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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

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**DECLARATION OF MICHAEL D.
SINGER IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL**

Hearing Information

Date: October 6, 2022

Time: 11:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not Set

1 I, Michael D. Singer, declare as follows:

2 1. I am Managing Partner at the law firm of Cohelan Khoury & Singer, co-counsel of
3 record for Plaintiff and the Proposed Class. I submit this declaration in support of Plaintiff's Motion
4 for Order Granting Preliminary Approval of Class Action Settlement. The following facts are within
5 my personal knowledge and if called to testify I could and would competently testify to them.

6 2. This declaration is intended to supplement the declaration filed by former associate
7 Kristina De La Rosa on June 22, 2022 in support of the Motion for Order Granting Preliminary
8 Approval of Class Action Settlement.

9 3. On August 12, 2022, the Court issued a Minute Order on Plaintiff's Motion for Order
10 Granting Preliminary Approval of Class Action Settlement, seeking additional information and
11 answers to question posed by the Court. The Court continued the hearing to October 6, 2022, and
12 directed supplemental briefing be filed no later than September 2, 2022.

13 4. The Class is defined as all current and former non-exempt, hourly paid employees of
14 Q Tech Corporation who worked in California at any time from May 17, 2017 to March 13, 2022.
15 PAGA "Aggrieved Employees" are all Class Members who were employed during the PAGA time
16 period of March 4, 2020 to March 13, 2022.

17 5. Based on Defendant's records, there are 185 class members. Of this amount, 147 are
18 estimated to be Aggrieved Employees.

19 6. Plaintiff believed he was wrongfully terminated and/or discriminated against by
20 Defendant on the basis of race and/or age. These claims were not alleged in the complaint.
21 Independent of the settlement presented for approval herein, the Parties independently and separately
22 negotiated a settlement agreement to resolve these additional claims. Attached as **Exhibit 1** is a true
23 and correct copy of the Individual Settlement Agreement and Release of Claims.

24 7. The settlement of Plaintiff's discrimination claim does not implicate his adequacy as
25 a class representative, nor is it in conflict with the interests of the class. Plaintiff's individual claim
26 had significant potential value, likely several times the amount he accepted in settlement. Defendant
27 did not want to settle unless Plaintiff released all claims, including claims for discrimination it
28 understood he contended were viable and wanted to pursue. Rather than jeopardize or delay the class

1 settlement, Plaintiff agreed to accept an individual settlement of all claims, known and unknown.
2 Plaintiff endeavored to obtain the maximum possible class settlement irrespective of his personal
3 claims, and the \$650,000 class settlement and \$25,000 individual settlement were discrete and
4 separate.

5 8. Plaintiff's counsel is taking no fee on this settlement and it is being paid by Defendant
6 outside the Class settlement. Plaintiff's conduct in this particular individual settlement demonstrates
7 his commitment to the interests of the class and supports his adequacy as a Class Representative.

8 9. The Parties had agreed Defendant shall fund the Gross Settlement Amount in two
9 equal installments. The funding provision has been revised so that Defendant will fund the entire
10 Gross Settlement Amount within thirty (30) calendar days after the effective date of settlement. The
11 operative Amended Class Action and PAGA Settlement Agreement and Release of Claims its
12 exhibits attached as **Exhibit 2** to this declaration, will entirely supersede the agreement filed with the
13 Preliminary Approval Motion on June 22, 2022.

14 10. A redline of the requested edits made to the Amended Class Action and PAGA
15 Settlement Agreement and Release of Claims is attached as **Exhibit 3**.

16 11. The Proposed Order Granting Preliminary Approval of Class Action Settlement has
17 been revised to reference the Supplemental Briefing, Amended Settlement Agreement and this
18 declaration, as well as other minor changes. The redlined Proposed Order is attached as **Exhibit 4**.

19 12. On the same date this declaration is filed with the Court, it will be served upon
20 Defendant and provided to the Labor and Workforce Development Agency ("LWDA") via the
21 LWDA's website, using the appropriate intake form. Attached as **Exhibit 5** is a true and correct copy
22 of the LWDA confirmation of Receipt.

23 I declare under the penalty of perjury under the laws of the State of California the foregoing
24 is true and correct and this declaration is executed August 31, 2022, in San Diego, California.

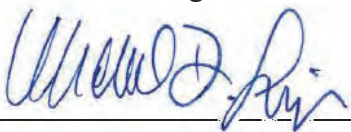
25 
26 _____
27 Michael D. Singer
28

EXHIBIT 1

INDIVIDUAL SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS

This Individual Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between Sunny Tam (“Plaintiff”) and Q-Tech Corporation (“Defendant”), subject to the terms and conditions hereof. Plaintiff and Defendant are collectively referred to as The Parties.

A. Definitions

1. “Action” means and refers collectively to the cases entitled “*Sunny K. Tam v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV18635 (the “Class Action”); and “*Sunny K. Tam, on behalf of himself and other aggrieved employees v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV19805 (the “PAGA Action”).

2. “Plaintiff’s Counsel” refers to Isam Khoury, Michael Singer, Kristina De La Rosa, and Rosemary Khoury of Cohelan Khoury & Singer, and Joseph Tojarieh of Stonebrook Law.

3. “Court” means the California Superior Court, County of Los Angeles.

4. “Defendant’s Counsel” or “Defense Counsel” means and refers to David A. Wimmer and Janet Swerdlow, of Swerdlow Florence Sanchez Swerdlow & Wimmer, A Law Corporation.

5. “Final Approval” refers to the order of the Court granting final approval of the settlement agreement resolving the Action (the “Class Action/PAGA Settlement Agreement”) and entering a judgment approving the Class Action/PAGA Settlement Agreement in the Action.

6. “Final Disposition” means a dismissal, order and/or judgement entered by the

Court finally and completely terminating the Action.

7. “Released Parties” means Defendant and each of its divisions, subsidiaries, partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and each of them, as well as each of their directors, officers, shareholders, partners, members, representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community.

B. Procedure

8. On or about May 17, 2021, Plaintiff filed the Class Action, which includes the following causes of action: (1) failure to pay minimum and regular wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay in lieu thereof; (4) failure to provide rest periods or pay in lieu thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to pay wages timely to separated employees; and (7) violations of unfair competition law.

9. On or about May 25, 2021, Plaintiff filed the PAGA Action, seeking civil penalties for alleged California Labor Code violations by Defendant, including allegations of: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages due during and upon separation from employment and (7) failure to maintain accurate records.

10. A genuine dispute exists between Plaintiff and Defendant regarding whether Plaintiff received all wages to which he was lawfully entitled arising from his employment with Defendant. Plaintiff agrees that he has read and understands Section 206.5 of the Labor Code which reads in pertinent part: *An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be*

earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor. Plaintiff having read and understood Labor Code Section 206.5 and having the opportunity to seek counsel regarding the same, agrees and affirms that he will not assert that Section 206.5 is applicable to this Agreement or any payments made hereunder.

C. General Terms

11. Plaintiff understands that, by entering into this Agreement, he is waiving any and all rights he may have arising under the Federal Age Discrimination in Employment Act, as amended, 29 U.S.C. Sections 621 et seq. Plaintiff was advised, and hereby is advised, to consult with legal counsel before entering into this Agreement. Plaintiff is represented by Plaintiff's Counsel. Plaintiff has 21 days to consider this Agreement. In addition, Plaintiff has seven days after executing this Agreement to revoke it. To revoke this Agreement, Plaintiff must notify Defendant's Counsel in writing of his revocation decision. To be valid, written notice of revocation must be received in Defendant's Counsel's office located at 9401 Wilshire Blvd., Suite 828, Beverly Hills, CA 90212, by the end of the seven-day revocation period. A revocation of this Agreement by Plaintiff shall have no impact on the Class Action/PAGA Settlement.

12. Defendant denies Plaintiff's claims and allegations in the Action and denies that it violated any of Plaintiff's rights.

D. Settlement Payment

(a) Gross Settlement Amount: Defendant shall pay Plaintiff to sum of Twenty Five Thousand Dollars (\$25,000.00), less regular payroll withholdings and authorized deductions (the "Settlement Amount") seven business days after Defendant receives notice of the

entry of Final Approval (or if Final Approval is not granted, within seven business days of receipt notice of an order reflecting Final Disposition of the Action), provided that Plaintiff has signed this Agreement and returned it to Defendant's Counsel and did not timely revoke this Agreement.

E. Release by Plaintiff

13. Upon entry of Final Approval (or Final Disposition of the Action if Final Approval is not granted), receipt of the Gross Settlement and clearance of payment, Plaintiff, on behalf of himself and his spouse, domestic partners, children, estates, heirs, and representatives, will forever completely release and discharge the Released Parties with respect to and from any and all claims, demands, rights, liens, agreements, contracts, covenants, actions, suits, causes of action, charges, grievances, wages, employment benefits, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held against any Released Parties arising out of or in any way connected with or related to or concerning: (1) any transactions, occurrences, acts or omissions contained in the Action; and/or (2) Plaintiff's employment with Defendant or the termination of Plaintiff's employment with Defendant; and/or (3) discrimination, harassment, retaliation, or any other violation of any federal, state, or local law (whether statutory or common law), regulation or ordinance (including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Family and Medical Leave Act, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment Retraining and Notification Act, the Employee Retirement Income Security Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California

Constitution, the California Government Code, and the California Labor Code); and/or (4) wrongful termination, breach of express and/or implied-in-fact contract, breach of the covenant of good faith and fair dealing, violation of public policy, intentional and/or negligent infliction of emotional distress, defamation, invasion of privacy, fraud and/or negligent misrepresentation, intentional and/or negligent interference with contractual relations and/or prospective economic advantage, and other common law torts; and/ or (5) any claim for severance pay, bonus, sick leave, holiday pay, vacation pay, life insurance, health and medical insurance or any other fringe benefit, or disability; and/or (6) any other transactions, occurrences, acts, or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, concealed or hidden, resulting from any act or omission by or on the part of any of them committed or omitted prior to the date of this Agreement. Notwithstanding anything herein to the contrary, this Agreement does not release any rights Plaintiff has arising out of the Class Action/PAGA Settlement Agreement, which rights are being separately released by Final Approval.

14. Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the above, nothing in this Release is intended to apply to the Class Action or to release the Class Action Claims. Plaintiff will still proceed as the named plaintiff and

class representative for purposes of pursuing claims asserted in the Class Action, including the anticipated settlement of the Class Action. The general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law as part of this Agreement.

F. Other Terms

15. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

16. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used by any Released Party to pursue an injunction, against any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any claim released by this Agreement.

17. Confidentiality. **Plaintiff agrees that the settlement amount in this Agreement, and anything that suggests the number or range thereof, shall remain confidential as between the Parties and their counsel, and neither Plaintiff nor Class Counsel shall disclose them to any other person, including any current or former employee of Defendant, other than by Plaintiff to Plaintiff's legal and financial advisors or to the Court if directly asked by the Court. Plaintiff agrees that any proven disclosure by Plaintiff in violation of the foregoing shall constitute and be treated as a material breach of this Agreement. Notwithstanding anything herein to the contrary, nothing in this Agreement prevents Plaintiff from discussing or disclosing information about the working conditions, unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiff has reason to believe is unlawful.**

18. Plaintiff will not engage in or assist in any litigation against Defendant relating to anything occurring prior to the effective date of this Agreement, except as permitted by law or if

compelled by order of a court or as necessary to participate in an investigation or proceeding conducted by the United States Equal Employment Opportunity Commission (“EEOC”), the California Department of Fair Employment and Housing (“DFEH”), or other governmental agency. Plaintiff further acknowledges and understands that this Agreement does not prohibit Plaintiff from filing an administrative charge or claim with: (a) the EEOC or DFEH or any state or local agency authorized by the EEOC to accept such charge or claim, or (b) the United States National Labor Relations Board. This Agreement does, however, preclude Plaintiff from receiving any monetary, injunctive, or other personal relief related in whole or in part to claims released in this Agreement. Should any individual or entity who is not subject to this Agreement bring an administrative charge, claim, or action against Defendant or any Releasee that results in assignable recovery or relief for Plaintiff; Plaintiff waives right to such recovery or relief and specifically assigns to Defendant and/or any Releasee, as the case may be, the right to any such recovery or relief arising from such proceeding.

19. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

20. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document, and pursuant to

California Evidence Code Section 1152, it shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve the Class Action/PAGA Settlement Agreement and/or interpret or enforce this Agreement.

21. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rules of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

22. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

23. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

24. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of Steven Rottman, Esq. to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs, and split any fees of Mr. Rottman equally. This

provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

25. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

26. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law.

27. Choice of Law. This Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California.

28. Integration. This Agreement, along with the Class Action/PAGA Settlement Agreement, contains the entire agreement between the Parties relating to the individual settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. This Agreement is an integrated document.

29. Binding on Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

30. Invalidity of Any Provision. If any term or provision of this Agreement is held to be invalid or unenforceable, the remaining terms or provisions of this Agreement shall continue

to be valid and will be performed, construed and enforced to the fullest extent permitted by law.

The invalid or unenforceable term or provision shall be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

31. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: 6/20/2022, 2022



Sunny K. Tam

Dated: _____, 2022

Q-TECH CORPORATION

By: Daniel Taylor
Title: Chief Financial Officer

to be valid and will be performed, construed and enforced to the fullest extent permitted by law. The invalid or unenforceable term or provision shall be deemed amended and limited in accordance with the intent of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

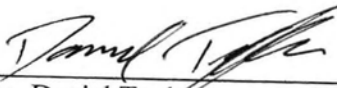
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Dated: _____, 2022

Sunny K. Tam

Dated: June 22, 2022

Q-TECH CORPORATION



By: Daniel Taylor
Title: Chief Financial Officer

EXHIBIT 2

**AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Amended Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiff Sunny Tam (“Plaintiff”) individually and on behalf of all Settlement Class Members and Aggrieved Employees (as defined below), on the one hand; and Defendant Q-Tech Corporation (“Defendant”), on the other hand; is intended to supersede and amend the Parties Class Action and PAGA Settlement Agreement and Release of Claims executed on or about June 20, 2022; and is approved as to form by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” means and refers collectively to the cases entitled “*Sunny K. Tam v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV18635 and “*Sunny K. Tam, on behalf of himself and other aggrieved employees v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV19805 and includes the Amended Complaint consolidating these two cases for settlement purposes.

2. “Agreement” or “Settlement Agreement” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including its attached Exhibits.

3. “Aggrieved Employees” means all current and former employees of Defendant who worked in California at any time during the PAGA Period as non-exempt, hourly paid employees.

4. “Amended Complaint” of “First Amended Complaint” shall mean and refer to the First Amended Complaint to be filed by Plaintiff in the case entitled *Sunny K. Tam v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV18635 and that will include all claims for civil penalties now pending in the case entitled *Sunny K. Tam, on behalf of himself and other aggrieved employees v. Q Tech Corporation*,” Los Angeles County Superior Court, Case No. 21STCV19805.

5. “Attorneys’ Fees and Costs Award” means the amount approved by the Court for Class Counsel’s attorneys’ fees and costs.

6. “Class Counsel” refers to Isam Khoury, Michael Singer, and Rosemary Khoury of Cohelan Khoury & Singer, and Joseph Tojarieh of Stonebrook Law.

7. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its available records and provide to the Settlement Administrator on one spreadsheet and shall include, to the extent available, the Settlement Class Members’ full names; last known addresses; telephone numbers; Social Security Numbers; the total Work Weeks Worked during the PAGA Period for each Aggrieved Employee; and the total Work Weeks Worked during the Class Period for each Settlement Class Member.

8. “Class Notice” means the Notice of Settlement of Class Action that will be sent to the Settlement Class Members and in a form substantially similar as **Exhibit A**.

9. “Class Period” is the period from May 17, 2017, to March 13, 2022.

10. “Class Representative” or “Plaintiff” means and refers to Sunny Tam.

11. “Court” means the California Superior Court, County of Los Angeles.

12. “Defendant’s Counsel” or “Defense Counsel” means and refers to David A. Wimmer and Janet Swerdlow of Swerdlow Florence Sanchez Swerdlow & Wimmer, A Law Corporation.

13. “Effective Date” occurs after the latest of the following dates is reached: (i) sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal, objection, or request to intervene is filed; or (ii) if there is an appeal of the Court’s judgment granting final approval of the settlement, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review in the California Supreme Court; or (iii) if a petition for review is filed, the date of denial of the petition for review, or the date the judgment is affirmed pursuant to such petition.

14. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties and in a form substantially similar as **Exhibit C**.

15. “Final Approval Hearing” refers to the hearing at which the Court is requested to

1 grant Final Approval of this Settlement Agreement.

2 16. "Final Settlement Class" means, collectively, all Settlement Class Members who
3 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

4 17. "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph
5 51(a) below, as the same may be escalated subject to Paragraph 51(b) below.

6 18. "Individual Settlement Payment" shall means the portion of the settlement
7 agreement that each Class Member is entitled to receive from the Net Settlement Amount in
8 accordance with this settlement and in accordance with the formula set forth in Paragraph 51 (d).

