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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JED ASIS and JUSTIN WATSON

Plaintiff,

vs.

FOOT LOCKER RETAIL, INC., and DOES
1 through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0000627

(Assigned to the Hon. George J. Abdallah, Dept.
10A)

**DECLARATION OF MAX W. GAVRON IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: October 3, 4, 5, 10, or 11, 2023
Time: 9:00 a.m.
Dept.: 10A

Complaint Filed: January 26, 2023
FAC Filed: July 25, 2023
Trial Date: Not Set

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiffs Kevin Johnson, Jed Asis, and Justin Watson (“Plaintiffs”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiffs' Counsel have zealously represented the interests of the putative class.

3. On January 13, 2021, Plaintiff Kevin Johnson (“Johnson”) filed a letter with the California Labor and Workforce Development Agency (“LWDA”) alleging claims against Defendant Foot Locker Retail, Inc. (“Defendant”) for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, and 1194.

4. On January 19, 2021, Johnson commenced a putative class action against Defendant entitled *Kevin Johnson v. Foot Locker Retail, Inc.*, Superior Court of the State of California, County of San Francisco, Case No. CGC-21-589180. The action was subsequently amended and removed to the United States District Court, Northern District of California (the “*Johnson Action*”). The *Johnson* third amended complaint alleges claims for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code §§ 510 and 1194; (3) violation of Labor Code §§ 201-204; (4) violation of Labor Code § 226(a); (5) violation of Business and Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”).

5. On March 3, 2023, Plaintiffs Jed Asis (“Asis”) and Justin Watson (“Watson”) filed a letter with the LWDA alleging claims against Defendant for violations of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802.

6. On January 26, 2023, Asis and Watson commenced a putative class action against Defendant entitled *Jed Asis and Justin Watson v. Foot Locker Retail, Inc.*, Superior Court of the State of California, County of San Joaquin, Case No. STK-CV-UOE-2023-0000627. The initial

1 complaint alleges claims for: (1) violation of Labor Code §§ 510 and 1194; (2) violation of
2 Labor Code § 226.7; (3) violation of Labor Code § 226; (4) violation of Labor Code §§ 201-203;
3 (5) violation of Labor Code § 2802; and (6) violation of Business and Professions Code § 17200,
4 *et seq.* The action was subsequently removed to the United States District Court, Eastern District
5 of California (the “*Asis* Action”).

6 7. In or about February 2023, the plaintiffs in the *Johnson* and *Asis* Actions
7 (collectively, “Plaintiffs”) became aware of their potentially related matters. After meeting and
8 conferring with the parties in both actions, Plaintiffs and Defendant (the “Parties”) agreed to a
9 global settlement of claims.

10 8. The Parties further agreed to stay the *Johnson* Action pending completion of the
11 global settlement. On May 2, 2023, the parties in the *Johnson* Action filed a Stipulation to Stay
12 Action Pending Settlement Approval in Related Action.

13 9. On May 3, 2023, the Court stayed the *Johnson* Action.

14 10. On May 12, 2023, the *Asis* Action was remanded to the Superior Court of the
15 State of California, County of San Joaquin for further proceedings (the “Action”).

16 11. As a condition of the global settlement, the Parties have agreed to consolidate
17 the claims in the *Johnson* and *Asis* Actions.

18 12. On July 25, 2023, Plaintiffs filed the First Amended Complaint, which is the
19 operative complaint in the Action (“Operative Complaint” or “Complaint”). The Operative
20 Complaint alleges claims for: (1) violation of Labor Code §§ 510 and 1194; (2) violation of
21 Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 226; (4) violation of Labor Code §§
22 201-203, 204, and 246; (5) violation of Labor Code § 2802; (6) violation of Business and
23 Professions Code § 17200, *et seq.*; and (7) violation of Labor Code § 2698, *et seq.* Specifically,
24 the Operative Complaint alleges that Defendant failed to pay overtime wages for all hours
25 worked and at the correct rate of pay for off-the-clock work, including but not limited to time
26 spent undergoing COVID screenings, temperature checks, and answering work-related trivia
27 questions; failed to provide timely and full-length meal and rest breaks to employees; failed to pay
28 meal and rest period premiums at the regular rate of pay when employees also earned non-

1 discretionary pay during the same pay period; failed to provide accurate itemized wage statements;
2 failed to pay all wages owed upon separation of employment, including sick pay wages, overtime
3 wages, and meal and rest period compensation; failed to reimburse employees for work-related
4 expenses; and engaged in unfair business practices. Plaintiffs also seek penalties pursuant to the
5 PAGA premised on the same Labor Code violations.

6 **DISCOVERY AND INVESTIGATION**

7 13. The Parties spent significant time and effort exchanging discovery and
8 information in this Action. Prior to agreeing to the Johnson mediation, the Johnson parties
9 exchanged written discovery, engaged in meet and confer efforts, and motion practice.
10 Defendant produced hundreds of pages of documents, including employee handbooks, payroll
11 policies, meal and rest break documents, and a sampling of employee clock-in and clock-out
12 records and corresponding payroll records. Defendant also produced information concerning the
13 number of current and former employees and the average rate of pay for putative class members.
14 At the district court in the *Johnson* Action, the Parties also engaged in motion practice and
15 litigation concerning the scope of Plaintiff's claims and Plaintiff ultimately defeated Defendant's
16 Motion for Partial Judgment on the Pleadings.

17 14. Plaintiffs' Counsel spent significant time and effort examining the documents
18 produced by Defendant throughout the litigation. Plaintiffs' Counsel prepared a comprehensive
19 mediation brief that outlined the factual and legal issues relevant to the litigation, contained a
20 detailed synthesis of Defendant's timekeeping and payroll records, and presented a complete
21 damages analysis of Defendant's potential liability. With the assistance of Mr. Rudy, the Parties
22 were able to reach an agreement to resolve all of the related actions in this case, which is
23 memorialized in the Joint Stipulation of Class Action and PAGA Settlement and Release

24 **MEDIATION**

25 15. On November 29, 2022, the parties in the *Johnson* Action participated in
26 mediation with neutral Mark Rudy, Esq., a respected mediator of complex wage and hour
27 actions. During the mediation, counsel zealously advocated on behalf of their respective clients.
28 Counsel for *Johnson* and Defendant spoke at length about the strengths and weaknesses of each

side's claims and defenses, the certifiability of the claims, and the scope of Defendant's liability. The parties gained valuable insight and exchanged significant information about their respective positions.

16. Further, Plaintiffs' Counsel prepared a comprehensive mediation brief that outlined the factual and legal issues relevant to the litigation, contained a detailed synthesis of Defendant's timekeeping and payroll records, and presented a complete damages analysis of Defendant's potential liability. After thorough and continued settlement negotiations with the assistance of Mr. Rudy, the *Johnson* parties accepted a mediator's proposal to settle Johnson's class and PAGA claims. Thereafter, the Parties negotiated the global settlement of the Actions as detailed above.

SUMMARY OF THE MONETARY TERMS OF THE PROPOSED SETTLEMENT

17. Attached hereto as **Exhibit A** is true and correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release ("SA," "Agreement," or "Settlement Agreement").

18. As defined by the Settlement Agreement, the Class consists of "all current and former non-exempt employees of Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time during the Class Period." *See* SA § B-2. The Class Period is the time period commencing on October 19, 2018, and ending February 27, 2023. SA § B-7.

19. Some Class Members may also be PAGA Members. *See* SA § B-22. PAGA Members consist of "all current and former non-exempt employees of Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time during the PAGA Period." *See id.* The PAGA Period is the time period commencing on July 19, 2019, and ending February 27, 2023. *Id.* § B-24.

20. The Parties estimate there are approximately 12,500 Class Members.

21. Class Members may opt-out of the settlement if they so choose. *See* SA § C-18. However, in light of the binding nature of a PAGA judgment on non-party employees, Class Members employed during the PAGA Period who exclude themselves from the settlement shall still be bound by the release of any claims under PAGA that are encompassed within the PAGA

Released Claims. *Id.*

22. The Settlement Agreement requires Defendant to pay the Gross Settlement Amount of Eight Million Nine Hundred Seventy Thousand Dollars (\$8,970,000.00). *See* SA § B-15. The Gross Settlement Amount was calculated with, and is premised on, Defendant's representation that Class Members worked approximately 600,000 workweeks during the Class Period. *See* SA § C-10. If the actual number of workweeks worked by the Class Members exceed 600,000 by more than ten percent (10%) (*i.e.*, more than 60,000), the Gross Settlement Amount will increase by 1% for every 1% increase in workweeks over the 10% threshold. *Id.*

23. The settlement allocates Five Hundred Thousand Dollars (\$500,000.00) of the Gross Settlement Amount to PAGA Penalties. *See* SA §§ B-23, C-7. Pursuant to the PAGA, 75% of the PAGA Penalties, *i.e.*, the sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), shall be paid to the California Labor and Workforce Development Agency ("LWDA"). *See id.* § B-23. The remaining 25% of the PAGA Penalties, *i.e.*, the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00), shall be distributed to PAGA Members. *See id.*

24. The balance of the Gross Settlement Amount remaining after deduction of the approved Incentive Payment to Plaintiffs, Settlement Administration Costs, PAGA Penalties, and Class Counsel Award ("Net Settlement Amount"), will be available for distribution to Participating Class Members (*i.e.*, Class Members who do not opt-out). *See* SA § B-20. The Individual Settlement Payments will be based on the number of workweeks worked by Class Members during the Class Period, less any required legal deductions. *See id.* § C-9. Class Members do not need to do anything should they wish to receive their share of the settlement funds. *See id.* §§ C-2, C-9.

25. As part of the settlement, Defendant does not object to Plaintiffs' request for an Incentive Payment of Ten Thousand Dollars (\$10,000.00) to each Plaintiff. *See* SA §§ B-16, C-5. This amount is to compensate each Plaintiff for their efforts and work in prosecuting this case, including meeting and communicating with counsel, reviewing the pleadings in this case, and for executing a general release under California Civil Code § 1542. Both Plaintiffs and Class

Counsel expressly acknowledge that the Court has final discretion in any fee award or Class Representative Incentive Payment. *See* SA §§ C-4, C-5.

26. Pursuant to the Settlement Agreement, Defendant also agrees not to oppose Plaintiffs' Counsel's request for attorney's fees up to thirty-five percent (35%) of the Gross Settlement Amount (\$8,970,000.00), *i.e.*, the sum of Three Million One Hundred Thirty-Nine Thousand Five Hundred Dollars (\$3,139,500.00), plus up to Thirty-Five Thousand Dollars (\$35,000.00) for reimbursement of litigation costs, subject to the Court finally approving this Settlement. *See* SA §§ B-4, C-4. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added to the Net Settlement Amount. Class Counsel expressly acknowledges that the Court has final discretion in any fee award.

27. Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote from Phoenix Settlement Administrators for a fee of approximately Sixty-Five Thousand Dollars (\$65,000.00). *See* SA §§ B-32, B-33. Phoenix is a well-recognized class action settlement administrator. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount. *Id.* The Parties believe that the administration fee is reasonable and should be approved.

PAYMENTS TO SETTLEMENT CLASS MEMBERS

28. Assuming that the Court approves the Class Representative Incentive Payment (\$30,000.00 in total), attorneys' fees (\$3,139,500.00), litigation costs (\$35,000.00), PAGA Penalties (\$500,000.00), and Settlement Administration Costs (\$65,000.00), I estimate that the Net Settlement Amount will total \$5,200,500.00.

29. Based on the size of the Class, the number of workweeks at issue, and the Gross Settlement Amount, Class Members will be entitled to recover, on average, up to \$416.04 each (\$5,200,500.00/12,500 Class Members). The amount any particular Class Member will be entitled to recover will be greater or lower than this average depending on the number of workweeks he or she worked, with some entitled to receive more, and others less. This is fair, as it directly allocates greater recovery to individual Class Members who have allegedly suffered

greater harm. The Settlement Agreement provides that all Individual Settlement Payments shall be allocated as twenty percent (20%) to W-2 wages and eighty percent (80%) to penalties and interest. SA § C-26.

30. In addition to the Individual Settlement Payments, Class Members who are PAGA Members are also entitled to receive twenty-five percent (25%) of the PAGA Penalties (\$500,000.00). SA §§ B-17, C-7, C-8. As detailed in the Settlement Agreement, the amount of the Individual PAGA Payment to each PAGA Member will be based upon the number of workweeks worked by PAGA Members during the PAGA Period. SA § C-8. All Individual PAGA Payments shall be allocated 100% as penalties. *Id.* § C-27.

31. Participating Class Members and PAGA Members will have 180 days from the mailing of the settlement payment to cash the check. SA § C-24. After the expiration of 180 days, the funds represented by uncashed settlement checks will be remitted to Legal Aid at Work, the designated *cy pres* recipient, pursuant to Code of Civil Procedure § 384. *Id.*

STRENGTHS AND WEAKNESSES OF PLAINTIFFS' CLAIMS

32. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendant, I negotiated the settlement with a clear understanding of the value of the class and representative PAGA claims. I took into account the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified.

33. **Failure to Pay Overtime Wages for All Hours Worked.** Plaintiffs allege that, as a pattern and practice, Defendant suffered and permitted non-exempt employees to work without payment of overtime wages for all hours worked in a workday and workweek. More specifically, Plaintiffs allege that they were required to perform off-the-clock work, such as undergoing COVID screenings, temperature checks, and answering work-related trivia questions, and were not paid for their time.

34. Defendant argues that these claims are not suitable for class treatment because its policies required accurate recording of time and prohibited off-the-clock work. Defendant's written policies strictly prohibit non-exempt employees from working off the clock for any reason. Furthermore, all time spent working must be reported. *Id.* Defendant further argues that

individual questions predominate. Citing to *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) and its progeny, Defendant argues that its liability is contingent on proof that Defendant knew or should have known that off-the-clock work was occurring. In the absence of a uniform policy, Defendant contends that Plaintiffs will not be able to establish the requisite knowledge through common proof and thus certification would not have been granted.

35. **Failure to Pay Overtime at the Regular Rate.** Defendant paid a variety of non-discretionary wages, including bonuses and commissions. Plaintiffs allege that Defendant did not include these non-discretionary wages in the regular rate computation for the purpose of paying overtime wages. Consequently, Plaintiffs contend that employees are owed additional overtime wages based on the correct regular rate of pay, and derivative waiting time and wage statement penalties. Defendant denies that it failed to pay overtime wages at the regular rate of pay. Moreover, given that there is no dispute that Defendant paid overtime wages, the potential range of damages is limited and primarily consists of derivative penalties.

36. **Failure to Provide Off-Duty Meal and Rest Periods and Pay Meal/Rest Period Premiums at the Regular Rate of Pay.** Plaintiffs allege that Defendant did not include the value of non-discretionary wages in the regular rate computation for the purpose of paying meal and rest period premiums. Consequently, Plaintiffs contend that employees are owed additional meal and rest period premiums based on the correct regular rate of pay, and derivative waiting time and wage statement penalties.

37. As explained in *Ferra v. Loews Hollywood Hotel, LLC*, employers must pay meal period premiums at the regular rate of pay. 11 Cal. 5th 858 (2021). Importantly, at the time Plaintiffs filed their action, the California Supreme Court had yet to decide *Ferra* and thus Defendant vehemently contested Plaintiffs' interpretation of the law. See *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239, 1246, (2019), *rev'd*, 11 Cal. 5th 858, 489 P.3d 1166 (2021) ("We agree with the trial court and with Loews, however, that the statutory terms "regular rate of pay" and "regular rate of compensation" are not synonymous, and the premium for missed meal and rest periods is the employee's base hourly wage.").

38. Defendant argued several things in its defense. Most prominently, Defendant

1 argued that *Ferra* did not alleviate Plaintiffs of their burden to prove the underlying meal period
2 violation. In other words, even if Plaintiffs could show that Defendant paid premiums at less
3 than the regular rate of pay, Plaintiffs would still have to demonstrate that Defendant did not
4 meet its obligation under the Labor Code and *Brinker* to provide employees a meal period. *See*
5 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the
6 other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is
7 performed.”). This, Defendant argued, would result in a claim that could not be certified as a
8 class action because Defendant maintained and enforced legally compliant policies. Defendant
9 claimed this would require Plaintiffs to investigate and ask each putative class member the
10 reason time records may have triggered the payment of a premium or shown a deficient meal
11 period and whether a premium was, in fact, owed to the class member. Furthermore, given that
12 there is no dispute that Defendant paid meal and rest period premiums wages, the potential range
13 of damages is limited and primarily consists of derivative waiting time penalties.

14 39. **Failure to Pay Wages Upon Termination.** Plaintiffs seek waiting time penalties
15 predicated on Defendant’s alleged underpayment/non-payment of wages, including for meal
16 period premium wages, sick pay wages, and overtime wages. Under the Healthy Workplaces,
17 Healthy Families Act of 2014, Cal. Lab. Code § 245 *et seq.* (“HWHFA”), “[p]aid sick time for
18 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
19 workweek in which the employee uses paid sick time, whether or not the employee actually
20 works overtime in that workweek.” Cal. Lab. Code § 226(l)(1) (emphasis added). Here, Plaintiffs
21 allege that during workweeks where an employee earned non-discretionary wages and sick pay
22 earnings, Defendant paid the sick pay at the employee’s base hourly rate. Plaintiffs contend that
23 the sick pay should have been paid at the employee’s regular rate of pay, which includes all non-
24 discretionary pay.

25 40. Defendant contested this claim on a number of grounds. With respect to the
26 alleged unpaid sick time, Defendant contended that Plaintiffs could not recover sick leave
27 directly because there is no private right of action. *See* Cal. Lab. Code § 248.5 (providing only
28 that “the Labor Commissioner or the Attorney General may bring a civil action in a court of

competent jurisdiction against the employer or other person violating this article”); *see also, e.g., Titus v. McLane Foodservices, Inc.*, 2016 WL 4797297, at *4 (E.D. Cal. Sept. 14, 2016) (the sick pay “statute provides that only the LWDA may recover civil penalties for a violation”); *Schroeder v. Envoy Air, Inc.*, 2016 WL 11520388, at *11 (C.D. Cal. Sept. 27, 2016) (“because the legislature did not clearly and unmistakably create a private right of action to enforce section 246(h), the Court concludes that there is none available”).

41. Some courts have held that sick pay is not “wages” entitling employees to Section 203 penalties even if underpaid. *See McPherson v. EF Intercultural Found., Inc.*, 47 Cal. App. 5th 243, 263, 260 Cal. Rptr. 3d 640, 654 (2020), review denied (July 22, 2020) (“because paid sick leave is not considered a form of “wages,” employers are not required to pay employees their unused sick leave on termination—accrued or not. (§ 246, subd. (g)(1).)”).

42. Defendant also would have argued that, even if there were a private right of action and any underpayment could be proven (which Defendant disputes), its payments to employees were made pursuant to a good faith belief that it was paying sick pay and meal period premiums correctly, and as a result, Plaintiffs cannot establish that Defendant “willfully” failed to pay wages at separation of employment and/or that a good faith dispute exists as to whether the allegedly underpaid monies were wages due. *Id.* This is a legal defense that, if successful, could potentially defeat Plaintiffs’ Section 203 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful where there is uncertainty in the law or a “good faith mistaken belief that wages are not owed”). In *Naranjo v. Spectrum Security Services, Inc.*, __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), review granted 2023 WL 3745105 (May 31, 2023), the court upheld an employer’s good faith defense to the plaintiff’s claim for waiting time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal defense, which precluded the imposition of waiting time penalties because its acts were not “willful” within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code § 226. Even had Plaintiffs ultimately prevailed on the merits, given the novelty of the legal questions it raised, Defendant may have sought immediate appellate review through a writ or

1 appeal.

2 **43. Wage Statement Claim.** Defendant maintains that any alleged omission of
3 information from the wage statements was not a “knowing and intentional failure” by Defendant
4 to comply with Labor Code § 226(a), and penalties are therefore unwarranted. *See Harris v.*
5 *Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary
6 judgment in favor of employer and finding its conduct was not “knowing and intentional”);
7 Gavron Decl. ¶ 50. Defendant also would have argued that penalties under Section 226 are
8 subject to a similar “good faith” defense as articulated above in the context of Plaintiffs’ claims
9 for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at
10 *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in violation
11 of Section 226, any violation is not knowing and intentional.”); *Naranjo*, __ Cal. Rptr. 3d __,
12 2023 WL 2261253

13 **44. Failure to Reimburse Employees for Personal Cell Phones.** Plaintiffs alleges
14 that Defendant required Class Members to use their personal cell phones for work-related
15 purposes but did not reimburse employees for the associated costs. Defendant disputes the
16 existence of a common policy that requires employees to use personal cell phones for work-
17 related purposes because it maintained compliant written reimbursement policies. Some courts
18 have denied class certification of Section 2802 claims because liability hinges on individualized
19 inquiries into the actual expenses incurred by class members and whether each class member was
20 fully reimbursed pursuant to the policy.

