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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**SEP 14 2011**

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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

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

Case No.: RG09-464228

CLASS ACTION

**ORDER GRANTING MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT, AND OF AWARDS OF  
COSTS AND ATTORNEYS' FEES**

18 Plaintiffs,

19 vs.

Date: September 8, 2011  
Time: 3:00 p.m.  
Dept: 17  
Judge: Hon. Steven A. Brick

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,  
24 INC., a Delaware corporation; SYSCO  
CENTRAL CALIFORNIA, INC., a California  
25 corporation,

26 Defendants.

1 The Court, having considered Plaintiffs' Motion for Final Approval of the settlement of the  
2 above-captioned action pursuant to the Settlement Agreement filed on or about May 23, 2011, having  
3 read and considered all of the papers of the parties and their counsel, having granted preliminary  
4 approval on June 9, 2011, and directed that notice be given to all Class Members of preliminary  
5 approval of the Settlement Agreement and the final approval hearing and the right to be excluded from  
6 the settlement, and having received no objections or opposition to the settlement, and good cause  
7 appearing, **IT IS HEREBY ORDERED AS FOLLOWS:**

8 1. Terms used in this Order have the meaning assigned to them in the Settlement  
9 Agreement, Class Notice, and the Motions for Preliminary and Final Approval of the Class Action  
10 Settlement.

11 **I. FINAL APPROVAL**

12 2. The Court hereby makes final the conditional class certification contained in the Order  
13 of Preliminary Approval of Settlement, Certification of Settlement Class and Appointment of Class  
14 Counsel, and thus certifies a class whose members consist of: All individuals employed by Defendants  
15 Sysco Corporation, Sysco San Diego, Inc., Sysco San Francisco, Inc., Sysco Ventura, Inc., Sysco Los  
16 Angeles, Inc., Sysco Sacramento, Inc., and Sysco Central California, Inc. (Collectively "SYSCO" or  
17 "Defendants") who worked as Marketing Associates in California during the Class Period of June 22,  
18 2005 through April 3, 2011. The Court further makes final the conditional appointment of, and thus  
19 appoints, Plaintiffs Steven Watts, Roland Herrera, Clark Arnold, Deena Bartley, Clifford Corcoran,  
20 Amy Porterfield, Scott Castanon, and Russell Perez as Class Representatives, and the law firms Hinton  
21 Alfert Sumner & Kaufmann and Goldstein, Demchak, Baller, Borgen & Dardarian as Class Counsel.

22 3. The Court hereby finds that the Notice of Preliminary Approval of Settlement and Final  
23 Approval Hearing has been mailed to all Class Members as previously ordered by the Court, and that  
24 such Notice fairly and adequately described the terms of the proposed Settlement Agreement, the  
25 manner in which Class Members could object to or participate in the settlement, and the manner in  
26 which Class Members could opt out of the Class; was the best notice practicable under the  
27 circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with  
28 Civil Code § 1781(e), Rule of Court 3.769, due process and all other applicable laws. The Court

1 further finds that a full and fair opportunity has been afforded to Class Members to participate in the  
2 proceedings convened to determine whether the proposed Settlement Agreement should be given final  
3 approval. Accordingly, the Court hereby determines that all Class Members who did not file a timely  
4 and proper request to be excluded from the settlement are bound by this final Order.

5 4. The Class Member who filed a timely request to be excluded from the settlement,  
6 Karina Aceves Rodriguez, is hereby excluded from the class and is bound by neither the settlement nor  
7 the Court's judgment in this action.

8 5. The Court finds that the Settlement Agreement is fair, reasonable, and adequate as to  
9 the Class, Plaintiffs and Defendants, and is the product of good faith, arm's-length negotiations  
10 between the parties, and further, that the Settlement Agreement is consistent with public policy, and  
11 fully complies with all applicable provisions of law. Accordingly, the Court hereby finally and  
12 unconditionally approves the Settlement Agreement, and specifically:

13 a. Approves the Gross Settlement Amount of Seventeen Million Nine Hundred and  
14 Ninety Five Thousand Dollars (\$17,995,000);

