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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MAURICIO SANDOVAL, an individual, on
behalf of himself, the state of California, and all
others similarly situated,

Plaintiff,

v.

DYNALLOY, INC., a California Corporation;
and DOES 1 to 50, inclusive,

Defendants.

Case Number: 30-2021-01186578-CU-OE-CXC

**SETTLEMENT AGREEMENT AND
RELEASE OF CLASS ACTION**

SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION

This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and entered into by: **(1)** Plaintiff Mauricio Sandoval (“Plaintiff”), individually and in his representative capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Dynalloy, Inc. (“Defendant”). This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into this definition section.

1.1. ACTION

“Action” shall mean the following civil action: *Mauricio Sandoval v. Dynalloy, Inc.*, case number 30-2021-01186578-CU-OE-CXC, filed on March 2, 2021, in the Superior Court of California for the County of Orange.

1.2. ADMINISTRATIVE EXPENSES

“Administrative Expenses” shall include all costs and expenses associated with and paid to the third-party settlement administrator, which are estimated not to exceed \$10,000.00.

1.3. APPLICABLE WAGE ORDER

“Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”) Wage Order applicable to the facts of this case, including IWC Wage Order 1-2001 and others that may be applicable. (Cal. Code of Regs., tit. 8, § 11010.)

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action, and all claims that could have
3 been asserted in the Action that would be barred as a result of the application of collateral
4 estoppel, issue preclusion, and res judicata.

5 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

6 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement
7 Amount attributable to attorney fees and litigation expenses. The Parties agree that the fee
8 portion of the Class Attorney Fees and Expenses shall be up to one-third of the Gross Settlement
9 Amount (i.e., \$166,666.67), as approved by the Court, and the award of costs and expenses
10 shall be up to an additional \$15,000.00.

11 **1.6. CLASS COUNSEL**

12 “Class Counsel” shall mean Jonathan Melmed and Laura Supanich of Melmed Law
13 Group P.C.

14 **1.7. CLASS MEMBER**

15 “Class Member” shall mean any person who is a prospective member of the Settlement
16 Class, or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir,
17 or successor-in-interest.

18 **1.8. CLASS NOTICE**

19 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth
20 in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be
21 mailed to Class Members along with the Share Form.

22 **1.9. CLASS PARTICIPANTS**

23 “Class Participants” shall mean all Class Members who do not timely request exclusion
24 from the Class Settlement.

25 **1.10. CLASS PERIOD**

26 “Class Period” shall mean the period from March 2, 2017, through the date of
27 preliminary approval.
28

1 **1.11. CLASS REPRESENTATIVE**

2 “Class Representative” shall mean Plaintiff Mauricio Sandoval.

3 **1.12. CLASS SETTLEMENT**

4 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement,
5 which is subject to Court approval.

6 **1.13. COMPLAINT**

7 “Complaint” shall mean the “First Amended Class Action and PAGA Representative
8 Action Complaint for: [Etc.],” filed on May 11, 2021 (ROA#14)..

9 **1.14. COURT**

10 “Court” shall mean the Superior Court of the County of Orange.

11 **1.15. DEFENDANT**

12 “Defendant” shall mean Defendant Dynalloy, Inc.

13 **1.16. DEFENSE COUNSEL**

14 “Defense Counsel” shall mean Matthew J. Fletcher and Brian Hoops, Connor, Fletcher
15 & Hedenkamp LLP

16 **1.17. EFFECTIVE DATE**

17 “Effective Date” shall be the date when all of the following events have occurred:
18 **(a)** this Settlement Agreement has been executed by all Parties; **(b)** the Court has given
19 preliminary approval to the Class Settlement; **(c)** notice has been given to the Settlement Class
20 providing them with an opportunity to request exclusion from the Class Settlement; **(d)** the
21 Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
22 certifying the Settlement Class and approving this Settlement Agreement; and **(e)** the later of
23 the following events: **(i)** the expiration of the period for filing any appeal, writ, or other
24 appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ, or
25 other appellate proceeding having been filed; **(ii)** the dismissal of any appeal, writ, or other
26 appellate proceeding opposing the Class Settlement with no right to pursue further remedies or
27 relief; or **(iii)** any appeal, writ, or the issuance of such other final appellate order upholding the
28 Court’s final order with no right to pursue further remedies or relief. In this regard, it is the

intention of the Parties that the Class Settlement shall not become effective until the Court's order approving the Class Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through (d) are completed (i.e., the date that the court has entered a final order and judgment certifying the Settlement Class and approving this Settlement Agreement).

1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING

"Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state, or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

1.19. EMPLOYER'S TAXES

"Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g., Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.20. FINAL APPROVAL AND FAIRNESS HEARING

"Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.21. GROSS SETTLEMENT AMOUNT

"Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling \$500,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case, inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the

Gross Settlement Amount on the portion of each Individual Settlement Amount allocated as wages.

1.22. HEARING ON PRELIMINARY APPROVAL

“Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary approval of the Class Settlement.

1.23. INCENTIVE AWARD

“Incentive Award” shall mean any additional monetary payment provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this Action.

1.24. INDIVIDUAL SETTLEMENT AMOUNT

“Individual Settlement Amount” shall mean the amount that is ultimately distributed to each Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement Amount does not include any portion of the PAGA Payment.

1.25. NET SETTLEMENT AMOUNT

“Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

1.26. OPT OUT

“Opt Out” shall refer to the process of submitting a timely and valid request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.27. OPT-OUTS

“Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

1.28. PAGA PAYMENT

“PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$50,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$37,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$12,500.00) to the PAGA Settlement Class. Class Counsel shall give timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699, subdivision (l)(2), with a copy of the notice to Defendant’s counsel sent contemporaneously therewith.

1.29. PAGA PERIOD

“PAGA Period” shall mean the period from March 2, 2020, through the date of preliminary approval.

1.30. PAGA SETTLEMENT CLASS

“PAGA Settlement Class” shall mean all individuals who are or were employed by Defendant Dynalloy, Inc. as non-exempt employees in California from March 2, 2020, through the date of preliminary approval. Defendant represents that the PAGA Settlement Class consists of approximately 233 employees that worked a total of approximately 1,805 pay periods during the PAGA Period.

1.31. PARTIES

“Parties” shall mean Plaintiff and Defendant.

1.32. PAYMENT PLAN

“Payment Plan” shall mean the Defendant will pay One Hundred Thousand Dollars (\$100,000) of the Gross Settlement Amount to be deposited into the Qualified Settlement Fund (“QSF”) established by the Settlement Administrator on or before the Preliminary Approval Date, and Defendant will deposit \$400,000 into the QSF 14 days after the Final Approval and Fairness Hearing or by March 1, 2022, whichever is later.

1.33. PLAINTIFF

“Plaintiff” shall mean Plaintiff Mauricio Sandoval.

1.34. PRELIMINARY APPROVAL DATE

“Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement Agreement.

1.35. RELEASED CLAIMS

“Released Claims” shall mean any and all claims alleged in the Complaint or claims that could have been brought based on the facts in the Complaint against any of the Released Parties based on alleged violations California Labor Code, sections §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, IWC Wage Order No. 1, UCL violations pursuant to Cal. Bus. & Prof. Code §17200 based on the foregoing, and statutory penalties based on the foregoing under California’s Private Attorney Generals Act (“PAGA”) (Labor Code §§ 2698-2699.5). For clarity and without limitation, the Released Claims include all claims for failure to pay for all hours worked and all wages earned, including any minimum or overtime hours; failure to provide any meal periods or compensation in lieu thereof; failure to provide any rest periods or compensation in lieu thereof; failure to timely pay any wages during employment; failure to pay all wages earned and unpaid at separation; failure to provide any compliant wage statements; any waiting time penalties, including, penalties for failure to pay all wages due to terminated or quitting employees; any alleged violation of Business and Professions Code §§ 17200-17210; any statutory penalties based on the foregoing; any civil penalties under the Private Attorney General Act Labor Code § 2699 et seq.; and interest, restitution, or any other relief, fees or costs based on the foregoing.