9 19. "Individual PAGA Payment" shall refer to the individual payments made to
10 Aggrieved Employees for their *pro rata* share of the PAGA Payment.

11 20. "Net Settlement Amount" is defined as the Gross Settlement Amount less
12 Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all
13 Settlement Administration Costs, and PAGA Penalties.

14 21. "Notice Packet" means the Class Notice and PAGA Notice that will be sent to the
15 Class Members and Aggrieved Employees.

16 22. "Notice Response Deadline" is 45 calendar days from the date the Notice Packet
17 is mailed to the Settlement Class Members.

18 23. "Objecting Settlement Class Member" means a Settlement Class Member who
19 submits a valid and timely objection to the terms of this Agreement with respect to the Released
20 Class Claims, pursuant to Paragraph 70(c) below.

21 24. "PAGA Notice" means the Notice of Settlement of PAGA claims that will be
22 sent to all Aggrieved Employees.

23 25. "PAGA Payment" shall refer to the \$18,750.00 in PAGA Penalties to be paid
24 pursuant to this Settlement to Aggrieved Employees.

25 26. "PAGA Penalties" means the total of \$75,000.00, which shall be separated as
26 \$56,250.00 that the Parties have agreed to pay to the California Labor and Workforce
27 Development Agency ("LWDA") in connection with the claims brought by Plaintiff under the
28 California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*)

1 (“PAGA”), as well as \$18,750.00 in aggregate Individual PAGA Payments allocated to each
2 Aggrieved Employee, as more fully described in Paragraph 51(i).

3 27. “PAGA Period” is the period from March 4, 2020, through March 13, 2022.

4 28. “Participating Class Member” means any and all Final Settlement Class members
5 who are deemed to participate, who will receive an Individual Settlement Payment, and who do
6 not opt-out by submitting a timely valid Request for Exclusion.

7 29. “Parties” or “Settling Parties” refers to Plaintiff, the Aggrieved Employees, the
8 Settlement Class, and Defendant, collectively.

9 30. “Preliminary Approval Order” means the judicial Order to be entered by the
10 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
11 and providing for the issuance of the Notice Packet to the Settlement Class and Aggrieved
12 Employees, an opportunity to opt out of the Final Settlement Class, an opportunity to submit
13 timely objections to the Settlement, and setting a hearing on the fairness of the terms of
14 Settlement, including approval of attorneys’ fees and costs and in a form substantially similar as
15 **Exhibit B.** Defendant will not object to Plaintiff’s motion for preliminary approval, provided the
16 motion is consistent with the Agreement. Plaintiff agrees to provide the Motion for Preliminary
17 Approval, and any supporting papers, to Defense Counsel five court days before it is filed.

18 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
19 Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from
20 which the settlement payments shall be made, and which is intended to be a fund that qualifies
21 under Internal Revenue Code Section 468.

22 32. “Released Class Claims” or “Class Claims” means any and all claims, demands,
23 rights, liabilities, and causes of action that were or could have been pled under local, state or
24 federal law based on the facts alleged in the Amended Complaint against Defendant arising
25 during the Class Period, including but not limited to claims for (1) failure to pay minimum and
26 regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in
27 lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide
28 accurate itemized wage statements, (6) failure to pay wages timely to separated employees, and

1 (7) violations of the Unfair Competition law.

2 33. “Released PAGA Claims” means any and all claims for civil penalties for
3 violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
4 512, 558, 1174, 1194, 1194.2, 1197, and 1198 under PAGA that Plaintiff alleged against the
5 Released Parties on behalf of Aggrieved Employees and the State of California, based on the
6 facts stated in Plaintiff’s Amended Complaint and in Plaintiff’s March 4, 2021 notice letter to the
7 LWDA (including any amendments thereto), including all PAGA claims seeking civil penalties
8 for (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure
9 to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu
10 thereof, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages
11 due during and upon separation from employment and (7) failure to maintain accurate records
12 arising during the PAGA Period.

13 34. “Released Parties” means Defendant and each of its divisions, subsidiaries,
14 partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and
15 each of them, as well as each of their directors, officers, shareholders, partners, members,
16 representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees,
17 successors, business managers, agents, contractors, insurers, attorneys, and employees, past and
18 present, and each of them and their marital community.

19 35. “Request for Exclusion” means and refers to a valid and timely request for
20 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
21 Settlement Class Member pursuant to Paragraph 70(a) below.

22 36. “Service Payment” or “Service Award” means the combined amount approved by
23 the Court to be paid to the Class Representative as a service award and enhancement in
24 consideration for the services Plaintiff performed on behalf of the Class and in exchange for the
25 Released Claims and Released PAGA claims set forth herein, in addition to his Individual
26 Settlement Payment as a Participating Class Member.

27 37. “Settlement Administrator” means and refers to the ILYM Group, Inc., the third-
28 party class action settlement administrator agreed to by the Parties, that will provide the Notice

1 Packet to the Settlement Class Members and Aggrieved Employees, and distribute the settlement
2 amounts as described in this Agreement, as well perform as any other related services requested
3 and agreed to by the Parties.

4 38. “Settlement Administration Costs” means the costs payable from the Gross
5 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
6 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
7 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
8 due diligence, mailing notice packets, issuing Individual Settlement Payments and Individual
9 PAGA payments, mailing reminding postcards, reporting and remittance obligations, distributing
10 the Gross Settlement Amount, and providing necessary reports and declarations, as requested by
11 the Parties. The Settlement Administration Costs shall not exceed Twenty Thousand Dollars
12 (\$20,000.00) and shall be paid from the Gross Settlement Amount, as approved by the Court.

13 39. “Settlement Class” consists of all current and former non-exempt, hourly-paid
14 employees of Defendant who worked in California at any time during the Class Period.

15 40. “Settlement Class Member” or “Class Member(s)” refers to individual members
16 of the Settlement Class.

17 41. “Work Weeks Worked” or “Eligible Work Weeks,” in the context of Settlement
18 Class Members, means all work weeks during the Class Period in which the Settlement Class
19 Member was employed by Defendant as a non-exempt employee in California and worked at
20 least one shift during the work week. Likewise, in the context of Aggrieved Employees, these
21 phrases mean all work weeks during the PAGA Period in which the Aggrieved Employee was
22 employed by Defendant as a non-exempt employee in California and worked at least one shift
23 during the work week.

24 **B. Procedure**

25 42. On or about May 17, 2021, Plaintiff filed a putative class-action complaint in the
26 Court against Defendant, Case No. 21STCV18635, including the following causes of action:
27 (1) failure to pay minimum and regular wages; (2) failure to pay overtime wages; (3) failure to
28 provide meal periods or pay in lieu thereof; (4) failure to provide rest periods or pay in lieu

thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to pay wages timely to separated employees; and (7) violations of unfair competition law.

43. On or about May 25, 2021, Plaintiff filed a PAGA representative case in the Court against Defendant, Case No. 21STCV19805, seeking civil penalties for alleged California Labor Code violations by Defendant, including allegations of: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages due during and upon separation from employment and (7) failure to maintain accurate records.

44. In conjunction with and conditioned upon the Court granting Preliminary Approval of this Settlement, Plaintiff will file the Amended Complaint. The Parties hereby agree that, for settlement purposes only, the statute of limitations of the PAGA claims pending in Los Angeles County Superior Court, Case No. 21STCV19805 shall be deemed to relate back to May 25, 2021. In addition, the Amended Complaint will include all other amendments necessary to give full effect to this settlement.

C. General Terms

45. Defendant denies Plaintiff's claims and allegations and contends that the Action is not suitable for class certification or manageable as a class or representative action.

46. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

47. The Parties have conducted a reasonable investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including the production of payroll and timekeeping records for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Settlement

1 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class
2 Members in light of all known facts and circumstances, including the risk of significant delay
3 and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
4 potential appellate issues.

5 48. On December 13, 2021, Plaintiff and Defendant participated in mediation before
6 Steven Rottman, a highly experienced wage-and-hour class action mediator. The matter resolved
7 at mediation pursuant to a mediator's proposal.

8 49. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
9 to be performed or judgments to be entered pursuant to the terms of the Settlement and
10 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
11 any statute or law or liability on any of the claims or allegations in the Action.

12 50. Stipulation for Class Certification and Representative Treatment. For settlement
13 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
14 do not submit a Request for Exclusion from the Settlement Class may be conditionally certified
15 as a settlement class and that the Aggrieved Employees are appropriate for representative
16 treatment. This stipulation to certification and representative treatment is in no way an admission
17 that class-action certification and/or representative treatment is proper and shall not be
18 admissible in this or in any other action except for the sole purpose of enforcing this Agreement.
19 If the Court does not approve the payment of the Net Settlement Amount as described in this
20 Agreement, the Parties agree to meet and confer to address the Court's concerns. Should, for
21 whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class
22 certification and representative treatment as part of the Settlement shall become null and void *ab*
23 *initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of
24 whether or not certification and/or representative treatment would be appropriate in a non-
25 settlement context. Defendant expressly reserves its rights and declares that it would continue to
26 oppose class certification, representative treatment, and the substantive merits of the case should
27 the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that
28

he would continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

D. Terms of Settlement

51. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00) (“the Gross Settlement Amount”), unless it shall be escalated pursuant to Paragraph 51(b) below. The Gross Settlement Amount is the maximum amount that will be paid and includes Individual Settlement Payments (including all employee-side payroll taxes thereupon), Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendant shall separately pay the employer’s share of applicable payroll tax obligations, which shall be paid and reported through the Settlement Administrator.

(b) The Settlement is based on Defendant’s representation that there are approximately 30,000 Work Weeks Worked included in the Class Period. In the event that the actual number of Work Weeks Worked by all Settlement Class Members during this period exceeds this number by more than five percent (5%) (i.e., 31,500 Work Weeks Worked or more), then Defendant shall increase the Gross Settlement Amount by the same percentage (i.e., \$22.50 for each additional Work Week Worked above 31,500 Work Weeks Worked). The Gross Workweek Value shall be calculated by dividing the Gross Settlement Amount prior to potential escalation (\$675,000.00) by 30,000, which amounts to a Gross Work Week Value of \$22.50. Thus, for example, should there be 32,500 Work Weeks Worked in the Class Period, then the Gross Settlement Amount shall be increased by \$22,500.00. (32,500 Work Weeks – 31,500 Work Weeks x \$22.50/additional Work Week.)

(c) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross Settlement Amount less Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. If the Court reduces the requested Attorneys’ Fees and Costs Award, Service Award, or Settlement Administration Costs, or either increases or decreases the amount allocated to the PAGA

1 Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

2 (d) Individual Settlement Payments for the Settlement Class: Individual
3 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
4 on the number of Eligible Work Weeks a Settlement Class Member worked during the Class
5 Period. Specific Calculations of Individual Settlement Payments will be made as follows:

- 6 • Based on the Class Data produced by Defendant, the Settlement Administrator
7 will calculate the total number of Work Weeks Worked by each Settlement
8 Class Member during the Class Period and the aggregate total number of
9 Work Weeks Worked by all Settlement Class Members during the Class
10 Period.
- 11 • The Net Settlement Amount will be divided by the aggregate total number of
12 Work Weeks Worked by all Settlement Class Members during the Class
13 Period, resulting in the “Class Work Week Value.” Each Settlement Class
14 Member’s Individual Settlement Payment will be calculated by multiplying
15 his or her total number of Work Weeks Worked during the Class Period by the
16 Class Work Week Value.
- 17 • Individual Settlement Payments will be reduced by any required deductions
18 for each Participating Class Member as specifically set forth herein, including
19 employee-side tax withholdings and deductions.
- 20 • The entire Net Settlement Amount will be disbursed to all Participating Class
21 Members. If there are any valid and timely Requests for Exclusion, the
22 Settlement Administrator shall proportionally increase the Individual
23 Settlement Payment for each Participating Class Member according to the
24 number of Work Weeks Worked, so that the amount actually distributed to the
25 Settlement Class equals 100% of the Net Settlement Amount.

26 (e) Individual PAGA Payments: Individual PAGA Payments will be
27 calculated and apportioned from the PAGA Payment based on the number of Eligible Work
28 Weeks an Aggrieved Employee worked during the PAGA Period. Specific Calculations of

Individual PAGA Payments will be made as follows:

- The Settlement Administrator will determine the total number of Work Weeks Worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Work Weeks Worked”), as well as the aggregate number of Work Weeks Worked by all Aggrieved Employees during the PAGA Period (“PAGA Work Weeks Worked”).
- Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Work Weeks Worked / PAGA Workweeks) x \$18,750.00 (the PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check. The Settlement payment for a Participating Class Member who is also an Aggrieved Employee will therefore include the Participating Class Member’s Individual Settlement Payment and Individual PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound by any release of the Released PAGA Claims and will still receive their Individual PAGA Payment.

(e) Tax Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203 & 226) from which no taxes will be withheld or other deductions made. The Individual PAGA Payments will be one hundred percent (100%) allocated to civil penalties from which no taxes will be withheld or other deductions made. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 to each Participating Class Member and/or Aggrieved Employee with respect to the penalties and interest allocations.

(f) Service Payment to Class Representative: The amount, if any, awarded to

1 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
2 exceed \$5,000 in exchange for the services Plaintiff performed on behalf of the Class and the
3 risk incurred in conferring the benefits of this settlement on the class. The Service Payment to
4 Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be
5 issued an IRS Form 1099 by the Settlement Administrator in connection with this payment.
6 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this
7 payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less
8 than the requested amount shall not be a basis for Class Counsel or the Class Representative to
9 void this Settlement Agreement nor to appeal this aspect of the Court's ruling. Should the Court
10 approve a lesser amount for the Service Payment, the difference shall be added to the Net
11 Settlement Amount to be distributed to the Participating Class Members.

12 (g) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
13 request by Class Counsel to the Court for an award of attorneys' fees of not more than thirty-
14 three and a third percent (33.33%) of the Gross Settlement Amount, as the same may be
15 escalated pursuant to Paragraph 51(b) of this Agreement, plus reasonable litigation costs
16 estimated not to exceed \$20,000. ("Attorneys' Fees and Costs Award"). Defendant agrees not to
17 oppose any contention by Class Counsel that attorneys' fees should be based on the common
18 fund theory. The Attorneys' Fee and Costs Award shall be paid from the Gross Settlement
19 Amount. Other than as set forth in Paragraph 51(d), Defendant shall have no further obligation
20 to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser
21 amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement
22 Amount to be distributed to the Participating Class Members. The Parties agree that any amount
23 awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be
24 a basis for Class Counsel or the Class Representative to rescind or otherwise void this Settlement
25 Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
26 reflecting the amount of attorneys' fees and costs awarded by the Court.

27 (h) Settlement Administration Costs: The fees and other charges of the
28 Settlement Administrator will be paid from the Gross Settlement Amount, subject to Court

1 approval and estimated not to exceed \$20,000. If the actual amount of the Settlement
2 Administration Costs is less than \$20,000, then the difference between \$20,000 and the actual
3 Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
4 Administration Costs exceed \$20,000, then such excess will be paid solely from the Gross
5 Settlement Amount and Defendant will not be responsible for paying any additional funds in
6 order to pay these additional costs, unless the increased costs are as a result of Defendant's
7 negligence or error.

8 (i) PAGA Penalties: The Parties agree that \$75,000 is allocated to PAGA
9 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this
10 amount, \$56,250.00 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
11 PAGA, and \$18,750.00 (25%) will be paid to the Aggrieved Employees based on a Work Weeks
12 Worked basis during the PAGA Period, i.e., the PAGA Payment, which will be treated entirely
13 as civil penalties and shall be reported as required on an IRS Form 1099. Defendant will
14 calculate the total number of Work Weeks Worked by each Aggrieved Employee during the
15 PAGA Period and the aggregate total number of Work Weeks Worked by all Aggrieved
16 Employees during the PAGA Period. Class Counsel shall give proper notice to the LWDA of
17 the Settlement.

18 (j) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make
19 no representations as to the tax treatment or legal effect of Settlement Amounts called for
20 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
21 representation by Class Counsel, Defendant, or Defendant's counsel in this regard. The amount
22 of federal income tax withholding will be based upon a flat withholding rate for supplemental
23 wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
24 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
25 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at
26 times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
27 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
28 applicable tax law, are changed after the date of this Agreement, the processes set forth in this

1 Section may be modified in a manner to bring Defendant into compliance with any such changes.
2 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
3 will be solely responsible for the payment of any taxes and penalties assessed on their respective
4 payments described herein and will hold Defendant harmless from and against any claims
5 resulting from treatment of such payments as non-taxable damages.

6 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
7 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
8 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
9 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
10 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
11 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
12 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
13 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
14 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
15 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
16 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
17 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
18 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
19 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
20 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
21 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
22 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
23 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
25 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
26 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
27 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
28 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING

1 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

2 52. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
3 Participating Class Members under this Agreement, as well as any other payments made
4 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
5 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
6 to: profit-sharing plans, bonus plans, 401(k) plans, pension plans, retirement plans, stock
7 purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any
8 other benefit or incentive plan. Rather, it is the Parties' intention that this Settlement will not
9 affect any rights, contributions, or amounts to which any Settlement Class Members may be
10 entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this
11 Settlement are not for days or hours worked and are not included toward any regular rate of pay
12 calculation, or any benefit vesting or accrual purpose.

