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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

21STCV19805

SUNNY K. TAM, on behalf of himself and
other aggrieved employees,

Plaintiff,

v.

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

Defendants.

CASE NO.

**REPRESENTATIVE ACTION COMPLAINT
FOR RECOVERY OF CIVIL PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

- 1. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY MINIMUM AND
REGULAR WAGES**
- 2. PAGA CIVIL PENALTIES FOR
FAILURE TO PAY OVERTIME
WAGES**
- 3. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE MEAL
PERIODS OR PAY IN LIEU
THEREOF**
- 4. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE REST
PERIODS OR PAY IN LIEU
THEREOF**
- 5. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE ACCURATE**

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- ITEMIZED WAGE STATEMENTS**
- 6. PAGA CIVIL PENALTIES FOR
FAILURE TO TIMELY PAY WAGES
DUE DURING AND UPON
SEPARATION FROM EMPLOYMENT**
- 7. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN
ACCURATE RECORDS**

1 Plaintiff SUNNY K. TAM (“Plaintiff”), on behalf of others aggrieved and as a
2 Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff SUNNY K. TAM (“Plaintiff”) brings this proposed PAGA
7 Representative Action against his former employer Q TECH CORPORATION, a California
8 Corporation, and DOES 1-10 (collectively, “Defendants”) under the California Labor Code to
9 recover civil penalties arising out of Defendants’ multiple labor code violations as described
10 herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiff alleges Defendants failed to: pay him and all other hourly,
14 non-exempt employees any wages for some time worked or spent under the Defendants’
15 control due to Defendants’ unlawful time rounding policy; pay properly-calculated overtime
16 wages because Defendants failed to include in employees’ regular rates of pay all applicable
17 compensation, including all applicable hourly rates in effect in the same workweek and all non-
18 discretionary compensation, including non-discretionary incentive pay, commissions, and flat
19 sum bonuses; provide all lawful meal and rest periods or pay an hour’s worth of pay in lieu
20 thereof; maintain accurate records, provide accurate, itemized wage statements; and timely pay
21 all final wages.

22 3. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
23 state of California and aggrieved current and former employees. Pursuant to Labor Code
24 sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and reasonable attorney’s fees
25 and costs. Plaintiff, by operation of law, has standing and capacity to sue as a representative of
26 the State of California. Plaintiff mailed written notice of the specific provisions of the Labor
27 Code that Defendants violated, including the facts and theories to support the alleged
28 violations, to the LWDA and to Defendant Q TECH CORPORATION pursuant to Labor Code

1 section 2699.3 on March 4, 2021. A true and correct copy of the notice is attached as **Exhibit A**
2 and incorporated by this reference. Defendants did not provide notice of cure and the LWDA
3 did not provide notice of investigation in the 65 days after the March 4, 2021 mailing of the
4 PAGA notice.

5 **II.**

6 **JURISDICTION & VENUE**

7 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code
8 of Civil Procedure section 395. Defendants conduct business in Los Angeles County, California
9 and each Defendant is within the jurisdiction of this Court for service of process purposes. The
10 unlawful acts alleged have a direct effect on Plaintiff and other aggrieved employees within the
11 State of California and Los Angeles County. Defendants employ numerous employees in Los
12 Angeles County and in California generally. There is no federal question at issue for removal
13 under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and
14 law, including the Labor Code, IWC Wage Orders, and the Code of Civil Procedure.

15 5. Plaintiff alleges, on information and belief, that no federal question is raised and
16 that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in
17 the alternative, that exceptions for local case or controversy under the CAFA do apply and
18 prohibit removal of this action to federal court. Plaintiff is also informed and believes that
19 based on his rate of pay, his individual claims do not meet the necessary amount in controversy
20 to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the
21 CAFA. Further as a representative action under the PAGA, the matter is not subject to removal
22 under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal
23 jurisdiction.

24 **III.**

25 **PARTIES**

26 6. Plaintiff SUNNY K. TAM is a resident of Los Angeles, California. Plaintiff is a
27 former employee of Defendants. At all relevant times, he was employed by Defendants in the
28 non-exempt, hourly-paid position of sealing technician in Los Angeles County. He was

1 discharged from employment around November 3, 2020.

2 7. Plaintiff alleges that he and all other non-exempt hourly employees in the State
3 of California worked under Defendants' policies and as a result, suffered the same violations
4 alleged herein.

5 8. Plaintiff is an "aggrieved employee" because he was employed by the alleged
6 violators and had one or more of the alleged violations committed against him and, therefore, is
7 properly suited to represent the interests of all other current and former employees of
8 Defendants.

9 9. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
10 current and former other aggrieved employees who suffered one or more of the alleged
11 violations ("aggrieved employees") as described herein during the applicable limitations period
12 for the time period covered by the PAGA (which is defined as any time from one year and 65
13 days prior to the commencement of this action until the commencement of trial in the matter).
14 The applicable limitations period is referred to herein as "the PAGA Period."

15 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant Q
16 TECH CORPORATION is a California Corporation that designs and manufactures crystal
17 oscillators for Space, Military, Avionics, and High Temperature applications, operating out of a
18 35,000 square-foot facility in Culver City, California within the County of Los Angeles.

