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Abraham Lincoln

08/19/2013

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Attorney for Plaintiffs BRANDYN TONEY,
UCHENNA OKEZIE, and NATHANIEL GORDON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

BRANDYN TONEY, UCHENNA
OKEZIE, and NATHANIEL GORDON,

Plaintiffs,

v.

FRONTRUNNERS FOOTWEAR, INC.,
SUREFOOT, LLC, NILES BUNNAG, and
DOES 1 through 50,

Defendants.

CASE NO.

**PLAINTIFFS' COMPLAINT FOR
DAMAGES ALLEGING:**

- (1) Racial Harassment in Violation of the Fair Employment and Housing Act;
- (2) Retaliation in Violation of the Fair Employment and Housing Act;
- (3) Racial Discrimination in Violation of the Fair Employment and Housing Act;
- (4) Failure to Prevent Discrimination or Harassment in Violation of the Fair Employment and Housing Act;
- (5) Wrongful Constructive Termination in Violation of Public Policy;
- (6) Rest Break Violations;
- (7) Meal Period Violations; and
- (8) Waiting Time Penalties

FILED
Los Angeles Superior Court

AUG 19 2013

John A. Clarke, Executive Officer/Clerk
By KATHY MORALES, Deputy

BC518770

PM FAX

RECEIPT #: CCH448295083
DATE PAID: 08/19/13 04:03 PM
PAYMENT: \$435.00
RECEIVED:
CHECK: \$435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00

CIT/CASE: BC518770
LEA/DEF#:

1 Plaintiffs BRANDYN TONEY, UCHENNA OKEZIE, and NATHANIEL GORDON
2 complain against FONTRUNNERS FOOTWEAR, a California Corporation, SUREFOOT, LLC,
3 a Utah Corporation, NILES BUNNAG, an Individual and DOES 1-50, inclusive, and demand a
4 trial by jury of all issues and causes of action alleged.

5 **PARTIES AND JURISDICTION**

6 1. At all pertinent times mentioned in this Complaint, Plaintiffs BRANDYN
7 TONEY, UCHENNA OKEZIE, and NATHANIEL GORDON ("Plaintiffs") were and are
8 residents of the State of California, in the County of Los Angeles. Plaintiffs worked for
9 Defendants FRONTRUNNERS FOOTWEAR and SUREFOOT, LLC at their Brentwood
10 location within the County of Los Angeles. At all times relevant hereto, Defendant NILES
11 BUNNAG was and continues to be the Manager of the Brentwood Store, and supervised
12 Plaintiffs' employment with the Corporate Defendants.

13 2. Defendant FRONTRUNNERS FOOTWEAR ("Frontrunners") is a California
14 corporation which designs and sells active wear and footwear for running, yoga, Pilates and other
15 popular activities.

16 3. Defendant SUREFOOT, LLC ("Surefoot") is a Utah Limited Liability Company
17 which owns and operates Frontrunners. At all times relevant herein, Surefoot and Frontrunners
18 operated as a joint employer of Plaintiffs, with each entity providing rules and regulations
19 governing Plaintiffs' employment, wages, supervisors, and all material terms and conditions of
20 Plaintiffs' employment.

21 4. Frontrunners and Surefoot will be collectively referred to in this Complaint as
22 "Corporate Defendants."

23 5. Defendant NILES BUNNAG ("Bunnag"), an Individual Defendant, is a resident
24 of the State of California, in and for the County of Los Angeles. Bunnag worked as the Store
25 Manager for the Corporate Defendants' Brentwood location, and supervised Plaintiffs'
26 employment at all times mentioned herein.

27 6. The true names and capacities, whether individual, corporate, associate, or
28 otherwise, of Does 1-50, inclusive, are unknown to Plaintiffs, who therefore sues the DOE

1 Defendants by fictitious names. Plaintiffs will amend this Complaint to show their true names
2 and capacities when they have been ascertained.