13 53. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
14 no circumstance will any portion of the Gross Settlement Amount revert to Defendant.
15 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
16 receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a
17 claim in order to receive their Individual PAGA Payments. Distributions, in the form of
18 Individual Settlement Payments and Individual PAGA Payments, will be made directly to each
19 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
20 responsible for accurately and timely reporting and remittance obligations with respect to
21 unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing
22 an Individual Settlement Payment or Individual PAGA Payment by the check cashing deadline,
23 as set forth herein.

24 54. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
25 adequate, and will so represent same to the Court.

26 **E. Release by Plaintiff, Aggrieved Employees and the Settlement Class**

27 55. Upon Final Approval and Defendant's funding of the Gross Settlement Amount,
28 along with any taxes necessary to be paid by Defendant to effectuate the Settlement and upon

1 issuance of Individual Settlement Payments to Participating Class Members, and except as to
2 such rights or claims as may be created by this Settlement Agreement, the Participating Class
3 Members, for themselves and for their respective spouses, domestic partners, children, estates,
4 heirs, and representatives, will forever completely release and discharge the Released Parties
5 from the Released Class Claims that have arisen or accrued during the Class Period. It is the
6 intent of the Parties that the Final Approval entered by the Court shall have full equitable and
7 collateral estoppel and *res judicata* effect and be final and binding upon Participating Class
8 Members regarding the Released Class Claims.

9 56. Each Participating Class Member will be deemed to have made the foregoing
10 Released Class Claims as if by manually signing it.

11 57. Upon Final Approval and Defendant's funding of the Settlement Amount, as well
12 as any taxes that must be paid by Defendant to effectuate the Settlement and upon issuance of
13 Individual PAGA Payments to Aggrieved Employees, Plaintiff, standing in the shoes of the
14 Labor Commissioner/LWDA to the extent permitted by law, and on behalf of the State of
15 California and all Aggrieved Employees, for themselves and for their respective spouses,
16 domestic partners, children, estates, heirs, and representatives, will forever completely release
17 and discharge the Released Parties from the Released PAGA Claims. It is the intent of the
18 Parties that the Final Approval entered by the Court shall have full equitable and collateral
19 estoppel and *res judicata* effect and be final and binding upon the LWDA and the Aggrieved
20 Employees regarding the Released PAGA Claims.

21 58. Each Aggrieved Employee and the LWDA will be deemed to have made the
22 foregoing Released PAGA Claims as if by manually signing it.

23 59. Plaintiff and Defendant intend that the Settlement described in this Agreement
24 will release and preclude any further claim, whether by lawsuit, administrative claim (to the
25 extent permitted by law) or action, grievance, arbitration, demand, or other action of any kind, by
26 each and all of the Participating Class Members to obtain a recovery based on or arising out of
27 the Released Class Claims. The Class Members shall be so notified in the Notice. This
28 paragraph only applies to Participating Class Members and, thus, does not apply to any Class

1 Member who timely and validly submits a Request for Exclusion.

2 60. Plaintiff and Defendant also intend that the Settlement described in this
3 Agreement will release and preclude any further claim for civil penalties under the California
4 Labor Code, whether by lawsuit, administrative claim (to the extent permitted by law) or action,
5 grievance, arbitration, demand, or other PAGA action of any kind, by each and all of the
6 Aggrieved Employees and by the LWDA to obtain a recovery based on or arising out of the
7 Released PAGA Claims. The Aggrieved Employees shall be so notified in the PAGA Notice,
8 and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the
9 filing of the Motion for Preliminary Approval.

10 61. Class Representative, on behalf of himself and the Participating Class Members,
11 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
12 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
13 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
14 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not
15 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

16 An employer shall not require the execution of any release of any claim or
17 right on account of wages due, or to become due, or made as an advance on
18 wages to be earned, unless payment of those wages has been made.

19 **F. Interim Stay of Proceedings**

20 62. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
22 except such as are necessary to effectuate the Settlement.

23 **G. Notice Process**

24 63. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for

determining the Individual Settlement Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator shall also be responsible for issuing to Class Representative, Participating Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

64. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute with the aid of the Settlement Administrator and without the necessity of State Court intervention.

65. Class Data. Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential, shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. The Settlement Administrator will be required to sign and provide to Defendant a Certification Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as entered by the Court.

66. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the

1 Settlement Administrator to the Settlement Class Members and Aggrieved Employees, by first
2 class mail, in English and Spanish, within fourteen (14) calendar days following the Settlement
3 Administrator's receipt of the Class Data. Notice Packets will be re-mailed to any Settlement
4 Class Member and/or Aggrieved Employee for whom an updated address is located within seven
5 (7) calendar days following both the Settlement Administrator learning of the failed mailing
6 and/or receipt of the updated address.

7 67. Returned Notices. Any Notice Packets returned as non-deliverable on or before
8 the Void Date shall be re-mailed via First-Class U.S. Mail to the forwarding address affixed
9 thereto within seven (7) calendar days of receipt by the Administrator to the forwarding address
10 affixed to the non-deliverable envelope. If no forwarding address is provided, the Administrator
11 will, within (5) business days, promptly attempt to determine the correct address using a skip
12 trace, or other search using the name, address or Social Security number of the Class Member
13 and Aggrieved Employee involved, and will then perform a single re-mailing. Notice Packets
14 will be re-mailed to any Settlement Class Member and Aggrieved Employee for whom an
15 updated address is located within seven (7) calendar days following both the Settlement
16 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
17 Packet shall be identical to the original Notice Packet, except that it shall notify the Settlement
18 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
19 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

20 68. Disputes Regarding Information on Notices. Class Members are deemed to
21 participate in the Settlement, unless they opt-out. The Class Notice will inform Class Members
22 of their estimated Individual Settlement Payment and the number of Work Weeks Worked
23 during the Class Period. The PAGA Notice will inform the Aggrieved Employees of their
24 estimated Workweeks Worked during the PAGA Period and estimated Individual PAGA
25 Payment. Class Members and Aggrieved Employees may dispute their Work Weeks Worked in,
26 respectively, the Class Period and/or PAGA Period if they feel they should be credited with more
27 Eligible Work Weeks than Defendant's records show by timely submitting evidence to the
28 Settlement Administrator. Defendant's records will be presumed determinative absent reliable

evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or Aggrieved Employee and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's and/or Aggrieved Employee's actual number of Work Weeks Worked during the Class Period and/or PAGA Period and estimated Individual Settlement Payment and/or Individual PAGA Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members and Aggrieved Employees will have until the Notice Response Deadline to dispute Work Weeks Worked, object or opt out of the Class Action Settlement, or object to the settlement of the PAGA Penalties and seek to intervene in the Action, unless extended by the Court. In the event that the Settlement Administrator revises the number of Work Weeks Worked for any Settlement Class Member or Aggrieved Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments and/or the Aggrieved Employees' Individual PAGA Payment accordingly. In no event will Defendant be required to increase the Gross Settlement Amount on this basis.

69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least seven (7) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

70. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt out or request exclusion from the Settlement with respect to the Released Class Claims. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

1 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT
2 CLASS IN THE Q-TECH CORPORATION LAWSUIT. I
3 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
4 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
5 MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
6 IN THIS LAWSUIT,” or a statement to that effect.

7 To be valid, any Request for Exclusion must include the full name, address, telephone
8 number, last four digits of the social security number or date of birth, and signature of the
9 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
10 mail to the Settlement Administrator at the specified address. Any such Request must be made
11 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
12 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
13 Any Settlement Class Member who timely requests exclusion in compliance with these
14 requirements: (i) will not have any rights under this Agreement with respect to the Released
15 Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
16 entitled to receive any payments under this Agreement for the Released Class Claims; and (iii)
17 will not be bound by this Agreement, or the judgment, with respect to the Released Class Claims.
18 Any Aggrieved Employee who requests timely exclusion from the Settlement Class will still be
19 subject to the Released PAGA Claims to the fullest extent permitted by law and shall be sent his
20 or her share of PAGA Penalties.

21 (b) Binding Effect on Participating Class Members. Except for those
22 Settlement Class Members who exclude themselves in compliance with the procedures set forth
23 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
24 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
25 Agreement, the judgment, and the releases set forth herein; and (iii) except as otherwise provided
26 herein, will be deemed to have waived all objections and oppositions to the fairness,
27 reasonableness, and adequacy of the Settlement.

28 (c) Objections to Settlement of the Released Class Claims or Released PAGA

1 Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this
2 Agreement. To object, a Settlement Class Member should inform the Settlement Administrator,
3 in writing, of his or her objection which must be postmarked by the Notice Response Deadline at
4 the address set forth in the Notice. Such objection shall include the Objecting Settlement Class
5 Member's full name, address, telephone number, and dates of employment with Defendant, the
6 case name and number, the basis for the objection, including any legal support and each specific
7 reason in support of the objection, as well as any documentation or evidence in support thereof,
8 and, if the Objecting Settlement Class Member is represented by counsel, the name and address
9 of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class
10 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement
11 Administrator shall attach the same to its declaration of due diligence and file with the Court
12 prior to the Final Approval Hearing. Any Participating Class Member who files an objection
13 remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant
14 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his
15 or her counsel related to any objections to the Settlement.

16 (d) Failure to Object. Any Settlement Class Member who desires to object to
17 the Released Class Claims or Released PAGA Claims in the Settlement but fails to timely submit
18 a written objection or in person objection at the Final Approval Hearing may still object and/or
19 comment on the Settlement in person and/or through counsel at the Final Approval Hearing.

20 (e) Responses to Objections. Counsel for the Parties may file a response to
21 any objections submitted by Objecting Settlement Class Members at least five (5) court days
22 before the date of the Final Approval Hearing.

23 (f) Timing of Requests. Settlement Class Members will have until the Notice
24 Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator
25 by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and
26 Defendant's counsel what objections or Requests for Exclusion were timely submitted on a
27 weekly basis, and upon the request of Class Counsel or Defense Counsel.

28 (g) Defective Submissions. If a Settlement Class Member's Request for

1 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
2 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
3 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
4 defective submission to advise the Settlement Class Member that his or her submission is
5 defective and that the defect must be cured to render the Request for Exclusion or objection
6 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
7 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
8 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
9 received by fax within that period, it will be deemed untimely.

10 71. The Settlement Administrator shall create a QSF for all money paid by Defendant
11 and shall deposit all funds received from Defendant into such QSF.

12 72. Funding of the Settlement Amount. Defendant shall fund the entire Gross
13 Settlement Amount within thirty (30) calendar days after the Effective Date. Defendant
14 separately shall pay its share of employer payroll taxes as calculated and directed by the
15 Settlement Administrator in a timely fashion. If any additional funds are owed pursuant to the
16 escalator clause in paragraph 51(b), Defendant shall fund said amount when it pays the Gross
17 Settlement Amount. Once Defendant has complied with its obligations set forth in this
18 paragraph, and provided the Class Data pursuant to paragraph 65 Defendant shall be deemed to
19 have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the
20 protections afforded it under the Agreement, and shall have no further obligations under the
21 Agreement, regardless of what occurs with respect to the further administration of the
22 Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable IRS
23 Forms W-2s and 1099 reflecting all payments to the Class Members, to Class Counsel, and to the
24 Settlement Administrator.

25 73. Distribution of Funds. No later than thirty (30) calendar days after Defendant
26 funds the Gross Settlement Amount and employer taxes, the Settlement Administrator will mail
27 the Individual Settlement Payments and Individual PAGA Payments to the Participating Class
28 Members and Aggrieved Employees, the portion of the PAGA Penalties payable to the LWDA,

1 the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to
2 the Class Representative, and will pay itself the Settlement Administration Costs.

3 74. Deadline for Cashing Settlement Checks. Participating Class Members and
4 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
5 Administrator to cash their settlement checks. A postcard reminding Participating Class
6 Members and/or Aggrieved Employees to negotiate or cash their Individual Settlement Award
7 checks before the void date will be mailed by the Settlement Administrator 90 days after
8 issuance of the Individual Settlement Award payments to those Participating Class Members
9 who have not negotiated their checks by that time. If any Participating Class Member's or
10 Aggrieved Employee's check is not cashed within that period the checks shall become null and
11 void, and any monies remaining in the distribution account shall be distributed to the Controller
12 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil
13 Code section 1500 *et seq.*, for the benefit of those Settlement Class Members and PAGA
14 Members who did not cash their checks until such time that they claim their property. The
15 Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure
16 Code section 384, as the entire Net Settlement Amount will be paid out to Settlement Class
17 Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not
18 be required to pay any interest on said amount. The releases contained herein will be binding
19 upon all Participating Class Members and Aggrieved Employees who do not cash their checks
20 within the 180-day period. In the event that any settlement check is returned to the Settlement
21 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
22 business days of receipt of the returned settlement check, perform a skip trace to locate the
23 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
24 located by these means, the Administrator will have ten (10) business days to re-issue the check.
25 Neither Defendant, Released Parties, Defense Counsel, Class Counsel, Plaintiff, nor the
26 Settlement Administrator will have any liability for lost or stolen settlement checks, forged
27 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without
28 limiting the foregoing, in the event a Participating Class Member or Aggrieved Employee

1 notifies the Settlement Administrator that he or she believes that a settlement check has been lost
2 or stolen, the Settlement Administrator shall immediately stop payment on such check. If the
3 check in question has not been negotiated prior to the stop payment order, the Settlement
4 Administrator will issue a replacement check.

5 75. No person shall have any claim against Defendant, Released Parties, Defendant's
6 Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
7 distributions, payments or reports made in accordance with or pursuant to this Agreement. This
8 provision does not, however, prevent a Party from seeking enforcement of this Agreement.

9 76. Without prejudice to any other remedies, the Settlement Administrator shall agree
10 to be responsible for any breach of its obligations (whether committed by the Settlement
11 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
12 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
13 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

14 **H. Duties of the Parties Prior to the Court's Approval**

15 77. Promptly after execution of this Settlement Agreement, Plaintiff will move the
16 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
17 accomplishing the following:

- 18 (a) Filing the Amended Complaint in Court as described in Paragraph 44,
19 upon the State Court's grant of Preliminary Approval;
- 20 (b) Scheduling the Final Approval Hearing on the issue of whether this
21 Settlement should be finally approved as fair, reasonable and adequate as
22 to the Class Members and Aggrieved Employees and a hearing on fees,
23 costs and the Service Payment;
- 24 (c) Approving as to form and content the proposed Notice Packet;
- 25 (d) Directing the mailing of the Notice Packet by first class mail to the
26 Settlement Class Members;
- 27 (e) Preliminarily approving this Settlement; and
- 28 (f) Preliminarily certifying the class for purposes of this Settlement.

1 78. Reallocation of Settlement Proceeds. In the event the Court fails to approve this
2 Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall
3 cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in
4 order to try to achieve Final Approval upon any subsequent Court hearings.

5 **I. Duties of the Parties Following State Court’s Final Approval**

6 79. In connection with the Final Approval Hearing provided for in this Settlement
7 Agreement, Class Counsel shall submit to the Court a Motion for Final Approval and a proposed
8 Final Approval Order:

9 (a) Approving the Settlement, adjudging the terms thereof to be fair,
10 reasonable and adequate, and directing consummation of its terms and provisions;

11 (b) Approving Class Counsel’s application for an award of attorneys’ fees and
12 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
13 and the payment to the Settlement Administrator for costs of administering the settlement; and

14 (c) Entering judgment approving settlement.

15 80. Final Judgment. The Settlement Administrator shall give the Participating Class
16 Members and Aggrieved Employees notice of the entry of Final Judgment by posting the Final
17 Judgment on its website for a period of three (3) years after entry of judgment.

18 **J. Voiding the Agreement**

19 81. Defendant will have, in its sole discretion, the right to void and withdraw from the
20 Settlement if ten percent (10%) or more of Class Members, by number or by value, opt out of the
21 Settlement. To do so, Defendant shall give written notice to the Settlement Administrator at
22 least 30 calendar days before the Final Approval Hearing date.

23 82. All Parties, signatories and their counsel shall not encourage opt-outs or
24 objections to this Agreement. The Parties specifically agree not to solicit opt-outs or objections,
25 directly or indirectly, through any means.

26 83. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
27 have no further obligations under the Settlement, including any obligation by Defendant to pay
28 the Gross Settlement Amount or any amounts that otherwise would have been owed under this

1 Settlement.

2 84. If the Settlement is voided by Defendant pursuant to Paragraph 81, any costs
3 incurred to date by the Settlement Administrator shall be borne by Defendant. If the Settlement
4 is voided or fails for any other reason, any costs incurred by the Settlement Administrator to date
5 shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

6 **K. Other Terms**

7 85. Waiver. The waiver by one Party of any breach of this Agreement by another
8 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

9 86. Full and Complete Defense. This Agreement may be pleaded by any Released
10 Party as a full and complete defense to and may be used by any Released Party to pursue an
11 injunction, against any action, suit or other proceeding that has been or may be instituted,
12 prosecuted or attempted, asserting any Released Claim.