19 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
20 employers of Plaintiff, and/or persons acting on behalf of Plaintiff's employer, who violated, or
21 caused to be violated, any provision regulating minimum wages or hours and days of work in
22 the applicable order of the Industrial Welfare Commission, as well as California Labor Code
23 sections 201-204, 226, 226.3, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, and 1198.

24 12. At all times relevant Q TECH CORPORATION did, and does, transact and
25 conduct business in the state of California and within the jurisdiction of the Court. At all times
26 relevant, Q TECH CORPORATION was Plaintiff's employer for purposes of the California
27 wage and hour laws at issue in this action.

28 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of

1 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
2 and believes, and based thereon alleges, that DOE Defendants are legally responsible for the
3 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
4 amend this complaint when their true names and capabilities are ascertained.

5 14. Plaintiff is informed and believes and, based thereon alleges, that each
6 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
7 other aggrieved employees, and exercised control over their wages, hours, and working
8 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
10 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
11 Defendant are legally attributable to the other Defendants.

12 **IV.**

13 **GENERAL ALLEGATIONS**

14 15. At all times during the PAGA Period, Plaintiff and aggrieved current and former
15 non-exempt, hourly employees were employed by Defendants and each of them, including
16 DOE Defendants, within the state of California.

17 16. During the PAGA Period, Defendants maintained common policies and
18 practices applicable to Defendants' employees, including Plaintiff, which resulted in
19 Defendants' failure to: pay all required wages for all hours worked, including all minimum,
20 regular, and overtime wages; provide all lawful meal and rest periods or pay an hour's worth of
21 pay in lieu thereof; provide accurate, itemized wage statements; and timely pay all final wages.
22 At all relevant times, Plaintiff and other aggrieved employees of Defendants worked under
23 these common policies and practices.

24 17. The California Labor Code and applicable IWC Wage Order and portions of the
25 California Code of Regulations provide (1) that all persons employed in the State of California
26 shall be presumed to be an hourly or non-exempt employee; (2) that all "hours worked" and
27 subject to the control of the employer, whether exercised or not, are to be paid at least the
28 minimum wage as determined by the State of California, and for overtime wages at either 1.5

1 times the regular rate of pay or 2.0 times the regular rate of pay when “hours worked” exceed 8
2 hours in a single day or shift, or 40 hours in a 168-total hour work. Labor Code sections 1194,
3 *et seq.* provide that notwithstanding any agreement to work for a lesser wage, an employee
4 receiving less than the legal overtime or minimum wage compensation is entitled to recover in
5 a civil action the unpaid balance of their owed compensation, including interest thereon,
6 reasonable attorneys’ fees, and costs of suit.

7 18. Plaintiff and all other aggrieved employees are covered by one or more IWC
8 Wage Order (“Wage Orders”), Labor Code section 510, and/or other applicable wage orders,
9 regulations, and statutes, and each aggrieved employee was not subject to an exemption for
10 executive, administrative, or professional employees, or any other exemption. Therefore,
11 Defendants are and were obligated to pay Plaintiff and other aggrieved employees lawful
12 minimum and overtime compensation, as well as to provide statutory meal and rest periods.

13 19. Plaintiff and each aggrieved employee worked in excess of the maximum
14 regular rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are
15 therefore entitled to appropriate overtime compensation at 1.5 times their regular rates of pay,
16 and when applicable, double-time rates as set forth by the above Wage Orders, regulations,
17 and/or statutes.

18 20. During the PAGA Period, Defendants maintained a common policy and practice
19 of failing to pay Plaintiff and other aggrieved employees for all hours worked. Specifically,
20 Plaintiff and other aggrieved employees were subjected to a uniform policy and practice of
21 unlawful time rounding. That is, Defendants did not pay Plaintiff and other aggrieved
22 employees precisely for all hours worked. Instead, Defendants rounded employees’ hours based
23 on scheduled hours of work and/or to the nearest quarter, half, or full hour. Over time, these
24 rounding practices unlawfully favored Defendants and resulted in time lost to employees,
25 including Plaintiff. This rounding policy was not neutral on its face or in application, and
26 resulted in a cumulative loss of time to Plaintiff and other aggrieved employees. Defendants
27 had the ability to pay for the precise hours worked, but opted instead to utilize the rounding
28 policy with no apparent benefit other than to benefit Defendants and deprive employees of

1 payment for all hours worked. Strict rules regarding early arrival, punctuality, and rules
2 favoring meal periods of less than thirty minutes further caused the rounding policy to favor
3 Defendants. As a result, Plaintiff and other aggrieved employees were not paid all minimum
4 and regular wages for all hours worked.

5 21. During the PAGA Period, when Plaintiff and other aggrieved employees worked
6 overtime, the rounding policy also resulted in the failure to pay all overtime wages for all
7 overtime hours worked. At times an employee was not scheduled for overtime, but ended up
8 working overtime. This time should have been recorded as overtime but due to the rounding,
9 Plaintiff and other aggrieved employees did not receive all applicable overtime wages.

