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7 Attorneys for Plaintiff(s),

8 KIMBERLY DAWN VANDERMOST, and all others similarly situated

(Additional attorneys for parties on following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
15 and as an “aggrieved employee” on behalf of
16 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 DYWIDAG SYSTEMS INTERNATIONAL,
20 USA, INC., a New York corporation; and DOES
1–50, inclusive,

21 *Defendant(s).*

Case No. 23STCV06697

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: March 28, 2023

Dept: SSC 7, The Honorable
Samantha P. Jessner

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ATTORNEYS FOR DEFENDANT

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Attorneys for Defendant
DYWIDAG SYSTEMS INTERNATIONAL, USA, INC.

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Kimberly Dawn Vandermost (“Plaintiff”) and defendant Dywidag Systems
3 International, USA, Inc. (“Dywidag Systems International, USA, Inc.”). The Agreement refers to
4 Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit as set forth in her June 2, 2023 operative
7 First Amended Complaint against Dywidag Systems International, USA, Inc. captioned
8 “Kimberly Dawn Vandermost, on behalf of herself, and all others similarly situated, and as an
9 ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
10 Attorneys General Act of 2004, *Plaintiff(s)*, vs. Dywidag Systems International, USA, Inc., a New
11 York corporation; and DOES 1 through 50, inclusive, *Defendant(s)*,” Case No. 23STCV06697
12 initiated on March 28, 2023 and pending in Superior Court of the State of California, County of
Los Angeles.

13 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the
14 neutral entity the Parties have agreed to appoint to administer the Settlement.

15 1.3. “Administration Expenses Payment” means the amount the Administrator will be
16 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
17 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
with Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employee” means a person whose employment with Defendant in
19 California terminated during the PAGA Period.

20 1.5. “Class” means all persons whose employment with Defendant in California
21 terminated during the Class Period.

22 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm.

23 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
24 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
expenses, respectively, incurred to prosecute the Action.

25 1.8. “Class Data” means Class Member identifying information in Defendant’s
26 possession, including the Class Member’s name, last-known mailing address, Social Security
27 number, and number of Class Period Employment Terminations and PAGA Employment

1 Terminations.

2 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
3 either a Participating Class Member or Non-Participating Class Member (including a Non-
4 Participating Class Member who qualifies as an Aggrieved Employee).

5 1.10. "Class Member Address Search" means the Administrator's investigation and
6 search for current Class Member mailing addresses using all reasonably available sources,
7 methods and means including, but not limited to, the National Change of Address database, skip
8 traces, and direct contact by the Administrator with Class Members.

9 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION
10 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
11 Class Members in English with a Spanish translation in the form, without material variation,
12 attached as Exhibit A and incorporated by reference into this Agreement.

13 1.12. "Class Period" means the period from March 28, 2020 to June 28, 2024.

14 1.13. "Class Representative" means the named Plaintiff in the operative complaint in the
15 Action seeking Court approval to serve as a Class Representative.

16 1.14. "Class Representative Service Payment" means the payment to the Class
17 Representative for initiating the Action and providing services in support of the Action.

18 1.15. "Court" means the Superior Court of California, County of Los Angeles.

19 1.16. "Defendant" means named Defendant Dywidag Systems International, USA, Inc.

20 1.17. "Defense Counsel" means Joshua B Wagner of Gordon Rees Scully Mansukhani,
21 LLP.

22 1.18. "Effective Date" means the date by when both of the following have occurred: (a)
23 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
24 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
25 Participating Class Member objects to the Settlement, the day following the Court's entry of
26 judgment so long as both Plaintiff and her counsel have provided a written waiver of their right
27 to appeal their fees, costs and/or incentive payment awards; or (b) if one or more Participating
28 Class Members objects to the Settlement and/or Class counsel / Plaintiff do not provide a written
waiver of their appeal rights, the day after the deadline for filing a notice of appeal from the
Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms
the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement. A proposed Final Judgment form is attached as Exhibit F.

1.22. “Gross Settlement Amount” means two hundred seventy-five thousand dollars (\$275,000.00), which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Employment Terminations during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Employment Terminations during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1 1.30. “Notice Packet” means the Class Notice (Exhibit A), the Election Not to
2 Participate in Settlement form (Exhibit B), the Employment Termination Dispute form (Exhibit
3 C), and the Objection form (Exhibit D) in English with Spanish translations.

4 1.31. “PAGA Employment Termination” means any Employment Termination during
5 which an Aggrieved Employee terminated employment with Defendant in California during the
6 PAGA Period.

7 1.32. “PAGA Period” means the period from March 27, 2022 to June 28, 2024.

8 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

9 1.34. “PAGA Notice” means Plaintiff’s March 27, 2023 letter to Defendant and the
10 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

11 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties (\$4,000.00) to
12 be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees
13 (\$1,000.00) and the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

14 1.36. “Participating Class Member” means a Class Member who does not submit a valid
15 and timely Request for Exclusion from the Settlement.

16 1.37. “Plaintiff” means Kimberly Dawn Vandermost, the named plaintiff in the Action.

17 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
18 of the Settlement.

19 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
20 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
21 attached as Exhibit E.

22 1.40. “Released Class Claims” means the claims being released as described in
23 Paragraph 6.2 below.

24 1.41. “Released PAGA Claims” means the claims being released as described in
25 Paragraph 6.3 below.

26 1.42. “Released Parties” means Defendant and each of its former and present directors,
27 officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns,
28 subsidiaries and affiliates.

1.43. “Request for Exclusion” means a Class Member’s submission of a written request
to be excluded from the Class Settlement signed by the Class Member. An Election Not to
Participate in Settlement form is attached as Exhibit B.

1.44. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46. “Employment Termination” means the termination of employment by Defendant in California during the Class Period, regardless of whether it was voluntary or involuntary. An Employment Termination Dispute form is attached as Exhibit C.

2. RECITALS.

2.1. On March 28, 2023, Plaintiff commenced this Action by filing a Complaint alleging a cause of action against Defendant for failure to timely pay wages. On June 2, 2023, Plaintiff filed a First Amended Complaint again alleging a cause of action against Defendant for failure to timely pay wages and additionally asserting claims for civil penalties under the Private Attorneys General Act relating to the putative failure to timely pay wages. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On December 21, 2023, the Parties participated in an all-day mediation presided over by neutral Phillip K. Cha. Mr. Cha engaged in substantial follow-up negotiation efforts, which ultimately led to this Agreement to settle the Action.