21 **45. Derivative PAGA Penalties.** Plaintiffs pursue derivative PAGA penalties based
22 on the Labor Code violations discussed above. Plaintiffs pursue derivative PAGA penalties
23 based on the Labor Code violations discussed above. The trial court has the discretion to reduce
24 PAGA civil penalties “if, based on the facts and circumstances of the particular case, to do
25 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See*
26 Labor Code § 2699(e)(2). Plaintiffs’ Counsel is not blind to the fact that Defendant could be
27 persuasive to the Court at trial and that the penalties herein could be substantially reduced.

28 //

1 **ESTIMATED POTENTIAL PENALTIES AND DAMAGES**

2 46. Based on the class data provided by Defendant, Plaintiffs' Counsel estimates that
3 Defendant could face liability ranging from approximately \$54 million to \$100 million for the
4 class and PAGA claims. Thus, the Gross Settlement Amount represents somewhere between
5 16.6 %to 8.9% of the realistic maximum damages and penalties at issue. Courts have held that
6 gross settlements approximating between only 8 and 25% of the defendant's potential exposure
7 are fair and reasonable. *See Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D.
8 Cal. Mar. 20, 2015) (approving class settlement recovering between 8.5% and 25% of the
9 defendant's potential exposure); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No.
10 8:12-cv-02161 (C.D. Cal. 2014) (approving wage and hour class settlement which obtained only
11 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6
12 (N.D. Cal. Nov. 21, 2012) (holding that settlement of approximately 15% of the potential
13 recovery was fair and reasonable).

14 47. **Failure to Pay Overtime Wages for All Hours Worked & Regular Rate**
15 **Claim.** The data produced by Defendant indicates that there are approximately 12,500 Class
16 Members who worked 600,000 workweeks during the Class Period. The average hourly rate of
17 these employees is \$14.95. While difficult to quantify, Plaintiffs assumed that class members
18 would be entitled to ½ hour of overtime pay for each work week associated with the off-the-
19 clock claims. This results in a total potential exposure of approximately \$6.7 million of
20 uncompensated overtime time (600,000 work weeks x 1/2 hour a week at \$22.43 per hour
21 (\$14.95 x 1.5)). To the extent that any damages arise from the alleged overtime regular rate
22 violation, this amount is reflected in the valuation of the derivative waiting time penalties claim
23 because the difference in payment of actual overtime hours likely a relatively small portion of
24 Defendant's reasonable potential exposure.

25 48. **Failure to Pay Meal and Rest Period Premiums at Regular Rate of**
26 **Compensation.** Plaintiffs' expert determined from the data produced in advance of mediation
27 that, according to Plaintiffs' theory of liability, Defendant undercompensated employees who
28 received a meal or rest period premium payment by approximately \$76,128. Plaintiffs argued

1 that these underpayments triggered derivative waiting time and wage statement penalties,
2 addressed below. Assuming a penalty would apply for any late, missed, or short meal period
3 identified in Defendant's records, which demonstrated an approximately 58% violation rate,
4 Plaintiffs also estimated approximately \$11 million in unpaid meal period premium wages.

5 **49. Failure to Pay Wages Upon Termination.** Based on Defendant's payroll data,
6 Plaintiffs estimated approximately 9,970 Class Members who separated employment during the
7 Class Period. The average straight time hourly rate of these employees was \$14.95. Thus, the
8 maximum amount of waiting time penalties could total as high as \$35 million [$\$14.95 \times 8 \text{ hours}$
9 $\times 30 \text{ days} \times 9,970 \text{ Class Members}$]. On the other hand, the average length of shift was closer to 6
10 hours, which would result in a lower exposure of approximately \$28 million. These maximum
11 exposures do not consider Defendant's arguments regarding its good faith defense addressed
12 above.

13 **50. Wage Statement Claim.** Plaintiffs' expert estimated the maximum Labor Code §
14 226(e) penalties totaled approximately \$2.2 million, which was premised on approximately
15 24,000 pay periods including a wage statement violation. As noted above, Defendant likely
16 would have asserted a "good faith" defense to these penalties too.

17 **51. Failure to Reimburse Employees.** Plaintiffs assumed that Defendant should
18 have reimbursed each Class Member \$10.00 per month for using their personal cell phone for
19 work-related purposes. This resulted in approximately \$1.5 million in exposure for Defendant
20 (600,000 workweeks $\times$ \$2.50 per workweek).

21 **52. PAGA Penalties.** Plaintiffs analyzed this claim by assuming a civil penalty of
22 \$100 per pay period during the PAGA Period, which resulted in penalties as high as
23 approximately \$44 million (440,000 pay periods $\times$ \$100 penalty). It is unrealistic to assume that
24 the Court will award the full amount of PAGA penalties if Plaintiffs are able to prevail at trial.
25 The recovery is uncertain because the Court can decline to award the full amount of PAGA
26 penalties where "if, based on the facts and circumstances of the particular case, to do otherwise,
27 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." As shown in
28 the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on

1 his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,
2 citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517
3 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see*
4 *O'Connor v. Uber Techs., Inc.*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties
5 amounted to \$1 billion, such award "could well be reduced, as a court may reduce the penalty
6 when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
7 confiscatory"). If the Court exercised the same discretion here, the PAGA penalties would be
8 reduced from approximately \$44 million to \$4.4 million.

9 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

10 53. Based on my own independent investigation and evaluation, I am of the opinion
11 that the settlement for the consideration and on the terms set forth in the Settlement Agreement is
12 fair, reasonable, and adequate and that the settlement is in the best interests of the Class, in light
13 of all known circumstances and the expenses and risks inherent in litigation. I also believe in the
14 fairness of the settlement based on factoring in the uncertainty and risks to Plaintiffs involved in
15 not prevailing on the class claims at trial and the possibility of appeal.

16 **ATTORNEY EXPERIENCE**

17 54. From the inception of the case, Class Counsel have solely represented the
18 interests of the Class. For example, Class Counsel expended significant time and resources
19 exchanging discovery, engaging in motion practice, drafting a mediation statement, and
20 attending mediation. Class Counsel have also expended costs at their own risk, for example, to
21 file this instant action, effect service of process, and pay mediation fees and other litigation
22 related costs.

23 55. Class Counsel have a great deal of experience in wage and hour class action
24 litigation and has been approved as class counsel in a number of class actions. My co-counsel
25 and I can and will adequately represent the Class Members in this action. I have no conflicts with
26 the Class and will adequately represent the Class.

27 56. I am one of the primary attorneys on this matter. My qualifications are as follows:
28 I received a full-tuition scholarship, and graduated from Southwestern Law School in 2013,

1 *magna cum laude*. I was in the top 5% of my class. During my time at Southwestern, I was a
2 Notes and Comments Editor on the Southwestern Law Review. I also received awards for
3 achieving the highest grade in my class in several courses. In 2012, I was a full-time extern, at
4 the United States District Court for the Central District. Immediately after law school, I taught
5 several courses at Southwestern, including Principles of Legal Analysis and Legal Methods. I
6 taught those courses for approximately four years.

7 57. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately
8 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted
9 in a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute.
10 I also regularly litigated cases across the civil litigation spectrum, including employment matters.

11 58. From February 2016, through Fall 2017, I practiced at the international law firm
12 of Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50
13 companies in Multi-District Litigation primarily in the product liability sphere. I also
14 successfully drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary
15 judgment decision regarding trade secret issues, in addition to working in several other practice
16 groups. *See Experian Info. Solutions v. Nationwide Marketing Servs. Inc.*, 893 F.3d 1176 (9th
17 Cir. 2018).

18 59. From September 2017, through September 2018, I served as a law clerk to a
19 Judge sitting on the United States District Court, Central District of California. I regularly
20 prepared bench memoranda, on cases involving all types of civil litigation, including regularly
21 working on wage and hour class actions.

22 60. I am currently an associate at the law firm Diversity Law Group, P.C., an
23 employment law firm that has handled numerous wage and hour class and individual actions, on
24 both plaintiff and defense sides. My current practice focuses on employment matters involving
25 both class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior
26 Courts, the Orange County Superior Courts, the San Diego County Superior Courts, and the
27 United States District Courts for the Central, Northern, and Eastern Districts of California. I am
28 currently handling, or have handled, numerous wage and hour class action lawsuits with the firm,

1 including, but not limited to: *Agar v. Sensient Natural Ingredients, LLC* (Case No. CV-19-
2 001906, Stanislaus County Superior Court); *Heredia v. Eddie Bauer LLC* (Case No.
3 16CV300475, United States District Court, Northern District of California); *Parsons v. Estenson*
4 *Logistics, LLC* (Case No. 34-2019-00252929, Sacramento County Superior Court); and *Rodas v.*
5 *Goodyear Tire* (Case No. 21-cv-07526, United States District Court, Central District of
6 California), among many others.

7 61. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of
8 Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28,
9 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our
10 clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

11 62. I have also assisted the firm in numerous wage and hour class action mediations.

12 63. I have no conflicts with Legal Aid at Work, which is the proposed *cy pres*
13 recipient of the unclaimed funds resulting from this proposed settlement.

14 **NOTICE TO THE LWDA**

15 64. Concurrent with the filing of the Motion for Preliminary Approval of Class and
16 Representative Action Settlement, my office uploaded the Motion, Settlement Agreement, and
17 proposed order to the LWDA's website. Attached as **Exhibit B** is a true and correct copy of the
18 upload confirmation.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on this 1st day of September 2023, at Los Angeles, California.

22 
23 _____
24 Max W. Gavron

EXHIBIT A

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Attorneys for Plaintiffs
 JED ASIS, JUSTIN WATSON AND KEVIN JOHNSON

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

JED ASIS and JUSTIN WATSON

Plaintiff,

vs.

FOOT LOCKER RETAIL, INC., and
 DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0000627

(Assigned for all purposes to the Hon. George J.
 Abdallah, Dept. 10A)

**JOINT STIPULATION OF CLASS ACTION
 AND PAGA SETTLEMENT AND RELEASE**

Complaint Filed: January 26, 2023
 FAC Filed: July 25, 2023
 Trial Date: Not Set

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15 Attorneys for Defendants
16 Foot Locker Retail, Inc. dba
17 Champs US, a New York corporation
18
19
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28

This Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Jed Asis, Justin Watson, and Kevin Johnson (collectively, “Plaintiffs” or “Class Representatives”), as an individual and on behalf of all others similarly situated and aggrieved employees, and Defendant Foot Locker Retail, Inc. (“Defendant”) (together with Plaintiffs, the “Parties”).