10 22. During the PAGA Period, Plaintiff and other aggrieved employees were also not
11 paid all applicable minimum and overtime wages for the time spent working during purported
12 meal periods.

13 23. During the PAGA Period, Defendants failed to record (and maintain records)
14 reflecting the beginning and end of each shift and work period, including the beginning and end
15 of each meal period. Defendants further failed to accurately record the total hours worked.

16 24. During the PAGA Period, Defendants further failed to pay all overtime wages
17 for all overtime hours worked because they failed to properly calculate the regular rate of pay
18 for purposes of calculating overtime rates (time and a half and double-time rates). Plaintiff and
19 other aggrieved employees were eligible to earn, and did earn, more than one base hourly rate
20 in the same workweek and non-discretionary compensation, including non-discretionary
21 incentive pay, commissions, and flat sum bonuses. Plaintiff and other aggrieved employees
22 worked overtime during the same workweek in which they worked at more than one base
23 hourly rate and/or earned additional non-discretionary compensation. However, all
24 remuneration was not properly calculated into the regular rate of pay and as a result the
25 overtime wages were not calculated using the correct regular rate of pay. Accordingly,
26 Defendants failed to pay all overtime wages owed to Plaintiff and other aggrieved employees.

27 25. During the PAGA Period, Defendants subjected Plaintiff and all other aggrieved
28 employees to policies and practices which failed to provide compliant meal and rest periods.

Defendants did not maintain a meal and rest period policy applicable to Plaintiff and other aggrieved employees. Plaintiff and other aggrieved employees were not authorized and permitted to take lawful rest and meal periods. Plaintiff and other aggrieved employees were not provided an opportunity for each shift to take off-duty, timely, uninterrupted meal periods lasting at least 30 minutes. Instead, meal periods were often short (less than 30 minutes), missed entirely, or late (after the 5th or 10th hour of work, as applicable). At times, job demands required Plaintiff and other aggrieved employees to entirely miss their meal periods. These job demands also caused employees to be unable to take timely meal periods because employees were required to continue working. Job demands caused meal periods to be shorter than 30 minutes because employees had to return to work before the end of the full thirty minutes.

26. During the PAGA Period, Plaintiff and other aggrieved employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than 10 hours.

27. During the PAGA Period, Plaintiff and other aggrieved employees were not provided complaint off-duty, timely, and uninterrupted rest periods. At times, job demands required Plaintiff and other employees to entirely miss their rest periods. These job demands also caused employees to be unable to take timely rest periods because employees were required to continue working. Job demands caused rest periods to be shorter than 10 minutes and/or interrupted because employees had to return to work before the end of the full ten minutes.

28. During the PAGA Period, Defendants never paid one hour of wages at a regular rate of pay for each shift in which compliant rest and meal periods were not provided, as required by Labor Code section 226.7 and Sections 11 and 12 of the applicable wage order.

29. During the PAGA Period, Defendants further failed to pay Plaintiff and other aggrieved employees all earned wages, including all minimum, regular, and overtime wages, upon termination of employment.

30. During the PAGA Period, Defendants failed to provide wage statements to

1 Plaintiff and other aggrieved employees. The paystubs provided to Plaintiff and other
2 aggrieved employees did not contain all accurate information as required by Labor Code
3 section 226(a), including the total hours worked. Additionally, the correct name of the
4 employer is Q Tech Corporation. The wage statements identified the name of the employer as
5 Q-Tech Corporation. Indeed, a search of the employer's name on the secretary of state website
6 as written on the wage statement does not bring results that include the correct employer. The
7 inclusion of the extra hyphen causes the name to be incorrect. Accordingly, Defendants failed
8 to include the correct name and address of the employer of Plaintiff and other aggrieved
9 employees on the wage statements. Additionally, because, as described above, Defendants
10 failed to pay all minimum, regular, and overtime wages, and all meal and rest premium wages,
11 they failed to accurately set forth the total gross wages earned, net wages earned, total hours
12 worked, and all applicable hourly rates and the total number of hours worked.

13 31. During the PAGA Period, Plaintiff and other aggrieved employees were not paid
14 all wages within the time set forth in Labor Code section 204 due to the failure to pay all
15 minimum, regular, and overtime wages and all meal and rest period premium wages as
16 described herein.

17 32. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
18 employees required waiting time penalties for failing to timely pay them their final wages. For
19 instance, Plaintiff's final day of employment was on or around November 2, 2020 when he was
20 involuntarily discharged. However, his final pay check states that his pay date was not until
21 November 5, 2020. As a result, Defendants paid Plaintiff late and did not pay him the required
22 waiting time penalties in violation of Labor code sections 201, 202, and 203. Plaintiff believes
23 other aggrieved employees suffered from these same labor code violations.

24 33. During the PAGA Period, Defendants also failed to pay Plaintiff and other
25 aggrieved employees within the time required because they did not pay all wages earned as set
26 forth herein. Plaintiff is informed and believe that Defendants have no policy or practice to
27 comply with Labor Code sections 201, 202, and 203 as to all separated employees in California
28 by timely paying final wages and paying waiting time penalty wages when failing to timely pay

1 final wages. On information and belief, Plaintiff maintains that Defendants maintained a
2 regular practice of failing to pay separated employees within the time requirements of Labor
3 Code sections 201- 202. Even if Defendants did provide employees with the final pay check
4 within the time frame required, they nevertheless failed to pay timely because they did not pay
5 all wages earned as set forth herein. As a result, Defendants liable for civil penalties for their
6 violation of Sections 201 and 202.