15 b. Approves that \$50,000 of the Settlement Fund be set aside as a Reserve Fund, in  
16 addition to amounts from uncashed checks, to address any legitimate disputes about the proper amount  
17 of payments to Class Members who were not initially located or who do not receive and cash their  
18 settlement checks; and that any amounts remaining in the Reserve Fund 380 days after the Settlement  
19 Effective Date<sup>1</sup> together with the amount of any uncashed settlement checks will be distributed to East  
20 Bay Community Law Center as the qualified 501(c)(3) charity (*cy pres* recipient);

21 c. Approves that \$50,000 of the Settlement Fund be designated to resolve PAGA  
22 claims, and that under Labor Code section 2699(i), 75 percent of that amount, or \$37,500, will be paid  
23 to the California Labor and Workforce Development Agency;

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<sup>1</sup> As defined in the Settlement Agreement.

1 d. Approves the application for class representative service awards as follows:  
2 \$15,000 to Stephen Watts; \$12,500 to each of Roland Herrera and Clark Arnold; and \$5,000 to each of  
3 Deena Bartley, Clifford Corcoran, Amy Porterfield, Scott Castanon, and Russell Perez.

4 e. Approves Class Counsels' reasonable attorneys' fees in the amount of \$4.08  
5 million, for the reasons set forth in paragraphs 7- 15, infra;

6 f. Orders that ten percent (10%) of the amount awarded as attorneys' fees be  
7 retained by the Administrator, to be paid out to Class Counsel upon further order of the Court after  
8 certification of completion of distribution of monies due to Class Members under the Settlement;

9 g. Approves Class Counsels' request for reimbursement of litigation expenses of  
10 \$42,568.32;

11 h. Approves payment to Kurtzman Carson Consultants LLC., the Settlement  
12 Administrator, of up to \$42,024.17, as costs and expenses of settlement administration;

13 i. Approves payment of the employer's share of payroll taxes for FICA, and any  
14 other taxes for which the employer would ordinarily be responsible, from the Settlement Fund.

15 6. Approves the payment from the Net Settlement Fund of amounts determined by the  
16 Settlement Administrator to be due to Class Members, including the allocation of such amounts  
17 between non-accountable business expenses (subject to withholding) and interest and penalties (not  
18 subject to withholding), as specified in the Settlement Agreement.

## 19 **II. ATTORNEYS' FEES**

20 7. As the Court explained in its tentative ruling, when the legislature has determined that a  
21 losing defendant must pay the attorneys' fees of a prevailing plaintiff on a particular type of claim,  
22 there is no need for the "common fund" approach, which is designed to avoid unjustly enriching a  
23 plaintiff who should otherwise be helping to foot the bill for his attorneys' services. (See, *e.g.*, *Lealao*  
24 *v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27-28.) The Court's primary analysis, then,  
25 should be under the lodestar/multiplier method. This includes for the UCL claims, which are wholly  
26 derivative. (See, *e.g.*, *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637  
27 [rejecting the application of C.C.P. § 1021.5 fee request in a FEHA case, stating that there is no need  
28 for 1021.5 fees when attorney fees are provided for under FEHA (and going on to use the lodestar

1 approach); *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133 [where a plaintiff  
2 prevails on a fee claim in a civil rights or comparable statute, the plaintiff is generally entitled to  
3 recover fees for work performed on all related claims].) The Court is permitted, but not required, to use  
4 the common fund analysis as a cross check. (*Lealao, supra*, at 39.)

5 8. At the hearing, Plaintiffs' counsel clarified that they do not dispute that Labor Code  
6 section 2802 (which substantively underpins all claims in this case) provides for statutory fee awards  
7 to prevailing plaintiffs, but argued that the primary vehicle for evaluating attorney fee requests under  
8 California law is the common fund approach. Counsel have not provided any authority to support the  
9 application of the percentage-based approach, first, in a fee-shifting case. This includes the excerpt  
10 from Richard Pearlstein's treatise on attorneys' fees, provided by Plaintiffs after the hearing, which  
11 cites no case in which a court applied the percentage-based approach as the primary method in  
12 evaluating fees on fee-shifting claims. Indeed, *Lealao* held that the primary approach is the lodestar  
13 method, and stated that even in true "common fund" cases, the use of a percentage-based approach is  
14 questionable. Counsel also argued that much of the benefit was provided pursuant to the UCL, which is  
15 not a fee shifting statute; however, they have cited no authority permitting the Court to ignore the fee-  
16 shifting nature of Plaintiffs' Labor Code claims, which are inextricably intertwined with their UCL  
17 claims.

