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**ENDORSED
FILED**
San Francisco County Superior Court

APR 11 2006

GORDON PARK-LI, Clerk
BY: MARYANN MORAN
Deputy Clerk

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 CALVIN C. EARLY, individually, and)
12 on behalf of all others similarly situated,)
13 Plaintiffs,)
14 vs.)
15 FOOT LOCKER RETAIL, INC., and)
16 DOES 1 through 25, inclusive,)
17 Defendants.)

Case No.: CGC 06449519
CLASS ACTION
**FIRST AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF AND
RESTITUTION**

18 Representative Plaintiff alleges as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,
22 including unpaid overtime compensation and interest thereon, rest and meal period penalties, waiting
23 time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under,
24 *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 226,
25 226.7, 512, 1174 and 1194, and CCP § 1021.5, on behalf of Plaintiff and all other persons who are
26 or have been employed by defendant FOOT LOCKER RETAIL, INC. and DOES 1 through 25,
27 inclusive (collectively "FOOT LOCKER") in any of FOOT LOCKER's retail stores in the State of
28 California during the relevant time period as an allegedly-overtime exempt salaried in-store

1 "managers." The Representative Plaintiff, on behalf of himself and the Class Members, also seeks
2 injunctive relief and restitution of all benefits FOOT LOCKER has enjoyed from its failure to pay
3 overtime compensation under Business and Professions Code §§ 17200-17208.

4 2. The Class Period is designated as the time from at least the commencement of the
5 applicable limitations period through the trial date and each period is based upon the allegation that
6 these respective violations of California's wage and hour laws, as described more fully below, have
7 been ongoing since at least these dates. During the Class Period, FOOT LOCKER has had a
8 consistent policy of (1) permitting, encouraging, and/or requiring their allegedly-overtime exempt
9 salaried in-store "managers," including Representative Plaintiff and Class Members, to work in
10 excess of eight hours per day and in excess of forty hours per week without paying them overtime
11 compensation as required by California state wage and hour laws; (2) unlawfully denying the
12 Representative Plaintiff and the Class Members statutorily-mandated meal and rest periods; (3)
13 willfully failing to pay compensation (including unpaid overtime) owing in a prompt and timely
14 manner to the Representative Plaintiff and/or those Class Members whose employment with FOOT
15 LOCKER terminated; and (4) willfully failing to provide Plaintiff and the Class Members with
16 accurate semimonthly itemized statements of the total number of hours each of them worked, the
17 applicable deductions and the applicable hourly rates in effect during the pay period.

18 INTRODUCTION

19
20 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
21 setting California's first workday standard, long before the federal government enacted overtime
22 protections for workers.

23 4. According to findings of the California Legislature, numerous studies have linked
24 long work hours to increased rates of accident and injury and a loss of family cohesion when either
25 or both parents are kept away from home for extended periods of time, on either a daily or weekly
26 basis.

27 5. Since its inception, defendant FOOT LOCKER has offered a wide range of
28 merchandise to the public, including athletic apparel, footwear and equipment. Representative

1 Plaintiff is informed and believes and, based thereon, alleges that, within the class period, FOOT
2 LOCKER has operated numerous retail stores throughout the State of California. In so doing, FOOT
3 LOCKER has employed hundreds, if not thousands, of individuals in recent years alone in salaried
4 in-store "manager" positions, employment positions which have not and currently do not meet the
5 test for exemption from the payment of overtime wages.

6 6. Despite actual knowledge of these facts and legal mandates, FOOT LOCKER has
7 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not
8 to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to salaried in-store
9 "managers" nor has it provided them with statutorily-mandated meal and rest periods or accurate and
10 complete semimonthly itemized statements.

11 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
12 officers of FOOT LOCKER knew of these facts and legal mandates, yet, nonetheless, repeatedly
13 authorized and/or ratified the violation of the laws cited herein.

14 8. Despite FOOT LOCKER's knowledge of the Plaintiff Class' entitlement to premium
15 (overtime) pay for excess hours worked and to meal and rest periods, FOOT LOCKER failed to
16 provide or require the use, maintenance or submission of accurate and complete time records by
17 members of the Plaintiff Class, in violation of California Labor Code § 1174[d]. This action is
18 brought to redress and end this long-time pattern of unlawful conduct.