7 34. During the PAGA Period, Defendants also did not pay a day's wages for every
8 day final pay was not paid through the date final wages were paid, as required by Labor Code
9 section 203. Thus, other aggrieved employees are owed civil penalties due to Defendants'
10 violation of Labor Code section 203.

11 35. During the PAGA Period, Plaintiff further alleges, based on personal experience
12 and observation, that the violations of the Labor Code described herein were suffered by other
13 current and former non-exempt, hourly employees of Defendants.

14 **V.**

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM AND REGULAR
WAGES**

18 **(Labor Code §§ 204, 1194, 1194.2, 1197, and 1198)**

19 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

20 36. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
full herein.

21 37. Labor Code section 1197 states: "The minimum wage for employees fixed by
22 the commission is the minimum wage to be paid to employees, and the payment of a less wage
23 than minimum wage so fixed is unlawful."

24 38. Labor Code section 1198 states: "The maximum hours of work and the standard
25 conditions of labor fixed by the commission shall be the maximum hours of work and the
26 standard conditions of labor for employees. The employment of any employee for longer hours
27 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

28 39. Section 4 of the applicable IWC Wage Order provides that an employer may not

1 pay employees less than the applicable minimum wage for all hours worked.

2 40. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
3 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
4 compensation applicable to the employee is entitled to recover in a civil action the unpaid
5 balance of the full amount of his minimum wage or overtime compensation, including interest
6 thereon, reasonable attorney’s fees and costs of suit.”

7 41. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
8 law, any provision of this code that provides for a civil penalty to be assessed and collected by
9 the Labor and Workforce Development Agency or any of its departments, divisions,
10 commissions, boards, agencies, or employees, for a violation of this code, may, as an
11 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
12 himself or herself and other current or former employees pursuant to the procedures specified
13 in Section 2699.3.”

14 42. Labor Code section 2699(f)(2) states: “For all provisions of this code except
15 those for which a civil penalty is specifically provided, there is established a civil penalty for a
16 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
17 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
18 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
19 each aggrieved employee per pay period for each subsequent violation.”

20 43. As set forth herein, Defendants willfully breached their obligation and failed to
21 pay Plaintiff and other aggrieved employees all minimum and regular wages for all hours
22 worked, including due to Defendants’ unlawful rounding policy, all in violation of Labor Code
23 sections 1197, 1194 and 1198 and the applicable Wage Order.

24 44. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
25 other aggrieved employees, for penalties as required by Labor Code sections 1197.1 and
26 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs, all
27 recoverable in an amount according to proof.

28 45. Plaintiff, as a representative of the general public, will and does seek to recover

1 any and all penalties for each and every violation, in an amount according to proof, as to those
2 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
3 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
4 of California.

5 **SECOND CAUSE OF ACTION**
6 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY OVERTIME WAGES**
7 **(Labor Code §§ 510 and 1194)**
8 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

9 46. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
10 full herein.

11 47. Labor Code section 510 provides in pertinent part: “Eight hours of labor
12 constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in
13 excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
14 work in any one workweek shall be compensated at the rate of no less than one and one-half
15 times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall
16 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
17 addition, any work in excess of eight hours on any seventh day of a workweek shall be
18 compensated at the rate of no less than twice the regular rate of pay of an employee.”

19 48. Section 3 of the applicable IWC Wage Order provides that an employer may not
20 pay non-exempt employees less than the applicable overtime rate for all overtime hours
21 worked.

22 49. As set forth herein, Defendants willfully breached their obligations to pay
23 Plaintiff and other aggrieved employees all overtime wages for all overtime worked all in
24 violation of Labor Code sections 510, 1194 and 1198, and the applicable Wage Order,
25 including due to Defendants’ unlawful rounding policy and Defendants’ failure to properly
26 calculate employees’ regular rates of pay.

27 50. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
28 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2) and
2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs, all

1 recoverable in an amount according to proof.

2 51. Plaintiff, as a representative of the general public, will and does seek to recover
3 any and all penalties for each and every violation, in an amount according to proof, as to those
4 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
5 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
6 of California.

7 **THIRD CAUSE OF ACTION**
8 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS OR PAY**
9 **IN LIEU THEREOF**

10 **(Labor Code §§ 226.7 and 512)**
11 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

12 52. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
13 full herein.

14 53. At all relevant times during the PAGA Period, Plaintiff and others aggrieved
15 were employees of Defendants covered by Labor Code sections 226.7 and 512, and the
16 applicable Wage Order.