This Settlement Agreement shall be binding on Plaintiffs and Class Members (as defined herein) and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

A. RECITALS

1. On January 13, 2021, Kevin Johnson (“Johnson”) filed a letter with the California Labor and Workforce Development Agency (“LWDA”) alleging claims against Defendant for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, and 1194.

2. On January 19, 2021, Johnson commenced a putative class action against Defendant entitled *Kevin Johnson v. Foot Locker Retail, Inc.*, Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-589180. The action was subsequently amended and removed to the United States District Court, Northern District of California (the “*Johnson Action*”). The *Johnson* third amended complaint alleges claims for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code §§ 510 and 1194; (3) violation of Labor Code §§ 201-204; (4) violation of Labor Code § 226(a); (5) violation of Business and Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.* The Parties thereafter litigated the *Johnson Action* in the District Court.

3. On November 29, 2022, the parties in the *Johnson* Action participated in mediation with neutral Mark Rudy, Esq. (the “Mediator”), a respected mediator of complex wage and hour actions. After continued settlement negotiations with the assistance of the Mediator and his evaluations, the *Johnson* parties accepted a mediator’s proposal to settle Johnson’s class and PAGA claims.

4. Separately, on March 3, 2023, Jed Asis (“Asis”) and Justin Watson (“Watson”) filed a letter with the LWDA alleging claims against Defendant for violations of Labor Code §§

201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802.

5. On January 26, 2023, Asis and Watson commenced a putative class action against Defendant entitled *Jed Asis and Justin Watson v. Foot Locker Retail, Inc.*, Superior Court of the State of California for the County of San Joaquin, Case No. STK-CV-UOE-2023-0000627. The initial complaint alleges claims for: (1) violation of Labor Code §§ 510 and 1194; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226; (4) violation of Labor Code §§ 201-203; (5) violation of Labor Code § 2802; and (6) violation of Business and Professions Code § 17200, *et seq.* The action was subsequently removed to the United States District Court, Eastern District of California (the “*Asis* Action”).

6. In or about February 2023, the plaintiffs in the *Johnson* and *Asis* Actions became aware of their potentially related matters. After meeting and conferring with the parties in both actions, Jed Asis, Justin Watson, and Kevin Johnson (collectively, “Plaintiffs”) and Defendant agreed to a global settlement of claims and executed a detailed memorandum of understanding on or about May 3, 2023, which is further memorialized in this Agreement.

7. The Parties further agreed to stay the *Johnson* Action pending completion of the various terms and conditions set forth in this Settlement Agreement. On May 2, 2023, the parties in the *Johnson* Action filed a Stipulation to Stay Action Pending Settlement Approval in Related Action. On May 3, 2023, the Court stayed the *Johnson* Action as requested.

8. On May 12, 2023, the Court approved the Parties’ Joint Stipulation to Remand Action to the Superior Court of California and remanded *Asis* Action to the Superior Court of the State of California for the County of San Joaquin for further proceedings.

9. As a condition of the global settlement, the Parties have agreed to consolidate the claims in the *Johnson* and *Asis* Actions. For the purposes of settlement only, the Parties stipulated and agreed, subject to the Court’s entry of an order approving the same, that leave be granted to file a First Amended Complaint. On July 21, 2023, the Parties submitted a stipulation requesting leave to file the First Amended Complaint, which included Kevin Johnson, the plaintiff in the *Johnson* Action, as a class representative and alleged the underlying claims, causes of action, and factual theories that were pled in both the *Johnson* Action and *Asis* Action. On July 21,

2023, the Court approved the Parties' stipulation and on July 25, 2023, Plaintiffs filed the First Amended Complaint, which is the operative complaint in the Action.

10. The settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and detailed analysis of Defendant's potential liability and total exposure in relation to the costs and risks associated with continued litigation.

11. Defendant denies all material allegations set forth in the Actions and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Actions and Released Claims and PAGA Released Claims, as defined below.

12. Counsel for Plaintiffs have diligently investigated the claims alleged in the Actions, including any and all applicable defenses, and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents and review of corporate policies and practices. Based on the documents produced, as well as counsel for Plaintiffs' own independent investigation and evaluation, counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the alleged putative class in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

13. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions.

B. DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Johnson v. Foot Locker Retail, Inc.* (United States District Court, Northern District Case No. 3:21-cv-02040-WHO) and *Asis v. Foot Locker Retail, Inc.* (San Joaquin

County Case No. STK-CV-UOE-2023-627), as amended, collectively.

2. “Class” or “Class Member(s)” means all current and former non-exempt employees of Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time during the Class Period.

3. “Class Counsel” or “Plaintiffs’ Counsel” mean Larry W. Lee Max W. Gavron, Nick Rosenthal, and Kristen Agnew of Diversity Law Group, P.C., Emil Davtyan of Davtyan Law Firm, Inc., and David J. Lee of David Lee Law, APC.

4. “Class Counsel Award” means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered and will render to Plaintiffs and the Class in the Action. Defendant agrees not to oppose a Class Counsel Award of up to thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, the sum of Three Million One Hundred Thirty-Nine Thousand Five Hundred Dollars (\$3,139,500.00), and costs in the amount of up to Thirty-Five Thousand Dollars (\$35,000.00), subject to the Court finally approving this Settlement.

5. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within fifteen (15) business days after Preliminary Approval. The Class List will be password protected and formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s (1) full name; (2) last known home address; (3) last known telephone number; (4) Social Security number; (5) total number of workweeks worked during the Class Period and PAGA Period; and (6) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. The Class List provided to the Settlement Administrator will be treated as confidential and will not be disclosed to anyone, except as may be required to applicable tax authorities, pursuant to Defendant’s express written consent, by order of the Court, or to carry out the reasonable steps described in this Settlement to locate missing Class Members.

6. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as “Exhibit A.”

7. “Class Period” means the time period commencing on October 19, 2018, and

1 ending February 27, 2023.

2 8. "Class Representatives" or "Plaintiffs" mean Jed Asis, Justin Watson, and Kevin
3 Johnson.

4 9. "Court" means the Superior Court of the State of California for the County of San
5 Joaquin.

6 10. "Defendant" means Foot Locker Retail, Inc.

7 11. "Defendant's Counsel" or "Defense Counsel" mean William C. Martucci and
8 Jason M. Richardson of Shook, Hardy & Bacon, L.L.P.

9 12. "Effective Date" means the first business day after all of the following events
10 have occurred: (a) this Agreement has been executed by all Parties and their respective counsel;
11 (b) the Court has given preliminary approval of the Settlement; (c) the Class Notice has been
12 given to the Class Members; (d) the Court has held a final approval hearing and entered a final
13 approval order and judgment certifying the Settlement Class and approving the Settlement; (e)
14 the United States District Court for the Northern District of California dismisses the *Johnson*
15 Action with prejudice, and (f) the later of the following events: (i) 65 calendar days following
16 notice of entry of the San Joaquin Superior Court's final approval order and judgment, assuming
17 no appeal or request for review is filed, or (ii) if any appeal, writ or other appellate proceeding
18 opposing this settlement has been filed within 65 calendar days following notice of entry of the
19 San Joaquin Superior Court's final approval order and judgment, then 30 calendar days after
20 when any appeal, writ, or other appellate proceeding opposing the Settlement has been resolved
21 finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the
22 intention of the Parties that the Settlement shall not become effective until entry of the San
23 Joaquin Superior Court's final approval order and judgment and the United States District Court
24 for the Northern District of California's dismissal of the *Johnson* Action with prejudice are
25 completely final, and there is no further recourse by an appellant or objector who seeks to contest
26 the Settlement.

27 13. "Final Approval" means the determination by the Court that the Settlement is fair,
28 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

1 14. “Final Approval Hearing” means the hearing at which the Court will consider and
2 determine whether the Settlement should be granted Final Approval.

3 15. “Gross Settlement Amount” means the amount of Eight Million Nine Hundred
4 Seventy Thousand Dollars (\$8,970,000.00) to be paid by Defendant in full resolution of all
5 Released Claims, PAGA Released Claims and the Action. The Gross Settlement Amount
6 includes all Individual Settlement Payments to Participating Class Members, the Incentive
7 Payment to Plaintiffs, Settlement Administration Costs to the Settlement Administrator, the
8 PAGA Penalties, and Class Counsel Award. In no event shall Defendant be required to pay any
9 amounts above this Gross Settlement Amount, with the limited exception that, as to that portion
10 of the payments to Participating Class Members that constitute wages, Defendant will be
11 separately responsible for only its share of any employer payroll taxes, including the employer
12 FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.
13 Defendant also agrees it is bound by the escalation provision Paragraph C.10.

14 16. “Incentive Payment” means the amount that the Court authorizes to be paid to
15 Plaintiffs, in addition to their Individual Settlement Payments and Individual PAGA Payments,
16 in recognition of their efforts and risks in assisting with the prosecution of the Action and in
17 exchange for a general release and waiver of Civil Code § 1542. Subject to the Court granting
18 final approval, the Parties agree that Plaintiffs shall each be paid up to Ten Thousand Dollars
19 (\$10,000.00) from the Gross Settlement Amount, totalling no more than Thirty Thousand Dollars
20 (\$30,000.00).

21 17. “Individual PAGA Payment” means the amount payable from the Net PAGA
22 Penalties to each PAGA Member.

23 18. “Individual Settlement Payment” means the amount payable from the Net
24 Settlement Amount to each Participating Class Member.

25 19. “Net PAGA Penalties” means twenty-five percent (25%), *i.e.*, the sum of One
26 Hundred Twenty-Five Thousand Dollars (\$125,000.00), of the PAGA Penalties, which shall be
27 distributed to PAGA Members.

28 20. “Net Settlement Amount” means the balance of the Gross Settlement Amount

1 remaining after deduction of the approved Incentive Payment to Plaintiffs, Settlement
2 Administration Costs, PAGA Penalties, and Class Counsel Award. The entire Net Settlement
3 Amount is the maximum amount that will be available for distribution to Participating Class
4 Members.

5 21. "Notice of Objection" means a Class Member's valid and timely written objection
6 to the Settlement, which must be in writing and include: (a) the case name and number of the
7 Action; (b) the objector's full name, signature, address, and telephone number, (c) a written
8 statement of all grounds for the objection accompanied by any legal support for such objection,
9 and (d) copies of any papers, briefs, or other documents upon which the objection is based. Any
10 Notice of Objection received shall apply solely to the release of the class claims. There is no
11 right to object to the PAGA Released Claims.

12 22. "PAGA Member" means all current and former non-exempt employees of
13 Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time
14 during the PAGA Period.

