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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.
23

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**DECLARATION OF KRISTINA DE LA
ROSA IN SUPPORT OF MOTION FOR
ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Information

Date: August 12, 2022

Time: 11:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not Set

1 I, Kristina De La Rosa, declare as follow

2 1. I am an Associate with the law firm of Cohelan Khoury & Singer, counsel of record
3 for Plaintiff Sunny Tam and the Settlement Class. I have been one of the attorneys working on this
4 case since its inception and submit this declaration in support of Plaintiff's Motion for Order Granting
5 Preliminary Approval of Class Action Settlement. The following facts are within my personal
6 knowledge and if called to testify I could and would competently do so.

7 2. I am in my eleventh year practicing law and have dedicated nearly my entire career to
8 class action litigation. Over the past several years, I have been appointed class counsel in the
9 following wage/hour employment class action cases where I was responsible for the prosecution of
10 said cases: *Ledbetter v. Parrot Cellular*, Superior Court for the County of Santa Clara; *Martinez v.*
11 *San Diego AutoScrubber, Inc.*, Superior Court for the County of San Diego; *Frayre v. UPS*, Superior
12 Court for the County of San Diego; *Madera v. Universal Alloy Corp.*, United States District Court
13 for the Central District of California; *Loveless v. ASM Affiliates*, Superior Court for the County of
14 San Diego; and *Troxel v. LA Leasing, Inc.*, Superior Court for the County of San Diego; *Alfaro v. Ten*
15 *Stories, Inc.*, Superior Court for the County of San Diego; *Alfaro v. KSC Studio, LLC dba OneKreate*,
16 Superior Court for the County of San Diego; *Garcia v. Workforce Strategies, Inc.*, Superior Court for
17 the County of San Diego; *Enriquez v. Colt Services, Inc.*, Superior Court for the County of San Diego;
18 *Burgueno v. Tayman Industries, Inc.*, Superior Court for the County of San Diego; *Highbaugh v. Staff*
19 *Pro*, Superior Court for the County of San Diego; *Merritt v. Houzz, Inc.*, Superior Court for the
20 County of Santa Clara; *Contreras v. Americold Logistics, Inc.*, United States District Court for the
21 Central District of California; and *Torres v Mercury Plastics, Inc.*, Superior Court for the County of
22 Los Angeles.

23 3. I have also been counsel of record and/or assisted in the prosecution of a number of
24 wage/hour, employment and consumer class action cases, including: *Chavez v. Real Time Staffing*
25 *Services, Inc.*, Superior Court for the County of San Diego; *Clancy v. Scripps Health*, Superior Court
26 for the County of San Diego; *Ferguson v. Winston Retail Solutions*, Superior Court for the County of
27 San Diego; *Subia v. National Security Industries, Inc.*, Superior Court for the County of Santa Clara;
28 *Garcia v. Task Ventures, LLC*, Superior Court for the County of San Diego; *Lewis v. Cat Spec.*,

1 Superior Court for the County of Contra Costa; *Mendoza v. McDonalds*, Superior Court for the
2 County of Los Angeles; *Radford v. ACD Direct*, Superior Court for the County of San Diego; *Costa*
3 *v. Altman Plants, Inc.*, Superior Court for the County of San Diego; *Rodriguez v. Chimney Sweeps*,
4 Superior Court for the County of San Diego; *Horton v. Socket Payment Services*, Superior Court for
5 the County of San Diego; *Virissimo v. L'Oreal USA Products, Inc.*, Superior Court for the County of
6 San Diego; *Lemar v. Earthlite LLC*, Superior Court for the County of San Diego; *Rodriguez v.*
7 *PetSmart, Inc.*, United States District Court for the Southern District; *Fox v. Capital Growth*
8 *Properties, Inc.*, Superior Court for the County of San Diego; *Maldonado et al v. Fast Auto Loans,*
9 *Inc.*, Superior Court for the County of Orange; *Andino v. Kaiser*, Superior Court for the County of
10 Alameda; *Torres v. Mercury Plastics, Inc.*, Superior Court for the County of Los Angeles; *Cole, Jr.*
11 *v. Ergon.*, Superior Court for the County of San Bernardino; *Harisis v. Starbucks*, Superior Court for
12 the County of Los Angeles; *Carley v. Landmark Event Staffing Services, Inc.*, Superior Court for the
13 County of Alameda; *Brooks v. Lusamerica Foods, Inc.*, Superior Court of the County of Santa Clara;
14 *Springstead v. RI International*, Superior Court for the County of San Diego; *Bigelow v. Steadfast*
15 *Security, Inc.*, Superior Court of the County of San Bernardino; *Gonzalez v. Staff Pro, LLC*, Superior
16 Court for the County of San Diego; *Castrejon, Jr., et al v. Westrock Services, LLC*, United States
17 District Court for the Northern District; *Prudential Overall Wage and Hours Cases*, Superior Court
18 for the County of Riverside; and *Foley v. Yuen's Enterprise One, Inc.*, Superior Court for the County
19 of San Bernardino.

