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11 Attorneys for Plaintiffs and the Putative Class

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 STEPHEN WATTS, ROLAND HERRERA,
15 CLARK ARNOLD, DEENA BARTLEY,
CLIFFORD CORCORAN, AMY
16 PORTERFIELD, SCOTT CASTANON, and
RUSSELL PEREZ, individually and on behalf of
17 all others similarly situated,

18 Plaintiffs,

19 vs.

20 SYSCO CORPORATION, a Delaware
corporation; SYSCO SAN DIEGO, INC., a
21 Delaware corporation; SYSCO SAN
FRANCISCO, INC., a Delaware corporation;
22 SYSCO VENTURA, INC., a Delaware
corporation; SYSCO LOS ANGELES, INC., a
23 Delaware corporation; SYSCO SACRAMENTO,
INC., a Delaware corporation; SYSCO
24 CENTRAL CALIFORNIA, INC., a California
corporation,

25 Defendants.
26

Case No.: RG09464228

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Date: June 9, 2011

Time: 3:00 p.m.

Dept: 17

Judge: Hon. Steven A. Brick

RESERVATION NO. 1180655

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I. INTRODUCTION

1. This Joint Stipulation of Class Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiffs Stephen Watts, Rolando Herrera, Clark Arnold, Deena Bartley, Clifford Corcoran, Scott Castanon, Amy Porterfield, and Russell Perez (collectively “Named Plaintiffs”), Defendants Sysco Corporation, Sysco San Diego, Inc.; Sysco San Francisco, Inc.; Sysco Ventura, Inc.; Sysco Los Angeles, Inc.; Sysco Sacramento, Inc.; and Sysco Central California, Inc. (collectively “Sysco” or “Defendants”), and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement supersedes any and all prior memoranda of understanding and accurately sets forth the Parties’ class action settlement including payments in the amount of seventeen million nine hundred ninety-five thousand dollars (\$17,995,000), plus additional relief consisting of the institution of an Expense Reimbursement Policy by Defendants, resolves all of the Named Plaintiffs’ claims, and all their claims on behalf of themselves and the “Putative Class Members” (as defined in section II.12 below) for alleged failure to reimburse business expenses, related claims for violation of itemized wage statement, unlawful deductions, and record keeping requirements under California law, and claims for penalties based on the claims described above, as detailed below.

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II. DEFINITIONS

2. The “Action” means the lawsuit entitled *Stephen Watts, et al. v. Sysco Corporation, et al.*, Case No. RG09464228, pending in Alameda County Superior Court.

3. “Class Member” means a Putative Class Member who does not properly elect to be excluded from the terms of this Agreement. Individual Class Members may be referred to collectively as “Class Members” or the “Class.”

4. “Marketing Associates” and “MAs” mean all employees who worked in California for any of the Defendants, other than Sysco Corporation, during the Class Period (as defined below) in the position of Marketing Associate (MA).

5. “Class Period” means the period between June 22, 2005 and April 3, 2011, inclusive of those dates.

1 6. “Class Positions” means Marketing Associate jobs for Sysco in California during the
2 Class Period.

3 7. “Class Representatives” or “Named Plaintiffs” means Named Plaintiffs Watts, Herrera,
4 Arnold, Bartley, Corcoran, Castanon, Porterfield, and Perez, who have been designated by Plaintiffs’
5 Counsel as Class Representatives for the Settlement Class.

6 8. “Court” means the Superior Court of the State of California, County of Alameda.

7 9. “Expense Reimbursement Policy” means the policy to reimburse expenses incurred by
8 MAs in the course of their jobs, which Sysco has adopted as part of this Agreement, as more fully
9 described in paragraph 28.c below.

10 10. Plaintiffs and Defendants herein are collectively referred to as “the Parties.”

11 11. “Plaintiffs’ Counsel” means the law firms of Hinton Alfert Sumner & Kaufmann of
12 Walnut Creek, California, and Goldstein, Demchak, Baller, Borgen & Dardarian of Oakland,
13 California.

14 12. “Putative Class Members” means all current and former Marketing Associates
15 employed by Sysco in California at any time from June 22, 2005 through April 3, 2011.

16 13. “Released Parties” means Defendants and their former and present subsidiaries,
17 affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials directors
18 and shareholders, and their respective pension, profit sharing, savings, health, and other employee
19 benefit plans of any nature, and those plans’ respective trustees and administrators.

20 14. “Settlement Administrator” or “Administrator” means Kurtzman Carson Consultants,
21 which has been selected by the parties, subject to Court approval, to administer the Settlement as
22 provided for in this Agreement.

23 15. “Settlement Effective Date” means the date of (i) the day after the last date by which a
24 notice of appeal to the California Courts of Appeal of the Judgment may be timely filed, and none is
25 filed; (ii) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or
26 otherwise, the day after the last date for filing a request for further review of the Courts of Appeal’s
27 decision passes, and no further review is requested; or (iii) if an appeal is filed and there is a final
28 disposition by ruling, dismissal, denial, or otherwise by the Courts of Appeal, and further review of

1 the Courts of Appeal's decision is requested, the day after the request for review is denied with
2 prejudice and/or no further review of the judgment can be requested; or (iv) if review is accepted, the
3 day the California Supreme Court affirms the Settlement.

4 III. LITIGATION BACKGROUND

5 16. On July 22, 2009, Named Plaintiffs Watts and Herrera filed a Complaint seeking to
6 recover unreimbursed business expenses incurred by themselves individually and by a class of
7 similarly situated MAs in California. Named as defendants in that Complaint were Defendants Sysco
8 Corporation, Sysco San Francisco, Inc., and Sysco San Diego, Inc.

9 17. The gravamen of the original Complaint was that Defendants had failed to reimburse
10 their MAs for out-of-pocket expenses that are necessary for the MA job, including mileage and other
11 personal automobile-related expenses, personal cellular phone usage, and home office expenses.
12 Those original Plaintiffs sought class-wide damages and restitution for reimbursement of the business
13 expenses, interest thereon, injunctive relief, costs and attorneys' fees pursuant to Labor Code § 2802,
14 Business and Professions Code §§ 17200 *et seq.*, and other provisions of law, for a period extending
15 back four years from the Complaint's filing date as the alleged Labor Code violations by Defendant
16 purportedly serve as predicate "unlawful acts" under the Unfair Competition Law ("UCL"), Business
17 and Professions Code § 17200.

18 18. With the filing of a First Amended Complaint on November 4, 2009, Clark Arnold was
19 added as a Named Plaintiff in the Action. With the filing of a Second Amended Complaint that has
20 been or will be effected pursuant to this Agreement, additional changes are made in Named Plaintiffs'
21 claims and allegations: (1) Deena Bartley, Clifford Corcoran, Scott Castanon, Amy Porterfield, and
22 Russell Perez join as Named Plaintiffs; (2) Defendants Sysco Ventura, Inc., Sysco Los Angeles, Inc.,
23 Sysco Sacramento, Inc., and Sysco Central California, Inc., are added as named Defendants; and (3)
24 Named Plaintiffs add claims against Defendants for related failures regarding accurate itemized wage
25 statements (Labor Code §§ 226 and 226.3) and unlawful deductions (Labor Code § 221), and for
26 penalties under the Private Attorney General Act ("PAGA") (Labor Code § 2699 *et. seq.*).

27 19. In its Answers to the original and amended Complaints, Defendants deny Named
28 Plaintiffs' claims. Defendants further aver that the case should not be certified as a class action, that

1 they did not unlawfully fail to reimburse MAs for business expenses, and that they have complied
2 with California law by reimbursing MAs for such business expenses through their compensation. In
3 settling the Action, Defendants maintain those positions.

4 20. Since before the filing of the Action and through settlement, Plaintiffs' Counsel has
5 conducted a thorough investigation into the facts of this class action, including interviewing numerous
6 witnesses and reviewing thousands of documents. Plaintiffs' Counsel has also served extensive
7 written discovery, including multiple sets each of Form and Special Interrogatories, Requests for
8 Admission, and Requests for Production of Documents on the originally named Defendant.
9 Defendants have produced documents and responses to this discovery, which Plaintiffs' Counsel has
10 reviewed and analyzed. In addition, all of the Defendants produced informally, as part of the
11 mediation/settlement process, a large number of additional documents, data, and information which
12 Plaintiffs' Counsel have reviewed and analyzed. Plaintiffs' Counsel deposed eight managers and
13 MAs of Sysco San Francisco, Inc. and Sysco San Diego, Inc. and two witnesses who testified for
14 Sysco San Francisco, Inc. and Sysco San Diego, Inc. as "persons most qualified" as to the key topics
15 at issue for class certification and on the merits. Defendants have served Named Plaintiffs with nine
16 sets of written discovery (three each Named Plaintiffs Watts, Herrera and Arnold) to which Plaintiffs
17 Watts, Herrera, and Arnold responded, and took the depositions of Named Plaintiffs Herrera and
18 Arnold.

19 21. After the litigation and discovery, summarized in paragraphs 16-20, the Parties agreed
20 to explore settlement negotiations through mediation.

21 22. In preparation for mediation, Plaintiffs' Counsel submitted 27 declarations from
22 Putative Class Members, which, among other things, set forth in detail MAs' job duties, work
23 routines, and the types and amounts of out-of-pocket expenses incurred in their work. These
24 declarations, and the documents and data produced and provided by Defendants, provided a basis for
25 Plaintiffs' Counsel's estimates of the unreimbursed business expenses incurred by Class Members
26 while carrying out their MA duties for Defendants. Plaintiffs' Counsel also served on Defendants
27 detailed mediation briefs setting out the facts, applicable law, and damages as Plaintiffs' Counsel
28 determined them.

1 23. After a full day of arms-length negotiation on November 19, 2010, assisted by the
2 Mediator, Layn Phillips (U. S. District Court Judge, Ret.), the parties failed to come to agreement on
3 settlement terms. However, several days after the mediation the Parties commenced direct
4 negotiations. After protracted follow-up negotiations lasting five months, scores of telephone
5 conversations and written communications, and the exchange of a number of drafts of a Memorandum
6 of Understanding, a Settlement Agreement, and related documents, the Parties reached an agreement
7 to settle this Action on the terms contained in this Settlement Agreement, subject to the Court's
8 approval of the Settlement.

9 24. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
10 discharge all disputes and claims against the Released Parties arising from or related to the Action.
11 This Settlement does not constitute an admission of liability. Sysco denies any liability. The Parties
12 agree that this is a settlement of disputed claims and that Labor Code Section 206.5 is therefore
13 inapplicable. Sysco denies liability for the claims asserted, and does not agree that certification of a
14 class in this Litigation or in any other case is appropriate or authorized under law, other than for
15 purposes of this Settlement. Neither the settlement documents, nor any other item pertaining to the
16 Settlement contemplated herein, shall be offered in this case or any other case or proceeding as
17 evidence of any admission by Sysco of any liability on any claims for damages or other relief, or of
18 the appropriateness of class certification or any element thereof. Any stipulation or admission by
19 Sysco contained herein is made for settlement purposes only. Sysco has concluded that any further
20 defense of this litigation would be protracted and expensive. Substantial amounts of time, energy and
21 resources of Sysco have been and, unless this Settlement is made, will continue to be devoted to the
22 defense of the claims asserted by Plaintiffs and the Putative Class. Sysco has, therefore, agreed to
23 settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set
24 forth in the Action. The Parties believe this Settlement is a fair, adequate, and reasonable settlement
25 of this Action and have arrived at this Settlement in arms-length negotiations, taking into account all
26 relevant factors, present and potential. This Settlement was reached after extensive negotiations

27 25. In the event this Settlement is not finally approved, nothing contained herein shall be
28 offered in this case or any other case or proceeding as an admission of liability or the appropriateness

1 of class certification, or construed as a waiver by Sysco of its contention that class certification is not
2 appropriate or is contrary to law in this Action or any other case or proceeding.