17 54. Labor Code section 512(a) provides as follows:

18 An employer may not employ an employee for a work period of more than
19 five hours per day without providing the employee with a meal period of
20 not less than 30 minutes, except that if the total work period per day of the
21 employee is no more than six hours, the meal period may be waived by
22 mutual consent of both the employer and employee. An employer may
23 not employ an employee for a work period of more than 10 hours per day
24 without providing the employee with a second meal period of not less than
25 30 minutes, except that if the total hours worked in no more than 12 hours,
26 the second meal period may be waived by mutual consent of the employer
27 and the employee only if the first meal period was not waived.

28 55. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal
or rest... period mandated pursuant to... an applicable... order of the
Industrial Welfare Commission.

(c) If an employee fails to provide an employee a meal period or rest
period in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work day that
the meal period or rest period is not provided.

1 56. Section 11(A) of the applicable Wage Order provides, in pertinent part: “No
2 employer shall employ any person for a work period of more than five (5) hours without a meal
3 period of not less than 30 minutes...”

4 57. Section 11(B) of the applicable Wage Order provides, in pertinent part: “An
5 employer may not an employee for a work period of more than ten (10) hours per day without
6 providing the employee with a second meal period of not less than 30 minutes...”

7 58. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
8 of civil penalties for violations of the labor code, to be recovered through a civil action brought
9 by an aggrieved employee on behalf of himself or herself and other current or former
10 employees pursuant to the procedures specified in Section 2699.3.

11 59. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved
12 employees with compliant meal periods as provided in Labor Code sections 226.7 and 512, and
13 failed to pay them the additional pay at the employee’s regular rate of compensation for each
14 work day such a meal period was not provided in lieu thereof.

15 60. Defendants’ conduct violates Labor Code sections 226.7, 512, and 1198, as well
16 as the “Meal Periods” section of the applicable IWC wage Order. As a result, Plaintiff is
17 entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or,
18 in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit, all recoverable
19 in an amount according to proof.

20 61. Plaintiff, as a representative of the general public, will and does seek to recover
21 any and all penalties for each and every violation, in an amount according to proof, as to those
22 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
23 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
24 of California.

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FOURTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS OR PAY
IN LIEU THEREOF
(Cal. Labor Code §§ 226.7 and 558; § 12 of the Applicable IWC Wage Order)
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

62. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

63. At all relevant times during the PAGA Period, Plaintiff and other aggrieved were employees of Defendants covered by Labor Code section 226.7 and the applicable Wage Order.

64. Labor Code section 226.7 provides as follows:

(b) An employer shall not require any employee to work during any meal or rest... period mandated pursuant to... an applicable... order of the Industrial Welfare Commission.

(c) If an employee fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

65. Section 12(A) of the applicable Wage Order provides, in pertinent part:

"Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

66. Section 12(B) of the applicable wage order provides, in pertinent part: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

67. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

1 68. As set forth herein, Defendants failed to provide Plaintiff and other aggrieved
2 employees with compliant rest periods as provided in Labor Code section 226.7 and failed to
3 pay them the additional pay at the employee's regular rate of compensation for each work day
4 in lieu of providing timely, off-duty rest period(s).

5 69. Defendants violated Labor Code sections 226.7 and 1198 as well as the "Rest
6 Periods" section of the applicable Wage Order and are liable to Plaintiff and other aggrieved
7 employees for penalties as required by Cal. Labor Code section 2699(a) or, in the alternative,
8 section 2699(f)(2), attorney's fees and costs, all recoverable in an amount according to proof.

9 70. Plaintiff, as a representative of the general public, will and does seek to recover
10 any and all penalties for each and every violation, in an amount according to proof, as to those
11 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
12 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
13 of California.

14 **FIFTH CAUSE OF ACTION**
15 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
16 **WAGE STATEMENTS**
17 **(Labor Code §§ 226 and 1174)**
18 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

19 71. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
20 full herein.

21 72. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage
22 statements total hours worked by Plaintiff and other aggrieved employees, along with gross and
23 net wages earned, all applicable hourly rates and the total number of hours worked at each
24 corresponding rate, and the name and address of the employer. Defendants have knowingly and
25 intentionally failed to comply with Labor Code section 226, subdivision (a) on each and every
26 wage statement that should have been provided to Plaintiff and other aggrieved employees by
27 failing to list the correct total hours worked, gross wages earned, net wages earned, all
28 applicable hourly rates and the total number of hours worked at each rate, and the correct name
of the employer.

73. Labor Code section 226.3 provides for civil penalties for violations of Labor

1 Code section 226. The civil penalty is \$250 for the initial violation and \$1000 for each
2 subsequent violation.

3 74. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
4 of civil penalties for violations of the labor code, to be recovered through a civil action brought
5 by an aggrieved employee on behalf of himself or herself and other current or former
6 employees pursuant to the procedures specified in Section 2699.3.

7 75. As set forth herein, Defendants failed to provide accurate itemized wage
8 statements reflecting all of the required information, all in violation of Labor Code section 226.
9 This information could not be readily determined from the face of the wage statement alone.

10 76. As a result, Defendants willfully violated the Labor Code and are liable to
11 Plaintiff and other aggrieved employees for civil penalties as required by Labor Code sections
12 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs,
13 all recoverable in an amount according to proof.

14 77. Plaintiff, as a representative of the general public, will and does seek to recover
15 any and all penalties for each and every violation, in an amount according to proof, as to those
16 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
17 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
18 of California.