3 7. At all times mentioned in the causes of action alleged in this Complaint, into
4 which this paragraph is incorporated by reference, each and every defendant was the agent or
5 employee of each and every other defendant. In engaging in the conduct alleged in the causes of
6 action into which this paragraph is incorporated by reference, each and every defendant was
7 acting within the course and scope of this agency or employment and was acting with the
8 consent, permission, and authorization of each of the remaining defendants. All actions of each
9 defendant alleged in the causes of action into which this paragraph is incorporated by reference
10 were ratified and approved by the officers or managing agents of every other defendant.

11 8. Venue is proper in Los Angeles County pursuant to California Government Code
12 § 12965(b), because Plaintiffs worked at Defendants' Brentwood location, located in Los
13 Angeles County, where the unlawful acts alleged herein occurred.

14 ADMINISTRATIVE REMEDIES

15 9. Plaintiffs have satisfied all private, administrative and judicial prerequisites to the
16 institution of this action. Plaintiffs filed Complaints of Discrimination under the provisions of
17 the California Fair Employment and Housing Act with the Department of Fair Employment and
18 Housing. Plaintiffs have filed the instant complaint in a timely manner within the limits set by
19 California law and based upon agreement of the parties.

20 10. This action is not preempted by the California Workers' Compensation Act
21 because sex and age discrimination, failure to prevent discrimination, and wrongful termination
22 in violation of public policy are not risks or conditions of employment.

23 FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

24 11. Plaintiff Brandyn Toney was employed by the Corporate Defendants for nearly
25 three years. Plaintiff Toney was employed by Frontrunners LA originally, and, following
26 Surefoot's acquisition of Frontrunners LA in June 2012, Mr. Toney became an employee of both
27 companies. Mr. Toney worked at the Corporate Defendants' Brentwood store, where he was
28 supervised by Store Manager Niles Bunnag. Plaintiffs Okezie and Gordon also worked for the
Corporate Defendants, in the Brentwood store, also supervised by Mr. Bunnag. Plaintiffs all

1 worked as Sales Associates, and their jobs were to fit and explain different styles of running
2 shoes, insoles and apparel to customers, and sell items to customers on a commission basis.
3 Plaintiff Toney was the top sales associates in the Brentwood store during his employment with
4 the Corporate Defendants.

5 12. Mr. Bunnag engaged in repeated and unrelenting racial harassment of Plaintiff
6 Toney and other African-American employees of the Corporate Defendants. This harassment
7 occurred on a weekly basis, beginning in January 2011 until each Plaintiff ultimately resigned
8 his position with the Corporate Defendants, as the working conditions were intolerable due to the
9 racial harassment.

10 13. Mr. Bunnag engaged in a pattern of racial harassment through repeated use of
11 racial slurs and epithets, both directed at employees of the Corporate Defendants, and directed at
12 customers in the presence of said employees. These racial slurs include, but are not limited, to
13 the words "nigger," "monkey," "chicken head" and "Black Peter Pan." Plaintiff Gordon also
14 recalls Mr. Bunnag referring to himself and other African-American employees as the "black
15 crows from Dumbo."

16 14. Mr. Bunnag has repeatedly, and over a long period time, called Plaintiff Toney
17 "monkey" and "chicken head," both of which are racial slurs. These slurs were made towards
18 Plaintiff Toney by Mr. Bunnag on multiple occasions, the most recent of which occurred on June
19 18, 2013. Mr. Bunnag made the same slurs towards Plaintiffs Okezie and Gordon, on a weekly
20 basis.

21 15. Plaintiff Toney confronted Mr. Bunnag regarding his use of these terms, and the
22 fact that Plaintiff Toney found it offensive. Mr. Bunnag's response was not to deny that this
23 occurred, but instead stated that he felt he had the right to use these terms because of their
24 working relationship. Indeed, even after Plaintiff Toney confronted Mr. Bunnag, and made him
25 aware that he found the slurs offensive, Mr. Bunnag *again* used these racial slurs towards Mr.
26 Toney.

