion. A court has authority to completely reduce penalties, as long as not to "zero." *Thurman v.*
4 *Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012). *See Carrington v.*
5 *Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (Plaintiff requested "nearly \$70 million in
6 penalties," trial court's \$150,000 award upheld on appeal). In one case, PAGA penalties were
7 discounted by 90% at trial, while in another, penalties were discounted only by 25%. *Carrington v.*
8 *Starbucks*, 30 Cal. App. 5th 504, 529 (2018); *Thurman v. Bayshore*, 203 Cal. App. 4th 1112 (2012).
9 If awarded, 75% of all PAGA penalties must be paid to the State of California.

10 The class action resolution provides substantially more tangible and realistic benefits to the
11 Class than would have received through a PAGA action. "PAGA penalties are paid 75% to the
12 California Labor and Workforce Development Agency and 25% to aggrieved employees. Thus, in
13 wage and hour class action cases that settle, [] very little of the total settlement is paid to PAGA
14 penalties in order to maximize payments to class members." *Magadia v. Wal-Mart Assocs.*, 384 F.
15 Supp. 3d 1058, 1101 (2019). "[T]he amount of the common settlement fund reserved for PAGA
16 penalties [is adequate], as courts frequently approve settlements in wage and hour class action and
17 PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in
18 order to maximize payments to class members." (citations omitted) *Mejia v. Walgreen Co.*, 2020 U.S.
19 Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021).

20 When dealing with judgments in favor or a class based on labor code violations, it seems as
21 if courts are more reluctant to award substantial additional PAGA civil penalties. KDLR Decl. ¶63.
22 Accordingly, Plaintiff additionally believed it would be unlikely to obtain both Labor Code § 203 and
23 226 statutory penalties and also simultaneously recover PAGA civil penalties for the alleged wage
24 violations. *Id.* Furthermore, it is unlikely for a court to award penalties for violation of section 1198
25 (pertaining to violations of the IWC Wage Order), if a penalty was applied based on another statute
26 for the same underlying conduct. *Id.* Thus, Plaintiff reduced the value of the penalties for 203, 226,
27 and 1198 to \$1 per pay period (representing the minimum amount of civil penalties in accordance
28 with the mandatory imposition required by the code). *Id.*

1 After reducing the value of 203, 226 and 1198 civil penalties, Plaintiff believed reasonable
2 exposure was no more than 20% of maximum exposure, or \$549,906², based on factors considered
3 in determining reasonable exposure for class claims, the ability of the court to reduce penalties nearly
4 to zero, and in light of conflicting authority as to whether courts have inherent authority to strike
5 PAGA claims deemed unmanageable for trial. KDLR Decl. ¶64.

6 The \$75,000 PAGA allocation is well within the range approved by California courts. See
7 *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties
8 1.25% of settlement reasonable, as “within the zero to two percent range for PAGA claims approved
9 by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009)
10 (PAGA settlement 2%); *Magadia, Id.*, at 1101, citing, among others, *Ceja-Corona v. CVS Pharm.,*
11 *Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in \$900,000
12 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015). (The
13 LWDA was served with the motion for approval when filed). KDLR Decl. ¶70, Exh. 3.

14 **E. The Settlement is Fair, Adequate, and Reasonable**

15 Plaintiff and his Counsel considered all issues and concluded the Settlement is fair and
16 reasonable. The settlement amount represents over a reasonable compromise of the rational value of
17 both Class and PAGA claims, [\$650,000/\$1,652,175 = 39%], and the Class allocation of \$575,000 is
18 52% of the full discounted liability value. The PAGA allocation of \$75,000 out of a discounted value
19 of \$549,906 [14%] is fair and reasonable and in line with multiple PAGA settlements which plaintiff’s
20 counsel has had approved. The settlement is thus well within the “ballpark” of reasonableness. KDLR
21 Decl. ¶65.