3 26. It is the intention of the Parties that this Settlement Agreement shall constitute a full and
4 complete settlement and release of the claims averred in the Action. This release includes in its effect
5 a release of all the Released Parties.

6 **IV. JURISDICTION AND VENUE**

7 27. The Parties agree that this Court has jurisdiction over the Parties and the subject matter
8 of this Action, and that venue is proper in this Court for purposes of obtaining preliminary and final
9 approval of this Settlement. The Parties further request and agree to the Court's exercise of
10 continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments
11 hereunder have been completed. The Parties agree that if the Court does not give final approval to the
12 Settlement, nothing in this Settlement Agreement shall be deemed to constitute a waiver by
13 Defendants or any of them of any objections or challenges to venue in Alameda County or any other
14 County for purposes of continuing litigation.

15 **V. TERMS OF SETTLEMENT**

16 28. NOW, THEREFORE, in consideration of the mutual covenants, promises, and under-
17 takings set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 18 a. Certification. The Action may be certified as a class action pursuant to
19 California Rule of Court 3.769(d) and Code of Civil Procedure § 382 for the
20 purposes of the monetary relief provided in this Settlement Agreement. Putative
21 Class Members shall be defined as and consist of: "All current and former
22 Marketing Associates employed by Sysco in California at any time from June
23 22, 2005 through April 3, 2011 ("Class Period")." Named Plaintiffs and their
24 attorneys, Hinton Alfert Sumner & Kaufmann, and Goldstein, Demchak, Baller,
25 Borgen & Dardarian, may be appointed as Class Representatives and Class
26 Counsel respectively.

1 b. Settlement Payments.

2 i. Under this Settlement Agreement, Defendants shall pay the total sum of
3 seventeen million nine hundred ninety-five thousand dollars
4 (\$17,995,000) (the "Settlement Fund"), which covers all payments to the
5 Class, reasonable attorneys' fees and costs awarded by the Court as
6 specified in this Settlement Agreement, costs of notice and
7 administration of the Settlement Agreement, enhancement payments to
8 the Named Plaintiffs (including those added by the Second Amended
9 Complaint), interest, penalties paid to the California Labor & Workforce
10 Development Agency (LWDA), employees' share of applicable payroll
11 taxes, and employer's share of FICA and any other applicable payroll
12 taxes, if any, and amounts deposited to the Reserve Fund created
13 hereunder. Under no circumstances shall Sysco be required to pay more
14 than the amount of this Settlement Fund in connection with this
15 Settlement.

16 ii. From the Settlement Fund, Plaintiffs' Counsel will apply to the Court
17 for, and Defendants will not object to Plaintiffs' Counsel's application
18 for, awards of actual litigation costs not to exceed \$50,000, to resolve
19 Named Plaintiffs' claims for costs of litigation expenses, and up to
20 twenty five percent (25%) of the Settlement Fund (four million four
21 hundred ninety eight thousand seven hundred fifty dollars (\$4,498,750)
22 to resolve Named Plaintiffs' and Plaintiffs' Counsel's claims for
23 reasonable attorneys' fees.

24 iii. The costs of settlement administration will also be paid from the
25 Settlement Fund.

26 iv. Plaintiffs' Counsel will also apply to the Court for, and Defendants will
27 not object to Plaintiffs' Counsel's application for, Enhancement
28 Payments totaling \$82,500 to the proposed Class Representatives –

1 \$15,000 to Named Plaintiffs Watts, Herrera, and Arnold \$7,500 to
2 Named Plaintiffs Bartley, Corcoran, Castanon, Porterfield, and Perez, to
3 be paid from the Settlement Fund

4 v. A payment in the amount of \$18,750.00 (75% of an allocated \$25,000)
5 shall be deducted from the Settlement Fund and paid to the California
6 Labor & Workforce Development Agency ("LWDA") as a payment of
7 penalties for the PAGA claims asserted in the Second Amended
8 Complaint. In connection with settlement approval, the LWDA shall be
9 notified of the existence of the Settlement. Should the LWDA object to
10 the Settlement or the amount of this payment, the parties agree to work
11 in good faith to negotiate another agreeable amount to be paid out of the
12 Settlement Fund for this payment of penalties to the LWDA under
13 PAGA and any such amount shall be paid to the LWDA under PAGA.

14 vi. If no objection to the Settlement is filed, Sysco shall deposit the
15 Settlement Fund to an interest-bearing account established by the
16 Administrator within ten (10) days of the Court's order granting final
17 approval of the proposed settlement. If there are objectors to the
18 Settlement, Sysco shall transmit the Settlement Fund to the
19 Administrator on the Settlement Effective Date. Whether or not an
20 objection to the Settlement is filed, payment shall not be distributed to
21 the class before the Settlement Effective Date. The Parties agree that
22 non-objectors will not have standing to appeal the Settlement.

23 vii. The Settlement Administrator will administer the notice, challenge, opt
24 out and objection to settlement procedures, informing Class Members of
25 their rights in regard to the proposed settlement as specified below; will
26 disburse monies from the Settlement Fund as and when authorized in this
27 Settlement Agreement and by order of the Court; will file and issue any
28 necessary tax reporting documents; and will inform the Parties and the

1 Court of its fulfillment of the duties imposed by this Settlement
2 Agreement. The costs of the Settlement Administrator shall be paid
3 from the Settlement Fund, including interest accruing to the Fund.

4 viii. The Settlement Administrator will, with Court approval, set aside from
5 the Settlement Fund a "Reserve Fund" in the amount of \$50,000, to be
6 available to pay any late or disputed payments approved by the
7 Settlement Administrator within one year after the entry of the Court's
8 order granting final approval of the Settlement. The Settlement
9 Administrator shall hold the Reserve Fund in an interest-bearing account.
10 All interest accrued shall remain in the Reserve Account unless and until
11 expended for such late or disputed payments pursuant to this Settlement
12 Agreement, and any remaining funds not so expended shall be paid to
13 the court-approved *cy pres* beneficiary(ies) as provided below.

14 ix. The "Net Settlement Fund" is the balance of the Settlement Fund,
15 including interest accruing to it, after payments have been made for
16 attorneys' fees and litigation expenses, settlement administration costs,
17 Named Plaintiffs' service payments, LWDA PAGA penalty amounts,
18 after deducting the "Reserve Fund" established pursuant to this
19 Agreement, and the employer's share of payroll taxes as provided for
20 herein. The Net Settlement Fund shall be used to pay all amounts due to
21 Settlement Class Members based on their weeks worked in Class
22 Positions and the employers' share of payroll taxes due on the portion of
23 such paid-out amounts which are attributable to taxable payments as
24 specified in this Agreement (i.e. 60%); and all monies in the Net
25 Settlement Fund shall be expended for those purposes, without any
26 reversion to Defendants.

27 x. Payments to Settlement Class Members shall be divided pro-rata among
28 such Class Members based on weeks they worked as an MA during the

1 Class Period (excluding periods of leave from that position, vacations,
2 sick time, and holidays), as a percentage of the total number of such
3 weeks worked by all such Class Members during the Class Period. In
4 allocating the Net Settlement Fund in that manner, all weeks worked by
5 Class Members shall be counted as of equal weight, without regard to
6 when or where worked.

7 xi. The employer's share of payroll taxes for FICA, and any other taxes for
8 which the employer would ordinarily be responsible, shall be deducted
9 from the Settlement Fund in determining the Net Settlement Fund to be
10 distributed to Class Members as taxable payroll payments.

11 xii. The Settlement Administrator shall, after final approval of the Settlement
12 Agreement by the Court, pay each Settlement Class Member a pro rata
13 portion of the Net Settlement Fund based on the number of weeks he or
14 she worked in Class Positions. That pro rata portion shall be determined
15 by dividing the total number of weeks worked in Class Positions during
16 the Class Period by all members of the Settlement Class (excluding
17 periods of leave from that position but including vacations and holidays)
18 into the amount of the Net Settlement Fund to arrive at an amount per
19 week; then, for each eligible Settlement Class Member, multiplying that
20 amount times the number of weeks the Settlement Administrator
21 determines that such Settlement Class Member was employed as a MA
22 during the Class Period.

23 xiii. The number of weeks worked by Putative Class Members in the Class
24 positions shall be determined by the Settlement Administrator based on
25 employment records to be provided by Defendants as specified below.
26 Putative Class Members shall have the right to challenge the number of
27 weeks worked as an MA and periods of leave (but not vacations, sick
28 time, or holidays) as reflected in Defendants' records. The Settlement

1 Administrator shall make final and non-appealable determinations as to
2 any such challenges, and shall revise Class Members' weeks worked
3 numbers consistent with its determinations. The Settlement
4 Administrator shall use any revised weeks worked data resulting from its
5 determinations on Putative Class Members' challenges in its final
6 calculations of the pro-rata portions of the Net Settlement Fund payable
7 to individual Class Members.

8 xiv. The Settlement Administrator shall make settlement payments due to
9 Class Members under this Agreement, as well as service payments to the
10 Named Plaintiffs and attorneys' fees and expenses awarded to Plaintiffs'
11 Counsel, by sending such payments by mail or other reliable means to
12 the respective recipients as specified below. Such payments shall be
13 made by checks that shall become void if they remain uncashed 90 days
14 after their issuance.

15 xv. Class Members entitled to recover under this Settlement Agreement will
16 include only those individuals who are identified on Defendants' records
17 as having worked as a MA in California during the Class Period, or those
18 additional individuals who obtain a determination by the Settlement
19 Administrator that they worked in that capacity notwithstanding the
20 absence of Defendants' records confirming such employment.

21 xvi. Except for the service awards to be made to the Named Plaintiffs, all
22 settlement payments under this Settlement Agreement are for business
23 expenses, interest, and related pay statement and PAGA penalties, in the
24 following proportions: 60% taxable non-accountable business expenses,
25 and 40% non-taxable interest and penalties, unless such treatment of the
26 payments is contrary to an IRS letter ruling. The Administrator shall
27 issue to Class Members the appropriate tax reporting form(s) (i.e. W-2,
28 1099-INT, 1099-MISC) for payments made to Class Members.

1 Payments made to Named Plaintiffs and Class Members pursuant to this
2 Settlement Agreement shall not be considered or treated as wages for
3 purposes of any Sysco profit-sharing, retirement, or other employee
4 benefit plan(s). Named Plaintiffs and Class Members who receive
5 payments under this Settlement Agreement are responsible for any taxes
6 applicable to such payments.

7 xvii. The Settlement is non-reversionary. The entire Settlement Fund amount,
8 after deductions for attorneys' fees, litigation costs, administrative
9 expenses, enhancement awards to class representatives, employer's and
10 employee shares of applicable taxes, and a Reserve Fund to cover claims
11 of Class Members whose entitlements to recovery could not be satisfied
12 through the normal notice and payment procedure (the "Net Settlement
13 Amount"), will be distributed to Class Members or a court-approved *cy*
14 *pres* beneficiary for any unclaimed funds. Class members shall not be
15 required to file or submit a claim form or take any other action in order
16 to receive payment.