2.4. Prior to negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, sample payroll records, written policies, the number of comparable employees, and related information. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801

1 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2 2.5. The Court has not granted class certification.

3 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware
4 of any other pending matter or action asserting claims that will be extinguished or affected by the
5 Settlement.

6 **3. MONETARY TERMS.**

7 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
8 Defendant promises to pay two hundred seventy-five thousand dollars (\$275,000.00) and no more
9 as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement
10 Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will
11 disburse the entire Gross Settlement Amount without asking or requiring Participating Class
12 Members or Aggrieved Employees to submit any claim as a condition of payment. None of the
13 Gross Settlement Amount will revert to Defendant.

14 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
15 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
16 the Court in the Final Approval:

17 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
18 Representative of not more than ten thousand dollars (\$10,000.00) (in addition to any Individual
19 Class Payment and any Individual PAGA Payment the Class Representative is otherwise entitled
20 to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a
21 Class Representative Service Payment that does not exceed this amount. As part of the motion
22 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court
23 approval for any Class Representative Service Payments no later than sixteen (16) court days
24 prior to the Final Approval Hearing. If the Court approves a Class Representative Service
25 Payment less than the amount requested, the Administrator will retain the remainder in the Net
26 Settlement Amount. The Administrator will pay the Class Representative Service Payment using
27 IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the
28 Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
33.33%, which is currently estimated to be ninety-one thousand, six hundred sixty-six dollars and

sixty-seven cents (\$91,666.67) and a Class Counsel Litigation Expenses Payment of not more than twelve thousand, five hundred dollars (\$12,500.00). Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed seven thousand dollars (\$7,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than seven thousand dollars (\$7,000.00), the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Employment Terminations of all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Employment Terminations.

3.2.4.1. Tax Allocation of Individual Class Payments. 100.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). They are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments

1 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

2 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
3 amount of four thousand dollars (\$4,000.00) to be paid from the Gross Settlement Amount, with
4 75% or three thousand dollars (\$3,000.00) allocated to the LWDA PAGA Payment and 25% or
5 one thousand dollars (\$1,000.00) allocated to the Individual PAGA Payments.

6 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
7 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
8 by the total number of PAGA Period Employment Terminations of all Aggrieved Employees
9 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
10 Period Employment Terminations. Aggrieved Employees assume full responsibility and liability
11 for any taxes owed on their Individual PAGA Payment.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
13 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
14 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

14 **4. SETTLEMENT FUNDING AND PAYMENTS.**

15 4.1. Class Employment Terminations and Aggrieved Employee Employment
16 Terminations. Based on a review of its records to date, Defendant estimates there are 161 Class
17 Members who collectively had a total of 359 Employment Terminations, and 48 Aggrieved
18 Employees who collectively had a total of 112 PAGA Employment Terminations.

19 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary
20 Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the
21 Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy
22 rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for
23 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
24 Administrator employees who need access to the Class Data to effect and perform under this
25 Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers
26 that the Class Data omitted class member identifying information and to provide corrected or
27 updated Class Data as soon as reasonably feasible. Without any extension of the deadline by
28 which Defendant must send the Class Data to the Administrator, the Parties and their counsel will
expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related

1 to missing or omitted Class Data.

2 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
3 Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days
4 after the Effective Date.

5 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
6 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
7 Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
8 Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
9 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class
10 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class
11 Representative Service Payment shall not precede disbursement of Individual Class Payments
12 and Individual PAGA Payments.

13 4.4.1. The Administrator will issue checks for the Individual Class Payments
14 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
15 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
16 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
17 not cashed by the void date. The Administrator will send checks for Individual Settlement
18 Payments to all Participating Class Members (including those for whom Notice Packet was
19 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
20 Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved
21 Employees (including those for whom Notice Packet was returned undelivered). The
22 Administrator may send Participating Class Members a single check combining the Individual
23 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
24 must update the recipients' mailing addresses using the National Change of Address Database.

25 4.4.2. The Administrator must conduct a Class Member Address Search for all
26 other Class Members whose checks are returned undelivered without USPS forwarding address.
27 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
28 forwarding address provided or to an address ascertained through the Class Member Address
Search. The Administrator need not take further steps to deliver checks to Class Members whose
re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, requested

1 by the Class Member prior to the void date.

2 4.4.3. For any Class Member whose Individual Class Payment check or
3 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
4 shall transmit the funds represented by such checks to the California Controller's Unclaimed
5 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
6 the requirements of California Code of Civil Procedure Section 384, subd. (b).

7 4.4.4. The payment of Individual Class Payments and Individual PAGA
8 Payments shall not obligate Defendant to confer any additional benefits or make any additional
9 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
10 this Agreement.

11 **5. [OMITTED]**

12 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
13 Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims
14 against all Released Parties as follows:

15 6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
17 and discharge Released Parties from all claims, transactions, or occurrences that occurred during
18 the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have
19 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
20 that were, or reasonably could have been, alleged based on facts contained in the Operative
21 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.3,
22 below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to
23 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
24 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
25 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
26 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
27 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
28 notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
and benefits, if any, of section 1542 of the California Civil Code, which reads:

1
2 **A general release does not extend to claims that the creditor or releasing party does**
3 **not know or suspect to exist in his or her favor at the time of executing the release,**
4 **and that if known by him or her would have materially affected his or her settlement**
5 **with the debtor or Released Party.**

6 6.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

7 All Participating Class Members, on behalf of themselves and their respective former
8 and present representatives, agents, attorneys, heirs, administrators, successors, and
9 assigns, release Released Parties from (i) all claims that were alleged, or reasonably
10 could have been alleged, based on the Class Period facts stated in the Operative
11 Complaint and ascertained in the course of the Action, including any claims for waiting
12 time penalties during the Class Period. Except as set forth in Section 6.3 of this
13 Agreement, Participating Class Members do not release any other claims, including
14 claims for vested benefits, wrongful termination, violation of the Fair Employment and
15 Housing Act, unemployment insurance, disability, social security, workers'
16 compensation or claims based on facts occurring outside the Class Period.