15 23. "PAGA Penalties" means the portion of the Gross Settlement Amount that the
16 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under
17 California Labor Code § 2698, et seq., the Private Attorneys General Act ("PAGA"). The amount
18 of the PAGA Penalties is subject to Court approval pursuant to California Labor Code § 2699(l).
19 The Parties have agreed that Five Hundred Thousand Dollars (\$500,000.00) of the Gross
20 Settlement Amount shall be allocated to the resolution of the PAGA Members' claims arising
21 under PAGA. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Penalties, i.e.,
22 the sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), shall be paid to the
23 California Labor and Workforce Development Agency. The remaining twenty-five percent
24 (25%) of the PAGA Penalties, i.e., the sum of One Hundred Twenty-Five Thousand Dollars
25 (\$125,000.00) ("Net PAGA Penalties"), shall be distributed to the PAGA Members.

26 24. "PAGA Period" means the time period commencing on July 19, 2019, and ending
27 February 27, 2023.

28 25. "PAGA Released Claims" means all claims, causes of action, demands, damages,

1 or liabilities arising at any time during the PAGA Period that were pled or which could have
2 been pled based on the factual allegations contained in the operative Complaints in the Actions
3 or any amendments thereto, for civil penalties under the PAGA including claims premised on
4 alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194,
5 and 2802. The PAGA Released Claims include all types of relief available for the PAGA
6 Released Claims, including without limitation any claims for damages, penalties, fines,
7 attorneys' fees, costs, expenses, or interest. This Settlement shall constitute, and may be pleaded
8 as, a complete and total defense to any PAGA Released Claims if raised in the future.

9 26. "Parties" means Plaintiffs and Defendant, collectively, and "Party" means either
10 Plaintiffs or Defendant.

11 27. "Preliminary Approval" means entry of the Court order granting preliminary
12 approval of the Settlement Agreement.

13 28. "Released Claims" means all claims, causes of action, demands, damages, or
14 liabilities arising at any time during the Class Period that were pled or which could have been
15 pled based on the factual allegations contained in the operative Complaints in the Actions or any
16 amendments thereto, including but not limited to claims for: (i) violation of Labor Code §§ 226.7
17 and 512; (ii) violation of Labor Code §§ 510 and 1194; (iii) violation of Labor Code §§ 201,
18 202, 203, 204, and 246; (iv) violation of Labor Code § 226; (v) violation of Labor Code § 2802;
19 and (vi) violation of Business & Professions Code §§ 17200, which are premised on the
20 violations described above. The Released Claims extend to all theories of relief, whether under
21 California law, federal law, state law, or common law (including, without limitation, as alleged
22 violations of the California Labor Code, the IWC Wage Orders, applicable regulations, or
23 California's Business and Professions Code §§ 17200). The Released Claims include all types
24 of relief available for the Released Claims, including without limitation any claims for damages,
25 restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest,
26 injunctive relief, declaratory relief, or liquidated damages. This Settlement shall constitute, and
27 may be pleaded as, a complete and total defense to any Released Claims if raised in the future.

28 29. "Released Parties" means Defendant, including each of its past, present and/or

1 future parent companies, subsidiaries, affiliates, divisions, related companies, successors, and
2 predecessors, as well as their respective past, present and future owners, officers, directors,
3 shareholders, employees, agents, members, managers, principals, representatives, accountants,
4 auditors, consultants, insurers and reinsurers, investors, lenders, administrators, company-
5 sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and
6 in their official capacities, as well as all persons acting by, through, under, or in concert with any
7 of these persons or entities.

8 30. "Request for Exclusion" means a timely letter submitted by a Class Member
9 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
10 clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth
11 the name, address, telephone number, and last four digits of the Social Security Number of the
12 Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by mail
13 to the Settlement Administrator at the specified address indicated in the Class Notice; and (e) be
14 postmarked on or before the Response Deadline.

15 31. "Response Deadline" means forty-five (45) days after the Settlement
16 Administrator initially mails the Class Notice to Class Members, and the last date on which Class
17 Members may submit Requests for Exclusion or Notices of Objections to the Settlement.

18 32. "Settlement Administration Costs" means the fees and expenses reasonably
19 incurred by the Settlement Administrator as a result of the procedures and processes expressly
20 required by this Agreement, which are estimated at Sixty-Five Thousand Dollars (\$65,000.00).
21 Any portion of the Settlement Administration Costs not used or approved by the Court shall be
22 added to the Net Settlement Amount.

23 33. "Settlement Administrator" means Phoenix Settlement Administrators, or any
24 other third-party class action settlement administrator agreed to by the Parties and approved by
25 the Court for purposes of administering this Settlement.

26 34. "Participating Class Members" means all Class Members who do not submit a
27 valid and timely Request for Exclusion.

28 35. "Settlement Payment Check" means the payment of the Individual Settlement

1 Payment to Participating Class Members and Individual PAGA Payment to PAGA Members.

2 **C. ADMINISTRATION OF SETTLEMENT**

3 1. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
4 this Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at
5 this Settlement after arm's-length negotiations, mediation, and in the context of adversarial
6 litigation, taking into account all relevant factors, present and potential. The Parties further
7 acknowledge that they are each represented by competent counsel and that they have had an
8 opportunity to consult with their counsel regarding the fairness and reasonableness of this
9 Agreement.

10 2. Non-Reversionary Settlement. This is a "non-reversionary" settlement. Under no
11 circumstances will any portion of the Gross Settlement Amount revert to Defendant. Class
12 Members will not have to make a claim in order to receive an Individual Settlement Payment or
13 Individual PAGA Payment. Distributions, in the form of Individual Settlement Payments and
14 Individual PAGA Payments, will be made directly to each Participating Class Member and PAGA
15 Member.

16 3. Funding of the Gross Settlement Amount. Within fourteen (14) business days of
17 the Effective Date, Defendant shall make a one-time deposit of the Gross Settlement Amount
18 into a Qualified Settlement Fund to be established by the Settlement Administrator. Defendant
19 shall also separately pay its share of employer payroll taxes as calculated and directed by the
20 Settlement Administrator.

21 4. Class Counsel Award. Defendant agrees not to oppose or impede any application
22 or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of the Gross
23 Settlement Amount, *i.e.*, the sum of Three Million One Hundred Thirty-Nine Thousand Five
24 Hundred Dollars (\$3,139,500.00), and costs in the amount of up to Thirty-Five Thousand Dollars
25 (\$35,000.00), which shall be paid from the Gross Settlement Amount. It is understood by Class
26 Counsel that the Court has final discretion in any fee award. The Settlement Administrator shall
27 issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and
28 expenses. Any portion of the Class Counsel Award not awarded to Class Counsel shall be added

1 to the Net Settlement Amount and shall be distributed to Participating Class Members as provided
2 in this Agreement. Notwithstanding any other provision of this Agreement, if the Court should fail
3 to award attorneys' fees to Class Counsel in the full amount provided for in this Agreement, no
4 order of the Court or modification of any order of the Court concerning the amount of any
5 attorneys' fees to be paid by Defendant to Class Counsel pursuant to this settlement shall constitute
6 grounds for cancellation or termination of the Agreement or grounds for limiting any other
7 provision of the Judgment. It is agreed that no order of the Court, including any order concerning
8 attorneys' fees, may alter or otherwise increase the Gross Settlement Amount.

9 5. Class Representative Incentive Payment. Defendant agrees not to oppose or impede
10 any application or motion by Plaintiffs for an Incentive Payment of up to Ten Thousand Dollars
11 (\$10,000.00) to each Plaintiff. The Incentive Payment shall be paid from the Gross Settlement
12 Amount and shall be paid in addition to Plaintiffs' Individual Settlement Payments as Participating
13 Class Members and Individual PAGA Payments as PAGA Members. It is understood by Class
14 Counsel and Plaintiffs that the Court has final discretion in any Incentive Payment. The Settlement
15 Administrator shall issue an IRS Form 1099 to Plaintiffs reflecting the Incentive Payment.
16 Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their
17 Incentive Payments and shall hold harmless Defendant from any claim or liability for taxes,
18 penalties, or interest arising as a result of the Incentive Payment. Any portion of the Incentive
19 Payment not awarded to Plaintiffs shall be added to the Net Settlement Amount and shall be
20 distributed to Participating Class Members as provided in this Agreement.

21 6. Settlement Administration Costs. The Settlement Administrator shall be paid for
22 the reasonable costs of administration of the Settlement from the Gross Settlement Amount,
23 currently estimated at Sixty-Five Thousand Dollars (\$65,000.00). These costs, which shall be paid
24 from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the
25 Individual Settlement Payments and Individual PAGA Payments, the issuance of W-2 and 1099
26 IRS Forms, establishing a Qualified Settlement Fund, administering and distributing the Gross
27 Settlement Amount and Class Counsel Award, and providing necessary reports and declarations.
28 Any portion of the Settlement Administration Costs not allowed shall be added to the Net

1 Settlement Amount and shall be distributed to Participating Class Members as provided in this
2 Agreement.

3 7. PAGA Penalties. Subject to Court approval, the Parties agree that the amount of
4 Five Hundred Thousand Dollars (\$500,000.00) of the Gross Settlement Amount shall be
5 designated for satisfaction of claims for civil penalties under the PAGA. The Settlement
6 Administration shall pay seventy-five percent (75%) of the PAGA Penalties, *i.e.*, the sum of Three
7 Hundred Seventy-Five Thousand Dollars (\$375,000.00), to the LWDA. The remaining twenty-
8 five percent (25%), *i.e.*, the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00)
9 (“Net PAGA Penalties”), shall be distributed to PAGA Members as per this Agreement.

10 8. Net PAGA Penalties. The Net PAGA Penalties shall be used to satisfy Individual
11 PAGA Payments to PAGA Members in accordance with the terms of this Agreement. The
12 Settlement Administrator will allocate the Individual PAGA Payments by first dividing the Net
13 PAGA Penalties by the total number of workweeks worked by PAGA Members during the PAGA
14 Period. That value will then be multiplied by the number of workweeks worked by each
15 respective PAGA Member in a non-exempt position during the PAGA Period. PAGA Members
16 are entitled to 100% of the Net PAGA Penalties. Defendant maintains no reversionary right to
17 any portion of the Net PAGA Penalties.

18 9. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
19 Individual Settlement Payments to Participating Class Members in accordance with the terms of
20 this Agreement. The Settlement Administrator will allocate the Individual Settlement Payments
21 by dividing the Net Settlement Amount by the total number of workweeks worked by Class
22 Members in a non-exempt position during the Class Period. The result will then be multiplied by
23 the number of workweeks each Participating Class Member worked in a non-exempt position
24 during the Class Period to calculate the amount owed to that individual. The payments to
25 Participating Class Members will be reduced by any required legal deductions for each
26 Participating Class Member. Participating Class Members are entitled to 100% of the Net
27 Settlement Amount. Defendant maintains no reversionary right to any portion of the Net
28 Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement

1 Administrator shall proportionately increase the Individual Settlement Payments for each
2 Participating Class Member so that the amount actually distributed to Participating Class
3 Members equals 100% of the Net Settlement Amount.