13 87. Parties' Authority. The signatories hereto represent that they are fully authorized
14 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
15 hereof.

16 88. No Publicity. Communications regarding this Settlement prior to the Final
17 Approval shall be limited to Court-Approved Notices in the Action. After the Final Approval,
18 Class Counsel and Class Representative agree that they will not make any comment or
19 publication of the Settlement or regarding Defendant that in any way could reasonably identify
20 Defendant in terms of affirmative or responsive media statements/comments, press releases or
21 conferences, website postings or content, social media postings or content, other Internet
22 postings or content, subscribed email messages, newsletters, disseminated updates, mass
23 mailings, or any other comment or publication to the press, media, or public at large. Nothing
24 herein shall be construed to prevent Class Counsel from the public filing of motions or other case
25 materials in the Action related to seeking and obtaining Court approval of this Settlement and the
26 related awards of attorneys' fees and costs. Nothing herein shall be construed to prohibit
27 communications with Settlement Class Members or their representatives about this Settlement,
28 including through the posting of Court-filed documents on Class Counsel's websites for access

solely by the Settlement Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties.

89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's Preliminary Approval, and Final Approval. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review at least five court days prior to the filing deadline.

90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

91. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement Class Member or Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the

1 manner and upon the terms and conditions set forth in this Agreement.

2 92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
3 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
4 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
5 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
6 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
7 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
8 and it, along with all related documents such as the notices, and motions for preliminary and
9 final approval, shall, pursuant to California Evidence Code section 1152, be inadmissible in
10 evidence in any proceeding, except an action or proceeding to approve the settlement, and/or
11 interpret or enforce this Settlement Agreement. The stipulation for class certification and PAGA
12 representative status as part of this Settlement Agreement is for settlement purposes only and if,
13 for any reason the settlement is not approved, the stipulation will be of no force or effect.

14 93. Notices. Unless otherwise specifically provided herein, all notices, demands or
15 other communications given hereunder shall be in writing and shall be deemed to have been duly
16 given as of the third business day after mailing by United States registered or certified mail,
17 return receipt requested, addressed:

18
19 To the Settlement Class Members and Aggrieved Employees:

20 Isam C. Khoury, Esq.
21 *ikhoury@ckslaw.com*
22 Michael D. Singer, Esq.
23 *msinger@ckslaw.com.com*
24 COHELAN KHOURY & SINGER
25 605 C Street, Suite 200
26 San Diego, CA 92101
27 Tel: (619) 595-3001

28 To Defendant:

David A. Wimmer, Esq.
dwimmer@swerdlowlaw.com
Janet I. Swerdlow, Esq.

jswordlow@swordlowlaw.com
SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER
9401 Wilshire Blvd., Suite 828
Beverly Hills, California 90212
Tel: (310) 288-3980

94. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

95. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

96. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

97. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek the help of Steven Rottman, Esq. to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs, and split any fees of Mr. Rottman equally. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

1 98. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
2 dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil
3 Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
4 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and
5 obligations of this Agreement.

6 99. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
7 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible
8 in a court of law.

9 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
10 enforced and administered in accordance with the laws of the State of California.

11 101. Integration Clause. This Settlement Agreement contains the entire agreement
12 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
13 or contemporaneous agreements, understandings, representations, and statements, whether oral
14 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
15 hereunder may be waived except in writing.

16 102. Binding on Assigns. This Settlement Agreement shall be binding upon and inure
17 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
18 successors and assigns.

19 103. Signatures of All Class Members Unnecessary to Be Binding. It is agreed that,
20 because the members of the Settlement Class are numerous, it is impossible or impractical to
21 have each Class Member execute this Settlement Agreement. The Notice will advise all
22 Settlement Class Members of the binding nature of the releases provided herein and such shall
23 have the same force and effect as if this Settlement Agreement were executed by each Settlement
24 Class Member.

25 104. Invalidity of Any Provision. Before declaring any provision of this Settlement
26 Agreement invalid, the State Court will first attempt to construe the provision as valid to the
27 fullest extent possible consistent with applicable precedents so as to define all provisions of this
28 Settlement Agreement valid and enforceable.

105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

8/25/2022

Dated: August __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

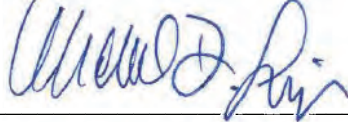


Sunny K. Tam

Approved As To Form:

Dated: August 25, 2022

CLASS COUNSEL:
COHELAN KHOURY & SINGER



Michael D. Singer
Attorneys for Plaintiff

Aug 25, 2022

Dated: August __, 2022

DEFENDANT:
Q-TECH CORPORATION



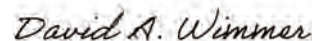
Daniel Taylor (Aug 25, 2022 16:53 PDT)

By: Daniel Taylor
Title: Chief Financial Officer

Aug 25, 2022

Dated: August __, 2022

DEFENDANT'S COUNSEL:
SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION



David A. Wimmer
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

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

Defendants.

Lead Case No. 21STCV18635
Related Case No. 21STCV19805
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Elihu M. Berle
Department SS6

**NOTICE OF CLASS ACTION
SETTLEMENT**

TO: All current and former non-exempt, hourly-paid employees of Q Tech Corporation who worked in California at any time from May 17, 2017 to March 13, 2022.

Please read this notice carefully.

This notice permits you to file a notice of objection on or before Insert if you wish to object to the proposed settlement, or to submit a request for exclusion on or before Insert if you wish to be excluded from the proposed settlement. YOU ARE NOT BEING SUED.

Pursuant to the order of the Los Angeles County Superior Court, entered <<preliminary approval>> YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the parties in the lawsuit identified in the caption above, pending in Los Angeles County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement.

You have received this notice because records indicate you qualify as a member of the Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On May 17, 2021, Sunny Tam (“Plaintiff”) initiated an action in the Los Angeles County Superior Court entitled Sunny Tam v. Q Tech Corporation, case number 21STCV18635 (the “Litigation”). In the Litigation, Plaintiff asserts individual, class, and representative claims seeking damages and penalties, including civil penalties under the Private Attorneys General Act (“PAGA”), based on allegations of failure to pay minimum wages and/or overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate itemized wage statements, failure to record hours worked, failure to timely pay all wages due upon termination, failure to record hours worked, and unfair competition.

Q Tech Corporation (“Q Tech” or “Defendant”) contends that Plaintiff’s claims are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the claims.

Plaintiff and his attorneys have vigorously prosecuted this case, and Q Tech has vigorously defended it. Although discovery has not been completed, the parties have investigated the facts to assess the relative merits of the claims and Q Tech’ defenses to those claims. Plaintiff’s attorneys (“Class Counsel”) have reviewed extensive documents and information produced by Q Tech.

Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believe that the proposed settlement is fair, reasonable, and adequate.

On December 13, 2021, the parties attended a full day of mediation. After extensive negotiations and much effort, the Parties agreed to the settlement described in this Notice. The Class Action and PAGA Settlement Agreement (“Agreement”) has been granted preliminary approval by the Court. The Agreement provisionally certifies the Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Plaintiff and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation.

The settlement provides for the following:

A. **Gross Settlement Fund:** Q Tech will pay \$650,000 to settle the Litigation. The \$650,000 Gross Settlement Fund shall consist of the following elements: (a) Class Counsel’s Attorneys’ Fees; (b) Litigation Costs and Expenses; (c) Class Representative Service Payment; (d) Settlement Administration Expenses; (e) PAGA Payment; and (f) Net Settlement Fund. Each of these components is described below.

B. **Class Counsel’s Attorneys’ Fees:** Class Counsel anticipates requesting an attorney fee award of up to one-third of the Gross Settlement Fund (\$216,666.67), subject to court approval, which shall be paid from the Gross Settlement Fund.

C. **Litigation Costs and Expenses:** Class Counsel anticipates requesting an award of no more than \$20,000, subject to court approval, as reimbursement for litigation costs and expenses, which shall be paid from the Gross Settlement Fund.

D. **Class Representative Service Payment:** Plaintiff anticipates requesting an award of no more than \$5,000, subject to court approval, for his role as Class Representative, which shall be paid from the Gross Settlement Fund.

E. **Private Attorneys General Act (PAGA) Payment:** The parties have designated \$75,000 of the Gross Settlement Fund as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$56,250) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$18,750) shall be allocated among the PAGA Members.

F. **Settlement Administration Expenses:** The parties have selected, and the Court has approved, ILYM, Inc. to administer the settlement. Upon final approval, Class Counsel will request that the Court approve a payment to ILYM, Inc. to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Gross Settlement Fund, and other activities required to administer the settlement. The parties estimate that the payment to ILYM, Inc., subject to court approval, will be no more than \$10,000 which shall be paid from the Gross Settlement Fund.

G. **Net Settlement Fund:** The Net Settlement Fund consists of all funds remaining from the Gross Settlement Fund after subtraction of Class Counsel’s Attorneys’ Fees, Litigation Costs and Expenses, Class Representative Service Payment, PAGA Payment, and Settlement Administration Expenses. The Net Settlement Fund, estimated to be \$323,333.33, will be distributed to the Settlement Class as described below.

H. Class Defined: “Class”– mean all current and former non-exempt, hourly-paid employees of Q Tech Corporation who worked in California at any time during the Class Period.

I. Settlement Class Defined: “Settlement Class” – means all those persons who are members of the Class and who have not excluded themselves (“opted out”) from the settlement.

J. Class Period and/or Settlement Period Defined: “Class Period” and/or “Settlement Period” – means the period from May 17, 2017 to March 13, 2022.

K. Allocation of Net Settlement Fund Among Settlement Class Members: The Net Settlement Fund will be allocated among Settlement Class Members on a proportional basis based on the number of workweeks each Settlement Class Member was employed by Q Tech in California as a non-exempt, hourly-paid employee during the Class Period. One day worked in a given week will be credited as a workweek for purposes of these calculations.

L. PAGA Members Defined: “PAGA Members” – means all current and former employees of Q Tech Corporation who worked in California at any during the PAGA Period as a non-exempt, hourly paid employee.

M. PAGA Period Defined: “PAGA Period” – means the period from March 4, 2020 to March 13, 2022.

N. Allocation of PAGA Payment: After 75% (\$56,250) of the PAGA Payment is paid to the LWDA, the remaining 25% (\$18,750) shall be allocated among the PAGA Members on a proportional basis based on the number of workweeks each PAGA Member worked during the PAGA Period. One day worked in a given week will be credited as a workweek for purposes of these calculations.

O. Tax Treatment of Payments to Settlement Class Members and PAGA Members: The Settlement Payments are payments for all claims in the Litigation or that reasonably could have been asserted based on the causes of action, claims and allegations in the Litigation. Of the payments to individual Settlement Class Members, one-fifth shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and four-fifths shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Outside of the Gross Settlement Fund, Q Tech shall be responsible for paying the employer’s share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or his Settlement Payment or Class Representative Service Payment. Payments to PAGA Members shall be designated as penalties to be reported on IRS Form 1099s where required by law. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Class member are represented by Plaintiff and Class Counsel. Unless you exclude yourself from the Class, you are a part of the Settlement Class, you will be bound by the terms of the settlement agreement and any final judgment that may be entered by the Court, and you will be deemed to have released certain claims as described below. As a member of the Settlement Class you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and costs.

A. Your Estimated Share of the Settlement

Q Tech's records indicated that you worked <<SettlementPeriodWeeks>> weeks as a non-exempt hourly employee during the Claim Period and that <<PAGAPeriodWeeks>> of those workweeks were during the PAGA Period. Based on these records, if the Court grants final approval to the settlement your estimated payment is \$<<EstimatedShare>>.

B. Participating in the Settlement

If you qualify for inclusion in the Class and you wish to participate in the settlement, **you are NOT required to take any action.** If the Court grants final approval of the settlement and you qualify as a Class Member, you will receive a Settlement Payment based on the calculations described above. You will also be bound by the terms of the settlement and will release Q Tech and all related or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

C. Objecting to the Settlement

If you do not agree with the terms of the proposed settlement, you can object to the proposed settlement before final approval. However, if the Court rejects your objection and grants final approval to the settlement, you will be bound by the terms of the settlement. To object, you may simply appear at the Final Approval Hearing or submit a written objection to the Class Settlement Administrator no later than INSERT at the following address:

Sunny Tam v. Q Tech Corporation

INSERT NAME

INSERT STREET ADDRESS

INSERT CITY, STATE ZIP

Toll Free: <<Telephone>>

Any written objection must state each specific reason in support of your objection and any legal support for the objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Class defined above. To be valid and effective, any written objection to final approval of the settlement must be postmarked and mailed to the Class Settlement Administrator no later than INSERT. **PLEASE DO NOT TELEPHONE THE COURT.**

The procedures stated above for objecting to the Class Settlement do not apply to the PAGA settlement. Settlement Class Members and PAGA Members may not object to the PAGA settlement.

D. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., "opt-out") by submitting a letter requesting exclusion to the Class Settlement Administrator. Your letter must be signed by you personally, and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Class. **Your letter requesting exclusion must be postmarked and mailed on or before INSERT, and mailed to the Class Settlement Administrator at the following address:**

Sunny Tam v. Q Tech Corporation

INSERT NAME

INSERT STREET

ADDRESS

INSERT CITY, STATE

ZIP

Toll Free: <<Telephone>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Class, shall be barred from participating in settlement as a member of the Settlement Class, may not object to the settlement, and shall receive no payment or benefits as a member of the Settlement Class. Any such person will not release any claims he or she may have against Q Tech.

If you exclude yourself from the Settlement, you will NOT receive any money from the Settlement unless you qualify as a PAGA Member, in which case you will receive a share of the PAGA Payment as set forth above. The procedures stated above for excluding yourself from the Settlement Class do not apply to the PAGA settlement. Settlement Class Members and PAGA Members may not exclude themselves from the PAGA settlement.

E. Challenging the Record of Your Weeks Worked

Section III.A. above states your estimated share of the Net Settlement Fund and PAGA Payment and the number of workweeks on which that estimate is based. If you believe that information is not accurate, you may state what you believe the correct number of workweeks to be and provide supporting documentation. The Settlement Administrator will then decide whether your estimated share should be revised. **Your written dispute must be postmarked and mailed on or before INSERT, and mailed to the Class Settlement Administrator at the following address:**

Sunny Tam v. Q Tech Corporation
 INSERT NAME
 INSERT STREET ADDRESS
 INSERT CITY, STATE ZIP
 Toll Free: <<Telephone>>

You may also provide corrected name, address, and/or telephone information on the Settlement Allocation Form.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court's final approval of the class settlement and entry of final judgment, funding of the Gross Settlement amount and issuance of the Settlement Payments to each member of the Settlement Class, each Settlement Class member shall be deemed to have released Q Tech and each of its divisions, subsidiaries, partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and each of them, as well as each of their directors, officers, shareholders, partners, members, representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, insurers, attorneys, and employees, past and present, and each of them and their marital community (collectively the "Releasees"), from any and all "Released Class Claims" that arose during the period of May 17, 2017 to March 13, 2022. For the purposes of this Agreement, the Released Class Claims are defined as:

all claims, demands, rights, liabilities, and causes of action that were or could have been pled under local, state or federal law based on the facts alleged in the Amended Complaint against Defendant arising during the Class Period, including but not limited to claims for (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide accurate itemized wage statements, (6) failure to pay wages timely to separated employees, and (7) violations of the Unfair Competition law.

Upon the Court's final approval of the class settlement and entry of final judgment, funding of the Gross Settlement amount, and issuance of the PAGA Payments to each of the PAGA Members, each PAGA Member shall be deemed to have released the Releasees from the "Released PAGA Claims," which is defined as:

any and all claims for civil penalties for violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, and 1198 under PAGA that Plaintiff alleged against the Released Parties on behalf of Aggrieved Employees and the State of California, based on the facts stated in Plaintiff's Amended Complaint and in Plaintiff's March 4, 2021 notice letter to the LWDA (including any amendments thereto), including all PAGA claims seeking civil penalties for (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages due during and upon separation from employment and (7) failure to maintain accurate records and which arose during the PAGA Period.

B. Payment to Settlement Class Members and PAGA Members

The Gross Settlement Fund will be distributed after the Court grants final settlement approval and enters judgment, and all appeals challenging the judgment have been resolved. There is no way to accurately predict how long this will take. To check on the progress of the settlement, you may call the settlement administrator at the toll-free number at the bottom of this page. *Please be patient.*

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department SS6 of the Los Angeles County Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012- Dept. SS6 on INSERT, 2022, at __:x0 __.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Class Counsel's Attorneys' Fees, Litigation Costs and Expenses, and the Class Representative Service Payment to be paid to the Plaintiff as Class Representative. Class Counsel's application for attorneys' fees and reimbursement of expenses will be on file with the Court no later than ten (10) days before this hearing, and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing. (However, you are permitted to appear.)