16 6.3 Release by Non-Participating Class Members Who Are Aggrieved
17 Employees:

17 All Non-Participating Class Members who are Aggrieved Employees are deemed to
18 release, on behalf of themselves and their respective former and present representatives,
19 agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from
20 all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
21 based on the PAGA Period facts stated in the Operative Complaint and the PAGA
22 Notice and ascertained in the course of the Action, and any claims for civil penalties
23 arising from the non-timely payment of final wages due and owing during the PAGA
24 Period.

24 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
25 file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with
26 the Court's current checklist for Preliminary Approvals. A Preliminary Approval Order form is
27 attached as Exhibit E.

1 7.1 Defendant’s Declaration in Support of Preliminary Approval. Within twenty-one
2 (21) days of the full execution of this Agreement, Defense Counsel will prepare and deliver to
3 Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts
4 relevant to any actual or potential conflicts of interest with the Administrator. In their
5 Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other
6 pending matter or action asserting claims that will be extinguished or adversely affected by the
7 Settlement.

8 7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
9 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
10 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
11 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
12 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
13 and Approval of PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration
14 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
15 attesting to its willingness to serve; competency; operative procedures for protecting the security
16 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
17 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
18 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
19 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
20 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
21 and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency
22 to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
23 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
24 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
25 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
26 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
27 potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient.
28 In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware
of any other pending matter or action asserting claims that will be extinguished or adversely
affected by the Settlement.

 7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than ten (10) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of

1 Class Members, PAGA Members, Class Employment Terminations, and PAGA Employment
2 Terminations in the Class Data.

3 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
4 twenty-one (21) days after receiving the Class Data, the Administrator will send to all Class
5 Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
6 the Notice Packet with Spanish translation, if applicable substantially in the forms attached to this
7 Agreement as **Exhibits A, B, C, and D**. The first page of the Class Notice shall prominently
8 estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment
9 payable to the Class Member, and the number of Employment Terminations and PAGA Employment
10 Terminations (if applicable) used to calculate these amounts. Before mailing Notice Packets, the
11 Administrator shall update Class Member addresses using the National Change of Address
12 database.

13 8.4.3 Not later than five (5) business days after the Administrator’s receipt of
14 any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
15 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
16 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
17 the Notice Packet to the most current address obtained. The Administrator has no obligation to
18 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
19 returned by the USPS a second time.

20 8.4.4 The deadlines for Class Members’ written objections, Challenges to
21 Employment Terminations and/or Employment Terminations (disputes), and Requests for
22 Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise
23 provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator
24 will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

25 8.4.5 If the Administrator, Defendant or Class Counsel is contacted by or
26 otherwise discovers any persons who believe they should have been included in the Class Data
27 and should have received Notice Packet, the Parties will expeditiously meet and confer in person
28 or by telephone, and in good faith. in an effort to agree on whether to include them as Class
Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
other Class Members, and the Administrator will send, via email or overnight delivery, a Class
Notice requiring them to exercise options under this Agreement not later than fourteen (14) days

1 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

2 8.5 Requests for Exclusion (Opt-Outs).

3 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
4 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
5 Exclusion not later than sixty (60) days after the Administrator mails the Notice Packet (plus an
6 additional fourteen (14) days for Class Members whose Notice Packet is re-mailed). A Request
7 for Exclusion is a letter from a Class Member or his/her representative that reasonably
8 communicates the Class Member's election to be excluded from the Settlement and includes the
9 Class Member's name, address and email address or telephone number. To be valid, a Request
10 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An
11 Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose
12 but is not required.

13 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
14 because it fails to contain all the information specified in the Class Notice. The Administrator
15 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
16 identity of the person as a Class Member and the Class Member's desire to be excluded. The
17 Administrator's determination shall be final and not appealable or otherwise susceptible to
18 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
19 the Administrator may demand additional proof of the Class Member's identity. The
20 Administrator's determination of authenticity shall be final and not appealable or otherwise
21 susceptible to challenge.

22 8.5.3 Every Class Member who does not submit a timely and valid Request for
23 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
24 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
25 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the
26 Participating Class Member actually receives the Class Notice or objects to the Settlement.

27 8.5.4 Every Class Member who submits a valid and timely Request for
28 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
or have the right to object to the class action components of the Settlement. Aggrieved Employees
are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Employment Terminations. Each Class Member

1 shall have sixty (60) days after the Administrator mails the Notice Packet (plus an additional
2 fourteen (14) days for Class Members whose Notice Packet is re-mailed) to challenge the number
3 of Class Employment Terminations and PAGA Employment Terminations (if any) allocated to
4 the Class Member in the Class Notice. This is also known as a dispute. An Employment
5 Termination Dispute form, attached as Exhibit C, may be used for this purpose but is not required.
6 The Class Member may challenge the allocation by communicating with the Administrator via
7 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
8 supporting documentation. In the absence of any contrary documentation, the Administrator is
9 entitled to presume that the Employment Terminations contained in the Class Notice are correct
10 so long as they are consistent with the Class Data. The Administrator's determination of each
11 Class Member's allocation of Employment Terminations and/or Employment Terminations shall
12 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
13 promptly provide copies of all challenges to calculation of Employment Terminations and/or
14 Employment Terminations to Defense Counsel and Class Counsel and the Administrator's
15 determination the challenges.

14 8.7 Objections to Settlement.

15 8.7.1 Only Participating Class Members may object to the class action
16 components of the Settlement and/or this Agreement, including contesting the fairness of the
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment and/or Class Representative Service Payment.

19 8.7.2 Participating Class Members may send written objections to the
20 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
21 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the
23 Administrator must do so not later than sixty (60) days after the Administrator's mailing of the
24 Notice Packet (plus an additional fourteen (14) days for Class Members whose Notice Packet was
25 re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is not
26 required.

27 8.7.3 Non-Participating Class Members have no right to object to any of the class
28 action components of the Settlement.

27 8.8 Administrator Duties. The Administrator has a duty to perform or observe all

1 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

2 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
3 establish and maintain and use an internet website to post information of interest to Class
4 Members including the date, time and location for the Final Approval Hearing and copies of the
5 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Notice
6 Packet, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
7 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
8 Approval and the Judgment. The Administrator will also maintain and monitor an email address
9 and a toll-free telephone number to receive Class Member calls, faxes and emails.

10 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
11 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
12 later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion,
13 the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the
14 names and other identifying information of Class Members who have timely submitted valid
15 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of
16 Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
17 Exclusion from Settlement submitted (whether valid or invalid).

