

AEGIS LAW FIRM, PC

KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
JESSICA L. CAMPBELL, State Bar No. 280626
FAWN F. BEKAM, State Bar No. 307312
JAMIE M. LOOS, State Bar No. 346492
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
jloos@aegislawfirm.com

Attorneys for Plaintiff Patrick Stevens,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

PATRICK STEVENS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE FINISH LINE, INC., WHICH
WILL DO BUSINESS IN CALIFORNIA
AS THE INDIANA FINISH LINE, INC.;
and DOES 1 through 20, inclusive,

Defendant.

Case No. 37-2021-00043563-CU-OE-CTL

*Assigned for all purposes to:
Hon. Loren G. Freestone, Dept. C-64*

**MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 21, 2023
Time: 10:30 a.m.
Dept.: C-64

1 **I. INTRODUCTION**

2 Plaintiff Patrick Stevens (“Plaintiff”) seeks approval of a settlement of claims under the
3 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) against
4 Defendant The Finish Line, Inc. dba The Indiana Finish Line, Inc. (“Defendant”) in the amount of
5 \$750,000.00. Plaintiff alleges approximately 4,000 non-exempt employees who worked for
6 Defendant were not paid at least minimum wages for all hours worked, not paid overtime
7 compensation, not provided with compliant meal periods or compensation in lieu thereof, not
8 provided with compliant rest breaks or compensation in lieu thereof, not provided with accurate
9 wage statements, and were not paid all wages owed upon separation of employment. The proposed
10 Settlement seeks to release claims for civil penalties for violations of Labor Code §§ 201-204, 210,
11 223, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12 ,1194, 1194.2, 1197, 1197.1,
12 1198, and §2698 *et seq.*

13 Under Labor Code § 2699(l)(2), the Court must review and approve any proposed PAGA
14 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
15 Settlement is attached to the Declaration of Fawn F. Bekam (“Bekam Decl.”) at ¶ 2, Exhibit 1.
16 Plaintiffs now seek this Court's approval of the Settlement terms.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 On August 4, 2021, Plaintiff sent a letter to the California Labor & Workforce
19 Development Agency (“LWDA”) via online submission and to Defendant on behalf of himself and
20 all other non-exempt employees of Defendant regarding Defendant’s alleged Labor Code
21 violations. *See* Bekam Decl. at ¶ 3, Exhibit 2. The LWDA did not respond to the notice within 65
22 days, indicating it did not intend to investigate, thus allowing Plaintiff to pursue PAGA claims
23 under Labor Code Section 2699.3(a)(2)(A). *See* Bekam Decl. at ¶ 4.

24 Plaintiff filed this lawsuit against Defendant The Finish Line, Inc. on October 13, 2021,
25 pursuant to Private Attorneys General Act of 2004, Cal. Labor Code Section 2698, *et seq.* based on
26 Defendant’s failure to pay proper minimum and overtime wages, failure to provide meal periods or
27 compensation in lieu thereof, failure to permit rest breaks or provide compensation in lieu thereof,
28 failure to provide accurate wage statements, and failure to pay all wages due upon separation of

1 employment. *Id.* at ¶ 5. Defendant filed its Answer to Plaintiff’s Complaint on December 10, 2021.
2 *Id.*

3 The parties subsequently agreed to attend mediation. *Id.* at ¶ 6. Through informal
4 discovery, Plaintiff received numerous documents and information pertaining to, *inter alia*, the
5 number of aggrieved employees and contact information, employment dates and job titles, policy
6 documents, and time and pay records. *Id.*

7 In preparation for mediation, Plaintiff evaluated the PAGA claims and calculated the
8 alleged exposure. *Id.* at ¶ 7. The parties attended mediation on December 6, 2022, with Jeffrey
9 Krivis, Esq., a respected PAGA action mediator. *Id.* The mediator made a mediator’s proposal
10 which was accepted by both Parties. *Id.*

11 In January of 2023, the Parties finalized the terms of the Settlement Agreement, which is
12 now presented to this Court for approval. *Id.* at ¶ 8. Plaintiff provided notice of the Settlement to
13 the LWDA on April 5, 2023. *Id.*, Exhibit 3. Plaintiff also served a copy of this motion on the LWDA
14 on April 5, 2023. *Id.* at ¶ 9, Exhibit 4.

15 **III. PAGA REQUIREMENTS**

16 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
17 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
18 plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
19 California and other similarly aggrieved employees without seeking class certification or meeting
20 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
21 such, the class action two-step preliminary and final approval process is not required.

22 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
23 the State and by private individuals who have been aggrieved by their employers. The statute calls
24 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the
25 aggrieved employees. Cal. Lab. Code § 2699(i).