27 16. Mr. Bunnag has a history of using racial slurs against at least three employees of
28 the Corporate Defendants, employees, and making jokes that made these other employees feel
uncomfortable. Two of these employees are Plaintiffs Uchenna Okezie and Nathaniel Gordon.

1 17. When Mr. Bunnag's son used racial slurs against Plaintiff Okezie, he informed
2 Mr. Bunnag that these slurs made him feel uncomfortable. Mr. Bunnag and his son continued to
3 make these slurs, and openly mocked Plaintiff Okezie for both his race and discomfort with the
4 racial slurs.

5 18. The harassment was also reported to Senior Manager Linda Sparling, but no
6 action was ever taken by the Corporate Defendants to stop the harassment.

7 19. Numerous of these incidents have been witnessed by other managers employed by
8 the Corporate Defendants, who failed to take any action to remedy the discriminatory and hostile
9 work environment created by Mr. Bunnag.

10 20. Indeed, on at least one occasion, January 6, 2013, Mr. Bunnag laughed while his
11 adult son, who is also an employee of the Corporate Defendants, was permitted to call employees
12 of the Corporate Defendants "nigger." Specifically, Mr. Bunnag's son, Jonathon Bunnag, was
13 upset that he was it was his turn on the store's rotation to greet and assist a customer. Jonathan
14 Bunnag told Plaintiff Okezie "why'd you tell my dad on me, that wasn't even my fucking
15 customer. I had my customer then I went to -relace that shoe while I was waiting. Its you dumb
16 niggers that wasn't paying attention and messed everything up. That bitch [the customer] didn't
17 even buy shit." When the employees, including Plaintiff Okezie, brought this to Mr. Bunnag's
18 attention, it was again brushed off - Mr. Bunnag just told Jonathan he needed to find a better
19 way to express his emotions, but did not address Jonathan's use of the word "nigger" at all. Mr.
20 Bunnag never reported the incident to upper management. Indeed, Mr. Bunnag himself used the
21 word "nigger" directed at Surefoot and FrontRunner's employees, as recently as February 2013.
22 In addition, Mr. Bunnag frequently makes racist jokes or slurs about African-American,
23 Hispanic, and Arabic customers of the Corporate Defendants, in front of his subordinates. As a
24 result of this incident,, and all the other racial harassment he had already endured, Plaintiff
25 Okezie informed Mr. Bunnag on January 16, 2013, that he would be resigning his position.

26 21. Plaintiff Toney made a formal complaint regarding the harassment perpetrated by
27 Mr. Bunnag, in a June 18 email to Surefoot's Human Resources Department. Although
28 Surefoot, through its managers, had been aware of Mr. Bunnag's conduct for quite some time,
and has informed Plaintiff Toney that it corroborated the facts made in his complaint, Surefoot

1 failed to discipline Mr. Bunnag. Indeed, Surefoot's CEO, Robert Lopez, met with Plaintiff
2 Toney on July 13, 2013, one day after Plaintiff Toney submitted his letter of resignation. Mr.
3 Lopez coaxed Mr. Bunnag to tell Plaintiff Toney "sorry" and Mr. Lopez then asked that Plaintiff
4 Toney not resign. The Corporate Defendants, through Mr. Lopez, informed Plaintiff Toney that
5 Mr. Bunnag may attend an extra harassment training in the future, but Mr. Toney is informed
6 and believes and hereby alleges that Mr. Bunnag has not been disciplined, demoted, suspended,
7 or terminated for his racially harassing conduct, despite statements in employee handbooks
8 provided to Plaintiffs that racial harassment is not tolerated by the Corporate Defendants.

9 22. These inactions not remedy the problem, and but rather simply showed Plaintiffs
10 that shows that the Corporate Defendants are ratifying and condoning the harassment perpetrated
11 by Mr. Bunnag. As a result, Plaintiff Toney, like any reasonable person in his position, was
12 forced to quit his job working for the Corporate Defendants, and look for work in a company that
13 does not permit racial harassment to occur.

