

COPY

1 EDWARD J. WYNNE (SBN 165819)
2 J.E.B. PICKETT (SBN 154294)
3 RIGHETTI WYNNE
4 456 Montgomery Street, Suite 1400
5 San Francisco, California 94104
6 Telephone: (415) 983-0900
7 Facsimile: (415) 397-9005

8 Attorneys for Plaintiff

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

OCT 31 2005

John A. Clarke, Executive Officer/Clerk

By _____, Deputy

D. GILES

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 LETISHA JACKSON, individually, and on
13 behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 DAVID'S BRIDAL, INC. and Does 1
17 through 50, inclusive,

18 Defendants.

NO. BC 341772

FIRST AMENDED COMPLAINT

[CLASS ACTION]

- 1. Violations of Labor Code
- 2. Violations of Business & Professions Code § 17200

19
20 FIRST CAUSE OF ACTION

21 Representative Plaintiffs bring this challenge to Defendants' lucrative, repressive and
22 unlawful business practices on behalf of themselves and a class of all others similarly situated
23 and for a Cause of Action against Defendants, DAVID'S BRIDAL, INC. and DOES 1-50,
24 inclusive, (hereinafter, "Defendants") and each of them, allege as follows:
25
26
27
28

1 within the State of California, including within Los Angeles County, for the purpose of selling
2 formal occasion attire and related merchandise. As such, and based upon all the facts and
3 circumstances incident to Defendants' business in California, Defendants are subject to
4 California Labor Code § 1194, *et seq.*, California Business and Professions Code § 17200, *et*
5 *seq.*, (Unfair Practices Act) and IWC Wage Order 7.

6
7 **5.**

8 Plaintiff does not know the true names or capacities, whether individual, partner or
9 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
10 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
11 complaint when the true names and capacities are known. Plaintiff is informed and believes
12 and thereon alleges that each of said fictitious Defendants were responsible in some way for the
13 matters alleged herein and proximately caused Plaintiff and others similarly situated to be
14 subject to the illegal employment practices, wrongs and injuries complained of herein.

15
16 **6.**

17 At all times herein mentioned, each of said Defendants participated in the doing of the
18 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

22
23 **7.**

24 At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course
26 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27
28 **8.**

At all times herein mentioned, the acts and omissions of various Defendants, and each
of them, concurred and contributed to the various acts and omissions of each and all of the
other Defendants in proximately causing the injuries and damages as herein alleged.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9.

At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged. Further, at all times mentioned herein, the wage and hour related compensation policies of Defendants' retail store locations in California are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

FACTUAL AND CLASS ALLEGATIONS

10.

Pursuant to California Labor Code §§ 218, 218.5, 218.6, and 1194, Plaintiff may bring a civil action for overtime wages directly against the employer without first filing a claim with the California Division of Labor Standards Enforcement and may recover such wages, together with interest thereon, penalties, attorney fees and costs.

11.

Representative Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as salaried employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code § 1194 and IWC Wage Order 7. Representative Plaintiff and the other members of the class were improperly and illegally mis-classified by Defendants as "exempt" employees when, in fact, they were "non-exempt" employees according to California law. Representative Plaintiff and the class have the right to be compensated by Defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the straight time rate plus the appropriate overtime premium as mandated by California law including interest, attorney fees and costs, and civil penalties thereon pursuant to Labor Code §§ 558 and 1197.1.

Plaintiff seeks to bring this lawsuit as a class action pursuant to Code of Civil Procedure § 382. The class that plaintiff seeks to represent is defined as follows: "All individuals who were employed by Defendants in Defendant's retail stores under the name 'David's Bridal' in the State of California at any time during the period commencing on the date that is four years preceding the filing of the original complaint up to the time the case is certified as a class action." Plaintiff further seeks to subdivide the class into the following subclasses:

Sub-class A:

All current and former California based salaried non-exempt retail store personnel who worked and/or are working overtime for Defendants within the last four years of the filing of the Complaint in this action up to and including the time that this action is certified as a class, yet were not paid overtime.

Sub-class B:

All current and former California based retail store personnel whose earned and unpaid vacation pay was forfeited within the last four years of the filing of the Complaint in this action up to and including the time that this action is certified as a class.