26 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
27 must first provide written notice to the LWDA and the employer of the particular Labor Code
28 violations the aggrieved employee alleges the employer has violated. See Cal. Labor Code §

1 2699.3(a)(1)(A). Once the LWDA notifies the aggrieved employee that it does not intend to
2 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
3 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
4 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A).

5 In 2009, the California Supreme Court considered the issue of whether an aggrieved
6 employee who brings a PAGA representative claim needs to meet class certification requirements.
7 *Arias*, 46 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court
8 held that an aggrieved employee's representative action brought on behalf of other aggrieved
9 employees against an employer for PAGA violations does not need to meet the requirements for
10 class certification. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does
11 so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Because the
12 employee's PAGA action functions as a substitute for an action brought by the government itself, a
13 judgment in the PAGA action binds all those who would be bound by a judgment in an action
14 brought by the government. *Id.*

15 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
16 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2). The Parties to this
17 current PAGA action have reached such an agreement and now seek this Court's approval of the
18 proposed settlement.

19 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

20 The Parties have agreed that Defendant will pay a total settlement amount of \$750,000.00
21 (the "Total Settlement Amount"). *See* Settlement Agreement at § 4. From this amount, up to one-
22 third of the Total Settlement Amount, or \$250,000.00, is allocated to attorneys' fees. *Id.* at § 4(a).
23 The Settlement allocates up to \$15,000.00 for litigation costs to Plaintiff's counsel. *Id.* To date,
24 Plaintiff's counsel has spent \$15,852.42 in litigation costs. *See* Bekam Decl. at ¶ 37, Exhibit 5. The
25 Settlement allocates up to \$17,900.00 to payment for Settlement Administrator ILYM Group, Inc.'s
26 costs associated with administration of the Settlement. *See* Settlement Agreement, § 4(b). For
27 Plaintiff's efforts in assisting with the Lawsuit and in exchange for a general release of their
28 individual claims, \$10,000.00 is allocated to Plaintiff. *Id.* at § 4(c).

1 After deducting the attorneys' fees and costs, Settlement Administrator's costs, and
2 Plaintiff's individual settlement awards, the remaining fund ("Net Settlement Amount") of
3 \$457,100.00 will be paid 75% to the LWDA ("LWDA Payment") and 25% to the PAGA Members
4 ("Employee Amount"). *Id.* at § 4(d). "PAGA Members" means and refers to any non-exempt hourly
5 employees of Defendant in California, who worked for Defendant from August 9, 2020 through the
6 date of Court approval of the Settlement and entry of judgment. *Id.* at §§ 2, 3, 5.

7 The "PAGA Member Payment" for the PAGA Employees shall be divided among the
8 PAGA Members based on the number of total pay periods in the Settlement Period to establish the
9 amount of the settlement allocation for each PAGA Pay Period ("Pay Period Amount"). *Id.* at § 7.
10 PAGA Members shall receive a pro rata value equal to the number of PAGA pay periods the PAGA
11 Members worked during the Settlement Period, as provided by Defendant to the Settlement
12 Administrator, multiplied by the Pay Period Amount (the "Individual Settlement Payments"). *Id.* at
13 § 8. All Individual Settlement Payments made to PAGA Members will be reported on an IRS Form
14 1099, if such reporting is required. *Id.* The Individual Settlement Payments will be characterized as
15 penalties for tax purposes. *Id.*

16 Defendant will provide the Settlement Administrator with a confidential list of the PAGA
17 Members which identifies for each PAGA Member their full name, social security number, last
18 known address, last known telephone number(s), and the number of pay periods for each PAGA
19 Member during the Settlement Period. *Id.* at § 9(a). After receipt of the list, the Settlement
20 Administrator will run all addresses of PAGA Members through the United States Postal Service
21 NCOA database to ensure current address information. *Id.* at § 9(d). The Settlement Administrator
22 will send Individual Settlement Payments by U.S. First Class mail. *Id.* at § 9(e). All funds not
23 claimed within 180 days of mailing of payment shall be sent to the California State Controller's
24 Office Unclaimed Property Fund in the name of each PAGA Member. *Id.* at § 9(f).