20 4. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a
21 Partnership of Professional Law Corporations, and within a few years began to focus on class actions.
22 In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs in
23 complex, class and representative action litigation, including wage and hour, labor and employment,
24 antitrust, consumer protection, construction defect and other public interest type class and
25 representative actions.

26 5. Managing Partner Michael D. Singer was admitted as a fellow to the College of Labor
27 and Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013, and 2018 list of Top
28 California Labor and Employment Attorneys. He, along with Isam Khoury, a founding Partner of the

1 firm, and Partner Diana M. Khoury, have also been selected by their peers based on ethics, experience
2 and reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers
3 Magazine for the years 2012 through the present.

4 6. Cohelan Khoury & Singer has been certified by the State Bar of California to provide
5 the Mandatory Continuing Legal Education activity entitled “Litigating California Class Actions”
6 and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D. Cohelan, is the
7 author of Cohelan on California Class Actions (1997-2022, updated annually), part of Thomson
8 Reuters Expert Series updated annually. Michael D. Singer is a contributing author on the CEB
9 publication California Wage and Hour Law: Compliance and Litigation (2010-2022 updated
10 annually), in which he wrote the opening chapter overview on California Wage and Hour laws,
11 including the public policy underpinnings for those laws, and the Private Attorneys General Act
12 (PAGA) Claim chapter. He is also a contributing author to the CEB Practitioner (2020), including
13 guidelines for oral argument and forms for PAGA litigation. Mr. Singer has served as a columnist for
14 the California State Bar, Litigation Section on wage and hour litigation and has contributed articles
15 on wage and hour and class action issues through the years to numerous California publications. Prior
16 to COVID, he typically lectured several times per year for continuing education courses on wage and
17 hour and class action issues at events in San Diego, Orange County, Los Angeles, and San Francisco.
18 For over twelve years, Mr. Singer has served as wage and hour amicus co-chair and liaison for the
19 California Employment Lawyers Association, drafting, reviewing, and coordinating amicus filings
20 on wage and hour issues in the California Supreme Court and Courts of Appeal. He has been engaged
21 in the practice of labor and employment law since 2000, handling well over 300 wage and hour class
22 and PAGA actions and several individual labor cases. He has litigated several types of employment
23 actions, including complex ERISA employee welfare benefit plan cases, as well as wage and hour
24 class actions before Federal and State Courts in California. In 2014, Mr. Singer, along with Partner
25 J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted wages and
26 unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial
27 court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers.

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1 7. As a part of our overall firm philosophy lawyers perform community service and pro
2 bono work. Firm volunteer work includes service through the Legal Aid at Work, San Diego
3 Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San
4 Diego. During law school, I interned for the ACLU and Equal Rights Assistance assisting on impact
5 litigation class action lawsuits. Partner Jeff Geraci is a past recipient of the Wiley W. Manuel Award
6 for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011.
7 Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and
8 currently sits on the Board as past Chair. He completed 24 years of volunteer judicial service as a
9 Judge Pro Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana
10 M. Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of
11 San Diego, Consumer Attorneys of California, and American Association for Justice serving and
12 chairing various committees through the years for these organizations. For six years from 2010
13 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of San Diego.
14 Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego County Bar
15 Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association providing access
16 to justice to the underserved and impoverished in the San Diego County region. Our firm's recent pro
17 bono victories include a settlement which prohibits the City of San Diego from targeting homeless
18 people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*,
19 USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the
20 number of available shelter beds in San Diego.

21 8. Cohelan Khoury & Singer has been certified Class Counsel in the following contested
22 proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No.
23 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No.
24 RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles
25 County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR*
26 *EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL
27 Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States
28 District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics*,

1 *L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318;
2 *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of
3 Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case
4 No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of
5 California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento
6 County Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle*
7 *Inventory Control Specialist and PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart*
8 *Supermarkets* San Mateo Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County
9 Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The*
10 *Orange County Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v.*
11 *Overland Solutions, Inc.*, United States District Court, Southern District of California Case No.
12 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
13 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
14 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA,*
15 *et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL*
16 *OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v.*
17 *Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District
18 of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's*
19 *Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v.*
20 *Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-
21 00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case
22 No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No.
23 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No.
24 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior
25 Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County
26 Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No.
27 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case
28 No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court,

1 Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los
2 Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, United
3 States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon*
4 *Company*, United States District Court, Southern District of California Case No. 10CV0634; and
5 *Weigele v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of
6 California Case No. 06CV1330, among others, as well as being appointed Class Counsel in
7 connection with well over 200 class action settlements.