No other claims are released other than those claims specifically pled in the Complaint or otherwise specifically identified herein, except any claims that would be barred as a result of the application of collateral estoppel, issue preclusion, or res judicata except as provided in this paragraph. Unless permitted by law, this Settlement Agreement shall not release any person, party, or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Unless permitted by law, this Settlement Agreement does not release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation,

1 the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
2 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights
3 Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101,
4 et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and
5 all of their implementing regulations.

6 **1.36. RELEASED PARTIES**

7 “Released Parties” shall mean Defendant and all of its subsidiaries, affiliates,
8 shareholders, members, managers, employees, agents, predecessors, successors, and assigns.

9 **1.37. RELEASING PARTIES**

10 “Releasing Parties” shall mean every Class Participant and all persons purporting to act
11 on their behalf or purporting to assert a claim under or through them, including, but not limited
12 to, their dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators,
13 agents, trustees, conservators, guardians, personal representatives, and successors-in-interest,
14 whether individual, class, representative, legal, equitable, direct or indirect, or any other type
15 or in any other capacity.

16 **1.38. RESPONSE DEADLINE**

17 “Response Deadline” shall mean the date forty-five (45) days following the date on
18 which the Settlement Administrator first mails Class Notice to the Class Members and the last
19 day on which Class Members may submit a request for exclusion and/or objection to Class
20 Settlement.

21 **1.39. SETTLEMENT ADMINISTRATOR**

22 “Settlement Administrator” shall mean ILYM Group, Inc. (or other administrator
23 agreed on by the parties) which the Parties have agreed will be responsible for administration
24 of the Class Settlement and related matters.

25 **1.40. SETTLEMENT CLASS**

26 “Settlement Class” shall mean all individuals who are or were employed by Defendant
27 Dynalloy, Inc. as non-exempt employees in California from March 2, 2017, through the date of
28 preliminary approval. Defendant represents that the Settlement Class consists of approximately

267 Class Members that worked a total of approximately 11,087 workweeks during the Class Period.

1.41. SHARE FORM

“Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along with the Class Notice.

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1. PLAINTIFF’S CLAIMS

A summary of the Complaint is as follows: Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and as a private attorney general on behalf of the State of California, has alleged the following violations: **(a)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; **(b)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(c)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Order; **(d)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order; **(e)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(f)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(g)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(h)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and **(i)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION

Class Counsel has conducted significant informal discovery during the prosecution of the Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds

1 of pages of documents and other information produced by Plaintiff and Defendant; (c) analysis
2 of employment data from a sample of Class Members; (d) an analysis of the legal positions
3 taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted
4 in the Action; (e) analysis of potential class-wide damages, including information sufficient to
5 understand Defendant's potential defenses to Plaintiff's claims; (f) research of the applicable
6 law with respect to the claims asserted in the Complaint and the potential defenses thereto; and
7 (g) assembling and analyzing of data for calculating damages.

8 Class Counsel and the Class Representative have vigorously prosecuted this case, and
9 Defendant vigorously contests the merits of the Action. The Parties have engaged in sufficient
10 investigation and discovery to assess the relative merits of the claims of the Class
11 Representative and of the defenses to them. After such discovery, investigation, and
12 prosecution, the Parties attended a full-day mediation with an experienced employment law
13 mediator, which culminated in a settlement in principle, the terms of which are elaborated in
14 this Settlement Agreement.

15 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF** 16 **CLASS SETTLEMENT**

17 The document and data exchange in this matter, as well as discussions between counsel,
18 have been adequate to give the Class Representative and Class Counsel a sound understanding
19 of the merits of their positions and to evaluate the value of the claims of the Settlement Class.
20 The informal discovery conducted in this Action and the information exchanged by the Parties
21 through pre-mediation discussions are sufficient to reliably assess the merits of the Parties'
22 respective positions and to compromise the issues on a fair and equitable basis.

23 The Class Representative and Class Counsel believe that the claims, causes of action,
24 allegations, and contentions asserted in the Action have merit. However, the Class
25 Representative and Class Counsel recognize and acknowledge the expense and delay of
26 continued lengthy proceedings necessary to prosecute the Action against Defendant through
27 trial and through appeals. Class Counsel has taken into account the uncertain outcome of the
28 litigation, the risk of continued litigation in complex actions such as this, as well as the

1 difficulties and delays inherent in such litigation, and the potential difficulty of obtaining
2 certification of the Settlement Class as well as trying the claims of the class. Class Counsel is
3 mindful of the potential problems of proof under, and possible defenses to, the claims alleged
4 in the Action.

5 The Class Representative and Class Counsel believe that the settlement set forth in this
6 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and
7 that an independent review of this Settlement Agreement by the Court in the approval process
8 will confirm this conclusion. Based on their own independent investigation and evaluation,
9 Class Counsel has determined that the settlement set forth in this Settlement Agreement is in
10 the best interests of Plaintiff and the Class Members.

11 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

12 Defendant has denied and continues to deny all allegations, claims, and contentions
13 alleged by Plaintiff in the Action. Defendant has expressly denied and continues to deny all
14 charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts,
15 or omissions alleged in the Action. Defendant contends that it complied with California and
16 federal wage and hour laws and has dealt legally and fairly with Plaintiff and the Class
17 Members.

18 Defendant further denies that, for any purpose other than settling this Action, these
19 claims are appropriate for class or representative treatment. Nonetheless, Defendant has
20 concluded that further proceedings in the Action would be protracted and expensive and that it
21 is desirable that the Action be fully and finally settled in the manner and upon the terms and
22 conditions set forth in this Settlement Agreement to dispose of burdensome and protracted
23 litigation, to permit the operation of Defendant's respective businesses without further
24 expensive litigation and the distraction and diversion of their personnel with respect to matters
25 at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent
26 in any litigation, especially in complex cases such as the Action. Defendant has, therefore,
27 determined that it is desirable and beneficial to it that the Action be settled in the manner and
28 upon the terms and conditions set forth in this Settlement Agreement.

1 **2.5. INTENT OF THE CLASS SETTLEMENT**

2 The Class Settlement set forth herein intends to achieve the following: **(a)** entry of an
3 order approving the Class Settlement; **(b)** entry of judgment of the Action; **(c)** discharge of the
4 Released Parties from liability for any and all of the Released Claims; and **(d)** discharge of
5 Defendant from liability for any and all claims arising out of the Action.

6 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

7 For the purposes of this Settlement Agreement and the Class Settlement of this Action
8 only, the Parties agree to conditional class certification of the Settlement Class. Defense
9 Counsel believes this conditional certification is appropriate because the Released Claims are
10 being compromised without need to establish the elements of those claims on which liability
11 turns. The certification of the Settlement Class shall not constitute, in this or any other
12 proceeding, an admission of any kind by Defendant, including without limitation, that
13 certification of a class for trial purposes is or would be warranted, appropriate or proper; or that
14 Plaintiff could establish any of the requisite elements for class treatment of any of the claims in
15 the Action. In fact, Defendant would oppose any motion for class certification.

16 In the event that the Settlement Agreement is not finally approved by the Court, a Final
17 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise
18 rendered null and void as set forth herein, then certification of the Settlement Class shall be
19 automatically vacated, shall be void *ab initio*, of no force or effect, and shall not constitute
20 evidence or a binding determination that the requirements for certification of a class for trial
21 purposes in this Action or in any other action which have been, are or can be, satisfied. Further,
22 if the Agreement does not reach a Final Effective Date, Plaintiff agrees that Plaintiff will not
23 argue, claim, reference, or otherwise raise any preliminary approval of the Settlement Class in
24 connection with any later proceeding before the Court.