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. Should you desire additional information, you may contact Class Counsel as follows:

Michael D. Singer
COHELAN KHOURY & SINGER
605 C Street, Ste. 200
Los Angeles, CA 92101
Tel: (619) 595-3001

If you wish to review the precise terms and conditions of the settlement, you are referred to the detailed Class Action and PAGA Settlement Agreement, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation, including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the Los Angeles County Superior Court, Hall of Justice Courthouse, Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California's Unclaimed Property Fund for the benefit of those Settlement Class Members and PAGA Members who did not cash their checks. If you lose or misplace a check, you should contact the Settlement Administrator immediately to request a replacement.

DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

BY ORDER OF THE SUPERIOR COURT

Tam v. Q Tech Corporation, et al.
Los Angeles County Superior Court
Case No. 21STCV18635

CHANGE OF ADDRESS FORM

I wish to change my name and/or mailing address and/or other contact information, for purposes of receiving communications related to this Lawsuit, to the following:

Name (First, Middle, Last): _____

Former Names (if any): _____

Home Street Address: _____

City, State, Zip Code: _____

Telephone Number(s): Home: _____ Work: _____

Email: _____

Last 4 digits of Social Security Number: _____ **[Required]**

I understand all future correspondence in this Action, including but not necessarily limited to important notices or settlement payments, will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

Dated: _____, 2022

Signature **[Required]**

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST CLASS MAIL TO:**

Tam v. Q Tech Corporation, et al.

c/o xxx

P. O. Box _____

xxxx, California _____

QUESTIONS? CALL TOLL FREE 1-866-_____

EXHIBIT B

1 **COHELAN KHOURY & SINGER**

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2 ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

3 msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

4 rkhoury@ckslaw.com

605 C Street, Suite 200

5 San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

7 **STONEBROOK LAW**

Joseph Tojarieh (SBN 265492)

8 jft@stonebrooklaw.com

10250 Constellation Boulevard, Suite 100

9 Los Angeles, CA 90067

Telephone: (310) 553-5533, ext. 1001/Facsimile: (310) 553-5536

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
16 and other similarly-situated employees
Plaintiff,

17 v.

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

21 Defendants.

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Information

Date: October 6, 2022

Time: 11:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not set

1 This matter came on for hearing on October 6, 2022 in Department SS-6 of the above-
2 captioned Court on Plaintiff's Motion for Order Granting Preliminary Approval of Class Action
3 Settlement ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of Points and
5 Authorities, Supplemental Briefing, Declarations of Class Counsel, and Declaration of Plaintiff
6 Sunny K. Tam, filed in support of Motion, the Amended Class Action and PAGA Settlement
7 Agreement and Release of Claims ("Settlement Agreement"), the proposed Notice of Class Action
8 Settlement ("Class Notice") attached as Exhibit "A" to the Settlement Agreement and Change of
9 Address Form, having carefully analyzed the Settlement Agreement and its Exhibits, and in
10 recognition of the Court's duty to make a preliminary determination as to the reasonableness of
11 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
12 proper notice is provided to all Class Members in accordance with due process requirements, and
13 to set a Final Approval Hearing to consider the proposed Settlement as to the good faith, fairness,
14 adequacy and reasonableness of any proposed Settlement, THE COURT HEREBY MAKES THE
15 FOLLOWING DETERMINATIONS AND ORDERS:

16 1. The Court conditionally finds that, for the purposes of approving this settlement
17 only, the proposed Class meets the requirements for certification under section 382 of the
18 California Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that
19 joinder of all members of the class is impracticable; (b) there are questions of law or fact common
20 to the proposed Class, and there is a well-defined community of interest among members of the
21 proposed Class with respect to the subject matter of the class action; (c) the claims of the Class
22 Representative are typical of the claims of the members of the proposed Class; (d) the Class
23 Representative has and will fairly and adequately protect the interests of the Members of the
24 Class; (e) a class action is superior to other available methods for an efficient adjudication of this
25 controversy in the context of settlement; and (f) the counsel of record for the Class Representative
26 are qualified to serve as counsel for him as well as his representative capacity and for the Class.

27 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to
28 the Declaration of Michael D. Singer as Exhibit "2," incorporated herein by this reference in full,

1 and made a part of this Order of preliminary approval, appears to be within the range of
2 reasonableness of a settlement which could ultimately be given final approval by this Court.

3 3. Further, it appears to the Court on a preliminary basis that: (a) the settlement
4 amount is fair and reasonable to the Class Members when balanced against the probable outcome
5 of further litigation relating to class certification, liability and damages issues and potential
6 appeals; (b) significant investigation, research, and informal discovery have been conducted such
7 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
8 (c) settlement at this time will avoid substantial costs, delay and risks that would be presented by
9 the further prosecution of the litigation; and (d) the proposed Settlement has been reached as the
10 result of intensive, serious and non-collusive negotiations facilitated by an experienced mediator at
11 mediation and between the Parties.

12 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
13 Approval of Class Action Settlement is hereby GRANTED, and as a part of said preliminary
14 approval, the Court accepts and incorporates the Settlement Agreement and orders that the Class
15 be conditionally certified for settlement purposes only pursuant to the terms and conditions
16 contained in the Settlement Agreement.

17 5. For purposes of the settlement of the Lawsuit, the Class is defined as:

18 “all current and former non-exempt, hourly-paid employees of Defendant who
19 worked in California at any time during the time period of May 17, 2017 to
20 March 13, 2022.”

21 6. The Court further finds that the proposed Notice of Class Action Settlement
22 (“Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b)
23 the conditional certification of the Class for settlement purposes only; c) preliminary Court
24 approval of the proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the
25 proposed Settlement and the benefits available to Class Members thereunder; f) their right to
26 receive their proportionate share of the Net Settlement amount without the need to return a claim
27 form; g) their right to request exclusion from the settlement and the procedures and deadline for
28 doing so; h) their right to object to the Settlement, and the procedure for doing so; and i) their right
to file documentation in support of or in opposition to, and to appear in connection with, said

1 hearing. The Court further finds that the Class Notice clearly comports with all constitutional
2 requirements, including those of due process. Accordingly, good cause appearing, the Court
3 hereby APPROVES the Class Notice.

4 7. The Court further finds that the mailing of the Class Notice, Change of Address
5 Form, and pre-printed return envelope, (collectively, the “Notice Packet”), to the last known
6 address of Class Members as specifically described within the Settlement Agreement, with
7 measures taken for verification of an address and skip tracing set forth therein constitutes an
8 effective method of notifying Class Members of their rights with respect to the class action and
9 Settlement. Accordingly, it is hereby ORDERED, that:

10 A. ILYM Group, Inc., be appointed the Settlement Administrator to administer
11 the settlement of this matter as more specifically set forth in the Settlement Agreement.

12 B. Isam Khoury, Michael Singer, , and Rosemary Khoury of Cohelan Khoury
13 & Singer, and Joseph Tojarieh of Stonebrook Law be appointed as Class Counsel.

14 C. Plaintiff Sunny K. Tam be appointed as the Class Representative.

15 D. Within fourteen (14) calendar days after entry of a Preliminary Approval
16 Order, Defendant shall transmit to the Settlement Administrator in a readable, ready to use
17 electronic excel format spreadsheet, with a list containing, for each Class Member, (1) the name;
18 (2) most current mailing address; (3) telephone number(s) and email address as indicated in
19 Defendant’s records; (4) social security number; (5) dates of employment; and (6) the aggregate
20 number of Workweeks during the Class Period and the PAGA Period (“Class Data List”).

21 E. Within fourteen (14) calendar days after receipt of the Class Data List, the
22 Settlement Administrator shall mail the Notice Packet to each Class Member. The Notice Packet
23 shall be mailed by first class, regular U.S. mail, using the most current mailing address
24 information available, with measures taken for updating an address as provided by the terms of the
25 Settlement Agreement.

26 F. Within 45 calendar days from the initial date the Settlement Administrator
27 first mails the Notice Packet to Class Members (the “Notice Response Deadline”), Class Members
28 who wish to exclude themselves from the Class must submit a written request for exclusion in the

1 manner set forth in the Class Notice and such request must be postmarked by the Notice Response
2 Deadline. Class Members who receive a re-mailed Notice Packet shall have their Notice Response
3 Deadline extended fifteen (15) calendar days from the original Notice Response Deadline to
4 submit a Request for Exclusion.

5 G. On or before the Notice Response Deadline, Class Members who dispute
6 the number of Workweeks must postmark and submit a written explanation to the Settlement
7 Administrator describing why the Workweeks are incorrect, with any supporting information or
8 documents, as set forth in the Class Notice. Class Members who receive a re-mailed Notice Packet
9 shall have their Notice Response Deadline extended fifteen (15) calendar days from the original
10 Notice Response Deadline to submit a Dispute.

11 H. On or before the Notice Response Deadline, Class Members who wish to
12 object to the Settlement, should submit to the Settlement Administrator, a written Notice of
13 Objection. Class Members who receive a re-mailed Notice Packet shall have their Notice
14 Response Deadline extended fifteen (15) calendar days from the original Notice Response
15 Deadline to submit an Objection. Class Members may also appear at the time of the Final
16 Approval Hearing to comment upon the Settlement.

17 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
18 the undersigned at ____ p.m. on _____, 2023, in Department SS6 of the Superior Court for
19 the State of California, County of Los Angeles, located at the Spring Street Superior Court Spring
20 Street Courthouse located at 312 N. Spring Street, San Diego, CA 90012 to consider the fairness,
21 adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order of
22 Preliminary Approval, and to consider the application for a service payment award to the named
23 Plaintiff/Class Representative, for Settlement Administration expenses and for Class Counsel's
24 attorneys' fees and litigation expenses incurred. All briefs and materials in support of an Order
25 Granting Final Approval, the service payment, Settlement Administration expenses, and Class
26 Counsel's attorneys' fees and litigation costs shall be filed with this Court on or before
27 _____, 2023.

28 ///

1 9. IT IS FURTHER ORDERED that if for any reason the Court does not sign and file
2 an Order Granting Final Approval, the Settlement Agreement shall be treated as if it had not been
3 entered, and the Parties shall be restored without prejudice to their status quo ante rights, as
4 specifically set forth in the Settlement Agreement.

5 10. All proceedings in this matter, except those contemplated by the Settlement
6 Agreement or this Order, are stayed.

7 11. The Court expressly reserves the right to adjourn or continue the Final Approval
8 Hearing from time to time without further notice to Class Members.

9 IT IS SO ORDERED.

10

11 Date: _____

The Honorable Elihu M. Berle

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EXHIBIT C

1 **COHELAN KHOURY & SINGER**

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3 Michael D. Singer (SBN 115301)

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10 Telephone: (310) 553-5533, ext. 1001/Facsimile: (310) 553-5536

Attorneys for Plaintiff Sunny K. Tam, on behalf of himself

11 and other similarly-situated employees

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

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

17 v.

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

21 Defendants.

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Complaint filed:

May 17, 2021

Trial date:

Not set

1 This matter came on for hearing on ____ in Department SS6 of the above-captioned Court
2 on Plaintiff's Motion for Order Granting Final Approval of Class Action and PAGA Settlement
3 and Entering Judgment ("Motion") pursuant to California Rule of Court 3.769, and the Court's
4 Order Granting Preliminary Approval and the Class Action and PAGA Settlement Agreement
5 filed on ____ ("Agreement").

6 Having received and considered the Settlement Agreement, the supporting papers filed by
7 the Parties, and the evidence and argument received by the Court in conjunction with the Motion
8 for Preliminary Approval of Class Action and PAGA Settlement, and the supporting papers, and
9 evidence and argument received by the Court in conjunction with the Motion for Order Granting
10 Final Approval of Class Action and PAGA Settlement, the Court grants final approval of the
11 Settlement and HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Preliminary Approval Order filed ____, a Notice of Class Action
13 and PAGA Settlement, Change of Address form, and pre-printed return envelope ("Notice
14 Packet") were sent to each Class Member by first-class United States mail. The Notice informed
15 the Class of the terms of the Settlement, their right to receive a Settlement Payment without any
16 required action, their right to comment upon or object to the Settlement, and their right to appear
17 in person or by counsel at the final approval hearing and to be heard regarding approval of the
18 Settlement. Adequate periods of time were provided for each of these procedures.

19 2. No member of the Class filed a request to be excluded from the Settlement or a
20 written objection to the proposed Settlement as part of this notice process or stated an intention to
21 appear at the final approval hearing.

22 3. The Court finds and determines this notice procedure afforded adequate protections
23 to Class Members and provides the basis for the Court to make an informed decision regarding
24 approval of the Settlement based on the responses of the Class. The Court finds and determines
25 that the notice provided in this case was the best notice practicable, which satisfies the
26 requirements of law and due process.

27 4. With respect to the Class and for purposes of approving this Settlement only, this
28 Court finds and concludes that: (a) the members of the Class are ascertainable and so numerous

1 that joinder of all members is impracticable; (b) there are questions of law or fact common to the
2 Class, and there is a well-defined community of interest among members of the Class with respect
3 to the subject matter of the Action; (c) the claims of the Class Representative are typical of the
4 claims of the members of the Class; (d) the Class Representative has fairly and adequately
5 protected the interests of the members of the Class; (e) a class action is superior to other available
6 methods for an efficient adjudication of this controversy; and (f) the counsel of record for Plaintiff,
7 the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his
8 individual and representative capacity for the Class.

9 5. The Court confirms certification, for settlement purposes only, of the Class:

10 “all current and former non-exempt, hourly-paid employees of Defendant
11 who worked in California at any time during the time period of May 17,
12 2017 to March 13, 2022.”

13
14 6. The Court finds and determines the terms set forth in the Agreement are fair,
15 reasonable, and adequate and, having found that the Settlement was reached as a result of
16 informed and non-collusive arms'-length negotiations facilitated by a neutral and experienced
17 mediator, directs the Parties to effectuate the Settlement according to the terms set forth in the
18 Settlement Agreement. The Court further finds the Parties conducted extensive investigation,
19 research, and informal discovery, and that their attorneys were able to reasonably evaluate their
20 respective positions. The Court also finds that Settlement will enable the Parties to avoid
21 additional and potentially substantial litigation costs, as well as delay and risks if the Parties were
22 to continue to litigate the case. The Court has reviewed the monetary recovery and recognizes the
23 significant value provided to the Class.

24 7. The Court further finds and determines that the terms of the Settlement are fair,
25 reasonable and adequate to the Class and to each Class Member and that the Settlement is ordered
26 finally approved, and that all terms and provisions of the Agreement should be and hereby are
27 ordered to be consummated.

28 8. The Court finds and determines that the Settlement Payments to be paid to

1 Participating Settlement Class Members as provided for by the Settlement are fair and reasonable.
2 The Court hereby grants final approval to and orders the payment of those amounts be made to the
3 Participating Class Members in accordance with the Agreement.

4 9. The Court finds and determines that the fees and expenses in administrating the
5 Settlement incurred by _____ in the amount of \$_____ are fair and reasonable. The Court hereby
6 grants final approval to and orders that the payment of that amount in accordance with the
7 Settlement Agreement.

8 10. The Court finds and determines the Class Representative Service Payment of
9 \$5,000 to Plaintiff Sunny K. Tam is fair and reasonable. The Court hereby orders the
10 Administrator to make this payment to the Plaintiff Sunny K. Tam, in accordance with the terms
11 of the Settlement Agreement.

12 11. The Court orders the payment of PAGA penalties in the amount of \$56,250 to the
13 California Labor and Workforce Development Agency (“LWDA”) representing the LWDA’s 75%
14 share of the \$75,000 allocated to the PAGA claim. The Court also orders the payment of PAGA
15 penalties in the amount of \$18,750 to the Participating Class Members in accordance with the
16 Agreement.

17 12. Pursuant to the terms of the Settlement Agreement, and the authorities, evidence
18 and argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys’ fees
19 of \$216,666.67 and litigation costs of \$xx,000. The Court finds such amounts to be fair and
20 reasonable. The Court hereby orders the Administrator to make these payments in accordance with
21 the terms of the Settlement Agreement.

22 13. Without affecting the finality of this Order or the entry of judgment in any way, the
23 Court retains jurisdiction of all matters relating to the interpretation, administration,
24 implementation, effectuation, and enforcement of this Order and the Agreement.

25 14. The Settlement is not an admission of liability by Defendant or any of the other
26 Released Parties, nor is this Judgment a finding of the validity of any claims in the Actions or of
27 any wrongdoing by Defendant or any of the other Released Parties. Neither this Judgment, the
28 Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement

1 is, may be construed as, or may be used as an admission by or against Defendant or any of the
2 other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or
3 carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any
4 event be construed as, or deemed to be evidence of, an admission or concession with regard to the
5 denials or defenses by Defendant or any of the other Released Parties and shall not be offered in
6 evidence against Defendant or any of the Released Parties in any action or proceeding in any
7 court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the
8 provisions of this Judgment, the Settlement, or any related agreement or release. Notwithstanding
9 these restrictions, any of the Released Parties may file in the Action or in any other proceeding this
10 Judgment, the Settlement, or any other papers and records on file in the Action as evidence of the
11 Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other
12 theory of claim preclusion, issue preclusion or similar defense as to the released claims.