18 9. Thus, the Court will evaluate counsel's fee request using the lodestar plus multiplier  
19 method, and will exercise its discretion to cross check the resulting fee award using the percentage-  
20 based approach.

21 10. Counsel have provided adequate information to support the reasonableness of the  
22 hourly rates billed, and there is no objection to these rates. As to the number of hours billed, the Court  
23 recognizes and appreciates the substantial exercise of billing judgment performed by both firms, as  
24 well as the thought put into proper and appropriate delegation of tasks by the Hinton firm. The  
25 summary and detailed time records do reveal some duplication and failure to appropriate delegate.  
26 They suggest that Mr. Baller, who is the Goldstein firm's highest billing attorney in this case,  
27 performed a disproportionate number of tasks himself rather than delegating to lower-priced  
28 associates. Examples include performing corporate and locations research; conducting telephone

1 interviews; calendaring due dates; drafting, proofing and revising form interrogatories and requests for  
2 admissions; draft deposition notices and case management statements. He also appears to have spent a  
3 disproportionate amount of time on settlement documents and preliminary approval. While the  
4 decision not to delegate in each of these areas may well have been reasonable under the circumstances,  
5 no explanation was provided.

6 11. The task based billing summaries are helpful, but suggest some unnecessary duplication  
7 across firms. For example, in areas where Mr. Pogrel testified that he took the laboring oar (pleadings,  
8 final approval, and depositions), the Goldstein firm actually billed more time. In one area where Mr.  
9 Pogrel states that the firms split responsibility (written discovery), the summaries reflect far more time  
10 expended by the Goldstein firm. This suggests that efforts to avoid duplication across firms were not  
11 entirely successful. To account for all of the foregoing issues, the Court is inclined to adjust counsel's  
12 stated lodestar downward by 5%, to \$1,166,600.

13 12. At the hearing, Counsel did not address the foregoing issues with the amount of  
14 counsel's lodestar, all of which were set forth in the Court's tentative ruling. Rather, counsel focused  
15 on the common fund approach and the Court's valuation of the settlement benefits, and also argued that  
16 these and other factors warrant the application of a very high multiplier (3.66).

17 13. Upon further reflection, the Court finds that the application of an extraordinary  
18 multiplier is warranted in this case. Initially, counsel have obtained superb results for the Class, a non-  
19 reversionary checks-mailed settlement with prospective relief that is apparently already on track to  
20 exceed Plaintiff's best estimate of its value. Further, this case presented an unusually high level of  
21 complexity and risk, due mainly to Defendants' corporate form, which posed significant obstacles to  
22 class certification and also required that additional class representatives with standing to sue each  
23 entity join the case. In addition, although Plaintiffs' counsel has successfully litigated and settled  
24 similar suits, the possibility of little or no recovery remained. The preclusion of other employment by  
25 Class Counsel was also actual and substantial. Finally, the Court notes the professionalism and  
26 promptness with which counsel obtained those results. Based upon the foregoing, the Court finds that  
27 facts and circumstances of this case support the application of the extraordinary multiplier of 3.5. (See,  
28 *e.g., In re Vitamin Cases* (2003) 110 Cal.App.4th 1041, citing *Ramos v. Countrywide Home Loans*,

1 *Inc.* (2000) 82 Cal.App.4th 615, 629-630 ["extraordinary justification was necessary for an enhanced  
2 fee award of 2.5 times the attorneys' usual hourly rates"]; *Amaral v. Cintas Corp.* (2008) 163  
3 Cal.App.4th 1157, 1216-18.) This results in a total fee award of \$4.08 million.

4 14. Applying a percentage-based cross check, if the Court uses Plaintiff's best-case estimate  
5 for prospective relief of \$14 million, this award represents almost 15% of the value of the relief  
6 obtained for the class. If the Court uses the conservative valuation of \$7 million for prospective relief,  
7 the award represents almost 20% of the total relief obtained. (The Court has calculated the value of the  
8 retrospective relief valued at approximately \$13.945 million, which is the gross fund minus attorneys'  
9 fees, which are provided for by statute.)

