

1 DAVID GLENN SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)

lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff,

8 KIMBERLY DAWN VANDERMOST, and all others similarly situated

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

10 **FOR THE COUNTY OF LOS ANGELES**

11 **(UNLIMITED JURISDICTION)**

12
13 KIMBERLY DAWN VANDERMOST, on
14 behalf of herself and all others similarly situated,
15 and the general public, and as an “aggrieved
16 employee” on behalf of other “aggrieved
17 employees” and the State of California under the
18 Labor Code Private Attorneys General Act of
19 2004,

20 *Plaintiff(s),*

21 vs.

22 DYWIDAG SYSTEMS INTERNATIONAL,
23 USA, INC., a New York corporation; and DOES
24 1–50, inclusive,

25 *Defendant(s).*

Case No. 23STCV06697

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

Hearing Date: February 5, 2026

Hearing Time: 10:00 a.m.

Hearing Dept.: SSC-7, The Honorable
Samantha P. Jessner

Action filed: March 28, 2023

Trial Date: Not Set



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement Agreement filed as an Exhibit to the Motion for
8 Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement
9 Agreement. The Court has determined only that there is sufficient evidence to suggest that the
10 proposed settlement might be fair, adequate, and reasonable, and that any final determination of
11 those issues will be made at the Final Approval Hearing. The Court will make a determination at
12 the hearing on the Motion for Final Approval of Class Action Settlement (the “Final Approval
13 Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 all 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
17 28, 2020 through June 28, 2024.

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

22 4. “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 and Plaintiff and her counsel expressly
26 waive their rights to appeal in writing, the day the Court enters Judgment; (b) if one or more
27 Participating Class Members objects to the Settlement, the day after the deadline for filing a notice
28 of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 appellate court affirms the Judgment and issues a remittitur.

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 Member addresses using the National Change of Address database.

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

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

13 11. The deadlines for Class Members' written objections, Challenges to Employment
14 Terminations (disputes), and Requests for Exclusion will be extended an additional 14 days
15 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is
16 re-mailed. The Administrator will inform the Class Member of the extended deadline with the
17 re-mailed Notice Packet.

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

26 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
27 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
28 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
2 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
3 the Class Member's election to be excluded from the Settlement and includes the Class Member's
4 name, address and email address or telephone number. To be valid, a Request for Exclusion must
5 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
6 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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

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

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

28 20. Non-Participating Class Members have no right to object to any of the class action



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

1 components of the Settlement.

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

12 22. The Court approves, as to form and content, the Class Notice in substantially the
13 form attached as Exhibit A to the Settlement, the Election Not to Participate in Settlement form
14 in substantially the form attached as Exhibit B to the Settlement, the Employment Terminations
15 Dispute form in substantially the form attached as Exhibit C to the Settlement, and the Objection
16 form in substantially the form attached as Exhibit D to the Settlement.

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

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

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

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

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

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



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

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 sixteen (16) Court days before the Final Approval Hearing. 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 proposed Settlement that is the subject of this order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement.

31. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing from time to time without further notice to members of the Class. The Plaintiff shall give prompt notice of any continuance to Settlement Class Members who object to the Settlement.

IT IS SO ORDERED.

DATE _____

**THE HON. SAMANTHA P. JESSNER,
SUPERIOR COURT JUDGE**



SPIVAK LAW
EMPLOYEE RIGHTS

Mail: 26
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069 27
(213) 725-9094 Tel
(213) 634-2485 Fax 28
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067