13 15. Nothing in this Order shall preclude any action to enforce the Parties' obligations
14 under the Agreement or under this Order, including the requirement that Defendant make
15 payments to the Participating Class Members in accordance with the Settlement.

16 16. The Court hereby enters final judgment in accordance with the terms of the
17 Settlement Agreement, the Court's Preliminary Approval Order, and this Order.

18 17. The Parties will bear their own costs and attorneys' fees except as otherwise
19 provided by this Court's Order awarding Class Counsels' attorneys' fees and litigation costs.

20 IT IS SO ORDERED.

21
22 Date: _____

The Honorable Elihu M. Berle

EXHIBIT 3

1 AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
2 RELEASE OF CLAIMS

3 This Amended Class Action and PAGA Settlement Agreement and Release of Claims is
4 entered into by and between Plaintiff Sunny Tam ("Plaintiff") individually and on behalf of all
5 Settlement Class Members and Aggrieved Employees (as defined below), on the one hand; and
6 Defendant Q-Tech Corporation ("Defendant"), on the other hand; is intended to supersede and
7 amend the Parties Class Action and PAGA Settlement Agreement and Release of Claims
8 executed on or about June 20, 2022; and is approved as to form by their respective counsel of
9 record, subject to the terms and conditions hereof and the Court's approval.

10 **A. Definitions**

11 1. "Action" means and refers collectively to the cases entitled "*Sunny K. Tam v. Q*
12 *Tech Corporation*," Los Angeles County Superior Court, Case No. 21STCV18635 and "*Sunny*
13 *K. Tam, on behalf of himself and other aggrieved employees v. Q Tech Corporation*," Los
14 Angeles County Superior Court, Case No. 21STCV19805 and includes the Amended Complaint
15 consolidating these two cases for settlement purposes.

16 2. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA
17 Settlement Agreement and Release of Claims, including its attached Exhibits.

18 3. "Aggrieved Employees" means all current and former employees of Defendant
19 who worked in California at any time during the PAGA Period as non-exempt, hourly paid
20 employees.

21 4. "Amended Complaint" of "First Amended Complaint" shall mean and refer to the
22 First Amended Complaint to be filed by Plaintiff in the case entitled *Sunny K. Tam v. Q Tech*
23 *Corporation*," Los Angeles County Superior Court, Case No. 21STCV18635 and that will
24 include all claims for civil penalties now pending in the case entitled *Sunny K. Tam, on behalf of*
25 *himself and other aggrieved employees v. Q Tech Corporation*," Los Angeles County Superior
26 Court, Case No. 21STCV19805.

27 5. "Attorneys' Fees and Costs Award" means the amount approved by the Court for
28 Class Counsel's attorneys' fees and costs.

6. “Class Counsel” refers to Isam Khoury, Michael Singer, ~~Kristina De La Rosa~~, and Rosemary Khoury of Cohelan Khoury & Singer, and Joseph Tojarieh of Stonebrook Law.

7. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its available records and provide to the Settlement Administrator on one spreadsheet and shall include, to the extent available, the Settlement Class Members’ full names; last known addresses; telephone numbers; Social Security Numbers; the total Work Weeks Worked during the PAGA Period for each Aggrieved Employee; and the total Work Weeks Worked during the Class Period for each Settlement Class Member.

8. “Class Notice” means the Notice of Settlement of Class Action that will be sent to the Settlement Class Members and in a form substantially similar as **Exhibit A**.

9. “Class Period” is the period from May 17, 2017, to March 13, 2022.

10. “Class Representative” or “Plaintiff” means and refers to Sunny Tam.

11. “Court” means the California Superior Court, County of Los Angeles.

12. “Defendant’s Counsel” or “Defense Counsel” means and refers to David A. Wimmer and Janet Swerdlow of Swerdlow Florence Sanchez Swerdlow & Wimmer, A Law Corporation.

13. “Effective Date” occurs after the latest of the following dates is reached: (i) sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal, objection, or request to intervene is filed; or (ii) if there is an appeal of the Court’s judgment granting final approval of the settlement, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review in the California Supreme Court; or (iii) if a petition for review is filed, the date of denial of the petition for review, or the date the judgment is affirmed pursuant to such petition.

14. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties and in a form substantially similar as **Exhibit C**.

15. “Final Approval Hearing” refers to the hearing at which the Court is requested to

grant Final Approval of this Settlement Agreement.

16. “Final Settlement Class” means, collectively, all Settlement Class Members who have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

17. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 51(a) below, as the same may be escalated subject to Paragraph 51(b) below.

18. “Individual Settlement Payment” shall means the portion of the settlement agreement that each Class Member is entitled to receive from the Net Settlement Amount in accordance with this settlement and in accordance with the formula set forth in Paragraph 51 (d).

19. “Individual PAGA Payment” shall refer to the individual payments made to Aggrieved Employees for their *pro rata* share of the PAGA Payment.

20. “Net Settlement Amount” is defined as the Gross Settlement Amount less Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties.

21. “Notice Packet” means the Class Notice and PAGA Notice that will be sent to the Class Members and Aggrieved Employees.

22. “Notice Response Deadline” is 45 calendar days from the date the Notice Packet is mailed to the Settlement Class Members.

23. “Objecting Settlement Class Member” means a Settlement Class Member who submits a valid and timely objection to the terms of this Agreement with respect to the Released Class Claims, pursuant to Paragraph 70(c) below.

24. “PAGA Notice” means the Notice of Settlement of PAGA claims that will be sent to all Aggrieved Employees.

25. “PAGA Payment” shall refer to the \$18,750.00 in PAGA Penalties to be paid pursuant to this Settlement to Aggrieved Employees.

26. “PAGA Penalties” means the total of \$75,000.00, which shall be separated as \$56,250.00 that the Parties have agreed to pay to the California Labor and Workforce Development Agency (“LWDA”) in connection with the claims brought by Plaintiff under the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*)

1 (“PAGA”), as well as \$18,750.00 in aggregate Individual PAGA Payments allocated to each
2 Aggrieved Employee, as more fully described in Paragraph 51(i).

3 27. “PAGA Period” is the period from March 4, 2020, through March 13, 2022.

4 28. “Participating Class Member” means any and all Final Settlement Class members
5 who are deemed to participate, who will receive an Individual Settlement Payment, and who do
6 not opt-out by submitting a timely valid Request for Exclusion.

7 29. “Parties” or “Settling Parties” refers to Plaintiff, the Aggrieved Employees, the
8 Settlement Class, and Defendant, collectively.

9 30. “Preliminary Approval Order” means the judicial Order to be entered by the
10 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
11 and providing for the issuance of the Notice Packet to the Settlement Class and Aggrieved
12 Employees, an opportunity to opt out of the Final Settlement Class, an opportunity to submit
13 timely objections to the Settlement, and setting a hearing on the fairness of the terms of
14 Settlement, including approval of attorneys’ fees and costs and in a form substantially similar as
15 **Exhibit B**. Defendant will not object to Plaintiff’s motion for preliminary approval, provided the
16 motion is consistent with the Agreement. Plaintiff agrees to provide the Motion for Preliminary
17 Approval, and any supporting papers, to Defense Counsel five court days before it is filed.

18 31. “QSF” means the Qualified Settlement Fund set up by the Settlement
19 Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from
20 which the settlement payments shall be made, and which is intended to be a fund that qualifies
21 under Internal Revenue Code Section 468.

22 32. “Released Class Claims” or “Class Claims” means any and all claims, demands,
23 rights, liabilities, and causes of action that were or could have been pled under local, state or
24 federal law based on the facts alleged in the Amended Complaint against Defendant arising
25 during the Class Period, including but not limited to claims for (1) failure to pay minimum and
26 regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in
27 lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide
28 accurate itemized wage statements, (6) failure to pay wages timely to separated employees, and

1 (7) violations of the Unfair Competition law.

2 33. "Released PAGA Claims" means any and all claims for civil penalties for
3 violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
4 512, 558, 1174, 1194, 1194.2, 1197, and 1198 under PAGA that Plaintiff alleged against the
5 Released Parties on behalf of Aggrieved Employees and the State of California, based on the
6 facts stated in Plaintiff's Amended Complaint and in Plaintiff's March 4, 2021 notice letter to the
7 LWDA (including any amendments thereto), including all PAGA claims seeking civil penalties
8 for (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure
9 to provide meal periods or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu
10 thereof, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages
11 due during and upon separation from employment and (7) failure to maintain accurate records
12 arising during the PAGA Period.

13 34. "Released Parties" means Defendant and each of its divisions, subsidiaries,
14 partnerships, parents, affiliated companies, trusts, or other related entities, past and present, and
15 each of them, as well as each of their directors, officers, shareholders, partners, members,
16 representatives, executors, trustees, fiduciaries, administrators, beneficiaries, assignees,
17 successors, business managers, agents, contractors, insurers, attorneys, and employees, past and
18 present, and each of them and their marital community.

19 35. "Request for Exclusion" means and refers to a valid and timely request for
20 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
21 Settlement Class Member pursuant to Paragraph 70(a) below.

22 36. "Service Payment" or "Service Award" means the combined amount approved by
23 the Court to be paid to the Class Representative as a service award and enhancement in
24 consideration for the services Plaintiff performed on behalf of the Class and in exchange for the
25 Released Claims and Released PAGA claims set forth herein, in addition to his Individual
26 Settlement Payment as a Participating Class Member.

27 37. "Settlement Administrator" means and refers to the ILYM Group, Inc., the third-
28 party class action settlement administrator agreed to by the Parties, that will provide the Notice

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1 Packet to the Settlement Class Members and Aggrieved Employees, and distribute the settlement
2 amounts as described in this Agreement, as well perform as any other related services requested
3 and agreed to by the Parties.

4 38. "Settlement Administration Costs" means the costs payable from the Gross
5 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
6 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
7 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
8 due diligence, mailing notice packets, issuing Individual Settlement Payments and Individual
9 PAGA payments, mailing reminding postcards, reporting and remittance obligations, distributing
10 the Gross Settlement Amount, and providing necessary reports and declarations, as requested by
11 the Parties. The Settlement Administration Costs shall not exceed ~~Twenty Thousand~~
12 Dollars (\$20,000.00) and shall be paid from the Gross Settlement Amount, as approved by the
13 Court.

14 39. "Settlement Class" consists of all current and former non-exempt, hourly-paid
15 employees of Defendant who worked in California at any time during the Class Period.

16 40. "Settlement Class Member" or "Class Member(s)" refers to individual members
17 of the Settlement Class.

18 41. "Work Weeks Worked" or "Eligible Work Weeks," in the context of Settlement
19 Class Members, means all work weeks during the Class Period in which the Settlement Class
20 Member was employed by Defendant as a non-exempt employee in California and worked at
21 least one shift during the work week. Likewise, in the context of Aggrieved Employees, these
22 phrases mean all work weeks during the PAGA Period in which the Aggrieved Employee was
23 employed by Defendant as a non-exempt employee in California and worked at least one shift
24 during the work week.

25 **B. Procedure**

26 42. On or about May 17, 2021, Plaintiff filed a putative class-action complaint in the
27 Court against Defendant, Case No. 21STCV18635, including the following causes of action:
28 (1) failure to pay minimum and regular wages; (2) failure to pay overtime wages; (3) failure to

1 provide meal periods or pay in lieu thereof; (4) failure to provide rest periods or pay in lieu
2 thereof; (5) failure to provide accurate, itemized wage statements; (6) failure to pay wages timely
3 to separated employees; and (7) violations of unfair competition law.

4 43. On or about May 25, 2021, Plaintiff filed a PAGA representative case in the Court
5 against Defendant, Case No. 21STCV19805, seeking civil penalties for alleged California Labor
6 Code violations by Defendant, including allegations of: (1) failure to pay minimum and regular
7 wages, (2) failure to pay overtime wages, (3) failure to provide meal periods or pay in lieu
8 thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide accurate
9 itemized wage statements, (6) failure to timely pay wages due during and upon separation from
10 employment and (7) failure to maintain accurate records.

11 44. In conjunction with and conditioned upon the Court granting Preliminary
12 Approval of this Settlement, Plaintiff will file the Amended Complaint. The Parties hereby agree
13 that, for settlement purposes only, the statute of limitations of the PAGA claims pending in Los
14 Angeles County Superior Court, Case No. 21STCV19805 shall be deemed to relate back to May
15 25, 2021. In addition, the Amended Complaint will include all other amendments necessary to
16 give full effect to this settlement.

17 **C. General Terms**

18 45. Defendant denies Plaintiff's claims and allegations and contends that the Action is
19 not suitable for class certification or manageable as a class or representative action.

20 46. The Class Representative believes he can proceed with his representative and
21 class claims, that the Action is meritorious, and that class certification is appropriate.

22 47. The Parties have conducted a reasonable investigation into the facts of the Action.
23 This includes conducting an extensive exchange of informal discovery, including the production
24 of payroll and timekeeping records for Settlement Class Members. Class Counsel is both
25 knowledgeable about and has done extensive research with respect to the applicable law and
26 potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an
27 investigation of the Class Members' claims against Defendant. Based on the foregoing data and
28 on their own independent investigation and evaluation, Class Counsel is of the opinion that the

1 Settlement with Defendant for the consideration and on the terms set forth in this Settlement
2 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class
3 Members in light of all known facts and circumstances, including the risk of significant delay
4 and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
5 potential appellate issues.

6 48. On December 13, 2021, Plaintiff and Defendant participated in mediation before
7 Steven Rottman, a highly experienced wage-and-hour class action mediator. The matter resolved
8 at mediation pursuant to a mediator's proposal.

9 49. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
10 to be performed or judgments to be entered pursuant to the terms of the Settlement and
11 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
12 any statute or law or liability on any of the claims or allegations in the Action.

13 50. Stipulation for Class Certification and Representative Treatment. For settlement
14 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
15 do not submit a Request for Exclusion from the Settlement Class may be conditionally certified
16 as a settlement class and that the Aggrieved Employees are appropriate for representative
17 treatment. This stipulation to certification and representative treatment is in no way an admission
18 that class-action certification and/or representative treatment is proper and shall not be
19 admissible in this or in any other action except for the sole purpose of enforcing this Agreement.
20 If the Court does not approve the payment of the Net Settlement Amount as described in this
21 Agreement, the Parties agree to meet and confer to address the Court's concerns. Should, for
22 whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class
23 certification and representative treatment as part of the Settlement shall become null and void *ab*
24 *initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of
25 whether or not certification and/or representative treatment would be appropriate in a non-
26 settlement context. Defendant expressly reserves its rights and declares that it would continue to
27 oppose class certification, representative treatment, and the substantive merits of the case should
28 the Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that

he would continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

D. Terms of Settlement

51. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00) (“the Gross Settlement Amount”), unless it shall be escalated pursuant to Paragraph 51(b) below. The Gross Settlement Amount is the maximum amount that will be paid and includes Individual Settlement Payments (including all employee-side payroll taxes thereupon), Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendant shall separately pay the employer’s share of applicable payroll tax obligations, which shall be paid and reported through the Settlement Administrator.

(b) The Settlement is based on Defendant’s representation that there are approximately 30,000 Work Weeks Worked included in the Class Period. In the event that the actual number of Work Weeks Worked by all Settlement Class Members during this period exceeds this number by more than five percent (5%) (i.e., 31,500 Work Weeks Worked or more), then Defendant shall increase the Gross Settlement Amount by the same percentage (i.e., \$22.50 for each additional Work Week Worked above 31,500 Work Weeks Worked). The Gross Workweek Value shall be calculated by dividing the Gross Settlement Amount prior to potential escalation (\$675,000.00) by 30,000, which amounts to a Gross Work Week Value of \$22.50. Thus, for example, should there be 32,500 Work Weeks Worked in the Class Period, then the Gross Settlement Amount shall be increased by \$22,500.00. (32,500 Work Weeks – 31,500 Work Weeks x \$22.50/additional Work Week.)

(c) Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross Settlement Amount less Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. If the Court reduces the requested Attorneys’ Fees and Costs Award, Service Award, or Settlement Administration Costs, or either increases or decreases the amount allocated to the PAGA

Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

(d) Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Eligible Work Weeks a Settlement Class Member worked during the Class Period. Specific Calculations of Individual Settlement Payments will be made as follows:

- Based on the Class Data produced by Defendant, the Settlement Administrator will calculate the total number of Work Weeks Worked by each Settlement Class Member during the Class Period and the aggregate total number of Work Weeks Worked by all Settlement Class Members during the Class Period.
- The Net Settlement Amount will be divided by the aggregate total number of Work Weeks Worked by all Settlement Class Members during the Class Period, resulting in the “Class Work Week Value.” Each Settlement Class Member’s Individual Settlement Payment will be calculated by multiplying his or her total number of Work Weeks Worked during the Class Period by the Class Work Week Value.
- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings and deductions.
- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks Worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(e) Individual PAGA Payments: Individual PAGA Payments will be calculated and apportioned from the PAGA Payment based on the number of Eligible Work Weeks an Aggrieved Employee worked during the PAGA Period. Specific Calculations of

Individual PAGA Payments will be made as follows:

- The Settlement Administrator will determine the total number of Work Weeks Worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Work Weeks Worked”), as well as the aggregate number of Work Weeks Worked by all Aggrieved Employees during the PAGA Period (“PAGA Work Weeks Worked”).
- Aggrieved Employee’s Individual PAGA Payment = (Aggrieved Employee’s Work Weeks Worked / PAGA Workweeks) x \$18,750.00 (the PAGA Payment). This amount is to be paid out to Aggrieved Employees by way of check. The Settlement payment for a Participating Class Member who is also an Aggrieved Employee will therefore include the Participating Class Member’s Individual Settlement Payment and Individual PAGA Payment. A Settlement Class Member who is also an Aggrieved Employee who submits a valid Request for Exclusion will nevertheless be bound by any release of the Released PAGA Claims and will still receive their Individual PAGA Payment.

