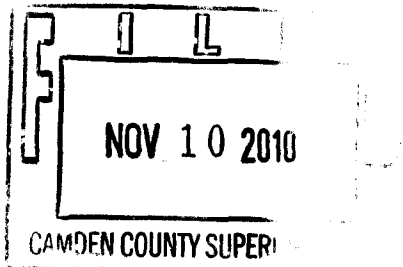


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Attorney for Plaintiffs

JOANN HERNANDEZ and MARISSA
MAGUIRE on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

FOOT LOCKER, INC.; FOOT LOCKER
RETAIL, INC; and DOES 1-10

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY

CLASS ACTION COMPLAINT

L-5655-10

JURY TRIAL REQUESTED

COMPLAINT AND JURY DEMAND

Plaintiffs, Joann Hernandez (“Hernandez”) and Marissa Maguire (“Maguire”) (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their attorneys, by way of their Complaint against the Defendants, allege as follows:

SUMMARY OF CLAIMS

1. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons within the State of New Jersey, to recover all unpaid wages and overtime compensation owed to them pursuant to the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a through 34:11:56a30 (collectively the “NJ Labor Laws”) and the common law.

2. As explained herein, under the NJ Labor Laws and the common law, Retail Employees (defined below) are entitled to wages for all hours worked, including premium overtime compensation.

3. This putative state-wide class action is comprised of all current and former “Retail Employees” in the State of New Jersey, defined as: hourly-paid employees who are, or were, employed by Foot Locker, Inc., and/or Foot Locker Retail, Inc., or any other parent, subsidiary, related, or successor companies (collectively, the “Company”) in the Company’s retail stores in a non-managerial position, including, but not limited to, individuals with the following job titles: (i) Sales Associate, (ii) Cashier, and/or (iii) Stock Person.

4. Plaintiffs are unaware of the names and capacities of those defendants sued as DOES 1 through 10, but will seek leave to amend their complaint once their identities become known to Plaintiffs. Upon information and belief, Plaintiffs allege that at all relevant times each defendant, including the DOE defendants 1 through 10, was the officer, director, employee, agent, representative, alter ego, an/or joint employer of or along with each of the other defendants, and in engaging in the conduct alleged herein was in the course and scope of and in furtherance of such relationship. Unless otherwise specified, Plaintiffs will refer to all defendants, including the Company, collectively as “Defendants” and each allegation pertains to each Defendant.

5. Plaintiffs bring this suit on behalf of a class of similarly situated persons composed of:

All persons within the State of New Jersey who: (i) are/were employed as Retail Employees with the Company; (ii) are/were not paid for all hours worked in a given workweek; and (iii) are/were not paid premium overtime compensation at a rate not less than one and one-half times their regular rate for all hours worked beyond forty hours (40) in a work week during the period of time within the statute of limitations (the “Class”).

6. Plaintiffs allege on behalf of the Class that Defendants violated the NJ Labor Laws and the common law by: (i) failing to provide the mandated minimum wage for all hours worked; and (ii) failing to pay overtime at the rate of one and one-half times the employee’s regular rate for

all hours worked in excess of forty hours in any given workweek.

7. As a result of Defendants' violation of the NJ Labor Laws and the common law, Plaintiffs and members of the Class were improperly under-compensated for their work.

PARTIES

8. Plaintiff Joann Hernandez is a resident of the State of New Jersey who was employed by Defendants as a Retail Employee in several stores in New Jersey during the statutory period covered by this Complaint, whom Defendants failed to compensate for all hours worked, including premium pay for all hours above and beyond forty hours in a work week. At all material times, Plaintiff Joann Hernandez has worked and/or resided within this state.

9. Plaintiff Marissa Maguire is a resident of the State of New Jersey who was employed by Defendants as a Retail Employee in New Jersey during the statutory period covered by this Complaint, whom Defendants failed to compensate for all hours worked, including premium pay for all hours above and beyond forty hours in a work week. At all material times, Plaintiff Marissa Maguire has worked and/or resided within this state.

10. Defendant Foot Locker, Inc. is a domestic corporation organized and existing under the laws of the State of New York which conducts business in the State of New Jersey as a retailer of athletic footwear and apparel.