Sub-class C:

All former California based retail store personnel who did not timely and properly receive their final wages within the last four years of the filing of the Complaint in this action up to and including the time that this action is certified as a class

Sub-class D:

All current and former California based retail store personnel who did not receive their meal and rest breaks within the last four years of the filing of the Complaint in this action up to and including the time that this action is certified as a class

The members of the class are so numerous that joinder of all members would be impractical, if not impossible. The members of the class are readily ascertainable by a review of Defendants' records. Further, the subject matter of this action both as to factual matters and as to matters of law, are such that there are questions of law and fact common to the class

1 which predominate over questions affecting only individual members including, among other
2 things, the following:

3 a. Statistically, one hundred percent of the class members of sub-class A were paid
4 on a salary basis with no overtime compensation paid for work accomplished in excess of forty
5 hours per week, or eight hours per day. Plaintiff is informed and believes and based thereon
6 alleges that Defendants and each of them have failed to meet the requirements for establishing
7 the exemption because all class members (1) regularly spent a majority of their time performing
8 non-exempt work, (2) did not customarily and regularly exercise discretion and independent
9 judgment, (3) did not have the authority to hire or fire or make meaningful recommendations
10 regarding same, and, (4) did not customarily and regularly supervise at least two employees or
11 the equivalent. In primarily engaging in non-exempt work, Representative Plaintiff and the
12 class, at all times relevant, met the realistic expectations of Defendants and each of them. Thus,
13 Representative Plaintiff and the class members were not exempt from the overtime
14 requirements of California law for these reasons.

15
16 b. Defendants have a uniform and consistent policy and practice concerning duties
17 and responsibilities of the class members of sub-class A which required that the class members
18 both work overtime without pay and regularly spend a majority of their time performing non-
19 exempt tasks. Further, Defendants dispensed misinformation amongst the class members to the
20 effect that salaried employees are not entitled to overtime compensation under Defendants'
21 labor policies and practices and under California law.

22 c. Defendants have a uniform and consistent policy and practice concerning duties
23 and responsibilities of the class members of sub-class A such that members do not regularly
24 and customarily exercise discretion and independent judgment.

25 d. The duties and responsibilities of the salaried employees at Defendants' retail
26 store locations were substantially similar from store to store, and, employee to employee.
27 Further, any variations in job activities between the different individuals in these positions are
28 legally insignificant to the issues presented by this action since the central facts remain, to wit,

1 these employees performed non-exempt work in excess of 50% of the time in their workday,
2 these employees did not regularly exercise discretion and independent judgment, these
3 employees' work routinely included work in excess of 40 hours per week and/or 8 hours per
4 day and they were not, and have never been, paid overtime compensation for their work.

5 e. Defendants have a uniform and consistent policy and practice regarding vacation
6 time applicable to all of their retail store employees. The legality of Defendants' uniform
7 policy and practice regarding the payment of earned and unused vacation pay involves common
8 questions of fact and law equally applicable to all members of sub-class B.

9 f. Defendants have a uniform and consistent policy and practice for the payment of
10 wages at time of termination. The legality of Defendants' uniform policy and practice
11 regarding the payment of final wages involves common questions of fact and law equally
12 applicable to all members of sub-class C.

13 g. Defendants have a uniform and consistent policy and practice of denying their
14 employees legally mandated meal and rest breaks. The legality of Defendants' uniform policy
15 and practice regarding the denial of meal and rest breaks involves common questions of fact
16 and law equally applicable to all members of sub-class D.

17
18 **13.**

19 There are predominant common questions of law and fact and a community of interest
20 amongst Plaintiff and the claims of the absent class members concerning whether Defendants'
21 regular business custom and practice of requiring substantial "overtime" work and not paying
22 for said work according to the overtime mandates of California law is, and at all times herein
23 mentioned was, in violation of California Labor Code § 1194, *et seq.*, the Unfair Practices Act
24 and IWC Wage Order 7. Defendants' employment policies and practices wrongfully and
25 illegally failed to compensate salaried employees for substantial overtime compensation earned
26 as required by California law.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14.

Representative Plaintiff's claims are typical of the claims of all members of the class. Plaintiff will fairly and adequately protect the interests of the class by vigorously pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of this type.

15.

The California Labor Code and Wage Order provisions upon which Plaintiff asserts these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Representative Plaintiff and members of the class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their current or former employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

16.

The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (1) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of the other class members not parties to the adjudications or which would substantially impair or

1 impede the ability of the class members to protect their interests. Further, the claims of the
2 individual members of the class are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses.