4 10. Calculation of Gross Settlement Amount & Escalation Clause. The Gross
5 Settlement Amount was calculated with, and is premised on, Defendant's representation that Class
6 Members worked approximately 600,000 workweeks during the Class Period. If the actual number
7 of workweeks worked by the Class Members exceeds 600,000 by more than ten percent (10%)
8 (*i.e.*, more than 60,000), Defendant shall increase the Gross Settlement Amount by 1% for every
9 1% increase in workweeks over the 10% threshold.

10 11. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
11 Participating Class Members, the Individual PAGA Payments made to PAGA Members, the
12 Incentive Payment made to Plaintiffs, as well as any other payments made pursuant to this
13 Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to
14 which any Participating Class Members may be eligible, including, but not limited to: profit-
15 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
16 PTO plans, and any other benefit plans. Rather, it is the Parties' intention that this Settlement will
17 not affect any rights, contributions, or amounts to which any Settlement Class Member or PAGA
18 Member may be entitled under any benefit plans.

19 12. Settlement Administration Process. The Parties agree to cooperate in the
20 administration of the Settlement and to make all reasonable efforts to control and minimize the
21 costs and expenses incurred in the administration of the Settlement. The Settlement Administrator
22 shall provide the following services:

- 23 a. Establish and maintain a Qualified Settlement Fund account;
- 24 b. Calculate the amount of the Settlement each Class Member and PAGA
25 Member is eligible to receive;
- 26 c. Verify the last known address for each Class Member and PAGA Member
27 through a generally utilized, national address update database prior to mailing the Class Notice;
- 28 d. Print and mail the Class Notice;

1 e. Establish and maintain a toll-free informational telephone support line to
2 assist Class Members who have questions regarding the Class Notice;

3 f. Conduct additional address searches for mailed Class Notices that are
4 returned as undeliverable and, to the extent new and more current addresses are found, also reprint
5 and re-mail Class Notices accordingly;

6 g. Field inquiries from Class Members and administer any Requests for
7 Exclusion. This service will include settlement proceed calculations, printing and issuance of
8 checks, and preparation of W-2 and 1099 Forms;

9 h. Distribute and pay the Incentive Payment, Individual Settlement Payments,
10 Individual PAGA Payments, the LWDA's portion of the PAGA Penalties, and fees and costs
11 awarded to Class Counsel; and

12 i. Provide declarations and/or other information to the Court as requested.

13 13. Delivery of the Class List. Within fifteen (15) business days of Preliminary
14 Approval, Defendant shall provide the Class List to the Settlement Administrator.

15 14. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
16 Class List from Defendant, the Settlement Administrator shall mail the Class Notice to all Class
17 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
18 identified in the Class List.

19 15. Confirmation of Contact Information in the Class List. Prior to mailing, the
20 Settlement Administrator shall perform a search based on the National Change of Address
21 Database for information to update and correct for any known or identifiable address changes.

22 16. Class Notices. All Class Members will be mailed a Class Notice. Each Class Notice
23 will provide: (1) information regarding the nature of the Action; (2) a summary of the Settlement's
24 principal terms; (3) the Class definition; (4) each Class Member's estimated Individual Settlement
25 Payment and the formula for calculating Individual Settlement Payments, if they do not request to
26 be excluded; (5) each Class Member's estimated Individual PAGA Payment and the formula for
27 calculating Individual PAGA Payments; (6) the dates that comprise the Class Period and PAGA
28 Period; (7) instructions on how to submit a valid Request for Exclusion or Notice of Objection;

(8) the deadline by which the Class Member must submit a Request for Exclusion or Notice of Objection; (9) the date for the final approval hearing; and (10) the claims to be released. The Class Notice will also inform Class Members that, in order to receive the Individual Settlement Payment and Individual PAGA Payment, they do not need to do anything except keep the Settlement Administrator apprised of their current mailing addresses.

17. Re-Mailing of Returned Notices. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security Number of the Class Member involved and shall then perform a re-mailing.

18. Request for Exclusion Procedures. Any Class Member, other than Plaintiffs, may opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth the name, address, telephone number, and last four digits of the Social Security Number of the Class Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement Administrator at the specified address indicated in the Class Notice; and (5) be postmarked on or before the Response Deadline. The date of the postmark shall be the exclusive means to determine whether a Request for Exclusion is timely. By submitting such a Request for Exclusion, a Class Member shall be deemed to have exercised his or her option to opt out of the Settlement and not be bound by this Agreement, except that in light of the binding nature of a PAGA judgment on non-party employees, Class Members employed during the PAGA Period who exclude themselves from this Settlement shall still be bound by the PAGA Released Claims. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a Request for Exclusion. Class Counsel shall not represent any Class Members with respect to any such request.

1 19. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
2 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
3 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
4 including those pertaining to the Released Claims, as well as any Judgment that may be entered
5 by the Court. Additionally, Class Members employed during the PAGA Period shall be bound by
6 the PAGA Released Claims, as well as any Judgment that may be entered by the Court thereon,
7 regardless of whether they opt-out of the Settlement.

8 20. Objection Procedures. Any Class Member who does not opt-out of this Settlement
9 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member should
10 return by mail a written statement of objection to the Settlement Administrator at the specified
11 address by the Response Deadline. The Notice of Objection must include: (1) the objector's full
12 name, signature, address, and telephone number; (2) a written statement of the basis for the
13 objection; and (3) any copies of papers, briefs, or documents upon which the objection is based.
14 However, any Class Member who does not submit a timely Notice of Objection may nevertheless
15 appear at the Final Approval Hearing and present an oral objection to the Settlement. At no time
16 shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
17 submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel
18 shall not represent any Class Members with respect to any such objections to this Settlement. Any
19 Class Member who submits a valid Request for Exclusion shall not be allowed to object to this
20 Settlement. No later than five (5) days after the Response Deadline, the Settlement Administrator
21 shall provide Defense Counsel with a complete list of all Class Members who have timely and
22 properly requested exclusion from the Class.

23 21. Defendant's Right to Rescind. If three percent (3%) or more of the Class submit a
24 timely and valid Request for Exclusion, Defendant will have the right, but not the obligation, to
25 revoke and void this Agreement at its discretion. Defendant must exercise the option to rescind
26 within seven (7) business days of Defense Counsel receiving notification from the Settlement
27 Administrator that more than three percent (3%) of the Class Members have submitted timely and
28 valid Requests for Exclusion from the Settlement. If Defendant exercises this right to void the

1 Agreement, then the Parties will have no further obligations under the Agreement, including,
2 without limitation, any obligation by Defendant to pay the Gross Settlement Amount, or any
3 amounts that otherwise would have been owed under this Agreement, except that Defendant shall
4 pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date
5 of Defendant's notice to rescind. In the event the Settlement is terminated, the Parties shall proceed
6 in all respects as if this Agreement had not been executed. The Parties agree that they will not
7 encourage any Class Member to object to the Settlement or to opt out.

8 22. Settlement Administrator's Reports of Information. The Settlement Administrator
9 shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of
10 Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement
11 Administrator will provide to counsel for both Parties any updated reports regarding the
12 administration of the Settlement as needed or requested. The Settlement Administrator shall also
13 forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further,
14 the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties'
15 counsel so that they can determine whether the Request for Exclusion is valid and timely.

16 23. Distribution of Payments. Within ten (10) calendar days of Defendant funding the
17 Gross Settlement Amount, the Settlement Administrator shall pay: (1) the Individual Settlement
18 Payments to Participating Class Members and Individual PAGA Payments to PAGA Members;
19 (2) the Labor and Workforce Development Agency seventy-five percent (75%) of the PAGA
20 Penalties; (4) the Incentive Payment to Plaintiffs; and (5) Class Counsel Award to Class Counsel.
21 The Settlement Administrator shall also issue a payment to itself for services performed in
22 connection with the Settlement.

23 24. Non-Negotiated Settlement Checks. Any Settlement Payment Checks shall be
24 negotiable until one hundred and eighty (180) calendar days after mailing to the Participating Class
25 Members and PAGA Members. Those funds represented by settlement checks returned as
26 undeliverable and the funds which correspond with the settlement checks that are not negotiated
27 within one hundred and eighty (180) calendar days after mailing shall be transferred to Legal Aid
28 at Work, the designated *cy pres* recipient, pursuant to Code of Civil Procedure § 384.

1 25. Certification of Completion. Upon completion of administration of the Settlement,
2 the Settlement Administrator shall provide a written declaration under oath to certify such
3 completion to the Court and counsel for all Parties.

4 26. Tax Allocation of Individual Settlement Payments. All Individual Settlement
5 Payments shall be allocated as follows: eighty percent (80%) as penalties and interest and reported
6 on an IRS Form 1099; and twenty percent (20%) shall be attributed to wages and reported via an
7 IRS Form W-2. Participating Class Members are responsible for their share of the payroll taxes,
8 which shall be deducted from their Individual Settlement Payments. Defendant is responsible for
9 the employer share of payroll taxes, in addition to the Gross Settlement Amount, and these taxes
10 will not be deducted from the Gross Settlement Amount.

11 27. Tax Allocation of Individual PAGA Payments. All Individual PAGA Payments
12 shall be allocated 100% as penalties. The amount of payment shall be reported on an IRS Form
13 1099 by the Settlement Administrator.

14 28. Administration of Taxes by the Settlement Administrator. The Settlement
15 Administrator shall be responsible for issuing to Plaintiffs, Participating Class Members, PAGA
16 Members, and Class Counsel, 1099 forms or other tax forms as may be required by law for all
17 amounts paid pursuant to this Agreement.

18 29. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and
19 Class Counsel make no representation as to the tax treatment or legal effect of the payments called
20 for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement,
21 representation, or calculation by Defendant, Defense Counsel, Class Counsel, or by the Settlement
22 Administrator in this regard. Plaintiffs and Participating Class Members understand and agree that
23 they will be solely responsible for the payment of any and all taxes and penalties assessed on their
24 respective payments described herein and will defend, indemnify, and hold Defendant, Defense
25 Counsel, Class Counsel, and the Settlement Administrator free and harmless from and against any
26 claims resulting from treatment of such payments as non-taxable penalties/damages.