17 c. Implementation and Maintenance of New Expense Reimbursement Policy

- 18 i. On April 4, 2011, as a part of this Settlement Agreement and in response
19 to this litigation, Sysco implemented throughout California a new
20 Expense Reimbursement Policy for MAs, the provisions of which are
21 described in Exhibit A to this Settlement Agreement.
- 22 ii. Defendants agree to maintain and continue to implement the Expense
23 Reimbursement Policy until at least April 4, 2013. If Sysco decides to
24 offer MAs as an alternative a different plan for reimbursement of
25 business expenses prior to April 4, 2013, each Marketing Associate will
26 have the right to choose between continuing to receive reimbursement
27 under the plan described in Exhibit A or accepting reimbursements under
28 the alternative plan.

1 iii. It is Class Counsel's opinion that absent any future change in the law, the
2 written provisions of Sysco's Expense Reimbursement Policy (Exhibit
3 A) do not, on their face, violate California Labor Code Section 2802.
4 Class Counsel will include this representation in their Motions for
5 Preliminary and Final Approval of this Settlement.

6 iv. The parties further agree to request that the Court include the following
7 language in its orders granting preliminary and final approval of the
8 Settlement:

9 As part of the settlement, Sysco has agreed to reimburse Marketing
10 Associates for necessary business expenses. For business miles driven,
11 Sysco has agreed to reimburse their work-related mileage at the
12 applicable Internal Revenue Service (IRS) mileage rate. The California
13 Supreme Court in *Gattuso* observed that reimbursing at the IRS rate was
14 an acceptable manner of complying with Labor Code section 2802.
15 Sysco's agreement to implement a plan that, on its face, reimburses
16 Marketing Associates at the IRS rate is a significant benefit to those
17 class members who continue to work at Sysco and thus the new plan
18 further supports the Court's finding that the settlement is fair and
19 adequate. Class Counsel have opined and the Court agrees that the new
20 plan, on its face, does not violate Section 2802.

21 Should the court decline to include the above language or substantially
22 similar language in its preliminary and/or final approval order, Class
23 Counsel shall still make their representations to the Court (paragraph
24 28.c.iii, above). However, if the Court will not approve the settlement
25 agreement if it includes Class Counsel's representation of its opinion
26 about the new Sysco plan, then Sysco at its sole election may withdraw
27 from the settlement and declare it null and void.

28 d. Objections. Class Members who wish to object to this settlement must do so in
writing, or in any other manner ordered by the Court. Written objections must
state the basis of the objection and be mailed to the Settlement Administrator
postmarked no later than 45 days after mailing of the class notice, or as
otherwise ordered by the Court. Class Members shall be permitted to withdraw

1 their objections in writing by submitting a withdrawal statement to the
2 Settlement Administrator not later than one business day prior to the Court's
3 final approval hearing, or as otherwise ordered by the Court.

4 e. Opt Outs. Putative Class Members who wish to opt out of this settlement shall
5 notify the Settlement Administrator in writing that they want to exclude
6 themselves (i.e., opt out) from the Settlement. The opt out statements sent to the
7 Settlement Administrator must be postmarked no later than 45 days after
8 mailing of the class notice, or as otherwise ordered by the Court ("Exclusion
9 Deadline"). Putative Class Members shall be permitted to rescind their opt out
10 statements in writing by submitting a rescission statement to the Settlement
11 Administrator not later than three business days prior to the Court's final
12 approval hearing, or as otherwise ordered by the Court. Any Putative Class
13 Member who chooses to opt-out from this Settlement will not be entitled to
14 recover under the Settlement and will not be bound by the Settlement or have
15 any right to object, appeal, or comment thereon. Putative Class Members who
16 do not submit a valid and timely request for exclusion on or before the
17 Exclusion Deadline date will be bound by all terms of this Settlement and any
18 Final Judgment entered in this Action if the Settlement is approved by the
19 Superior Court, regardless of whether they have improperly requested exclusion
20 from the Settlement.

21 f. Release of Named Plaintiffs' Claims and Class Claims. It is agreed by and
22 among the Parties that the Action and any claims, damages, or causes of action
23 that are the subject of said Action, are by this Settlement Agreement settled and
24 compromised as between the Named Plaintiffs, Class Members and Defendants,
25 subject to the terms and conditions set forth in this Settlement Agreement and
26 the approval of the Superior Court of Alameda County. The terms of such
27 release shall be as more specifically described in section IX below.
28

- 1 g. Entry of Judgment. Upon final approval of the Settlement, the parties shall seek
2 entry of judgment pursuant to Rule 3.769 of the California Rules of Court and
3 the terms of this Settlement. Such judgment shall provide that the Court retains
4 jurisdiction over the Parties to enforce the terms of the Court's final orders and
5 judgment thereon, as is required by Rule 3.769(h).
- 6 h. Non-Approval By The Court. In the event that this Settlement Agreement is not
7 approved by the Court, fails to become effective, or is reversed, withdrawn or
8 modified by the Court or an appellate court with jurisdiction over the case:
- 9 i. The Settlement Agreement shall have no force or effect;
- 10 ii. The Settlement Agreement shall not be admissible in any judicial,
11 administrative or arbitral proceeding for any purpose or with respect to
12 any issue, substantive or procedural;
- 13 iii. The preliminary and conditional certification of the Action shall become
14 null and void, and the fact of certification shall not be admissible in any
15 judicial, administrative or arbitral proceeding for any purpose or with
16 respect to any issue, substantive or procedural; and
- 17 iv. None of the parties to this Settlement Agreement will be deemed to have
18 waived any claims, objections, defenses or arguments with respect to the
19 issue of class certification or the merits of Plaintiffs' claims.

20 **VI. DUTIES OF SETTLEMENT ADMINISTRATOR**

21 29. The Settlement Administrator shall be responsible for and the Settlement Fund shall
22 cover: (a) preparing and mailing notices of settlement and of estimated settlement payment amounts,
23 and instructions on how to opt out of or object to the Settlement, to all Putative Class Members,
24 including taking appropriate steps to trace and locate any individual Putative Class Members whose
25 address or contact information as provided to the Settlement Administrator is inaccurate or outdated;
26 (b) emailing copies of notices of settlement and of estimated settlement payment amounts, and
27 instructions on how to opt out of or object to the Settlement, to all Putative Class Members for whom
28 Defendants have and provide to the Settlement Administrator an email address; (c) receiving and

1 independently reviewing and resolving any challenges, including associated documentation, from
2 Putative Class Members regarding the number of weeks they worked as MAs during the Class Period;
3 (d) receiving and serving on Plaintiffs' Counsel and Defendants' Counsel, and the Court, opt out
4 statements, copies of written objections, and any withdrawal and rescission statements;
5 (e) establishing a toll free telephone line and responding to inquiries and requests for information or
6 assistance from Putative Class Members; (f) maintaining the Reserve Fund account in an interest-
7 bearing account; (g) determining and paying the final amounts due to be paid to Class Members after
8 adjustment for funds due to Putative Class Members who opt of the settlement, resolution of all
9 challenges, and re-apportionment of any amounts that cannot be distributed due to inability to locate
10 Class Members; (h) determining and paying the amounts due to be paid as withholding taxes on
11 taxable amounts distributed to Class Members pursuant to the terms of this Agreement, and providing
12 tax reporting forms applicable to such payments to governmental tax authorities, Class Members and
13 Sysco; (i) determining the validity of any late claims or disputes and making payment from the
14 Reserve Fund for any valid late claims or disputes on a pro rata basis as provided for below;
15 (j) making final payment of any residual to the designated cy pres beneficiary(ies) and closing the
16 fund; (k) reporting to Plaintiffs' Counsel, Defendant's Counsel, and the Court regarding the
17 completion of the tasks identified in this paragraph; and (l) carrying out other related tasks including
18 the cancellation or voiding of checks not cashed within 90 days of their issuance and replacement of
19 funds allocated to payments associated with such checks as provided for in this Agreement, the proper
20 maintenance of undisbursed Settlement Fund amounts in an interest bearing account and reporting
21 required for that account, in accordance with the terms of this Settlement Agreement and orders of the
22 Court; and (m) other tasks as the Parties mutually agree or the Superior Court orders the Claims
23 Administrator to perform. The Parties each represent they do not have any financial interest in the
24 Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
25 a conflict of interest.

26 30. All disputes relating to the Settlement Administrator's ability and need to perform its
27 duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the
28

1 terms and conditions of this Settlement Agreement, until all payments and obligations contemplated
2 by the Settlement Agreement have been fully carried out.

3 **VII. NOTICE TO THE SETTLEMENT CLASS MEMBERS**

4 31. Within five (5) days of preliminary approval of the settlement, Defendants shall provide
5 to the Settlement Administrator information in electronic format regarding all Putative Class
6 Members, including their names, last known addresses, any available home and cellular telephone
7 numbers and email addresses, Social Security numbers, dates of employment in Class Positions, the
8 total number of hours or days of leave of absence during their employment as MAs in the Class
9 Period that will be used to calculate their weeks worked, and any other information needed to
10 calculate the estimated payment for each Putative Class Member.

11 32. The Settlement Administrator shall send a Notice of Settlement and Opportunity to Opt
12 Out or Object to Settlement (“Notice of Settlement”) in the form attached hereto as Exhibit “B”,
13 subject to approval by the Court, to all Putative Class Members, by first class mail, within 20 days of
14 the Court granting preliminary approval of the settlement and the form of the Notice. Attached to the
15 Notice of Settlement will be an Estimated Payment Form and instructions (“Share Form”), in the form
16 attached hereto as Exhibit “C,” which shall also be subject to approval by the Court. The Notice of
17 Settlement and Share Form shall be sent in an envelope that shall include the following return
18 address:

19 Sysco Marketing Associate Class Action Administrator
20 c/o Kurtzman Carson Consultants
21 475 Rowland Avenue
22 Novato, CA 94945

23 33. Upon approval by the Court, and at the same time as the Settlement Administrator mails
24 the Notice of Settlement to Putative Class Members as provided for above, the Settlement
25 Administrator shall also send an e-mail to all Putative Class Members for whom Defendants have
26 provided an email address, including all then-current employees of Defendants, informing the
27 Putative Class Members about the basic terms of the settlement and providing contact information for
28 the Settlement Administrator to receive a duplicate notice and/or settlement share form. The e-mail
shall be titled “Notice Regarding Settlement of Sysco Marketing Associate Class Action.”

1 34. Prior to mailing the Notice of Settlement and Share Forms, the Settlement Administrator
2 will update the addresses for the Putative Class Members using the National Change of Address
3 database and other available resources deemed suitable by the Settlement Administrator. Any
4 returned envelopes from the initial mailing with forwarding addresses will be used by the Settlement
5 Administrator to locate missing Putative Class Members and re-mail the Notice to the correct or
6 updated address. The Settlement Administrator will use all appropriate tracing methods to ensure that
7 the Notice of Settlement packets are received by all Putative Class Members.

8 35. Plaintiffs' Counsel shall have the right to take appropriate steps to locate and assist
9 Putative Class Members and Class Members during the notice period and Class Members during the
10 distribution process. In carrying out their duties to assist in locating Putative Class Members or Class
11 Members, subject to Defendants' approval, Plaintiffs' Counsel (or a search firm retained by Plaintiffs'
12 Counsel, approved by Defendants, and the Court for this purpose), may be given access by the
13 Settlement Administrator to the social security numbers of those Class Members who have not cashed
14 their settlement checks as of thirty (30) days after mailing of the checks. Other than the limited
15 disclosure of Social Security Numbers authorized by this provision, the Settlement Administrator
16 shall not disclose Class Members' or Putative Class Members' Social Security Numbers to anyone.