25 **4. APPOINTMENT OF CLASS COUNSEL**

26 For purposes of this Settlement Agreement and subject to the Court's approval, the
27 Parties agree to the appointment of Class Counsel as counsel for the Settlement Class and the
28 effectuation of the Class Settlement pursuant to this Settlement Agreement.

1 **5. CONSIDERATION**

2 **5.1. SETTLEMENT AMOUNT**

3 The Parties agree to settle this Action for the Gross Settlement Amount of \$500,000.00.
4 There shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in
5 full pursuant to the Payment Plan. The Gross Settlement Amount and other actions and
6 forbearances taken by Defendant shall constitute adequate consideration for the Class
7 Settlement and will be made in full and final settlement of: the Released Claims, the Class
8 Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the PAGA
9 Payment (and any payments to individual PAGA Class Members resulting from the PAGA
10 Payment), and any other obligation of Defendant under this Settlement Agreement (other than
11 the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of
12 wages).

13 After the Court issues an order preliminarily approving this Class Settlement, the
14 Settlement Administrator will distribute the Class Notice to the Class Members, which shall
15 describe the terms of the Class Settlement and procedures to Opt Out, object, or participate in
16 the Class Settlement as well as the Share Form, which shall identify the Class Member, the
17 number of workweeks worked by each Class Member ("Workweeks"), as well as the estimated
18 amount of the Individual Settlement Amount the Class Member can expect to receive once the
19 Class Settlement becomes effective on the Effective Date. Class Members shall be given the
20 opportunity to challenge their Workweeks information.

21 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

22 Plaintiff may petition the Court to approve an Incentive Award in an amount up to
23 \$7,500.00 for Mauricio Sandoval to acknowledge his efforts on behalf of the Settlement Class
24 in this Action, including assisting in the investigation and consulting with Class Counsel and
25 providing crucial documents to Class Counsel. Defendant shall not oppose any request by
26 Plaintiff for an Incentive Award in such an amount. Any Incentive Award approved by the
27 Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in addition to
28 any distribution to which he may otherwise be entitled as a Class Participant. Any Incentive

Award approved by the Court shall not be considered wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

5.3. PAYMENT TO CLASS PARTICIPANTS

Each Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked by the Class Members during the Class Period as a proportion of all weeks worked by all Class Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

5.4. PAYMENT TO PAGA SETTLEMENT CLASS

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$50,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$37,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$12,500.00) to the PAGA Settlement Class. The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all members of the PAGA Settlement Class.

5.5. TAX TREATMENT AND PAYMENT

For the purpose of calculating Employee's Taxes and Required Withholding for the Individual Settlement Amounts for Class Participants (including any payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 25% of each Individual Settlement Amount shall constitute payment in the form of wages (and each Class

Participant will be issued an IRS Form W-2 for such payment to him or her), and 75% of each Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely responsible for all other individual tax obligations.

With respect to the PAGA Payment and any payments made to individual members of the PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made to them.

5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS

Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program. Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs to reflect this

1 intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not
2 for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring term as
3 defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting,
4 benefit accrual, or any other purpose, and that additional contributions or benefits are not
5 required by this Settlement Agreement. Defendant does not consider the Class Settlement
6 payments “compensation” for purposes of determining eligibility for, or benefit accrual within,
7 any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

8 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

9 As part of the motion for final approval of the Class Settlement, Class Counsel may
10 apply for an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-
11 third of the Gross Settlement Amount (i.e., \$166,666.67) and the award of costs and expenses
12 up to an additional \$15,000.00. Defendant agrees to not object to any such fee, cost, or expense
13 application in those amounts.

14 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in
15 the manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the
16 Court shall be paid from the Gross Settlement Amount prior to arriving at the Net Settlement
17 Amount and shall not constitute payment to any Class Members. If Class Counsel voluntarily
18 reduces the request for Class Attorney Fees and Expenses or the Court’s award of Class
19 Attorney Fees and Expenses is less than set forth above, the Net Settlement Amount shall be
20 recalculated to reflect the actual Class Attorney Fees and Expenses awarded.

21 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
22 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
23 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to
24 be performed and costs to be incurred in connection with approval by the Court of the Class
25 Settlement; **(c)** all work to be performed and costs and expenses, if any, incurred in connection
26 with administering the Class Settlement through the Effective Date and dismissal of the Action
27 with prejudice; and **(d)** may be based on the “catalyst theory” and/or the “common fund
28 doctrine.”

1 **6. SETTLEMENT ADMINISTRATION**

2 **6.1. COSTS AND EXPENSES**

3 All costs and expenses due to the Settlement Administrator in connection with its
4 administration of the Class Settlement, including, but not limited to, providing the Class Notice,
5 locating Class Members, processing Opt Out requests and objections, distributing the portion
6 of the PAGA Payment payable to the LWDA, distributing the portion of the PAGA Payment
7 payable to the members of the PAGA Settlement Class, and calculating, administering and
8 distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall
9 be paid from the Gross Settlement Amount, and is not expected to exceed \$10,000.00.

10 **6.2. PAYMENT BY DEFENDANT**

11 Defendant shall deposit the Gross Settlement Amount pursuant to the Payment Plan. In
12 no event shall Defendant be obligated to pay or deposit with the Settlement Administrator more
13 than \$500,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

14 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

15 **7.1. THE SETTLEMENT ADMINISTRATOR**

16 The Settlement Administrator will be responsible for: mailing the Class Notice and
17 Share Form (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry
18 of final order and judgment certifying the Class Settlement and approving this Settlement
19 Agreement; handling inquiries from Class Members concerning the Class Notice; determining
20 Individual Settlement Amounts; determining individual payments to members of the PAGA
21 Settlement Class; maintaining the settlement funds in an appropriate interest-bearing account;
22 preparing, administering, and distributing Individual Settlement Amounts to Class
23 Participants; preparing, administering, and distributing individual payments to members of the
24 PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA;
25 issuing a final report and performing such other duties as the Parties may direct. Additionally,
26 the Settlement Administrator will handle all tax document preparation and reporting, including
27 state and federal tax forms, if any.

1 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel
2 and Defense Counsel with summary information updating them as to the number of validated
3 and timely objections and Opt Out requests. The Settlement Administrator will serve on Class
4 Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests
5 and objections no later than seven (7) days after their receipt. The Settlement Administrator
6 will provide Class Counsel with proof of mailing of the Class Notice, without listing individual
7 Class Member names which the Settlement Administrator will file with the Court at the time
8 Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing.

9 No later than seven (7) days prior to the Final Approval and Fairness Hearing, the
10 Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a
11 report with summary information regarding: **(a)** the total amount of final Individual Settlement
12 Amounts of each Class Participant, without any identifying personal information; **(b)** the
13 number of Class Participants to receive such payments, and **(c)** the final number of Opt-Outs
14 and objections.

15 Administrative Expenses are not anticipated to exceed \$10,000.00. Prior to the
16 calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator
17 shall calculate the total Administrative Expenses through the conclusion of their services and
18 such actual amount will be deducted from the Gross Settlement Amount prior to the final
19 calculation of the Individual Settlement Amounts.

20 **7.2. NOTICE TO CLASS MEMBERS**

21 Notice shall be provided to Class Members in the following manner: Within fourteen
22 (14) days after the Preliminary Approval Date, Defendant shall provide the Settlement
23 Administrator with an updated list of Class Members and members of the PAGA Settlement
24 Class containing names, social security numbers, dates of employment, last-known addresses,
25 and phone numbers (the "Database"). The Database shall be marked "Confidential – Settlement
26 Administrator's Eyes Only." Class Counsel shall not receive a copy of this list.