14 23. Similarly, Plaintiffs Okezie and Gordon were also forced to quit their employment
15 with the Corporate Defendants, after other managers witnessed the racial harassment perpetrated
16 by Mr. Bunnag, and did not act to either stop the harassment from occurring, or report it to
17 Human Resources.

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19 **FIRST CAUSE OF ACTION**
20 **Racial Harassment in Violation of the California Fair Employment and Housing Act**
21 **Against All Defendants**

22 24. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
23 23 above.

24 25. The above conduct was unwelcome, directed toward Plaintiffs, offensive, and was
25 part of an ongoing and continuing pattern of racially harassing conduct.

26 26. The above conduct caused Plaintiffs to perceive their work environments as
27 intimidating, hostile, abusive and/or offensive, thereby constituting a hostile work environment
28 based upon Plaintiffs' race.

1 27. The above conduct as severe and/or pervasive harassing conduct, directed at
2 Plaintiffs because of their race.

3 28. Complaints and/or information about much of the harassing conduct were made to
4 all Defendants, but the harassment continued.

5 29. Plaintiffs filed timely complaints against the Defendants with the DFEH alleging
6 racial harassment and failure to prevent racial harassment. Thereafter, Plaintiffs received from
7 the DFEH notification of their rights to sue in the Courts of the State of California, the
8 Defendants for which complaints had been filed.

9 30. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
10 committed with the wrongful intent to injure Plaintiffs and in conscious disregard of Plaintiffs'
11 rights.

12 31. By reason of the conduct of Defendants and each of them as alleged herein,
13 Plaintiffs have necessarily retained attorneys to prosecute the within action. Plaintiffs are
14 therefore entitled to reasonable attorney's fees and litigation expenses, including expert witness
15 fees and costs, incurred in bringing the within action.

16 32. As a result of Defendants' actions, Plaintiffs sustained economic harms and losses
17 in an amount according to proof at the time of trial. These amounts exceed the jurisdictional
18 requirements of this Court. As a further result of Defendants' actions, Plaintiffs suffered
19 emotional distress, resulting in damages in an amount according to proof at the time of trial.
20 These amounts exceed the jurisdictional requirements of this Court.

21 33. WHEREFORE Plaintiffs pray for relief as stated in pertinent part hereinafter.

22 **SECOND CAUSE OF ACTION**

23 **Retaliation in Violation of the California Fair Employment and Housing Act**
24 **By Plaintiff Toney Against the Corporate Defendants and DOES 1-50**

25 34. Plaintiffs hereby incorporate by reference Paragraphs 1 through 33, inclusive, as
26 though set forth here in full.

27 35. Plaintiff Toney engaged in protected activities when he complained about Mr.
28 Bunnag's conduct to the Corporate Defendants, including but not limited to Mr. Bunnag himself,
initially, and then the Human Resources Department when the harassment continued. Defendant

1 and each of them, and/or their agents/employees, retaliated against Plaintiff in violation of
2 Government Code, §12940(h) by refusing to take action against Mr. Bunnag, thereafter accusing
3 Plaintiff Toney of theft (the first disciplinary action ever alleged against Plaintiff Toney) and
4 constructively terminating his employment after he engaged in a protected activity.

5 36. Plaintiff's complaint for racial harassment was a substantial motivating reason for
6 the adverse employment actions taken against Plaintiff Toney, in violation of the FEHA.

7 37. Plaintiff Toney was harmed by Defendants' actions.

8 38. Defendants' act of subjecting Plaintiff to adverse employment actions in
9 retaliation for his complaint of racial harassment is a substantial factor in causing Plaintiff's
10 harm.

11 39. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
12 committed with the wrongful intent to injure Plaintiff Toney and in conscious disregard of
13 Plaintiff's rights.

