**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF KANSAS**

ANTHONY HARMS and MICHAEL TUTTLE, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

SYSCO KANSAS CITY, INC.,

Defendant.

Case No. 2:24-cv-02452-KHV-JBW

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR UNOPPOSED MOTION FOR ORDER CERTIFYING CLASS AND COLLECTIVE ACTION FOR PUPOSES OF SETTLEMENT, PRELIMINARILY APPROVING CLASS AND COLLECTIVE ACTION SETTLEMENT, DIRECTING NOTICE TO THE CLASS, AND APPOINTING CLASS COUNSEL**

## I. INTRODUCTION

Plaintiffs respectfully move the Court for an order certifying their class and collective action claims for purposes of settlement[1], preliminarily approving the parties' proposed class and collective action settlement, approving the issuance of notice, and appointing class counsel. More specifically, Plaintiffs seek conditional certification of a settlement-only class under 29 U.S.C. 216(b) defined as: "all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors from July 1, 2020, through March 1, 2026, and who are included in the class list as determined by Defendant's business records" ("collective class" or "FLSA collective class"). Plaintiffs also seek certification under Rule 23 of a Kansas state law settlement-only class defined as "all persons employed as

---

[1] The parties' Settlement Agreement is attached as Exhibit 1, to which the FLSA Putative Collective Class Notice is attached as Exhibit A, and Joint FLSA and State/KWPAClass Putative Notice is attached as Exhibit B.

hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors between July 1, 2020, and January 26, 2026, who do not opt out" ("KWPA class" or "KWPA settlement class").

## II. FACTUAL BACKGROUND

### A. The Parties

Named Plaintiffs Anthony Harms ("Plaintiff Harms") and Michael Tuttle ("Plaintiff Tuttle"), and Opt-In Plaintiffs Michael Shouse, Jacob Reynolds, and James Monaco ("Opt-In Plaintiffs") were formerly employed by Defendant Sysco Kansas City, Inc. ("Defendant" or "Sysco") as hourly, outbound "Order Selectors" at Defendant's warehouse location in Olathe, Kansas. *See* Doc. 54 at ¶¶ 6-9, 22. Defendant Sysco Kansas City, Inc. provides wholesale food service distribution and delivery to businesses and other organizations. *Id.* at 1, 3. Order Selectors are responsible for picking orders for delivery to foodservice venues in their local community.

### B. Overview of the Claims and Defenses at Issue

This case involves the following claims: (1) individual and putative collective action claims for unpaid overtime under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq*. ("FLSA"), and (2) individual and putative class action claims under Federal Rule of Procedure 23 for unpaid "straight time" damages under Kansas common law and the Kansas Wage Payment Act, K.S.A. §§ 44-313, *et seq*. *Id.* at ¶¶ 69-92, 102-111.

1. *Summary of Plaintiffs' Claims*

Plaintiffs allege that they, and other similarly-situated outbound Order Selectors at Defendant's Olathe, Kansas warehouse location were required to perform "off-the-clock" work, resulting in them not receiving overtime pay for all hours they worked in excess of 40 hours each workweek, or straight time pay for all hours they worked in non-overtime workweeks. *Id.* at ¶¶

49-50. More specifically, Plaintiffs allege they and other Order Selectors were regularly instructed by one or more of Defendant's managers to perform compensable work tasks prior to clocking in, and after clocking out. These alleged tasks included attending meetings, performing pre-shift and post-shift inspections, and retrieving and returning equipment needed for the shift. *Id.* at ¶ 46(a)-(b); Doc. 25-6, Tuttle Declaration at ¶¶ 7, 8.

2. *Summary of Defendant's Defenses*

Defendant denies Plaintiffs' allegations and denies that Plaintiffs are entitled to any relief whatsoever including because it has at all times compensated Plaintiffs and other outbound Order Selectors for all compensable work consistent with applicable law. Defendant pleaded several affirmative defenses (*see, e.g.*, Doc 56) and generally denies any liability or wrongdoing of any kind associated with the claims asserted in this case. Further, Defendant asserts that because the Plaintiffs' and other members of the putative classes were represented by United Food and Commercial Workers Union, Local No. 2, their employment as Order Selectors were governed by the terms of Collective Bargaining Agreements between Defendant and the Union, and as such, their state law claims are preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 141, *et seq*. ("LMRA"). *Id.* While Plaintiffs disagree with Defendant's assertion, Plaintiffs acknowledge that both parties have pointed to case law supporting their respective positions, and consequently, there appears to be a not insignificant risk that Defendant would ultimately prevail on this issue and on its other defenses.

**C. Procedural History of the Case**

Plaintiffs' counsel began engaging in informal discovery and preliminary settlement negotiations with Defendant in December of 2023. In connection with these negotiations, on February 1, 2024, the parties entered into an agreement to toll the statute of limitations on the FLSA overtime claims of Plaintiffs and other similarly-situated Order Selectors. Plaintiffs filed their initial Complaint on October 3, 2024. Doc. 1. Plaintiffs subsequently amended their complaint, and the operative complaint—*i.e.,* the First Amended Complaint ("FAC")—was filed on July 1, 2025. Doc. 54. Throughout this litigation, the parties have conducted extensive written discovery. The Named and Opt-In Plaintiffs responded to individual written discovery requests served by Defendant. Plaintiffs also propounded written discovery to Defendant, conducted numerous witness interviews, collected sworn statements, and sorted and categorized myriad individual time and pay records for the putative class.

**D. Characteristics of the Putative Settlement Classes**

1. *The Putative FLSA Collective Class and KWPA Class*

During the collective class period of Defendant's records reflect that a total of approximately 847 individuals worked as outbound Order Selectors at the Olathe, Kansas warehouse. During the collective class period, Named Plaintiffs and the Early Opt-Ins earned weekly regular hourly rates of pay (including various shift differentials) ranging between $21.00 to $22.00.

The Named Plaintiffs and the Early Opt-Ins worked approximately 229 workweeks during the collective class period. They worked an average of a little over four shifts each workweek during the relevant time period; these shifts averaged approximately 9.3 hours in length.

a. <u>Overview of Factors Considered by Counsel in Creating Settlement Damage Modeling for the Class</u>

In creating settlement damage modeling for the putative settlement classes, Plaintiffs' counsel relied upon pay and timekeeping information for the putative classes produced by Defendant in advance of mediation. Plaintiffs' counsel initially calculated the "best day in court" damages for the putative FLSA collective class members and putative KWPA class members using the amount of per-shift uncompensated time alleged by the Named and Opt-In Plaintiffs, as applied to the number of overtime and non-overtime workweeks worked by these individuals during the respective collective class and KWPA class periods. More specifically, the Named and Opt-In Plaintiffs alleged they worked an average of 38.5 minutes of uncompensated time each shift—including compensable activities they allege they performed before clocking in, and after clocking out. *See, e.g.* Doc. 25-1, Declarations and Consents to Join of Named Plaintiffs and Opt-In Plaintiffs.

Applying that alleged amount of 38.5 minutes of uncompensated work per shift, and assuming collective class members worked an average of four shifts per workweek during the collective class period, equates to 154 minutes/2.57 hours of uncompensated time per workweek, which results in: a total of approximately $1,400,000.00 in overtime damages for the members of the collective class (or approximately of $2,800,000.00 including liquidated damages) and a total of $300,000.00 in straight time damages for the members of the KWPA class (or $400,000.00 including liquidated damages).

Defendant strongly disputes that the Named and Opt-In Plaintiffs performed *any* amount of compensable work prior to clocking in or after clocking out—let alone the amount of uncompensated work per shift they alleged.

Defendant also disputes that any delta between the time an employee "badges in" to the facility, and the time an employee clocks in for his or her shift could serve as evidence that the employee had performed compensable pre-shift work, because the employee could have been performing activities during that time which are not compensable under the Portal-to-Portal Act, 29 U.S.C. §§ 251-262, such as walking to the timeclock, or personal tasks such as using the restroom or visiting the breakroom. Nevertheless, the comparison between badge swipe and clock-in times does provide, at a minimum, a potential outer boundary of the amount of potential off-the-clock work at the beginning of their shifts. In other words, although the badge swipe data cannot reliably provide any outer boundary for the maximum amount of alleged uncompensated post-shift work for the putative collective class members, the comparison of the badge swipe data to clock-in times does suggest the amount of alleged pre-shift work time, and by extension, the total amount of uncompensated time per shift (and per workweek) was likely lower for the putative class members than that alleged by the Named and Opt-in Plaintiffs. Based on this information, Plaintiffs' counsel calculated the average difference in minutes between the badge swipes for the Named Plaintiffs and Early Opt-Ins and when they clocked in for each shift.

Accordingly, Plaintiffs' counsel believes more realistic damage calculations for the putative collective and KWPA class members would be based on assumptions of 15-20 minutes of uncompensated time per shift worked, or 60-100 minutes of uncompensated time per workweek (depending on whether the individual worked four or five weekly shifts). Under those assumptions, given Named Plaintiffs' individual payroll records and incorporating assumptions based on the timekeeping, payroll, and other data provided by defendant, Plaintiffs' counsel calculated the "best day in court" overtime damages for the collective class members would range between approximately $500,000.00 and $900,000.00 (or $1,000,000.00 to $1,800,000.00 including liquidated damages), and the "best day in court" straight time damages for the members of the KWPA class would range between approximately $150,000.00 and $250,000.00 (or a total of $200,000.00 to $325,000.00 including liquidated damages).

### E. The Settlement

#### 1. *History of Settlement Negotiations*

After initially agreeing to explore resolution of this matter in July of 2025, the parties scheduled mediation with experienced, third-party mediator Todd McNamara to occur in early

January 2026.[2] *See* Doc. 64 at 2, 10/17/25 Joint Status Report. In connection with the parties' settlement discussions, Defendant initially produced summary payroll and timekeeping information for the putative class as well as payroll and time clock data for a representative sample of the class.[3] *Id.* Plaintiffs made an initial settlement demand in October of 2025, and thereafter, the parties engaged in settlement negotiations until reaching a settlement in principle as to a total, maximum amount of $900,000.00 in late January of 2026. *See* Doc. 69, 1/27/26 Joint Status Report. However, there remained a myriad of material terms for the parties to negotiate in February and March of this year before they could finalize and seek approval of the settlement. These terms included, but were not limited to whether any portion of the settlement would be reversionary, whether any unclaimed settlement funds would be redistributed on a *pro rata* basis to participating class members, the scope of the release of claims by participating and non-participating class members, and the respective roles of the Settlement Administrator and Plaintiffs' Counsel in determining how settlement funds would be allocated between and among the class members.

2. *Settlement Structure and Monetary Terms*

Under the terms of the Parties' Settlement Agreement, Defendant has agreed to pay a maximum, total amount of $900,000.00 to fully resolve this matter. *See, generally,* Ex. 1. This total settlement amount is intended to be inclusive of: (1) all settlement awards to participating class members; (2) any Service Awards to the Named and Opt-In Plaintiffs approved by the Court; (3) payment to Plaintiffs' Counsel for any amounts of attorneys' fees, expenses, and costs approved by the Court, and (4) payment for settlement administration costs. As set forth in the Settlement Agreement, after the amounts of any approved Service Awards, attorneys' fees, and

---

[2] Due to his health and other family issues, Mr. McNamara needed to postpone the original and subsequent rescheduled mediation dates in January. *See, e.g.* Docs. 66, 68.

[3] Defendant subsequently produced payroll and timeclock data for the entire putative class in late December of 2025.

Settlement Administrator's fees and expenses are deducted from the Maximum Settlement Fund, the remaining funds available for distribution to the class members' settlement awards is referred to as the Net Settlement Fund. Ex. 1, Settlement Agreement at Pages 4-5.

Here, Plaintiffs seek approval of a total amount of attorney's fees and costs in an amount that will not exceed 1/3 of the Maximum Settlement Fund. Plaintiff's counsel will file a separate and contemporaneous motion for preliminary approval of attorney's fees, and the Defendant may oppose said motion for fees. Additionally, Plaintiffs also seek approval for a total amount of $16,000.00 in Service Awards to the Named Plaintiffs and Early Opt-In Plaintiffs ($5,000 to each named Plaintiff and $2,000 to each early opt-in) in recognition of the extensive amount of time these Plaintiffs devoted to this litigation, their representation of the putative class, and the reputational risk they each undertook by being named plaintiffs and early opt-ins in this lawsuit. Finally, based on the preliminary cost estimate ($29,022) prepared by the settlement administrator (Angeion Group) the Parties agreed to set aside $30,000.00 in Settlement Administration costs—subject to Court approval.

3. *Plan of Allocation and Estimated Value of Settlement Per Class Member*

If the amounts of attorneys' fees and costs, service representative awards, settlement administration costs, and reserve funds as provided in the previous section are approved by the Court, the amount of the Net Settlement Fund will be approximately $524,000.00. This represents a meaningful portion of the allegedly unpaid overtime wages related to each of Plaintiffs' claims after accounting for attorneys' fees, costs, and the service awards.

In proposing an equitable Plan of Allocation for the distribution of settlement funds, Plaintiffs' counsel considered the putative collective class and KWPA class members' individual rates of pay (to create settlement bands), total number of workweeks and shifts worked during the collective class period and KWPA class periods, and hours worked per workweek during the collective class period and KWPA class period (to differentiate between straight time pay weeks and overtime weeks.)

Because of the wide variance in the regular hourly rates of pay including shift differentials that were earned by collective class members in workweeks during the relevant time period, Plaintiffs have proposed a Plan of Allocation which assigns each putative collective class member to one of five payment "tiers" or "bands" based on their average hourly rates of pay during the collective class period. These proposed payment tiers/bands and rates are as follows:

| **Settlement Payment Tier** | **Averaged Straight Time Rate for Settlement Payments to Class Members in This Tier** |
|---|---|
| Tier 1: Class Members earning average hourly rates of pay between \$20.00 and \$22.99 | \$21.50 |
| Tier 2: Class Members earning average hourly rates of pay between \$23.00 and \$24.99 | \$23.50 |
| Tier 3: Class Members earning average hourly rates of pay between \$25.00 and \$27.99 | \$26.50 |
| Tier 4: Class Members earning average hourly rates of pay between \$28.00 and \$30.99 | \$29.50 |
| Tier 5: Class Members earning average hourly rates of pay of \$31.00 and higher | \$32.50 |

After the opt-in process and an initial calculation of the payments owed from the settlement fund, the amount remaining in the settlement fund, if any, will be reallocated among class members who opted-in to ensure each receives one hour of overtime pay (based on the average hourly rate for his or her assigned payment tier) for each overtime-eligible workweek they worked during the collective class period. Subject to the same process and calculations, each putative KWPA class member will similarly receive a minimum of one hour of straight time pay (based on the average hourly rate for his or her assigned payment tier) for each non-overtime workweek they worked during the KWPA class period.

4. *Calculating Estimated Potential Settlement Amounts*

After execution of the Settlement Agreement, Defendant shall provide the third party administrator with summary data reflecting the average individual rate of "straight time" or "regular" pay for each putative collective class and KWPA class member during the relevant class periods, the total number of workweeks each collective class and KWPA class member worked during the class periods, and the proportion of those workweeks in which they worked more than 39 hours.[4] This information will be used to assign collective and KWPA class members to payment tiers, and calculate their estimated individual potential settlement amounts to be included on the appropriate Notice of Settlement Forms they will receive from the Settlement Administrator. In the event that any class member disputes the calculations for their estimated settlement amounts, the Parties will meet and confer to identify the specific records associated with that individual consistent with the process for disputes outlined in the Settlement Agreement.