(e) Tax Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203 & 226) from which no taxes will be withheld or other deductions made. The Individual PAGA Payments will be one hundred percent (100%) allocated to civil penalties from which no taxes will be withheld or other deductions made. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 to each Participating Class Member and/or Aggrieved Employee with respect to the penalties and interest allocations.

(f) Service Payment to Class Representative: The amount, if any, awarded to

1 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
2 exceed \$5,000 in exchange for the services Plaintiff performed on behalf of the Class and the
3 risk incurred in conferring the benefits of this settlement on the class. The Service Payment to
4 Plaintiff will be paid out of the Gross Settlement Amount. The Class Representative will be
5 issued an IRS Form 1099 by the Settlement Administrator in connection with this payment.
6 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this
7 payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less
8 than the requested amount shall not be a basis for Class Counsel or the Class Representative to
9 void this Settlement Agreement nor to appeal this aspect of the Court's ruling. Should the Court
10 approve a lesser amount for the Service Payment, the difference shall be added to the Net
11 Settlement Amount to be distributed to the Participating Class Members.

12 (g) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
13 request by Class Counsel to the Court for an award of attorneys' fees of not more than thirty-
14 three and a third percent (33.33%) of the Gross Settlement Amount, as the same may be
15 escalated pursuant to Paragraph 51(b) of this Agreement, plus reasonable litigation costs
16 estimated not to exceed \$20,000. ("Attorneys' Fees and Costs Award"). Defendant agrees not to
17 oppose any contention by Class Counsel that attorneys' fees should be based on the common
18 fund theory. The Attorneys' Fee and Costs Award shall be paid from the Gross Settlement
19 Amount. Other than as set forth in Paragraph 51(d), Defendant shall have no further obligation
20 to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser
21 amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement
22 Amount to be distributed to the Participating Class Members. The Parties agree that any amount
23 awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be
24 a basis for Class Counsel or the Class Representative to rescind or otherwise void this Settlement
25 Agreement. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099
26 reflecting the amount of attorneys' fees and costs awarded by the Court.

27 (h) Settlement Administration Costs: The fees and other charges of the
28 Settlement Administrator will be paid from the Gross Settlement Amount, subject to Court

1 approval and estimated not to exceed \$20,000. If the actual amount of the Settlement
2 Administration Costs is less than \$20,000, then the difference between \$20,000 and the actual
3 Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
4 Administration Costs exceed \$20,000, then such excess will be paid solely from the Gross
5 Settlement Amount and Defendant will not be responsible for paying any additional funds in
6 order to pay these additional costs, unless the increased costs are as a result of Defendant's
7 negligence or error.

8 (i) PAGA Penalties: The Parties agree that \$75,000 is allocated to PAGA
9 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this
10 amount, \$56,250.00 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
11 PAGA, and \$18,750.00 (25%) will be paid to the Aggrieved Employees based on a Work Weeks
12 Worked basis during the PAGA Period, i.e., the PAGA Payment, which will be treated entirely
13 as civil penalties and shall be reported as required on an IRS Form 1099. Defendant will
14 calculate the total number of Work Weeks Worked by each Aggrieved Employee during the
15 PAGA Period and the aggregate total number of Work Weeks Worked by all Aggrieved
16 Employees during the PAGA Period. Class Counsel shall give proper notice to the LWDA of
17 the Settlement.

18 (j) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make
19 no representations as to the tax treatment or legal effect of Settlement Amounts called for
20 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
21 representation by Class Counsel, Defendant, or Defendant's counsel in this regard. The amount
22 of federal income tax withholding will be based upon a flat withholding rate for supplemental
23 wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
24 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
25 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at
26 times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
27 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
28 applicable tax law, are changed after the date of this Agreement, the processes set forth in this

1 Section may be modified in a manner to bring Defendant into compliance with any such changes.
2 Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they
3 will be solely responsible for the payment of any taxes and penalties assessed on their respective
4 payments described herein and will hold Defendant harmless from and against any claims
5 resulting from treatment of such payments as non-taxable damages.

6 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
7 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
8 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
9 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
10 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
11 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
12 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
13 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
14 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
15 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
16 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
17 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
18 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
19 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
20 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
21 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
22 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
23 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
25 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
26 ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
27 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
28 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING

1 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

2 52. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
3 Participating Class Members under this Agreement, as well as any other payments made
4 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
5 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
6 to: profit-sharing plans, bonus plans, 401(k) plans, pension plans, retirement plans, stock
7 purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any
8 other benefit or incentive plan. Rather, it is the Parties' intention that this Settlement will not
9 affect any rights, contributions, or amounts to which any Settlement Class Members may be
10 entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this
11 Settlement are not for days or hours worked and are not included toward any regular rate of pay
12 calculation, or any benefit vesting or accrual purpose.

13 53. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
14 no circumstance will any portion of the Gross Settlement Amount revert to Defendant.
15 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
16 receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a
17 claim in order to receive their Individual PAGA Payments. Distributions, in the form of
18 Individual Settlement Payments and Individual PAGA Payments, will be made directly to each
19 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
20 responsible for accurately and timely reporting and remittance obligations with respect to
21 unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing
22 an Individual Settlement Payment or Individual PAGA Payment by the check cashing deadline,
23 as set forth herein.

24 54. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
25 adequate, and will so represent same to the Court.

26 **E. Release by Plaintiff, Aggrieved Employees and the Settlement Class**

27 55. Upon Final Approval and Defendant's funding of the Gross Settlement Amount,
28 along with any taxes necessary to be paid by Defendant to effectuate the Settlement and upon

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issuance of Individual Settlement Payments to Participating Class Members, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members, for themselves and for their respective spouses, domestic partners, children, estates, heirs, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims that have arisen or accrued during the Class Period. It is the intent of the Parties that the Final Approval entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims.

56. Each Participating Class Member will be deemed to have made the foregoing Released Class Claims as if by manually signing it.

57. Upon Final Approval and Defendant's funding of the Settlement Amount, as well as any taxes that must be paid by Defendant to effectuate the Settlement and upon issuance of Individual PAGA Payments to Aggrieved Employees, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent permitted by law, and on behalf of the State of California and all Aggrieved Employees, for themselves and for their respective spouses, domestic partners, children, estates, heirs, and representatives, will forever completely release and discharge the Released Parties from the Released PAGA Claims. It is the intent of the Parties that the Final Approval entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon the LWDA and the Aggrieved Employees regarding the Released PAGA Claims.

58. Each Aggrieved Employee and the LWDA will be deemed to have made the foregoing Released PAGA Claims as if by manually signing it.

59. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim (to the extent permitted by law) or action, grievance, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on or arising out of the Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph only applies to Participating Class Members and, thus, does not apply to any Class

1 Member who timely and validly submits a Request for Exclusion.

2 60. Plaintiff and Defendant also intend that the Settlement described in this
3 Agreement will release and preclude any further claim for civil penalties under the California
4 Labor Code, whether by lawsuit, administrative claim (to the extent permitted by law) or action,
5 grievance, arbitration, demand, or other PAGA action of any kind, by each and all of the
6 Aggrieved Employees and by the LWDA to obtain a recovery based on or arising out of the
7 Released PAGA Claims. The Aggrieved Employees shall be so notified in the PAGA Notice,
8 and Class Counsel shall provide appropriate notice to the LWDA of this Agreement prior to the
9 filing of the Motion for Preliminary Approval.

10 61. Class Representative, on behalf of himself and the Participating Class Members,
11 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
12 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
13 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
14 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not
15 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

16 An employer shall not require the execution of any release of any claim or
17 right on account of wages due, or to become due, or made as an advance on
18 wages to be earned, unless payment of those wages has been made.

19 **F. Interim Stay of Proceedings**

20 62. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
22 except such as are necessary to effectuate the Settlement.

23 **G. Notice Process**

24 63. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for

determining the Individual Settlement Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence, reporting and remittance obligations, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. The Settlement Administrator shall also be responsible for issuing to Class Representative, Participating Class Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

64. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute with the aid of the Settlement Administrator and without the necessity of State Court intervention.

65. Class Data. Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential, shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. The Settlement Administrator will be required to sign and provide to Defendant a Certification Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as entered by the Court.

66. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the

1 Settlement Administrator to the Settlement Class Members and Aggrieved Employees, by first
2 class mail, in English and Spanish, within fourteen (14) calendar days following the Settlement
3 Administrator's receipt of the Class Data. Notice Packets will be re-mailed to any Settlement
4 Class Member and/or Aggrieved Employee for whom an updated address is located within seven
5 (7) calendar days following both the Settlement Administrator learning of the failed mailing
6 and/or receipt of the updated address.

7 67. Returned Notices. Any Notice Packets returned as non-deliverable on or before
8 the Void Date shall be re-mailed via First-Class U.S. Mail to the forwarding address affixed
9 thereto within seven (7) calendar days of receipt by the Administrator to the forwarding address
10 affixed to the non-deliverable envelope. If no forwarding address is provided, the Administrator
11 will, within (5) business days, promptly attempt to determine the correct address using a skip
12 trace, or other search using the name, address or Social Security number of the Class Member
13 and Aggrieved Employee involved, and will then perform a single re-mailing. Notice Packets
14 will be re-mailed to any Settlement Class Member and Aggrieved Employee for whom an
15 updated address is located within seven (7) calendar days following both the Settlement
16 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
17 Packet shall be identical to the original Notice Packet, except that it shall notify the Settlement
18 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
19 the Notice Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

20 68. Disputes Regarding Information on Notices. Class Members are deemed to
21 participate in the Settlement, unless they opt-out. The Class Notice will inform Class Members
22 of their estimated Individual Settlement Payment and the number of Work Weeks Worked
23 during the Class Period. The PAGA Notice will inform the Aggrieved Employees of their
24 estimated Workweeks Worked during the PAGA Period and estimated Individual PAGA
25 Payment. Class Members and Aggrieved Employees may dispute their Work Weeks Worked in,
26 respectively, the Class Period and/or PAGA Period if they feel they should be credited with more
27 Eligible Work Weeks than Defendant's records show by timely submitting evidence to the
28 Settlement Administrator. Defendant's records will be presumed determinative absent reliable

evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and/or Aggrieved Employee and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's and/or Aggrieved Employee's actual number of Work Weeks Worked during the Class Period and/or PAGA Period and estimated Individual Settlement Payment and/or Individual PAGA Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members and Aggrieved Employees will have until the Notice Response Deadline to dispute Work Weeks Worked, object or opt out of the Class Action Settlement, or object to the settlement of the PAGA Penalties and seek to intervene in the Action, unless extended by the Court. In the event that the Settlement Administrator revises the number of Work Weeks Worked for any Settlement Class Member or Aggrieved Employee, then the Settlement Administrator will recalculate the Participating Class Members' Individual Settlement Payments and/or the Aggrieved Employees' Individual PAGA Payment accordingly. In no event will Defendant be required to increase the Gross Settlement Amount on this basis.

69. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least seven (7) calendar days prior to the Final Approval Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

70. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the provisions in the Settlement related to the Released Class Claims, and the ability to opt out or request exclusion from the Settlement with respect to the Released Class Claims. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement with respect to the Released Class Claims in accordance with the following guidelines:

(a) Requests for Exclusion from Participating in the Settlement Class. Any Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

1 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
2 CLASS IN THE Q-TECH CORPORATION LAWSUIT. I
3 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
4 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
5 MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS
6 IN THIS LAWSUIT," or a statement to that effect.

7 To be valid, any Request for Exclusion must include the full name, address, telephone
8 number, last four digits of the social security number or date of birth, and signature of the
9 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
10 mail to the Settlement Administrator at the specified address. Any such Request must be made
11 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
12 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
13 Any Settlement Class Member who timely requests exclusion in compliance with these
14 requirements: (i) will not have any rights under this Agreement with respect to the Released
15 Class Claims, including the right to object, appeal, or comment on the Settlement; (ii) will not be
16 entitled to receive any payments under this Agreement for the Released Class Claims; and (iii)
17 will not be bound by this Agreement, or the judgment, with respect to the Released Class Claims.
18 Any Aggrieved Employee who requests timely exclusion from the Settlement Class will still be
19 subject to the Released PAGA Claims to the fullest extent permitted by law and shall be sent his
20 or her share of PAGA Penalties.

21 (b) Binding Effect on Participating Class Members. Except for those
22 Settlement Class Members who exclude themselves in compliance with the procedures set forth
23 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
24 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
25 Agreement, the judgment, and the releases set forth herein; and (iii) except as otherwise provided
26 herein, will be deemed to have waived all objections and oppositions to the fairness,
27 reasonableness, and adequacy of the Settlement.

28 (c) Objections to Settlement of the Released Class Claims or Released PAGA

1 Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this
2 Agreement. To object, a Settlement Class Member should inform the Settlement Administrator,
3 in writing, of his or her objection which must be postmarked by the Notice Response Deadline at
4 the address set forth in the Notice. Such objection shall include the Objecting Settlement Class
5 Member's full name, address, telephone number, and dates of employment with Defendant, the
6 case name and number, the basis for the objection, including any legal support and each specific
7 reason in support of the objection, as well as any documentation or evidence in support thereof,
8 and, if the Objecting Settlement Class Member is represented by counsel, the name and address
9 of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class
10 Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement
11 Administrator shall attach the same to its declaration of due diligence and file with the Court
12 prior to the Final Approval Hearing. Any Participating Class Member who files an objection
13 remains eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant
14 shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his
15 or her counsel related to any objections to the Settlement.

16 (d) Failure to Object. Any Settlement Class Member who desires to object to
17 the Released Class Claims or Released PAGA Claims in the Settlement but fails to timely submit
18 a written objection or in person objection at the Final Approval Hearing may still object and/or
19 comment on the Settlement in person and/or through counsel at the Final Approval Hearing.

20 (e) Responses to Objections. Counsel for the Parties may file a response to
21 any objections submitted by Objecting Settlement Class Members at least five (5) court days
22 before the date of the Final Approval Hearing.

23 (f) Timing of Requests. Settlement Class Members will have until the Notice
24 Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator
25 by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and
26 Defendant's counsel what objections or Requests for Exclusion were timely submitted on a
27 weekly basis, and upon the request of Class Counsel or Defense Counsel.

28 (g) Defective Submissions. If a Settlement Class Member's Request for

1 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
2 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
3 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
4 defective submission to advise the Settlement Class Member that his or her submission is
5 defective and that the defect must be cured to render the Request for Exclusion or objection
6 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
7 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
8 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
9 received by fax within that period, it will be deemed untimely.

10 71. The Settlement Administrator shall create a QSF for all money paid by Defendant
11 and shall deposit all funds received from Defendant into such QSF.

12 72. Funding of the Settlement Amount. Defendant shall fund the entire Gross
13 Settlement Amount ~~in two equal installments. Defendant shall fund the first installment of~~
14 ~~\$325,000 to the Settlement Administrator within five (5) business~~ thirty (30) calendar days after
15 the Effective Date. ~~Defendant shall fund the second installment of \$325,000 to the Settlement~~
16 ~~Administrator 180 calendar days thereafter.~~ Defendant separately shall pay its share of employer
17 payroll taxes as calculated and directed by the Settlement Administrator in a timely fashion. If
18 any additional funds are owed pursuant to the escalator clause in paragraph 51(b), Defendant
19 shall fund ~~50% of the additional funds with the first installment and the remaining 50% of the~~
20 ~~additional funds shall be funded with the second installment~~ said amount when it pays the Gross
21 Settlement Amount. Once Defendant has complied with its obligations set forth in this
22 paragraph, and provided the Class Data pursuant to paragraph 65 Defendant shall be deemed to
23 have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the
24 protections afforded it under the Agreement, and shall have no further obligations under the
25 Agreement, regardless of what occurs with respect to the further administration of the
26 Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable IRS
27 Forms W-2s and 1099 reflecting all payments to the Class Members, to Class Counsel, and to the
28 Settlement Administrator.

1 73. Distribution of Funds. No later than thirty (30) calendar days after Defendant²
2 ~~second and final funding event of funds~~ the Gross Settlement Amount and employer taxes, the
3 Settlement Administrator will mail the Individual Settlement Payments and Individual PAGA
4 Payments to the Participating Class Members and Aggrieved Employees, the portion of the
5 PAGA Penalties payable to the LWDA, the payment to Class Counsel for the Attorneys' Fees
6 and Costs Award, any Service Payment to the Class Representative, and will pay itself the
7 Settlement Administration Costs.