17 **VIII. CALCULATION OF SETTLEMENT PAYMENTS AND DISTRIBUTION**
18 **OF NET SETTLEMENT FUND**

19 36. Each Share Form mailed to a Putative Class Member will identify the number of
20 compensable weeks that Defendants' records indicate he or she worked as a MA during the Class
21 Period (excluding period of leaves of absence) and estimate each Putative Class Member's potential
22 pro rata share of the Net Settlement Fund.

23 37. Putative Class Members will have the right to challenge only the number of weeks
24 worked (dates of employment and leaves of absence) as shown on the Share Form. Challenges to the
25 number of weeks worked listed on Share Forms shall be sent directly to the Settlement Administrator
26 at the address indicated on the Form. No challenge to the number of weeks worked will be accepted
27 unless postmarked no later than 45 days after mailing of notice to Putative Class Members.
28 Additional time may be provided to a Putative Class Member for good cause and within an amount of

1 time determined by the Settlement Administrator that will not delay the distribution of settlement
2 payments to Class Members. The Settlement Administrator will inform Plaintiffs' Counsel and
3 Defendants' Counsel in writing of any timely filed challenges.

4 38. Challenges will be resolved without hearing by the Settlement Administrator, who will
5 make a decision based on Defendants' records and any documents or other information presented by
6 the Putative Class Member or Class Member making the challenge, Plaintiffs' Counsel or Defendants.
7 The Settlement Administrator's determination is final and binding without a right of appeal.

8 39. The Settlement Administrator shall (a) date stamp all original opt out statements and
9 objections to the settlement that it receives; (b) serve copies on Plaintiffs' Counsel and Defendants'
10 Counsel no later than five business days after receipt, or immediately if received within five business
11 days of the Court's final approval hearing; and (c) file the date-stamped originals with the Clerk of the
12 Court no later than five business days prior to the date of the Court's final approval hearing or
13 immediately if received less than five business days prior to the date of the Court's final approval
14 hearing.

15 40. The Settlement Administrator shall also (a) date stamp all original rescission of opt out
16 and withdrawal of objection statements it receives; (b) serve copies on Plaintiffs' Counsel and
17 Defendants' Counsel no later than five (5) business days after receipt, or immediately if received
18 within five (5) business days of the Court's final approval hearing; and (c) file the date-stamped
19 originals with the Clerk of the Court no later than five business days prior to the date of the Court's
20 final approval hearing or immediately if received less than five business days prior to the date of the
21 Court's final approval hearing.

22 41. The Settlement Administrator shall make the final calculation of payments from the Net
23 Settlement Fund to be distributed to the Class Members, taking account of its determinations of any
24 challenges by Putative Class Members or Class Members as provided for in this Agreement, within 15
25 days after the entry of the Court's order granting final approval of the settlement. Upon completion of
26 its final calculation of payments, and at least 30 days prior to the distribution of payments to Class
27 Members from the Net Settlement Fund, the Settlement Administrator shall provide Plaintiffs'
28 Counsel and Defendants' Counsel with a report listing the amount of all payments to be made to each

1 Class Member from the Net Settlement Fund. The Settlement Administrator also will supply
2 Plaintiffs' Counsel and Defendants' Counsel with an updated list of Putative Class Members that
3 includes Putative Class Member names, addresses, and weeks worked, reflecting any corrections or
4 updates made by the Settlement Administrator in the course of administering notice to the Class and
5 the receipt of any challenges and written objection and opt out statements.

6 42. The Settlement Administrator shall be responsible for issuing and mailing the checks,
7 paying to governmental tax authorities all withholding amounts required to be withheld on taxable
8 payments and sending any necessary tax reporting forms to Class Members, Plaintiffs' Counsel, and
9 Defendants. The Settlement Administrator shall provide a declaration of payment, which will be filed
10 with the Court and served on Plaintiffs' Counsel and Defendants within 30 days of mailing the
11 payments to Class Members and Plaintiffs' Counsel.

12 43. Class Members who are sent payments shall have 90 calendar days after mailing by the
13 Settlement Administrator to cash their settlement checks. If such Class Members do not cash their
14 checks within that period, those checks will become void and the Settlement Administrator will stop
15 payment on the uncashed checks. In such event, those Class Members will be deemed to have waived
16 irrevocably any right in or claim to a settlement payment; however, the Settlement Administrator
17 may, in its discretion, and without appeal to or right of review by the Court, agree to make full or
18 partial payment of the amounts calculated to be due to such Class Members. All amounts remaining
19 from voided and uncashed checks after deduction of costs shall be added to the Reserve Account to
20 pay late or disputed claims. Whether or not such Class Members receive any payment from the Net
21 Settlement Fund or the Reserve Fund, this Settlement Agreement shall be binding upon them.

22 44. Should there remain any residual from the Net Settlement Fund and/or the Reserve
23 Fund after all payments are made under this Settlement Agreement, for example, if any settlement
24 checks are not cashed within 90 calendar days after mailing or unclaimed amounts remain in the
25 Reserve Fund after 365 days from the Effective Settlement Date, the residual amount shall be paid to
26 the East Bay Community Law Center (Berkeley, CA) as *cy pres* beneficiary, subject to the Court's
27 approval. Should the Court not approve the East Bay Community Law Center the Parties will
28 nominate one or more alternative *cy pres* nominees for the Court's consideration. Any costs

1 associated with administering the residual (e.g., bank stop payment charges, settlement administration
2 costs associated with further payments to Class Members or payments to the *cy pres* beneficiary(ies)
3 will be deducted from the residual before donation of the *cy pres* funds.

4 45. No later than 380 days after the Effective Settlement Date, the Claims Administrator
5 shall pay over any residual amounts including any amounts remaining in the Reserve Fund to the *cy*
6 *pres* beneficiary(ies) designated by the process described above. The Claims Administrator shall
7 provide a declaration of payment to *cy pres* beneficiary(ies), which will be filed with the Court and
8 served on Plaintiffs' Counsel and Defendants within 15 days of payment of the residual to such
9 beneficiary(ies).

10 **IX. RELEASE BY THE CLASS, AND PLAINTIFFS**

11 46. Release as to all Class Members. As of the Settlement Effective Date, the Class
12 Members, including Named Plaintiffs, shall be deemed to fully release and discharge the Released
13 Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations or
14 liabilities that were asserted in or arising out of the Complaint or any Amended Complaint (including
15 the Second Amended Complaint to be filed as part of this Settlement) related to Sysco's alleged
16 failure to reimburse Putative Class Members for business-related expenses during the Class Period.
17 This release covers claims arising out of Sysco's alleged failure to indemnify, reimburse, or
18 compensate for business-related expenses, including any claims for penalties arising from late
19 reimbursement, or compensation for business-related expenses under California Labor Code sections
20 201-203, interest on unreimbursed business-related expenses, claims under the Private Attorney
21 General Act (PAGA), California Labor Code section 2698 *et seq.* for unreimbursed business-related
22 expenses, any claims under Labor Code § 221 for unauthorized deductions from compensation related
23 to alleged deductions of business-related expenses, any claims for failure to provide accurate or
24 itemized wage statements related to alleged failure to itemize reimbursement of business-related
25 expenses, and claims for alleged unlawful, unfair and/or fraudulent business practices under
26 California Business and Professions Code section 17200, *et seq.*, arising out of Sysco's alleged failure
27 to reimburse Putative Class Members for business-related expenses during the Class Period.
28

1 47. General Release by Named Plaintiffs. In addition to the releases made by the Class
2 Members set forth in the above Paragraph 46, the Named Plaintiffs, as of the Settlement Effective
3 Date, make the additional following general release of all claims, known or unknown. The Named
4 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities, grievances, demands
5 for arbitration, and cause of action of every nature and description whatsoever, known or unknown,
6 pending or threatened, asserted or that might have been asserted, whether brought in tort, in contract
7 (including under any applicable Collective Bargaining Agreement), or for violation of any state or
8 federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission
9 by or on the part of any of the Released Parties committed or omitted before the execution of this
10 Agreement. The release stated in this Paragraph 47 will be referred to as the "General Release." The
11 General Release includes any known or unknown claims the Named Plaintiffs do not know or suspect
12 to exist in their respective favor at the time of the General Release, which, if known by any of them,
13 might have affected their respective settlement with, and release of, the Released Parties or might have
14 affected their respective decisions not to object to this Settlement or the General Release. With respect
15 to the General Release, the Named Plaintiffs each agree that, upon the Effective Date, the Named
16 Plaintiffs will have each, and by operation of the Final Judgment will have each, expressly waived and
17 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542
18 of the California Civil Code, or any other similar provision under federal or state law, which provides:

19 A general release does not extend to claims which the creditor does not know or suspect
20 to exist in his or her favor at the time of executing the release, which if known by him or
21 her must have materially affected his or her settlement with the debtor.

22 The Named Plaintiffs may discover facts in addition to or different from those any of them
23 know or believe to be true with respect to the subject matter of the General Release, but the Named
24 Plaintiffs upon the Effective Date, will each be deemed to have, and by operation of the Final
25 Judgment will have each, fully, finally, and forever settled and released any and all of the claims
26 released under the General Release, whether known or unknown, suspected or unsuspected, contingent
27 or non-contingent, that now exist, or have existed upon any theory of law or equity now existing or
28 coming into existence in the future, including, but not limited to, conduct that is negligent, intentional,
with or without malice, or breach of any duty, law, or rule, without regard to the subsequent discovery

1 or existence of such different or additional facts. This General Release shall not release the Released
2 Parties from any pending workers compensation claim filed on behalf of the Named Plaintiffs.

3 48. Nothing in this Settlement Agreement shall be construed to bar any claims by the
4 Named Plaintiffs or Class Members that may arise after the Class Period. This release also
5 specifically excludes any claims the Class Members (not including the Named Plaintiffs) may have
6 that arise from time periods in which they were not MAs during the Class Period.

7 49. No re-hire. Named Plaintiffs each acknowledge and agree that they are each not now
8 either an employee or independent contractor of Sysco, and each agree that they will each not
9 knowingly apply for or otherwise seek employment of any kind or any kind of independent contractor
10 relationship with Defendants. Named Plaintiffs each waive any possible right to future employment
11 with Defendants, and agree not to seek or accept future employment with Defendants. Named
12 Plaintiffs each agree that Defendants are entitled to reject, without cause, any employment application
13 made by any Named Plaintiff.

14 50. In further consideration for the General Release and no-rehire agreement executed by
15 each Named Plaintiff, Defendants agree to confirm dates of employment and position only, if
16 contacted for a reference for any such Named Plaintiff.

17 **X. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**
18 **AND BETWEEN PRELIMINARY AND FINAL APPROVAL**

19 51. The Class Counsel shall promptly submit this Settlement Agreement to the Court
20 together with a Motion for Preliminary Approval of Settlement and Certification of Settlement Class.

21 The Motion for Preliminary Approval shall also seek an order:

- 22 a. Preliminarily approving the settlement;
23 b. Approving as to form and content the proposed Notice of Settlement;
24 c. Approving as to form and content the proposed Share Form and instructions;
25 d. Directing the mailing of the Notice of Settlement and Share Forms and
26 instructions to Putative Class Members by first class mail, and providing information to Putative Class
27 Members by email as specified herein;

1 e. Preliminarily certifying the Action for purposes of settlement and preliminarily
2 appointing Named Plaintiffs and Plaintiffs' Counsel as representatives of the Class for purposes of
3 settlement;

4 f. Preliminarily approving settlement administration services to be provided by the
5 Settlement Administrator;

6 g. Preliminarily approving the proposed service awards to the Named Plaintiffs as
7 Class Representatives;

8 h. Preliminarily approving the application for payment of reasonable attorneys'
9 fees and costs to Plaintiffs' Counsel;

10 i. Containing the language specified by this Agreement regarding Sysco's new
11 Expense Reimbursement Policy and its facial compliance with Labor Code § 2802; and

12 j. Scheduling a fairness hearing on the question of whether the proposed
13 settlement should be finally approved as fair, reasonable and adequate as to the members of the Class.