14 40. By reason of the conduct of Defendants, Plaintiff Toney has necessarily retained
15 attorneys to prosecute the within action. Plaintiff is therefore entitled to reasonable attorney's
16 fees and litigation expenses, including expert witness fees and costs, incurred in bringing the
17 within action.

18 41. As a result of Defendants' actions, Plaintiff sustained economic harms and losses
19 in an amount according to proof at the time of trial. These amounts included but are not limited
20 to lost wages, benefits, and stock options that exceed the jurisdictional requirements of this
21 Court. As a further result of Defendant's actions, Plaintiff suffered emotional distress, resulting
22 in damages in an amount according to proof at the time of trial. These amounts exceed the
23 jurisdictional requirements of this Court.

24 42. WHEREFORE, Plaintiff prays for relief as stated in pertinent part hereinafter.
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THIRD CAUSE OF ACTION
Race Discrimination
California Fair Employment and Housing Act ("FEHA")
California Government Code § 12940 et seq.
Against all Corporate Defendants and DOES 1-50

43. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through 42 above.

44. The Corporate Defendants are employers as defined by the Fair Employment and Housing Act (FEHA).

45. Plaintiffs are African-American males, and thus part of a protected class as defined by the FEHA.

46. Defendants subjected Plaintiffs to adverse employment actions, including but not limited to failing to consider them for promotion, failure to promote them, failure to transfer him to other departments away from Mr. Bunnag, failure to transfer, discipline, and/or terminate Mr. Bunnag's employment, and ultimately, constructive termination of their employment with the Corporate Defendants.

47. Plaintiffs' protected status as African-American males was a substantial motivating reason for the adverse employment actions, in violation of FEHA.

48. Plaintiffs were harmed by Defendants' actions.

49. Defendants' act of subjecting Plaintiffs to adverse employment actions based on their race is a substantial factor in causing Plaintiffs' harm.

50. Defendant's actions were willful, malicious, fraudulent and oppressive, and were committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiffs' rights.

51. By reason of the conduct of Defendants, Plaintiffs have necessarily retained attorneys to prosecute the within action. Plaintiffs are therefore entitled to reasonable attorney's fees and litigation expenses, including expert witness fees and costs, incurred in bringing the within action.

52. As a result of Defendants' actions, Plaintiffs sustained economic harms and losses in an amount according to proof at the time of trial. These amounts included but are not limited to lost wages, benefits, and stock options that exceed the jurisdictional requirements of this

1 Court. As a further result of Defendants' actions, Plaintiffs suffered emotional distress, resulting
2 in damages in an amount according to proof at the time of trial. These amounts exceed the
3 jurisdictional requirements of this Court.

4 53. WHEREFORE, Plaintiffs pray for relief as stated in pertinent part hereinafter.

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6 **FOURTH CAUSE OF ACTION**
7 **Failure to Prevent Discrimination and Harassment**
8 **California Fair Employment and Housing Act ("FEHA")**
9 **California Government Code §12940 et seq.**
10 **Against All Corporate Defendants and DOES 1-50**

11 54. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
12 53 above.

13 55. In violation of FEHA, the Corporate Defendants failed to take all reasonable steps
14 necessary to prevent racial harassment and/or discrimination against Plaintiffs.

15 56. In perpetrating the above-described conduct, Defendants engaged in a pattern,
16 practice, policy and custom of racial harassment and/or discrimination. Said conduct on the part
17 of Defendants constituted a policy, practice, tradition, custom and usage which denied Plaintiffs
18 protection of the FEHA.

19 57. At all relevant time periods, Defendants failed to make an adequate response and
20 investigation into the allegations of racial harassment and/or discrimination by Plaintiff Toney
21 and other employees. Plaintiff Toney reported the aforesaid pattern and practice, and thereby
22 established a policy, custom, practice or usage within the organization of Defendant, which
23 condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in racial
24 harassment and/or toward Plaintiffs. In addition, Defendants managers were aware of the
25 conduct, but did nothing to stop the harassment or discrimination from occurring.

