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BY: RONNIE COOPER

6 Attorneys for Representative Plaintiffs  
7 and the Plaintiff Classes

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

11 TRACY KIRKMAN and TAGGERT  
12 STRICKLAND, individually, and on  
13 behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 THE MUSICLAND GROUP, INC., and  
16 DOES 1 through 25, inclusive,

16 Defendants.

Case No.: CGC 05-444746

CLASS ACTION

**AMENDED COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

18 Representative Plaintiffs allege as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,  
22 including unpaid overtime compensation and interest thereon, rest and meal period penalties, waiting  
23 time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under,  
24 *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 226,  
25 226.7, 512, 1174 and 1194, and CCP § 1021.5, on behalf of Plaintiffs and all other persons who are  
26 or have been employed by defendant THE MUSICLAND GROUP, INC. and DOES 1 through 25,  
27 inclusive (collectively "MUSICLAND") in any of MUSICLAND'S retail stores in the State of  
28 California at any time after the commencement of the pay period including September 9, 2001 as an

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1 allegedly-overtime exempt salaried in-store manager. The Representative Plaintiffs, on behalf of  
2 themselves and the Class Members, also seeks injunctive relief and restitution of all benefits  
3 MUSICLAND has enjoyed from its failure to pay overtime compensation under Business and  
4 Professions Code §§ 17200-17208.

5 2. The Class Period is designated as the time from at least the commencement of the  
6 pay period including September 9, 2001 through the trial date and each period is based upon the  
7 allegation that these respective violations of California's wage and hour laws, as described more  
8 fully below, have been ongoing since at least these dates. During the Class Period, MUSICLAND  
9 has had a consistent policy of (1) permitting, encouraging, and/or requiring their allegedly-overtime  
10 exempt salaried in-store managers, including Representative Plaintiffs and Class Members, to work  
11 in excess of eight hours per day and in excess of forty hours per week without paying them overtime  
12 compensation as required by California state wage and hour laws; (2) unlawfully denying the  
13 Representative Plaintiffs and the Class Members statutorily-mandated meal and rest periods; (3)  
14 willfully failing to pay compensation (including unpaid overtime) owing in a prompt and timely  
15 manner to the Representative Plaintiffs and/or those Class Members whose employment with  
16 MUSICLAND terminated; and (4) willfully failing to provide Plaintiffs and the Class Members with  
17 accurate semimonthly itemized statements of the total number of hours each of them worked, the  
18 applicable deductions and the applicable hourly rates in effect during the pay period.

## 19 20 INTRODUCTION

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

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

28 5. Since its inception, defendant MUSICLAND has offered a wide range of merchandise

1 to the public, including compact discs, movie videos, DVDs, and other entertainment and electronic  
2 items. Representative Plaintiffs are informed and believe and, based thereon, allege that, within the  
3 class period, MUSICLAND has operated numerous retail stores throughout the State of California.  
4 In so doing, MUSICLAND has employed hundreds, if not thousands, of individuals in recent years  
5 alone in salaried in-store manager positions, employment positions which have not and currently do  
6 not meet the test for exemption from the payment of overtime wages.

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

12 7. Representative Plaintiffs are informed and believe and, based thereon, allege that  
13 officers of MUSICLAND knew of these facts and legal mandates, yet, nonetheless, repeatedly  
14 authorized and/or ratified the violation of the laws cited herein.

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

20  
21 **JURISDICTION AND VENUE**

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

27 10. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims  
28 for injunctive relief, and restitution of ill-gotten benefits arising from defendant MUSICLAND's

1 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

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

9  
10 **PLAINTIFFS**

11 12. During a portion of the herein-relevant time period, the Representative Plaintiffs  
12 identified herein were and are natural persons, and were, during the relevant time period identified  
13 herein, employed by defendant MUSICLAND as allegedly-overtime-exempt salaried in-store  
14 managers, an employment position which was mis-classified as salaried/exempt from overtime pay.