22 A settlement is not judged solely against what might have been recovered at trial, nor must a
23 settlement provide 100% of damages sought to be fair and reasonable. *Linney v. Cellular Alaska*
24 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a yielding of
25 absolutes. . . Naturally, the agreement reached normally embodies a compromise; in exchange for the

26
27 ² \$2,749,529 (\$36 [§201-203] + \$1,162,900 [§204] + \$11,629 [§226] + \$450,760 [§226.7] +
28 \$249,950[§510] + \$290,725 [§512] + \$72,000 + [§1174] + \$499,900 [§1197] + \$11,629 [§1198]).
\$2,749,529 *20% = \$549,906

1 saving of cost and elimination of risk, the parties each give up something they might have won had
2 they proceeded. . .” “It is well-settled law that a cash settlement amounting to only a fraction of the
3 potential recovery does not . . . render the settlement inadequate or unfair.” *Officers for Justice v.*
4 *Civil Serv. Comm’n*, 688 F.2d 615, 628, 624 (9th Cir. 1982)

5 **VIII. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

6 Before granting class certification for settlement, the Court must find the proposed Class
7 satisfies the requirements of Code of Civil Procedure § 382. *Wershba v. Apple Computer, Inc.*, 91
8 Cal. App. 4th 224, 237-38 237 (2001). The parties must show the existence of “an ascertainable class
9 and a well-defined community of interest among class members.” *Sav-On Drug Stores v. Super. Ct.*,
10 34 Cal. 4th 319, 326 (2004). The “community of interest” element embodies three factors: (1)
11 predominant common questions of law or fact; and, (2) a class representative with claims typical of
12 the class; (3) who can adequately represent the class. *Id.* The court must also determine a class action
13 proceeding is the superior means for fair and efficient adjudication of the litigation. *Id.*; *Dunk*, 48 Cal.
14 App. 4th at 1806. For settlement purposes, each of these prerequisites must be met. *See Wershba*, 91
15 Cal. App. 4th at 237-38.

16 **A. The Proposed Settlement Class is Ascertainable and Numerous**

17 Defendant can easily identify Class Members and produce their contact information and
18 number of Class Workweeks. KDLR Decl. ¶66. The Class is numerous, with 470 members. *Rose v.*
19 *City of Hayward*, 126 Cal. App. 3d 926, 934 (1981). Joinder of these individuals would be
20 impracticable and a Class-wide proceeding is preferable and superior. KDLR Decl. ¶67.

21 A community of interest exists where (1) legal or factual questions common to the Class
22 predominate over questions affecting individual Class members; (2) claims of the Class
23 Representatives are typical of the claims or defenses of the Class; and (3) the Class Representative
24 are able to adequately and fairly protect the interests of the class. *Sav-On Drug Stores, Inc., supra*, at
25 326; *Wershba*, 91 Cal. App. 4th at 238.

26 The proposed Class satisfied these three factors. First, each member of the Class was subject
27 to the same policies, including the same rounding and regular rate of pay calculations, which Plaintiff
28 alleged caused damages to his and the Class. Plaintiff alleged that it was Defendant’s common

1 policies which resulted in that they were not paid for all time under Defendant's control, including
2 rest periods, and paid premiums for failed meal breaks and rest periods. Where the same alleged
3 policies form the basis for the claims of all Class Members, a plaintiff's claims are common for
4 settlement purposes. *See Hanlon*, 150 F. 3d at 1022. KDLR Decl. ¶68.

5 Second, Plaintiff's claims are typical of the claims of Class Members. Plaintiff and all Class
6 Members assert the same legal theories and the same types of damages. Third, Plaintiff can
7 adequately protect the interests of the Class. KDLR Decl. ¶69. *See Wershba*, 91 Cal. App. 4th at 238.
8 His counsel has no conflicts of interest, has vigorously prosecuted this action on behalf of Plaintiff
9 and the Class, and has significant experience litigating employment wage and hour class actions.
10 Plaintiff and the Class have co-extensive claims, the terms of the Settlement apply to all Class
11 Members equally, and no conflict exists between them. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
12 450 (1976).

13 **IX. CONCLUSION**

14 Plaintiff requests the Settlement be preliminarily approved, the Notice of Class Action
15 Settlement be approved and ordered disseminated to the Class, that ILYM Group, Inc. be appointed
16 Administrator, Cohelan Khoury & Singer and Stonebrook Law be confirmed as Class Counsel,
17 Plaintiff Sunny K. Tam be appointed Class Representative, and a Final Approval Hearing date be set.

18 Respectfully submitted,

19 **COHELAN KHOURY & SINGER**
20 **STONEBROOK LAW**

21 Dated: June 22, 2022

22 By: 
23 Kristina De La Rosa
24 Joseph Tojarieh
25 Counsel for Plaintiff Sunny Tam
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