5. *Reserve Fund*

Under the terms of the Settlement Agreement, the Settlement Administrator will set up a reserve fund of $30,000.00 that may be used to make payments—with approval from Defendant and Class Counsel—to class members who dispute their estimated settlement amounts, to

[4] Although Defendant produced time and pay data for the entire putative collective class and KWPA class in late December 2025, that data is anonymized by class member numbers, and the format in which that data was produced includes thousands of lines of data which would be inefficient and unwieldy for Plaintiffs' counsel to summarize for each individual class member.

individuals who were not identified as being collective class or KWPA class members but have a good faith claim for participation in the settlement, or for any other reasonable purpose necessary to effectuate the settlement.

6. *Class Notice and Claim Forms*

Settlement payments from the Net Settlement Fund will be made on a claims-made basis; putative collective class members and KWPA class members will need to submit a valid, completed Claim Form to participate in the settlement and receive a payment. Within fourteen (14) days of receiving putative class and collective class members' contact information from Defendant, and estimated settlement amount calculations from Plaintiffs' counsel, the Settlement Administrator will distribute the Notice of Settlement of Class and Collective Action Lawsuit and Fairness Hearing (attached as Exhibit 1A) and Claim Form (attached as Exhibit 1C) to the putative FLSA collective class members. This Notice Form advises collective and KWPA class members of their options under the settlement.

The Settlement Administrator will distribute this Settlement Notice and Claim Form *via* First Class United States mail, postage prepaid, and *via* email. Each notice packet will include a postage prepaid return envelope for putative collective class members to return their completed Claim Forms. Each Claim Form shall also have a scannable "QR" code or other similar means directing Class Employees to a case-specific website portal for submitting Claim Forms electronically. The Claim Forms will serve as the putative collective class member's consent to join this lawsuit as a party-plaintiff for purposes of 29 U.S.C. §216(b).

7. *Class Member Opt-Out and Dispute Procedures*

Any KWPA class member may request exclusion from the KWPA class by submitting an "Opt Out Statement" to the Settlement Administrator. To be effective, such Opt-Out Statements must be sent via First Class United States mail and postmarked within forty-five (45) days from the mailing of the Notice by the Settlement Administrator. Class members who dispute their estimated settlement amount(s) may contact the Settlement Administrator prior to the Claims Form submission deadline and providing sufficient explanation of the reasons for their dispute. The Settlement Administrator will then advise Defendant's counsel and Plaintiff's counsel of the identity of any class members disputing their settlement amounts and other relevant information regarding the reasons for the dispute, and may ultimately use Reserve Funds to adjust the disputing class members' settlement amounts with the consent of Defendant's counsel and Plaintiffs' counsel.

8. *Treatment of Unclaimed Settlement Funds*

Any unclaimed Net Settlement funds resulting from non-participation of collective class members which were originally allocated as FLSA funds under the Plan of Allocation will be reallocated and redistributed on a *pro rata* basis to the participating class members not to exceed one hour of overtime with liquidated damages per overtime workweek during the collective class period. The remainder of any unclaimed funds from the Net Settlement that were originally allocated as KWPA funds will be similarly be rebalanced and reallocated on a *pro rata* basis in an amount not to exceed 33% of the original estimated KWPA portion of their damages.

Class members who submit a valid Claim Form to participate in the settlement will have one hundred and twenty (120) days after the check date to cash their Settlement Checks. If a participating class member does not cash his or her Settlement Check within that 120 day period, their Settlement Check will be void, a stop-payment will be placed. In such event, the amounts associated with the Uncashed Settlement Checks shall be distributed to the Kansas State Treasurer's Unclaimed Property Fund in the name of the Participating Settlement Member who did not cash his or her Settlement Check. Participating Settlement Members who do not cash their Settlement Checks shall remain bound by this Settlement and the applicable release.

9. *Scope of Release of Claims*

The scope of claims released by class members who choose to participate in the settlement depends on whether they choose to submit a Claim Form, whether they are only putative collective class members or are also KWPA class members, or if they are also KWPA class members—whether they submit an Opt-Out Statement. Collective class members who are not KWPA class members and who do not submit a valid Claim Form will not release any claims under the FLSA or Kansas state law. Class members who are also KWPA class members and who do not submit a valid Claim Form or an Opt-Out Statement will retain their FLSA claims but waive their state law claims. The scope of the release of claims for KWPA class members who do not submit Opt-Out Statements is defined in the Settlement Agreement as follows:

> Upon the entry of the Final Order and Judgment, each Class Employee who did not validly opt out in accordance with Paragraph IV.B.4, shall, on his or her behalf, and on behalf of his or her respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, fully release and discharge the Released Parties of and from any and all state-law wage-and-hour-related claims asserted in the Litigation, including under the Kansas Wage Payment Act, breach of contract, and violation of state laws or regulations for unpaid compensation or a quantum meruit theory of recovery, and any other statutory or common law wage-and-hour-related claims of any kind related to the claims asserted in the Litigation, whether known or unknown, specifically asserted or not, arising from their employment with Defendant, including statutory claims, whether known or unknown, in law or in equity, including, but not limited to, any and all claims under the Kansas Minimum Wage and Maximum Hours Law or the Kansas Wage Payment Act, claims under any legal theory for failure to pay for all time worked punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under the Employee Retirement Income Security Act ("ERISA") that are related to or derivative of the claims released in this provision.

Ex. 1, at Page 10.

The scope of the release for collective class members who submit Claim Forms is defined in the Settlement agreement as follows:

> Each Participating Settlement Member shall, on his or her behalf, and on behalf of his or her respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, fully release and discharge the Released Parties from any and all federal wage and hour claims asserted in the Litigation, and any related FLSA claims for unpaid overtime arising from his or her employment with Defendant, including statutory claims, whether known or unknown, in law or in equity, including liquidated damages, interest, punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under ERISA that are related to or derivative of the claims released in this Paragraph.

*Id*.

These releases are narrowly tailored to the claims asserted in the Amended Complaint. And the releases only apply to ERISA claims that are "related to or derivative of" the other released claims, such as claims under a benefit plan for the allegedly unpaid wages at issue in the Amended Complaint.

## II. ARGUMENT & AUTHORITIES

"Court approval is required to settle both Rule 23 class actions and FLSA claims." *Florece v. Jose Pepper's Restaurants, LLC,* No. 20-2339-ADM, 2021 WL 5038773, at *2 (D. Kan. Oct. 29, 2021). When a court has not yet certified an FLSA collective action or a Rule 23 class action, "the court must first consider certification before addressing the proposed settlement." *Id.* Here, in connection with their request for preliminary approval of the Parties' proposed hybrid settlement, Plaintiffs seek conditional certification of a settlement-only class under 29 U.S.C. §216(b) of the FLSA defined as: "all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors from July 1, 2020, through January 26, 2026, and who are included in the class list as determined by Defendant's business records" and certification under Rule 23 of a Kansas state law settlement-only class defined as "all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors between July 1, 2020, and January 26, 2026, who do not opt out."

### A. Conditional Certification is Warranted Under the FLSA[5]

As this Court has previously noted, the parties to an FLSA action must present a settlement of those claims to the court for review and a determination that the settlement is fair and reasonable. *Barbosa v. Nat'l Beef Packing Co.,* LLC., No. 12-2311-KHV, 2015 U.S.Dist. LEXIS 108821, at 18-19 (D. Kan. Aug. 13, 2015) citing (*Lynn's Food Store, Inc. v United States*, 679 F.2d at 1353(11th Cir. 1982)). When parties reach a settlement involving FLSA collective action claims prior to conditional certification, the named plaintiffs may ask the Court to: "(1) conditionally certify the proposed settlement class, (2) preliminarily approve the proposed settlement and (3) approve the proposed notice to putative class members." *Elston v. Horizon Global Americas,* Inc., 2020 WL 6318660, at *3 (D.Kan. Oct. 28, 2020) (citing *Christeson v. Amazon.comksdc, LLC,* 2019 WL 354956, at *5 (D.Kan. Jan. 29, 2019)). Here, because the Parties reached a settlement to resolve FLSA collective action claims prior to the Court granting conditional certification of a collective action, Plaintiffs now seek conditional certification of a settlement collective action "class" in connection with their request for preliminary approval of a settlement.

In this district, courts typically use a two-step approach when determining whether plaintiffs are "similarly situated" for purposes of the collective action provision of the FLSA found at 29 U.S.C. 216(b). *See Thiessen v. GE Capital Corp.,* 267 F.3d 1095, 1105 (10th Cir. 2001). Under this approach, the court typically makes an initial "notice stage" determination whether plaintiffs are "similarly situated" such that a collective action should be conditionally certified for

---

5 Defendant also disputes that FLSA certification is appropriate, but have agreed not to oppose Plaintiffs' request for certification as part of settling this matter, in light of the costs and risks inherent in all litigation

purposes of sending notice to potential class members. *See id.* at 1102; *see also Brown v. Money Tree Mortg., Inc.,* 222 F.R.D. 676, 679 (D. Kan. Aug. 23, 2004). For conditional certification at the notice stage, the court requires "nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan." *Thiessen*, 267 F.3d at 1102 (quotations omitted). The standard for certification at the notice stage is a lenient one that typically results in class certification. *See Brown,* 222 F.R.D. at 679. "This initial stage determination certifies the case as a collective action for purposes of sending the opt-in notice to potential class members." *Flerlage v. US Foods, Inc.,* No. 18-2614-DDC-TJJ, 2020 WL 4673155, at *8 (D. Kan. Aug. 12, 2020) (citing *Thiessen,* 267 F.3d at 1102).[6]

1. *Plaintiffs Have Presented Substantial Allegations Sufficient to Warrant Conditional Certification of a Settlement-Only Collective Class*

Conditional certification at the notice stage is appropriate where Plaintiffs "allege[ ] a common failure—that [they] and the putative class members were together the victims of an illegal approach to FLSA-mandated wage policies." *Cox v. Lab. Source, LLC*, Case No. 2:22-CV-2420-JAR-ADM, 2023 U.S. Dist. LEXIS 180752, at *10 (D. Kan. Oct. 6, 2023). In the operative First Amended Complaint, the Named Plaintiffs allege they, and other similarly-situated Order Selectors who worked at Sysco's Olathe, Kansas warehouse location were all victims of an alleged policy, plan, or practice by Defendant to deprive them of overtime compensation for all hours they worked in excess of 40 each workweek, and straight time compensation for off-the-clock work performed in non-overtime workweeks. *See e.g.* Doc. 54 at ¶ 46, 85, 87, 105, 108.

---

[6] The second stage under this two-stage approach typically occurs after discovery is complete—upon the motion of a party—at which time the court "determines whether the case should remain certified, or be decertified using a stricter standard." *Flerlage,* 2020 WL 4673155 at *8.

As more fully set forth in Plaintiffs' previously-filed Memorandum in Support of their Motion for Conditional Certification and supporting exhibits, the named Plaintiffs and other hourly employees who similarly held the position of "Order Selector" (or a position with similar job duties) and worked the outbound shift at the Warehouse during the relevant time period allege they were instructed by management to perform work prior to clocking in, and after clocking out, which resulted in Plaintiffs and those similarly-situated to them not receiving overtime compensation for all work they performed in excess of 40 hours each workweek. *See* Doc. 25 at 4-7; Doc. 25-1, Named and Opt-In Plaintiffs' Declarations and Consents to Join; Doc. 25-2, Tolle Declaration at ¶¶ 4-7; Doc. 25-3, Johnson Sworn Statement; Doc. 25-6, Tuttle Declaration at ¶¶ 6-11.

Plaintiffs respectfully contend they have provided sufficient evidence to meet the lenient, first stage burden for conditional certification of a settlement-only collective action class. Accordingly, Plaintiffs respectfully request this Court grant their motion for conditional certification and authorize the issuance of notice to the putative settlement collective class members.

### B. The Settlement KWPA Class Satisfies the Requirements of Rule 23(a) and Rule 23(b)(3) for Purposes of Class Certification[7]

A class action that may be settled with court approval under Rule 23(e) is "one qualified for certification under Rule 23(a) and (b)." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620-21 (1997). In other words, a party seeking certification of a settlement-only class must still meet the "'strict burden'" of establishing that the prerequisites of Rule 23(a) and (b) are met. *Florece,* 2021 WL 5038773 at *2 (quoting *Trevizo v. Adams,* 455 F.3d 1155, 1162 (10th Cir. 2006)). However, because the proposal of a settlement class does not contemplate a trial of the asserted

[7] Defendant disputes that Rule 23 certification is appropriate, but have agreed not to oppose Plaintiffs' request for certification as part of settling this matter, in light of the costs and risks inherent in all litigation.

class claims, the Court "need not inquire whether the case if tried, would present intractable management problems…" *Amchem,* 521 U.S. at 620 (citing Fed. R. Civ. P. 23(b)(3)(D)). Here, certification of the settlement class is warranted and appropriate because the class meets each of the requirements of Rule 23(a) and (b).

1. *The Settlement KWPA Class Meets the Numerosity Requirement*

Rule 23(a)(1) requires the class to be "so numerous that joinder of all members is impracticable." Plaintiff must "produce some evidence or otherwise establish by reasonable estimate the number of class members who may be involved." *Bennett v. Sprint Nextel Corp.,* 298 F.R.D. 498, 504 (D. Kan. 2014). "[T]here is no set formula to determine if the class is so numerous that it should be so certified." *Trevizo,* 455 F.3d at 1162 (quotation omitted). The inquiry is fact-specific, and the district court has "wide latitude ... in making this determination." *Id.* Here, Defendants' records reflect that over 600 employee fit the class definition. Courts within the Tenth Circuit have regularly found that classes of more than 500 members would be considered so numerous that joinder would be impracticable. *See, e.g. Florece*, 2021 WL 3634683, at *2–3 (D. Kan. Aug. 17, 2021) (class of more than 500 individuals met numerosity requirement); *Decoteau v. Raemisch,* 304 F.R.D. 683, 687-88 (D. Colo. 2014) (finding a class of at least 500 individuals satisfied Rule 23(a)(1)); *Armstrong v. Powell,* 230 F.R.D. 661, 674-75 (W.D. Okla. 2005). Accordingly, the proposed KWPA settlement class meets the numerosity requirement of Rule 23(a)(1).

2. *The Settlement KWPA Class Meets the Commonality Requirement*

The "commonality" requirement of Rule 23(a)(2) requires Plaintiffs to show "that questions of law or fact are common to the class, that is, members of the putative class possess the same interest and suffer the same injury." *Knight v. Mill-Tel, Inc.,* 11-1143-EFM, 2013 WL

3895341, at *2 (D. Kan. July 29, 2013). For purposes of establishing commonality, the class claims "must depend upon a common contention…of such a nature that it is capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 359 (2011). Here, the settlement class meets the commonality requirement for several reasons.

First, the putative class members all held hourly Order Selector positions at a single warehouse location in Olathe, Kansas, and thus, were all subject to the same alleged time and pay policies. *See, e.g. Garcia v. Tyson Foods, Inc.,* 890 F.Supp.2d 1273, 1283 (D. Kan. 2012) (finding commonality requirement met for KWPA class where the employees were paid under the same policies), *aff'd,* 770 F.3d 1300 ($10^{th}$ Cir. 2014). Second, there are numerous questions of fact common to all of the putative class members' claims, including whether Defendant accurately paid putative class members all of their wages due for the hours they worked. Finally, these common questions of fact ultimately lead to the common question of whether Defendant's timekeeping practices violated the KWPA.

Whether Plaintiffs can show Defendant's practices violated the KWPA "will resolve an issue central to" all of the putative class members' claims. *Florece,* 2021 WL 3634683 at *3. *See also Dukes,* 564 U.S. at 350 ("What matters to class certification…is not the raising of common 'questions'—even in droves—but, rather, the capacity of a class wide proceeding to generate common *answers* apt to drive the resolution of the litigation.") (emphasis in original) (internal citations omitted). In other words, Plaintiffs satisfy the commonality requirement because their "ability to prove a violation of law occurred is common to all putative class members' claims; a common answer that will drive the litigation's outcome." Therefore, Plaintiffs satisfy the commonality requirement. *Flerlage v. US Foods, Inc.,* No. 18-2614-DDC-TJJ, 2020 WL 4673155, at *3 (D. Kan. Aug. 12, 2020).