27 30. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY

TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

D. RELEASE OF CLAIMS BY PLAINTIFFS AND THE SETTLEMENT CLASS

1. Release of Claims by Plaintiffs. As a condition to obtaining the Incentive Payment provided for herein, Plaintiffs (on behalf of themselves and their spouse(s), heirs, executors, administrators, trustees, and/or permitted assigns) also agree to a general release of any and all claims against Defendant and the Released Parties (as defined above)—which shall include without limitation any and all claims which in any way relate to their employment with Defendant,

under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof. Plaintiffs further expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

2. Release of Claims by Participating Class Members. Upon the payment of the Gross Settlement Amount, Plaintiffs and all Participating Class Members, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and all Released Claims.

3. Release of Claims by PAGA Members. Upon the payment of the Gross Settlement Amount, Plaintiffs and all PAGA Members, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged, to the fullest extent possible, any and all of the Released Parties of and from any and all PAGA Released Claims.

E. FINAL AND PRELIMINARY APPROVAL

1. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to request the Preliminary Approval of the Settlement, conditional certification of the Class, and the entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall provide for the Class Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs shall submit this Agreement, which sets forth the terms of this Settlement, and will include the proposed Class Notice, attached to this Agreement

1 as **Exhibit A.**

2 2. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
3 Requests for Exclusion or Notices of Objection to the Settlement, and with the Court's permission,
4 a Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval
5 of the Settlement along with the amounts properly payable for (i) Individual Settlement Payments;
6 (ii) the PAGA Penalties; (ii) the Class Counsel Award; (iii) the Incentive Payment; and (iv)
7 Settlement Administration Costs. Class Counsel will be responsible for drafting all documents
8 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
9 attorneys' fees and costs application to be heard at the Final Approval Hearing.

10 3. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
11 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
12 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
13 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
14 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
15 may be appropriate under court rules or as set forth in this Agreement.

16 4. Dismissal of the *Johnson* Action. Within seven (7) calendar days of notice of the
17 Court's entry of final judgment approving the terms of the Settlement, the Parties shall prepare
18 and file a joint stipulation of voluntary dismissal with prejudice in the *Johnson* Action.

19 5. Nullification of Settlement. In the event that the Settlement does not become final
20 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
21 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
22 likewise be treated as void from the beginning.

23 **F. CLASS CERTIFICATION & NON-ADMISSION OF LIABILITY**

24 1. Class Action Certification. The Parties are agreeing to class certification for
25 settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an
26 admission of any kind by Defendant, including without limitation, that certification of a class for
27 trial or any other purpose is appropriate or proper or that Plaintiffs or any Class Member can
28 establish any of the requisite elements for class treatment of any of the claims in this Action. If,

1 for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties
2 will be restored to their respective positions in the lawsuit as if they had not entered into this
3 Agreement. The Parties further agree that this Agreement or any documents or orders issued
4 related to this Settlement will not be admissible, other than according to the Settlement's terms, in
5 this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii)
6 Defendant is liable to the Plaintiffs or any Class Member.

7 2. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
8 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
9 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
10 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
11 pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached
12 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
13 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor
14 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as
15 an admission or concession by Defendant of any such violations or failures to comply with any
16 applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce
17 the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or
18 received as evidence in any action or proceeding to establish any liability or admission of any
19 nature on the part of Defendant, or to establish the existence of any condition constituting a
20 violation of, or a non-compliance with, federal, state, local, or other applicable law.

21 G. DISPUTES

22 1. Disputes Regarding Language of Settlement Agreement. If the Parties have a
23 dispute with regard to the language of the Agreement, the Parties agree to attempt to informally
24 resolve the dispute by engaging Mark Rudy, Esq. to mediate such dispute.

25 2. Disputes Regarding Individual Settlement Payments. In the event that Class
26 Members have a dispute as to the data provided by Defendant, Class Members will have the
27 opportunity to provide documentation and/or an explanation. Absent evidence rebutting
28 Defendant's records, Defendant's records will be presumed determinative. If there is a dispute, the

1 Settlement Administrator will consult with the Parties to determine whether an adjustment is
2 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of,
3 any Individual Settlement Payments and Individual PAGA Payments under the terms of this
4 Agreement, and that determination shall be binding.

5 3. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
6 Settlement Administrator concerning the administration of the Settlement will be resolved by the
7 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
8 for the Parties will confer in good faith to resolve the disputes without the necessity of involving
9 the Court.

10 4. Enforcement Actions. In the event that one or more of the Parties institutes any
11 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
12 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
13 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'
14 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

15 H. MISCELLANEOUS TERMS

16 1. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
17 agree to keep the terms of the Settlement confidential until the filing of Plaintiffs' Motion for
18 Preliminary Approval. Any confidentiality associated with the terms of this Settlement shall expire
19 upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except
20 that the negotiations and discussions preceding submission of the Settlement to the Court for
21 preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties
22 or unless otherwise ordered by the Court. Further, the Parties and their counsel agree that they will
23 not issue any press releases, initiate any contact with the press, respond to any press inquiry, post
24 information on any social media or website, or have any communication with the press about the
25 fact, amount, or terms of the Settlement. Plaintiffs and Class Counsel agree that if contacted by
26 the press regarding this case, they will only state that the Actions exist and have been resolved.
27 This provision shall not prohibit Class Counsel from communicating with Class Members after
28 preliminary approval is granted or if contacted by such Class Members. Nothing in this provision

1 prohibits Defendant from disclosing the terms of this Settlement prior to Plaintiffs' Motion for
2 Preliminary Approval in connection with public reporting requirements, nor does anything in this
3 provision prohibit the Parties or their counsel from disclosing the terms of the Settlement prior to
4 Plaintiffs' Motion for Preliminary Approval as may be required by law.

5 2. No Prior Assignments. The Parties and their counsel represent, covenant, and
6 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
7 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
8 action, cause of action, or right herein released and discharged.

9 3. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
10 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
11 herein. Any Exhibits to this Agreement are an integral part of the Settlement.

12 4. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
13 of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations
14 or agreements may be deemed binding on the Parties.

15 5. Amendment or Modification. This Agreement may be amended or modified only
16 by a written instrument signed by the Parties, their successors-in-interest, or their counsel.

17 6. Authorization to Enter into Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate this
19 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
20 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
21 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
22 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
23 the Parties are unable to reach agreement on the form or content of any document needed to
24 implement the Settlement, or on any supplemental provisions that may become necessary to
25 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
26 such disagreement.

27 7. Execution and Counterparts. This Agreement is subject only to the execution of all
28 Parties. However, the Agreement may be executed in one or more counterparts. All executed

1 counterparts and each of them, including facsimile, DocuSign, and scanned copies of the signature
2 page, shall be deemed to be one and the same instrument provided that counsel for the Parties shall
3 exchange among themselves original signed counterparts.

4 8. Binding on Successors and Assigns. This Agreement shall be binding upon, and
5 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

6 9. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
7 governed by and interpreted according to the laws of the State of California.

8 10. Invalidity of Any Provision. Before declaring any provision of this Agreement
9 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
10 consistent with applicable precedents so as to define all provisions of this Agreement valid and
11 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
12 way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the
13 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
14 provision had never been included in this Agreement.

15 11. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
16 that Plaintiffs or Class Counsel may appeal any reduction in the Class Counsel Award below the
17 amount Class Counsel requests, and either Party may appeal any order that materially alters the
18 Agreement's terms.

19 12. Captions. The captions and section numbers in this Agreement are inserted for the
20 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
21 provisions of this Agreement.

22 13. Waiver. No waiver of any condition or covenant contained in this Agreement or
23 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
24 constitute a further waiver by such party of the same or any other condition, covenant, right or
25 remedy.

26 14. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
27 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
28 against one Party than another merely by virtue of the fact that it may have been prepared by

counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

15. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement.

16. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement.

17. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement shall be fully enforceable and binding on all Parties, and agree that it shall be admissible and subject to disclosure in any proceeding to enforce its terms.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant.

PLAINTIFF KEVIN JOHNSON

Dated: 08/02/23, 2023

DocuSigned by:

Kevin Johnson

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Kevin Johnson

PLAINTIFF JED ASIS

Dated: July 31, 2023

DocuSigned by:

Jed Asis

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Jed Asis

PLAINTIFF JUSTIN WATSON

Dated: Aug 1, 2023

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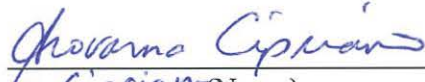
Justin Watson

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Justin Watson

DEFENDANT FOOT LOCKER RETAIL, INC.

Dated: August 17, 2023


Giovanna Cipriano (Name)
SVP (Title)
On behalf of Foot Locker Retail, Inc.

APPROVED AS TO FORM:

DIVERSITY LAW GROUP, P.C.
DAVTYAN LAW FIRM, INC.
DAVID LEE LAW, APC

Dated: August 2, 2023


Larry W. Lee
Max W. Gavron
Emil Davtyan
David Lee
Attorneys for Plaintiff Kevin Johnson, Jed Asis, and
Justin Watson and Proposed Class Counsel

SHOOK, HARDY & BACON, L.L.P.

Dated: August 17, 2023


William C. Martucci
Jason M. Richardson
Attorneys for Defendant Foot Locker Retail, Inc.
dba Champs US

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Jed Asis, Justin Watson, and Kevin Johnson v. Foot Locker Retail, Inc.
San Joaquin County Superior Court, Case No. STK-CV-UOE-2023-0000627

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

To: all current and former non-exempt employees of Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time between October 19, 2018, and February 27, 2023.

BASIC INFORMATION

1. What is this settlement about?

A lawsuit was filed by Kevin Johnson (“Plaintiff”) against Foot Locker Retail, Inc. (“Defendant”) on January 19, 2021, Superior Court of the State of California for the County of San Francisco, Case No. CGC-21-589180. The action was subsequently amended and removed to the United States District Court, Northern District of California (the “*Johnson* Action”). The *Johnson* third amended complaint alleges claims for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code §§ 510 and 1194; (3) violation of Labor Code §§ 201-204; (4) violation of Labor Code § 226(a); (5) violation of Business and Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.* The Parties thereafter litigated the *Johnson* Action in the District Court.

On January 26, 2023, Jed Asis and Justin Watson filed a putative class action against Defendant entitled *Jed Asis and Justin Watson v. Foot Locker Retail, Inc.*, Superior Court of the State of California for the County of San Joaquin, Case No. STK-CV-UOE-2023-0000627. The initial complaint alleges claims for: (1) violation of Labor Code §§ 510 and 1194; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226; (4) violation of Labor Code §§ 201-203; (5) violation of Labor Code § 2802; and (6) violation of Business and Professions Code § 17200, *et seq.* (the “*Asis* Action”). On July 25, 2023, Plaintiff Asis, Watson, and Johnson filed a First Amended Complaint in the *Asis* Action, which is the operative complaint (“*Complaint*”).