27 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
28 Administrator shall determine the number of workweeks worked by each Class Member,

1 populate the data for each Class Member accordingly, and send each Class Member the Class
2 Notice via first-class, United States mail. The Class Notice shall also contain an easily
3 understood statement alerting the Class Members that, unless they elect to Opt Out of the Class
4 Settlement, the Class Member is releasing and waiving all Released Claims against the Released
5 Parties.

6 The Class Notice will inform Class Members of their estimated share of the settlement
7 and the number of workweeks they worked during the Class Period. Class Members may
8 dispute their workweeks if they believe they worked more weeks in the Class Period than
9 Defendant's records show by submitting information to the Settlement Administrator no later
10 than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement
11 Administrator, which is the defined Response Deadline. The Settlement Administrator will
12 jointly work with Plaintiff and Defendant to resolve the dispute in good faith, and the Court
13 will ultimately decide any unresolved dispute..

14 **7.3. OPT OUT PROCEDURE**

15 Class Members who do not timely Opt Out of the Class Settlement will be deemed to
16 participate in the Class Settlement and shall become Class Participants without having to submit
17 a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member
18 must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The
19 Opt Out request must state the Class Member's name, address, telephone number, and
20 signature. The Opt Out request should state something to the effect of:

21 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
22 *MAURICIO SANDOVAL V. DYNALLOY, INC.* LAWSUIT. I UNDERSTAND THAT
23 IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
24 RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT
25 AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

26
27 Any Opt Out request that is not postmarked by the Response Deadline will be invalid.
28 In the event that, prior to the Response Deadline, any Class Notice mailed to a Class Member

1 is returned as having been undelivered by the United States Postal Service, the Settlement
2 Administrator shall perform a skip trace search and seek an address correction for such Class
3 Members, and a second Class Notice will be sent to any new or different address obtained. Such
4 Class Members shall have an additional fourteen (14) days from the date of the mailing of the
5 second Class Notice in which to Opt Out if the Response Deadline would have otherwise passed
6 prior to fourteen (14) days from the date of the mailing of the second Class Notice.

7 It will be presumed that, if an envelope containing the Class Notice has not been
8 returned within twenty-eight (28) days of the mailing, the Class Member received the Class
9 Notice. At least seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement
10 Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due
11 Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts
12 to locate Class Members. The declaration shall specify the number of Class Members to whom
13 the Class Notice was sent and the number of Class Members to whom the Class Notice was not
14 delivered, as well as information relating to the number of Opt-Outs and objectors. Class
15 Counsel shall file this declaration with the Court.

16 If the Settlement Administrator determines that an Opt Out request returned by a Class
17 Member before the Response Deadline is deficient, then the Settlement Administrator shall
18 mail a deficiency letter to that Class Member identifying the problem. If a Class Member
19 submits both a dispute and an Opt Out request, the Settlement Administrator shall make
20 reasonable attempts to clarify as if the Opt Out request were deficient. If the Class Member fails
21 to cure the deficiency, the Opt Out request shall be disregarded and the claim will be paid, and
22 the Class Member will become bound by the judgment.

23 Class Participants will be bound by the Release of Released Claims set forth in the
24 definition of "Released Claims" provided in this Settlement Agreement.

25 A request to Opt Out of the Class Settlement shall **not** serve to exclude the Class
26 Member from participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to
27 their share of the PAGA Payment. Class Members who are also members of the PAGA
28

Settlement Class shall have no right or ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

7.4. OBJECTION PROCEDURE

The Class Notice shall inform the Class Members of their right to object to the Class Settlement. Any Class Member who wishes to object to the Class Settlement may submit a written objection to the Settlement Administrator no later than the Response Deadline. Only Class Participants may object to the Settlement. The objection should include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class Settlement should not be approved, including the legal and factual arguments supporting the objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, they may do so. The Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person or through a lawyer retained at their own expense.

7.5. NOTICE OF FINAL JUDGMENT

Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered a final order certifying the Class for settlement purposes only and approving the Class Settlement, the Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of the California Rules of Court, by posting a copy of said order and final judgment on its website at a web address to be included in the Class Notice.

8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT

The claims of all Class Members are settled for the Gross Settlement Amount of \$500,000.00, which will be allocated as follows:

1. The Administrative Expenses, estimated not to exceed \$10,000.00;
2. Class Counsel's attorney fees not to exceed \$166,666.67;

3. Class Counsel's litigation costs and expenses not to exceed \$15,000.00;
4. The Incentive Award, not to exceed \$7,500.00; and
5. PAGA Payment to LWDA of \$37,500.00.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement Administrator shall recalculate the final Net Settlement Amount based on the actual values of the amounts in each category.

8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of workweeks for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

**8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF
THE PAGA SETTLEMENT CLASS**

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$50,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$37,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$12,500.00) to the PAGA Settlement Class.

The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant harmless from any and all liability with regard thereto.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the individual payment amounts allocated to each member of the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding.

The members of the PAGA Settlement Class shall be solely responsible for any and all tax obligation associated with their respective shares of the PAGA Payment.

8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES

The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses approved by the Court no later than twenty (20) days after the Effective Date.

8.5. TIME FOR PAYMENT OF INCENTIVE AWARD

The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the Court no later than twenty (20) days after the Effective Date.

8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA

The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no later than twenty (20) days after the Effective Date.

8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND INDIVIDUAL SETTLEMENT AMOUNTS

The Settlement Administrator shall make every effort to pay the Employee's Taxes and Required Withholding associated with each Class Participant's Individual Settlement Amount and mail the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the last-known address no later than twenty (20) days after the Effective Date. If the Settlement Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the remaining monetary obligations have been calculated and accounted for.

Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment. In the event that any Class Participant is deceased, payment shall be made payable to the estate of that Class Member and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or

1 declaration pursuant to California Probate Code section 13101, in which case payment shall be
2 made to the affiant(s) or declarant(s).

3 **8.8. NON-CASHED SETTLEMENT CHECKS**

4 Any funds associated with PAGA Payment checks that have not been cashed within one
5 hundred eighty (180) will be paid to the State of California Industrial Relations' Unpaid Wage
6 Fund in the names of the interested distributees.

7 Any funds associated with Class Member checks that have not been cashed within one
8 hundred eighty (180) days, will become void and the Individual Settlement Amount associated
9 with the uncashed check will be distributed pursuant to Code of Civil Procedure section 384 to
10 Institute for the Study of Human Knowledge, subject to Court approval. For the purposes of
11 determining whether Defendant has met their financial obligation to pay the Individual
12 Settlement Payment, Defendant will be deemed to have fulfilled its obligation upon the mailing
13 of the check to the Class Member, regardless of whether such Class Member subsequently
14 negotiates the check.

15 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
16 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

17 Class Member Workweeks and the corresponding Individual Settlement Amount shall
18 be calculated using the employment and payroll records of Defendant, which presumptively
19 shall be deemed to be full, complete, and accurate for purposes of this Settlement Agreement.
20 To overcome that presumption, any Class Member objecting to the accuracy of the number of
21 Workweeks or amount of the Individual Settlement Amount must submit documentary
22 evidence, such as pay stubs or other written employment records, to the Settlement
23 Administrator. Each Class Member may dispute the number of Workweeks or their estimated
24 Individual Settlement Amount contained on their Class Notice ("Workweeks Dispute"). Any
25 such Workweeks Dispute must be mailed or faxed to the Settlement Administrator by the Class
26 Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement
27 Administrator shall immediately provide copies of all disputes to counsel for Defendant, shall
28 inform Class Counsel of the dispute without disclosing the identity of the Class Member making

the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION

If 10 or more Class Members opt out of the settlement, Defendant has the right (but not the obligation) to void the settlement. If the workweeks exceed 11,087 by more than 15%, Defendant shall pay an additional sum necessary to increase the Settlement Amount by the percentage by which the workweeks exceed 15% of the represented workweeks (e.g., if the actual workweeks is 20% higher than the represented workweeks, the Settlement Amount shall be increased by 5%).

