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individually and on behalf of all others similarly situated

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/13/2021 at 11:58:05 AM

Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

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

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET SEQ.)**

1 Plaintiff Patrick Stevens, individually and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Patrick Stevens ("Plaintiff") brings this representative action, pursuant
5 to Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, *et seq.*, against
6 defendant The Finish Line, Inc., Which Will Do Business In California As The Indiana Finish
7 Line, Inc., and DOES 1 through 20, inclusive (collectively, "Defendant"), on behalf of himself
8 and other aggrieved employees, defined as all non-exempt employees employed by Defendant
9 in California.

10 2. Defendant is in the business of athletic shoe and apparel retail.

11 3. Through this action, Plaintiff alleges that Defendant has engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission ("IWC") Wage Orders, all of which contribute to Defendant's deliberate unfair
14 competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendant has
16 increased their profits by violating state wage and hour laws by, among other things:

17 (a) Failing to pay minimum wages;

18 (b) Failing to pay overtime wages at the proper rates;

19 (c) Failing to provide meal periods or compensation in lieu thereof;

20 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

21 (e) Failing to provide accurate itemized wage statements; and

22 (f) Failing to pay all wages due upon separation of employment.

23 5. Plaintiff brings this lawsuit seeking monetary relief against Defendant on behalf
24 of himself and all others similarly situated in California to recover, among other things, unpaid
25 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
26 Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
27 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a representative action brought under PAGA, codified at Cal. Lab. Code §§ 2698, *et seq.* The civil penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendant because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendant resides, transacts business or has offices in this county, or the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendant during the relevant time periods as alleged herein in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendant at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendant sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendant once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted

1 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
3 are legally attributable to the other defendant. Furthermore, defendant in all respects acted as
4 the employer and/or joint employer of Plaintiff and the class members.

5 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein were performed by, or are attributable to, Defendant and/or
7 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
8 the other's behalf. The acts of Defendant was in accordance with, and represent, the official
9 policy of Defendant.

10 15. At all relevant times, Defendant, and each of them, acted within the scope of
11 such agency or employment, or ratified each and every act or omission complained of herein.
12 At all relevant times, Defendant, and each of them, aided and abetted the acts and omissions of
13 each and all the other Defendant in proximately causing the damages herein alleged.

14 16. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendant is in some manner intentionally, negligently or otherwise responsible for the acts,
16 omissions, occurrences and transactions alleged herein.

17 **GENERAL ALLEGATIONS**

18 17. At all relevant times mentioned herein, Defendant employed Plaintiff and other
19 persons as non-exempt employees at their California locations.

20 18. Plaintiff was employed in a non-exempt position at Defendant's California
21 location(s).

22 19. Defendant continues to employ non-exempt employees at their California
23 locations.

24 20. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendant was advised by skilled lawyers, employees and other professionals who
26 were knowledgeable about California's wage and hour laws, employment and personnel
27 practices and the requirements of California law.
28

1 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and aggrieved employees were entitled to receive wages for
3 all time worked (including minimum wages and overtime wages) and that they were not
4 receiving all wages earned for work that was required to be performed due to off-the-clock
5 security checks. In violation of the Labor Code and IWC Wage Orders, Plaintiff and aggrieved
6 employees were not paid all wages (including minimum wages and overtime wages) for all
7 hours worked. For instance, Defendant calculated daily overtime based on time worked in each
8 shift rather than time spent during each workday, which resulted in an underpayment of
9 overtime when two shifts occurred on the same workday. Defendant also failed to pay the
10 applicable minimum wage for these split shifts. Further, Defendant required its non-exempt
11 employees to undergo off-the-clock “security checks” or bag checks before they could start
12 their shifts, at the end of their shifts, including but not limited to when both leaving and
13 returning for their meal periods and rest breaks. Defendant does not compensate these
14 employees for the time spent going through these checks despite being in control of these
15 employees.