18 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
19 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
20 of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
21 Exclusion (whether valid or invalid) received, objections received, challenges to Employment
22 Terminations and/or Employment Terminations received and/or resolved, and checks mailed for
23 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
24 Reports must include provide the Administrator’s assessment of the validity of Requests for
25 Exclusion and attach copies of all Requests for Exclusion and objections received.

26 8.8.4 Employment Termination Challenges. The Administrator has the authority
27 to address and make final decisions consistent with the terms of this Agreement on all Class
28 Member challenges over the calculation of Employment Terminations and/or Employment
Terminations. The Administrator’s decision shall be final and not appealable or otherwise
susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the

1 date by which Class Counsel is required to file the Motion for Final Approval of the Settlement,
2 the Administrator will provide to Class Counsel and to Defense Counsel a signed declaration
3 suitable for filing in Court attesting to its due diligence and compliance with all of its obligations
4 under this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice
5 Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class
6 Members, the total number of Requests for Exclusion from Settlement it received (both valid or
7 invalid), the number of written objections and attach the Exclusion List. The Administrator will
8 supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel
9 is responsible for filing the Administrator's declaration(s) in Court.

10 8.8.6 Final Report by Administrator. Within fourteen (14) days after the
11 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
12 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
13 identification number only of all payments made under this Agreement. At least fifteen (15) days
14 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
15 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
16 of all payments required under this Agreement. Class Counsel is responsible for filing the
17 Administrator's declaration in Court.

18 **9. CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the
19 date of this Settlement Agreement, (1) there were 161 Class Members and 359 Total Employment
20 Terminations during the Class Period and (2) there were 48 Aggrieved Employees who had 112
21 Employment Terminations during the PAGA Period.

22 **10. DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for
23 Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class
24 Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties
25 agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
26 whatsoever, and that neither Party will have any further obligation to perform under this
27 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
28 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
Court of its election to withdraw not later than ten (10) days after the Administrator sends the

1 final Exclusion List to Defense Counsel; late elections will have no effect.

2
3 **11. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the
4 calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the
5 Settlement that includes a request for approval of the PAGA settlement under Labor Code section
6 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion
7 for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not
8 later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense
9 Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve
any disagreements concerning the Motion for Final Approval.

10 11.1 Response to Objections. Each Party retains the right to respond to any objection
11 raised by a Participating Class Member, including the right to file responsive documents in Court
12 no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
accepted by the Court.

13 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
14 Approval on any material change to the Settlement (including, but not limited to, the scope of
15 release to be granted by Class Members), the Parties will expeditiously work together in good
16 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
17 Approval. The Court’s decision to award less than the amounts requested for the Class
18 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
19 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

20 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
21 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
22 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

23 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
24 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
25 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
26 respective counsel, and all Participating Class Members who did not object to the Settlement as
27 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to

1 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
2 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
3 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
4 Parties' obligations to perform under this Agreement will be suspended until such time as the
5 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
the amount of the Net Settlement Amount.

6 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
7 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
8 material modification of this Agreement (including, but not limited to, the scope of release to be
9 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
10 expeditiously work together in good faith to address the appellate court's concerns and to obtain
11 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
12 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
13 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
14 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
as long as the Gross Settlement Amount remains unchanged.

15
16 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
17 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
18 amended judgment.

19 **13. ADDITIONAL PROVISIONS.**

20 13.1 No Admission of Liability, Class Certification or Representative Manageability
21 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
22 claims. Nothing in this Agreement is intended or should be construed as an admission by
23 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant
24 has any liability for any claims asserted; nor should it be intended or construed as an admission
25 by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
26 certification and representative treatment is for purposes of this Settlement only. If, for any reason
27 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant
reserves the right to contest certification of any class for any reasons, and Defendant reserves all

1 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
2 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
3 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
4 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
Settlement and this Agreement).

5 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
6 Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval
7 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
8 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
9 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
10 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
11 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
12 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
13 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
government agency.

14 Each Party agrees to immediately notify each other Party of any judicial or agency
15 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and
16 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
17 communication, before the filing of the Motion for Preliminary Approval, any with third party
18 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
19 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
20 communications with Class Members in accordance with Class Counsel's ethical obligations
owed to Class Members.

21 13.3 No Solicitation. The Parties separately agree that they and their respective
22 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
23 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
24 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
obligations owed to Class Members.

25 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
26 Agreement together with its attached exhibits shall constitute the entire agreement between the
27 Parties relating to the Settlement, superseding any and all oral representations, warranties,

1 covenants, or inducements made to or by any Party.

2 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
3 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
4 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
5 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
6 terms of this Agreement including any amendments to this Agreement.

7 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
8 use their best efforts, in good faith, to implement the Settlement by, among other things,
9 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
10 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
11 the form or content of any document necessary to implement the Settlement, or on any
12 modification of the Agreement that may become necessary to implement the Settlement, the
13 Parties will seek the assistance of a mediator and/or the Court for resolution.

14 13.7 No Prior Assignments. The Parties separately represent and warrant that they
15 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
16 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
17 action, or right released and discharged by the Party in this Settlement.

18 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense
19 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
20 Settlement be relied upon as such within the meaning of United States Treasury Department
21 Circular 230 (31 CFR Part 10, as amended) or otherwise.

22 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
23 amended, modified, changed, or waived only by an express written instrument signed by all
24 Parties or their representatives, and approved by the Court.

25 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
26 inure to the benefit of, the successors of each of the Parties.

27 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
28 be governed by and interpreted according to the internal laws of the state of California, without
regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
preparation of this Agreement. This Agreement will not be construed against any Party on the

1 basis that the Party was the drafter or participated in the drafting.

2 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
3 entered during Action and in this Agreement relating to the confidentiality of information shall
4 survive the execution of this Agreement.

5 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
6 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
7 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
8 connection with the Settlement, may be used only with respect to this Settlement, and no other
9 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
10 or rule of court. Not later than ninety (90) days after the date when the Court discharges the
11 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
12 funds, Class Counsel shall destroy, all paper and electronic versions of Class Data received from
13 Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant
14 makes a written request to Class Counsel for the return, rather than the destructions, of Class
15 Data.

16 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
17 is inserted for convenience of reference only and does not constitute a part of this Agreement.

