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11 Attorneys for Plaintiff Sunny K. Tam, on behalf of himself
12 and other similarly-situated employees

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

14 **FOR THE COUNTY OF LOS ANGELES**

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

Plaintiff,

17 v.

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

21 Defendants.
22

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

23 **CLASS ACTION AND REPRESENTATIVE**
24 **ACTION**

25 **SUPPLEMENTAL BRIEFING IN**
26 **SUPPORT OF MOTION FOR**
27 **PRELIMINARY APPROVAL OF CLASS**
28 **ACTION SETTLEMENT**

Hearing Information

Date: November 16, 2022

Time: 9:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not Set

1 On October 6, 2022, the Court held a second hearing on Plaintiff's Motion for Order Granting
2 Preliminary Approval of Class Action Settlement. Plaintiff's prior Supplemental Briefing in support
3 of Preliminary Approval presented authority that the settlement did not create a conflict of interest
4 and did not create an impediment to Mr. Tam's loyalty to the class. Similarly, the separate settlement
5 does not create a breach of fiduciary duty. However, the Court expressed three additional concerns:
6 (1) That there be no restrictions in Mr. Tam's settlement agreement preventing him from discussing
7 the settlement; (2) That Plaintiff amend the Notice of Class Action Settlement to include reference to
8 the Plaintiff's separate, individual wrongful termination and discrimination settlement of \$25,000;
9 and (3) that Mr. Tan's individual settlement may put him in breach of his fiduciary duty as class
10 representative to the class. Each is addressed below.

11 The parties have revised the individual settlement agreement to delete any non-disclosure
12 provisions. Supplemental Declaration of Michael D. Singer, ("Supp. Singer Decl."), ¶5, Exhibit 1 -
13 Amended Individual Settlement Agreement and Release of Claims.

14 The parties have revised the Notice of Class Action Settlement to address the Court's concerns
15 by providing information regarding the individual settlement. Supp. Singer Decl. ¶¶6, 9, Exhibit 3 -
16 Notice of Class Action Settlement.

17 In **Section I. BACKGROUND OF THE CASE**, the following is added in redline: **The**
18 **parties also agreed to separately settle the individual claims of Plaintiff Sunny K. Tam for allegations**
19 **he was wrongfully terminated and discriminated against as set forth below.** Supp. Singer Decl. ¶7.

20 In **Section II. SUMMARY OF THE PROPOSED SETTLEMENT** the following is added
21 in redline: **Q-Tech will pay Plaintiff Sunny Tam \$25,000 to settle any claims for wrongful termination**
22 **and discrimination in exchange for a full release of all claims, as well as a release of claims under**
23 **California Civil Code section 1542, which provides: A general release does not extend to claims that**
24 **the creditor or releasing party does not know or suspect to exist in his or her favor at the time of**
25 **executing the release and that, if known by him or her, would have materially affected his or her**
26 **settlement with the debtor or released party.** Supp. Singer Decl. ¶8.

27 The Court also provided Plaintiff an opportunity to submit briefing on whether his separate,
28 individual settlement may put him in breach of his fiduciary duty as class representative to the class,

1 which is addressed as follows.

2 Plaintiff has not located California appellate authority deciding either way whether a separate
3 settlement creates a breach of fiduciary duty. There is, however, federal district court authority
4 indicating that such a settlement does not breach a class representative's fiduciary duty to absent class
5 members by virtue of ruling such settlements do not render the class representative inadequate or
6 create a conflict of interest.¹ Consistent with the adequacy requirement of not taking personal action
7 in conflict with or at the expense of the class, the fiduciary responsibility of class representatives has
8 been described as follows: "certified representatives and the class counsel assume[] certain fiduciary
9 responsibilities to the Class," and as a result, "the certified representatives may not take any action
10 which will prejudice the Class's interest, or further their personal interests at the expense of the
11 Class"). *Sondel v. Northwest Airlines, Inc.* (8th Cir. 1995) 56 F.3d 934, 938-39.

12 In *Roberts v. Electrolux Home Prods.* (C.D. Cal. Sept 11, 2014) 2014 U.S. Dist. LEXIS
13 130163, 26-27, the district court made a specific finding of adequacy in approving a settlement in
14 which the class representatives also received separate individual settlements where they provided, as
15 here, a broader release than that binding absent class members.