26 58. At all relevant time periods there existed within the organization of Defendant a
27 pattern and practice of conduct by its personnel which resulted in racial harassment and/or
28 discrimination, including but not necessarily limited to, conduct directed at Plaintiffs.

59. Defendants did not have an adequate racial harassment and/or discrimination
policy in effect, did not implement the limited and inadequate policy they did have, and did not

1 provide adequate racial harassment and/or discrimination training for its employees and
2 managers.

3 60. Defendants knew or reasonably should have known that the failure to provide
4 adequate education, training, and information as to their personnel policies and practices
5 regarding racial harassment and/or discrimination would result said harassment and
6 discrimination against employees including but not limited to Plaintiffs.

7 61. The failure of Defendants to provide any or adequate education, training, and
8 information to personnel concerning policies and practices regarding racial harassment and/or
9 discrimination constituted deliberate indifference to the FEHA rights of employees, including but
10 not limited to those of Plaintiffs.

11 62. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
12 committed with the wrongful intent to injure Plaintiffs and in conscious disregard of Plaintiffs'
13 rights

14 63. By reason of the conduct of Defendants, Plaintiffs have necessarily retained
15 attorneys to prosecute the within action. Plaintiffs are therefore entitled to reasonable attorney's
16 fees and litigation expenses, including expert witness fees and costs, incurred in bringing the
17 within action.

18 64. As a result of Defendants' actions, Plaintiffs sustained economic harms and losses
19 in an amount according to proof at the time of trial. These amounts exceed the jurisdictional
20 requirements of this Court. As a further result of Defendants' actions, Plaintiffs suffered
21 emotional distress, resulting in damages in an amount according to proof at the time of trial.
22 These amounts exceed the jurisdictional requirements of this Court.

23 65. WHEREFORE Plaintiffs pray for relief as stated in pertinent part hereinafter.
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FIFTH CAUSE OF ACTION
Wrongful Termination and Employment Practices
in Violation of Public Policy
Against All Corporate Defendants and DOES 1-50

66. Plaintiffs hereby adopts and incorporates by reference paragraphs 1 through 65, inclusive, of this complaint and makes them a part of this instant cause of action as though fully set forth herein.

67. The California Fair Employment and Housing Act, as amended, Government Code Section 12940 makes it an unlawful employment practice for an employer or person to harass and/or discriminate against an employee based on their race or engagement in a protected activity.

68. By its aforesaid conduct, including but not limited to the adverse employment actions against Plaintiffs, and allowing a hostile work environment in which no reasonable person in Plaintiffs' position could be expected to continue working for Defendants, Defendants acted in contravention of the public policy of California.

69. Plaintiffs' were constructively discharged from their employment with the Corporate Defendants, because Plaintiffs suffered intolerable working conditions that Defendants either intentionally created and/or knowingly permitted to exist. These conditions were created and/or permitted to exist by Defendants' officers, directors, managing agents, or supervisory employees, and were such that under all the circumstances, a reasonable employee in Plaintiffs' position would have felt compelled to resign, rather than continue to endure unrelenting, severe and/or pervasive racial harassment.

70. As a direct and proximate result of Defendants' unlawful employment practices, Plaintiffs have suffered damages, including but not limited to damages for wage loss, lost stock options, and loss of employment benefits; humiliation, embarrassment, mental and emotional distress and discomfort; attorneys' fees, costs; and certain other incidental damages, all according to proof.

71. Defendants committed the acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper

1 and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was carried
2 out in conscious disregard of Plaintiffs' rights. Defendants' conduct was carried out by a
3 managing agent, or an officer, a director, or a managing agent of Defendants. Defendants had
4 advance knowledge of the unfitness of its decision-maker and employed him or her with a
5 conscious disregard of Plaintiffs' rights, and/or authorized and/or ratified his or her conduct. As
6 a result of Defendants' conduct, Plaintiffs are entitled to recover punitive damages.