18 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
19 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
20 weekend or federal legal holiday, such date or deadline shall be on the first business day
21 thereafter.

22 13.17 Notice. All notices, demands or other communications between the Parties in
23 connection with this Agreement will be in writing and deemed to have been duly given as of the
24 third business day after mailing by United States mail, or the day sent by email or messenger,
25 addressed as follows:

26 To Plaintiff:
27 David Glenn Spivak, Esq.
28 The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

1 To Defendant:
2 Joshua B Wagner, Esq.
3 Gordon Rees Scully Mansukhani, LLP
4 633 W 5th St, 52nd Floor
5 Los Angeles, CA 90071-2086
6 jwagner@grsm.com

7 13.18 Execution in Counterparts. This Agreement may be executed in one or more
8 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
9 Agreement shall be accepted as an original. All executed counterparts and each of them will be
10 deemed to be one and the same instrument if counsel for the Parties will exchange between
11 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
12 the existence and contents of this Agreement.

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14 **[Balance of this page intentionally left blank]**
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1 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
2 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
3 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
4 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
5 process.

6 05 / 30 / 2025

7 Dated: _____, 2025

By: _____


KIMBERLY DAWN VANDERMOST

10 Dated: _____, 2025

By: _____

MIKE KELLEY, President
Dywidag Systems International, USA,
Inc.

13 THE SPIVAK LAW FIRM

14 05 / 29 / 2025

15 Dated: _____, 2025

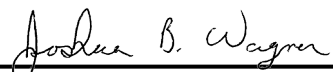
By: _____


DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KIMBERLY DAWN
VANDERMOST, and all others
similarly situated

20 GORDON REES SCULLY MANSUKHANI,
21 LLP

22 Dated: June 02, 2025

By: _____


JOSHUA B WAGNER, Attorneys for
Defendant, DYWIDAG SYSTEMS
INTERNATIONAL, USA, INC.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: _____, 2025

By: _____
KIMBERLY DAWN VANDERMOST

Dated: June 2, 2025

Signed by:
Mike Kelley
MIKE KELLEY, President
Dywidag Systems International, USA, Inc.

THE SPIVAK LAW FIRM

Dated: _____, 2025

By: _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, KIMBERLY DAWN
VANDERMOST, and all others
similarly situated

GORDON REES SCULLY MANSUKHANI,
LLP

Dated: _____, 2025

By: _____
JOSHUA B WAGNER, Attorneys for
Defendant, DYWIDAG SYSTEMS
INTERNATIONAL, USA, INC.

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

(case name: *Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc. and*
number 23STCV06697)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Dywidag Systems International, USA, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by one of Defendant’s former employees Kimberly Dawn Vandermost (“Plaintiff”) and seeks payment of (1) statutory waiting time penalties for a class of all persons whose employment with Defendant in California terminated during the Class Period (March 28, 2020 to June 28, 2024); and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all persons whose employment with Defendant in California terminated during the PAGA Period (March 27, 2022 to June 28, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Class Period Employment Termination is <<\$increment type value>> and of a PAGA Employment Termination is <<@PayPeriodValue>>. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t have a PAGA Employment Termination.

The above estimates are based on Defendant’s records showing that **you had <<__>> Employment Termination(s)** during the Class Period and **you had <<__>> Employment Termination(s)** during the PAGA Period. If you believe that you had more Employment Terminations during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much

of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant in California and had an employment termination during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. You can use the enclosed Election Not To Participate In Settlement form for this purpose. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Employment Termination / Employment Terminations Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Employment Terminations you had during the Class Period and how many Employment Terminations you had during the PAGA Period, respectively. The number Class Period Employment Terminations and number of PAGA Period Employment Terminations you had according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Employment Terminations Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to timely pay final wages. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm (“Class Counsel.”)

Defendant strongly denies violating any laws or failing to timely pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to

resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Gross Settlement Amount. Defendant Will Pay \$275,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment if appeal rights are waived, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

B. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

1. Attorney Fees and Costs. Up to \$91,666.67 (33.33% of the Gross Settlement to Class Counsel for attorneys’ fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Award. Up to \$10,000.00 as a Class Representative Service Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.

3. Administration Expenses. Up to \$7,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees

based on their PAGA Period Employment Terminations.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Based on its records, Defendant estimated that, as of the date of the Settlement, (1) there are 161 Class Members and 359 total Employment Terminations during the Class period and (2) there were 48 Aggrieved Employees who had 112 Employment Terminations during the PAGA Period.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Employment Terminations.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve 100.00% of the payments to Class Members to interest and penalties (“Non-Wage Portion.”). The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property Fund at (800) 992-4647.

F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out. The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class Members) will not receive

Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

H. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Employment Terminations, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

I. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant, related entities, or their officers, directors, employees, and agents for wages or waiting time penalties based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

J. The PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are

Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

A. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Employment Terminations of all Participating Class Members, and (b) multiplying the result by the number of Employment Termination of each individual Participating Class Member.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,000.00 by the total number of PAGA Employment Terminations of all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Employment Terminations of each individual Aggrieved Employee.

C. Employment Termination Challenges. The number of Class Employment Terminations you had during the Class Period and the number of PAGA Employment Terminations you had during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until <<RESPONSE DEADLINE>> to challenge the number of Employment Terminations and/or Employment Terminations credited to you. You can submit your challenge by signing and sending a letter to the Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this purpose. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by submitting copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Employment Terminations based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Employment Termination challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Email, fax, or mail a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. You may use the enclosed Election Not To Participate In Settlement form for this purpose. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Kimberly Dawn Vandermost vs. Dywidag Systems International, USA, Inc.*, Case No. 23STCV06697, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. You should send your Request for Exclusion to the Administrator by email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Kimberly Dawn Vandermost vs. Dywidag Systems International, USA, Inc.*, case no. 23STCV06697, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department SSC 7 of the Los Angeles Superior Court, located at Spring Street Courthouse, 312 N Spring St., Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>> (<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 23STCV06697. You can also make an appointment to personally review court documents in the Clerk's Office at the Spring Street Courthouse by calling <<CLERK OF COURT'S PHONE NUMBER>>.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David Glenn Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

Administrator:

Name of Company: Phoenix Class Action Administration Solutions
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

Vandermost v. Dywidag Systems International, USA, Inc.
Superior Court of the State of California, County of Los Angeles
Case No. 23STCV06697

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

ONLY COMPLETE THIS FORM IF YOU DO NOT WANT TO BE A PARTICIPATING CLASS MEMBER AND RECEIVE YOUR PRO RATA SHARE OF THIS CLASS ACTION SETTLEMENT. IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR A SHARE OF THE SETTLEMENT PROCEEDS, DO NOT FILL OUT THIS FORM.