3. *The Settlement KWPA Class Meets the Typicality Requirement*

Under the typicality requirement of Rule 23(a)(3), Plaintiffs' claims must be typical of the claims of the putative class they seek to represent. Typicality does not require that the Plaintiffs' claims be identical to the class members' claims, but "they must not be significantly antagonistic." *Id.* at *4. Moreover, as the Tenth Circuit has explained, class members' differing fact situations will not defeat typicality, "so long as the claims of the class representative and class members are based on the same legal or remedial theory." *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.,* 765 F.3d 1205, 1216 (10th Cir. 2014) (quotation omitted).

In this case, the Plaintiffs' claims and interests are identical—and not in any way antagonistic—to the claims and interests of the putative settlement class members. Rather, as evidenced by, the Plaintiffs and the early Opt-in sworn statements and declarations that were attached to Plaintiff's Motion for Conditional Certification (Doc. 25), as well as statements by other former Sysco personnel, it is clear that Plaintiffs' legal and remedial theories under the KWPA—*i.e.* Defendant's alleged practice of having order selectors work off the clock—apply to all class members as well. *See also* Doc. 25-3, Johnson Sworn Statement. This Court, as well as other courts within this district, have found this to be a sufficient demonstration of typicality. *See e.g. Flerlage,* 2020 WL 4673155 at *3 (finding typicality requirement satisfied where "plaintiffs' legal and remedial theories are identical to those of the putative class"); *Florece,* 2021 WL 3634683 at *4 (finding typicality satisfied where named plaintiff's "legal and remedial theories" were identical to those of the class); *Garcia,* 890 F. Supp.2d at 1283 (finding the plaintiffs proved typicality for a KWPA class, where their legal theory that the defendant's pay policies resulted in under compensation applied to all employees).

Plaintiffs respectfully request this Court similarly find that the proposed settlement class in this matter meets the typicality requirement of Rule 23(a)(3).

4. *Plaintiffs and their Counsel Meet the Adequacy Requirement*

Under the adequacy requirement of Rule 23(a)(4), Plaintiffs must show they will "fairly and adequately protect the interests of the class." To do so, Plaintiffs must actually be members of the class they seek to represent, must show their interests do not conflict with the interests of class members, and must show they will "vigorously prosecute the action through qualified counsel." *Florece,* 2021 WL 3634683 at *4 (citing *Rutter & Wilbanks Corp. v. Shell Oil Co*., 314 F.3d 1180, 1188 (10th Cir. 2002)). Notably, "[m]inor conflicts among class members do not defeat certification; to defeat class certification, a conflict must be fundamental and go to specific issues in controversy." *In re Motor Fuel Temperature Sales Pracs. Litig.,* 292 F.R.D. 652, 671 (D. Kan. 2013) (quotation omitted). "A fundamental conflict exists where some class members claim to have been harmed by conduct which resulted in benefit to other class members." *Id.*

Here, Plaintiffs Harms and Tuttle are both members of the settlement class they seek to represent. Neither Plaintiff has any known conflicts of interest with the putative settlement class members related to the specific issues in controversy in this case. Rather, the Plaintiffs have sustained the same alleged injuries as the putative settlement class members, and Plaintiffs have not alleged any claims that would be harmful to the claims of any settlement class members. And, as evidenced by the declarations each of these Plaintiffs submitted in support of Plaintiffs' Motion for Approval of Attorneys' Fees, Costs, and Service Awards ("Fee Approval Motion"), the Plaintiffs have vigorously participated in, and ensured the prosecution of this litigation by and through their retained counsel. Finally, as more fully addressed in their Fee Approval Motion, Plaintiffs' counsel are sufficiently qualified and experienced to represent the members of the settlement class. Accordingly, Plaintiffs respectfully assert they have met the adequacy requirement of Rule 23(a)(4).

5. *The KWPA Settlement Class Meets the Predominance and Superiority Requirements of Rule 23(b)(3)*

Here, Plaintiffs seek class certification under Rule 23(b)(3), which requires a showing that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quotation omitted). Here, the common questions of law and fact predominate over any individualized questions. Indeed, courts "routinely have found predominance where…the challenged [wage] policy is common to the class as a whole and the proposed class members share similar job duties." *Felps v. Mewbourne Oil Co.,* 336 F.R.D. 664, 675 (D.N.M. 2020) (collecting cases).

Predominance is met in this case for the same reasons. Plaintiffs and the putative settlement KWPA class members all held hourly, outbound Order Selector positions at a single facility, and "the case turns on whether" Defendant's alleged practices at the Olathe warehouse location violated the KWPA by denying class members payment of all wages due. *Florece,* 2021 WL 3634683 at *5 (finding predominance where plaintiff and class members "all held the same server position" and the "case turn[ed] on whether defendants' policy (or policies) violated the MMWL by denying class members minimum wage and overtime compensation."). Whether Defendants' alleged practice violated the KWPA is a "common issue that is susceptible to generalized, class-wide proof and predominates over any individual questions, such as the damages due to each class member." *Id.* Consequently, the settlement class meets the predominance requirement of Rule 23(b)(3).

The settlement class also meets the superiority requirement of Rule 23(b)(3), because Plaintiffs' claims and the claims of the putative settlement class members are substantially similar, are predicated upon the same evidence (such as timekeeping and payroll data), and would largely require the same witnesses and exhibits. Accordingly, a class action is superior to potentially hundreds of discrete actions that could be "grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation." *Bennett v. Sprint Nextel Corp.*, 298 F.R.D. 498, 513 (D. Kan. 2014). Superiority is also demonstrated under an analysis of the other pertinent factors enumerated in Rule 23(b)(3), including "the class members' interests in individually controlling the prosecution or defense of separate actions" and "the desirability or undesirability of concentrating the litigation of the claims in the particular forum." Fed. R. Civ. P. 23(b)(3).[8]

With respect to the first factor, "[c]lass members have little interest in individually controlling the prosecution of separate [KWPA] actions because the amount at stake for each individual class member is small relative to the cost of maintaining a separate action." *Flerlage,* 2020 WL 4673155 at *4. Finally, because the settlement class encompasses only outbound Order Selectors who worked at a single warehouse location in Kansas, it is certainly desirable to

---

[8] The other two enumerated factors in Rule 23(b)(3) are not particularly applicable here, as Plaintiffs are not aware of the existence of any similar litigation by individuals who may be class members here, and because Plaintiffs are seeking certification of a settlement-only class which will resolve the class claims without a trial, and thus, any trial manageability concerns are not relevant. *See* Fed. R. Civ. P. 23(b)(3).

concentrate the litigation of their claims in this Court. *See id* (concluding Kansas was an "appropriate forum" for a class that "encompasses only people who worked in Kansas").

As demonstrated by the preceding sections, the settlement class meets the requirements of both Rule 23(a) and Rule 23(b)(3). Consequently, Plaintiffs respectfully request the Court grant their motion for preliminary certification of a settlement class under Rule 23.

**C. Preliminary Approval of the Settlement is Appropriate Under the FLSA**

In considering whether to approve an FLSA settlement, the court must decide whether: "(1) the litigation involves a bona fide dispute, (2) the proposed settlement is fair and equitable to all parties, and (3) the proposed settlement contains an award of reasonable attorneys' fees." *Flerlage v. US Foods, Inc*., 2020 WL 6318662, at *1 (D.Kan. Oct. 28, 2020) (citing *Barbosa,* 2015 WL 4920292 at *5).

1. *The Case Involves a Bona Fide Dispute*

A party seeking approval of an FLSA settlement must submit sufficient information for the court to conclude that a *bona fide* dispute exists. *Flerlage,* 2020 WL 4673155 at *9. To do so, courts within this district typically require the moving party to provide:

> (1) a description of the nature of the dispute, (2) a description of the employer's business and the type of work performed by the employees, (3) the employer's reasons for disputing the employees' right to a minimum wage or overtime, (4) the employees' justification for the disputed wages, and, (5) if the parties dispute the computation of wages owed, each party's estimate of the number of hours worked and the applicable wage.

*Id. See also Florece,* 2021 WL 3634683 at *8. In Sections II A-D *supra*, Plaintiffs have provided the Court with each of these requisite categories of information. Accordingly, Plaintiffs respectfully request the Court find that this case involves a *bona fide* dispute under the FLSA.

2. *The Settlement is Fair and Equitable to All Parties*

"[A]n FLSA settlement must provide adequate compensation to the employee and must not frustrate the FLSA policy rationales." *Pliego*, 313 F.R.D. at 130. Notably, in this district, when determining whether a proposed FLSA settlement is fair and equitable, courts examine the factors applicable in the Rule 23(e) settlement approval context. *See e.g. Elston*, 2020 WL 2473542, at *4. In the interest of brevity and efficiency, Plaintiffs refer to and incorporate the arguments and authorities below in Section II D, as if fully stated here.

3. *The Settlement Contains a Reasonable Amount of Attorneys' Fees*

As addressed more fully in Plaintiffs' contemporaneous Fee Approval motion, the amount of attorneys' fees sought by Plaintiffs' counsel in connection with this settlement are both reasonable and warranted under a consideration of the lodestar to date, and all other relevant factors. For purposes of efficiency and brevity, Plaintiffs respectfully incorporate the arguments and case law cited in their Fee Approval Motion as if fully set forth here.

**D. Preliminary Approval of the Settlement is Appropriate Under Rule 23**

Whether a settlement warrants approval is within the trial court's sound discretion. *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). The settlement approval process typically occurs in two phases. First, the court considers whether preliminary approval of the settlement is appropriate. *See e.g. Freebird, Inc. v. Merit Energy Co.*, No. 10-1154-KHV, 2012 WL 6085135, at *4 (D. Kan. Dec. 6, 2012). "If the Court grants preliminary approval, it directs notice to class members and sets a hearing at which it will make a final determination on the fairness of the class settlement." *In re Motor Fuel Temperature Sales Practices Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012). Because preliminary approval is just the first step of the approval process, courts typically apply a "less stringent" standard than that at final approval. *See e.g. Flerlage v. US Foods, Inc.,* No. 18-2614-DDC-TJJ, 2020 WL 4673155, at *5 (D. Kan. Aug. 12, 2020);

*Freebird*, 2012 WL 6085135 at *5. Indeed, "[c]ourts considering [class action] settlements do so in light of the strong presumption of favoring compromise of disputes generally, but which 'is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Hershey v. ExxonMobil Oil Corp.,* No. 07-1300-JTM, 2012 WL 5306260, at *1-2 (D.Kan. Oct. 26, 2012) (quoting *Rutter,* 314 F.3d at 1188).

Under Federal Rule of Civil Procedure 23(e)(2), the court may approve a proposed class action settlement "only on a finding that it is fair, reasonable and adequate," which requires a consideration of whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
>> (i) the costs, risks, and delay of trial and appeal;
>> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). In addition to the factors outlined in Rule 23(e)(2), the Tenth Circuit also requires courts to consider the following four factors when assessing whether a proposed settlement is "fair, reasonable, and adequate":

> (1) Whether the proposed settlement was fairly and honestly negotiated;
> (2) Whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
> (3) Whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
> (4) The judgment of the parties that the settlement is fair and reasonable.

*Rutter & Wilbanks Corp. v. Shell Oil, Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002). As other courts within this district have noted, these *Rutter* factors are similar to—and in some instances overlap with—the factors outlined in Rule 23(e)(2). *See, e.g. Florece,* 2021 WL 3634683 at *11–12 (noting *Rutter* factors are similar to those under the revised Rule 23(e)(2)); *Chavez Rodriguez v. Hermes Landscaping, Inc.,* No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020) (noting that the *Rutter* factors largely overlap with the factors set forth in Rule 23(e)(2)).

Importantly, "[w]hile the Court will consider [the Tenth Circuit's] factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well." *In re Motor Fuel Temperature Sales Practices Litig.*, 286 F.R.D. at 502–03. And as stated in Rule 23(e)(1)(B), the Court must direct notice to the class if the parties can show, "that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Here, Plaintiffs can show that the Court will likely be able to approve the settlement under Rule 23(e)(2), because each of the relevant factors under that Rule (as well as each of the similar *Rutter* factors) favors approval of the Parties' proposed settlement.

1. *The Settlement Class was Adequately Represented*

As another court within this district has noted, courts sometimes analyze this factor by evaluating the adequacy requirement of Rule 23(a)(4). *See Chavez Rodriguez,* 2020 WL 3288059 at *2 (D. Kan. June 18, 2020). Here, the settlement class was adequately represented for the same reasons. Plaintiffs and their counsel meet the adequacy requirement of Rule 23(a)(4). More specifically, the Named Plaintiffs have vigorously ensured prosecution of this litigation by and through their retained, experienced counsel and as more fully addressed in their Fee Approval Motion, Plaintiffs' counsel are experienced class action litigators, and well-qualified to represent the members of the settlement class. Consequently, this factor favors settlement.

2. *The Proposed Settlement was Fairly and Honestly Negotiated at Arms' Length*

Both Parties in this matter are represented by experienced class action counsel, and there is no evidence of collusion between the Parties. Rather, the Parties actively engaged in informal and formal discovery, conferred on multiple occasions regarding discovery disputes and other discovery issues, interviewed and obtained statements from multiple witnesses and engaged in multiple mediations. Where, as here, "counsel has vigorously advocated for their respective clients' positions," other courts within this district have found that this factor favors approval. *Florece v. Jose Pepper's Restaurants, LLC,* No. 20-2339-ADM, 2021 WL 5042715, at * 4 (D.Kan. Oct. 29, 2021).

3. *The Settlement Provides Adequate Relief for the Class and the Parties and their Counsel Believe the Settlement is Fair and Reasonable*

The parties' proposed settlement provides more than adequate relief for the class. More specifically, under the proposed Plan of Allocation, every participating KWPA class member who does not opt-out of the settlement will receive approximately one hour of straight time pay at the average hourly rate for their assigned payment tier for each non-overtime eligible workweek they worked during the KWPA class period.

Plaintiffs acknowledge that this proposed settlement includes a potential reversion of unclaimed funds; however, before any funds are reverted to the Defendant they are first rebalanced and reallocated on a pro rata basis to the participating class members capped at one hour of overtime with liquidated damages per overtime workweek during the Class Period of the FLSA Class and capped at an amount not to exceed 33% of the original estimated State Class portion of their damages. *See* Ex. 1, the Settlement Agreement at Page 9. Lastly, any uncashed settlement checks will not be reverted to the Defendant but instead distributed to Kansas Unclaimed Property in the name of the class member. As other courts have noted, "reverter clauses are acceptable 'when class members receive full recovery for their damages and the parties agree to the reversion.'" *Childs v. Unified Life Ins. Co.*, No. 10-CV-23-PJC, 2012 WL 13018913, at *3 (N.D. Okla. Aug. 21, 2012) (quoting *McKinnie v. JP Morgan Chase Bank, N.A.,* 678 F.Supp.2d 806, 812 (E.D. Wisc. 2009)).

a. The Costs, Risks, and Delay of Continued Litigation, Trial and Appeal Support the Settlement

This Rule 23(e)(2) factor overlaps with two of the *Rutter* factors—*i.e.* the existence of "serious questions of law and fact which might place the ultimate outcome of this action in dispute," and whether "the value of immediate recovery outweighs the possibility of any future relief." *Rutter,* 314 F.3d at 1188. *See also Chavez Rodriguez,* 2020 WL 3288059 at *3 (noting these factors "largely overlap and can be subsumed under Rule 23's requirement that the settlement agreement's adequacy be measured against the 'costs, risks, and delay of trial and appeal' of the underlying case) (quoting Fed. R. Civ. P. 23(e)(2)(C)(i)). Here, there are serious issues of law and fact which could, if the case was further litigated, place the class members' ability to recover in jeopardy. *Id.* For example, if Defendant was to prevail on the LMRA preemption issue, the approximately 576 KWPA class members would be precluded from recovering straight time damages under the KWPA and/or Kansas state common. Given the risks associated with the issues of law and fact, the value of the immediate recovery provided to the class by the proposed settlement also outweighs any potential future recovery.

