

1 provide rest and meal breaks, (2) failure to pay overtime, (3) failure to pay minimum wage, (4)
2 failure to provide accurate itemized wage statements, (5) failure to maintain accurate itemized
3 wage statements, (6) failure to timely pay wages, and (7) failure to pay all wages due upon
4 termination. (*See* Doc. Nos. 1-1, 15 at 2.) On November 19, 2015, defendant Sysco removed the
5 action to this court. (Doc. No. 1.)

6 On October 27, 2016, after engaging in discovery and mediation, the parties agreed to and
7 executed a settlement agreement covering all of plaintiffs' claims, including their PAGA claims.
8 (*See* Doc. No. 21.) The settlement agreement provides a total settlement amount of \$17,500 for
9 settlement of the PAGA claims. (*Id.* § 1.F.) This amount includes a payment of \$13,125 (75
10 percent of the total amount) to the California Labor and Workforce Development Agency
11 ("LWDA"), and a payment of the remaining \$4,372 (25 percent of the total amount) to the
12 "aggrieved employees" as defined by the settlement agreement. (*Id.*) In exchange, defendant is
13 to be released from liability for plaintiffs' PAGA claims. (*Id.* § 4.)

14 **LEGAL STANDARD**

15 In 2003, the California Legislature enacted the Private Attorney General Act, Cal. Lab.
16 Code §§ 2698 et seq., after declaring (i) that adequate financing of labor law enforcement was
17 necessary to achieve maximum compliance; (ii) that staffing levels for state labor law
18 enforcement agencies have declined and were unable to keep up with a growing labor market;
19 (iii) that vigorous assessment and collection of civil penalties provides a meaningful deterrent to
20 unlawful conduct; and (iv) that it was therefore in the public interest to allow aggrieved
21 employees, acting as private attorneys general, to seek and recover civil penalties for Labor Code
22 violations. 2003 Cal. Stat. 6629. Under PAGA, an "aggrieved employee" may bring an action
23 for civil penalties for labor code violations on behalf of herself and other current or former
24 employees. Cal. Lab. Code § 2699(a).¹ A plaintiff suing under PAGA "does so as the proxy or
25 agent of the state's labor law enforcement agencies." *Arias v. Superior Court*, 46 Cal. 4th 969,
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27 ¹ An "aggrieved employee" is defined as "any person who was employed by the alleged violator
28 and against whom one or more of the alleged violations was committed." Cal. Lab. Code
§ 2699(c).

1 986 (2009). Accordingly, a judgment in a PAGA action “binds all those, *including nonparty*
2 *aggrieved employees*, who would be bound by a judgment in an action brought by the
3 government.” *Id.* (emphasis added); *see also Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.
4 4th 348, 381 (2014) (“When a government agency is authorized to bring an action on behalf of an
5 individual or in the public interest, and a private person lacks an independent legal right to bring
6 the action, a person who is not a party but who is represented by the agency is bound by the
7 judgment as though the person were a party.”).

8 The PAGA statute imposes a number of limits on litigants. First, because a PAGA action
9 functions as a “substitute” for an action brought by the state government, a plaintiff suing under
10 PAGA is limited to recovery of civil penalties only, rather than damages available privately
11 through direct or class action claims. *Id.* Second, to bring an action under PAGA, an aggrieved
12 employee must first provide written notice to the LWDA as well as to the employer. Cal. Lab.
13 Code § 2699.3(a)(1). Third, any civil penalties recovered must be distributed as follows: 75
14 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. Cal. Lab. Code
15 § 2699(i).

16 Finally, a trial court must “review and approve” any settlement of PAGA claims. Cal.
17 Lab. Code § 2699(l)(2).² This court is unable to find, and the parties have not identified, any
18 published authority identifying the proper standard of review of PAGA settlements to be
19 employed by the court. In the class action context, where PAGA claims often also appear, a
20 district court must independently determine that a proposed settlement agreement is
21 “fundamentally fair, adequate and reasonable” before granting approval. *See Officers for Justice*
22 *v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982); *see*
23 *also In re Heritage Bond Litigation*, 546 F.3d 667, 674-75 (9th Cir. 2008). However, as the
24 parties rightly point out and as noted above, this is not a class action lawsuit, and PAGA claims
25 are intended to serve a decidedly different purpose—namely to protect the public rather than for
26 the benefit of private parties. *See Arias*, 46 Cal. 4th at 986. In one recent district court case, the

27 ² The proposed settlement must also be submitted to the LWDA at the same time it is submitted
28 to the court. *Id.*

1 LWDA provided some guidance regarding court approval of PAGA settlements. *See* California
2 Labor and Workforce Development Agency’s Comments on Proposed PAGA Settlement
3 (“LWDA Comments”), *O’Connor v. Uber Techs., Inc.*, No. 3:13-cv-03826-EMC (N.D. Cal. Jul.
4 29, 2016), ECF No. 736 at 2–3.³ In that case, where both class action and PAGA claims were
5 covered by a proposed settlement, the LWDA stressed that

6 when a PAGA claim is settled, the relief provided for under the
7 PAGA be genuine and meaningful, consistent with the underlying
8 purpose of the statute to benefit the public and, in the context of a
9 class action, the court evaluate whether the settlement meets the
standards of being “fundamentally fair, reasonable, and adequate”
with reference to the public policies underlying the PAGA.