1 **9.3. INVALIDATION**

2 Invalidation of any material portion of this Settlement Agreement shall invalidate the
3 Class Settlement in its entirety, unless the Parties subsequently agree in writing that the
4 remaining provisions of the Class Settlement are to remain in full force and effect.

5 **9.4. STAY ON APPEAL**

6 In the event of a timely appeal from the approval of the Class Settlement and judgment,
7 the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement
8 Amount or take any other actions required by this Settlement Agreement until all appeal rights
9 have been exhausted by operation of law.

10 **10. MOTIONS FOR COURT APPROVAL**

11 **10.1. PRELIMINARY APPROVAL**

12 As soon as practicable after execution of this Settlement Agreement, Class Counsel will
13 submit this Settlement Agreement to the Court along with a Motion for Preliminary Approval
14 of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court
15 for preliminary approval in a timely fashion.

16 **10.2. FINAL APPROVAL**

17 The Final Approval and Fairness Hearing shall be held before the Court. At the Final
18 Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order
19 certifying the Settlement Class for settlement purposes only and approving the Class Settlement
20 as being fair, reasonable, and adequate to the Class Participants within the meaning of
21 California Rules of Court, Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final
22 judgment of the Action consistent with the terms of the Class Settlement and rule 3.769,
23 subdivision (h), of the California Rules of Court. Class Counsel and Defense Counsel shall
24 submit to the Court such pleadings and/or evidence as may be required for the Court's
25 determination.

1 **11. RELEASES AND WAIVERS**

2 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

3 Upon the Effective Date, the Releasing Parties shall be deemed to each release the
4 Released Parties, and each of them, of and from any and all Released Claims arising during the
5 Class Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever
6 settle, compromise, and discharge the Released Claims. Each of the Releasing Parties, including
7 each Class Participant, will be bound by the release of Released Claims as a result of the Class
8 Settlement and to the terms of the final judgment and the satisfaction of such judgment.

9 Class Participants will be deemed to have acknowledged and agreed that their claims
10 for wages and/or penalties in the Action are disputed, and that their Individual Settlement
11 Amount constitutes payment of all sums allegedly due to them. Class Participants will be
12 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not
13 applicable to the Individual Settlement Amount. That section provides in pertinent part as
14 follows:

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

19 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

20 Notwithstanding the limitations on the release for Class Members set forth in the
21 definition “Released Claims,” Plaintiff, on behalf of himself and his dependents, heirs and
22 assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
23 conservators, guardians, personal representatives, and successors-in-interest, whether
24 individual, class, representative, legal, equitable, direct or indirect, or any other type or in any
25 other capacity, shall and does hereby forever release, discharge and agree to hold harmless the
26 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
27 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
28 losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in

equity, which he may now have or may have after the signing of this Settlement Agreement, arising out of or in any way connected with his employment with Defendant including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules, and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of emotional distress, negligent infliction of emotional distress, or damages under any other federal, state, or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Settlement Agreement. This release is not intended to cause of release, discharge, or waiver of any claims that the Plaintiff cannot release as a matter of law, such as potential administrative claims by the EEOC or DFEH.

1 Plaintiff specifically acknowledges that he is aware of and familiar with the provisions
2 of California Civil Code section 1542, which provides as follows:

3 “A general release does not extend to claims that the creditor or releasing party does not
4 know or suspect to exist in his or her favor at the time of executing the release and that,
5 if known by him or her, would have materially affected his or her settlement with the
6 debtor or released party.”
7

8 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives
9 and relinquishes all rights and benefits he may have under section 1542 as well as any other
10 statutes or common law principles of a similar effect. Plaintiff may hereafter discover facts in
11 addition to or different from those which he now knows or believes to be true with respect to
12 the subject matter of all the claims referenced herein, but agrees that, upon the Effective Date,
13 Plaintiff shall and hereby does fully, finally, and forever settle and release any and all claims
14 against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-
15 contingent, that were asserted or could have been asserted upon any theory of law or equity
16 without regard to the subsequent discovery of existence of such different or additional facts.

17 **11.3. CIRCULAR 230 DISCLAIMER**

18 Each party to this Settlement Agreement (for purposes of this section, the
19 “Acknowledging Party”; and each party to this Agreement other than the Acknowledging Party,
20 an “Other Party”) acknowledges and agrees that (1) no provision of this Settlement Agreement,
21 and no written communication or disclosure between or among the parties or their attorneys
22 and other advisers, is or was intended to be, nor shall any such communication or disclosure
23 constitute or be construed or be relied upon as, tax advice within the meaning of United States
24 Treasury Department Circular 230 (31 C.F.R. Part 10); (2) the Acknowledging Party (a) has
25 relied exclusively upon her or its own independent legal and tax advisers for advice (including
26 tax advice) in connection with this Settlement Agreement, (b) has not entered into this
27 Settlement Agreement based upon the recommendation of any other party or any attorney or
28 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure

by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the Acknowledging Party; and **(3)** no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

12. DUTIES OF THE PARTIES

12.1. MUTUAL FULL COOPERATION

The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Settlement Agreement.

12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT

The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral attack.

12.3. DUTIES PRIOR TO COURT APPROVAL

Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as

1 to the Class Members, approving as to form and content the proposed Class Notice and Share
2 Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and directing the mailing of the
3 Class Notice to Class Members. While Defendant can reserve its right to object to facts or
4 assertions made in the moving papers, Defense Counsel shall file a notice of non-opposition to
5 the granting of the motion for preliminary approval or join in the motion.

6 **13. MISCELLANEOUS PROVISIONS**

7 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

8 Pending Court approval and other than as provided herein, if any of the conditions set
9 forth in this Settlement Agreement are not met and satisfied, this Settlement Agreement may,
10 at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and
11 effect, and may not be used or be admissible in any subsequent proceeding, either in this Court
12 or in any other court or forum. If either Party decides to void the Settlement Agreement, then
13 the Settlement Agreement and conditional class certification shall be considered void, and
14 neither the Settlement Agreement, conditional class certification, nor any of the related
15 negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the
16 same position, without prejudice, as if this Settlement Agreement had been neither entered into
17 nor filed with the Court. Should any Party choose to void the Class Settlement under this
18 subsection, such Party shall be responsible for all Settlement Administrator fees and costs
19 actually incurred.

20 **13.2. DIFFERENT FACTS**

21 The Parties acknowledge that, except for matters expressly represented herein, the facts
22 in relation to the dispute and all claims released by the terms of this Settlement Agreement may
23 turn out to be different from the facts now known by each party and/or its counsel, or believed
24 by such Party or counsel to be true, and each Party therefore expressly assumes the risk of the
25 existence of different or presently unknown facts, and agrees that this Settlement Agreement
26 shall be in all respects effective and binding despite such difference.
27
28

1 **13.3. NO PRIOR ASSIGNMENTS**

2 The Parties represent, covenant, and warrant that they have not directly or indirectly
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person
4 or entity any portion of any liability, claim, demand, action, cause of action, or right herein
5 released and discharged except as set forth herein.