11. Defendant Foot Locker Retail, Inc. is a domestic corporation organized and existing under the laws of the State of New York which conducts business in the State of New Jersey as a retailer of athletic footwear and apparel. At all relevant times covered by this Complaint, Defendant has maintained and operated retail stores throughout the State of New Jersey, including retail stores within this County.

12. Upon information and belief, Defendant employs, or has employed, in excess of one hundred Retail Employees in the State of New Jersey during the relevant class period.

FACTUAL ALLEGATIONS

13. NJ Labor Laws provide that employees are entitled to be paid for all hours worked.

14. Further, unless proven to be exempt from the protection of the NJ Labor Laws, all employees are entitled to receive the statutory minimum wage for all hours worked and premium overtime pay for work in excess of forty hours per week.

15. Contrary to these basic protections, Plaintiffs and the other similarly situated members of the Class are, or were, employees of Defendants working in retail locations in the State of New Jersey, who were not paid for all hours they worked, including the payment of premium overtime pay as required by law for all hours worked above and beyond forty in any given workweek.

16. Pursuant to the Defendants' uniform employment policies, Retail Employees record their hours worked through a computer system at their retail location. The data entered by the Retail Employees is processed by Defendants to calculate the pay of the Retail Employees.

17. Upon information and belief, Defendants set the number of labor hours each retail store may allocate among its Retail Employees. Managers of Defendants' retail stores are pressured to stay within their respective store's budgeted number of labor hours.

18. Pursuant to Defendants' employment policies, managers of the retail locations have access to the data entered by the Retail Employees and can manipulate the recorded hours entered by the Retail Employees before the data is processed, and the pay of the Retail Employees is calculated.

19. Upon information and belief, persons within the Company, including managers in charge of Defendants' retail locations, with the knowledge and complicity of the Company, regularly

altered the computerized records of the hours worked by the Retail Employees to reflect a lower number of hours worked by the Retail Employees than the actual hours worked (hereinafter, referred to as “Shaved Time”).

20. Upon information and belief, managers engaged in the Shaved Time practice in order to comply with the Company’s set monthly allocation of hours for a given retail location.

21. Upon information and belief, Plaintiffs and the members of the Class regularly performed work for the benefit of Defendants while they were not clocked-in to Defendants’ time keeping system. This practice entailed members of the Class performing work either before their official time-keeping record began, or after their official time-keeping period ended (hereinafter, referred to as “Off the Clock”), including times when they were clocked-out for meals or breaks. Retail Employees, including Plaintiffs, are, or were, not compensated for the time spent working Off the Clock.

22. Upon information and belief, managers of Defendants’ retail stores required employees to work Off the Clock in order to comply with the Company’s set monthly allocation of labor hours for a given retail location. At all times material and relevant, Defendants were aware of Off the Clock work by Retail Employees

23. Upon information and belief, pursuant to Defendants’ employment policies and procedures, managers of Defendants’ retail stores received bonuses if their stores met, or fell below, their allocated labor budgets.

24. Upon information and belief, pursuant to Defendants’ uniform employment policies, managers of Defendants’ retail stores were subject to discipline and / or poor performance reviews if their stores exceeded their allocated labor budgets.

25. Based on Defendants' employment policies and procedures, managers of Defendants' retail stores have an incentive to engage in Shaved Time and Off the Clock practices to increase their compensation, thereby not crediting Retail Employees for all hours worked.

26. The direct result of the Shaved Time and Off the Clock practices is that Plaintiffs and the members of the Class were not compensated for all of the hours they worked.

27. Additionally, the actual hours worked by Plaintiffs and the members of the Class at times were above forty hours during a work week, thereby making them eligible for premium overtime compensation. However, due to Defendants' Shaved Time and Off the Clock practices, the recorded hours of Plaintiffs and the members of the Class did not reflect these overtime hours.

28. Therefore, pursuant to Defendants' employment policies (including Shaved Time and Off the Clock practices), Plaintiffs and the members of the class did not receive overtime compensation for all hours worked, including premium overtime compensation in an amount equal to one and one-half times their regular rate of pay for each hour worked in excess of forty in a workweek.

29. In violation of the NJ Labor Laws, Plaintiffs and the members of the Class are/were not paid for all the hours worked in a given workweek and are/were not paid overtime compensation at a rate not less than one and one-half times their regular rate for work performed beyond forty hours in a work week.