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

18 14. The Plaintiff Classes consists, generally, of all members who are/were employed as  
19 salaried in-store managers in any of MUSICLAND's "SUNCOAST MOTION PICTURES" or  
20 "SAM GOODY" stores, and were classified thereby as overtime-exempt employees at any time  
21 between the commencement of the pay period including September 9, 2001 and the present.

22 15. At all times herein relevant, the Representative Plaintiffs were and now are persons  
23 within the Classes of persons further described and defined herein.

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

27 ///

28 ///

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**DEFENDANTS**

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

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

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

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

**CLASS ACTION ALLEGATIONS**

21. Representative Plaintiffs TRACY KIRKMAN and TAGGERT STRICKLAND bring this action on behalf of themselves and as a class action on behalf of all persons or entities similarly situated and proximately damaged by MUSICLAND's conduct as set forth herein, including, but not necessarily limited to the following Class:

**Sam Goody Class:**

All persons who are/were employed in an in-store manager position by The Musicland Group, Inc., in one or more of The Musicland Group, Inc.'s California "Sam Goody" stores and who were classified as overtime-exempt employees at any time between September 9,

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1 2001 and the present.

2 Suncoast Motion Pictures Class:

3 All persons who are/were employed in an in-store manager position  
4 by The Musicland Group, Inc., in one or more of The Musicland  
5 Group, Inc.'s California "Suncoast Motion Picture" stores and who  
6 were classified as overtime-exempt employees at any time between  
7 September 9, 2001 and the present.

8 22. Defendants, their officers and directors are excluded from the Classes.

9 23. This action has been brought and may properly be maintained as a class action under  
10 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation  
11 and the proposed classes are easily ascertainable.

12 a. Numerosity: A class action is the only available method for  
13 the fair and efficient adjudication of this controversy. The  
14 members of the classes are so numerous that joinder of all  
15 members is impractical, if not impossible, insofar as  
16 Representative Plaintiffs are informed and believe and, on  
17 that basis, allege that the total membership in the classes is in  
18 the thousands of individuals. Membership in the Classes will  
19 be determined upon analysis of employee and payroll, among  
20 other, records maintained by MUSICLAND.

21 b. Commonality: The Representative Plaintiffs and the Class  
22 Members share a community of interests in that there are  
23 numerous common questions and issues of fact and law  
24 which predominate over any questions and issues solely  
25 affecting individual members, including, but not necessarily  
26 limited to:

27 i. whether defendant MUSICLAND violated IWC Wage  
28 Orders and/or Labor Code § 510 by failing to pay  
overtime compensation to in-store managers who  
worked in excess of forty hours per week and/or eight  
hours per day.

ii. whether defendant MUSICLAND violated Business  
and Professions Code § 17200 by failing to pay  
overtime compensation to in-store managers who  
worked in excess of forty hours per week and/or eight  
hours per day.

iii. whether defendant MUSICLAND violated Labor  
Code §§ 226.7 and/or 512 by failing to consistently  
provide meal and rest periods to its in-store managers.

iv. whether defendant MUSICLAND violated Labor  
Code § 1174 by failing to keep accurate records of  
employees' hours of work.

1 v. whether defendant MUSICLAND violated Labor  
2 Code §§ 201-203 by failing to pay overtime wages  
3 due and owing at the time that certain Class Members'  
4 employment with Defendant terminated.

5 vi. whether defendant MUSICLAND violated Labor  
6 Code § 226 by failing to provide the semimonthly  
7 itemized statements to Class Members of total hours  
8 worked by each and all applicable hourly rates in  
9 effect during the pay period.

10 vii. whether Representative Plaintiffs and the Classes are  
11 entitled to "waiting time" penalties, pursuant to Labor  
12 Code § 203.

13 c. Typicality: The Representative Plaintiffs' claims are typical  
14 of the claims of the Classes. The Representative Plaintiffs  
15 and all members of the Classes sustained injuries and  
16 damages arising out of and caused by defendant  
17 MUSICLAND's common course of conduct in violation of  
18 law, as alleged herein.