6 **13.4. NON-ADMISSION**

7 Nothing in this Settlement Agreement shall be construed as or deemed to be an
8 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other
9 Party, or any other person, and the Parties specifically disclaim any liability, culpability,
10 negligence, or wrongdoing toward each other or any other person. Each of the Parties has
11 entered into this Settlement Agreement with the intention to avoid further disputes and litigation
12 with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute
13 any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations
14 in the Action. Nothing herein shall constitute any admission by Defendant regarding the merits
15 of the Claims in this Action, including but not limited to claims for unpaid wages or violations
16 under California or federal law. Nothing herein shall constitute an admission by Defendant that
17 the Action was properly brought as a class or representative action other than for settlement
18 purposes. To the contrary, Defendant has denied and continues to deny each and every material
19 factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation
20 and execution of this Settlement Agreement, and all acts performed or documents executed
21 pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not, shall
22 not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
23 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint
24 in the Action; and are not, shall not be deemed to be, and may not be used as, an admission or
25 evidence of any fault or omission on the part of Defendant in any civil, criminal, or
26 administrative proceeding in any court, administrative agency, or other tribunal.

13.5. NON-EVIDENTIARY USE

Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and the Released Parties to prove or defend against any claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or governmental proceeding.

13.6. MEDIA OR PRESS

Plaintiff and Defendant, and their respective counsel, recognize, accept, and agree that the Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media or press. The Parties agree to the following comment: "After detailed exploration of the facts, Dynalloy agreed to an early settlement of this Action. Dynalloy and the plaintiff agree that the settlement is in good faith, and it will benefit hundreds of current and former employees of Dynalloy."

13.7. NON-RETALIATION

Defendant understands and acknowledges that it has a legal obligation to not retaliate against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties, or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or indirectly, to Opt Out of the Class Settlement. Notwithstanding

1 the foregoing, nothing herein shall restrict Dynalloy from encouraging current employees from
2 joining the class.

3 **13.8. CONSTRUCTION**

4 The Parties agree that the terms and conditions of this Settlement Agreement are the
5 result of lengthy, intensive, arms-length, non-collusive negotiations between the Parties and
6 that this Settlement Agreement is not to be construed in favor of or against any party by reason
7 of the extent to which any party or its counsel participated in the drafting of this Settlement
8 Agreement. If any of the dates in this Settlement Agreement fall on a weekend, bank or court
9 holiday, the time to act shall be extended to the next business day.

10 **13.9. GOVERNING LAW**

11 This Settlement Agreement is intended to and shall be governed by the laws of the State
12 of California, without regard to conflict of law principles, in all respects, including execution,
13 interpretation, performance, and enforcement.

14 **13.10. NOTICES**

15 Except for Class Member notices required to be made by the Settlement Administrator,
16 all notices or other communications required or permitted under this Settlement Agreement
17 shall be in writing and shall be sufficiently given if delivered in person to the party or their
18 counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery
19 addressed to the address of the party appearing in this Settlement Agreement.

20 **13.11. CAPTIONS AND INTERPRETATIONS**

21 Section titles or captions contained herein are inserted as a matter of convenience and
22 for reference only and in no way define, limit, extend, or describe the scope of this Settlement
23 Agreement or any provision thereof.

24 **13.12. MODIFICATION**

25 This Settlement Agreement may not be changed, altered, or modified, except in writing
26 signed by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of
27 this Settlement Agreement has been granted by the Court, then any such amendments or
28 modifications to this Settlement Agreement shall be approved by the Court. This Settlement

1 Agreement may not be discharged except by performance in accordance with its terms or by a
2 writing signed by the Parties.

3 **13.13. INTEGRATION CLAUSE**

4 This Settlement Agreement contains the entire agreement between the Parties relating
5 to the Class Settlement of the Action and the transactions contemplated thereby, and all prior
6 or contemporaneous agreements, understandings, representations, and statements, whether oral
7 or written, and whether by a party or such party's legal counsel, are hereby superseded. No
8 rights under this Settlement Agreement may be waived except in writing as provided above.

9 **13.14. SUCCESSORS AND ASSIGNS**

10 This Settlement Agreement shall be binding on and inure to the benefit of the Parties
11 and Class Members (excluding only persons who timely Opt Out) and their respective present
12 and former heirs, trustees, executors, administrators, representatives, officers, directors,
13 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,
14 consultants, pension plans, welfare benefit plans, fiduciaries, parent companies, subsidiaries,
15 affiliates, related companies, joint ventures, predecessors, successors, and assigns.

16 **13.15. CORPORATE SIGNATORIES**

17 Any person executing this Settlement Agreement or any such related document on
18 behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for
19 the benefit of all Parties hereto, that such person has been duly authorized by such corporation
20 or partnership to execute this Settlement Agreement or any such related document.

21 **13.16. EXECUTION IN COUNTERPARTS**

22 This Settlement Agreement shall become effective upon its execution by all of the
23 undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution
24 of counterparts shall have the same force and effect as if all Settling Parties had signed the same
25 instrument.

26 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

27 Except as otherwise specifically provided for herein, each party shall bear her or its own
28 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of

the Action and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

13.18. ACTION TO ENFORCE AGREEMENT

In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.

14. EXECUTION

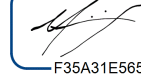
The Parties and their counsel have executed this Settlement Agreement on the date below their signatures or the signature of their representatives. The date of this Settlement Agreement shall be the date of the latest signature.

APPROVAL AND EXECUTION BY PARTIES

CLASS REPRESENTATIVE:

Dated: 12/9/2021 _____

DocuSigned by:


F35A31E565F44BE...

Mauricio Sandoval
Plaintiff and Class Representative

DEFENDANT:

Dated: _____

Dynalloy, Inc.

By: _____

Title: _____

1 the Action and shall not seek reimbursement thereof from any other party to this Settlement
2 Agreement.

3 **13.18. ACTION TO ENFORCE AGREEMENT**

4 In any suit or court action to enforce the terms of this Agreement, the prevailing party
5 shall be entitled to recover her or its attorney fees and costs.

6 **14. EXECUTION**

7 The Parties and their counsel have executed this Settlement Agreement on the date
8 below their signatures or the signature of their representatives. The date of this Settlement
9 Agreement shall be the date of the latest signature.

10 **APPROVAL AND EXECUTION BY PARTIES**

11 **CLASS REPRESENTATIVE:**

12 Dated: _____

13 _____
14 Mauricio Sandoval
15 Plaintiff and Class Representative

16 **DEFENDANT:**

17 Dated: 12/8/21

18 Dynalloy, Inc.

19 Wayne H. Brown

20 By: Wayne H. Brown

21 Title: President

EXHIBIT 1

Notice of Proposed Class Action Settlement

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MAURICIO SANDOVAL, an individual, on
behalf of himself, the State of California, as a
private attorney general, and on behalf of all
others similarly situated,

Plaintiff,

v.

DYNALLOY, INC., a California corporation;
and DOES 1 TO 50,

Defendants.

Case Number: 30-2021-01186578-CU-OE-CXC

Notice of Proposed Class Action Settlement

A court authorized this notice. This is not a solicitation from a lawyer.

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

You may be eligible to receive a settlement payment. Please read this notice carefully.

A proposed class action settlement agreement (the “Settlement”) has been reached between: **(1)** Plaintiff Mauricio Sandoval (“Plaintiff”), individually and in his representative capacity on behalf of a group of prospective class members defined below, and as a private attorney general on behalf of the State of California; and **(2)** Defendant Dynalloy, Inc. (“Defendant”). The Settlement resolves disputed claims against Defendant arising out of its compensation practices during the period from March 2, 2017, through the date of preliminary approval (the “Class Period”) as applied to all individuals who are or were employed by Defendant Dynalloy, Inc. as non-exempt employees in California from March 2, 2017, through the date of preliminary approval (“Class Members”).

The proposed settlement also includes the settlement of claims for civil penalties under California’s Private Attorneys General Act (“PAGA”) between March 2, 2020, through [the date of preliminary approval]. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the Court approves this settlement, and even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

The Court has granted preliminary approval of the Settlement and ordered this notice to be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member (as defined above) and received this notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described below.