14 52. The Preliminary Approval Motion shall include the following statement with respect to
15 Sysco's new expense reimbursement policy:

16 It is Class Counsel's opinion that absent any future change in the law, the written
17 provisions of Sysco's Expense Reimbursement Policy do not, on their face,
18 violate California Labor Code Section 2802.

19 53. Plaintiffs' Counsel shall also request that the Court include the following language in its
20 order granting preliminary approval:

21 As part of the Settlement, Sysco has agreed to reimburse Marketing Associates
22 for necessary business expenses. For business miles driven, Sysco has agreed to
23 reimburse their work-related mileage at the applicable Internal Revenue Service
24 mileage rate. The California Supreme Court in *Gattuso* observed that reimbursing
25 at the IRS rate was an acceptable manner of complying with Labor Code section
26 2802. Sysco's agreement to implement a plan that, on its face, reimburses
27 Marketing Associates at the IRS rate is a significant benefit to those class
28 members who continue to work at Sysco and thus the new plan further supports
the Court's finding that the settlement is fair and adequate. Class Counsel have
opined and the Court agrees that the Expense Reimbursement Policy, on its face,
does not violate section 2802.

54. Defendants shall not oppose the motion for preliminary approval.

1 55. Defendants shall provide to the Settlement Administrator, within five days after the
2 Court's Order granting preliminary approval, the class membership list and identification and contact
3 information specified in paragraph 29 above in electronic format as agreed to by the Settlement
4 Administrator and Sysco. Sysco shall thereafter, during the notice, approval, opt out/objection and
5 payment processes, assist the Settlement Administrator as necessary or as requested to use, correct, or
6 update this information to enable the Settlement Administrator to locate and contact Putative Class
7 Members and Class Members, and to provide information needed by the Settlement Administrator in
8 order to make determinations on such persons' challenges. Class Counsel agree that they will not use
9 any of this information which is also to be provided to them along with the Settlement Administrator
10 pursuant to this Agreement for any purpose unrelated to this Settlement.

11 56. The Parties shall cooperate with each other and the Settlement Administrator during the
12 process of giving Putative Class Members notice and opportunity to opt out of or object to the
13 Settlement, in every way necessary and appropriate to assure effective communication to individual
14 Putative Class Members of information concerning their rights and obligations under this Settlement
15 Agreement.

16 57. Plaintiffs' Counsel shall provide the Court, at least five days prior to the final approval
17 and fairness hearing, a declaration by the Settlement Administrator of due diligence and proof of
18 mailing of the Notice of Settlement and Share Form required to be mailed to Putative Class Members
19 by this Settlement Agreement, including tracing and re-mailing efforts, and the delivery results of the
20 Settlement Administrator's mailings.

21 **XI. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

22 58. Plaintiffs' Counsel will submit a proposed order and judgment for final approval, which
23 shall include findings and orders:

- 24 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable and
25 adequate, and directing that its terms and provisions be carried out;
- 26 b. Approving the payment of service awards to the Plaintiffs as Class
27 Representatives;

1 c. Approving Plaintiffs' Counsel's application for an award of attorneys' fees and
2 reimbursement of out-of-pocket litigation expenses;

3 d. Containing the same exact language as that specified in paragraph 53 with
4 regard to the order granting preliminary approval; and

5 e. Providing that the Court will retain jurisdiction to oversee administration and
6 enforcement of the terms of the Settlement, including all payments required under the Settlement
7 Agreement, and the Court's orders.

8 59. Following entry of the Court's Order granting final approval of the Settlement
9 Agreement, the parties will each act to assure its timely execution and the fulfillment of all its
10 provisions, including but not limited to the following:

11 a. Should an appeal be taken from the final approval of the Settlement Agreement,
12 all parties will support the approval order on appeal.

13 b. Plaintiffs' Counsel and Counsel for Defendants will assist the Settlement
14 Administrator as needed or requested in the process of identifying and locating Eligible Class
15 Members entitled to payments from the Class Settlement Fund and assuring delivery of such payments;

16 c. Plaintiffs' Counsel and counsel for Defendants will assist the Settlement
17 Administrator as needed or requested in responding to late requests for payments from the Reserve
18 Fund and the fair administration of the Settlement Fund;

19 d. Plaintiffs' Counsel and counsel for Defendants will cooperate with each other
20 and assist the Settlement Administrator as needed or requested in completing the distribution of any
21 residual amount from the Reserve Fund and/or uncashed checks, as specified above, to the designated
22 cy pres beneficiary(ies);

23 e. The Parties and Plaintiffs' Counsel will certify to the Court completion of all
24 payments required to be made by this Settlement Agreement, promptly after completion thereof.

25 **XII. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT**

26 60. The preliminary schedule for notice, approval, and payment procedures carrying out
27 this settlement is as follows. The schedule may be modified depending on whether and when the
28 Court grants necessary approvals and orders notice to the class, and sets further hearings. In the event

1 of such modification, the parties shall cooperate in order to complete the settlement procedures as
2 expeditiously as reasonably practicable.

3 On or before May 19, 2011	Plaintiffs' Counsel to file Motion for Preliminary Approval of Settlement with the Court
4 On or before May 24, 2011	Sysco to File Non-Opposition to Plaintiffs' Motion for Preliminary Approval
5	
6 On or before June 3, 2011 (subject to Court availability)	Preliminary Approval hearing
7	
8 5 days after Preliminary Approval of Settlement	Defendants to provide the Settlement Administrator the most recent available names, mailing addresses, phone numbers, e-mail addresses, and social security numbers it has for all Putative Class Members, as well as any information regarding the Putative Class Members' dates of employment, leaves of absence, vacation, and sick time.
9	
10	
11 20 days after Preliminary Approval of Settlement	Mailing by first class mail and email of Class Action Settlement Notice and Settlement Share Form by Settlement Administrator.
12	
13 20 days after mailing of Notice and Settlement Share Form	Settlement Administrator to conduct trace/search efforts and send a follow up mailing to individuals whose Notice was returned as undeliverable or whose listed address is found to be inaccurate or outdated;
14	
15	
16	
17 45 days after mailing of Notice and Settlement Share Form	Last day for Putative Class Members to opt out, challenge dates of employment, or submit written objections.
18	
19 5 court days before final approval hearing	Last day for filing and service of papers in support of final settlement approval and requests for attorneys' fees and expenses.
20	
21	
22	Settlement Administrator to file with the Court and serve on the parties or opt-out statements and written objections or statements of intention to object to the Settlement received from Class Members, and will also file with the Court and serve on the parties its certification of the completion and results of the class notice and related processes.
23	
24	
25 Within 15 days of notice of entry of order granting final approval	Settlement Administrator to make the final calculation of payments from the Net Settlement Fund to be distributed to the Class Members
26	
27	
28	

1 Within 20 days of notice of entry of order granting final approval Settlement Administrator to provide all Counsel with a report listing the amount of all payments to be made to each Class Member from the Net Settlement Fund.

2
3 “Settlement Effective Date” Settlement Administrator to distribute and pay from the Settlement Fund: (1) Settlement share checks to all participating Settlement Class Members.(2) 90 percent of the attorneys’ fees and all of the awarded reimbursed litigation expenses to Plaintiffs’ Counsel; (3) checks for the class representatives’ service awards; and (4) administration costs paid to the Settlement Administrator.

4
5
6
7 Within 10 days of date of expiration of class member settlement checks. Plaintiffs to submit final Settlement Administrator’s report regarding status of payments and payment of remainder of attorneys’ fees, and request for retained 10 percent of the attorneys’ fees..

8
9
10
11 380 days after settlement effective date Settlement Administrator to pay any remaining funds in the reserve fund to court-approved *cy pres* beneficiary(ies).

12
13 15 days after payment to *cy pres* and close of the Reserve Fund Plaintiffs to submit final Settlement Administrator’s report regarding all payments and the *cy pres* distribution, if any.

14
15 **XIII. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

16 61. In the event that five percent (5%) or more of the Putative Class Members elect to opt
17 out of the settlement and do not timely rescind their opt out statements, Defendants, in their
18 discretion, may void this Settlement Agreement. Defendants may exercise its option to void the
19 Settlement by giving notice, in writing, to Plaintiffs’ Counsel and the Court within twenty-one (21)
20 days of receipt of notice from the Settlement Administrator that the requisite number of the Putative
21 Class Members have opted out, but in any event at least ten (10) days before the Final Approval
22 Hearing.

23 62. If the Court will not approve the settlement agreement if it includes Plaintiffs’
24 Counsel’s representation of its opinion about the new Sysco plan, as specified in paragraph 53 above
25 or using substantially similar language, then Sysco at its sole election may withdraw from the
26 settlement and declare it null and void, provided that Sysco exercise that right within 14 days of
27 receipt of such final information.

1 63. This Settlement Agreement is based upon information represented by Defendants that
2 Putative Class Members worked a total of 157,291 weeks as MAs during the period June 22, 2005 to
3 June 21, 2010. Based on that information, Plaintiffs' Counsel have projected the total number of
4 weeks worked up to April 4, 2011 to be 181,072. Sysco shall submit to the Settlement Administrator
5 and Plaintiffs' Counsel, within five (5) days of preliminary approval by the Court, data showing the
6 number of weeks worked by Putative Class Members as MAs during the Class Period. If that final
7 information shows that Putative Class Members worked at least 5% more work weeks during the
8 Class Period (excluding periods when such Putative Class Members were on leave or otherwise not
9 working) than the number projected by Plaintiffs' Counsel (i.e., if that total final number exceeds
10 190,125 excluding leave periods), Plaintiffs' Counsel, on behalf of the Putative Class, shall have the
11 right to withdraw from the Settlement at their sole election, provided that Plaintiffs' Counsel exercise
12 that right within 14 days of receipt of such final information.

13 64. Other than as specifically provided for in this Settlement Agreement it may not be
14 changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and with
15 approval by the Court. This Settlement Agreement may not be discharged except by performance in
16 accordance with its terms or by a writing signed by the Parties hereto.

17 **XIV. CONFIDENTIALITY AND PUBLICITY**

18 65. The Parties shall keep the existence and terms of this Settlement Agreement, and
19 information concerning its negotiation (including any antecedent agreements relating to the terms
20 hereof), confidential by adhering to the procedures and restrictions specified hereinafter.

21 66. The Parties shall not disclose the negotiation, terms, or existence of this Settlement
22 Agreement, or discussions related thereto, except for as-needed communications with their
23 accountants or other financial advisors, counsel, or retained consultants, the Settlement Administrator,
24 or the Court, except as specified below in this paragraph. However, the Parties may disclose that they
25 have reached an agreement in principle to settle the Action subject to approval by the Court. The
26 confidentiality obligations imposed by this provision shall expire upon entry of an order of the Court
27 granting preliminary approval to this Settlement Agreement, except: (1) the negotiations and
28 discussions preceding submission of the Settlement to the Court for approval shall at all times remain

1 confidential, unless otherwise ordered by the Court; (2) Sysco may disclose the Settlement in filings it
2 is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings;
3 (3) any negotiations and discussions between the Parties between the time of preliminary approval
4 and the time of final approval shall at all times remain confidential, unless otherwise ordered by the
5 Court; and (4) as otherwise specifically provided hereinafter. Any disclosure to the Parties'
6 consultants and the Settlement Administrator as permitted by this paragraph shall be made pursuant to
7 the Protective Order previously entered in this case.