8 9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively
9 commenced, prosecuted and concluded numerous state and federal class and representative actions.
10 Since 2016, Cohelan Khoury & Singer has played a central role in the resolution of over 200 such
11 cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container*
12 *Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675,
13 Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case
14 No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District
15 Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d)
16 *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415,
17 Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court,
18 Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San
19 Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v.*
20 *Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon.
21 Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
22 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange
23 County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San
24 Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v.*
25 *The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue;
26 (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern
27 District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly*
28 *Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning;

(n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

10. We are experienced and consider ourselves qualified to evaluate the claims and defenses in this Action. This allowed our firm to assist in achieving an efficient resolution of the claims in this matter for a non-reversionary Settlement Payment of \$650,000 for approximately 185

1 current and former non-exempt California individuals employed by Defendant Q Tech Corporation
2 (“Defendant” or “Q Tech”) at any time during the Class Period of May 17, 2017 to March 13, 2022.
3 The proposed Settlement is memorialized in the Class Action and PAGA Settlement Agreement and
4 Release of Claims (“Agreement”), attached as Exhibit 1.

5 11. Plaintiff Sunny K. Tam was employed by Defendant as a non-exempt, hourly
6 employee from approximately 1988 to November 5, 2020.

7 12. Q Tech is a leading supplier of crystal oscillators for space, military, avionics and high
8 temperature related services and applications.

9 13. The Class is defined as all current and former non-exempt, hourly paid employees of
10 Q Tech Corporation who worked in California at any time from May 17, 2017 to March 13, 2022.

11 14. PAGA “Aggrieved Employees” are all Class Members who were employed during the
12 PAGA time period of March 4, 2020 to March 13, 2022.

13 15. Based on Defendant’s records, there are 185 class members who worked an estimated
14 30,000 workweeks during the Class Period. Of this amount, 147 are estimated to be Aggrieved
15 Employees who worked 11,629 workweeks during the PAGA period. Each pay period consisted of
16 one workweek.

17 16. On March 4, 2021, Plaintiff served notice on the Labor Workforce and Development
18 Agency and Defendant of these allegations and his intention to seek penalties pursuant to the Private
19 Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.* Attached as Exhibit 2 is a true
20 and correct copy of the March 4, 2021 PAGA Notice.

21 17. After waiting the requisite 65-day notice period, Plaintiff filed a class action complaint
22 in the above-captioned Court on May 17, 2021 alleging: (1) failure to pay minimum wages (Labor
23 Code §§ 1194, 1197, *et seq.* and the applicable IWC Wage Order); (2) failure to pay overtime wages
24 (Labor Code §§ 510, 1194, *et seq.* and the applicable IWC Wage Order); (3) failure to provide timely,
25 off-duty meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, and the applicable
26 IWC Order); (4) failure to provide or authorize paid 10-minute, off-duty rest periods or compensation
27 in lieu thereof (Labor Code § 226.7 and the applicable IWC Order); (5) failure to provide accurate
28 wage statements (Labor Code §§ 226, 1174); (6) failure to timely pay wages to terminated or resigned

1 employees (Labor Code §§ 201, 202 and 203); (7) Violation of the Unfair Competition Law (Business
2 & Professions Code §§ 17200, *et seq.*

3 18. On May 25, 2022, Plaintiff filed a separate action seeking recovery civil penalties
4 under PAGA arising out of the same causes of action, as well as civil penalties for violations of Labor
5 Code § 204, 1174 and 1198.

6 19. These actions were deemed related by Court order on July 12, 2021, with the class
7 complaint being designated as the lead case. A stipulation to file a consolidated complaint is
8 submitted concurrently with the Motion for Preliminary Approval.

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

12 21. In preparation of the mediation which took place on December 13, 2021, Defendant
13 produced time and payroll records for 168 employees as well as the titles of job positions and the
14 number of employees who worked in each position. Defendant also produced applicable policies and
15 the employee handbook.

16 22. Using this data and information, Plaintiff assessed Class-wide damages and exposure
17 to PAGA civil penalty liability based on each of the claims asserted by Plaintiff. The data provided
18 was detailed and allowed calculation, by year, of the length of shifts worked, the amount of wages
19 owed, the number of rest and meal periods owed, and the amount of rest and meal period premium
20 wages that should have been paid based on the theories advanced by Plaintiff. All data and
21 information was used to calculate a class-wide damage and PAGA civil penalties model.