1. DESCRIPTION OF THE LAWSUIT

On March 2, 2021, Plaintiff, individually and in his representative capacity on behalf of the Class Members, and as a private attorney general on behalf of the State of California, filed

1 a complaint against Defendant in the Superior Court of California for the County of Orange in
2 the matter of *Mauricio Sandoval v. Dynalloy, Inc.*, case number **30-2021-01186578-CU-OE-**
3 **CXC** (the “Action”). The Action sought recovery for Defendant’s alleged: **(1)** failure to pay
4 minimum wage for all hours worked; **(2)** failure to pay proper overtime wages; **(3)** failure to
5 provide compliant rest periods and pay missed rest break premiums; **(4)** failure to provide
6 compliant meal periods and pay missed meal period premiums; **(5)** failure to pay timely wages
7 during employment; **(6)** failure to pay all wages due and owing at separation; **(7)** failure to
8 provide complete and accurate wage statements; **(8)** deceptive, fraudulent, or otherwise
9 unlawful business practices based on the foregoing in violation of California’s Unfair
10 Competition Law; and **(9)** statutory penalties based on the foregoing pursuant to the California
11 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

12 **Defendant denies all liability, denies all allegations in the Action, and has raised**
13 **various defenses to the claims.** Defendant asserts that it fully complied with all applicable
14 wage and hour laws and contends that civil penalties under PAGA are not warranted. Defendant
15 also denies that the Action is suitable for class certification. Defendant has entered into the
16 Settlement solely for purposes of resolving this dispute to avoid costly, disruptive, and time-
17 consuming litigation and does not admit to any wrongdoing or liability.

18 The Court has not ruled on the merits in the Action. By approving the Settlement and
19 issuing this notice, the Court is *not* suggesting which side would win or lose the case if it went
20 to trial or whether the claims are suitable for class certification. To avoid the additional expense,
21 inconvenience, and risk of continued litigation, however, Plaintiff and Defendant (the “Parties”)
22 have concluded that it is in their respective best interests and the interests of the Class Members
23 to settle the Action on the terms summarized in this notice. The Settlement was reached after
24 Defendant provided extensive information and documents to Plaintiff’s counsel, and after
25 lengthy arms-length non-collusive negotiations between the Parties, including mediation with
26 an experienced and well-respected mediator in California. In these negotiations, both sides
27 recognized the substantial risk of the Court deciding against them at trial and determined that
28 the Settlement was a fair, reasonable, and adequate way to resolve the disputed claims.

1 Plaintiff and Plaintiff's counsel—Jonathan Melmed and Laura Supanich of Melmed
2 Law Group P.C. ("Class Counsel")—support the Settlement. Among the reasons for support
3 are the defenses to liability potentially available to Defendant, the risk of denial of class
4 certification, the inherent risk of trial on the merits, and the delays and uncertainties associated
5 with litigation. Plaintiff and Class Counsel believe that the settlement described in this notice
6 is fair, adequate, reasonable, and in the best interests of Plaintiff and the Class Members.

7 Under the Settlement, the following settlement class will be certified under California
8 law: all individuals who are or were employed by Defendant Dynalloy, Inc. as non-exempt
9 employees in California from March 2, 2017, through the date of preliminary approval. The
10 "Class Period" is defined as the period from March 2, 2017, through the date of preliminary
11 approval. The Settlement provides for a gross settlement amount of \$500,000.00, a share of
12 which is to be distributed to the Class Members based on the pro rata number of weeks worked
13 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
14 Members. In exchange for their share of the settlement amount, all participating Class Members
15 will be deemed to have released Defendant from liability on the terms described in this notice.

16 On [date of preliminary approval], the Court preliminarily approved the Settlement and
17 conditionally certified the settlement class. This notice is being sent to you because Defendant's
18 records indicate that you worked for Defendant during the Class Period and that you meet the
19 definition required to be treated as a Class Member.

20 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANT, THIS SETTLEMENT WILL**
21 **NOT AFFECT YOUR EMPLOYMENT.**

22 California law strictly prohibits retaliation. Further, Defendant is prohibited by law from
23 taking any adverse action against or otherwise target, retaliate, or discriminate against any Class
24 Member because of the Class Member's participation or decision not to participate in the
25 Settlement.

1 **3. TERMS OF THE SETTLEMENT**

2 Defendant has agreed to pay \$500,000.00 (the “Gross Settlement Amount”) to resolve
3 the claims in the Action. The Parties agreed to the following payments from the Gross
4 Settlement Amount:

- 5 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
6 as the “Settlement Administrator,” who is sending this notice to you and will perform
7 many other duties relating to the Settlement. Under the Settlement, up to \$10,000.00
8 will be paid from the Gross Settlement Amount to pay the Settlement Administration
9 Costs.
- 10 2. **Attorneys’ Fees and Expenses.** Class Counsel have been prosecuting the Action on
11 behalf of the Class Members on a contingency fee basis (that is, without being paid any
12 money to date) and have been paying all litigation costs and expenses. To date, the
13 Parties have aggressively litigated many aspects of the case including investigation,
14 settlement efforts, and a full-day mediation session. The Court will determine the actual
15 amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross
16 Settlement Amount. Class Members are not personally responsible for any of Class
17 Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of one-third of
18 the Gross Settlement Amount (i.e., \$166,666.67) as reasonable compensation for the
19 work Class Counsel performed and will continue to perform in the Action. Class
20 Counsel also will ask for reimbursement of up to \$15,000.00 for the costs Class Counsel
21 incurred in connection with the Action.
- 22 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide
23 a service payment to Plaintiff in the amount of \$7,500.00 for Mauricio Sandoval to
24 compensate him for his efforts on behalf of the Class Members in the Action, including
25 assisting in the investigation and consulting with Class Counsel and providing crucial
26 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a
27 Class Member.
- 28

4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$50,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$37,500.00) to the LWDA and twenty-five percent (25%) (i.e., \$12,500.00) to the individuals who come within the definition of an “aggrieved employee” for the purposes of the Settlement (i.e., all individuals who are or were employed by Defendant Dynalloy, Inc. as non-exempt employees in California from March 2, 2020, through the date of preliminary approval). The “PAGA Period” is defined for these purposes to mean the period from March 2, 2020, through the date of preliminary approval.

After deducting the amounts above, the balance of the settlement amount will form the “Net Settlement Amount” for distribution to the Class Members.

4. **DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

Each eligible Class Member who does not request exclusion from the Settlement will be deemed a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed pro rata based on the proportional number of weeks worked by each Class Member during the Class Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the Settlement, his or her share will be distributed to the remaining Class Participants.

Twenty-Five percent (25%) of each Individual Settlement Amount will constitute payment in the form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and Seventy-Five percent (75%) of each Individual Settlement Amount will constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

Defendant, or its proxies, shall take all usual and customary deductions from the Individual Settlement Amount payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest or penalty distribution—it will,

1 however, be reported on IRS Form 1099 as income. Class Participants are responsible for the
2 proper income tax treatment of their Individual Settlement Amount. The Settlement
3 Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice.
4 Accordingly, Class Members should consult with their tax advisors concerning the tax
5 consequences and treatment of payments they receive under the Settlement.

6 The workweeks you worked for Defendant during the Class Period will be calculated
7 based on Defendant's records. If you feel that you were not credited with the correct number of
8 workweeks worked during the Class Period, you may submit evidence to the Settlement
9 Administrator on or before [Response Deadline] with documentation to establish the number
10 of workweeks you claim to have actually worked during the Class Period. **Documentation sent
11 to the Settlement Administrator will not be returned or preserved, so do not send
12 originals.** The Parties and the Settlement Administrator will promptly evaluate the evidence
13 submitted and discuss in good faith how many workweeks should be credited. The Settlement
14 Administrator will make the final decision as to how many weeks are credited and report the
15 outcome to the Class Participant. If you are unsatisfied with the decision, you may submit an
16 objection, which is explained below.