10 *Id.*; *see also O’Connor v. Uber Techs., Inc.*, ___ F. Supp. 3d ___, No. 3:13-cv-03826-EMC, 2016
11 WL 4398271, at *17 (N.D. Cal. Aug. 18, 2016) (citing the same with approval).

12 Recognizing the distinct issues presented by class actions, this court is nevertheless
13 persuaded by the LWDA’s reasoning in *O’Connor* and therefore adopts its proposed standard in
14 evaluating the PAGA-only settlement agreement now before the court. Accordingly, the court
15 will approve a settlement of PAGA claims upon a showing that the settlement terms (1) meet the
16 statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and
17 adequate⁴ in view of PAGA’s public policy goals.⁵

18
19 ³ *See also id.* at 3 (“The LWDA is not aware any existing case law establishing a specific
20 benchmark for PAGA settlements, either on their own terms or in relation to the recovery on
other claims in the action.”).

21 ⁴ The court’s determination as to fairness, reasonableness, and adequacy may involve a balancing
22 of several factors including but not limited to the following: the strength of plaintiffs’ claims; the
23 risk, expense, complexity, and likely duration of further litigation; the amount offered in
24 settlement; the extent of discovery completed, and the stage of the proceedings; and the
experience and views of counsel. *See Officers for Justice*, 688 F.2d at 625.

25 ⁵ In the absence of class claims in this case, the parties suggest that the court should instead adopt
26 the “genuine and meaningful” standard referenced in the LWDA Comments. In *O’Connor*,
27 neither the LWDA nor the district court distinguished between the “genuine and meaningful”
28 standard on the one hand, and “fundamentally fair, reasonable, and adequate” standard on the
other. Moreover, this court has not found and cannot conceive of any articulable definition for
“genuine and meaningful” that would not account for the consideration of factors under the
“fundamentally fair, reasonable, and adequate” standard, described above.

1 **DISCUSSION**

2 Here, the proposed settlement of plaintiffs’ PAGA claims is appropriate for approval. In
3 accordance with the statute’s requirements, plaintiffs have submitted notices of alleged Labor
4 Code violations to LWDA and defendant prior to bringing this action, and the settlement’s terms
5 provide for the appropriate distribution of PAGA-related funds upon court approval. (*See* Doc.
6 No. 15 ¶¶ 1, 15.) The parties represent that they arrived at a settlement agreement after mediation
7 and having considered the sharply disputed factual and legal issues involved in the lawsuit, the
8 risks and burdens attending further litigation, and the benefits to be received through compromise
9 and settlement of plaintiffs’ claims. (*Id.* ¶¶ 10–11.) Moreover, the parties represent that they
10 have provided a copy of their joint stipulation regarding the proposed stipulation to the LWDA.
11 (*Id.* ¶ 16.)

12 The PAGA claims in this action are primarily based on defendant’s alleged failure to
13 provide rest and meal breaks. As plaintiffs’ point out, the bulk of their PAGA claims are
14 derivative of the alleged rest and meal break violations. (*See* Doc. No. 17 at 4.) Additionally, the
15 aggrieved employees on whose behalf plaintiffs seek relief here are defined as “all non-exempt
16 employees in Sysco’s Modesto, California warehouse from October 13, 2014 to [October 27,
17 2016].” (Doc. No. 21 at 1.) Having reviewed the parties’ submission and the terms of the
18 proposed settlement, the court finds that the settlement amount related to plaintiffs’ PAGA claims
19 is fair, reasonable, and adequate in light of the public policy goals of PAGA.

20 **CONCLUSION**

21 For the reasons set forth above, the court is satisfied that the settlement of plaintiffs’
22 PAGA claims is fundamentally fair, reasonable, and adequate in light of the public policies
23 underlying PAGA. Accordingly,

- 24 1. The parties’ settlement agreement is approved with respect to plaintiffs’ PAGA
25 claims;
- 26 2. Plaintiffs are directed to submit a copy of this order to the LWDA within ten days of
27 the date of this order; and

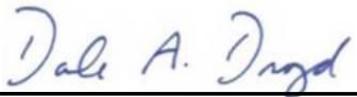
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3. The court shall retain jurisdiction over this action. Within sixty days of the date of this order, the parties are directed to file a joint status report regarding the status of the distribution of settlement proceeds to the LWDA. Upon satisfaction that the appropriate payment has been made to the state, the court will then close this case.

IT IS SO ORDERED.

Dated: February 2, 2017


UNITED STATES DISTRICT JUDGE