HOWEVER, IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, ONE OPTION IS TO COMPLETE AND SIGN THIS FORM AND RETURN IT TO THE ADMINISTRATOR BY EMAIL, FAX, OR U.S. MAIL. IF RETURNED BY U.S. MAIL, IT MUST BE POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Vandermost v. Dywidag Systems International, USA, Inc. Class Action Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and that I also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on ____.

Dated: ____.
(Signature)

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EXHIBIT C

Superior Court of The State of California
for the County of Los Angeles
Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc., Case No.
23STCV06697

XX - XX -

1 what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE
2 DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the
3 submission date (such as a postmark or delivery service date stamp). You may use this
4 Employment Terminations Dispute form for this purpose. You must also send any documents or
5 other information that you contend supports your belief that the information set forth above is
6 incorrect. The Administrator will resolve any dispute based upon its review of both Defendant's
7 records and any information you provide. Please be advised that the information on this
8 Employment Terminations Dispute Form is presumed to be correct unless the documents you
9 submit are company records from Defendant.

10 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF CLASS**
11 **PERIOD EMPLOYMENT TERMINATIONS OR PAGA EMPLOYMENT**
12 **TERMINATIONS, YOU DO NOT NEED TO TAKE ANY ACTION**
13 **WITH RESPECT TO THIS FORM.**

EXHIBIT D

OBJECTION FORM

Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Superior Court of the State California, County of Los Angeles
Case No. 23STCV06697

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU SHOULD EMAIL IT TO <<____@____.COM>>, FAX IT TO <<XXX-XXX-XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM. THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR THE SETTLEMENT CLASS WILL FILE THE OBJECTION WITH THE COURT.

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing regardless of whether you submit a timely objection.

[] I OBJECT to the *Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

[] I am or will be represented by an attorney (provide name and address of attorney on lines below if applicable):

Executed on _____, 2023
(Signature)

<<Name>>
(Printed Name)

EMAIL TO THE ADMINISTRATOR: <<_____.COM>>

FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

Kimberly Dawn Vandermost v. Dywidag Systems International, USA, Inc.
Administrator
[ADDRESS]

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EXHIBIT E

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10 **(UNLIMITED JURISDICTION)**

11 KIMBERLY DAWN VANDERMOST, on
12 behalf of herself and all others similarly situated,
13 and as an “aggrieved employee” on behalf of
14 other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

15 *Plaintiff(s),*

16 vs.

17 DYWIDAG SYSTEMS INTERNATIONAL,
18 USA, INC., a New York corporation; DOES 1–
50, inclusive,

19 *Defendant(s).*
20

Case No. 23STCV06697

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action filed: March 28, 2023
Dept: SSC 7, The Honorable
Samantha P. Jessner

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23 The Motion of Plaintiff Kimberly Dawn Vandermost (hereafter referred to as “Plaintiff”)
24 for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 The Honorable Samantha P. Jessner, judge presiding. The Court having considered the Motion, the
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1 Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement
2 Agreement”), and other supporting papers, HEREBY ORDERS THE FOLLOWING:

3 1. The Court grants preliminary approval of the Settlement and the Settlement Class
4 based upon the terms set forth in the Settlement Agreement filed as an Exhibit to the Motion for
5 Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement
6 Agreement. The Court has determined only that there is sufficient evidence to suggest that the
7 proposed settlement might be fair, adequate, and reasonable, and that any final
8 determination of those issues will be made at the Final Approval Hearing. The Court will
9 make a determination at the hearing on the Motion for Final Approval of Class Action Settlement
10 (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the
11 Settlement Class.
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14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all
15 persons whose employment with Defendant in California terminated during the Class Period
16 (collectively “Class Members”). The “Class Period” shall mean the period of time from March 28,
17 2020 through June 28, 2024.
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19 3. Based on its records, Defendant estimates that, as of the date of the Settlement
20 Agreement, (1) there are 161 Class Members and 359 total Employment Terminations during the
21 Class Period and (2) there were 48 Aggrieved Employees who had 112 Employment Terminations
22 during the PAGA Period.

23 4. “Effective Date” means the date by when both of the following have occurred: (a)
24 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
25 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
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1 Participating Class Member objects to the Settlement and Plaintiff and her counsel expressly waive
2 their rights to appeal in writing, the day the Court enters Judgment; (b) if one or more Participating
3 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal
4 from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court
5 affirms the Judgment and issues a remittitur.

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7 5. This action is provisionally certified pursuant to section 382 of the California Code
8 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
9 purposes of settlement only with respect to the proposed Settlement Class.

10 6. Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
11 Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel
12 spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class
13 Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose,
14 and restrict access to the Class Data to Administrator employees who need access to the Class Data
15 to effect and perform under the Settlement Agreement. Defendant has a continuing duty to
16 immediately notify Class Counsel if it discovers that the Class Data omitted class member
17 identifying information and to provide corrected or updated Class Data as soon as reasonably
18 feasible. Without any extension of the deadline by which Defendant must send the Class Data to
19 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
20 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

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23 7. No later than three (3) business days after receipt of the Class Data, the
24 Administrator shall notify Class Counsel that the list has been received and state the number of
25 Class Members, PAGA Members, Employment Terminations, and Employment Terminations in

the Class Data.

8. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet with Spanish translation substantially in the forms attached to this order as **Exhibits A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Employment Terminations and PAGA Employment Terminations (if applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses using the National Change of Address database.

9. Not later than 3 business days after the Administrator’s receipt of any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time.

10. Class Counsel’s contact information is David Glenn Spivak, Esq., The Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s contact information is Joshua B Wagner, Esq., Gordon Rees Scully Mansukhani, LLP, 633 W 5th St, 52nd Floor, Los Angeles, CA, 90071-2086.

11. The deadlines for Class Members’ written objections, Challenges to Employment

Terminations (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Notice Packet requiring them to exercise options under the Settlement Agreement not later than 14 days after receipt of Notice Packet, or the deadline dates in the Notice Packet, whichever are later.