Finally, with respect to the costs of ongoing litigation, were the parties to continue litigating this matter, Defendant would likely face more costly and time-consuming discovery obligations, including additional searches for, and production of electronically stored information regarding the class members and Defendant's personnel who are allegedly responsible for, or otherwise knowledgeable about class members working off the clock. Plaintiffs would similarly be faced with more onerous review and analysis of relevant time, time edit, and pay data for the class member and conducting depositions of Defendant's knowledgeable witnesses. And both Parties would also likely face the additional expenses associated with engaging an economist or other expert witness(es) and conducting numerous depositions. Accordingly, these factors favor approval of the settlement.

b. The Settlement's Proposed Plan of Allocation Treats Class Members Equitably Relative to One Another

The proposed Plan of Allocation for the settlement takes into account the differing hourly rates of pay of, and number of workweeks worked by settlement class members, and properly distinguishes between alleged straight time and alleged overtime damages. *See Cisneros v. EP Wrap-It Insulation, LLC,* No. CV 19-500 GBW/GJF, 2021 WL 2953117, at *9 (D.N.M. July 14, 2021) (noting considerations for this factor include "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.") (quoting Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment.). Finally, as another court within this district has noted, "[a]s a general rule, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable." *Hershey v. ExxonMobil Oil Corp.,* No. 07-1300-JTM, 2012 WL 5306260, at *3 (D. Kan. Oct. 26, 2012), *aff'd in part,* dismissed in part, 550 F. App'x 566 (10th Cir. 2013) (quoting *Law v. National Collegiate Athletic Ass'n*, 108 F.Supp.2d 1193, 1196 (D.Kan. 2000)). By considering the extent of their alleged "injuries," in the allocation of settlement funds, the proposed Plan of Allocation for this settlement treats class members fairly and equitably relative to one another, and thus, this factor also favors settlement.

c. The Proposed Claims Process is Straightforward and Uncomplicated

While the Court arguably cannot fully evaluate the "effectiveness" of the settlement's proposed method for claims until after the claims process has been completed, at this juncture, Plaintiffs assert that they purposefully attempted to design a claims process that would *not* effectively discourage participation due to unnecessarily complicated or rigid requirements. Rather, class members will be able to submit claims forms to the Settlement Administrator by mail, by email, or through a dedicated claims website operated by the Settlement Administrator. *C*lass members will also be receiving the Notice and Claim Form by U.S. Mail and by email and will receive a reminder postcard and email if they do not timely respond. Plaintiffs are confident that this claims process will not unduly burden class members or discourage their participation.

d. The Terms of the Proposed Award of Attorneys' Fees

The relevant facts and authority supporting the reasonableness of the attorneys' fees award Plaintiffs seek as a part of this settlement are set forth in Plaintiffs' contemporaneously-filed Fee Approval Motion.[9] Notwithstanding Plaintiffs' reliance on the arguments advanced, and authorities relied upon therein, Plaintiffs note that Courts within this district regularly approve attorneys' fees in similar settlements in an amount equal to one third (1/3 or 33%) or more of the total settlement. *See e.g., Elston v. Horizon Glob. Americas, Inc.,* CV 19-2070-KHV, 2020 WL 6318660, at *7 (D. Kan. Oct. 28, 2020) (In an FLSA common fund settlement, this Court found, "[a] fee award of 38.6 per cent is within the range of around one-third of the settlement fund. For these reasons, the lodestar and percentage methods weigh in favor of finding the attorneys' fees reasonable."); *Foster v. Robert Brogden's Olathe Buick GMC, Inc.,* 17-2095-DDC-JPO, 2019 WL 6715470, at *6 (D. Kan. Dec. 10, 2019) (finding a fee of 33% of common fund typical); *Hoffman v. Poulsen Pizza* LLC, 15-2640-DDC-KGG, 2017 WL 25386, at *9 (D.

[9] Plaintiffs acknowledge this is also a factor considered by the Court when determining whether to approve a settlement under the FLSA.

Kan. Jan. 3, 2017) (approving attorneys' fee of 33% of the common fund settlement in FLSA matter); *Koehler v. Freightquote.com, Inc.,* No. 12-2505-DDC-GLR, 2016 WL 3743098, at *8 (D. Kan. July 13, 2016) (approving fee award equal to 33% of the common fund).

**E. The Court Should Approve the Proposed Notices, Direct the Issuance of Notice to the Settlement Class and Appoint Cornerstone Law Firm as Class Counsel**

When a class is certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). More specifically, "in easily understood language," this notice must "clearly and concisely state" the eight categories of information enumerated in Fed. R. Civ. P. 23(c)(2)(B). Highly summarized, this includes information about the class definition and nature of the action and the class claims or defenses at issue, and it must also apprise class members: that they may enter an appearance through an attorney at their option; that they may request to be excluded from the class, and the time and manner for making any such request, and the binding effect of a class judgment on them. *Id.* With respect to conditional certification of collective actions under the FLSA, the court "has the power and duty to ensure that the notice is fair and accurate, but it should not alter plaintiff's proposed notice unless such alteration is necessary." *Christeson v. Amazon.com.ksdc, LLC, No*. 18-2043-KHV, 2019 WL 2137282, at *4 (D. Kan. May 16, 2019). Finally, within the settlement context, Rule 23(e) also requires the court to "direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement]" after granting preliminary approval. Fed. R. Civ. P. 23(e)(1)(B).

As noted in the advisory committee's note to the 2018 amendment of Rule 23(c)(2), courts commonly direct "notice to the class simultaneously under both Rule 23(e)(1) and Rule 23(c)(2)(B), including a provision for class members to decide by a certain date whether to opt out." Fed. R. Civ. P. 23(c)(2), advisory committee's note to the 2018 amendment. Where, as here, no class was certified prior to settlement, notice to the class must comply with the requirements of both Rule 23(e)(1) and Rule 23(c)(2)(B). *See e.g. Florece,* 2021 WL 5042715, at *12. Where class members are identifiable, individual notice "is not a discretionary consideration that can be waived in a particular case; rather, it is an unambiguous requirement of Rule 23." *Better v. YRC Worldwide, Inc.,* No. 11-2072- KHV, 2015 WL 566962, at *3 (D. Kan. Feb. 11, 2015) (quotations omitted).

Here, the proposed Notice properly apprises class members of all requisite categories of information under Rule 23(c)(2)(B) and also includes the information relevant to Rule 23(e)(5) regarding class member objections. The Notice also provides a sufficient length of time—*i.e.* 45 days—for class members to submit objections or dispute their settlement amounts. *See e.g. Florece,* 2021 WL 5042715, at *12 (finding 45 days to be a sufficient amount of time for class members to weigh options and submit objections). Finally, the Notice includes Plaintiffs' counsel's information, and will be individually sent to class members by the Settlement Administrator through U.S. Mail and email, using addresses and contact information provided by Defendant. For these reasons, Plaintiffs request the Court approve the form and issuance of the proposed Notice.

### F. The Court Should Appoint Cornerstone Law Firm as Class Counsel and Schedule a Final Approval Hearing

Finally, because an order certifying a class must also appoint class counsel who will fairly and adequately represent the interests of the class,[10] Plaintiffs respectfully request this

[10] Relevant information regarding the work counsel has done in identifying or investigating potential claims in this action, their class and collective action experience and resulting experience and knowledge of the FLSA and state wage and hour laws, and the resources counsel can, and will commit to representing the class can be found in counsel's Motion for Attorney's fees.

Court appoint the undersigned as Class Counsel. *See* Fed. R. Civ. P. 23(c)(1)(B) & (g). Finally, Plaintiffs respectfully request the Court grant all the relief requested herein and schedule a Final Approval Hearing for this settlement.

Respectfully Submitted,

CORNERSTONE LAW FIRM
By: /s/ Ryan M. Paulus
Ryan M. Paulus KS 27293
r.paulus@cornerstonefirm.com
M. Katherine Paulus KS 23866
m.paulus@cornerstonefirm.com
Drew M. Russell DKan 79133
d.russell@cornerstonefirm.com
Kansas City, Missouri 64151
Telephone (816) 581-4040
Facsimile (816) 741-8889

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

The undersigned certifies on this 3rd day of April 2026, Plaintiff electronically filed the same with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following counsel of record for Defendant:

John Kober
John.kober@mrganlewis.com
Kevin Gaffney
Kevin.gaffney@morganlewis.com
Christopher A. Parlo
Chris.parlo@morganlewis.com

**ATTORNEYS FOR DEFENDANT**

/s/ Ryan M. Paulus
**ATTORNEY FOR PLAINTIFFS**

EXHIBIT
1

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF KANSAS**

| | | |
|---|---|---|
| ANTHONY HARMS and MICHAEL TUTTLE, on behalf of themselves and others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>SYSCO KANSAS CITY, INC.,<br><br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 2:24-cv-02452-KHV-TJJ |

**CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement and Release ("Agreement") is entered into between Sysco Kansas City, Inc. ("Defendant"), on the one hand, and Anthony Harms and Michael Tuttle ("Named Plaintiffs"), individually and on behalf of themselves and others similarly situated, on the other hand, to resolve all claims and disputes which are the subject of the lawsuit filed by Named Plaintiffs with the U.S. District Court for the District of Kansas, *Harms et al. v. Sysco Kansas City, Inc.*, Case No. 2:24-cv-02452-KHV-TJJ (the "Litigation").

**RECITALS**

WHEREAS, the Named Plaintiffs have asserted claims against Defendant under, inter alia, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq*., under Kansas common law for unjust enrichment/quantum meruit, and under the Kansas Wage Payment Act, K.S.A. § 44-313 *et seq*., based on the alleged failure to pay overtime compensation to the Named Plaintiffs and others similarly situated for all hours worked, including the alleged failure to properly calculate the regular rate for overtime purposes, *see* Litigation ECF Doc. 54;

WHEREAS, Named Plaintiffs sought the recovery of, among other things, minimum wages, overtime wages, compensatory damages, liquidated damages, attorneys' fees, and costs;

WHEREAS, Plaintiffs' Counsel analyzed and evaluated the merits of the claims made against Defendant, conducted interviews with putative collective members, obtained and reviewed documents relating to Defendant's compensation policies and practices, and analyzed payroll and other data and information;

WHEREAS, based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that these claims, if not settled now, might not result in any recovery or might result in a recovery less favorable, and that any recovery would not occur for several years or at all, Plaintiffs' Counsel are satisfied that the terms and conditions of this Agreement are a fair, reasonable, and adequate compromise of a bona fide wage and hour dispute and that this Agreement, reached as a result of arms-length negotiations, is in the best interests of the Named Plaintiffs and the Class Employees (as defined below);

WHEREAS, Defendant denies all the claims and contentions alleged by the Named Plaintiffs. Nonetheless, Defendant has concluded that further litigation of Named Plaintiffs' claims would be protracted and expensive, and would also divert management and employee time. Defendant also has taken into account the uncertainty and risks inherent in litigation and has, therefore, concluded that it is desirable that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement; and

WHEREAS, the purpose of this Agreement is to settle fully and finally all Released Claims (as hereinafter defined).

WHEREAS, the Parties desire to settle fully and finally the differences between them and have agreed to settle this case as to Named Plaintiffs as well as all individuals comprising the Settlement Class, as defined below; and

WHEREAS, the Parties agree to undertake their best efforts, including all steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

Defendant and the Named Plaintiffs (collectively the "Parties") agree to do all things and procedures reasonably necessary and appropriate to obtain approval of this Agreement in consideration for: (a) payment by Defendant of the Maximum Settlement Fund as defined in this Agreement subject to the terms, conditions and limitations of this Agreement; (b) the release and dismissal with prejudice of all claims as set forth in this Agreement; and (c) other valuable monetary and non-monetary consideration as set forth in this Agreement. This Agreement is contingent on approval by the Court and is entered into voluntarily by the Parties for settlement purposes only.

## I. Definitions

**A. "Agreement."** "Agreement" means this agreement, *i.e.*, the Class and Collective Action Settlement Agreement, together with all of its attachments and exhibits, which the Parties understand and agree sets forth all material terms and conditions of the settlement between them, and which is subject to Court approval. It is understood and agreed that the obligations of the Defendant for payment under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date.

**B. "Claimant."** "Claimant" shall mean any Class Employee who timely submits a valid and complete Claim Form on or before the Claim Form Deadline in accordance with

Paragraph IV.B.3 of this Agreement and whose Claim Form is accepted in accordance with Paragraph IV.C below .

**C. "Claim Form."** "Claim Form" shall mean the form provided to Class Employees, other than the Named Plaintiffs or Early Opt-Ins, to submit in order to obtain a payment from the Net Settlement Fund pursuant to this Agreement. The Claim Form shall be in the form attached as Exhibit C to this Agreement.

**D. "Claim Form Deadline."** "Claim Form Deadline" shall mean the date that is sixty (60) days after the Settlement Administrator first mails the Claim Forms to Class Employees pursuant to Paragraph IV.B.3 of this Agreement. If the Settlement Administrator re-mails the Claim Form to any individual pursuant to Paragraph IV.B.3 of this Agreement because the first mailing was returned as undeliverable, the Claim Form Deadline for such individuals shall be the later of (a) sixty (60) days from the original mailing to all Class Employees, or (b) thirty (30) days after the re-mailing. If the Claim Form Deadline falls on a Sunday or holiday, the deadline to return Claim Forms will be the next business day that is not a Sunday or holiday.

**E. "Class Counsel" or "Plaintiffs' Counsel."** "Class Counsel" or "Plaintiffs' Counsel" shall mean Cornerstone Law Firm.

**F. "Class Employees."** "Class Employees" means all persons employed as hourly, non-exempt employees who were employed by Defendant at the Olathe, Kansas, facility as outbound Order Selectors, from July 1, 2020, through January 26, 2026 and who are included in the class list as determined by Defendant's business records.

**G. "Class Representatives."** "Class Representatives" means Named Plaintiffs Anthony Harms and Michael Tuttle.

**H. "Complaint."** "Complaint" means the First Amended Complaint for Damages dated July 1, 2025, filed by Named Plaintiffs in the Litigation. *See* ECF Doc. 54.

**I. "Court."** "Court" refers to the Court having jurisdiction over the Litigation, at any stage; presently the U.S. District Court for the District of Kansas.

**J. "Covered Settlement Administration Costs."** "Covered Settlement Administration Costs" means the fees and costs incurred by the Settlement Administrator in administering the settlement as described in this Agreement, up to and including a total amount of $30,000.00.

**K. "Defendant."** "Defendant" means Sysco Kansas City, Inc.

**L. "Defense Counsel."** "Defense Counsel" means Morgan, Lewis & Bockius LLP.

**M. "Early Opt-Ins."** "Early Opt-Ins" means Michael Shouse, Jacob Reynolds, and James Monaco.

**N. "Effective Date."** "Effective Date" means the date on which the Judgment becomes a Final Judgment.

**O. "Final Approval."** "Final Approval" means the date the Court enters an Order finally approving the Settlement and dismissing the Litigation against the Defendant with prejudice, while still retaining continuing jurisdiction over the administration of the settlement.