25 //

26 //

27 //

28 //

1 In exchange for the settlement payment, the State of California and the PAGA Employees
2 will release the following claims:

3 As of the Effective Date, Plaintiff, the PAGA Members, and the LWDA fully and
4 finally release Defendant, and each of its past, present and future agents,
5 employees, servants, officers, directors, partners, trustees, representatives,
6 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related
7 or affiliated companies/corporations and/or partnerships (defined as a
8 company/corporation and/or partnership that is, directly or indirectly, under
9 common control with Defendant or any of their parents and/or affiliates), divisions,
10 assigns, predecessors, successors, insurers, consultants, any actual or alleged joint
11 employers, and alter-egos, and all of their respective past, present and future
12 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents,
13 subsidiaries, insurers, and assigns (collectively, the "Released Parties"), from all
14 "Released Claims," as defined herein. "Released Claims" means any and all claims
15 alleged in the Action, and all claims arising out of or in connection with the facts,
16 theories, primary rights, or claims alleged in the Action, and includes all claims
17 under PAGA associated with all claims for or arising in connection with: failure to
18 pay minimum wages; failure to pay straight time compensation, overtime
19 compensation, double-time compensation, reporting time compensation, and/or
20 interest; missed, late, short, or interrupted meal and/or rest periods, including any
21 claim for any alleged failure to pay premiums for missed, late, short or interrupted
22 meal or rest periods, or to pay such premiums at the regular rate of compensation,
23 inaccurate or otherwise improper wage statements and/or failure to keep or
24 maintain accurate records, unlawful payment instruments; claims for off the clock
25 work including, but not limited to, undergoing store security/bag checks; claims for
failing to provide suitable seats; any claim for penalties arising out of, arising in
connection with, or related to any or all of the aforementioned claims, including,
but not limited to, recordkeeping penalties, wage statement penalties, minimum-
wage penalties, liquidated damages, and waiting-time penalties; and attorneys' fees
and costs. For purposes of clarification, the claims released by the PAGA Members
and the LWDA include any and all claims under PAGA that arise out of or in
connection with the claims, facts, theories or primary rights alleged in the Action,
and any claims which could have been asserted in the Action arising from the
alleged facts, claims, theories, and/or primary rights alleged to have been invaded
to the fullest extent permitted by law. Without limitation by any other language in
this Agreement, the release includes claims under PAGA alleging violation of the
Wage Orders of the California Industrial Welfare Commission; and/or alleging
violation of California Labor Code §§201-204, 210, 223, 226, 226.3, 226.7, 510,
512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*
This release does not release any individual's non-PAGA claims.

26 See Settlement Agreement at § 5(a). If the total the number of pay periods in the PAGA period
27 exceeds 69,500 by more than 10% (i.e., above 76,450) by the date of final approval of the
28 settlement, Defendant shall have the option to either (a) increase the settlement amount by a

1 proportionate amount or (b) shorten the release period so that there is no increase in the settlement
2 amount. *Id.* at § 9(c).

3 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

4 **A. Standard for Approval**

5 While there are no statutory or common law standards for approval of PAGA settlements,
6 the legislative history of the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.*
7 (“PAGA”) sheds some light on the approval requirement as it was phrased in § 2699, subdivision
8 (l) prior to the July 1, 2016 amendments. *See* Cal. Lab. Code § 2699(l) (2015) (amended 2016)
9 (“The superior court shall review and approve any penalties sought as part of a proposed
10 settlement...”). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed
11 by the Governor and filed with the Secretary of State on October 12, 2003. *See* Legislative
12 Counsel’s Digest re Senate Bill No. 796, attached as Exhibit A to the Request for Judicial Notice
13 (“RJN”) filed herewith, p. 1. It took effect on January 1, 2004.

14 The original version of the act did not contain the court approval requirement now codified
15 in § 2699(l). That subdivision was added as part of the amendments to the Act that were introduced
16 as SB 1809 in February of 2004 and signed by the Governor and filed with the Secretary of State
17 on August 11, 2004. *See* Legislative Counsel’s Digest re Senate Bill No. 1809, attached as Exhibit
18 B to the RJN, p. 1. Those amendments took effect immediately, and the court approval requirement
19 of § 2699(l) was one of the provisions that the legislature made retroactive to January 1, 2004. *Id.*
20 at pp. 1-2.

21 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the
22 amendments (SB 1809). *See* RJN, Exs. A and B. On July 29, 2004, during the consideration of the
23 amendments in SB 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the
24 Senate, which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)”
25 of what would become § 2699. *See* 7/29/04 Letter from Sen. Dunn to Sen. Burton, attached as
26 Exhibit C to the RJN. He was sending this letter “in response to an issue raised by the Judicial
27 Council of California.” *Id.* In the letter, Senator Dunn stated that:

1 The purpose of court review of the penalties in subdivision (l) is to ensure that
2 settlements involving penalties arising under Labor Code Section 2699 do not
undercut the dual statutory purposes of punishment and deterrence, or result in
unjust, arbitrary, and oppressive, or confiscatory settlements.

3 *Id.*

4 To Plaintiff's knowledge, this is the only statement in the legislative history directly
5 addressing the purpose of the court approval requirement. While the letter does not address any
6 specific factual issues to be considered, it does provide some very broad criteria. It suggests that
7 the courts should consider whether the penalties are so small as to "undercut the dual purposes of
8 punishment and deterrence" or so large that they may result in an "unjust, arbitrary and oppressive,
9 or confiscatory" settlement.