13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

14. The Administrator may not reject a Request for Exclusion as invalid because it fails

1 to contain all the information specified in the Class Notice. The Administrator shall accept any
2 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
3 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
4 determination shall be final and not appealable or otherwise susceptible to challenge. If the
5 Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator
6 may demand additional proof of the Class Member's identity. The Administrator's determination
7 of authenticity shall be final and not appealable or otherwise susceptible to challenge.
8

9 15. Every Class Member who does not submit a timely and valid Request for Exclusion
10 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
11 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
12 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless of
13 whether or not the Participating Class Member actually receives the Class Notice or objects to the
14 Settlement.
15

16 16. Every Class Member who submits a valid and timely Request for Exclusion is a
17 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
18 right to object to the class action components of the Settlement. Class Members release all claims
19 for civil penalties that could have been sought by the California Labor & Workforce
20 Development Agency ("LWDA") and/or the California Labor Commissioner for the violations
21 identified in Plaintiff's pre-filing letter to the LWDA; however, the Settlement does not release the
22 individual claims of any Non-Participating Class Member.
23

24 17. Challenges to Calculation of Employment Terminations. Each Class Member shall
25 have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
26

Members whose Notice Packet is re-mailed) to challenge the number of Class Employment Terminations and/or PAGA Employment Terminations (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. An Employment Termination Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or U.S. Mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Employment Terminations information contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Period Employment Terminations and/or PAGA Employment Terminations shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Period Employment Terminations and/or PAGA Employment Terminations to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

18. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

19. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so

1 not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 14
2 days for Class Members whose Notice Packet was re-mailed). An Objection form attached as
3 Exhibit D may be used for this purpose but is not required.

4 20. Non-Participating Class Members have no right to object to any of the class action
5 components of the Settlement.

6 21. Not later than 14 days before the date by which Plaintiff is required to file the Motion
7 for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense
8 Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
9 compliance with all of its obligations under the Settlement Agreement, including, but not limited
10 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of
11 Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion from
12 Settlement it received (both valid or invalid), the number of written objections and attach the
13 Exclusion List. The Administrator will supplement its declaration as needed or requested by the
14 Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s)
15 in Court.

16 22. The Court approves, as to form and content, the Class Notice in substantially the
17 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
18 substantially the form attached as Exhibit B to this Order, the Employment Terminations Dispute
19 form in substantially the form attached as Exhibit C to this Order, and the Objection form in
20 substantially the form attached as Exhibit D to this Order.

21 23. The Court approves, for settlement purposes only, David Glenn Spivak of The
22 Spivak Law Firm as Class Counsel.

24. The Court approves, for settlement purposes only, Kimberly Dawn Vandermost as the Class Representative.

25. The Court approves Phoenix Class Action Administration Solutions as the Administrator.

26. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

27. The Court preliminarily approves the estimated Administrator costs payable to the Administrator subject to final review by the Court.

28. The Court preliminarily approves Plaintiff's Class Representative Service Payment subject to final review by the Court.

29. A Final Approval Hearing shall be held on ____ at _____.m. in Department SSC 7 of the Superior Court for the State of California, County of Los Angeles, located at the Spring Street Courthouse, 312 N Spring St., Los Angeles, CA 90012 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Service Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any continuance of the hearing of the motion for final approval.

30. If for any reason the Court does not execute and file a Final Approval Order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the

1 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
2 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
3 litigation, as more specifically set forth in the Settlement.

4 31. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
6 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
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8 **IT IS SO ORDERED.**

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11 **DATE**

**THE HONORABLE SAMANTHUA P.
JESSNER
SUPERIOR COURT JUDGE**

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EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

KIMBERLY DAWN VANDERMOST, on
behalf of herself and all others similarly situated,
and as an “aggrieved employee” on behalf of
other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

DYWIDAG SYSTEMS INTERNATIONAL,
USA, INC., a New York corporation; DOES 1–
50, inclusive,

Defendant(s).

Case No. 23STCV06697

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: March 28, 2023
Dept: SSC 7, The Honorable
Samantha P. Jessner

20 This matter came on for hearing on ____ at ____m. in Department SSC 7 of the above-
21 captioned court on Plaintiff’s Motion for Final Approval of a Class Action Settlement pursuant
22 to California Rules of Court, Rule 3.769, as set forth in the Joint Stipulation of Class Action
23 Settlement and Release of Claims (the “Settlement”) filed herewith which provides for a Gross
24 Settlement Amount (“GSA”) of up to \$275,000.00 in compromise of all disputed claims on behalf
25 of all persons whose employment with Defendant in California terminated during the Class Period
26 of this Settlement, March 28, 2020 through June 28, 2024 (“Settlement Class Period”). All
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capitalized terms used herein shall have the same meaning as defined in the Settlement.

In accordance with the Court's prior Order Granting Preliminary Approval of Class Action Settlement, Class Members have been given notice of the terms of the Settlement and the opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its terms. Having received and considered the Settlement, the supporting papers filed by the Parties, and the evidence and argument received by the Court in conjunction with the motions for preliminary and final approval of the Settlement, the Court grants final approval of the Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING DETERMINATIONS¹:

1. The Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members. Pursuant to this Court's Order Granting Preliminary Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the Settlement, their right to receive their proportional share of the Settlement, their right to request exclusion, their right to comment upon or object to the Settlement, and their right to appear in person or by counsel at the final approval hearing and to be heard regarding final approval of the Settlement. Adequate periods of time were provided for each of these procedures. No member of the Settlement Class presented written objections to the proposed Settlement as part of this notice process, stated an intention to appear, or actually appeared at the final approval hearing.

2. For purposes of this Final Order and Judgment, the Class Members are all persons

¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and incorporated by reference.

1 whose employment with Defendant in California terminated during the Class Period during the
2 period of March 28, 2020 to June 28, 2024 (“Settlement Class Period”).