19 20 JURISDICTION AND VENUE

21 9. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
22 for unpaid overtime wages under Labor Code § 1194, for penalties for failure to provide meal and
23 rest periods under Labor Code §§ 226.7 and 512, for penalties for failure to pay wages of discharged
24 employees under Labor Code § 203 and for penalties for failure to provide itemized statements of
25 actual hours worked and all applicable hourly rates under Labor Code § 226.

26 10. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
27 for injunctive relief, and restitution of ill-gotten benefits arising from defendant FOOT LOCKER's
28 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

1 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
2 Civil Procedure § 395(a). Defendant FOOT LOCKER operates retail stores in San Francisco
3 County, and transacts business, has agents, and is otherwise within this Court's jurisdiction for
4 purposes of service of process. The unlawful acts alleged herein have a direct effect on
5 Representative Plaintiff and those similarly situated within the State of California and within San
6 Francisco County. Defendant FOOT LOCKER operates said retail stores and has employed
7 numerous Class Members in San Francisco County.

8
9 PLAINTIFFS

10 12. During a portion of the herein-relevant time period, the Representative Plaintiff
11 identified herein was and is a natural person, and was, during the relevant time period identified
12 herein, employed by defendant FOOT LOCKER as a salaried in-store "manager," an employment
13 position which was mis-classified as salaried/exempt from overtime pay.

14 13. As used throughout this Complaint, the terms "Plaintiffs" and/or "Class(es)" refer to
15 the named plaintiff herein as well as each and every person eligible for membership in one or more
16 of the Plaintiff Class, as further described and defined below.

17 14. The Plaintiff Class consists, generally, of all members who are/were employed as
18 salaried in-store "managers" of FOOT LOCKER, and were classified thereby as overtime-exempt
19 employees at any time between the commencement of the applicable limitations period and the
20 present.

21 15. At all times herein relevant, the Representative Plaintiff was and now is a person
22 within the Class of persons further described and defined herein.

23 16. The Representative Plaintiff brings this action on behalf of himself and as a class
24 action, pursuant to California Code of Civil Procedure § 382, on behalf of all persons or entities
25 similarly situated and proximately damaged by the unlawful conduct described herein.

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DEFENDANTS

17. At all times herein relevant, defendants FOOT LOCKER RETAIL, INC. and Does 1 through 25, inclusive (collectively referred to as "FOOT LOCKER" and/or "Defendant") were corporations, duly licensed and located and doing business in, but not limited to, the County of San Francisco, in the State of California.

18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the remaining defendants.

19. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

20. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

21. Representative Plaintiff CALVIN C. EARLY brings this action on behalf of himself and as a class action on behalf of all persons or entities similarly situated and proximately damaged by FOOT LOCKER's conduct as set forth herein, including, but not necessarily limited to the following Class:

All persons who are/were employed as a salaried in-store "manager" by Foot Locker Retail, Inc., in one or more of Foot Locker Retail, Inc.'s California retail stores and who were classified as overtime-exempt employees at any time between the commencement of the applicable limitations period and the present.

- 1 22. Defendants, their officers and directors are excluded from the Class.
- 2 23. This action has been brought and may properly be maintained as a class action under
- 3 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
- 4 and the proposed class is easily ascertainable.
- 5 a. Numerosity: A class action is the only available method for
- 6 the fair and efficient adjudication of this controversy. The
- 7 members of the class are so numerous that joinder of all
- 8 members is impractical, if not impossible, insofar as
- 9 Representative Plaintiff is informed and believes and, on that
- 10 basis, alleges that the total membership in the class is in the
- 11 thousands of individuals. Membership in the Class will be
- 12 determined upon analysis of employee and payroll, among
- 13 other, records maintained by FOOT LOCKER.
- 14 b. Commonality: The Representative Plaintiff and the Class
- 15 Members share a community of interests in that there are
- 16 numerous common questions and issues of fact and law
- 17 which predominate over any questions and issues solely
- 18 affecting individual members, including, but not necessarily
- 19 limited to:
- 20 i. whether defendant FOOT LOCKER violated IWC
- 21 Wage Orders and/or Labor Code § 510 by failing to
- 22 pay overtime compensation to salaried in-store
- 23 "managers" who worked in excess of forty hours per
- 24 week and/or eight hours per day.
- 25 ii. whether defendant FOOT LOCKER violated Business
- 26 and Professions Code § 17200 by failing to pay
- 27 overtime compensation to salaried in-store
- 28 "managers" who worked in excess of forty hours per
- week and/or eight hours per day.
- iii. whether defendant FOOT LOCKER violated Labor
- Code §§ 226.7 and/or 512 by failing to consistently
- provide meal and rest periods to its salaried in-store
- "managers."
- iv. whether defendant FOOT LOCKER violated Labor
- Code § 1174 by failing to keep accurate records of
- employees' hours of work.
- v. whether defendant FOOT LOCKER violated Labor
- Code §§ 201-203 by failing to pay overtime wages
- due and owing at the time that certain Class Members'
- employment with Defendant terminated.
- vi. whether defendant FOOT LOCKER violated Labor
- Code § 226 by failing to provide the semimonthly
- itemized statements to Class Members of total hours
- worked by each and all applicable hourly rates in