7 **SIXTH CAUSE OF ACTION**
8 **REST BREAK VIOLATIONS**
9 **OF CALIFORNIA LABOR CODE 226.7 AND WAGE ORDER 4-2001**
10 **(Against All Corporate Defendants and DOES 1 through 50)**

11 72. Plaintiffs incorporate by reference as though fully set forth herein the preceding
12 paragraphs of this Complaint.

13 73. Plaintiff regularly worked in excess of four hours a day without being afforded
14 at least the ten (10) minute rest period(s) (per each four (4) hours worked) in which he was
15 relieved of all duties, as required by California Labor Code §§ 226.7 and 512, and Wage Order
16 No. 4-2001, § 12.

17 74. As a result of Defendants' failure to comply with California Labor Code §§ 226.7
18 and 512, and Wage Order No. 4-2001, § 12, Plaintiffs are entitled to one (1) hour of pay at their
19 regular rate of compensation for each work day on which Defendants failed to provide
20 Plaintiffs with the requisite rest period. By violating California Labor Code § 226.7, and Wage
21 Order No. 4-2001, § 12, Defendants will also liable for reasonable attorneys' fees and costs under
22 California Labor Code § 218.5.

23 75. By violating California Labor Code §§ 226.7 and Wage Order No. 4-2001, § 12,
24 Defendants will also liable for penalties, and for reasonable attorneys' fees and costs under California
25 Labor Code § 2699 *et seq.*

26 **SEVENTH CAUSE OF ACTION**
27 **MEAL PERIOD VIOLATIONS**
28 **OF CALIFORNIA LABOR CODE 512 AND WAGE ORDER 4-2001**
(Against All Corporate DEFENDANTS and DOES 1 through 50)

76. Plaintiffs incorporate by reference as though fully set forth herein the preceding
paragraphs of this Complaint.

1 77. Plaintiffs regularly worked in excess of five hours a day without being afforded
2 at least a half-hour meal period in which he was relieved of all duties, as required by California
3 Labor Code §§ 226.7 and 512, and Wage Order No. 4-2001, § 11.

4 78. Plaintiffs regularly worked in excess of five hours a day and was required to
5 waive his right to the meal period, in violation of California Labor Code § 226.7.

6 79. As a result of Defendants' failure to comply with California Labor Code § 226.7
7 and 512, and Wage Order No. 4-2001, § 11, Plaintiffs are entitled to recover one hour of additional
8 pay at the regular rate of compensation for each workday that the proper meal periods were not
9 provided.

10 80. By violating California Labor Code §§ 226.7 and 512, and Wage Order No. 4-
11 2001, § 11, Defendants are also liable for reasonable attorneys' fees and costs under California
12 Labor Code § 218.5.

13 81. By violating California Labor Code §§ 226.7 and 512, and Wage Order No. 4-
14 2001, § 11, Defendants are also liable for penalties, and for reasonable attorneys' fees and costs
15 under California Labor Code § 2699 *et seq.*

16 **EIGHTH CAUSE OF ACTION**
17 **WAITING TIME PENALTIES**
18 **CAL. LABOR CODE §§ 201, 202 & 203**
19 **(Against All Corporate Defendants and DOES 1 through 50)**

20 82. Plaintiffs incorporate by reference as though fully set forth herein the preceding
21 paragraphs of this Complaint.

22 83. California Labor Code § 201 requires an employer who discharges an employee
23 to pay all compensation due and owing to that employee immediately upon discharge.

24 84. California Labor Code § 202 requires an employer to pay all compensation due
25 and owing to an employee who quits within 72 hours of that employee quitting, unless the employee
26 provides at least 72 hours' notice of quitting, in which case all compensation is due at the end
27 of the employee's final day of work.

28 85. California Labor Code § 203 provides that if an employer willfully fails to pay
compensation promptly upon discharge, as required by § 201 or § 202, then the employer is
liable for waiting time penalties in the form of continued compensation of up to 30 work days.