22 23. With significant investigation, research, informal discovery, and analysis of the data
23 and information by Plaintiff and her damages consultant, the Parties mediated with Mr. Rottman on
24 December 13, 2021. After a full day of arms'-length negotiations, the Parties reached an agreement.

25 24. The Parties agreed, subject to Court approval, Defendants will pay \$650,000, the
26 Gross Settlement Amount ("GSA") in two separate installments, which includes: (a) attorneys' fees
27 up to \$216,666.67 (one-third of GSA) to compensate Class Counsel for work performed and work
28 remaining to secure final Court approval; (b) litigation costs up to \$20,000; (c) Class Representative

1 Payment of \$5,000 to Mr. Tam, in recognition of bringing the case, work performed, risks undertaken
2 for costs if the case had not successfully concluded, and substantial benefits conferred on absent Class
3 Members and aggrieved employees; (d) PAGA Payment of \$75,000 [\$56,250 to the LWDA
4 (75%)/\$18,750 to Aggrieved Employees (25%)] and (e) ILYM, Inc.'s ("Settlement Administrator")
5 costs not to exceed \$10,000. Defendant will pay employer's share of payroll taxes in addition to GSA.
6 After these deductions, the estimated amount to be distributed directly to employees is \$323,333.33.

7 25. Plaintiff consented to apportion fees: 60% to Cohelan, Khoury & Singer, and 40% to
8 Stonebrook Law.

9 26. The amount of each Class Member's Individual Settlement Amount and each PAGA
10 Aggrieved Employee is tied to the number of workweeks that each Settlement Member worked for
11 Defendant in California during the Class Period and PAGA Periods.

12 27. The Net Settlement amount that is to be allocated to Class Members and the 25% of
13 the PAGA penalties to be paid to Aggrieved Employees will be paid on a proportional basis based on
14 the number of workweeks each employee worked in comparison to the respect group.

15 28. Defendant paid its employees every seven days which means that each work week
16 constituted a pay period. One day worked in a given week will be credited as a workweek for purposes
17 of these calculations.

18 29. The method of distribution allocates funds based on weeks worked, and the basis of
19 the claims, and does not give preference to any Class Member.

20 30. Average estimated payment to class members for each workweek is \$10.78
21 (\$323,333.33 NSA / 30,000 workweeks). A Class Member working the entire Class Period would
22 receive an estimated \$2,705 (\$10.78 /251 workweeks).

23 31. The NSA will be allocated as follows: twenty percent (20%) will be paid as wages
24 subject to withholding of all applicable local, state and federal taxes; forty percent (40%) will be paid
25 as interest from which no taxes will be withheld; and forty percent (40%) will be paid as penalties,
26 including waiting time penalties, from which no taxes will be withheld.

27 32. The PAGA Payment, which will be treated entirely as civil penalties, will also be paid
28 as penalties from which no taxes will be withheld.

1 33. The information to distribute the Settlement is readily available from Defendant's
2 records, and the Administrator can apply the settlement formula fairly and transparently.

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

7 35. The Settlement Administrator will send a postcard reminding Participating Class
8 Members and/or Aggrieved Employees to negotiate or cash their Individual Settlement Award checks
9 before the void date. Checks will be void 180 days after issuance, and any unclaimed amounts will
10 be distributed to the California State Controller's Office, Unclaimed Property Division in the name
11 of the Class Member or PAGA Aggrieved Employee.

12 36. ILYM, Inc. will update Class Member addresses with the National Change of Address
13 database and mail a Notice of Class Action Settlement ("Class Notice") to each Member identified
14 by Defendant's employment records.

15 37. The proposed Class Notice advises Members of their right, manner and timing to: (1)
16 participate in the Settlement without submitting a claim; (2) dispute the basis of the Individual
17 Settlement Payment; (3) object or opt-out. Class Members are informed of estimated payments,
18 release to be given, date of the Final Approval hearing, and how to obtain further information through
19 class counsel, or ILYM's or the Court's website.

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

28 ///

1 39. Plaintiff, standing in the shoes of the Labor Commissioner/LWDA to the extent
2 permitted by law, and on behalf of the State of California and all Aggrieved Employees, will release
3 claims alleged under the PAGA, as follows: any and all claims for civil penalties for violations of
4 California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
5 1194, 1194.2, 1197, and 1198 under PAGA that Plaintiff alleged against the Released Parties on
6 behalf of Aggrieved Employees and the State of California, based on the facts stated in Plaintiff's
7 Amended Complaint and in Plaintiff's March 4, 2021 notice letter to the LWDA (including any
8 amendments thereto), including all PAGA claims seeking civil penalties for (1) failure to pay
9 minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods
10 or pay in lieu thereof, (4) failure to provide rest periods or pay in lieu thereof, (5) failure to provide
11 accurate itemized wage statements, (6) failure to timely pay wages due during and upon separation
12 from employment and (7) failure to maintain accurate records arising during the PAGA Period. Any
13 Class Member who is an Aggrieved Employee and who requests timely exclusion from the Settlement
14 Class, will still be subject to the Release of PAGA Claims.