8 67. Insofar as may be permitted by the Court, which permission the Parties hereto shall seek
9 from the Court, Plaintiffs' Counsel shall submit a copy of this Settlement Agreement and summary of
10 its terms in or with their motion for preliminary approval together with their request that the Court
11 review the Settlement Agreement and hear Plaintiffs' motion for preliminary approval *in camera*. In
12 their submission, Plaintiffs' Counsel shall further request that the Court permit them to place any
13 documents related to the motion for preliminary approval, including the Settlement Agreement, in the
14 public record only upon the Court's granting of preliminary approval. However, Plaintiffs' Counsel
15 may, consistent with this Settlement Agreement, comply with any orders or directions of the Court
16 with regard to the form of submission, filing and/or hearing of their motion for preliminary approval.

17 68. The Parties agree that the Court may, and submit that the Court should, direct that all
18 pleadings containing a copy of this Settlement Agreement or a summary of its terms or contents, shall
19 be filed in the public record immediately upon the entry of an order granting the motion for
20 preliminary approval. Thereafter, neither the Settlement Agreement nor any pleading containing a
21 summary or description of its terms shall be treated as confidential information under the Settlement
22 Agreement, and except as provided for in this Agreement, the Parties shall not be restricted in their
23 ability to respond to inquiries regarding this Settlement. In particular, Plaintiffs' Counsel shall be
24 permitted to communicate with Putative Class Members concerning the terms or provisions of this
25 Settlement.

26 69. The Parties agree that no one shall issue any media statement or make any statement of
27 any kind to the media or the general public regarding this Settlement Agreement or the Settlement's
28 terms, unless agreed upon in writing by the Parties. If contacted by the media, Named Plaintiffs and

1 Plaintiffs' Counsel will represent that they are bound by the provisions of this Settlement not to
2 disclose its terms or the discussions leading to the Parties' agreement, and shall refer the media to the
3 Court's website or files for information about the matter. The Parties further agree that Plaintiffs'
4 Counsel may publish on their law firms' web sites or in list in future court filings information about
5 this Settlement that has already been made publicly available (unless the information became publicly
6 available only through a violation of this Agreement).

7 **XV. TOLLING AGREEMENT**

8 67. The Parties agree that the Tolling Agreement they entered into on June 8, 2010 shall
9 remain in effect unless and until it is superseded by the Final Approval of the Settlement or terminated
10 by the Parties according to its terms.

11 **XVI. PARTIES' AUTHORITY**

12 68. The signatories hereby represent that they are fully authorized to enter into this
13 Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

14 **XVII. MUTUAL FULL COOPERATION**

15 69. The Parties agree to fully cooperate with each other to accomplish the terms of this
16 Settlement Agreement, including but not limited to, executing such documents and taking such other
17 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
18 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by
19 this Settlement Agreement and any other efforts that may become necessary by order of the Court or
20 otherwise to effectuate this Settlement Agreement and the terms set forth herein. At no time will any
21 of the Parties or their counsel seek to solicit or otherwise encourage Named Plaintiffs to submit written
22 objections to the Settlement or requests for exclusion from the Class, or appeal from the Superior
23 Court's Final Judgment. As soon as practicable after execution of this Settlement Agreement,
24 Plaintiffs' Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all
25 necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

26 ///

27 ///

28 ///

1 **XVIII. NO ADMISSION OF LIABILITY OR WRONGDOING;**
2 **INADMISSIBILITY OF SETTLEMENT AS EVIDENCE**

3 70. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be
4 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
5 Defendants, and the Defendants specifically deny any liability. The Parties agree that this is a
6 settlement of disputed claims and that Labor Code section 206.5 is therefore inapplicable. Each of the
7 Parties hereto has entered into this Settlement Agreement with the intention to avoid further disputes
8 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
9 settlement document and shall, pursuant to California Evidence Code § 1152, be inadmissible in
10 evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to
11 approve, interpret, or enforce this Settlement Agreement.

12 **XIX. NOTICES**

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

17 To Plaintiffs' Counsel:

18 David Pogrel
19 HINTON, ALFERT, SUMNER & KAUFMANN
20 1646 N. California Blvd., Suite 600.
21 Walnut Creek, CA 94596
22 (925) 932-6006
23 (925) 932-3412 (Fax)
24 pogrel@hinton-law.com

25 To the Defendants :

26 **Neal S. ManneSusman Godfrey LLP**
27 **1000 Louisiana**
28 **Suite 5100**
 Houston, TX 77002-5096
 (713) 653-7827
 (713) 654-3380 (Fax)
 nmanne@susmangodfrey.com

1 If the identity of the person(s) to be notified for any party change, or their address changes, that
2 party shall notify all other Parties of said change in writing.

3 **XX. CAPTIONS AND INTERPRETATIONS**

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

8 73. The Parties hereto agree that the terms and conditions of this Settlement Agreement are
9 the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement
10 Agreement shall not be construed in favor of or against any Party by reason of the extent to which any
11 Party or his, her or its counsel participated in the drafting of this Settlement Agreement.

12 **XXI. INTEGRATION CLAUSE**

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

17 **XXII. NO PRIOR ASSIGNMENTS**

18 75. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
19 hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto
20 represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred,
21 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
22 liability, claim, demand, action, cause of action or rights herein released and discharged except as set
23 forth herein.

24 **XXIII. SETTLEMENT CLASS MEMBER SIGNATORIES**

25 76. For the purposes of this settlement only, it is agreed that because the members of the
26 Class are so numerous, it is impossible or impractical to have each member of the Class execute this
27 Settlement Agreement. The Notice of Settlement, Exhibit "B" hereto, will advise all Putative Class
28 Members of the binding nature of the release and the Court's final approval of this Settlement

1 Agreement shall have the same force and effect as if this Settlement Agreement were executed by each
2 Class Member.

3 **XXIV. COUNTERPARTS**

4 77. This Settlement Agreement may be executed in counterparts with signatures transmitted
5 by facsimile or as an electronic image of the original signature. When each party has signed and
6 delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken
7 together with other signed counterparts, shall constitute one Settlement Agreement, which shall be
8 binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect
9 as the original signature, if and only if it is transmitted from counsel of one party to the other. Such
10 transmissions shall be interpreted as verification by the transmitting counsel that the signature is
11 genuine and that the party signing has authorized and reviewed the agreement.

12 **XXV. SAVINGS CLAUSE**

13 80. Before declaring any provision of this Agreement invalid, the Court will first attempt to
14 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as
15 to define all provisions of this Agreement valid and enforceable.

16 **XXVI. CLASS REPRESENTATIVES' WAIVER OF RIGHT**
17 **TO BE EXCLUDED OR OBJECT**

18 81. The Named Plaintiffs each agree that by signing this Agreement they each become
19 bound by its terms and further agree not to request to be excluded from the Class and agree not to
20 object to any of the terms of this Agreement. Non-compliance by any Named Plaintiff with this
21 paragraph will be void and of no force or effect. Any such request for exclusion or objection by any
22 Named Plaintiff will therefore be void and of no force or effect.

23 Dated: May __, 2011

By: _____
Stephen Watts
Named Plaintiff

24
25 Dated: May __, 2011

By: _____
Roland Herrera
Named Plaintiff

1 Dated: May __, 2011 By: _____
Clark Arnold
Named Plaintiff

2

3 Dated: May __, 2011 By: _____
Deena Bartley
Named Plaintiff

4

5 Dated: May __, 2010 By: _____
Clifford Corcoran
Named Plaintiff

6

7

8 Dated: May __, 2010 By: _____
Scott Castanon
Named Plaintiff

9

10 Dated: May __, 2010 By: _____
Amy Porterfield
Named Plaintiff

11

12 Dated: May __, 2010 By: _____
Russell Perez
Named Plaintiff

13

14 HINTON ALFERT SUMNER & KAUFMANN

15 Dated: May __, 2011 By: _____
AARON KAUFMANN
DAVID P. POGREL
Attorneys for Plaintiffs

16

17

18

19 Dated: May __, 2011 GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN

20

21 By: _____
MORRIS J. BALLER
Attorneys for Plaintiffs

22

23 Dated: May __ 2011 SYSCO CORPORATION

24

25 By: _____
Scott Sonnemaker, SVP Western Region

26

27 Dated: May __, 2011 SYSCO SAN DIEGO, INC.

28

29 By: _____
Richard Friedlen, President Sysco San Diego, Inc.

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Dated: May __, 2011

SYSCO SAN FRANCISCO, INC.

By: _____
Jim Ehlers, President Sysco San Francisco, Inc.

Dated: May __, 2011

SYSCO VENTURA, INC.

By: _____
Jerry Barash, President Sysco Ventura, Inc.

Dated: May __, 2011

SYSCO LOS ANGELES, INC.

By: _____
Joe Barton, President Sysco Los Angeles, Inc.

Dated: May __, 2011

SYSCO SACRAMENTO, INC.

By: _____
Delmer Schnuelle, President Sysco Sacramento, Inc.

Dated: May __, 2011

SYSCO CENTRAL CALIFORNIA, INC.

By: _____
Suzi Monzingo, President Sysco Central California, Inc.

Dated: May __, 2011

SUSMAN GODFREY LLP.

By: _____
NEAL MANNE
Attorneys for Defendants

EXHIBIT A

BUSINESS EXPENSE REIMBURSEMENT POLICY AND AGREEMENT

This Agreement is between _____ (“you” or “your”) and Sysco [Location] (“Sysco” or the “Company”).

Sysco agrees to reimburse you for all necessary business expenses. Reimbursement payment amounts will be issued by separate check. Employees must promptly provide all receipts and information related to the reimbursement requests according to the policy set forth below.

Automobile Expenses

Sysco will reimburse you for all necessary automobile expenses using the applicable IRS mileage rate. Reimbursable miles are only those miles driven to and from destinations to conduct business on the Company’s behalf or for the Company’s benefit.

Reimbursements at the IRS rate covers all reasonable operating costs you incur during the operation of your personal vehicle for business purposes, including but not limited to fuel, mileage, insurance, registration, repairs, maintenance, depreciation and wear-and-tear. Expenses incurred for tolls or parking will be reimbursed separately and should be submitted by the _____ of the month to the [INSERT TITLE OF INDIVIDUAL HANDLING REIMBURSEMENTS IN THE ACCOUNTING DEPARTMENT].

Sysco will reimburse MAs for business-related automobile expenses incurred after they begin their workday and before they end their workday. Personal miles and expenses incurred while not working will not be reimbursed.

It is not necessary for MAs to do substantial work from home and a MA’s home should not be a MA’s principal place of business. Most MAs will begin their workday when they arrive at their first business location and will end their day at the last business location they visit for the day.

If you believe you begin your workday before you arrive at your first business location or end your workday after you leave the last business location you visit, please contact _____. _____ will work with you to determine when you begin and end your workday and whether such miles should be reimbursed. You should direct any additional questions regarding the payment of mileage, including whether certain mileage may be reimbursed, to _____.

You must submit mileage expense reimbursement requests via the Company’s [Title of request form] to [Job Title] at [fax number or email] on a [weekly/monthly] basis.

You are responsible for any fines or parking violations incurred as a result of driving your personal vehicle.

Mobile Phones

Sysco will provide you with a mobile phone, phone number, and service plan to be used for work, which will be fully paid for by the Company. This phone and accompanying services will be owned by Sysco. At the end of your employment or upon request by Sysco, the phone must be returned. Sysco has the right to inspect the company-provided mobile phone's records, including its call and text logs and email history and their contents. Any calls or texts or other form of communication that is of a personal nature should be sent from the MA's personal mobile phone. If Sysco discovers data that it believes is inappropriate, including, for example, pornography, the employee may face discipline up to and including immediate termination.