3 3. The Court finds and determines that the notice procedure afforded adequate
4 protections to Class Members and provides the basis for the Court to make an informed decision
5 regarding final approval of the Settlement based on the responses of Class Members. The Court
6 finds and determines that the notice provided in this case was the best notice practicable, which
7 satisfied the requirements of law and due process as to all persons entitled to such notice.
8

9 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
10 resolution set forth in this Settlement will release and discharge the Released Claims by way of
11 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
12 of any kind by each and all of the Settlement Class Members (including participation to any extent
13 in any representative or collective action) against the Released Parties. This release will not take
14 effect until Defendant has paid the Gross Settlement Amount in full per this Settlement
15 Agreement.
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17 **PAGA Release.** Plaintiff releases all claims for civil penalties that could have been
18 sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to
19 the LWDA; the Settlement does not release the individual claims of any Non-Participating Class
20 Member.
21

22 **“Released Claims”** shall mean all claims stated in the Operative Complaint and based
23 solely on the facts alleged in the Operative Complaint. **“Released Parties”** shall mean Defendant
24 and any related entities, its officers, directors, employees and agents.

25 2. The Court further finds and determines that the terms of the Settlement are fair,
26 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
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1 provisions of the Settlement, including the release of claims contained therein, should be and
2 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
3 according to its terms. As of the Effective Date of Settlement, and for the duration of the
4 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
5 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
6 against the Released Parties as fully set forth in the Settlement. No objections were received by
7 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
8 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
9 the Administrator and therefore is/are not in the Settlement Class.

11 3. The Court finds and determines that (a) the Settlement Shares to be paid to
12 Participating Class Members and (b) the LWDA payment as civil penalties under the California
13 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
14 2699 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
15 final approval to, and orders the payment of, those amounts be made to the Participating Class
16 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
17 accordance with the terms of the Settlement.

19 4. The Court further grants final approval to and orders that the following payments
20 be made in accordance with the terms of the Settlement:

21 a. Class Counsel fees & costs of \$91,666.67 in attorneys’ fees and \$12,500.00
22 in litigation costs to Class Counsel;

24 b. \$10,000.00 as a Class Representative Service Payment award payable to
25 Plaintiff Kimberly Dawn Vandermost for **her** service as a Class Representative;

26 c. \$7,000.00 in costs of the Administrator payable to Phoenix Class Action
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1 Administration Solutions for its services as the Administrator; and

2 d. Payment of \$3,000.00 (75% of the (\$4,000.00 PAGA penalty) to the
3 LWDA.

4 7. The settlement shall proceed as directed in the Settlement, and no payments
5 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
6 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
7 of all matters relating to the interpretation, administration, implementation, effectuation and
8 enforcement of this Final Order and Judgment and the Settlement pursuant to California Rule of
9 Court 3.769(h).

10 8. Within 14 calendar days of the Effective Date of Settlement, Defendant shall
11 deposit the Settlement proceeds in an account designated by the Administrator: (i) the total
12 amount of all Individual Class Payments to Participating Class Members, (ii) the Court approved
13 Class Counsel fees & costs, (iii) the Court-approved Class Representative Service Payment, (iv)
14 the Court-approved costs of the Administrator, (v) the payment to the LWDA, and (vi) the total
15 amount of all Individual PAGA Payments to Aggrieved Employees.

16 9. Defendant's payment of such sums shall be the sole financial obligation of
17 Defendant under the Settlement, and shall be in full satisfaction of all claims released herein,
18 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs and
19 expenses.

20 10. Pursuant to CCP 384 and the Settlement, Participating Class Members shall have
21 one hundred and eighty (180) days from the date of the check's issuance to cash their Settlement
22 Share check. After the expiration of the 180-day period, on Defendant's behalf, the Administrator
23 shall remit any amounts from voided settlement checks and otherwise unclaimed, plus interest on
24

1 the Residue at the legal rate of interest from the date of entry of the initial judgement to the
2 California Unclaimed Property Fund.

3 11. The Parties shall file a final accounting report by _____. A non-appearance case
4 review re submission of a final report is scheduled for ____ at _____.m. in Department SSC 7. The
5 Parties shall also prepare and file a stipulation and proposed order and proposed Amended Final
6 Order and Judgment by _____ which includes the amount of distribution of unpaid cash Residue,
7 and unclaimed or abandoned funds to the non-party, the accrued interest on that sum. The
8 stipulation shall be signed by counsel for the class and defense counsel in accord with the
9 proposed Amended Final Order and Judgment. If there are objections by any party or non-party,
10 class counsel shall immediately notify the Court and the matter will be set for further hearing. A
11 non-appearance hearing for the lodging of the stipulation and proposed order and separate
12 amended judgment is scheduled for ____ at _____.m. in Department SSC 7.

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15 12. Nothing in this Final Order and Judgment shall preclude any action to enforce the
16 Parties' obligations under the Settlement or hereunder, including the requirement that Defendant
17 deposit funds for distribution by the Administrator to Participating Class Members in accordance
18 with the Settlement.

19 13. The Court hereby enters final judgment in this case in accordance with the terms
20 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
21 Order and Judgment.

22 14. The Parties are hereby ordered to comply with the terms of the Settlement.

23 15. The Parties shall bear their own costs and attorneys' fees except as otherwise
24 provided by the Settlement and this Final Order and Judgment.

25 16. The Settlement is not an admission by Defendant nor is this Final Order and
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1 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant.
2 Furthermore, the Settlement is not a concession by Defendant and shall not be used as an
3 admission of any fault, omission, or wrongdoing by Defendant. Neither this Final Order and
4 Judgment, the Settlement, any document referred to herein, any exhibit to any document referred
5 to herein, any action taken to carry out the Settlement, nor any negotiations or proceedings related
6 to the Settlement are to be construed as, or deemed to be evidence of, or an admission or
7 concession with regard to, the denials or defenses of Defendant, and shall not be offered in
8 evidence in any proceeding against the Parties hereto in any Court, administrative agency, or other
9 tribunal for any purpose whatsoever other than to enforce the provisions of this Final Order and
10 Judgment. This Final Order and Judgment, the Settlement and exhibits thereto, and any other
11 papers and records on file in the Action may be filed in this Court or in any other litigation as
12 evidence of the settlement by Defendant to support a defense of res judicata, collateral estoppel,
13 release, or other theory of claim or issue preclusion or similar defense as to the Released Claims.
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16 17. This document shall constitute a Judgment for purposes of California Rule of
17 Court 3.769(h).

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
19
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21 _____
22 **DATE**

23 **THE HONORABLE SAMANTHA P.**
24 **JESSNER**
25 **SUPERIOR COURT JUDGE**
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