15 40. The parties attended a full day of mediation with an experienced wage and hour class
16 action mediator and through negotiations facilitated by Mr. Rottman continued their arms'-length
17 negotiations by phone and email and the Parties agreed to a settlement in principle on that same day.
18 All Counsel aggressively pursued their respective positions at all times.

19 41. Plaintiff's Counsel investigated all claims and defenses before filing the Complaint.
20 When the Parties agreed to mediation, Plaintiff requested, and Defendant produced, data and
21 documents, to allow liability to be assessed and Class-wide damages to be calculated.

22 42. Proof of wage and hour class claims is based, at any stage, almost entirely on written
23 policies and time and pay records. Plaintiff's counsel obtained nearly all of the time and pay records
24 for 168 employees records, and an expert analyzed them, before negotiating a settlement.

25 43. Plaintiff's Counsel believes the Settlement achieved in this Action is fair, reasonable
26 and in the best interest of the Class in light of the monetary recovery by the Class, complexities and
27 difficulties of this litigation, the state of the law, the potential the case may not have been certified,
28 and adverse summary judgment or decertification ruling, the lengthy process of establishing specific

1 damages, and various possible delays and uncertainty regarding the outcome of appeal. Each of these
2 factors was carefully considered before reaching agreement.

3 44. Plaintiff's counsel relied on data and documents, including time, pay, and employment
4 records. Plaintiff's counsel and their expert reviewed and analyzed time and pay records to assess
5 liability and extrapolate the data provided for the anticipated Class period before attending mediation.

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

13 46. With respect to regular rate of pay, Defendant disputed which types of payments
14 qualified as non-discretionary bonuses that needed to be incorporated into the regular rate of pay.

15 47. Defendant argued that it has focused intently on wage and hour compliance for years.
16 As part of that effort, employees are reminded to take duty free meal and rest periods any purported
17 violations were a result of personal choice. Defendant argued that even if Plaintiffs prevail on their
18 underlying wage claims, Plaintiffs could not establish the "willfulness" requirement for claims for
19 penalties pursuant to Labor Code § 203.

20 48. Defendant presented additional defenses based on procedure. First, Defendant
21 produced an arbitration agreement signed by Plaintiff which would force him to waive class claims
22 and require all individual claims to be arbitrated on an individual basis. Defendant alleged that the
23 majority, if not all, of the class members signed a similar document.

24 49. Defendant further alleged that any purported violations arising from a particular
25 deviation from its policies and practices would result in an individualized inquiry unsuitable for class
26 resolution or render a PAGA action unmanageable.

27 50. While Plaintiff's counsel believed in the underlying merits of the claims, we had to
28 consider all of Defendant's defenses, including the chance that the arbitration provision could be

1 found to be enforceable. In addition, Plaintiff's counsel had to consider the additional risks associated
2 with certification of class claims and then any subsequent attempts to decertify the class, adverse
3 summary adjudication rulings, manageability at trial, the lengthy process of establishing damages,
4 and the delay and uncertainty of appeals.

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

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

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

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

21 55. Based on Defendant's records and conversations with Plaintiff, Plaintiff's counsel
22 estimated that there were approximately 76,601 shifts of at least five hours in which a meal periods
23 was either, not provided, late or which the shift exceeded ten hours in length and a second meal period
24 was not provided. In consideration of Defendant's contention of individualized issues and based on
25 conversations with Plaintiff, Plaintiff assumed any meal periods less than thirty minutes were by
26 employee choice. Plaintiff estimated there was a 50% chance of opposing a motion to compel
27 arbitration and a 50% probability of certifying the class and prevailing at trial, and thus the realistic
28 exposure was no more than \$431,264 (average hourly rate of \$22.52 * 76,601 shifts * 50% success

1 rate * 50% success rate).

2 56. There were 134,739 shifts over 3.5 hours, qualifying for rest periods. Plaintiff
3 recognized that a 100% violation rate did not occur and that time records would not show rest period
4 violations. Accordingly, and based on plaintiff's investigation, Plaintiff assumed a 40% violation rate
5 (53,896 affected shifts) but believed that again, there was only a 50% chance of defeating a motion
6 to compel arbitration and no more than a 10% probability of prevailing at class certification and trial,
7 with realistic exposure of approximately \$60,686.