Miscellaneous Expenses

From time to time, you may need to buy miscellaneous items such as toner, paper, pens, paper, notebooks, and other supplies. Sysco encourages you to use the supplies available at the operating companies, but will fully reimburse you for such necessary purchases made for business. You should turn in your receipts for miscellaneous expenses on at least a monthly basis.

Laptop Computers

Sysco will provide you with a laptop to be used for work, which will be fully paid for by the Company. Sysco will own this laptop. At the end of your employment or upon request by Sysco, the laptop must be returned. Sysco has the right to inspect company-provided laptops at any time, including all data stored on the computers' hard drives or any other associated media storage. If Sysco discovers data that it believes is inappropriate, including, for example, pornography, the employee may face discipline up to and including immediate termination.

What To Do If You Believe that You Have Not Been Fully Reimbursed for All Necessary Business Expenses

You should promptly inform your direct supervisor or another member of management in the sales department if you believe that you have not been fully reimbursed for all actual and necessary expenses incurred in the discharge of your employment duties for Sysco for any given workweek. All reports of possible inadequate reimbursement will be promptly investigated, including a review of all of your expense related records and receipts. If, as a result of the investigation, it is determined that you have not been adequately reimbursed for actual and necessary business expenses, the Company will promptly reimburse you, in full, for all actual and necessary business-related expenses incurred. It is your responsibility to keep accurate records and receipts of all business related expenses for the purpose of disputing reimbursement.

Agreed:

Employee

Sysco [Location]

[Name of Company Representative]

Date: _____

Date: _____

EXHIBIT B

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA

If you are or were employed by SYSCO or any SYSCO Operating Company as a MARKETING ASSOCIATE in California, a class action settlement may affect your rights.

The Alameda County Superior Court (“Court”) has authorized this notice in *Watts, et al. v. Sysco Corporation, et al.*, Case No. RG09-464228 (the “Action”). This is not a solicitation from a lawyer.

- In July 2009, two former Sysco Marketing Associates (“MA”), sued Sysco Corporation, Sysco San Francisco, Inc., and Sysco San Diego, Inc. The employees claimed that those companies had failed to reimburse them and other MAs for business expenses they and other MAs in California incurred in carrying out their daily sales duties, including for mileage, cell phone use, and home office items.
- Later in the Action, six additional former Sysco employees joined in making the same claims against the Sysco Companies sued in July 2009, plus four additional Sysco Operating Companies. Together all of the Sysco Companies sued in the Action are referred to in this Notice as “Sysco.”
- Sysco denies the claims made in the Action and asserts that it has fully reimbursed MAs for their business expenses, consistent with California law.
- The Parties have reached a settlement of the Action. The Court has allowed the Action to proceed as a class action for settlement purposes only. The Class for purposes of settlement consists of Marketing Associates employed by Sysco in California at any time from June 22, 2005 through April 3, 2011.
- The Court has preliminarily approved a settlement of the Action, in which Sysco has agreed to pay \$17,995,000 to pay for all costs related to this settlement, and resolve all of the claims made in the lawsuit based on the employees’ expense reimbursement and related claims. As part of the settlement, Sysco has also revised and expanded its policy to reimburse MAs for business expenses.
- You are receiving this notice because Sysco’s records indicate that you may be a Class Member in this Settlement. **Read this Notice Carefully, as your legal rights may be affected and you have a choice to make now:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

Option 1: Participate in the Settlement and Receive a Settlement Award.	<i>You need not do anything in order to receive a Settlement Award in this case. However, in exchange for the Settlement Award described below, you will give up your right to sue for expense reimbursements and related claims released by the Settlement.</i>
Option 2: Request to be Excluded from the Settlement	<i>Opt-out or exclude yourself from the Settlement. Get no benefits from it. If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money, and you will not give up any rights you may have against Sysco.</i>

Option 3: Object to the Settlement

The Court will decide whether any objections to the settlement are valid. If you file an objection and it is rejected by the Court, you will give up your right to sue for expense reimbursements and related claims unless you also file a request to be excluded.

I. BACKGROUND OF THE CASE

On July 22, 2009, Plaintiffs Stephen Watts and Rolando Herrera, former Sysco MAs, filed a class action against Sysco Corporation, Sysco San Francisco, Inc., and Sysco San Diego, Inc., on behalf of themselves and all other MAs who worked for Sysco in California since June 22, 2005.

Six additional former MAs - Clark Arnold, Deena Bartley, Clifford Corcoran, Scott Castanon, Amy Porterfield, and Russell Perez - later joined as Plaintiffs in the Action. In addition, the Plaintiffs added claims against four other Sysco Operating Companies - Sysco Los Angeles, Inc.; Sysco Ventura, Inc.; Sysco Central California, Inc.; and Sysco Sacramento, Inc. The Plaintiffs allege that they and other MAs were not reimbursed for day-to-day business expenses that they incurred while working for Sysco as MAs, including vehicle usage costs (i.e., mileage), cell phone use, and home office expenses.

Sysco denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and asserts that MAs are fully reimbursed for expenses, consistent with California law. The Court has not decided whether any violations occurred.

After a full day of mediation and several months of later arms-length negotiations between the Plaintiffs and Sysco (the "Parties"), the Parties reached this Settlement. This Settlement has been given preliminary approval by the Court, and this notice is being sent to all Settlement Class Members who now have the opportunity to receive a portion of the \$17,995,000 settlement payment or exclude themselves from the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. Who is included in the Settlement?

You will be included in the Settlement if you were employed by Sysco as a MA in the State of California at any time from June 22, 2005 to April 3, 2011 ("Settlement Class Positions"), unless you properly opt-out as described below. **You need not do anything to participate in the Settlement.**

B. How much is my share of the Settlement if it is approved?

Sysco will make a settlement payment ("Settlement Payment") of \$17,995,000, if the Court grants final approval of the Settlement. As will be described in more detail below, the amount available for Class Members from the \$17,995,000 is estimated at \$12,380,890, calculated as follows:

\$17,995,000	(Settlement Amount)
\$ 4,498,750	(25% Award for Attorneys' Fees)
\$ 50,000	(Estimated Litigation Costs)
\$ 82,500	(Class Representatives' Service Payments)
\$ 25,418	(Estimated Administrator Fees)
\$ 18,750	(Payment to California Labor Workforce Development Agency)
\$ 887,692	(Payment of employer share of payroll taxes on taxable Settlement Payments)
\$ 50,000	("Reserve Fund" set aside to pay potential late/disputed claims)
\$12,380,890	= Estimated "Net Settlement Fund" Payable to Class Members

The Net Settlement Fund may vary depending upon whether, and in what amounts, the Court approves the attorneys' fees, litigation expense reimbursements, and Service Payments.

The entire Net Settlement Fund will be paid to Class Members based upon the following formula: The number of weeks worked by each Settlement Class Member as a MA at any time during the period June 22, 2005 through April 3, 2010 (the "Class Period") in relation to the number of weeks worked by all members of the Class during the Class Period, i.e. a pro-rata portion of the Net Settlement Fund based on time worked by each Class Member. Preliminarily, it is estimated that each Class Member will be paid approximately \$68.38 for each week she or he worked as a MA during the Class Period.

Each Class Member who worked in the Class Positions, according to Sysco's records, will receive a payment calculated as described above. **The estimated gross amount that you can expect to receive pursuant to the proposed terms of the Settlement is stated in the enclosed Share Form.** This estimated amount is subject to change, up or down, depending on the final number of Settlement Class Members who participate in the Settlement and the number of weeks they worked during the Class Period, among other things. The net amount you receive will be less than the gross amount to account for mandatory tax withholdings described below.

The Settlement Payment to you will be treated as partially (60%) for expenses paid on a "non-accountable" expense reimbursement plan, and partially (40%) as interest and penalties. From the portion payable for non-accountable plan expenses, certain taxes will be withheld as required by law. You will receive separate IRS Form 1099s for the two portions of the payment. If you decide to participate in the settlement and collect your share of the fund, **you will be responsible for correctly characterizing these payments for personal tax purposes and paying any taxes owed on the amounts.** Neither the Settlement Administrator, Plaintiffs, Sysco, nor their respective lawyers are authorized to provide tax reporting advice and provide no advice as to whether receipt of this payment will impact your prior or future tax filings. **You should obtain independent tax advice regarding these matters.**

C. What if the information on my Share Form is incorrect?

The amount you receive from the Settlement is not subject to dispute by you, except to the extent you believe that it has been incorrectly calculated due to an error in records showing your dates of employment as a MA during the Class Period, excluding dates when you were not working (medical leave, sick days, vacation, personal leave, etc.). The Share Form enclosed with this Notice lists the dates that you worked for Sysco as a MA during the Class Period, excluding leave periods. If you believe that the dates worked information is incorrect, you may dispute or "challenge" the listed time period(s) in which you worked as a MA or in which you were on leave during the Class Period, by submitting a written challenge along with **any documents or other supporting evidence to the Settlement Administrator.** Such challenges must be post-marked by no later than _____, 2011.

Sysco's records will be presumed to be correct, but the Settlement Administrator will evaluate any information and evidence submitted by you and may in its discretion use dates different from those in Sysco's records. Any disputes will be finally resolved by the Settlement Administrator without the possibility of appeal to Class Counsel, Sysco, or the Court.

If the Share Form does not correctly state your name or contact information, please inform the Settlement Administrator immediately. You can do this by calling or writing to

Sysco MA Settlement Administrator
c/o Kurtzman Carson Consultants
75 Rowland Way
Suite 250
Novato, CA 94945
T: 415.798.5900

D. When will I receive my Settlement Payment?

The Settlement Payments will be made approximately 65 days after final court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement. The earliest that this could occur is in _____, 2011.

E. What if I do not want to participate in this lawsuit or this Settlement?

IMPORTANT: You will be bound by the terms of the Settlement, unless you submit a timely written request to be excluded from the Settlement. To exclude yourself from the Settlement you

must mail a written request specifically stating your full name, address, and social security number, as well as the following statement: "I wish to exclude myself or opt out of the class action settlement in the Alameda County Superior Court case of *Watts v. Sysco Corporation*, Case No. RG09-464228. I understand that by requesting to opt out of this Settlement, I will not be a Class Member and I will not receive any payments from the Settlement of that case." Such request for exclusion must be post-marked no later than _____, 2011.

F. What additional payments will be made to the Class Representatives?

In addition to their respective shares as participating Settlement Class Members, Plaintiffs Watts, Herrera, and Arnold will be paid up to \$15,000, and Plaintiffs Bartley, Corcoran, Castanon, Porterfield, and Perez will be paid up to \$7,500, respectively, subject to Court approval, for their services as Class Representatives bringing this case, as well as their willingness to accept the risks of being a Class Representative. These payments will be deducted from the Settlement Payment.

G. What payments will be made for applicable taxes on Settlement Payments

Taxes required to be withheld from Settlement Payments to Class Members will be withheld from the portion (60%) of their checks allocated to payments from a non-accountable expense reimbursement plan. In addition, \$ _____ will be deducted from the Settlement Amount to be paid to government tax authorities as Sysco's share of payroll taxes on that same portion of the Settlement Payments. No tax withholdings will be made by the Settlement Administrator on the remaining (40%) portion of Settlement Payments.

H. What payments will be made to the attorneys representing the Settlement Class?

Class Counsel will request approval from the Court for payment of attorneys' fees of 25 % of the total Settlement, or \$4,498,750, plus reimbursement of actual litigation costs up to \$50,000. These amounts will be deducted from the Settlement and are subject to Court approval.