**P. "Final Approval Order."** "Final Approval Order" means an order that finally and unconditionally grants final approval of the Agreement, grants final certification of the Settlement Class for settlement purposes only, authorizes payments to Named Plaintiffs and the Settlement Class as provided in this Agreement, and fully and finally extinguishes (i) the Released State Law Claims of the State Law Class and Settlement Class; and (ii) the Released Federal Law Claims of the Settlement Class. The Parties shall submit a draft order, entitled "Order Granting Final Approval of Class Settlement," substantially in the form attached hereto as Exhibit D, for the Court's review and approval.

**Q. "Final Judgment."** "Final Judgment" means fifteen (15) days after the latest of: (i) the date of final affirmance on an appeal of the Judgment, or the expiration of time for a petition for a writ of certiorari to review the Judgment and, if certiorari is granted, the date of final affirmance of the Judgment following review pursuant to that grant; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Judgment.

**R. "Final Settlement Approval Hearing."** "Final Settlement Approval Hearing" means a hearing set by the Court to take place at least one hundred and twenty (120) days from the date of the entry of the Preliminary Approval Order, for the purpose of (i) determining the fairness, adequacy, and reasonableness of the Agreement terms and associated settlement pursuant to class action procedures and requirements; (ii) approving Class Counsel's attorneys' fees and costs; (iii) approving the payment of the Service Payments; and (iv) entering Judgment.

**S. "General Release Payment."** "General Release Payment" means the amounts to be paid to Named Plaintiffs described in Paragraph III.E.5 in addition to their Settlement Checks and Service Payment as an optional payment, unrelated to and not contingent upon the Released Federal Law Claims and Released State Law Claims, in consideration for their general release of claims.

**T. "IRS."** "IRS" means the Internal Revenue Service.

**U. "Judgment."** "Judgment" means the judgment to be rendered by the Court pursuant to this Agreement.

**V. "Litigation."** "Litigation" means the lawsuit filed by Named Plaintiffs with the U.S. District Court for the District of Kansas, *Harms et al. v. Sysco Kansas City, Inc.*, Case No. 2:24-cv-02452-KHV-TJJ.

**W. "Maximum Settlement Fund."** "Maximum Settlement Fund" means $900,000.00, and is the maximum amount that Defendant has agreed to pay to fully resolve and settle this Litigation including any claim for attorneys' fees and costs approved by the Court; the employee share of payroll taxes and all other applicable taxes; any and all amounts to be paid to Class Employees under the Net Settlement Fund; the Covered Settlement Administration Costs;

any Court-approved Service Payments; and the Reserve Fund. Defendant will not be required to pay under this Agreement any more than the gross total of the Maximum Settlement Fund.

**X. "Named Plaintiffs."** "Named Plaintiffs" means Anthony Harms and Michael Tuttle.

**Y. "Net Settlement Fund."** "Net Settlement Fund" means the Maximum Settlement Fund less Class Counsel's attorneys' fees and costs approved by the Court, the Service Payment approved by the Court, the Covered Settlement Administration Costs, the General Release Payment, and the Reserve Fund, the sum of which the parties estimate to be $519,000.00.

**Z. "Objection Deadline."** "Objection Deadline" refers to the date fourteen (14) days prior to the Final Settlement Approval Hearing.

**AA. "Opt-Out Statement."** "Opt-Out Statement" is a written, signed statement by a Class Employee sent to the Settlement Administrator that he or she is opting out of the Settlement. The Opt-Out Statement must comply with the provisions of Paragraph IV.B.4 to be valid.

**BB. "Participating Settlement Member." "**Participating Settlement Member" means any Claimant who submits a valid and timely Claim Form and thus becomes bound by both the Released State Law Claims and the Released Federal Law Claims portions of the Agreement if the Effective Date occurs, and also includes Named Plaintiffs and Early Opt-Ins, who shall not be required to submit a Claim Form to be a Participating Settlement Member.

**CC. "Parties**." "Parties" shall refer to the Named Plaintiffs and the Defendant.

**DD. "Preliminary Approval."** "Preliminary Approval" means the date on which the Court preliminarily approves the terms of the Parties' Agreement and certifies a class and collective action for settlement purposes only, as provided in Paragraph IV.A.

**EE. "Preliminary Approval Order."** "Preliminary Approval Order" means an order to be executed and filed by the Court preliminarily approving the terms contained in this Agreement and certifying a class action for settlement purposes only as provided in Paragraph IV.A. The Parties shall submit a draft order, entitled "Order Granting Preliminary Approval of Class Action Settlement," substantially in the form attached hereto as Exhibit B, for the Court's review and approval.

**FF. "Proposed Settlement Notice," "Settlement Notice" and "Notice."** "Proposed Settlement Notice," **"Settlement Notice" and "Notice" shall all** mean the Notice Regarding Proposed Settlement of Class Action to be sent to Class Employees after the Court grants Preliminary Approval of the Agreement, substantially in the form attached to this Agreement as Exhibit A.

**GG. "Released Federal Law Claims."** "Released Federal Law Claims" means the released claims identified in Paragraph III.E.2.

**HH. "Released Parties."** "Released Parties" means the Defendant and its present and former affiliates, divisions, members, subsidiaries, parents, predecessors, any merged entity or merged entities and all of its and their present and former officers, directors, employees, agents, attorneys, shareholders and/or successors, insurers or reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them.

**II. "Released State Law Claims."** "Released State Law Claims" means the released claims identified in Paragraph III.E.1.

**JJ. "Remaining Reserve Fund."** "Remaining Reserve Fund" means any amounts in the Reserve Fund that are not used by the Settlement Administrator as described in Paragraph I.JJ. All amounts associated with the Remaining Reserve Fund shall be distributed as described in Paragraph IV.B.5.b.

**KK. "Reserve Fund."** "Reserve Fund" means a fund in the amount of $30,000.00, allocated from the Maximum Settlement Fund, that the Settlement Administrator may use, with approval from Defendant's counsel and Class Counsel, to make payments to Class Employees who dispute their Potential Settlement Payment amounts, or to individuals who were not identified as Class Employees but have a good faith claim for participation in this settlement, or for any other reasonable purpose necessary to effectuate the settlement.

**LL. "Service Payment."** "Service Payment" means the amounts approved by the Court to be paid to Named Plaintiffs and Early Opt-Ins as described in Paragraph III.C, in addition to their Settlement Checks as Class Employees and their effort in assisting in the prosecution of the Litigation or otherwise benefiting the Settlement Class.

**MM. "Settlement Administrator."** "Settlement Administrator" refers to Angeion Group, the settlement administrator selected by the Parties.

**NN. "Settlement Checks."** "Settlement Checks" means the checks issued to Class Employees for their share of the Net Settlement Fund calculated in accordance with this Agreement.

**OO. "Settlement Class."** "Settlement Class" means Named Plaintiffs, Early Opt-Ins, and Participating Settlement Members who will become bound by the Released State Law Claims and Released Federal Law Claims portion of the Judgment, as applicable, if the Effective Date occurs.

**PP. "State Law Class."** "State Law Class" means Named Plaintiffs, Early Opt-Ins, and all Class Employees who do not opt out in the manner described in Paragraph IV.B.4, and thus means all individuals who will become bound by the Released State Law Claims portion of the Judgment if the Effective Date occurs.

**QQ. "Taxing Authorities."** "Taxing Authorities" means the IRS and other appropriate taxing authorities.

**RR. "Uncashed Settlement Checks."** "Uncashed Settlement Checks" means settlement payment checks that are not redeemed by Participating Settlement Members within the one hundred and twenty (120) day redemption period and thus become void and have a stop-payment placed. All amounts associated with the Uncashed Settlement Checks shall be distributed as described in Paragraph IV.B.5.b.

**SS. "Unclaimed Settlement Funds."** "Unclaimed Settlement Funds" shall mean the aggregate amount of the Net Settlement Fund not claimed in a timely and valid manner pursuant to Paragraphs IV.B.3 or IV.B.5 of this Agreement, and not otherwise accepted pursuant to Paragraph IV.C of this Agreement. All amounts associated with the Unclaimed Settlement Funds shall be distributed as described in Paragraph IV.B.5.b.

## II. Certification of the Class and Collective for Purposes of Settlement Only

**A.** The Parties stipulate for settlement purposes only that the requirements for collective certification under 29 U.S.C. § 216(b) are met with respect to the members of the Settlement Class, and that the requirements for class certification under Fed. R. Civ. P. 23(b)(3) are met with respect to the State Law Class, provided however that the stipulations in this Paragraph are made solely for purposes of this Agreement. The Parties agree that the stipulations and the terms of this Agreement are in no way an admission that class or collective action certification, including conditional collective action certification, was or would otherwise be proper in this Litigation, and neither the existence nor the terms of this Agreement or the stipulations will be admissible in this or any other action or proceeding as evidence (i) that a determination or admission that any group of similarly situated employees exists to maintain a class action under Rule 23 of the Federal Rules of Civil Procedure (or comparable state laws or rules) or collective action under the FLSA; (ii) of an adjudication of the merits of the Litigation; (iii) that Defendant is liable to Named Plaintiff, Early Opt-Ins, Class Employees, or the Settlement Class; or (iv) of an adjudication of any other matters released in this Agreement.

## III. Payments, Settlement Fund and Allocation

**A.** Allocation of the Net Settlement Fund: The Net Settlement Fund shall be allocated as follows:

1. Approximately 84% of the Net Settlement Fund will be allocated for payments of overtime damages under the FLSA to Class Employees ("FLSA Funds"), and approximately 16% of the Net Settlement Fund will be allocated for payments of straight time damages under the KWPA to State Law Class members ("KWPA Funds").

2. Class Employees shall be assigned to one of four payment tiers based on their individual average hourly straight time rates of pay during the Class Period.

3. Each Class Employee will receive an amount equivalent to approximately one hour of overtime pay at a rate of one and one-half times the averaged straight time pay rate for his/her/their payment tier for each overtime workweek he/she/they worked the Class Period.

4. Each Class Employee who is also a member of the State Law Class will also receive an amount equivalent to approximately one hour of straight time pay at the averaged

amount for his/her/their respective payment tier for each non-overtime workweek he/she/they worked during the State Law Class Period.

5. Class Employees may dispute the amount of their Potential Settlement Payments by contacting the Settlement Administrator prior to the Claims Form Deadline. The Settlement Administrator will notify Class Counsel of the identity of any Class Employee disputing the amount of his/her/their Potential Settlement Payment, his/her/their dates of employment, and the reason(s) for the dispute. Class Counsel will work with Defendant's counsel if necessary to determine whether, and to what extent the disputing Class Employee's individual Potential Settlement Payment should be adjusted using Reserve Funds.

6. Any amounts of Unclaimed Settlement Funds resulting from Class Employees who do not submit a timely Claim Form, or from Reserve Funds that are not utilized for adjusting Potential Settlement Payments for Class Employees disputing their individual settlement amounts will be redistributed and reallocated on a pro rata basis to increase the individual Potential Settlement Payments to Participating Settlement Members as follows:

(a) Any Unclaimed Settlement Funds which were allocated FLSA Funds will first be recalculated on a *pro rata* basis to the FLSA/overtime damages portion of the individual Potential Settlement Payments for all Participating Settlement Members, but any such distributions shall be capped at an amount which would—when added to the Participating Settlement Members' individual, original estimated Potential Settlement Payment amounts—not exceed the equivalent of one hour of overtime with liquidated damages per overtime workweek during the Class Period.

(b) Any Unclaimed Settlement Funds which were Allocated KWPA funds will first be recalculated on a *pro rata* basis to the KWPA portion of the individual Settlement Awards for all Participating Settlement Members who are also State Law Class members, but any such distributions shall be capped at an amount not to exceed 33% of the original estimated KWPA portion of their damages. Second, after any such distributions, any remaining Unclaimed Settlement Funds which were Allocated KWPA Funds will next be, if applicable, reallocated and distributed to increase the FLSA overtime damages portion of the Potential Settlement Awards to Participating Settlement Members up to the capped amounts described in the immediately preceding section.

(c) In the event that the reallocation of Unclaimed Settlement Funds as described in Section III.A.6(a)-(b), does not result in each Participating Settlement Member receiving the maximum, "capped" amount of overtime damages described in Section III.A.6(a), or, if applicable, the maximum "capped" amount of straight time damages described in Section III.A.6(b), then any remaining Reserve Funds which were not utilized to increase the Potential Settlement Payments of Class Employees who disputed their settlement amounts will similarly be proportionally reallocated and redistributed to increase the overtime and/or straight time damages portions of the Potential Settlement Payments to Participating Settlement Members up to the maximum "capped" amounts.

(d) After the reallocation and distribution of Unclaimed Settlement Funds as described in Section III.A.6(a)-(c), any remaining Unclaimed Settlement Funds, other than Uncashed Settlement Checks, resulting from non-participation of Class Employees and/or remaining Reserve Funds which were not utilized to increase the Potential Settlement Payments of Class Employees who disputed their settlement amounts shall revert to Defendant.

**B.** <u>Participation in Settlement:</u> Class Employees who submit a Claim Form on or before the Claim Form Deadline will become Participating Settlement Members, and shall be deemed to have waived the Released Federal Law Claims and Released State Law Claims against the Released Parties.

**C.** <u>Service Payments to Named Plaintiffs:</u> The Service Payment to Named Plaintiffs shall not exceed Five Thousand and Zero Cents ($5,000.00) each. The Service Payments to the Early Opt-Ins shall not exceed Two Thousand and Zero Cents ($2,000.00) each. These Service Payments are being sought in recognition of their efforts to pursue the claims raised in this Litigation on behalf of the Settlement Class, including assisting Class Counsel with the prosecution of this Litigation. Defendant will not oppose this request for the Service Payments. In the event that the Court does not approve the amount of the Service Payments, the settlement will proceed. This Agreement is not contingent upon the Court's approval of the request for the

Service Payments in any amount. This Agreement will be modified to reflect any amount that is approved by the Court. Any amounts allocated as the Service Payments under this Agreement, but not approved by the Court, shall be added to the Net Settlement Fund.

**D.** Payment of Attorneys' Fees and Costs: Class Counsel will apply to the Court for approval of attorneys' fees and costs not to exceed Three Hundred Thousand Dollars and Zero Cents ($300,000.00). Defendant has the option of opposing such application. In the event that the Court does not approve the amount of the requested attorneys' fees or costs, the settlement will proceed. This Agreement is not contingent upon the Court's approval of the requested attorneys' fees or costs in any amount and will be modified to reflect the amount(s) approved by the Court. Any amounts allocated as attorney's fees or costs under this Agreement, but not approved by the Court, shall be added to the Net Settlement Fund.

**E.** Release of Claims.

1. **Release of State and Local Claims.** Upon the entry of the Final Order and Judgment, each Class Employee who did not validly opt out in accordance with Paragraph IV.B.4, shall, on his or her behalf, and on behalf of his or her respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, fully release and discharge the Released Parties of and from any and all state-law wage-and-hour-related claims asserted in the Litigation, including under the Kansas Wage Payment Act, breach of contract, and violation of state laws or regulations for unpaid compensation or a quantum meruit theory of recovery, and any other statutory or common law wage-and-hour-related claims of any kind related to the claims asserted in the Litigation, whether known or unknown, specifically asserted or not, arising from their employment with Defendant, including statutory claims, whether known or unknown, in law or in equity, including, but not limited to, any and all claims under the Kansas Minimum Wage and Maximum Hours Law or the Kansas Wage Payment Act, claims under any legal theory for failure to pay for all time worked punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under the Employee Retirement Income Security Act ("ERISA") that are related to or derivative of the claims released in this provision.

2. **Release of Federal Law Claims.** In addition to the release provisions of Paragraph III.E.1 above, each Participating Settlement Member shall, on his or her behalf, and on behalf of his or her respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, fully release and discharge the Released Parties from any and all federal wage and hour claims asserted in the Litigation, and any related FLSA claims for unpaid overtime arising from his or her employment with Defendant, including statutory claims, whether known or unknown, in law or in equity, including liquidated damages, interest, punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under ERISA that are related to or derivative of the claims released in this Paragraph III.E.2.