1 effect during the pay period.

2 vii. whether Representative Plaintiff and the Class are
3 entitled to "waiting time" penalties, pursuant to Labor
4 Code § 203.

5 c. Typicality: The Representative Plaintiff's claims are typical
6 of the claims of the Class. The Representative Plaintiff and
7 all members of the Class sustained injuries and damages
8 arising out of and caused by defendant FOOT LOCKER's
9 common course of conduct in violation of law, as alleged
10 herein.

11 d. Superiority of Class Action: Since the damages suffered by
12 individual Class Members, while not inconsequential, may be
13 relatively small, the expense and burden of individual
14 litigation by each member makes or may make it impractical
15 for members of the Class to seek redress individually for the
16 wrongful conduct alleged herein. Should separate actions be
17 brought or be required to be brought by each individual
18 member of the Class, the resulting multiplicity of lawsuits
19 would cause undue hardship and expense for the Court and
20 the litigants. The prosecution of separate actions would also
21 create a risk of inconsistent rulings, which might be
22 dispositive of the interests of other Class Members who are
23 not parties to the adjudications and/or may substantially
24 impede their ability to adequately protect their interests.

25 e. Adequacy of Representation: The Representative Plaintiff in
26 this class action is an adequate representative of the Class, in
27 that the Representative Plaintiff's claims are typical of those
28 of the Class and the Representative Plaintiff has the same
interests in the litigation of this case as the Class Members.
The Representative Plaintiff is committed to vigorous
prosecution of this case, and has retained competent counsel,
experienced in litigation of this nature. The Representative
Plaintiff is not subject to any individual defenses unique from
those conceivably applicable to the Class as a whole. The
Representative Plaintiff anticipates no management
difficulties in this litigation.

22 COMMON FACTUAL ALLEGATIONS

23 24. As described herein, FOOT LOCKER has, for years, knowingly failed to adequately
24 compensate salaried in-store "managers" within the class definition identified above for premium
25 (overtime) wages due, thereby enjoying a significant competitive edge over other retail store chains.
26 Even upon termination or resignation of the employment of numerous class members, FOOT
27 LOCKER has declined to pay these wages, in blatant violation of California Labor Code §§ 201
28 and/or 202.

1 25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
2 Members' entitlement to premium (overtime) pay for excess hours worked, FOOT LOCKER
3 violated California Labor Code § 1174[d] by failing to provide or require the use, maintenance or
4 submission of time records by members of the Plaintiff Class. FOOT LOCKER also failed to
5 provide Representative Plaintiff and members of the Class with accurate semimonthly itemized
6 statements of the total number of hours worked by each and all applicable hourly rates in effect
7 during the pay period in violation of California Labor Code § 226. In so doing, FOOT LOCKER
8 has not only failed to pay its workers the full amount of compensation due, it has, until now,
9 effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the
10 magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

11 26. California Labor Code §§ 201 and 202 require defendant FOOT LOCKER to pay its
12 employees all wages due immediately upon discharge. California Labor Code § 203 provides that,
13 if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to
14 pay the subject employees' wages until the back wages are paid in full or until an action is
15 commenced. The penalty cannot exceed 30 days of wages.

16 27. Representative Plaintiff and all persons similarly situated are entitled to unpaid
17 compensation, yet, to date, have not received such compensation. More than 30 days have passed
18 since certain class members have left defendant FOOT LOCKER's employ.