19 **SIXTH CAUSE OF ACTION**
20 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE DURING AND**
21 **UPON SEPARATION FROM EMPLOYMENT**

22 **(Labor Code §§ 201-204)**
23 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

24 78. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
25 full herein.

26 79. Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by
27 any person in any employment are due and payable twice during each calendar month, on days
28 designated in advance by the employer as the regular paydays." Section 204(d) states: "The
requirements of this section shall be deemed satisfied by the payment of wages for weekly,
biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days

1 following the close of the payroll period.” The “Minimum Wages” Section of the applicable
2 Wage Order further states “every employer shall pay to each employee, on the established
3 payday for the period involved, not less than the applicable minimum wage for all hours
4 worked in the payroll period.”

5 80. Labor Code sections 201 and 202 require Defendants to pay employees all
6 wages due no later than 72 hours after resignation from employment, or immediately in the
7 case of discharge by the employer. Labor Code section 203 provides that if an employer
8 willfully fails to timely pay such wages, then the employer must, as a penalty, continue to pay
9 the subject employees’ wages until the back wages are paid in full or an action is commenced.
10 The penalty cannot exceed 30 days of wages.

11 81. Labor Code section 210(a) provides: “(a) In addition to, *and entirely*
12 *independent and apart from*, any other penalty provided in this article, every person who fails
13 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
14 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation,
15 one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
16 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
17 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

18 82. California Labor Code section 256 states that a civil penalty shall be imposed
19 “in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

20 83. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
21 of civil penalties for violations of the labor code, to be recovered through a civil action brought
22 by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Section 2699.3.

24 84. As set forth herein, Defendants willfully failed to pay Plaintiff and other
25 aggrieved employees all minimum, regular, and overtime wages they were owed during their
26 employment. Defendants also willfully failed to timely pay wages to employees who were
27 voluntarily and/or involuntarily were terminated from their employment within the time
28 requirements set forth in Cal. Labor Code sections 201-202. Plaintiff is informed and believes

1 that Defendants' pay practices are continuing such that current employees are not being timely
2 paid wages as they work in violation of law.

3 85. More than 30 days have passed since Plaintiff and other aggrieved employees
4 have left Defendants' employ.

5 86. As a result, Defendants willfully violated the Labor Code and are liable to
6 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,
7 256, and 2699(a) or, in the alternative, section 2699(f)(2), all recoverable in an amount
8 according to proof.

9 87. Plaintiff, as a representative of the general public, will and does seek to recover
10 any and all penalties for each and every violation, in an amount according to proof, as to those
11 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
12 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
13 of California.

14 **SEVENTH CAUSE OF ACTION**
15 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
16 **(Labor Code § 1174)**
17 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

18 88. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
19 full herein.

20 89. Labor Code section 1174(d) requires each employee to "[k]eep, at a central
21 location in the state or at the plants or establishments at which employees are employed, payroll
22 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
23 units earned by and any applicable piece rate paid to, employees employed at the respective
24 plants or establishments."

25 90. The "Records" section of the applicable IWC wage order requires each
26 employer to maintain "[t]ime records showing when the employee begins and ends each work
27 period. Meal periods, split shift intervals and total daily hours worked shall also be recorded."

28 91. California Labor Code section 1174.5 imposes a \$500 civil penalty for any
failure to maintain records required by Section 1174(d).

93. As set forth herein, Defendants failed to maintain all records as required by law, including but not limited to the beginning and ending time of each work period and meal period.

94. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), all recoverable in an amount according to proof.

95. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SUNNY K. TAM, on behalf of himself and all other aggrieved employees, prays for judgment as follows:

a. For maintenance of this claim as a Representative Action under the PAGA, providing Plaintiff and his counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement (“DLSE”);

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3 for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

- 1 d. For recovery of civil penalties as permitted by Labor Code section 210 for
2 failing to timely pay wages due during employment;
- 3 e. For recovery of civil penalties as permitted by Labor Code section 256 for
4 failing to timely provide final wages to employees upon separation from employment;
- 5 f. For recovery of civil penalties as permitted by Labor Code sections 1174 and
6 1174.5 for failing to maintain accurate records;
- 7 g. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
8 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided
9 for failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 1198, and 1174.
- 10 h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law;
- 11 i. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
12 California Labor Code sections 218.5, 226(e), 1194, 1197, the PAGA, and/or Code of Civil
13 Procedure section 1021.5 on a public benefit theory; and all other applicable state laws;
- 14 j. For injunctive relief; and
- 15 k. Such other relief as this Court deems necessary, just, equitable and proper.

16 COHELAN KHOURY & SINGER

17
18
19 Dated: May 17, 2021

By: 

Michael E. Singer

Kristina De La Rosa

Counsel for Plaintiff SUNNY K. TAM on behalf of
himself and other aggrieved employees

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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(† Also admitted in Illinois)

March 4, 2021

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Q-Tech Corporation
10150 W. Jefferson Blvd.
Culver City, CA 90232

Re: NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

This letter shall serve as Sunny K. Tam's (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his wage and hour claims against Q-Tech Corporation (referred to herein as "the Employer"). Claimant submits this notice on behalf of himself and all current and former exempt and/or non-exempt employees in California who during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL ALLEGATIONS

Claimant worked for Q-Tech Corporation as a sealing technician from approximately 1998 until his termination on or about November 3, 2020. His final pay check was dated November 5, 2020.