3. A Class Employee's waiver of their claims under the FLSA shall be effective upon the date the Settlement Administrator distributes the Net Settlement Funds.

4. Class Employees who have not submitted timely and valid Claim Forms will be bound by the release in Paragraph III.E.1 but not bound by the release in Paragraph III.E.2.

5. **General Release of Claims by Named Plaintiffs and Early Opt-Ins Receiving Service Payments.** In addition, to the maximum extent permitted by law and in consideration for receiving a separate General Release Payment in the amount of $1,000 which is not tied to their Service Payment, Settlement Checks, or the Released Federal Law Claims or Released State Law Claims, the Named Plaintiffs and Early Opt-Ins at their option generally release the Released Parties from any and all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known or unknown, against the Released Parties, which the Named Plaintiffs, Early Opt-Ins, and their heirs, executors, administrators, successors, and assigns, ever had, may now have, or hereafter later determine that they have or had, including, but not limited to claims relating to their employment, including, but not limited to, claims arising under the Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., including but not limited to, breach of fiduciary duty and equitable claims to be brought under ERISA §1132(a)(3), the Worker Adjustment and Retraining Notification Act, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act, the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, the Kansas Minimum Wage and Maximum Hours Law, the Kansas Wage Payment Act, the Kansas Equal Pay Law, the Kansas Discrimination Against Military Personnel Act, the Kansas Discrimination Against Victims of Domestic Violence or Sexual Assault Act, the Kansas Whistleblower Protection Act, Chapter 44 of the Kansas Statutes, including, without limitation, the Kansas WARN law, including any and all amendments to the foregoing, and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against the Defendant or the Released Parties, including any claim for attorneys' fees, expenses or costs based upon any conduct from the beginning of the world up to and including the date that the Named Plaintiffs and Early Opt-Ins execute this General Release; provided, however, that Named Plaintiffs and Early Opt-Ins do not waive any rights to file an administrative charge with the Equal Employment Opportunity Commission, subject to the condition that they agree not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom; and further provided, however, that Named Plaintiffs and Early Opt-Ins do not release any claim for breach of the terms of the Agreement.

6. This Settlement is intended to include in its effect all claims identified in this Paragraph III.E, including claims that Named Plaintiffs do not know or suspect to exist in their favor against the Defendant or the Released Parties at the time of the release.

7. Named Plaintiffs further covenant that, in exchange for receiving a Service Payment, they will not participate and/or opt in to any other legal actions against the Defendant or the Released Parties relating to any of the claims released by this Agreement; will withdraw any opt-in; will dismiss the action or themselves from the action in actions where they are a claimant, plaintiff or appellant; and will opt-out of those actions if they become aware of such actions.

## IV. <u>The Settlement Process</u>

**A.** <u>Court Approval of Settlement and Dismissal of Case:</u> As soon as practicable and without undue delay, Named Plaintiffs will file a motion seeking the Court's Preliminary Approval of the terms of this Agreement and, upon Final Approval, Plaintiffs will seek the Court's dismissal of the Litigation with prejudice, on the condition that the Court retain jurisdiction to administer and enforce the terms of this Agreement, to the extent allowed by law.

1. A condition precedent to this Agreement is the Court's approval of the Preliminary Approval Order attached as Exhibit B, without any changes by the Court to the Preliminary Approval Order that the Defendant reasonably and in good faith deems material.

2. The Parties shall provide to the Court for review and approval this Agreement, with exhibits, including (a) the proposed Preliminary Approval Order in substantially the form attached as Exhibit B, (b) the Proposed Settlement Notice, attached as Exhibit A, and such other information as the Court may request.

3. The Parties shall cooperate and take all necessary steps to effectuate judicial approval of the Agreement. Should the Court not approve the Agreement, or should the Court not approve and enter the Preliminary Approval Order in the form attached as Exhibit B (or in a form without any changes by the Court that the Defendant reasonably and in good faith deems material), the terms of this Agreement will be null and void, the Parties will retain all rights and defenses in the Litigation, and all negotiations and information and materials pertaining in any way to this Agreement or the settlement of the Litigation will be inadmissible. In such an event, the Parties agree in good faith to negotiate about appropriate revisions to this Agreement or any exhibits thereto and re-submit for the Court's approval. In the event that this settlement is never approved by the Court, the Parties will retain all rights and defenses in the Litigation, and all negotiations and information and materials pertaining in any way to this Agreement or the settlement of the Litigation will be inadmissible.

4. Within ten (10) days following the filing of this Agreement with the Court, Defendant shall serve upon the Office of the Comptroller of the Currency of the United States and the appropriate State official of each State in which any of the Class Employees reside, as determined by Defendant's records, a notice of the proposed settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA"). A sample of the CAFA notice is attached to this Agreement as Exhibit E.

5. <u>Final Approval.</u> At least one hundred and twenty (120) days after entry of the Preliminary Approval Order, the Court shall set the Final Settlement Approval Hearing. At least fourteen (14) days prior to the Final Settlement Approval Hearing, Named Plaintiffs will

move the Court for entry of the Final Approval Order and the associated Judgment (which the Defendant will not oppose). The Parties shall make all reasonable efforts to secure entry of the Final Approval Order and the associated Judgment. If the Court rejects their request, fails to enter the Final Approval Order, or fails to enter the Judgment, this Agreement shall be void *ab initio*, and Defendant shall have no obligations to make any payments under the Agreement, except for costs already incurred by the Settlement Administrator, which shall be borne equally by, on one hand, Class Counsel and Named Plaintiffs, and the Defendant, on the other. At the time the motion is filed requesting Final Approval, Named Plaintiffs and Class Counsel also shall make an application for attorneys' fees and costs and the Service Payments. Notwithstanding any order entered on Named Plaintiffs' and Class Counsel's application for awards to them, under no circumstance shall Defendant be required to pay any such awards absent occurrence of the Effective Date.

**B.** <u>Settlement Administration.</u> If the Court grants Preliminary Approval of this Agreement, the Parties will use Angeion Group (or any other mutually-agreed settlement administrator) to administer the settlement. Reasonable fees and expenses of the Settlement Administrator shall be paid from the Maximum Settlement Fund. In no circumstances will any administration of the settlement, including issuance of the Proposed Settlement Notice, occur unless and until the Court grants Preliminary Approval as set forth in Paragraph IV.A. The Parties agree to the following procedure for administration of the settlement:

1. <u>Collection and Validation of Contact and Payroll Information.</u>

(a) Within twenty one (21) days of Preliminary Approval, Defendant shall provide the Settlement Administrator with summary data reflecting the average base hourly rate of pay, weighted by the number of workweeks at each Class Employee's base hourly rate, for each Class Employee during the Class Period, the total number of workweeks each Class Employee worked during the Class Period, and the proportion of those workweeks in which they worked more than 39 hours. The Settlement Administrator will use this information to calculate the estimated Potential Settlement Payments to each Class Employee. Defendant may, at its option, provide this data in an anonymized manner (e.g. assigning numbers to each class members, or using employee id numbers) as long as Defendant maintains and provides to the Settlement Administrator a "key" associating the identity of class members with their anonymized identifiers.

(b) Within twenty one (21) days of Preliminary Approval, Defendant shall provide the names, last known home addresses, and last known personal email addresses of the Class Employees ("Contact Information") and payroll or other data needed for purposes of allocating the Net Settlement Fund and/or issuing the Settlement Checks ("Payroll Information") of Class Employees to the Settlement Administrator. Any and all information, including Social Security numbers, provided by Defendant or Class Counsel shall be held in confidence and shall be used solely for purposes of effectuating this Agreement. This information shall not be disclosed to Named Plaintiffs or Class Employees

(c) Upon receipt of the Contact Information, the Settlement Administrator shall make reasonable efforts to obtain valid, current addresses for Class Employees, including validating Contact Information through the national change of address database or other third party change of address databases prior to sending the Proposed Settlement Notice and thereafter as needed.

2. Establishment and Funding of the Qualified Settlement Fund.

(a) If the Court grants Preliminary Approval of this Agreement, the Settlement Administrator shall establish a Qualified Settlement Fund ("QSF") pursuant to 26 C.F.R. § 1.468B-1 for the purposes of administering the settlement. The Parties shall provide the Settlement Administrator with all necessary cooperation for the creation of the QSF, including but not limited to the execution of all necessary documents.

(b) Defendant shall fund the QSF with the Maximum Settlement Fund, minus the amount of any Unclaimed Settlement Funds, within fourteen (14) days of the Effective Date.

(c) To effectuate the terms of the Settlement and to correct for mathematical or factual errors in the allocations to Class Employees, the Settlement Administrator shall allocate from the Maximum Settlement Fund $30,000.00 to create a Reserve Fund, which the Settlement Administrator may use, with approval from Defendant and Class Counsel, to make payments to Class Employees who dispute their allocation amounts, to individuals who were not identified as Class Employees but have a good faith claim for participation in the settlement, or for any other reasonable purpose necessary to effectuate the settlement.

3. Class Notice and Class Employee Claim Forms.

(a) Settlement payments from the Net Settlement Fund will be made on a claims-made basis only. The Settlement Administrator will calculate the final amounts due to each Claimant as the Settlement Check and issue checks payable to said Claimants.

(b) **Class Notice for Class Employees.** Within fourteen (14) days of receiving the Contact Information and Payroll Information, the Settlement Administrator shall distribute, via First Class United States mail, postage prepaid, and using each Class Employee's last known address as provided by the Defendant and as updated by Class Counsel or the Settlement Administrator, the Notice of Settlement of Class and Collective Action Lawsuit and Fairness Hearing ("Notice") to all Class Employees. The Settlement Administrator shall also distribute the Settlement Notice and Claim Form to Class Employees via the last known personal email addresses provided by Defendant.

(c) **Claim Forms for Class Employees.** Notices mailed to Class Employees shall include a Claim Form. The mailed Notices and Claim Forms addressed to Class Employees shall also include a postage prepaid return envelope. Each Claim Form shall also have a scannable "QR" code or other similar means directing Class Employees to a case-specific website for submitting Claim Forms electronically.

(d) The Settlement Administrator shall give the Parties five (5) business days' notice before the Notices and Claim Forms are sent out. The Notices and Claim Forms shall inform all Class Employees of their rights under this Agreement. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Class Employee for whom the Notice is returned by the post office as undeliverable and shall attempt a re-mailing as described below. Defense Counsel and Class Counsel have the right to make inquiries and receive any information from the Settlement Administrator as is necessary to the administration of this Settlement.

(e) If any Notices and Claim Forms are returned as undeliverable, the Settlement Administrator shall forward them to any forwarding addresses provided by the U.S. Postal Service. If no such forwarding address is provided, the Settlement Administrator shall perform reasonable and diligent efforts to obtain the most recent addresses for such Class Employees. The Settlement Administrator shall, within ten (10) days after the first mailing of Notice, notify Class Counsel and Defense Counsel of the precise date of the end of the period to opt-out and the Claim Form Deadline.

(f) The Settlement Administrator shall notify Class Employees who submit deficient Claim Forms ("Deficient Claimant(s)") of the deficiency within five (5) business days of receipt. Deficient Claimants will have fourteen (14) days thereafter to cure said deficiencies. Deficiencies that are not cured within fourteen (14) days shall render the Deficient Claimant's claim waived, unless the deficiency is excused and the Claim Form is accepted in accordance with Paragraph IV.C. Deficient Claimants whose claims are waived will still be bound by the Release of State and Local Claims described in Paragraph III.E.1.

(g) Except for Claim Forms accepted in accordance with Paragraph IV.C, each Class Employee must submit their completed Claim Form by U.S. mail to the Settlement Administrator, and/or electronically through the case website established by the Settlement Administrator, no later than the Claim Form Deadline in order to be eligible for their Settlement Checks. The postmark date of the Claim Form mailed by the Settlement Administrator to the Class Employee, and the postmark date and/or electronic timestamp of the Claim Form mailed and/or submitted by the Class Employee to the Settlement Administrator, shall be deemed the exclusive means for determining whether a Class Employee timely submitted his/her Claim Form. In the event that there is no postmark date of the Claim Form being mailed by the Class Employee to the Settlement Administrator, it shall be presumed that the Claim Form was mailed three (3) days prior to the Settlement Administrator's receipt of the Claim Form, excluding any Sunday or other day for which no postal service was provided.

4. <u>Class Employee Opt-Out</u>

(a) Any Class Employee may request exclusion from the Settlement Class by "opting out," unless he or she becomes a Participating Settlement Member by submitting a Claim Form, in which case any opt-out request made by such Participating Settlement Member at any time shall be deemed null and void. Class Employees who choose to opt-out of the Settlement must mail an Opt-Out Statement. An Opt-Out Statement is a written, signed statement to the Settlement Administrator stating that he or she is opting out of the Settlement ("Opt-Out Statement"). The Opt-Out Statement must contain the name, address and telephone number of the Class Employee to be valid. It must also contain the words "I elect to exclude myself from the settlement in *Harms v. Sysco Kansas City, Inc.*," or substantially similar words, in order to be valid. To be effective, such Opt-Out Statements must be sent via First Class United States mail and postmarked within forty-five (45) days from the mailing of the Notice to the Class Employee. The Notice of Proposed Class and Collective Action Lawsuit and Fairness Hearing mailed to the Class Employee member will specify a date certain by which Class Employees must submit any Opt-Out Statement.

(b) If a Class Employee submits a deficient Opt-Out Statement, the Settlement Administrator shall notify the Class Employee of the deficiency within five (5) business days of receipt. If the deficient Opt-Out Statement was timely postmarked as described in Paragraph IV.B.4.a, the Class Employee shall have fourteen (14) days after receipt of the notice of deficiency to cure said deficiencies, at which point his or her attempted opt-out will be rejected if not received. Class Employees submitting untimely or deficient Opt-Out Statements shall be bound by the Settlement and its release of the State and Local Claims described in Paragraph III.E.1, but will not be considered Participating Settlement Members for settlement distribution purposes. If a Class Employee submits both a Claim Form and an Opt-Out Statement, the Claim Form will control and the Class Employee will be considered a Participating Settlement Member.

(c) Named Plaintiffs and Early Opt-Ins shall not opt out.

5. <u>Issuance of the Payments Under This Agreement.</u>

(a) Within fourteen (14) days of the date Defendant funds the QSF as described in Paragraph IV.B.2.a, the Settlement Administrator shall issue (i) Settlement Checks allocated from the Net Settlement Fund, in accordance with Paragraph III.A to the Participating Settlement Members; (ii) a wire transfer in the amount of any Court-approved attorneys' fees and costs to Class Counsel; and (iii) checks in the amounts of any Court-approved Service Payments to Named Plaintiffs and Early Opt-Ins.

(b) After pro-rata reapportionment the remaining Unclaimed Settlement Funds and Remaining Reserve Fund shall remain the property of the Defendant and, if the Defendant has paid such amounts to the Settlement Administrator, such amounts shall be returned to the Defendant by the Settlement Administrator.

(c) Participating Settlement Members will have one hundred and twenty (120) days after the check date to cash their Settlement Checks. If a Participating Settlement Member does not cash his or her Settlement Check within the one hundred and twenty (120) day period, their Settlement Check will be void, a stop-payment will be placed, and the Settlement Check shall become an Uncashed Settlement Check. In such event, the amounts associated with the Uncashed Settlement Checks shall be distributed to the Kansas State Treasurer's Unclaimed Property Fund in the name of Participating Settlement Member who did not cash his or her Settlement Check. Participating Settlement Members who do not cash their Settlement Checks shall remain bound by this Settlement and the applicable release in Paragraph III.E. This Agreement and the associated Final Order and Judgment do not and will not create any unpaid residual with respect to the Uncashed Settlement Checks or any Unclaimed

Settlement Funds subject to the provisions of Section III.A.6(a)-(e). The outcome of any proceeding related to the distribution of amounts associated with Unclaimed Settlement Funds shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion.