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

e. Adequacy of Representation: The Representative Plaintiffs  
in this class action are adequate representatives of the Classes,  
in that the Representative Plaintiffs' claims are typical of  
those of the Classes and the Representative Plaintiffs has the  
same interests in the litigation of this case as the Class  
Members. The Representative Plaintiffs are committed to  
vigorous prosecution of this case, and has retained competent  
counsel, experienced in litigation of this nature. The  
Representative Plaintiffs are not subject to any individual  
defenses unique from those conceivably applicable to the  
Classes as a whole. The Representative Plaintiffs anticipate  
no management difficulties in this litigation.

### COMMON FACTUAL ALLEGATIONS

24. As described herein, MUSICLAND has, for years, knowingly failed to adequately

1 compensate in-store managers within the class definition identified above for premium (overtime)  
2 wages due, thereby enjoying a significant competitive edge over other retail store chains. Even upon  
3 termination or resignation of the employment of numerous class members, MUSICLAND has  
4 declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

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

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

20 27. Representative Plaintiffs and all persons similarly situated are entitled to unpaid  
21 compensation, yet, to date, have not received such compensation. More than 30 days have passed  
22 since certain class members have left defendant MUSICLAND's employ.

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

27 29. As a direct and proximate result of MUSICLAND's unlawful conduct, as set forth  
28 herein, Representative Plaintiffs and particular Class Members have sustained damages, as described



1 above, including, but not limited to a loss of earnings for hours of overtime worked on behalf of  
2 Defendants, in an amount to be established at trial. As a further direct and proximate result of  
3 Defendant's unlawful conduct, as set forth herein, certain Class Members herein are entitled to  
4 recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for  
5 failure to provide semimonthly statements of actual hours worked and all applicable hourly rates  
6 (pursuant to Labor Code § 226) in an amount to be established at trial. As a further direct and  
7 proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and  
8 the Classes are also entitled to recover costs and attorneys' fees, pursuant to statute.

9  
10 **FIRST CAUSE OF ACTION**  
11 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
12 **(California Business & Professions Code §§ 17200-17208)**

13 30. Representative Plaintiffs incorporate in this cause of action each and every allegation  
14 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

15 31. Representative Plaintiffs further bring this cause of action on behalf of the general  
16 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of  
17 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business  
18 practices described herein.

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

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

27 34. Defendant has clearly established a policy of accepting a certain amount of collateral  
28 damage, as represented by the damages to Representative Plaintiffs and the Plaintiff Classes herein  
alleged, as incidental to its business operations, rather than accept the alternative costs of full

1 compliance with fair, lawful and honest business practices ordinarily borne by responsible  
2 competitors of Defendant and as set forth in legislation and the judicial record.

3  
4 **SECOND CAUSE OF ACTION**  
5 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**  
6 **(California Labor Code § 510)**

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

9 36. During the time period beginning as of the commencement of the pay period  
10 including September 9, 2001 and continuing through the present, Representative Plaintiffs and the  
11 Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The  
12 precise number of hours will be proven at trial.

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

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

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

- 23 a. Labor Code §203: "If an employer willfully fails to pay, without  
24 abatement or reduction, in accordance with Sections 201, 201.5, 202, and  
25 205.5, any wages of an employee who is discharged or who quits, the wages  
26 of the employee shall continue as a penalty from the due date thereof at the  
27 same rate until paid or until an action therefor is commenced; but the wages  
28 shall not continue for more than 30 days."
- b. Labor Code § 226: "Every employer shall semimonthly or at the time of  
each payment of wages, furnish each of his or her employees, either as a  
detachable part of the check, draft, or voucher paying the employee's wages,  
or separately when wages are paid by personal check or cash, an itemized  
statement in writing showing . . . (2) total hours worked by the employee . .  
. and (9) all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.”