10 These broad criteria appear to give the Court wide latitude in determining whether to
11 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
12 the effect the penalties may have on the defendant/employer rather than the LWDA or the
13 aggrieved employees who will receive the penalties. This is different than the analysis of a class
14 action settlement, which typically focuses on the amount received by the class and compares that
15 to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail,*
16 *Inc.*, 168 Cal.App.4th 116, 130 (2008); *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186
17 Cal.App.4th 399, 407 (2010).

18 **B. The Settlement Meets the Standard for Approval**

19 The \$750,000.00 Gross Settlement Amount is reasonable when considered in light of the
20 principles discussed in Senator Dunn's letter. Bekam Decl. at ¶ 10. For a group of approximately
21 4,000 employees, a penalty of \$750,000.00 is large enough to punish Defendant for alleged past
22 violations and deter future violations. *Id.* At the same time, the penalty amount is not so large as to
23 be unjust, oppressive or confiscatory, considering the company's potential exposure explained
24 below. *Id.*

25 The Gross Settlement Amount is also reasonable in light of the facts of the present action,
26 the recent decision by the United States Supreme Court in *Viking River Cruises, Inc. v. Moriana*,
27 142 S.Ct. 1906 (2022), the real risk that no PAGA penalties would be paid, and inherent risks and
28 uncertainties associated with PAGA claims. Bekam Decl. at ¶ 11.

1 Plaintiff calculated the maximum potential exposure at the initial violation rate of \$100 per
2 pay period, assuming a violation in every pay period as follows: 63,321 pay periods x \$100 per pay
3 period = \$6,332,100.00. Bekam Decl. at ¶ 12. If the Court stacked different types of penalties in
4 each pay period, Plaintiff calculated the exposure as follows:

- 5 - 63,321 pay periods x \$100 x 100% violation rate (for interrupted meal breaks due to security
6 bag checks) = \$6,332,100.00 for meal period violations;
- 7 - 63,321 pay periods x \$100 x 100% violation rate (for interrupted rest breaks due to security bag
8 checks) = \$6,332,100.00 for rest break violations;
- 9 - 63,321 pay periods x \$100 x 100% violation rate (for unpaid wages due to security bag checks)
10 = \$6,332,100.00 for unpaid wages; and
- 11 - 63,321 pay periods x \$250 x 100% violation rate = \$15,830,250.00 for derivative wage
12 statement penalties.

13 *Id.* This amount does not include discretionary reduction by the Court. *Id.* at ¶ 13. Further, these
14 calculations assumed the Court would find violations in every pay period as to rest breaks, unpaid
15 wages, and wage statement penalties based on Plaintiffs' theories of liability. *Id.*

16 Defendant could have defeated Plaintiffs' claims by proving it did not require employees
17 to submit to security bag checks until after they clocked in, or at all during meal and rest breaks,
18 and thus those PAGA claims were unmanageable, and the wage statements claims would fail as
19 they were purely derivative of the other claims. *Id.* at ¶ 14. The settlement negotiations took these
20 risks into account. *Id.*

21 Most importantly, the settlement negotiations considered the risk that the Supreme Court
22 decision *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 287 (2022) could potentially eliminate
23 this PAGA case entirely and Plaintiff would not be able to recover any penalties. Therefore, Plaintiff
24 took this decision into consideration when valuing the case. Bekam Decl. at ¶ 15.

25 Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA
26 awards are discretionary and can be reduced by the Court. *Id.* at ¶ 16. Under Labor Code §
27 2699(e)(2), the Court can reduce the PAGA penalties "if, based on the facts and circumstances of
28 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,

1 or confiscatory.” *Id.* In other words, were this matter to go to trial, any award granted would be at
2 the discretion of the Court. *Id.* Plaintiff recognizes that, although he believes there would be no
3 persuasive grounds to reduce the penalties, the Court could determine otherwise and significantly
4 reduce the PAGA penalties. Bekam Decl. at ¶ 17. The wide range of potential recovery and the
5 additional delays and risks of trial justified settling at this point for a reasonable amount of recovery.
6 *Id.*

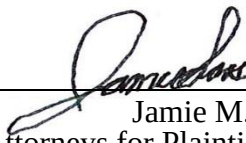
7 **VI. CONCLUSION**

8 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
9 pursuant to PAGA in this Action.

10 Dated: April 4, 2023

AEGIS LAW FIRM, PC

11 By

12 
13 _____
14 Jamie M. Loos
15 Attorneys for Plaintiff Patrick Stevens
16
17
18
19
20
21
22
23
24
25
26
27
28