17 Settlement checks will be mailed to all Class Participants after the Court grants final
18 approval of the Settlement and judgment is entered.

19 **5. THE RELEASE OF CLAIMS**

20 If the Court approves the Settlement, the Court will enter judgment and the Settlement
21 will bind all Class Participants. The Class Participants will then be barred from bringing any
22 "Released Claims" against the "Released Parties" as those terms are defined below.

23 The "Released Parties" are Defendant and all of its current and former subsidiaries,
24 affiliates, shareholders, members, managers, employees, agents, predecessors, successors, and
25 assigns.

26 The "Released Claims" are any and all claims alleged in the First Amended Complaint
27 or claims that could have been brought based on the facts in the First Amended Complaint
28 against any of the Released Parties based on alleged violations California Labor Code, sections

1 §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1,
2 1198, 1199, IWC Wage Order No. 1, UCL violations pursuant to Cal. Bus. & Prof. Code
3 §17200 based on the foregoing, and statutory penalties based on the foregoing under
4 California’s Private Attorney Generals Act (“PAGA”) (Labor Code §§ 2698-2699.5).). For
5 clarity and without limitation, the Released Claims include all claims for failure to pay for all
6 hours worked and all wages earned, including any minimum or overtime hours; failure to
7 provide any meal periods or compensation in lieu thereof; failure to provide any rest periods or
8 compensation in lieu thereof; failure to timely pay any wages during employment; failure to
9 pay all wages earned and unpaid at separation; failure to provide any compliant wage
10 statements; any waiting time penalties, including, penalties for failure to pay all wages due to
11 terminated or quitting employees; any alleged violation of Business and Professions Code §§
12 17200-17210; any statutory penalties based on the foregoing; any civil penalties under the
13 Private Attorney General Act Labor Code § 2699 et seq.; and interest, restitution, or any other
14 relief, fees or costs based on the foregoing. The Release Period is the Class Period. No other
15 claims are released other than those claims specifically plead in the operative complaint in the
16 Action, unless such claims would have otherwise been barred under the doctrines of res
17 judicata, collateral estoppel, or issue preclusion

18 Notwithstanding the foregoing, the Settlement does *not* release Defendant or any
19 person, party, or entity from claims, if any, by Class Members for workers compensation,
20 unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or
21 causes of action which may be possessed by Class Members under state or federal
22 discrimination statutes, including, without limitation, the California Fair Employment and
23 Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the
24 California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
25 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement
26 Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing
27 regulations and interpretive guidelines.
28

Class Members who do not request exclusion from the Settlement will be deemed to have acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Settlement payments. That section provides in pertinent part as follows:

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

6. YOUR OPTIONS

6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT

If you do nothing, you will be automatically included as a Class Participant in the Settlement and will receive a settlement payment. You do *not* have to take any further action to receive your settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached *Class Action Settlement Share Form*.

6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT

If you do *not* wish to take part in the class action portion of the Settlement (the “Class Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by completing the attached Request for Exclusion Form and sending it to the Settlement Administrator postmarked no later than [Response Deadline].

Send the request for exclusion directly to the Settlement Administrator at the following address **by no later than [Response Deadline]**:

ILYM Group, Inc.
14751 Plaza Drive, Suite J
Tustin, California 92780

Any person who submits a timely request for exclusion from the Class Settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and shall receive no benefits from the class action portion of the Settlement. If you want confirmation of receipt of your request for exclusion, please send it by United States certified mail, return receipt requested, or contact the Settlement Administrator.

Importantly, Class Members who timely and validly request exclusion from the Class Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from the Class Settlement applies solely to the Class Members' entitlement to the class action portion of the Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class Settlement you will still be entitled to your share, if any, of the PAGA Payment.

6.3. OBJECT TO THE SETTLEMENT

You have the right to object to the terms of the Settlement if you do not request exclusion. If, however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may file with the Settlement Administrator a written objection stating your name, address, telephone number, dates of employment with Defendant, the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections in writing must be mailed to the Settlement Administrator—ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin, California 92780—by no later than **[Response Deadline]** to be considered. **Objections that are not timely submitted might not be considered by the court.**

If you choose to object to the Settlement, an objection may be in writing, or you may orally object or otherwise offer comments at the final approval hearing scheduled for **[Final Approval Hearing Date]**, at **[Final Approval Hearing Time]** in Department **[Court Department]** of the Superior Court of California for the County of Orange, located at **[Court Location]**. You have the right to appear either in person or through your own attorney at this hearing.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement

in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

The Court may, at the time of the final approval and fairness hearing, have certain social distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose information is provided below, for more information about the Court's current social distancing procedures. You may also review the Court's website for the most current information.

7. HOW TO UPDATE OR CHANGE YOUR ADDRESS

If you move after receiving this notice or if it was misaddressed, please contact the Settlement Administrator, ILYM Group, Inc., at **(888) 250-6810** or by email at **claims@ilymgroupclassaction.com**, as soon as possible. **This is important to ensure that future notices and/or the Settlement payment reach you.**

8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED

Within ten (10) days after the Court has held a final and fairness approval hearing and entered a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a copy of that order and final judgment on its website at the following website address:

[Case-Specific Settlement URL (to be added by Settlement Administrator)]

9. IF THE SETTLEMENT IS NOT APPROVED

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the Settlement may be voided, in which case no money will be paid, and the case will return to litigation. If that happens, there is no assurance: **(1)** that the class will be certified by the Court; **(2)** that any decision at trial would be in favor of Class Members; **(3)** that a trial decision, if any, would be as favorable to the Class Members as the Settlement; or **(4)** that any favorable trial decision would be upheld if an appeal was filed.

1 **10. QUESTIONS OR COMMENTS**

2 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions
3 about the settlement, you may contact the Settlement Administrator at: **(888) 250-6810** or by e-
4 mail at **claims@ilymgrouppclassaction.com**. You may also contact Class Counsel at the
5 addresses or phone numbers listed below.

6
7 **Lawyers Representing Plaintiff and the Class Members**

8 **MELMED LAW GROUP P.C.**

9 Jonathan Melmed

10 jm@melmedlaw.com

11 Laura Supanich

12 lms@melmedlaw.com

13 1801 Century Park East, Suite 850

14 Los Angeles, California 90067

15 Phone: (310) 824-3828

16 Fax: (310) 862-6851

EXHIBIT 2

Class Action Settlement Share Form

CLASS ACTION SETTLEMENT SHARE FORM

*Mauricio Sandoval v. Dynalloy, Inc.
Case Number 30-2021-01186578-CU-OE-CXC
Superior Court of California for the County of Orange*

The proposed class action settlement agreement (the “Settlement”) described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendant Dynalloy, Inc. (“Defendant”) arising out of its compensation practices during the period from March 2, 2017, through the date of preliminary approval (the “Class Period”) as applied to all individuals who are or were employed by Defendant Dynalloy, Inc. as non-exempt employees in California from March 2, 2017, through the date of preliminary approval (“Class Members”).

You are receiving this form because you are believed to be a Class Member. **According to Defendant’s records, you worked [REDACTED] workweeks for Defendant during the Class Period. Accordingly, your share of the Settlement is currently estimated to be \$ [REDACTED],** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement.

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator no later than **[Response Deadline]** at:

ILYM Group, Inc.
claims@ilymgrouppclassaction.com
(888) 250-6810
14751 Plaza Drive, Suite J
Tustin, California 92780

If you dispute the information stated above, the information Defendant provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.