30. Plaintiffs allege on behalf of the members of the Class that Defendants' failure to pay all wages, including overtime, was knowing and willful. Accordingly, Plaintiffs and members of the Class are entitled to recover all wages due for hours worked, including overtime hours, for which the appropriate compensation was not paid.

31. Evidence reflecting the precise number of overtime hours worked by Plaintiffs and

every other member of the Class, as well as the applicable compensation rates, is in the possession of Defendants. If these records are unavailable, members of the Class may establish the hours they worked solely by their testimony and the burden of overcoming such testimony shifts to the employer.

32. Each of the foregoing acts is in contravention of NJ Labor Laws.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action as a class action for claims under the NJ Labor Laws pursuant to New Jersey Court Rule 4:32 on behalf of themselves and the following similarly situated persons:

All persons within the State of New Jersey who: (i) are/were employed as Retail Employees with the Company; (ii) are/were not paid for all hours worked in a given workweek; and (iii) are/were not paid premium overtime compensation at a rate not less than one and one-half times their regular rate for all hours worked beyond forty hours (40) in a work week during the period of time within the statute of limitations (the "Class").

34. The claims under the NJ Labor Laws may be pursued by all similarly-situated persons who choose not to opt-out of the Class.

35. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of the members of the Class is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that there are more than one hundred individuals in the Class.

36. Plaintiffs will fairly and adequately protect the interests of the Class, and have retained counsel that are experienced and competent in class action and employment litigation. Plaintiffs have no interest that is contrary to, or in conflict with, members of the Class.

37. A class action suit, such as the instant one, is superior to other available means for

fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to them.

38. Moreover, absent this action, the members of the Class likely will not obtain redress of their injuries, and Defendants will retain the proceeds of its violations of the applicable NJ Labor Laws.

39. Furthermore, even if any member of the Class could afford individual litigation against the Company, it would be unduly burdensome to the judicial system. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Class and provide for judicial consistency.

40. There is a well-defined community of interest in the questions of law and fact affecting the Class as a whole. The questions of law and fact common to each member of the Class predominate over any questions affecting solely individual members of the action. Among the common questions of law and fact are:

- a. Whether Defendants employed Plaintiffs and the members of the Class within the meaning of the NJ Labor Laws;
- b. Whether Plaintiffs and the members of the Class worked hours in excess of forty per week in performance of their job duties;
- c. Whether Plaintiffs and the members of the Class worked hours Off the Clock;
- d. Whether Defendants failed to pay Plaintiffs and the members of the Class for all actual hours worked;
- e. Whether Defendants failed to pay Plaintiffs and the members of the Class all

premium overtime compensation due to them;

- f. Whether Defendants violated statutory provisions regarding compensation due to Plaintiffs and the members of the Class;
- g. Whether Defendants have policies, practices and procedures that result in Plaintiffs and members of the class not being paid all compensation due to them;
- h. Whether Defendants breached contracts with Plaintiffs and the members of the Class; and
- i. Whether Plaintiffs and the members of the Class have sustained damages and, if so, what the proper measure of damages is.

41. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and the Class have sustained damages arising out of the wrongful and uniform employment policies of Defendant in violation of the NJ Labor Laws alleged herein.

42. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance.

COUNT ONE

43. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

44. N.J.S.A. 34:11-56a4 provides that an employer shall pay to each employee a minimum wage for each hour worked, unless the employee falls under an enumerated exemption.

45. Pursuant to Defendants' employment policies, Plaintiffs and members of the Class were not credited for all hours worked.

46. Plaintiffs and members of the Class were not compensated at a rate at least equal to

the New Jersey minimum wage for all hours worked.

47. Pursuant to N.J.S.A. 34:11-56a4, Plaintiffs and members of the Class are entitled to recover their wages, plus interest, attorney's fees, and costs, in an amount to be proven at trial.

COUNT TWO

48. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

49. Plaintiffs and members of the Class worked hours in excess of forty per week for which they did not receive premium compensation.

50. N.J.S.A. 34:11-56a4 provides that an employee must be paid overtime, equal to one and one-half times the employee's regular rate of pay, for all hours worked in excess of forty per week, unless the employee falls under one of the enumerated exemptions.

51. Plaintiffs and the members of the Class do not fall under any of the enumerated exemptions to the requirements for overtime compensation under the NJ Labor Laws.