At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein.

The Employer failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all applicable hours of work. The Employer failed to pay any wages for this time spent working and under the direction and control of the Employer.

At all times during their employment and at least one year prior to the date of this notice, Claimant and other aggrieved employees were subjected to a uniform policy and practice of unlawful time rounding. That is, the Employer did not pay Claimant and other aggrieved

employees precisely for all hours worked. Instead, the Employer rounded his and other aggrieved employees' hours based on scheduled hours of work and/or nearest quarter, half, or full hour. Over time, these rounding practices unlawfully favored the Employer and resulted in time lost to the aggrieved employees, including Claimant. This rounding policy was not neutral on its face or in application, and resulted in a cumulative loss of time to Claimant and other aggrieved employees. The Employer had the ability to pay for the precise hours worked, but opted instead to utilize the rounding policy with no apparent benefit other than to benefit the Employer and deprive employees of payment for all hours worked. Strict rules regarding early arrival, punctuality, and rules favoring meal periods of less than thirty minutes further affected the rounding policy to result in more favorable results to the Employer. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When Claimant and other aggrieved employees worked overtime, the rounding policy also resulted in the failure to pay all overtime wages for all overtime hours worked. At times an employee was not scheduled for overtime, but did end up working overtime. This time should have been recorded as overtime but due to the rounding, Claimant and other aggrieved employees did not receive all applicable overtime wages.

Claimant and other aggrieved employees were not paid all applicable minimum and overtime wages for the time spent working during purported meal periods.

Furthermore, the Employer failed to record (and maintain records) reflecting when the beginning and ending of each shift and work period, including the beginning and ending of each meal period. The Employer further failed to accurately record the total hours worked.

The Employer further failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half- and double-time rates). Claimant and other aggrieved employees were eligible to earn, and did earn, more than one base hourly rates in the same workweek, non-discretionary compensation, including non-discretionary incentive pay, commissions, and flat sum bonuses. Claimant and other aggrieved employees worked overtime during the same workweek in which they worked at more than one base hourly rate and/or earned additional non-discretionary compensation. However, all remuneration was not properly calculated into the regular rate of pay and as a result the overtime wages were not calculated using the correct regular rate of pay. Accordingly, the Employer failed to pay all overtime wages owed to Claimant and other aggrieved employees.

The Employer subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. The Employer did not maintain a meal and rest period policy applicable to Claimant and other aggrieved employees. Claimant and other aggrieved employees were not authorized and permitted to take lawful rest and meal periods.

Claimant and other aggrieved employees were not provided an opportunity for each shift to take off-duty, timely, uninterrupted meal periods lasting at least 30 minutes. Instead, meal periods were often short (less than 30 minutes), missed entirely, or late (after the 5th or 10th hour of work, as applicable). At times, the job demands sometimes required Claimant and other aggrieved employees to have to entirely miss his or her meal periods. The job demands also caused employees to be unable to take timely meal periods because employees were required to continue working. Job demands caused meal periods to be shorter than 30 minutes because employees had

to return to work before the end of the full thirty minutes. Claimant and other aggrieved employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than 10 hours.

For the same reasons, Claimant and other aggrieved employees were not provided complaint off-duty, timely, and uninterrupted rest periods. At times, the job demands sometimes required Claimant and other employees to have to entirely miss his or her rest periods. The job demands also caused employees to be unable to take timely rest periods because employees were required to continue working. Job demands caused rest periods to be shorter than 10 minutes and/or interrupted because employees had to return to work before the end of the full thirty minutes.

The Employer never paid one hour of wages at a regular rate of pay for each shift in which non-compliant rest and meal periods were not provided, as required by Labor Code section 226.7 and Sections 11 and 12 of the applicable wage order.

The Employer further failed to pay Claimant and other aggrieved employees all earned wages, including all minimum, regular, and overtime wages upon termination of employment.

During the relevant time period, the Employer failed to provide reimbursement to Claimant and other aggrieved employees for all reasonable costs and expenses incurred in direct consequence to their job duties. The Employer failed to maintain an adequate reimbursement policy and further failed to inform aggrieved employees of their right to seek reimbursement for all costs and expenses.

The Employer failed to provide wage statements to Claimant and other aggrieved employees. The paystubs provided to Claimant and other aggrieved employees did not contain all accurate information as required by Labor Code section 226(a), including the total hours worked. Additionally, the correct name of the Employer is Q Tech Corporation. The wage statements identified the name of the Employer as Q-Tech Corporation. Indeed, a search of the Employer's name on the secretary of state as written on the wage statement does bring results that include the correct employer. The inclusivity of the extra hyphen causes the name to be incorrect. Accordingly, Employer failed to include the correct name and address of the employer of Claimant and other aggrieved employees on the wage statements.