8 74. Deadline for Cashing Settlement Checks. Participating Class Members and
9 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
10 Administrator to cash their settlement checks. A postcard reminding Participating Class
11 Members and/or Aggrieved Employees to negotiate or cash their Individual Settlement Award
12 checks before the void date will be mailed by the Settlement Administrator 90 days after
13 issuance of the Individual Settlement Award payments to those Participating Class Members
14 who have not negotiated their checks by that time. If any Participating Class Member's or
15 Aggrieved Employee's check is not cashed within that period the checks shall become null and
16 void, and any monies remaining in the distribution account shall be distributed to the Controller
17 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil
18 Code section 1500 *et seq.*, for the benefit of those Settlement Class Members and PAGA
19 Members who did not cash their checks until such time that they claim their property. The
20 Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure
21 Code section 384, as the entire Net Settlement Amount will be paid out to Settlement Class
22 Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not
23 be required to pay any interest on said amount. The releases contained herein will be binding
24 upon all Participating Class Members and Aggrieved Employees who do not cash their checks
25 within the 180-day period. In the event that any settlement check is returned to the Settlement
26 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
27 business days of receipt of the returned settlement check, perform a skip trace to locate the
28 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is

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located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Released Parties, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

75. No person shall have any claim against Defendant, Released Parties, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

76. Without prejudice to any other remedies, the Settlement Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Settlement Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

77. Promptly after execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Filing the Amended Complaint in Court as described in Paragraph 44, upon the State Court's grant of Preliminary Approval;
- (b) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

- (c) Approving as to form and content the proposed Notice Packet;
- (d) Directing the mailing of the Notice Packet by first class mail to the Settlement Class Members;
- (e) Preliminarily approving this Settlement; and
- (f) Preliminarily certifying the class for purposes of this Settlement.

78. Reallocation of Settlement Proceeds. In the event the Court fails to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval upon any subsequent Court hearings.

I. Duties of the Parties Following State Court's Final Approval

79. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit to the Court a Motion for Final Approval and a proposed Final Approval Order:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and
- (c) Entering judgment approving settlement.

80. Final Judgment. The Settlement Administrator shall give the Participating Class Members and Aggrieved Employees notice of the entry of Final Judgment by posting the Final Judgment on its website for a period of three (3) years after entry of judgment.

J. Voiding the Agreement

81. Defendant will have, in its sole discretion, the right to void and withdraw from the Settlement if ten percent (10%) or more of Class Members, by number or by value, opt out of the Settlement. To do so, Defendant shall give written notice to the Settlement Administrator at least 30 calendar days before the Final Approval Hearing date.

82. All Parties, signatories and their counsel shall not encourage opt-outs or

objections to this Agreement. The Parties specifically agree not to solicit opt-outs or objections, directly or indirectly, through any means.

83. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Settlement.

84. If the Settlement is voided by Defendant pursuant to Paragraph 81, any costs incurred to date by the Settlement Administrator shall be borne by Defendant. If the Settlement is voided or fails for any other reason, any costs incurred by the Settlement Administrator to date shall be borne equally by Defendant and Plaintiffs, unless otherwise specified in this Agreement.

K. Other Terms

85. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

86. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used by any Released Party to pursue an injunction, against any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Claim.

87. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

88. No Publicity. Communications regarding this Settlement prior to the Final Approval shall be limited to Court-Approved Notices in the Action. After the Final Approval, Class Counsel and Class Representative agree that they will not make any comment or publication of the Settlement or regarding Defendant that in any way could reasonably identify Defendant in terms of affirmative or responsive media statements/comments, press releases or conferences, website postings or content, social media postings or content, other Internet postings or content, subscribed email messages, newsletters, disseminated updates, mass mailings, or any other comment or publication to the press, media, or public at large. Nothing

herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees and costs. Nothing herein shall be construed to prohibit communications with Settlement Class Members or their representatives about this Settlement, including through the posting of Court-filed documents on Class Counsel's websites for access solely by the Settlement Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties.

89. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's Preliminary Approval, and Final Approval. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review at least five court days prior to the filing deadline.

90. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

91. No Admission. Defendant denies any and all liability to Plaintiff and/or any Settlement Class Member or Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless,

1 Defendant wishes to settle and compromise the matters at issue in the Action to avoid further
2 substantial expense and the inconvenience and distraction of protracted and burdensome
3 litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation,
4 and without conceding any infirmity in the defenses that it has asserted or could assert against
5 Plaintiff, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the
6 manner and upon the terms and conditions set forth in this Agreement.

7 92. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
8 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
9 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
10 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
11 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
12 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
13 and it, along with all related documents such as the notices, and motions for preliminary and
14 final approval, shall, pursuant to California Evidence Code section 1152, be inadmissible in
15 evidence in any proceeding, except an action or proceeding to approve the settlement, and/or
16 interpret or enforce this Settlement Agreement. The stipulation for class certification and PAGA
17 representative status as part of this Settlement Agreement is for settlement purposes only and if,
18 for any reason the settlement is not approved, the stipulation will be of no force or effect.

19 93. Notices. Unless otherwise specifically provided herein, all notices, demands or
20 other communications given hereunder shall be in writing and shall be deemed to have been duly
21 given as of the third business day after mailing by United States registered or certified mail,
22 return receipt requested, addressed:

23
24 To the Settlement Class Members and Aggrieved Employees:

25 Isam C. Khoury, Esq.
26 ikhoury@ckslaw.com
27 ~~Kristina De La Rosa~~ Michael D. Singer, Esq.
28 ~~kdelarosa~~ msinger@ckslaw.com
COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

Tel: (619) 595-3001

To Defendant:

David A. Wimmer, Esq.
dwimmer@swerdlowlaw.com
Janet I. Swerdlow, Esq.
jswerdlow@swerdlowlaw.com
SWERDLOW FLORENCE SANCHEZ SWERDLOW & WIMMER
9401 Wilshire Blvd., Suite 828
Beverly Hills, California 90212
Tel: (310) 288-3980

94. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

95. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

96. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

97. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged

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1 deficiencies, and Plaintiff and Defendant agree to seek the help of Steven Rottman, Esq. to
2 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
3 bear their own attorneys' fees and costs, and split any fees of Mr. Rottman equally. This
4 provision shall not apply to any legal action or other proceeding instituted by any person or
5 entity other than Plaintiff or Defendant.

6 98. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
7 dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil
8 Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of
9 this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents and
10 obligations of this Agreement.

11 99. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
12 this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible
13 in a court of law.

14 100. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced and administered in accordance with the laws of the State of California.

16 101. Integration Clause. This Settlement Agreement contains the entire agreement
17 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
18 or contemporaneous agreements, understandings, representations, and statements, whether oral
19 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
20 hereunder may be waived except in writing.

21 102. Binding on Assigns. This Settlement Agreement shall be binding upon and inure
22 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
23 successors and assigns.

24 103. Signatures of All Class Members Unnecessary to Be Binding. It is agreed that,
25 because the members of the Settlement Class are numerous, it is impossible or impractical to
26 have each Class Member execute this Settlement Agreement. The Notice will advise all
27 Settlement Class Members of the binding nature of the releases provided herein and such shall
28 have the same force and effect as if this Settlement Agreement were executed by each Settlement

Class Member.

104. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the State Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

105. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: ~~January~~August __, 2022

PLAINTIFF AND CLASS

REPRESENTATIVE:

Sunny K. Tam

Approved As To Form:

Dated: ~~January~~August __, 2022

CLASS COUNSEL:
COHELAN KHOURY & SINGER

~~Kristina De La Rosa~~Michael D. Singer
Attorneys for Plaintiff

Dated: ~~January~~August __, 2022

DEFENDANT:
Q-TECH CORPORATION

By: Daniel Taylor
Title: Chief Financial Officer

1 Dated: ~~January~~August __, 2022

DEFENDANT'S COUNSEL:
SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION

David A. Wimmer
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT 4

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

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.

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**

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Information

Date: ~~August 12~~ October 6, 2022

Time: 11:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not set

1 This matter came on for hearing on ~~August 12~~October 6, 2022 in Department SS-6 of the
2 above-captioned Court on Plaintiff's Motion for Order Granting Preliminary Approval of Class
3 Action Settlement ("Motion").

4 The Court, having fully reviewed the Motion, the supporting memorandum of Points and
5 Authorities, ~~Supplemental Briefing~~, Declarations of Class Counsel, and Declaration of Plaintiff
6 Sunny K. Tam, filed in support of Motion, the ~~Amended~~ Class Action and PAGA Settlement
7 Agreement and Release of Claims ("Settlement Agreement"), the proposed Notice of Class Action
8 Settlement ("Class Notice") attached as Exhibit "A" to the Settlement Agreement and Change of
9 Address Form, having carefully analyzed the Settlement Agreement and its Exhibits, and in
10 recognition of the Court's duty to make a preliminary determination as to the reasonableness of
11 any proposed class action settlement, and if preliminarily determined to be reasonable, to ensure
12 proper notice is provided to all Class Members in accordance with due process requirements, and
13 to set a Final Approval Hearing to consider the proposed Settlement as to the good faith, fairness,
14 adequacy and reasonableness of any proposed Settlement, THE COURT HEREBY MAKES THE
15 FOLLOWING DETERMINATIONS AND ORDERS:

16 1. The Court conditionally finds that, for the purposes of approving this settlement
17 only, the proposed Class meets the requirements for certification under section 382 of the
18 California Code of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that
19 joinder of all members of the class is impracticable; (b) there are questions of law or fact common
20 to the proposed Class, and there is a well-defined community of interest among members of the
21 proposed Class with respect to the subject matter of the class action; (c) the claims of the Class
22 Representative are typical of the claims of the members of the proposed Class; (d) the Class
23 Representative has and will fairly and adequately protect the interests of the Members of the
24 Class; (e) a class action is superior to other available methods for an efficient adjudication of this
25 controversy in the context of settlement; and (f) the counsel of record for the Class Representative
26 are qualified to serve as counsel for him as well as his representative capacity and for the Class.

27 2. The Court finds on a preliminary basis that the Settlement Agreement, attached to
28 the Declaration of ~~Kristina De La Rosa~~Michael D. Singer as Exhibit "~~24~~," incorporated herein by

1 this reference in full, and made a part of this Order of preliminary approval, appears to be within
2 the range of reasonableness of a settlement which could ultimately be given final approval by this
3 Court.

4 3. Further, it appears to the Court on a preliminary basis that: (a) the settlement
5 amount is fair and reasonable to the Class Members when balanced against the probable outcome
6 of further litigation relating to class certification, liability and damages issues and potential
7 appeals; (b) significant investigation, research, and informal discovery have been conducted such
8 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
9 (c) settlement at this time will avoid substantial costs, delay and risks that would be presented by
10 the further prosecution of the litigation; and (d) the proposed Settlement has been reached as the
11 result of intensive, serious and non-collusive negotiations facilitated by an experienced mediator at
12 mediation and between the Parties.

13 4. Accordingly, good cause appearing, the Motion for Order Granting Preliminary
14 Approval of Class Action Settlement is hereby GRANTED, and as a part of said preliminary
15 approval, the Court accepts and incorporates the Settlement Agreement and orders that the Class
16 be conditionally certified for settlement purposes only pursuant to the terms and conditions
17 contained in the Settlement Agreement.

18 5. For purposes of the settlement of the Lawsuit, the Class is defined as:

19 “all current and former non-exempt, hourly-paid employees of Defendant who
20 worked in California at any time during the time period of May 17, 2017 to
21 March 13, 2022.”

22 6. The Court further finds that the proposed Notice of Class Action Settlement
23 (“Notice”) fairly and adequately advises Class Members of a) the pendency of the Class Action; b)
24 the conditional certification of the Class for settlement purposes only; c) preliminary Court
25 approval of the proposed Settlement; d) the date of the Final Approval Hearing; e) the terms of the
26 proposed Settlement and the benefits available to Class Members thereunder; f) their right to
27 receive their proportionate share of the Net Settlement amount without the need to return a claim
28 form; g) their right to request exclusion from the settlement and the procedures and deadline for
doing so; h) their right to object to the Settlement, and the procedure for doing so; and i) their right

1 to file documentation in support of or in opposition to, and to appear in connection with, said
2 hearing. The Court further finds that the Class Notice clearly comports with all constitutional
3 requirements, including those of due process. Accordingly, good cause appearing, the Court
4 hereby APPROVES the Class Notice.

5 7. The Court further finds that the mailing of the Class Notice, Change of Address
6 Form, and pre-printed return envelope, (collectively, the “Notice Packet”), to the last known
7 address of Class Members as specifically described within the Settlement Agreement, with
8 measures taken for verification of an address and skip tracing set forth therein constitutes an
9 effective method of notifying Class Members of their rights with respect to the class action and
10 Settlement. Accordingly, it is hereby ORDERED, that:

11 A. ILYM Group, Inc., be appointed the Settlement Administrator to administer
12 the settlement of this matter as more specifically set forth in the Settlement Agreement.

13 B. Isam Khoury, Michael Singer, ~~Kristina De-La-Rosa~~, and Rosemary Khoury
14 of Cohelan Khoury & Singer, and Joseph Tojarieh of Stonebrook Law be appointed as Class
15 Counsel.

16 C. Plaintiff Sunny K. Tam be appointed as the Class Representative.

17 D. Within fourteen (14) calendar days after entry of a Preliminary Approval
18 Order, Defendant shall transmit to the Settlement Administrator in a readable, ready to use
19 electronic excel format spreadsheet, with a list containing, for each Class Member, (1) the name;
20 (2) most current mailing address; (3) telephone number(s) and email address as indicated in
21 Defendant’s records; (4) social security number; (5) dates of employment; and (6) the aggregate
22 number of Workweeks during the Class Period and the PAGA Period (“Class Data List”).

23 E. Within fourteen (14) calendar days after receipt of the Class Data List, the
24 Settlement Administrator shall mail the Notice Packet to each Class Member. The Notice Packet
25 shall be mailed by first class, regular U.S. mail, using the most current mailing address
26 information available, with measures taken for updating an address as provided by the terms of the
27 Settlement Agreement.

28 F. Within 45 calendar days from the initial date the Settlement Administrator

1 first mails the Notice Packet to Class Members (the “Notice Response Deadline”), Class Members
2 who wish to exclude themselves from the Class must submit a written request for exclusion in the
3 manner set forth in the Class Notice and such request must be postmarked by the Notice Response
4 Deadline. Class Members who receive a re-mailed Notice Packet shall have their Notice Response
5 Deadline extended fifteen (15) calendar days from the original Notice Response Deadline to
6 submit a Request for Exclusion.

7 G. On or before the Notice Response Deadline, Class Members who dispute
8 the number of Workweeks must postmark and submit a written explanation to the Settlement
9 Administrator describing why the Workweeks are incorrect, with any supporting information or
10 documents, as set forth in the Class Notice. Class Members who receive a re-mailed Notice Packet
11 shall have their Notice Response Deadline extended fifteen (15) calendar days from the original
12 Notice Response Deadline to submit a Dispute.

13 H. On or before the Notice Response Deadline, Class Members who wish to
14 object to the Settlement, should submit to the Settlement Administrator, a written Notice of
15 Objection. Class Members who receive a re-mailed Notice Packet shall have their Notice
16 Response Deadline extended fifteen (15) calendar days from the original Notice Response
17 Deadline to submit an Objection. Class Members may also appear at the time of the Final
18 Approval Hearing to comment upon the Settlement.

19 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
20 the undersigned at ____ p.m. on _____, 2023~~2~~, in Department SS6 of the Superior Court for
21 the State of California, County of Los Angeles, located at the Spring Street Superior Court Spring
22 Street Courthouse located at 312 N. Spring Street, San Diego, CA 90012 to consider the fairness,
23 adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order of
24 Preliminary Approval, and to consider the application for a service payment award to the named
25 Plaintiff/Class Representative, for Settlement Administration expenses and for Class Counsel’s
26 attorneys’ fees and litigation expenses incurred. All briefs and materials in support of an Order
27 Granting Final Approval, the service payment, Settlement Administration expenses, and Class
28 Counsel’s attorneys’ fees and litigation costs shall be filed with this Court on or before

1 _____, 2023~~2~~.

2 9. IT IS FURTHER ORDERED that if for any reason the Court does not sign and file
3 an Order Granting Final Approval, the Settlement Agreement shall be treated as if it had not been
4 entered, and the Parties shall be restored without prejudice to their status quo ante rights, as
5 specifically set forth in the Settlement Agreement.

6 10. All proceedings in this matter, except those contemplated by the Settlement
7 Agreement or this Order, are stayed.

8 11. The Court expressly reserves the right to adjourn or continue the Final Approval
9 Hearing from time to time without further notice to Class Members.

10 IT IS SO ORDERED.

11

12 Date: _____

The Honorable Elihu M. Berle

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EXHIBIT 5