52. Pursuant to N.J.S.A. 34:11-56a4, Plaintiffs and members of the Class are entitled to recover their overtime wages, plus interest, attorney's fees and costs, in amounts to be proven at trial.

COUNT THREE

53. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

54. Plaintiffs and the members of the Class agreed to certain hourly wages from the Defendants for each hour worked in a given week. Upon information and belief, the terms for compensation are contained in verbal and/or written employment offers, employee handbooks, payroll and earnings documents and/or other documents governing the terms of employment of

Plaintiffs and the members of the Class, copies of which are in Defendants' possession.

55. Plaintiffs and the members of the Class fulfilled their contractual obligations and performed the services for which they were to be compensated.

56. As detailed herein, however, rather than pay Plaintiffs and the members of the Class for all hours they worked (in accordance with their contractual obligations), Defendants required Plaintiffs and the members of the Class to work Off the Clock and/or engaged in Shaved Time.

57. As a result of Defendants' conduct, Plaintiffs and the members of the Class have suffered damages, including, but not limited to, unpaid minimum wages and overtime compensation.

58. Therefore, Plaintiffs and the members of the Class are entitled to the amount of unpaid wages and overtime compensation and such other legal and equitable relief from Defendants' unlawful and willful conduct, as the Court deems just.

COUNT FOUR

59. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

60. Based upon the representations made by Defendants to Plaintiffs and the members of the Class as to wages to be paid for hours worked, Plaintiffs, along with each member of the Class, had contracts that were implied with the Defendants for wages to be paid for each hour worked in a given week.

61. Plaintiffs and the members of the Class performed services for which they were promised compensation.

62. As detailed herein, however, rather than pay Plaintiffs and the members of the Class for all hours they worked, Defendants required Plaintiffs and the members of the Class to work Off the Clock and/or engaged in Shaved Time.

63. As a result of Defendants' conduct, Plaintiffs and the members of the Class have suffered damages, including, but not limited to, unpaid wages and overtime compensation.

64. Therefore, Plaintiffs and the members of the Class are entitled to the amount of unpaid wages and overtime compensation and such other legal and equitable relief from Defendants' unlawful and willful conduct, as the Court deems just.

COUNT FIVE

65. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

66. Plaintiffs and the members of the Class conferred a benefit upon Defendants by working without receiving proper compensation.

67. Defendants knowingly and voluntarily accepted the benefits and services provided by Plaintiffs and the members of the Class.

68. By failing to pay Plaintiffs and the members of the Class wages for all hours worked, including premium overtime compensation, Defendants obtained substantial benefits and have been unjustly enriched.

69. Defendants' conduct was willful and not the result of mistake or inadvertence, and as such, it would be inequitable for Defendants to retain the benefits received.

70. Plaintiffs are entitled to the fair and reasonable values of their services and benefits conferred upon Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A Declaration that Defendants violated the NJ Labor Laws;

- B. An Order designating the NJ Class as a class action pursuant to New Jersey Court Rule 4:32;
- C. An Order appointing Plaintiffs and their counsel to represent the Class;
- D. Compensatory and punitive damages and all other remedies permitted;
- E. Prejudgment interest;
- F. An Order awarding attorneys' fees and costs; and
- G. All other relief as the Court deems just.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues in this matter.

DESIGNATION OF TRIAL ATTORNEY

In accordance with R.4:25-4, Peter A. Muhic, Esquire, is named as Designated Trial Attorney for this matter.

CERTIFICATION

Peter A. Muhic, Esquire, attorney for plaintiffs, certifies:

1. To the best of my knowledge, the matter in controversy, seeking recovery under the labor laws of the State of New Jersey for a class of New Jersey current and former employees of Defendants, is not the subject of any other action pending in any Court and is not the subject of a pending arbitration proceeding. There is an action seeking recovery under the Fair Labor Standards Act pending in the United States District Court for the Eastern District of Pennsylvania, *Pereira v. Foot Locker, Inc.*, Civil Action No. 07-cv-02157.

2. No other action or arbitration proceeding in this State is contemplated.
3. There is no other party who should be joined in this action to my knowledge as of the

present time.

Dated: November 9, 2010

**BARROWAY TOPAZ KESSLER
MELTZER & CHECK, LLP**

By: 

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