1 86. Defendants have willfully failed and refused to timely pay compensation and
2 wages, including unpaid overtime pay, unpaid minimum wage pay and unpaid rest break and meal
3 period compensation, to Plaintiff whose employment terminated. As a result, Defendants are
4 liable to Plaintiff for waiting time penalties, together with interest thereon and reasonable
5 attorneys' fees and costs, under California Labor Code §§ 203 and 256.

6 **PRAYER FOR RELIEF**

7 Plaintiffs pray for judgment against Defendants as follows:

- 8 1. Compensatory damages, including economic and non-economic damages included but
9 not limited to emotional distress damages and lost wages and benefits, in a sum according
10 to proof;
 - 11 2. Punitive damages, in a sum according to proof;
 - 12 3. Interest on judgment, including but not limited to prejudgment and post-judgment
13 interest, at the legal rate, pursuant to the Civil Code;
 - 14 4. Recovery of all reasonable attorneys' fees, expert witness fees, litigation expenses and
15 costs incurred, pursuant to Section 1021.5 of the Code of Civil Procedure, and Section
16 12965 of the Government Code;
 - 17 5. Front pay in lieu of reinstatement, as Defendants' failure to discipline and/or terminate
18 Mr. Bunnag, and instead allow the harassment to continue to occur, has made Plaintiffs'
19 continued employment with Defendants impossible;
 - 20 6. An injunction: (1) ordering Defendants to cease and desist from discriminating against
21 and harassing individuals based on their race; and (2) ordering Defendants to provide
22 mandatory and meaningful training to all district managers and employees regarding the
23 laws prohibiting discrimination and harassment;
 - 24 7. For such other and further relief as the court may deem proper.
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3 DATED: August 19, 2013

Respectfully submitted,

THE FIGARI LAW FIRM

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BARBARA E. FIGARI, ESQ.

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9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs Brandyn Toney, Uchenna Okezie and Nathaniel Gordon herewith demands a jury
11 trial in this action.

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15 DATED: August 19, 2013

Respectfully submitted,

THE FIGARI LAW FIRM

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19 BARBARA E. FIGARI, ESQ.
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SHORT TITLE:

Bradyn Toney, et al v. FrontRunners Footwear, Inc., et al

CASE NUMBER

BC518770

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

BY FAX

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL ¹⁰ ☐ HOURS/ ☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in central (other county, or no bodily injury/property damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/ Property Damage/ Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.

SHORT TITLE:

Brandy Toney, et al v. FrontRunners Footwear, Inc., et al

CASE NUMBER

Non-Personal Injury/Property
Damage/Wrongful Death Tort

Employment

Contract

Real Property

Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input checked="" type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE:

Brandyrt Toney, et al v. FrontRunners Footwear, Inc., et al

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons See Step 3 Above
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
	<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
	<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	<input type="checkbox"/> A6006 Claims Involving Mass Tort (40)	1., 2., 8.
	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	<input type="checkbox"/> A6036 Toxic Tort/Environmental (30)	1., 2., 3., 8.
	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
	<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
	<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
	<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
	<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
	<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
	<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	<input type="checkbox"/> A6190 Election Contest	2.
	<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
	<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

BY FAX

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Barbara E. Figari (SBN 251942) The Figari Law Firm 234 N. El Molino Avenue, Suite 201 Pasadena, CA 91101 TELEPHONE NO.: (310) 910-9442 FAX NO.: (310) 910-9446 ATTORNEY FOR (Name): Plaintiffs Brandyn Toney, et al		FOR COURT USE ONLY FILED Los Angeles Superior Court AUG 19 2013 John A. Clarke, Executive Officer/Clerk By <u>Kathy Morales</u> , Deputy KATHY MORALES
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hills Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: Brandyn Toney v. FrontRunners Footwear, Inc., Surefoot, LLC, et al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: BC518770 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DP/WD (23) Non-PI/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **Eight (8)**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 19, 2013

Barbara E. Figari

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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