- 2 c. Labor Code §510: “Any work in excess of eight hours in one workday  
3 and any work in excess of 40 hours in any one workweek and the first eight  
4 hours worked on the seventh day or work in any one workweek shall be  
5 compensated at the rate of no less than one and one-half times the regular rate  
6 of pay for an employee . . . .”
- 7 d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser  
8 wage, any employee receiving less than the legal minimum wage or the legal  
9 overtime compensation applicable to the employee is entitled to recover in  
10 a civil action the unpaid balance of the full amount of this minimum wage or  
11 overtime compensation, including interest thereon, reasonable attorney’s fees,  
12 and costs of suit.
- 13 e. Labor Code §1198: “[t]he maximum hours of work and the standard  
14 conditions of labor fixed by the commission shall be the maximum hours of  
15 work and the standard conditions of labor for employees. The employment  
16 of any employee for longer hours than those fixed by the order or under  
17 conditions of labor prohibited by the order is unlawful.”
- 18 f. Labor Code §1199: “Every employer or other person acting either  
19 individually or as an officer, agent, or employee of another person is guilty  
20 of a misdemeanor and is punishable by a fine of not less than one hundred  
21 dollars (\$100) or by imprisonment for not less than 30 days, or by both, who  
22 . . . (a) Requires or causes any employee to work for longer hours than those  
23 fixed, or under conditions of labor prohibited by an order of the commission.  
24 . . . [or] (c) Violates or refuses or neglects to comply with any provision of  
25 this chapter or any order or ruling of the commission.”

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

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

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

42. Representative Plaintiffs incorporate in this cause of action each and every allegation

1 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

2 43. California Labor Code § 512 provides:

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

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

16 45. Specifically, California Labor Code § 226.7 provides:

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

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

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

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

48. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings,  
in an amount to be established at trial. As a further direct and proximate result of Defendant's  
unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members are entitled  
to recover various penalties, in an amount to be established at trial, as well as costs and attorneys'  
fees, pursuant to statute.

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

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

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

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

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

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

52. Representative Plaintiffs seek to recover actual damages (including prospective damages associated with filing restatements of earnings with taxing and/or other authorities), costs and attorneys' fees under this section on behalf of themselves and the Plaintiff Classes.

53. Defendant MUSICLAND failed to provide timely, accurate and complete itemized wage statements to Representative Plaintiffs and the Plaintiff Classes in accordance with Labor Code § 226(a). Plaintiffs has suffered injuries due to this unlawful conduct insofar as they have lost use of the compensation due, were forced to bring this action to redress these violations, were forced to file inaccurate wage information with government agencies and, should this action be successful, may be required to restate earnings for prior years and/or incur time and costs in so doing.

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

**RELIEF SOUGHT**

**WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the proposed Classes, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:**

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

2. That defendant MUSICLAND is found to have violated the overtime provisions of the Labor Code as to the Representative Plaintiffs and the Classes;

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

4. That defendant MUSICLAND is found to have violated the record keeping provisions of Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiffs and the Classes and for willful failure to provide accurate semimonthly itemized statements thereto;

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

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

7. An award to Representative Plaintiffs and the Plaintiff Classes of damages for the amount of unpaid overtime compensation, the amount of wage due as a result of Defendant's failure to provide meal and rest periods, the amount of prospective damages associated with filing restatements of earnings with taxing and/or other authorities, and related damages, including interest thereon, and penalties in an amount to be proven at trial;

8. That defendant MUSICLAND be ordered to pay restitution to Representative Plaintiffs and the Plaintiff Classes due to defendant MUSICLAND's unlawful activities, pursuant to Business and Professions Code §§ 17200-08;

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1           9.       That defendant MUSICLAND further be enjoined to cease and desist from unlawful  
2 activities in violation of Business and Professions Code § 17200;

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


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

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

8           13.       For costs of suit and any and all such other relief as the Court deems just and proper.  
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10 Dated: October 12, 2005

**SCOTT COLE & ASSOCIATES, APC**

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13 By:   
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Matthew R. Bainer, Esq.

15 Attorneys for the Representative Plaintiffs  
16 and the Plaintiff Classes  
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