Additionally, because, as described above, the Employer failed to pay all minimum, regular, and overtime wages, and all meal and rest premium wages, it failed to accurately set forth the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked.

During his employment, Claimant was not paid all wages within the time set forth in Labor Code section 204 due to the failure to pay all minimum, regular, and overtime wages and all meal and rest period premium wages as described herein.

Claimant's final day of employment was on or around November 2, 2020 when he was involuntarily discharged. However, his final pay check states that his pay date was not until November 5, 2020. As a result, Employer paid Claimant late and did not pay him the required

waiting time penalties in violation of Labor code sections 201, 202, and 203. Claimant believes other aggrieved employees suffered from these same labor code violations.

Additionally, the Employer failed to pay Claimant and aggrieved employees within the time required because it did not pay all wages earned as set forth herein. Claimant is informed and believe that the Employer has no policy and/or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages. On information and belief, Claimant maintains that the Employer maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201- 202. Even if the Employer did provide employees with the final pay check within the time frame required, it nevertheless failed to pay timely because it did not pay all wages earned as set forth herein. As a result, the Employer is liable for civil penalties for its violation of Sections 201 and 202.

The Employer also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Thus, aggrieved employees are owed civil penalties due to the Employer's violation of Labor Code section 203.

Claimant further allege, based on personal experience and observation, that the violations of the Labor Code described herein were suffered by other current and former employees of the Employer.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code Sections 510, 1194, 1197, 1197.1, and 1198 and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

The Employer failed to pay all minimum, regular, and overtime wages required by law.

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

As set forth in detail above, the Employer violated Labor Code sections 510, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code Sections 226.2, 226.7, 512(a), and 1198, and the “Meal Periods” and “Rest Periods” Sections of the Applicable Wage Order)

As set forth herein, during the time that Claimant performed work for the Employer, the Employer did not provide Claimant and other aggrieved employees all lawful and compliant rest and meal periods, and failed to pay them all required meal and rest premiums due to them under the law.

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Consequently, Claimant is entitled to receive a one-hour wage premium for each day a compliant meal period was not provided and a one-hour wage premium for each day a compliant rest period was not provided. Claimant intends to pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, and penalties to the extent allowed by law.

Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Labor Code section 226.7(b) states: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions

of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Meal Period” Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period will be waived by mutual consent of the employer and the employee. If an employer fails to provide an employee a meal period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

Pursuant to the “Rest Period” Section of the applicable Wage Order, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

As set forth above, the Employer denied Claimant and other aggrieved employees’ meal and rest periods due to them under the law. Consequently, the Employer must pay one hour of wages for each day a proper meal period was not properly provided and one hour of wages for each day a rest period was not properly provided. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods and rest breaks.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code Sections 246(i), 226(a), 226.3, 1198, and 2699, and the
“Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer. . .; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

The wage statements of employees who are compensated on a piece-rate basis during a pay period shall also comply with the requirements of Labor Code section 226.2(a)(2)(A)-(B):

(2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

(A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

(B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

The Employer failed to provide Claimant with an accurate, timely itemized wage statement complying with the requirements of the Labor Code and applicable IWC Wage Order. Claimant will pursue all remedies, including recovery of wages, interest, attorneys’ fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees of the Employer.

**FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code Sections 201, 201.3, 202, 203, 204, 256, 1198, and 2699, and the “Minimum Wages” Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Section 204(d) states: “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 201 states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202

states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

The Employer failed to timely pay Claimant and other aggrieved employees all wages due and owing during and upon termination of employment. The Employer willfully failed to pay all wages and penalties when required by Sections 201, 202, and 204 of the Labor Code. Therefore, the penalties to all affected employees, including Claimant.

FAILURE TO REIMBURSE EXPENSES

(Labor Code §§ 2802 and 2804)

California Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(b) states: “All awards made by a Court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at time of trial.

Furthermore, Labor Code section 2802(c) states: “For the purposes of this section, the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.”

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to fulfill these obligations when it failed to reimburse Claimant and other aggrieved employees for all costs and expenses they incurred while working for the Employer.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code Sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As set forth above, Q-Tech Corporation was the Employer, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 226, 226.7, 1194, 2802, 510, 512, 1197, and 1198, and

caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

DUTIES OF EMPLOYER

(Labor Code Sections 1174, 1174.5, 2810.5, and 1198 and Section 7 of the Applicable IWC Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Section 7 of the applicable IWC wage order also states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 2810.5 further requires an employer to provide to each employee a written notice containing certain information, including rates of pay, meal or lodging allowances, designated payday, name of employer, physical address of employer's main office or principal place of business, contact information of the employer, and worker's compensation carrier contact information. The Employer entirely failed to comply with this requirement.

The Employer violated Sections 1174, 1198, and 2810.5, and section 7 of the applicable IWC Wage order by failing to maintain time records and failing to provide the requisite notices.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code Sections 218.6, 226(e), 1194, 1194.2, 2699, *et seq.*, and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, 2699, *et seq.*, and 2802 give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred in actual damages, costs, and attorney's fees and will continue to incur costs as a result of Employer's unlawful actions.

CONCLUSION

The Employer violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



Kristina De La Rosa

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