(d) Named Plaintiffs, Early Opt-Ins and Participating Settlement Members shall remain bound by this Agreement, their respective Releases, and the Final Order Approving Settlement, notwithstanding any failure to cash or deposit any Settlement Check issued pursuant to this Paragraph.

**C.** Untimely, Deficient, or Disputed Claims. The Settlement Administrator shall promptly advise counsel for the Parties of any Class Employees who file late or deficient claims, who dispute their allocation based on the settlement formula, or who have come forward as individuals who were not identified as Class Employees but who seek to participate in the Settlement. The Defendant's personnel records reflecting dates a Class Employee worked during the covered period are presumed to be correct unless that individual submits documents and the Settlement Administrator determines that those documents prove otherwise. Class Counsel and counsel for Defendant shall confer as to whether individuals with late, deficient or disputed claims or any others may participate in the Settlement, and whether their allocation based on the settlement formula should be corrected (if applicable). In the case of late or deficient claims submitted by Class Employees, or claims by individuals who were not included in the Contact Information, if any such claims are accepted, such individuals shall be considered Participating Settlement Members for all purposes under this Agreement. Any individuals whose Claim Forms are accepted in accordance with this Paragraph shall be paid from the Net Settlement Fund or the Reserve Fund as applicable. Once settlement funds no longer remain available to pay additional claims or adjust allocations, no further claims shall be accepted, or changes to allocations made. In no event shall the acceptance of any Claim Forms or changes to allocations in accordance with this Paragraph result in the Defendant being required to pay more than the Maximum Settlement Fund.

**D.** Tax Treatment of Settlement Checks.

1. For tax purposes, 50% of each Settlement Check shall be treated as back wages, and the other 50% of each Settlement Check shall be treated as interest, any applicable penalties, liquidated damages and other non-wage relief.

2. Payments treated as back wages shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Taxing Authorities and the payee under the payee's name and Social Security number on an IRS Form W-2. The employee portion of all applicable income and payroll taxes will be the sole responsibility of the individual Class Employee, and shall come out of the Net Settlement Fund.

3. Payments treated as interest and/or liquidated damages shall be made without withholding and shall be reported to the Taxing Authorities and the payee, to the extent required by law, under the payee's name and Social Security number on an IRS Form 1099.

4. The Settlement Administrator shall be responsible for determining the appropriate number of exemptions to be used in calculating payroll tax and withholding, deciding the appropriate tax rate, and issuing IRS Forms W-2 and Forms 1099 as appropriate.

**E.** Tax Treatment of Attorneys' Fees. Within seven (7) days following Final Approval, Class Counsel shall provide the Settlement Administrator with a duly completed IRS Form W-9. The payments provided by Paragraph III.D shall be considered attorneys' fees and reported on behalf of Class Counsel to the Taxing Authorities on an IRS Form 1099 issued to Class Counsel by the Settlement Administrator, provided that the Settlement Administrator has timely received a duly completed IRS Form W-9 from Class Counsel.

**F.** Tax Treatment of Service Payments. The Service Payments paid to Named Plaintiffs and Early Opt-Ins under this Agreement shall be reported as non-wage income to the Taxing Authorities on an IRS Form 1099 issued to Named Plaintiffs and Early Opt-Ins by the Settlement Administrator.

**G.** Responsibility for Taxes.

1. In the event that it is determined by the Taxing Authorities that Class Counsel, Named Plaintiffs, Early Opt-Ins and/or any Class Employee owes any additional taxes with respect to any attorneys' fees or costs, any Service Payments, or any Settlement Check distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between Class Counsel, Named Plaintiffs, Early Opt-Ins and/or any Class Employees and the Taxing Authorities, and that Defendant will not be responsible for the payment of such taxes, including any interest and penalties.

2. Class Counsel, Defense Counsel, and Defendant make no representations, and it is understood and Named Plaintiffs agree on behalf of Class Employees, that Class Counsel, Counsel for the Defendant, and Defendant have made no representations, as to the taxability of any portions of the Settlement Check to Named Plaintiffs, Early Opt-Ins or any Class Employee, the payment of any costs or award of attorneys' fees to Class Counsel, or any Service Payment to Named Plaintiffs or Early Opt-Ins. The Proposed Settlement Notice will advise Class Employees to seek their own tax advice prior to acting in response to the Notices. Neither Class Counsel nor Counsel for the Defendant intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

3. Named Plaintiffs, Early Opt-Ins and/or any Class Employee agree to indemnify and hold harmless Defendant and Released Parties for any taxes, penalties, interest, or other amounts due or owing by Defendant for any taxes due or owed by Named Plaintiffs, Early Opt-Ins and/or any Participating Settlement Member on any portion(s) of the Settlement Check to any Named Plaintiffs, Early Opt-Ins or any Participating Settlement Members or any Service Payments to Named Plaintiffs and Early Opt-Ins. Other than as set forth above, and as required by law, Defendant and the Settlement Administrator will not make from the payment to Named Plaintiffs, Early Opt-Ins, and/or any Participating Settlement Member any deductions, withholdings, or additional payments, including, without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions,

wage garnishments, or charity withholdings, and entry of the Final Judgment shall be deemed authority not to make such deductions, withholdings, or additional payments. Any amount paid to Named Plaintiffs, Early Opt-Ins and/or any Participating Settlement Members shall not create any credit or otherwise affect the calculation of any deferred compensation, benefit, pension, or other compensation or benefit plan provided by Defendant.

**H.** Other Responsibilities of the Settlement Administrator.

1. The Settlement Administrator shall provide weekly updates to Class Counsel and Defense Counsel regarding Class Employee claim rates, objections, disputes, and opt outs.

2. The Settlement Administrator will create the following for purposes of communicating with Class Employees: toll free telephone number, email address, P.O. Box, and website. The Settlement Administrator shall keep a log of all communications with any Class Employees, and shall be responsible for responding to inquiries about the settlement. In the event any Class Employee requests to speak to Class Counsel or has a question that seeks legal advice about the settlement, the Settlement Administrator shall provide that person with Class Counsel's contact information, including telephone number, email address, and mailing address. The Settlement Administrator shall forward all other unresolved questions or issues in writing to Class Counsel and Defense Counsel, who will work jointly to attempt to provide a resolution.

3. In communications to Class Employees, the Settlement Administrator and the Parties will cooperate to facilitate the purposes of the settlement.

## V. Non-Admission of Liability

This Agreement shall not in any way be construed as an admission by Defendant that it has acted wrongfully with respect to Named Plaintiffs, Early Opt-Ins, Class Employees, or to any other person, collectively or individually, and Defendant specifically disclaims any liability to or wrongful acts against Named Plaintiffs, Early Opt-Ins, Class Employees, or any other person, on the part of the Defendant or the Released Parties. Furthermore, the Parties agree that this Agreement does not constitute an adjudication of the merits of the Litigation or any other matters released in this Agreement. Accordingly, the Parties agree that none of them has prevailed on the merits; nor shall this Agreement serve or be construed as evidence that (1) any party has so prevailed; (2) Defendant or the Released Parties have engaged in any wrongdoing; or (3) any claims may or should proceed on a class or collective action basis against any of the Defendant or the Released Parties. Nothing in this provision shall prevent the Parties from bringing an action to enforce the terms of this Agreement.

## VI. Release of Fees and Costs

Named Plaintiffs and Class Counsel understand and agree that any fee payments made under Paragraph III.D of this Agreement will be the full, final, and complete payment by Defendant of all attorneys' fees and costs arising from or relating to the representation of Named Plaintiffs, Early Opt-Ins, or the Class Employees or any other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of this Litigation against Defendant. As an inducement to Defendant to enter into this Agreement, and as a material condition thereof, Named Plaintiffs hereby irrevocably and unconditionally release, acquit, and forever discharge any claim they may have against the Released Parties for attorneys' fees or costs arising from or relating to this litigation. As a further inducement to Defendant to enter into this Agreement, and as a material condition thereof, Named Plaintiffs further understand and agree that the fee and cost payments made pursuant to Paragraph III.D of this Agreement will be the full, final, and complete payment of all attorneys' fees and costs that are released, acquitted, or discharged under this Paragraph. As further inducement to Defendant to enter into this Agreement, and as a material condition thereof, Named Plaintiffs warrant and represent that they will not, nor will any of their employees, agents, or representatives file any claims for attorneys' fees or costs against the Released Parties, including, but not limited to, bills of costs or requests for attorneys' fees arising out of the Litigation, and Named Plaintiffs hereby irrevocably and unconditionally release, acquit, and forever discharge the Released Parties of any liability for such fees and/or costs. Furthermore, Named Plaintiffs and Class Counsel represent and warrant that they are not aware of any attorney who has any attorney's fee lien on or claim to any proceeds arising out of, by virtue of, or in connection with the Litigation.

## VII. Use and Return of Documents

Parties agree to return and/or destroy all documents and materials designed as "Confidential" and those produced in conjunction with the Parties' mediation or other settlement negotiations in the matter. All originals, copies, and summaries of documents, presentations, and data provided to either party in connection with the mediation or other settlement negotiations in this matter, including e-mail attachments containing such materials, may be used only with respect to this settlement, or any dispute between Class Employees and Class Counsel regarding the settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Notwithstanding this provision, counsel shall be allowed to maintain one firm copy of all documents to the extent they are required to by the rules of professional conduct.

## VIII. Court Retains Jurisdiction to Enforce Agreement

The Parties shall request that the Court retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, to the extent permitted by law, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement. This retention of jurisdiction encompasses any disagreement among the Parties concerning the final forms of the Notices or other documents necessary to implement this Agreement, and all other disputes regarding the Agreement and its implementation, and requires that any action to enforce this Agreement shall be commenced and maintained only in this Court.

## IX. Governing Law

This Agreement is made and entered into in the State of Kansas and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Kansas. Any legal action relating to this Agreement shall be brought in this Court before Judge Vratil or any judge presiding in her stead, or if jurisdiction in this Court is lacking, in the courts for the State of Kansas.

## X. Cooperation Clause

The Parties agree to cooperate to effectuate the settlement of the Litigation, including securing the Court's approval of the Agreement, assisting with the administration of the Settlement in accordance with the terms of this Agreement, and obtaining a final dismissal. The Parties further agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the terms and conditions of the Agreement, including but not limited to obtaining the dismissal, transfer to the Court, or stay of any pending or subsequently-filed class or collective action lawsuit that alleges any of the claims covered by the Releases herein.

## XI. Assignments

Named Plaintiffs and Class Counsel represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation or any related action.

## XII. No Representations from Parties

Named Plaintiffs, Class Counsel, Defendant and Defense Counsel represent and acknowledge that, in executing this Agreement, they do not rely and have not relied upon any representation or statement (except those made in this Agreement) made by any Party or by any of their agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement.

## XIII. Right to Withdraw

Defendant shall have the right to withdraw from, and void *ab initio*, this Agreement at any time prior to the Effective Date upon the occurrence of any one of the following events: (i) Defendant is required to pay more than Maximum Settlement Fund; (ii) more than 5 percent of the Class Employees opt out in the manner prescribed by Paragraph IV.B.4 of this Agreement; or (iii) Defendant reasonably determines that the Court has issued an Order inconsistent with any of the terms of this Agreement, after conferring with Class Counsel consistent with the Cooperation Clause in Section XIII and petitioning the Court to resolve any identified inconsistency.

## XIV. Binding Agreement

This Agreement shall be binding upon the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Defendant and to its respective heirs, administrators, representatives, executors, successors, and assigns.

## XV. Arm's Length Transaction; Materiality of Terms

The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

## XVI. Severability

Should any clause, sentence, provision, Paragraph, or part of this Agreement be adjudged by any court of competent jurisdiction, or be held by any other competent governmental authority having jurisdiction, to be illegal, invalid, or unenforceable, such judgment or holding shall not affect, impair, or invalidate the remainder of this Agreement, but shall be confined in its operation to the clause, sentence, provision, Paragraph, or part of the Agreement directly involved, and the remainder of the Agreement shall remain in full force and effect.

## XVII. Waivers to Be in Writing

No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's Preliminary Approval or Final Approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

## XVIII. Captions

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

## XIX. Construction

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

## XX. Sole and Entire Agreement

This Agreement, including Exhibits A through E attached hereto, set forth the entire agreement between the Parties hereto. This Agreement fully supersedes any and all prior oral or written agreements or understandings between the Parties hereto pertaining to the subject matter hereof. This Agreement may only be modified in writing.

## XXI. Extensions of Time

If any deadlines related to this Agreement cannot be met, Class Counsel and Defense Counsel shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Agreement. In the event that the Parties fail to reach such agreement, any of the Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Agreement.

**XXII. Facsimile/Electronic Signatures**

Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

**XXIII. Third-Party Beneficiaries**

This Agreement is not designed to and does not create any third-party beneficiaries other than any third parties that are identified as Released Parties as defined in Paragraph I.GG.

**XXIV. Counterparts**

This Agreement may be executed in two or more counterparts, each of which counterpart shall be deemed to be an original, and all of which such counterparts shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**EXHIBIT A**

***Harms, et al. v. Sysco Kansas City, Inc., Case No. 2:24-cv-02452-KHV-TJJ (D. Kan.)***

# NOTICE OF PROPOSED SETTLEMENT OF CLASS AND COLLECTIVE ACTION LAWSUIT AND FAIRNESS HEARING

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

**PLEASE READ THIS NOTICE CAREFULLY. IF YOU WORKED AS AN OUTBOUND ORDER SELECTOR FOR SYSCO KANSAS CITY, INC. ("SYSCO"), AT THE OLATHE, KANSAS FACILITY ANY TIME DURING THE TIME PERIOD SET FORTH BELOW, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS AND COLLECTIVE ACTION LAWSUIT SETTLEMENT.**

This Notice pertains to all persons employed as hourly, non-exempt employees who were employed by Sysco at the Olathe, Kansas, facility as outbound Order Selectors, from July 1, 2020, through January 26, 2026 ("Order Selectors").

- Former Order Selectors Anthony Harms and Michael Tuttle sued Sysco claiming that it did not properly pay them for all hours worked. As such, they allege they are owed unpaid overtime wages, minimum wages, and other related damages from Sysco.

- Sysco denies these allegations and believes that Order Selectors were and are properly paid for all time worked and received all payments from Sysco to which they are entitled.

- The Plaintiffs and Sysco agreed to this settlement to avoid the burden, expense, inconvenience, and uncertainty of litigation. The Court preliminarily approved this settlement, but the Court has not made any ruling on the merits of the Plaintiffs' claims, and no party has prevailed in this action.

- **You are entitled to money from this settlement.** You have received this Notice because Sysco's records indicate that you worked as an Order Selector at the Olathe, Kansas facility during the period of July 1, 2020, through January 26, 2026. If you submit a properly completed Claim Form & Release ("Claim Form") enclosed with this Notice by [insert deadline], you will receive an amount proportional to the number of weeks you worked during that period for Sysco.