16 The Court further finds that the Class Representatives are individually
17 releasing claims for the property damage experienced as a result of
18 their Dryer fires (and none of the absent Settlement Class members
19 are providing these releases). The Court notes that, as part of their
20 individual settlements, Plaintiffs will receive the following for
21 individual (non-class) property damage claims: \$25,000 to Shannon
22 Carty; \$7,587.33 to Matthew Downs; and \$1,239.65 to Michelle
23 McGowan. These separate settlement amounts do not render the Class
24 Representatives inadequate or otherwise cause a conflict of interest;
rather, the Class Representatives are settling their individual claims
and providing releases—above and beyond the Settlement—as part of
their own individual property damage claims. The Court finds that
this creates no conflict of interest between the Class Representatives
and the Class; nor does it creates a conflict between Class Counsel
and the Class. litigation.

25 ¹In the absence of relevant state precedents, California courts examine federal law for guidance on
26 issues of class action procedure. *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 318. Though federal
27 district court decisions do not constitute precedent, they may be cited and relied on as persuasive,
28 *Castaneda v. Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051, 1074 [“a
decision of a federal district court has no precedential value in this court; at best, it
is persuasive authority only”].

1 In *Flores v. Dart Container Corp.* (E.D. Cal. Jan 12, 2021) 2021 U.S. Dist. LEXIS 6897, 15,
2 the district court found that settlement of separate, individual claims that arose out of circumstances
3 unique to the class representative negotiated separately from the class settlement did not render the
4 Plaintiff fundamentally unfit to act as a class representative. The Court addressed the adequacy
5 requirement, stating it “is aimed at ensuring that class representatives do not have adverse interests
6 that are fundamental to the suit and “go to the heart of the litigation,” from representing other class
7 members, not at prohibiting class representatives from having any unique interests at all.”

8 By contrast, a breach of fiduciary duty has been found where a class representative attempted
9 to settle their individual claim directly with the defendant and without counsel. See *Chinitz v. Intero*
10 *Real Estate Servs.* (N.D. Cal. May 4, 2021) 2021 U.S. Dist. LEXIS 85340, 3-4 [a class representative
11 has a fiduciary duty to the class, “and as a result the certified representatives may not take any action
12 which will prejudice the Class’s interest, or further their personal interests at the expense of the
13 Class.”]

14 None of these concerns is present in this case. As set forth in the Declaration of Michael D.
15 Singer filed August 31, 2022:

16 Plaintiff believed he was wrongfully terminated and/or discriminated
17 against by Defendant on the basis of race and/or age. These claims
18 were not alleged in the complaint. Independent of the settlement
19 presented for approval herein, the Parties independently and
20 separately negotiated a settlement agreement to resolve these
21 additional claims...Plaintiff’s individual claim had significant
22 potential value, likely several times the amount he accepted in
23 settlement. Defendant did not want to settle unless Plaintiff released
24 all claims, including claims for discrimination it understood he
contended were viable and wanted to pursue. Rather than jeopardize
or delay the class settlement, Plaintiff agreed to accept an individual
settlement of all claims, known and unknown. Plaintiff endeavored to
obtain the maximum possible class settlement irrespective of his
personal claims, and the \$650,000 class settlement and \$25,000
individual settlement were discrete and separate.

25 Mr. Tam’s individual settlement, separately negotiated, involving claims unique to him, and
26 not having been negotiated at the expense of the class, therefore did not breach his fiduciary duty as
27 class representative. The class will be apprised of the settlement, as it is described in full in the Notice
28 of Settlement, and thus the Court can revisit the matter should a class member raise an objection on

1 this issue. Supp. Singer Decl. ¶10.

2 Accordingly, Plaintiff requests the Court grant preliminary approval of the class settlement.

3
4 Respectfully submitted,

5 **COHELAN KHOURY & SINGER**
6 **STONEBROOK LAW**

7 Dated: October 28, 2022

8 By:  _____
9 Micahel D. Singer
Joseph Tojarieh
Counsel for Plaintiff Sunny Tam