8 57. Plaintiff estimated maximum liability for the wage statement claim to be \$535,250,
9 based on Section 226's \$50 violation rate and 10,465 pay periods in the statutory period.

10 58. Plaintiff estimated that there was a 50% chance of successfully opposing a motion to
11 compel. However, if Plaintiff overcame any motion to compel arbitration, Plaintiff would recover
12 wage statement penalties if he prevailed on any one of the claims for unpaid wages. Accordingly,
13 Plaintiff estimated that there was a 75% probability of succeeding at trial. This resulted in a realistic
14 exposure of approximately \$392,438.

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

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

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

27 62. The total amount of PAGA penalties calculated, before any discount was applied, was
28 \$6,799,985 (\$3,600 [\$201-203] + \$1,162,900 [\$204] + \$2,907,250 [\$226] + \$450,760 [\$226.7] +

1 \$249,950[§510] + \$290,725 [§512] + \$72,000 + [§1174] + \$499,900 [§1197] + \$1,162,900 [§1198]).

2 63. When dealing with judgments in favor or a class based on labor code violations, it
3 seems as if courts are more reluctant to award substantial additional PAGA civil penalties.
4 Accordingly, Plaintiff additionally believed it would be unlikely to obtain both Labor Code § 203 and
5 226 statutory penalties and also simultaneously recover PAGA civil penalties for the alleged wage
6 violations. Furthermore, it is unlikely for a court to award penalties for violation of section 1198
7 (pertaining to violations of the IWC Wage Order), if a penalty was applied based on another statute
8 for the same underlying conduct. Thus, Plaintiff reduced the value of the penalties for 203, 226, and
9 1198 to \$1 per pay period (representing the minimum amount of civil penalties in accordance with
10 the mandatory imposition required by the code).

11 64. Plaintiff believed reasonable exposure was no more than 20% of maximum exposure,
12 or \$549,906, based on factors considered in determining reasonable exposure for class claims, the
13 ability of the court to reduce penalties nearly to zero, and in light of conflicting authority as to whether
14 courts have inherent authority to strike PAGA claims deemed unmanageable for trial.

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

21 66. Defendant can easily identify Class Members and produce their contact information
22 and number of Class Workweeks.

23 67. The Class is numerous, with 470 members. Joinder of these individuals would be
24 impracticable and a Class-wide proceeding is preferable and superior.

25 68. The proposed Class satisfied these three factors. First, each member of the Class was
26 subject to the same policies, including the same rounding and regular rate of pay calculations, which
27 Plaintiff alleged caused damages to his and the Class. Plaintiff alleged that it was Defendant's
28 common policies which resulted in that they were not paid for all time under Defendant's control,

1 including rest periods, and paid premiums for failed meal breaks and rest periods. Where the same
2 alleged policies form the basis for the claims of all Class Members, a plaintiff's claims are common
3 for settlement purposes.

4 69. Plaintiff's claims are typical of the claims of Class Members. Plaintiff and all Class
5 Members assert the same legal theories and the same types of damages. Plaintiff can adequately
6 protect the interests of the Class.

7 70. On the same date this motion and its exhibits are filed with the Court, they will be
8 served upon Defendant and provided to the Labor and Workforce Development Agency ("LWDA")
9 via the LWDA's website, using the appropriate intake form. Attached as Exhibit 3 is a true and correct
10 copy of the LWDA confirmation of Receipt.

11 71. The Settlement achieved in this Action is fair and reasonable and in the best interest
12 of the Class in light of the monetary recoveries by the Class, complexities and difficulties of this
13 litigation, the state of the law, the potential the motion to compel arbitration would be granted, the
14 potential that this case may not have been certified, an adverse summary judgment or decertification
15 ruling, the lengthy process of establishing specific damages, and various possible delays and
16 uncertainty regarding the outcome of appeals. Each of these factors was carefully considered before
17 reaching agreement. In light of the foregoing, I believe a settlement of \$250,000 is fair and reasonable.

18 72. Plaintiff believed he was wrongfully terminated and/or discriminated against by
19 Defendant on the basis of race and/or age. These claims were not alleged in the complaint.
20 Independent of the settlement presented for approval herein, the Parties independently and separately
21 negotiated a settlement agreement to resolve these additional claims.

22 I declare under the penalty of perjury under the laws of the State of California the foregoing
23 is true and correct and this declaration is executed June 22, 2022, in San Diego, California.

24
25 

26 Kristina De La Rosa
27
28

EXHIBIT 1

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

This 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; 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, 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.