**PLEASE READ THIS NOTICE CAREFULLY AS IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS.**

| **YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:** | |
|---|---|
| **If you worked for Sysco as an Order Selector between July 1, 2020, through January 26, 2026:** | |
| **SUBMIT A CLAIM FORM AND OBTAIN A PAYMENT** | If you wish to participate in the settlement and receive the full settlement payment for which you are eligible, complete and mail back the enclosed "Claim Form" to the Settlement Administrator, as discussed in Section 4 below. An electronic Claim Form may also be submitted through the case website: **[insert case website address].** If mailed, the Claim Form must be postmarked or received by **[Insert Date]**.<br><br>If you choose to participate in the settlement, you will release the claims discussed in Section 8 below. |
| **DO NOTHING** | If you do nothing and the Court grants final approval of the settlement, you will not receive a settlement payment in connection with the claims in this Litigation. You will retain your right to file your own legal action against Sysco under federal law as discussed in Section 8 below, should you choose, assuming that the time period to sue has not expired. However, you will not retain your right to sue Sysco for any of the Released State Law Claims discussed in Section 8 below. |
| **OPT OUT** | If you do not want to participate in the settlement and want to retain your right to sue Sysco for unpaid wages under state and/or local law as discussed in Section 8 below, you must submit a written Opt-Out Statement to the Settlement Administrator, as discussed in Section 5 below. If you submit an Opt-Out Statement, you will not be eligible to receive a settlement payment. |
| **OBJECT** | You may write to the Court about why you object to the settlement. If you submit an Opt-Out Statement, however, you cannot object to the settlement. More information about objecting is set forth in Section 6 below. |

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will only be made if and when the Court approves the settlement and after any appeals are resolved. Please be patient.

## 1. WHAT IS THE PURPOSE OF THIS NOTICE?

This Notice explains the terms of the settlement, your rights, and what claims are being released by Order Selectors who are Class Employees. If the settlement is given final approval by the Court, Sysco will create a settlement fund of up to $900,000.00. You are receiving this notice because you can be a Participating Settlement Member.

## 2. WHAT DOES THE SETTLEMENT PROVIDE?

Sysco has agreed to pay up to a maximum of $900,000.00 to be allocated among current and former Order Selectors who qualify for a settlement payment based upon the weeks worked in the Order Selector role. The settlement fund will cover settlement payments to each person who submits a valid Claim Form, a Service Payment of $5,000.00 to each Named Plaintiff and a Service Payment of $2,000.00 to each Early Opt-In for their efforts to pursue the claims in this Litigation, the employee's share of payroll taxes, attorneys fees' and costs of up to one-third of the settlement fund, the costs of the Settlement Administrator to facilitate this settlement up to

$30,000, and a reserve fund to pay disputed claims. Unclaimed funds associated with the settlement will revert to Sysco.

## 3. HOW MUCH MONEY WILL I GET IF I SUBMIT A CLAIM FORM?

If you submit a Claim Form, you will receive approximately $XX. Your settlement payment will be calculated based on the number of weeks you were employed as an Order Selector from July 1, 2020, through January 26, 2026. One-half of the payment will be considered wages, and taxes and will be withheld from that portion. The other half will be considered non-wage compensation, and taxes will not be withheld. Please consult your tax advisor or accountant regarding the taxability of this settlement payment. You are solely responsible for the payment of any taxes on payments reported as non-wage income, as well as reimbursing Sysco if it is required to pay any taxes, interest, or penalties due or owed by you. Class Counsel and Sysco's counsel make no representations regarding the taxability of your settlement payment.

If the settlement is approved, the Settlement Administrator will deduct from the settlement fund the amounts needed to cover approved attorney's fees, costs, up to $30,000.00 in settlement administration expenses, Service Payments, payroll taxes and the reserve fund and pay claims from the remaining Net Settlement Fund.

Payment will only be made if the Court finally approves the settlement, so we do not know when checks will be sent to you.

**Checks that are not cashed within 90 days of issuance will be null and void.**

## 4. HOW DO I SUBMIT A CLAIM FORM?

To participate in the settlement and receive a settlement payment, you must return a properly completed Claim Form in the enclosed pre-stamped return envelope, by mailing or emailing it to the Settlement Administrator, or by submitting an electronic Claim Form through the case website: **[insert case website address]**

The Claim Form must be postmarked or received no later than [**date**]. A Claim Form is included with this Notice. The Settlement Administrator's contact information is:

**[insert settlement administrator name]**
**[insert address]**
**[insert phone number]**
**[insert email address]**

## 5. HOW CAN I OPT OUT OF THE SETTLEMENT?

If you do not want to participate in the settlement, you must submit a written, signed Opt-Out Statement which includes the words, "**I elect to exclude myself from the settlement in *Harms v. Sysco Kansas City, Inc.***" or substantially similar words. The Opt-Out Statement must be mailed to the Settlement Administrator listed in Section 4 and be postmarked no later than [insert date]. You must include your name, address and telephone number in the Statement and must sign it.

If you do not affirmatively opt out, you will continue to be a Class Employee, and that means that if the settlement is approved, you will release the Released State Law claims described below in Section 8, and you will be prohibited from bringing or participating in any other cases concerning those claims against Sysco or the Released Parties. It also means that all of the Court's orders will apply to you and legally bind you.

## 6. WHAT IF I HAVE AN OBJECTION TO THE SETTLEMENT?

If you have not opted out of the settlement, you can object to any portion of the settlement with which you disapprove. The Court will consider your views. You are not required to submit an objection. To object to the settlement, you must send a signed letter to the Settlement Administrator by [insert date] saying that you object to the settlement. Written objections must contain your name and address, must be signed by you, and must include reference to the matter of ***Harms v. Sysco Kansas City, Inc.*** If you opt out of the settlement, you cannot object to the settlement.

An objector also has the right to appear in person at the Fairness Hearing (explained in Section 10 below) but is not required to do so in order to have their objections considered by the Court. If you wish to appear at the Fairness Hearing, you must state your intention to do so in your letter to the Settlement Administrator.

## 7. WHAT'S THE DIFFERENCE BETWEEN OPTING OUT AND OBJECTING?

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement. You can object only if you remain a Class Employee. Opting out is telling the Court that you do not want to be a Class Employee. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an exclusion request, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself.

## 8. WHAT CLAIMS AM I RELEASING BY PARTICIPATING IN THE SETTLEMENT?

Upon the entry of the Final Order and Judgment, if you worked for Sysco between July 1, 2020, through January 26, 2026, and have not opted out of this settlement, you, on your own behalf, and on behalf of your respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, fully release and discharge Sysco Kansas City, Inc., and its present and former affiliates, divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, attorneys, shareholders and/or successors, and insurers or reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them (the "Released Parties"), of and from any and all state-law wage-and-hour-related claims asserted in the Litigation, including under the Kansas Wage Payment Act, breach of contract, and violation of state laws or regulations for unpaid compensation or a quantum meruit theory of recovery, and any other statutory or common law wage-and-hour-related claims of any kind related to the claims asserted in the Litigation, whether known or unknown, specifically asserted or not, arising from their employment with Sysco, including statutory claims, whether known or unknown, in law or in equity, including, but not limited to, any and all claims under the Kansas Minimum Wage and Maximum Hours Law or the Kansas Wage Payment Act, claims under any legal theory for failure to pay for all time worked, punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under the Employee Retirement Income Security Act ("ERISA") that are related to or derivative of the claims released in this provision ("Released State Law Claims").

In addition, if you already opted in and/or sign and return a Claim Form that is accepted pursuant to this settlement and are sent a settlement check, you, on your own behalf, and on behalf of your respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, shall fully release and discharge Sysco and the Released Parties from any and all federal wage and hour claims asserted in the Litigation, and any related FLSA claims for unpaid overtime arising from his or her employment with Sysco, including statutory claims, whether known or unknown, in law or in equity, including liquidated damages, interest, punitive damages and/or penalties through the date of the Preliminary Approval Order. This release includes claims under ERISA that are related to or derivative of the claims released in this provision ("Released Federal Law Claims").

This settlement is intended to include in its effect all claims identified in this section, including claims that you do not know or suspect to exist in your favor against Sysco or the Released Parties at the time of the release. To summarize, and for the purpose of implementing a full and complete release, if you do not opt out of the settlement as described in Section 5, you will expressly waive all rights and benefits you may otherwise have been entitled to pursuant to the Released State Law Claims. Similarly, if you sign and return a Claim Form as described in Section 4 that is accepted pursuant to this settlement and are sent a settlement check, you will expressly waive all rights and benefits you may otherwise have been entitled to pursuant to the Released Federal Law Claims. You agree and acknowledge that this is a knowing and voluntary waiver.

## 9. WHEN WILL I GET MY PAYMENT?

The Court will hold a hearing on _______________, at _________ to determine whether to approve the settlement. If the Court approves the settlement, there could be appeals after that. Resolving appeals can take time, perhaps more than a year. Settlement Checks will be issued once the Court approves the Settlement and any appeals have expired. Please be patient.

## 10. WHEN IS THE FAIRNESS HEARING?

A hearing before the Court will be held on ______________, at _________ (the "Fairness Hearing"). The purpose of this hearing will be for the Court to determine whether the Settlement is fair, adequate, and reasonable and if it should be approved by the Court. The Court will take into account any objections filed in accordance with the procedures described above.

## 11. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you returned your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## 12. DO I HAVE A LAWYER IN THIS CASE AND HOW WILL THEY BE PAID?

The Court has decided that the lawyers at Cornerstone Law Firm, are qualified to represent the Class Employees. These lawyers are "Class Counsel." You will not be charged for these lawyers because their fees and costs will be paid from the total settlement fund as approved by the Court. These fees would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve payment for their out-of-pocket costs. You do not need to retain your own attorney to participate in this settlement.

Class Counsel will also ask the Court to approve a payment of $5,000.00 to Named Plaintiffs and $2,000.00 to each Early Opt-Ins in recognition of the risks they took and their service to Class Employees.

## 13. WHAT IF I HAVE QUESTIONS OR WANT TO EXAMINE COURT RECORDS?

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you can contact the Settlement Administrator or Class Counsel at:

Ryan M. Paulus
M. Katherine Paulus
Drew Russell
Cornerstone Law Firm
5821 NW 72nd Street
Kansas City, Missouri 64151
Telephone: (816) 581-4040
Facsimile: (816) 741-8889
r.paulus@cornerstonefirm.com
m.paulus@cornerstonefirm.com
d.russell@cornerstonefirm.com

You may also examine the court records in-person at the Clerk's Office located at 500 State Ave, Room 259 Kansas City, KS 66101.

**Please do not contact the Court.**

EXHIBIT C

# EXHIBIT C
## CLAIM FORM AND RELEASE

*Harms, et al. v. Sysco Kansas City, Inc., Case No. 2:24-cv-02452-KHV-TJJ*
*United States District Court for the District of Kansas*

**TO SHARE IN THE NET SETTLEMENT FUND, YOU MUST COMPLETE, SIGN AND RETURN THIS CLAIM FORM.**

**THE CLAIM FORM MUST BE POSTMARKED OR RECEIVED BY NO LATER THAN ____________, 2026**

**RETURN TO:**
*Harms, et al. v. Sysco Kansas City, Inc.*
**[insert settlement administrator]**
**[ADDRESS /PHONE/FAX/EMAIL]**
**[insert case website address]**

Your Claim Number is ____________. Your PIN is __________.

The records of Sysco Kansas City, Inc. ("Sysco") indicate that you were employed as an outbound Order Selector by Sysco between July 1, 2020 and January 26, 2026 in Sysco's Olathe, Kansas facility and are eligible to participate in the Class and Collective Action Settlement Agreement ("Agreement") summarized in the Notice.

By signing and returning this form, you are consenting to join the above-captioned settled lawsuit brought to recover wages under the Fair Labor Standards Act and Kansas state statutory and common law. The Court has already reviewed and preliminarily approved the terms of the settlement.

By signing and returning this form, you acknowledge that you are agreeing not to sue the Released Parties, as described in the Notice and the Agreement, for any claims that are released as set forth in the Notice and the Agreement. You agree to be bound by the Agreement and not to sue or otherwise make a claim against any of the Released Parties as to any claims released by the Agreement.

### CONSENT TO BECOME A PARTY PLAINTIFF

I, the undersigned, whom Sysco employed as an hourly, non-exempt employee between July 1, 2020 and January 26, 2026 and during this time, was employed as an outbound Order Selector in Sysco's Olathe, Kansas facility hereby consent to be a party Plaintiff in this lawsuit, which is an action to recover unpaid wages, including overtime compensation not paid pursuant to the requirements of the Fair Labor Standards Act. By my signature below, I designate the Named Plaintiffs and Class Counsel as my representatives to make decisions on my behalf concerning the Litigation, the manner and methods of conducting the Litigation and decisions regarding settlement, attorneys' fees and costs and all other matters pertaining to this lawsuit. I understand that while I have the right to choose other counsel and pursue my claims on my behalf, I choose to be represented by Class Counsel from Cornerstone Law Firm, and other attorneys with whom they may associate.

Date: ______________________ ________________________________________
(Sign your name here)

**CORRECTIONS OR ADDITIONAL INFORMATION**

Write any name and address corrections below if any is necessary **OR** if there is no preprinted data, please provide your name (including any name you used while employed at Sysco) and address here:

Name: ______________________________
(include any name(s) you used while employed at Sysco)

Address: ______________________________

**EXHIBIT E**

Morgan Lewis

**Christopher A. Parlo**
+1.212.309.6062
chris.parlo@morganlewis.com

Month XX, 2026

[Name]
[Office of the Attorney General OR Office of the Comptroller of the Currency of the United States]
[Address]

Re: *Harms, et al. v. Sysco Kansas City, Inc.*, Case No. 2:24-cv-02452-KHV-TJJ (D. Kan.)
Notice of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715

Dear CAFA Coordinator:

Defendant Sysco Kansas City, Inc. ("Sysco") hereby provides this notice of a proposed class action settlement in the above-referenced class action (the "Action") pursuant to the Class Action Fairness Act of 2005 ("CAFA"). In accordance with CAFA, Defendant encloses copies of the following:

(A) A copy of the most recent operative complaint;

(B) The Motion for Preliminary Approval and supporting documents filed by Plaintiffs, which includes the proposed Class and Collective Action Settlement Agreement and a proposed Notice of Proposed Settlement of the Class and Collective Action Lawsuit and Fairness Hearing and Claim Form describing the Action and how class members may request exclusion from the class action settlement;

(C) A list of class members identified as having a last-known home address in your state according to Defendant's available records[1]; and

(D) The Preliminary Approval Order.

Pursuant to CAFA, you are not required to comment on the settlement. However, if you wish to comment, you must do so within ninety (90) days of being served with this notice. *See* 28 U.S.C. §1715(d).

The Court has scheduled a final approval hearing for [DATE] at [TIME] a.m. in order to consider: (a) making a final determination as to certification of the class pursuant to Rule 23 and of the fairness, adequacy and reasonableness of the Settlement terms and procedures; (b) fixing the amount of

[1] This list is premised on information currently available to Defendant. In the event that updated contact information is located by the Settlement Administrator or by the parties during the administration process, there may be certain individuals from your state who may be eligible to participate in this settlement and, conversely, individuals previously identified who no longer reside in your state.

attorneys' fees and litigation costs and expenses to Class Counsel and Service Payment to Named Plaintiffs and Early Opt-Ins; (c) hearing any timely and properly filed objections; and (d) entering judgment.

Under the terms of the Settlement Agreement, the expected payment amounts to Participating Settlement Members will depend upon a number of factors. Therefore, it is not feasible to reliably estimate the proportionate share of the claims of the Class Employees who reside in your state. The formula for the allocation of the Net Settlement Amount is set forth in Section III.A of the Settlement Agreement. The proportionate share of the claims of class members who reside in your state to the entire settlement is currently estimated at approximately __%.

Pursuant to CAFA, you are not required to comment on the settlement. However, if you have questions about this notice, the lawsuit or the enclosed materials, or if you did not receive any of the above-listed materials, please contact us.

Sincerely,

Christopher A. Parlo

Cc: Ryan M. Paulus, M. Katherine Paulus, Drew Russell, Counsel of Record for Plaintiffs (w/o Encl.)

Notices will also be sent to the U.S. Attorney General and the Attorneys General of other states where class members reside.