10 15. While counsel argues that no lawyer would negotiate a contingency fee of less than  
11 33% of the benefits obtained, not all contingency agreements are the same. Some such agreements  
12 involve a sliding scale, where the percentage drops as the size of the recovery rises. Some use lower  
13 percentages if the case settles early in the litigation. Some (albeit very few) are based upon the net  
14 verdict, after deductions for costs and expenses. Counsel also ask the Court to use Plaintiffs' best  
15 estimate of the prospective relief won. While this may be appropriate for purposes of valuing the  
16 settlement, counsel overlook the fact that they will be paid their full fee before all of the prospective  
17 relief will be realized, and have not shown that privately-negotiated contingency fee agreements are  
18 commonly structured in this fashion.

19 16. In any event, the percentage-based method is only a cross check to ensure that the fee  
20 award is not unreasonable, and an optional one, at that. Nothing indicates that there is any danger,  
21 here, of unjustly enriching the class (particularly given Plaintiffs' estimate that the class will receive  
22 less than half of their potential damages) by awarding less than 33%. Given the extraordinary  
23 multiplier applied to account for the additional risks incurred by Plaintiffs' counsel in taking this case,  
24 it is difficult to believe that the award will deter counsel from taking similar cases in the future.

1 **III. IMPLEMENTATION SCHEDULE**

2 17. The Court orders the following Implementation Schedule for further proceedings:

3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
	Within 10 days of notice of entry of this order																								
	Within 15 days of notice of entry of this order																								
	Within 20 days of notice of entry of this order																								
	"Settlement Effective Date" (Upon (i) the expiration of time for appeal of this order; or (ii) if there is an appeal, then upon the final resolution of any appeal from this order).																								
	45 days after mailing of Settlement Checks.																								
	5 days before date of expiration of Class Member settlement checks																								
	90 days after mailing of Settlement Checks.																								
	Within 10 days of date of expiration of Settlement Class Member settlement checks																								
	February 23, 2012 at 3:00 p.m.																								

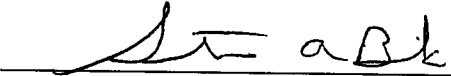


<p>1 365 days after Settlement Effective Date</p> <p>2</p> <p>3</p>	<p>Settlement Administrator to (1) make any final Class Member payments from the Reserve Fund, (2) reimburse Class Counsel for expenses paid to peoplehunter.com, and (3) calculate the balance remaining in the Reserve Fund, if any.</p>
<p>4 380 days after Settlement Effective Date</p> <p>5</p> <p>6</p>	<p>Settlement Administrator to pay any remaining funds in the Reserve Fund to court-approved cy pres beneficiary.</p>

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

15 19. This Court retains exclusive and continuing jurisdiction over the litigation for purposes  
16 of supervising, implementing, interpreting and enforcing this Order and the Settlement Agreement, and  
17 in order to conduct further hearing(s) on certification of distribution procedures as specified above.

18  
19 Dated: September 14 2011

20   
21 Steven A. Brick  
22 JUDGE OF THE SUPERIOR COURT  
23  
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**Superior Court of California  
Alameda County**

**Case # RG09 464228**

**Case Name: Watts vs. Sysco Corporation**

**Document: Order Granting Motion for Final Approval of Class Action Settlement, and of Awards of Costs and Attorneys' Fees**

**CLERK'S CERTIFICATE OF  
MAILING  
(CCP 1013a)**

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak St. Oakland, California. I served this **Order** by placing copies in envelope(s) addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at **Oakland**, California, following standard court practices.

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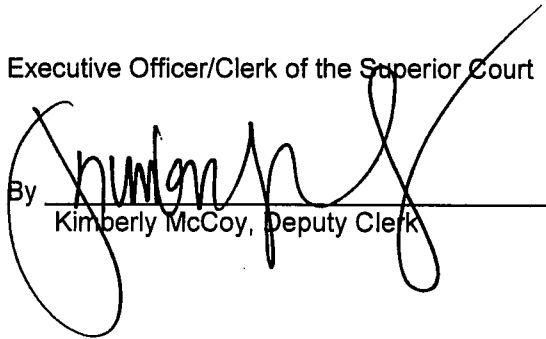
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Date:

**SEP 15 2011**

Executive Officer/Clerk of the Superior Court

By

  
\_\_\_\_\_  
Kimberly McCoy, Deputy Clerk