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

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

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

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

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

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

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

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

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

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

24 26. “PAGA Penalties” means the total of \$75,000.00, which shall be separated as
25 \$56,250.00 that the Parties have agreed to pay to the California Labor and Workforce
26 Development Agency (“LWDA”) in connection with the claims brought by Plaintiff under the
27 California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*)
28 (“PAGA”), as well as \$18,750.00 in aggregate Individual PAGA Payments allocated to each

1 Aggrieved Employee, as more fully described in Paragraph 51(i).

2 27. "PAGA Period" is the period from March 4, 2020, through March 13, 2022.

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

6 29. "Parties" or "Settling Parties" refers to Plaintiff, the Aggrieved Employees, the
7 Settlement Class, and Defendant, collectively.

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

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

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

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

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

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

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

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 Ten Thousand Dollars and
12 Zero Cents (\$10,000.00) and shall be paid from the Gross Settlement Amount, as approved by
13 the 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 \$10,000. If the actual amount of the Settlement
2 Administration Costs is less than \$10,000, then the difference between \$10,000 and the actual
3 Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
4 Administration Costs exceed \$10,000, 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. Section 206.5 provides in pertinent part as follows:

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

17 Class Representative, on behalf of himself and the Participating Class Members, acknowledges,
18 agrees and affirms that he will not assert that California Labor Code Section 206.5 is applicable
19 to the Parties hereto. **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 Gross Settlement
13 Amount in two equal installments. Defendant shall fund the first installment of \$325,000 to the
14 Settlement Administrator within five (5) business days after the Effective Date. Defendant shall
15 fund the second installment of \$325,000 to the Settlement Administrator 180 calendar days
16 thereafter. Defendant separately shall pay its share of employer payroll taxes as calculated and
17 directed by the Settlement Administrator in a timely fashion. If any additional funds are owed
18 pursuant to the escalator clause in paragraph 51(b), Defendant shall fund 50% of the additional
19 funds with the first installment and the remaining 50% of the additional funds shall be funded
20 with the second installment. Once Defendant has complied with its obligations set forth in this
21 paragraph, and provided the Class Data pursuant to paragraph 65 Defendant shall be deemed to
22 have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the
23 protections afforded it under the Agreement, and shall have no further obligations under the
24 Agreement, regardless of what occurs with respect to the further administration of the
25 Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable IRS
26 Forms W-2s and 1099 reflecting all payments to the Class Members, to Class Counsel, and to the
27 Settlement Administrator.

28 73. Distribution of Funds. No later than thirty (30) calendar days after Defendant's

1 second and final funding event of the Gross Settlement Amount and employer taxes, the
2 Settlement Administrator will mail the Individual Settlement Payments and Individual PAGA
3 Payments to the Participating Class Members and Aggrieved Employees, the portion of the
4 PAGA Penalties payable to the LWDA, the payment to Class Counsel for the Attorneys' Fees
5 and Costs Award, any Service Payment to the Class Representative, and will pay itself the
6 Settlement Administration Costs.

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

1 directly or indirectly, through any means.

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

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

10 **K. Other Terms**

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

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

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

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

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

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

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

25 91. No Admission. Defendant denies any and all liability to Plaintiff and/or any
26 Settlement Class Member or Aggrieved Employee in this Action, as to any and all causes of
27 action that were asserted or that might have been asserted in this Action. Nonetheless,
28 Defendant wishes to settle and compromise the matters at issue in the Action to avoid further

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

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

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

22
23 To the Settlement Class Members and Aggrieved Employees:

24 Isam C. Khoury, Esq.
25 *ikhoury@ckslaw.com*
26 Kristina De La Rosa Esq.
27 *kdelarosa@ckslaw.com.com*
28 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 deficiencies, and Plaintiff and Defendant agree to seek the help of Steven Rottman, Esq. to

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

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

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

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

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

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

23 103. Signatures of All Class Members Unnecessary to Be Binding. It is agreed that,
24 because the members of the Settlement Class are numerous, it is impossible or impractical to
25 have each Class Member execute this Settlement Agreement. The Notice will advise all
26 Settlement Class Members of the binding nature of the releases provided herein and such shall
27 have the same force and effect as if this Settlement Agreement were executed by each Settlement
28 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: June 20, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:



Sunny K. Tam

Approved As To Form:

Dated: June 20, 2022

CLASS COUNSEL:

COHELAN & HOLTRY, SINGER



Kristina De La Rosa
Attorneys for Plaintiff

Dated: June __, 2022

DEFENDANT:

Q-TECH CORPORATION

By: Daniel Taylor
Title: Chief Financial Officer

Dated: June __, 2022

DEFENDANT'S COUNSEL:

SWERDLOW FLORENCE SANCHEZ
SWERDLOW & WIMMER, A LAW CORPORATION

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

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

10
11 Dated: January __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

12
13 _____
Sunny K. Tam

14 **Approved As To Form:**

15
16 Dated: January __, 2022

CLASS COUNSEL:
COHELAN KHOURY & SINGER

17
18
19 _____
Kristina De La Rosa
Attorneys for Plaintiff

20
21 Dated: January __, 2022

DEFENDANT:
Q-TECH CORPORATION

22
23 _____
By: Daniel Taylor
Title: Chief Financial Officer

24
25
26 *June 22, 2022*
27 Dated: January __, 2022

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

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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
Kristina De La Rosa
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 _____

EXHIBIT B

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Kristina De La Rosa (SBN 279821)

kdelarosa@ckslaw.com

Rosemary C. Khoury (SBN 331307)

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San Diego, CA 92101

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STONEBROOK LAW

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

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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

v.

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

Defendants.

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

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

Hearing Information

Date: August 12, 2022

Time: 11:00 a.m.

Dept: SS-6

Judge: Hon. Elihu M. Berle

Complaint filed: May 17, 2021

Trial date: Not set

1 This matter came on for hearing on August 12, 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, Declarations of Class Counsel, and Declaration of Plaintiff Sunny K. Tam, filed in
6 support of Motion, the Class Action and PAGA Settlement Agreement and Release of Claims
7 ("Settlement Agreement"), the proposed Notice of Class Action Settlement ("Class Notice")
8 attached as Exhibit "A" to the Settlement Agreement and Change of Address Form, having
9 carefully analyzed the Settlement Agreement and its Exhibits, and in recognition of the Court's
10 duty to make a preliminary determination as to the reasonableness of any proposed class action
11 settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to
12 all Class Members in accordance with due process requirements, and to set a Final Approval
13 Hearing to consider the proposed Settlement as to the good faith, fairness, adequacy and
14 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 as Exhibit "1," incorporated herein by this reference in

1 full, 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, Kristina De La Rosa, and Rosemary Khoury
13 of Cohelan Khoury & Singer, and Joseph Tojarieh of Stonebrook Law be appointed as Class
14 Counsel.

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

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

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

27 F. Within 45 calendar days from the initial date the Settlement Administrator
28 first mails the Notice Packet to Class Members (the “Notice Response Deadline”), Class Members

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

6 G. On or before the Response Deadline, Class Members who dispute the
7 number of Workweeks must postmark and submit a written explanation to the Settlement
8 Administrator describing why the Workweeks are incorrect, with any supporting information or
9 documents, as set forth in the Class Notice.

10 H. Class Members who wish to object to the Settlement, should submit to the
11 Settlement Administrator, a written Notice of Objection. Class Members may also appear at the
12 time of the Final Approval Hearing to comment upon the Settlement.

13 8. IT IS FURTHER ORDERED that the Final Approval Hearing shall be held before
14 the undersigned at ____ p.m. on _____, 2022, in Department SS6 of the Superior Court for
15 the State of California, County of Los Angeles, located at the Spring Street Superior Court Spring
16 Street Courthouse located at 312 N. Spring Street, San Diego, CA 90012 to consider the fairness,
17 adequacy and reasonableness of the proposed Settlement preliminarily approved by this Order of
18 Preliminary Approval, and to consider the application for a service payment award to the named
19 Plaintiff/Class Representative, for Settlement Administration expenses and for Class Counsel's
20 attorneys' fees and litigation expenses incurred. All briefs and materials in support of an Order
21 Granting Final Approval, the service payment, Settlement Administration expenses, and Class
22 Counsel's attorneys' fees and litigation costs shall be filed with this Court on or before
23 _____, 2022.

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

28 ///

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

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

5 IT IS SO ORDERED.

6

7 Date: _____

The Honorable Elihu M. Berle

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EXHIBIT C

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

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

and other similarly-situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

v.

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

Defendants.

Lead Case No. 21STCV18635

Related Case No. 21STCV19805

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Elihu M. Berle

Department SS6

**CLASS ACTION AND REPRESENTATIVE
ACTION**

**[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 2

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

March 4, 2021

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

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

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

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

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

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

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

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

FAILURE TO PROVIDE MEAL AND REST PERIODS

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

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

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

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

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

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

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

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

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

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

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FAILURE TO REIMBURSE EXPENSES

(Labor Code §§ 2802 and 2804)

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

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

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

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

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

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

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

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

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

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

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

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

DUTIES OF EMPLOYER

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

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

Section 7 of the applicable IWC wage order also states:

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

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

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

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

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

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

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

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

CONCLUSION

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

Sincerely,
COHELAN KHOURY & SINGER



Kristina De La Rosa

cc (via email only):
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EXHIBIT 3