4 **17.**

5 Such a pattern, practice and uniform administration of corporate policy regarding illegal
6 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
7 by Representative Plaintiff and the class identified herein, in a civil action, for the unpaid
8 balance of the full amount of the straight time compensation and overtime premiums owing,
9 including interest thereon, penalties, reasonable attorneys fees, and costs of suit according to
10 the mandate of California Labor Code § 1194, et seq.

11 **18.**

12 Proof of a common business practice or factual pattern, of which the named Plaintiff's
13 experience is representative, will establish the right of each member of the plaintiff class to
14 recovery on the causes of action alleged herein.

15 **19.**

16 The plaintiff class is entitled in common to a specific fund with respect to the overtime
17 compensation monies illegally and unfairly retained by Defendants. The plaintiff class is
18 entitled in common to restitution and disgorgement of those funds being improperly withheld
19 by Defendants. This action is brought for the benefit of the entire class and will result in the
20 creation of a common fund.

21 **20.**

22 Representative Plaintiff and members of the class identified herein as former employees
23 were discharged by Defendants or voluntarily quit, and did not have a written contract for
24 employment. The Defendants, in violation of California Labor Code §§ 201 and 202, et seq.,
25 respectively, had a consistent and uniform policy, practice and procedure of willfully failing to
26 pay the earned and unpaid wages of all such former employees. The Defendants have willfully
27 failed to pay the earned and unpaid wages of such individuals, including, but not limited to,
28

1 straight time, overtime, vacation time, and other wages earned and remaining uncompensated
2 according to amendment or proof. Representative Plaintiff and other members of the class did
3 not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid
4 wages from Defendants. Accordingly, Defendants are liable for waiting time penalties for the
5 unpaid wages pursuant to California Labor Code § 203.

6 **21.**

7 As a pattern and practice, in violation of the aforementioned labor laws and wage
8 orders, Defendants knowingly and intentionally did not maintain any records or furnish any
9 records to the class pertaining to when Representative Plaintiff and the members of the class
10 began and ended each work period, meal period, the total daily hours worked, and the total
11 hours worked per pay period and applicable rates of pay in violation of California Labor Code
12 §§ 226 and 1174 thereby causing injury to the class. Accordingly, Defendants and each of
13 them are liable for civil penalties to Plaintiff and the class pursuant to Labor Code §§ 226,
14 226.3, 558, and 1174.5.

15 **22.**

16 In violation of Labor Code § 226.7, Defendants failed to provide meal and rest period
17 breaks in the number, length and manner as required. At no time have Plaintiff and the class
18 entered into any written agreement with the Defendants expressly or impliedly waiving their
19 right to their meal breaks. Plaintiff and the class have been injured by Defendants' failure to
20 comply with Labor Code § 226.7 and are thus entitled to the wages set forth in Labor Code §
21 226.7 and penalties per Labor Code § 558.

22 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
23 members of the class, pray for judgment as hereinafter set forth.

24 **SECOND CAUSE OF ACTION**

25 COMES NOW, Representative Plaintiff, individually and on behalf of the class and as a
26 second, separate and distinct cause of action against Defendants, and each of them, alleges as
27 follows:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

23.

Plaintiff herein repeats and re-alleges as though fully set forth at length each and every paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause of action for relief regarding Defendants' violations of California Business and Professions Code § 17200 *et seq.* (Unfair Practices Act).

24.

At all times herein mentioned Defendants, and each of them, acting as the employer, individually or through officers, directors, agents or employees of another have (1) required or caused Representative Plaintiff and the class to work for longer hours than those fixed or under conditions prohibited by Industrial Welfare Commission Wage Orders applicable to Defendants' business, (2) paid or caused to be paid to Plaintiffs and the class less than the minimum fixed by IWC Wage Order 7, and (3) violated, refused, or neglected to comply with any provision of Part 4, Chapter 1 of the Labor Code beginning at § 1171 or any order or ruling of the Industrial Welfare Commission. As a result of the foregoing and the acts complained of herein, Defendants, and each of them, are guilty of violating California Labor Code §§ 204, 216, 1198 and 1199. In addition to the other violations of the law set forth in the First Cause of Action, Defendants' violations of California Labor Code §§ 204, 216, 1198 and 1199 serve as a further basis for Defendants' liability under California Business & Professions Code § 17200, *et seq.*

25.

Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices as outlined herein, to wit, by (1) requiring their salaried retail store employees to perform the labor services without overtime compensation, (2) failing to pay to all retail employees all of their earned and unused vacation pay, (3) failing to properly and timely pay to all retail employees all the wages at time of termination, and (4) failing to provide meal and rest breaks to all retail employees. Defendants' utilization of such unfair business practices constitutes unfair competition and

1 provides an unfair advantage over Defendants' competitors. Representative Plaintiff, and other
2 similarly situated members of the class, seeks full restitution of monies, as necessary and
3 according to proof, to restore any and all monies withheld, acquired and/or converted by the
4 Defendants by means of the unfair practices complained of herein. Representative Plaintiff
5 seeks, on her own behalf and on behalf of the class, the appointment of a receiver, as necessary.
6

7 **26.**

8 Plaintiff is informed and believes and on that basis alleges that at all times herein
9 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
10 proscribed by California Business and Professions Code § 17200 *et seq.*, including those
11 alleged herein thereby depriving Plaintiff and other members of the class the minimum working
12 standards and conditions due to them under the California labor law and Industrial Welfare
13 Commission Wage Orders as specifically described herein.

14 **27.**

15 Representative Plaintiff, and all persons similarly situated, are further entitled to and do
16 seek a both a declaration that the above-described business practices are unfair, unlawful and/or
17 fraudulent and injunctive relief restraining Defendants from engaging in any of such business
18 practices in the future. Such misconduct by Defendants, unless and until enjoined and
19 restrained by order of this Court, will cause great and irreparable injury to all members of the
20 class in that the Defendants will continue to violate California law, represented by labor
21 statutes and IWC Wage Orders, unless specifically ordered to comply with same. This
22 expectation of future violations will require current and future employees to repeatedly and
23 continuously seek legal redress in order to gain compensation to which they are entitled under
24 California law. Plaintiff has no other adequate remedy at law to insure future compliance with
25 the California labor laws and Wage Orders alleged to have been violated herein.

26 WHEREFORE, Representative Plaintiff, on her own behalf and on behalf of the
27 members of the class and the general public, pray for judgment as follows:
28

1. For an order certifying the proposed class and sub-classes;

1 2. Upon the First Cause of Action, for consequential damages according to proof
2 as set forth in California Labor Code § 1194, *et seq.* (and California Industrial Welfare
3 Commission Wage Order 7) related to overtime wages due and owing;

4 3. Upon the First Cause of Action, for waiting time penalties according to proof
5 pursuant to California Labor Code § 203;

6 4. Upon the First Cause of Action, for civil penalties pursuant to California Labor
7 Code §§ 226, 226.3, 558, 1174.5, and 1197.1;

8 5. Upon the First Cause of Action, for wages pursuant to Labor Code § 226.7;

9 6. Upon the Second Cause of Action, that Defendants be ordered to show cause
10 why they should not be enjoined and ordered to comply with IWC Wage Order 7 related to
11 payment of overtime compensation and record keeping for Defendants' salaried retail store
12 employees who are primarily engaged in non-exempt work and work more than 40 hours per
13 week or 8 hours per day and related to the failure to timely and properly pay vacation pay, final
14 wages, and provide rest and meal breaks; and for an order enjoining and restraining Defendants
15 and their agents, servants and employees related thereto;

16 7. Upon the Second Cause of Action, for a declaratory judgment and a decree
17 adjudging and decreeing that Representative Plaintiff and the members of the class have
18 regularly worked compensable overtime; further, that the work performed by Representative
19 Plaintiff and the members of the class is subject to overtime compensation requirements and/or
20 is in excess of 40 hours per week and/or 8 hours a day, and that Representative Plaintiff and the
21 members of the class are entitled to overtime compensation for said work and that Defendants
22 have failed to timely and properly pay vacation pay, final wages, and provide rest and meal
23 breaks;

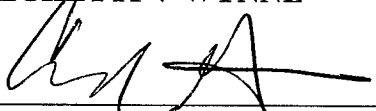
24 8. Upon the Second Cause of Action, for restitution to Representative Plaintiff and
25 other similarly effected members of the class of all funds unlawfully acquired by Defendants by
26 means of any acts or practices declared by this Court to be violative of the mandate established
27 by California Business and Professions Code § 17200 *et seq.*;
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 9. For pre-judgment interest as allowed by California Labor Code §§ 1194 and 218.6;
- 10. For reasonable attorneys fees, expenses and costs as provided by California Labor Code §§ 218.5, 226, and 1194; and,
- 11. For such other and further relief the Court may deem just and proper.

DATED: October 28, 2005

RIGHETTI ♦ WYNNE

By: 
Edward J. Wynne, Esq.