The lawsuit claims that Defendant violated sections of the California Labor Code for: (a) failing to provide timely and full-length meal breaks to employees who worked 5 hours or longer in one shift, in violation of Labor Code §§ 226.7 and 512; (b) failing to pay meal and/or rest period premiums at the regular rate of compensation when employees also earned non-discretionary remuneration during the same pay period in violation of Labor Code § 226.7 and 512; (c) failing to pay overtime wages for all hours worked and at the correct rate of pay, in violation of Labor Code §§ 510 and 1194; (d) failing to pay all wages owed upon separation of employment, in violation of Labor Code §§ 201-204 when employees were paid sick pay wages and non-discretionary wages, including, but not limited to, bonuses/commissions during the same workweek; (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); (f) failing to reimburse business expenses; and (g) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, and 1194, and the applicable IWC Wage Orders. The Complaint also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). The lawsuit claims that the Defendant violated the California Labor Code, entitling Class Members to damages, penalties and restitution. Defendant denies all alleged violations and denies that they owe Class Members anything. The Court has not made a ruling on the merits of the case.

2. Why is this a class action?

In a class action, one or more people called the Class Representative sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. In a class action one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The San Joaquin County Superior Court is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL] the Court granted preliminary approval of the Settlement, appointed Plaintiffs Jed Asis, Justin Watson, and Kevin Johnson, as the Class Representatives, and appointed their attorneys at Diversity Law Group, P.C., D. Law, Inc., and David Lee Law, APC, as counsel for the Class (“Class Counsel”).

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant as a non-exempt employee who worked for Defendant Foot Locker Retail, Inc. in California any time between October 19, 2018, and February 27, 2023 (the “Class Period”).

You are also an Aggrieved Employee, if you were employed by Defendant as a non-exempt employee who worked for Defendant Foot Locker Retail, Inc. in California any time between July 19, 2019, and ending February 27, 2023 (the “PAGA Period”).

THE SETTLEMENT BENEFITS—WHAT YOU GET

5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Eight Million Nine Hundred Seventy Thousand Dollars (\$8,970,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed 35% of the Gross Settlement Amount or Three Million One Hundred Thirty-Nine Thousand Five Hundred Dollars (\$3,139,500.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Thirty-Five Thousand Dollars (\$35,000.00);
- C. **Class Representative Enhancement Payment** in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to each Plaintiff, totaling no more than Thirty Thousand Dollars (\$30,000.00);

D. **Settlement Administration Costs** which are currently estimated to be Sixty-Fix Thousand Dollars (\$65,000.00); and

E. **PAGA Payment** in the amount of Five Hundred Thousand Dollars (\$500,000.00) for the settlement of claims arising under the Private Attorney's General Act of 2004 ("PAGA"). Seventy-Five percent (75%) of this amount, (\$375,000.00) shall be paid to the LWDA. The remaining twenty-five percent (25%) (\$125,000.00) will be distributed to the Aggrieved Employees, for the release of their claims as set forth in the PAGA Released Claims, described below in Section [REDACTED].

The amount you are eligible to receive from the settlement, your "Individual Settlement Payment" will be determined on a *pro rata* basis, based on the number of workweeks you worked in California as a non-exempt employee during the Class Period. The Settlement Administrator will allocate the Individual Settlement Payments by dividing the Net Settlement Amount by the total number of workweeks worked by Class Members in a non-exempt position during the Class Period. The result will then be multiplied by the number of workweeks each Participating Class Member worked in a non-exempt position during the Class Period to calculate the amount owed to that individual.

[ONLY FOR AGGRIEVED EMPLOYEES: Your share of the Net PAGA Penalties is calculated on a *pro rata* basis based on the total number of weeks you worked for Defendant during the PAGA Period. The Settlement Administrator will allocate the Individual PAGA Payments by first dividing the Net PAGA Penalties by the total number of workweeks worked by PAGA Members during the PAGA Period. That value will then be multiplied by the number of workweeks worked by each respective PAGA Member in a non-exempt position during the PAGA Period. This portion of the Settlement will be categorized as 100% penalties and subject to an IRS Form 1099.]

Your Individual Settlement Payment will be apportioned as twenty percent (20%) wages, eighty percent (80%) interest and penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member's settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

You worked XXX workweeks during the Class Period [ONLY FOR AGGRIEVED EMPLOYEES: and XXX workweeks during the PAGA Period.] Your Individual Settlement Payment is \$XXX.XX [ONLY FOR AGGRIEVED EMPLOYEES: and your Individual PAGA Payment is \$XXX.XX.] The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.

This Amount was determined based on Defendant's record of your employment during the Class Period and/or PAGA Period, and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of workweeks during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your workweeks will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No].

[Fax No.]

HOW TO GET A PAYMENT FROM THE SETTLEMENT

6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount by Defendant and entry of Final Approval Order and Final Judgment by the Court, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion will release the “Released Parties” from the “Released Claims” for the “Class Period.”

The “Released Parties” means Defendant Foot Locker Retail, Inc., including each of its past, present and/or future parent companies, subsidiaries, affiliates, divisions, related companies, successors, and predecessors, as well as their respective past, present and future owners, officers, directors, shareholders, employees, agents, members, managers, principals, representatives, accountants, auditors, consultants, insurers and reinsurers, investors, lenders, administrators, company-sponsored employee benefit plans, assigns, joint venturers, and attorneys, both individually and in their official capacities, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

The “Released Claims” means all claims, causes of action, demands, damages, or liabilities arising at any time during the Class Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaints in the Actions or any amendments thereto, including but not limited to claims for: (i) violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 510 and 1194; (iii) violation of Labor Code §§ 201, 202, 203, 204, and 246; (iv) violation of Labor Code § 226; (v) violation of Labor Code § 2802; and (vi) violation of Business & Professions Code §§ 17200, which are premised on the violations described above. The Released Claims extend to all theories of relief, whether under California law, federal law, state law, or common law (including, without limitation, as alleged violations of the California Labor Code, the IWC Wage Orders, applicable regulations, or California’s Business and Professions Code §§ 17200). The Released Claims include all types of relief available for the Released Claims, including without limitation any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. This Settlement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims if raised in the future.

[ONLY AGGRIEVED EMPLOYEES:] All Aggrieved Employees will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the “PAGA Released Claims” with respect to all of the Released Parties even if a Class Member submits a Request for Exclusion.

“PAGA Released Claims” means all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaints in the Actions or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, and 2802. The PAGA Released Claims include all types of relief available for the PAGA Released Claims, including without limitation any claims for damages, penalties, fines, attorneys’ fees, costs, expenses, or interest. This Settlement shall constitute, and may be pleaded as, a complete and total defense to any PAGA Released Claims if raised in the future.]

EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS

If you want to keep the right to sue or continue to sue Released Parties with respect to the Released Claims (other than those which fall within the definition of the PAGA Released Claims), then you must submit a

request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive your share of payment from the Net Settlement Amount. However, if eligible, you will still receive your Individual PAGA Payment because the Request for Exclusion does not apply to this claim.

8. How can I not participate in the Settlement?

To exclude yourself from the release of Released Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: “I wish to exclude myself from the class action settlement reached in the matter of *Jed Asis, Justin Watson, and Kevin Johnson v. Foot Locker Retail, Inc.*”

The written for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No.]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You may still receive a portion of the Net PAGA Penalties if you worked during the PAGA Period, because the Request for Exclusion does not apply to the PAGA Released Claims. You will not be legally bound by the release of Released Claims.

If you exclude yourself, you may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Claims (except for Released Claims that fall within the definition of the PAGA Released Claims).

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court has approved Diversity Law Group, P.C., Davtyan Law Firm, Inc., and David Lee Law, APC as Class Counsel. The firm’s contact information is:

DIVERSITY LAW GROUP, P.C. Larry W. Lee, Esq. lwlee@diversitylaw.com Max W. Gavron, Esq. mgavron@diversitylaw.com 515 S. Figueroa Street, Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	D. LAW, INC. Emil Davtyan emil@davtyanlaw.com 400 N. Brand Blvd, Suite 700 Glendale, CA 91203 Telephone: (818) 275-5799	DAVID LEE LAW, APC David J. Lee david@davidjleelaw.com 515 S. Flower Street, Suite 1900 Los Angeles, California 90071 Telephone: (213) 236-3536
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Class Counsel will ask the Court for attorneys’ fees of up to \$3,139,500.00 and reimbursement of litigation cost/expenses of up to \$35,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT

10. What if I want to object to this settlement?

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you should mail your written objection to the Settlement Administrator no later than [DATE]. Your objection must include the case name and number of the Action; your full name, signature, address, and telephone number; a written statement of all grounds for the objection accompanied by any legal support for such objection; and copies of any papers, briefs, or other documents upon which the objection is based for the Court to consider. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection. Instructions on how to do so are in Section 12, below. You may not object to the PAGA Released Claims.

11. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

12. When and where will the Court decide whether to approve the settlement?

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend. The Court will hold the Final Approval Hearing at [] a.m. on [], 2023] in Department 10A of the San Joaquin County Superior Court located at 180 E. Weber Avenue, Stockton, California 95202.

Hearings before the judge overseeing this case will be conducted remotely. Class members who wish to appear should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at <https://www.sjcourts.org/divisions/civil/> and should be reviewed in advance. Class members may appear remotely using the telephone number, bridge number, and pin number for Department 10A.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

13. Do I have to come to the hearing?

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. Hearings before the judge overseeing this case will be conducted remotely. Class members who wish to appear should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at <https://www.sjcourts.org/divisions/civil/> and should be reviewed in advance. Class members may appear remotely using the telephone number, bridge number, and pin number for Department 10A.

IF YOU DO NOTHING

14. What happens if I do nothing at all?

If you do nothing, you will receive your share of the Settlement, and you will release the Released Claims. You will not be able to participate in any other lawsuit against Defendant or Released Parties about the Released Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be paid to Legal Aid at Work, a non-profit legal entity, to further the objectives of the underlying class action, or promote the law consistent with the objectives of the underlying class action.

GETTING MORE INFORMATION

15. How do I get more information?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed Settlement Agreement which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Joaquin County Superior Court, located at 180 E. Weber Avenue, Stockton, California 95202, and may also be reviewed online at [\[insert court website link\]](#).

WHAT IF MY INFORMATION CHANGES?

16. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO
THE CLERK OF THE COURT OR THE JUDGE**

EXHIBIT B