19 28. As a consequence of defendant FOOT LOCKER's willful conduct in not paying
20 compensation for all hours worked and not paying for denied meal and rest periods, certain class
21 members are entitled to 30 days wages as a penalty under Labor Code section 203, together with
22 interest thereon and attorneys' fees and costs.

23 29. As a direct and proximate result of FOOT LOCKER's unlawful conduct, as set forth
24 herein, Representative Plaintiff and particular Class Members have sustained damages, as described
25 above, including, but not limited to a loss of earnings for hours of overtime worked on behalf of
26 Defendants, in an amount to be established at trial. As a further direct and proximate result of
27 Defendant's unlawful conduct, as set forth herein, certain Class Members herein are entitled to
28 recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for

1 failure to provide semimonthly statements of actual hours worked and all applicable hourly rates
2 (pursuant to Labor Code § 226) in an amount to be established at trial. As a further direct and
3 proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and
4 the Class are also entitled to recover costs and attorneys' fees, pursuant to statute.

5
6 **FIRST CAUSE OF ACTION**
7 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
8 **(California Business & Professions Code §§ 17200-17208)**

9 30. Representative Plaintiff incorporates in this cause of action each and every allegation
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 31. Representative Plaintiff further brings this cause of action on behalf of the general
12 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
13 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business
14 practices described herein.

15 32. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
16 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
17 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
18 cited herein.

19 33. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
20 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
21 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
22 set forth in California Business & Professions Code §§ 17200-17208.

23 34. Defendant has clearly established a policy of accepting a certain amount of collateral
24 damage, as represented by the damages to Representative Plaintiff and the Plaintiff Class herein
25 alleged, as incidental to its business operations, rather than accept the alternative costs of full
26 compliance with fair, lawful and honest business practices ordinarily borne by responsible
27 competitors of Defendant and as set forth in legislation and the judicial record.

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**SECOND CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME
(California Labor Code § 510)**

35. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

36. During the time period beginning as of the commencement of the applicable limitations period and continuing through the present, Representative Plaintiff and the Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The precise number of hours will be proven at trial.

37. During said time period, defendant FOOT LOCKER refused to compensate Representative Plaintiff and the Class Members for some and/or all of the overtime wages earned in violation of applicable Wage Order(s) and the California Labor Code.

38. During said time period, particular Class Members herein were employed by and were thereafter terminated or resigned from their positions with FOOT LOCKER, yet were not paid all premium (overtime) and/or other wages due upon said termination or within seventy-two hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

39. At all relevant times, Defendant was aware of and was under a duty to comply with various provisions of the California Labor Code. Some of these Labor Code provisions include(d):

- a. Labor Code §203: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."
- b. Labor Code § 226: "Every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing . . . (2) total hours worked by the employee . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."
- c. Labor Code §510: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate

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of pay for an employee”

- d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.
- e. Labor Code § 1198: “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
- f. Labor Code § 1199: “Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who . . . (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. . . [or] (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

40. By refusing to compensate Representative Plaintiff and the Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein, as well as various IWC Wage Order provisions.

41. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, some Class Members are entitled to recover “waiting time” penalties/wages, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

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**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)**

42. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

43. California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

44. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code § 512 as well as California Labor Code § 226.7.

45. Specifically, California Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

46. One or more Industrial Welfare Commission Wage Orders mandates that Defendant authorize and permit ten minutes of "net rest time" for every four hours of work "or major fraction thereof" for non-exempt employees such as Representative Plaintiff and members of the Plaintiff Class.

47. By failing to consistently provide meal and rest periods to Representative Plaintiff and Class Members, Defendant violated these California Labor Code provisions.

48. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendant's

1 unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members are entitled
2 to recover various penalties, in an amount to be established at trial, as well as costs and attorneys'
3 fees, pursuant to statute.

4
5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
7 **(California Labor Code § 226)**

8 49. Representative Plaintiff incorporates in this cause of action each and every allegation
9 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

10 50. California Labor Code § 226(a) provides:

11 Each employer shall semimonthly, or at the time of each payment of
12 wages, furnish each of his or her employees either as a detachable
13 part of the check, draft or voucher paying the employee's wages, or
14 separately when wages are paid by personal check or cash, an
15 itemized wage statement in writing showing: (1) gross wages earned;
16 (2) total number of hours worked by each employee whose
17 compensation is based on an hourly wage; (3) all deductions;
18 provided, that all deductions made on written orders of the employee
19 may be aggregated and shown as one item; (4) net wages earned;
20 (5) the inclusive date of the period for which the employee is paid; (6)
21 the name of the employee and his or her social security number; and
22 (7) the name and address of the legal entity which is the employer.