16 22. Upon information and belief, Defendant failed to provide Plaintiff and aggrieved
17 employees timely, uninterrupted, off-duty meal periods of no less than thirty minutes before
18 their fifth hour of work. Based on the lack of proper coverage and scheduling of meal periods
19 during these employees’ shifts, Plaintiff and aggrieved employees were not able to take
20 required off-duty meal periods at the appropriate intervals during their shifts. Defendant also
21 interrupted meal periods with “on duty” security checks. These policies, among others, have
22 resulted in a denial of these employees’ rights to 30-minute meal periods in violation of
23 California law.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
25 should have known that Plaintiff and aggrieved employees were entitled to receive all required
26 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
27 employees’ regular rate of pay when they did not receive a timely meal period. In violation of
28 the Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees did not receive all

1 timely meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
2 employees' regular rate of pay when they did not receive a timely, uninterrupted meal periods.

3 24. Upon information and belief, Defendant failed to provide Plaintiff and aggrieved
4 employees timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
5 four hours worked, or every major fraction thereof. These policies, among others, have
6 resulted in a denial of these employees' rights to a ten-minute rest period in violation of
7 California law.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
9 should have known that Plaintiff and aggrieved employees were entitled to receive all rest
10 breaks or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
11 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
12 Wage Orders, Plaintiff and aggrieved employees did not receive all rest breaks or payment of
13 one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when a
14 rest break was missed.

15 26. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
16 should have known that Plaintiff and aggrieved employees were entitled to receive itemized
17 wage statements that accurately showed their employer's legal name, gross and net wages
18 earned, inclusive dates of pay periods, total hours worked and all applicable hourly rates in
19 effect and the number of hours worked at each hourly rate in accordance with California law.
20 In violation of the Labor Code, Plaintiff and aggrieved employees were not provided with
21 accurate itemized wage statements.

22 27. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
23 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
24 wages due upon separation of employment. In violation of the Labor Code, Plaintiff and
25 aggrieved employees did not receive payment of all wages within permissible time periods.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
27 should have known they had a duty to compensate Plaintiff and aggrieved employees, and
28 Defendant had the financial ability to pay such compensation but willfully, knowingly and

1 intentionally failed to do so all in order to increase Defendant's profits.

2 **FIRST CAUSE OF ACTION**

3 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

4 29. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
7 provides for a civil penalty to be assessed and collected by the Labor and Workforce
8 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
9 agencies or employees for violation of the code may, as an alternative, be recovered through a
10 civil action brought by an aggrieved employee on behalf of himself and other current or former
11 employees pursuant to the procedures specified in Labor Code § 2699.3.

12 31. For all provisions of the Labor Code except those for which a civil penalty is
13 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
14 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
15 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
16 period in which Defendant violated these provisions of the Labor Code.

17 32. Defendant's conduct violates numerous Labor Code sections including, but not
18 limited to, the following:

19 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1182.12, 1194, 1194.2,
20 1197 and 1198 for failure to timely pay all earned wages (including minimum
21 wages and overtime wages) owed to Plaintiff and other aggrieved employees
22 during employment and upon separation of employment as herein alleged;

23 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
24 Plaintiff and other aggrieved employees and failure to pay premium wages for
25 missed meal periods as herein alleged;

26 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
27 other aggrieved employees and failure to pay premium wages for missed rest
28 periods as herein alleged;

1 (d) Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
2 itemized wage statements to Plaintiff and other aggrieved employees as herein
3 alleged; and

4 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
5 complete records showing, among other things, the hours worked daily by and
6 the wages paid to aggrieved employees.

7 33. As set forth above, Defendant has violated numerous provisions of the Labor Code
8 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff seeks
9 the civil penalties set forth in Labor Code § 558 for himself, the underpaid employees, and the
10 State of California.

11 34. Plaintiff is an “aggrieved employee” because he was employed by the alleged
12 violators and had one or more of the alleged violations committed against him, and therefore is
13 properly suited to represent the interests of all other aggrieved employees.

14 35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
15 and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved
16 employees under PAGA.

17 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
18 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
19 cited above.

20 37. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
21 herein.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
24 and judgment against Defendant, jointly and severally, as follows:

25 1. For civil penalties against Defendant on behalf of all aggrieved employees
26 pursuant to Labor Code §§ 2698, *et seq.*

27 2. For reasonable attorneys’ fees, costs of suit and interest to the extent permitted
28 by law, including pursuant to Code of Civil Procedure § 1021.5 and PAGA; and

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3. For such other relief as the Court deems just and proper.

Dated: October 13, 2021

AEGIS LAW FIRM, PC

By:  _____
Fawn F. Bekam
Attorney for Plaintiff Patrick Stevens