I. What payments will be made for costs of settlement administration?

The costs of administering the Settlement -estimated at \$25,418 - will be deducted from the Settlement.

J. What is the amount and function of the Reserve Fund?

The parties have agreed to establish a Reserve Fund of \$50,000 to pay for payments due to Settlement Class Members that the Settlement Administrator deems to have been mistakenly denied, overlooked, or otherwise disputed. This fund will be deducted from the Settlement amount and held in an interest-bearing account for one year after the Court grants final approval to the Settlement. After this time has expired, any funds that remain from the Reserve Fund, in addition to any amounts remaining from uncashed settlement checks, will be paid to one or more charities approved by the Court. After the Reserve Fund has been paid out in these ways, there will be no funds remaining for any further payments to Settlement Class Members.

K. Payment of Penalties to the State of California

The parties have allocated \$25,000 as payment pursuant to the "Private Attorney General Act", or "PAGA." The California Labor Code requires that 75% of any amounts paid pursuant to PAGA be provided to a California state agency known as the Labor and Workforce Development Agency. Therefore, \$18,750 (75% of \$25,000) will be deducted from the Settlement and paid to the LWDA pursuant to PAGA.

L. How Much Will Actually Be Paid Out to Class Members?

The remainder of the Settlement Amount, \$12,380,890, also known as the Net Settlement Amount, will be paid out to Class Members (subject to tax withholdings as described above).

M. What Changes is Sysco Making in its Expense Reimbursement Policies as a Result of the Settlement?

On April 4, 2011, as a part of the Settlement Agreement, Sysco put into effect a new Expense Reimbursement Policy applicable to MAs in California. Sysco has stated that the intention of this Policy is to reimburse MAs fully for all necessary business expenses they incur in their jobs. Under this Policy, all Class Members currently working for Sysco, and MAs who are hired while the Policy remains in effect, will be reimbursed for business expenses in three basic ways. First, they will be paid for business mileage driven in personal vehicles at the applicable IRS mileage rate, which is currently 51 cents per mile. Second, Sysco will provide MAs with cellular telephone service that Sysco believes is sufficient for their business needs. Third, MAs will have the ability to submit reimbursement requests for other expenses such as auto tolls and parking, home office supplies, etc., using forms and procedures established by Sysco. All currently employed MAs have been informed of this Policy and provided with necessary forms and instructions.

Sysco has agreed to keep this Policy in effect until at least April 4, 2013. Sysco may also decide to offer MAs an alternative method of being reimbursed for business expenses, at their option; but the new Expense Reimbursement Policy will still remain available to MAs until at least April 4, 2013.

N. What Claims Will I Release by Participating in the Settlement?

The Class Members release and discharge Sysco and its former and present parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials directors and shareholders, and their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, and those plans' respective trustees and administrators. ("Released Parties"), relating to any and all claims for reimbursement of business expenses incurred as MAs during the Class Period under California Labor Code § 2802, and any associated claims for damages, restitution or penalties, and any claims for equitable relief, based on any and all claims for failure to reimburse, or cover, or pay for business costs, including without limitation claims for reimbursement of costs spent on vehicle usage costs (i.e. mileage), cellular phone use, and home office expenses. ("Class Members' Released Claims"). The Class Members' Released Claims include claims meeting the above definition (limited to business expense-related claims) under any and all applicable statutes, including in particular California Labor Code §§ 201,202,203, 221, 226, and 2802; the California Unfair Competition Law, California Bus. & Prof. Code § 17200, the California Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 through 2699, California Code of Civil Procedure § 1021.5, and any other provision of the California Labor Code or other laws as they relate to the reimbursement of business expenses.

O. What can I do if I oppose the Settlement?

You may object to the terms of the Settlement before final approval, either by filing a written objection or filing a notice of your intent to appear and object at the final approval hearing at the time and place listed below in this Notice. However, if the Court rejects your objection and approves the Settlement you will be bound by the terms of the Settlement, unless you also submit a request to be excluded from the Settlement.

To object, you must send a written notice of objection or a written notice of your intent to appear and object at the final approval hearing to the Settlement Administrator, with a copy to the Class Counsel, at the addresses shown below. The Settlement Administrator will file your objection with the Court before the final approval hearing. You may also file your objection directly with the Court at the address listed in the section describing the location of the Final Approval Hearing, with a copy to the Settlement

Administrator and Class Counsel, but this may result in delays or failure to respond to your objection. DO NOT TELEPHONE THE COURT OR SYSCO'S COUNSEL.

Any written objection and/or notice of your intent to appear at the hearing must state each specific reason in support of your objection and any legal support for each objection. Your written objection and/or notice of your intent to appear at the hearing must also state your full name, address, date of birth, dates of your employment, and positions held at Sysco in California. **To be valid and effective, the Settlement Administrator and/or the Court must receive any written objections and/or notices of intent to appear at the hearing not later than [REDACTED], 2011].** A Settlement Class Member who fails to file and serve a written statement of objection in the manner described above and by the specified deadline will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

To object, file your objection with :

SYSCO MA CLASS ACTION ADMINISTRATOR

Kurtzman Carson Consultants

75 Rowland Way
Suite 250
Novato, CA 94945
T: 415.798.5900

And also send a copy of your objection to:

Aaron Kaufmann
David Pogrel
HINTON, ALFERT, SUMNER & KAUFMANN
1646 North California Blvd., Suite 600
Walnut Creek, CA 94596
Phone: -(925) 932-6006
Fax: -(925) 932-3412

Morris J. Baller
Lin Yee Chan
GOLDSTEIN DEMCHAK BALLER BORGES &
DARDARIAN
300 Lakeside Drive, Ste. 1000
Oakland, CA 94612-3534
Phone: (510) 763-9800
Fax: (510) 835-1417

P. What if I change my mind about opting out of or objecting to the Settlement?

If you file a request for exclusion from the Settlement or file an objection to the Settlement but then change your mind after you, you can rescind your request or objection. **Any such statement of rescission must be in writing, and must be sent to the Settlement Administrator; and must be received at least a day before the date of the Final Approval Hearing, or _____, 2011 as currently scheduled, to be effective.** If you submit a timely rescission, the rescinded exclusion request or objection will have no effect on your participation in the Settlement or the amount of any payment you are entitled to receive from the Settlement.

III. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a final approval hearing on the proposed Settlement on [REDACTED], 2011, at [REDACTED], at Department 17, Alameda County Superior Court, 1221 Oak Street, Oakland, CA 94612. The purpose of this hearing is to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and expense reimbursement and the Class Representative's service payments. The hearing may be postponed without further notice to the Class; any such postponement will be posted on the Court's website for Department 17.

It is not necessary for you to appear at this hearing unless you wish to object to the Settlement. If you have given written notice of your objection to the Settlement, you may appear at the hearing at your option.

IV. GETTING MORE INFORMATION ABOUT THE SETTLEMENT

This Notice contains a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Joint Stipulation of Class Action Settlement and Release between Plaintiffs and Sysco, which will be on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined at any time during regular business hours in the Office of the Clerk, Alameda County Superior Court, Department 17, Alameda County Superior Court, 1221 Oak Street, Oakland, CA 94612. You may also contact the Administrator in writing or by telephone at: 1 (800) [REDACTED]. You also may contact Class Counsel listed below for more information:

Aaron Kaufmann
David Pogrel
HINTON, ALFERT, SUMNER & KAUFMANN
1646 North California Blvd., Suite 600
Walnut Creek, CA 94596
Phone: -(925) 932-6006
Fax: -(925) 932-3412

Morris J. Baller
Lin Yee Chan
GOLDSTEIN DEMCHAK BALLER BORGES &
DARDARIAN
300 Lakeside Drive, Ste. 1000
Oakland, CA 94612-3534
Phone: (510) 763-9800
Fax: (510) 835-1417

IMPORTANT:

1. **PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIMS PROCESS.**
2. **If you move or change address, please send the Administrator your new address. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your Settlement Payment. Failure to do so may result in non-payment or delay in payment.**
3. **It is strongly recommended that you keep a copy of any request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**

BY ORDER OF THE COURT.

EXHIBIT C

EXHIBIT C

**ESTIMATED PAYMENT FORM AND INSTRUCTIONS TO CHALLENGE
DATES OF EMPLOYMENT**

WATTS, ET AL., V. SYSCO CORPORATION, ET AL., Case No. RG09-464228 IN
THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

**Your estimated share of the settlement in this case is \$XXXXXX.
This estimate is based on the dates of employment, excluding leaves
of absence, as listed on page 2 of this form.**

**If you accept your dates of employment, you do not need to do
anything to receive your share of the settlement (unless you also
need to update or correct your mailing address).**

**If you wish to challenge the dates of employment listed on page 2,
carefully follow the instructions on this form.**

**TO CHALLENGE THE ESTIMATED AMOUNT OF PAYMENT BASED ON
THE DATES OF EMPLOYMENT AS A MARKETING ASSOCIATE,
THIS FORM MUST BE SIGNED AND POSTMARKED OR FAXED NOT
LATER THAN _____.**

**MAIL TO:
SYSCO MARKETING ASSOCIATE CLASS ACTION ADMINISTRATOR
KURTZMAN CARSON CONSULTANTS
75 ROWLAND WAY
NOVATO, CA 94945
OR FAX TO: (415) 892-7354**

Important:

1. It is strongly recommended that you keep proof of timely mailing and/or faxing for your records until receipt of your settlement payment. You do NOT have to submit this form if you believe the dates of employment listed below are accurate.

2. If you change your mailing address, please send your new mailing address to the Administrator. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your settlement payment.

EMPLOYMENT DATES AND CHALLENGE INFORMATION

<<Name>>

<<Address>>

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

(_____) _____ -- _____
Home Telephone Number

Your Compensable Workweeks

Sysco's records show that during the Class Period of June 22, 2005 through April 3, 2011, you held the position of Marketing Associate in California in the following time periods:

<<Dates>>

During this time, you were on a leave of absence for ___ days. (or "N/A" if no leaves of absence noted)

Your total number of Compensable Workweeks is: <<number of workweeks>>

Your Estimated Payment

Based upon the estimated share for each compensable workweek at an estimated amount per week worked of \$ _____, your settlement share is currently estimated at \$ _____, assuming that all Settlement Class Members identified to date participate in the Settlement (i.e., can be located and do not opt out). This amount is subject to change, either up or down, depending upon the number of Settlement Class Members who submit challenges to estimated amounts, the outcome of those challenges, the number of Class Members who opt out, and other possible factors.

CHALLENGE

Check a box below ONLY if you wish to challenge the dates listed below. All Fields must be complete for your challenge to be accepted:

- I wish to challenge the employment dates listed above. I have included with a written statement of what I believe to be my correct dates of employment as a Marketing Associate with Sysco in California during the period from June 22, 2005 through April 3, 2011. I have also included information and/or documentary evidence that supports my challenge. I understand that, by submitting this challenge, I authorize the Administrator to review Sysco's records and determine the validity of my challenge based upon Sysco's records as well as the dates, records and information that I am submitting. This includes information related to any possible Family Medical Leave Act (FMLA)/California Family Responsibility Act (CFRA) leave that I may have been on while employed by Sysco.

Signature

Name of Class Members _____ [preprinted]

Class Member ID Number (from address label):
_____ [preprinted]

I believe that my correct dates of employment as a Marketing Associate for Sysco during the class period are _____ to _____.

Statement of reasons and documentation of dates of employment according to Class Member: _____

[attach documentation and use separate page(s) as necessary]