23 51. California Labor Code § 226(e) provides:

24 An employee suffering injury as a result of a knowing and intentional
25 failure by an employer to comply with subdivision (a) is entitled to
26 recover the greater of all actual damages or fifty dollars (\$50) for the
27 initial pay period in which a violation occurs and one hundred dollars
28 (\$100) per employee for each violation in a subsequent pay period,
not exceeding an aggregate penalty of four thousand dollars (\$4,000),
and is entitled to an award of costs and reasonable attorney's fees.

29 52. Representative Plaintiff seeks to recover actual damages (including prospective
30 damages associated with filing restatements of earnings with taxing and/or other authorities), costs
31 and attorneys' fees under this section on behalf of himself and the Plaintiff Class.

32 53. Defendant FOOT LOCKER failed to provide timely, accurate and complete itemized
33 wage statements to Representative Plaintiff and the Plaintiff Class in accordance with Labor Code
34 § 226(a). Plaintiff has suffered injuries due to this unlawful conduct insofar as they have lost use
35 of the compensation due, were forced to bring this action to redress these violations, were forced to

1 file inaccurate wage information with government agencies and, should this action be successful,
2 may be required to restate earnings for prior years and/or incur time and costs in so doing.

3 54. None of the statements provided by Defendant has accurately reflected total number
4 of hours worked, actual gross wages earned, net wages earned, or the appropriate deductions.

5
6 **RELIEF SOUGHT**

7 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed **Class**,
8 prays for judgment and the following specific relief against **Defendants, and each of them**, jointly
9 and separately, as follows:

10 1. For an Order certifying the proposed Class and/or any other appropriate subclasses
11 under Code of Civil Procedure § 382;

12 2. That defendant FOOT LOCKER is found to have violated the overtime provisions
13 of the Labor Code as to the Representative Plaintiff and the Class;

14 3. That defendant FOOT LOCKER is found to have violated Labor Code §§ 226.7 and
15 512 for willful failure to provide meal periods, including second meal periods, and rest periods;

16 4. That defendant FOOT LOCKER is found to have violated the record keeping
17 provisions of Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiff and the Class and for
18 willful failure to provide accurate semimonthly itemized statements thereto;

19 5. That defendant FOOT LOCKER is found to have violated Labor Code §§ 201 and
20 202 for willful failure to pay all compensation owed at the time of termination of employment to
21 particular members of the Plaintiff Class;

22 6. That defendant FOOT LOCKER is found to have violated Business and Professions
23 Code § 17200 by failing to pay Representative Plaintiff and Class Members overtime compensation,
24 "waiting time" penalties and/or by failing to provide accurate and complete itemized wage
25 statements;

26 7. An award to Representative Plaintiff and the Plaintiff Class of damages for the
27 amount of unpaid overtime compensation, the amount of wage due as a result of Defendant's failure
28 to provide meal and rest periods, the amount of prospective damages associated with filing

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1 restatements of earnings with taxing and/or other authorities, and related damages, including interest
2 thereon, and penalties in an amount to be proven at trial;

3 8. That defendant FOOT LOCKER be ordered to pay restitution to Representative
4 Plaintiff and the Plaintiff Class due to defendant FOOT LOCKER's unlawful activities, pursuant to
5 Business and Professions Code §§ 17200-08;

6 9. That defendant FOOT LOCKER further be enjoined to cease and desist from
7 unlawful activities in violation of Business and Professions Code § 17200;

8 10. For all other Orders, findings and determinations identified and sought in this
9 Complaint;

10 11. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

11 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 218.5 and 1194
12 and/or California Civil Code § 1021.5; and

13 13. For costs of suit and any and all such other relief as the Court deems just and proper.

14
15 Dated: April 11, 2006

16 **SCOTT COLE & ASSOCIATES, APC**

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18 By: 

19 Scott Edward Cole, Esq.
20 Attorneys for the Representative Plaintiff
21 and the Plaintiff Class
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