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OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 07 2000

John A. Clarke, Executive Officer/Clerk  
By D. Giles Deputy  
D. Giles

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11  
12 JOY FONG, individually, and on behalf of  
13 others similarly situated,

14 Plaintiff,

15 vs.

16 HOOP RETAIL STORES, LLC dba THE  
17 DISNEY STORE, THE CHILDREN'S  
18 PLACE RETAIL STORES, INC. and  
19 Does 1 through 50, inclusive,

20 Defendants.

NO. BC355121

COMPLAINT

[CLASS ACTION]

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

21  
22 **FIRST CAUSE OF ACTION**

23 Representative Plaintiff brings this challenge to Defendants' lucrative, repressive and  
24 unlawful business practices on behalf of themselves and a class of all others similarly situated  
25 and for a Cause of Action against Defendants, HOOP RETAIL STORES, LLC dba THE  
26 DISNEY STORE, THE CHILDREN'S PLACE RETAIL STORES, INC. and DOES 1-50,  
27 inclusive, (hereinafter, "Defendants") and each of them, allege as follows:  
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4.

Plaintiff is informed and believes and thereon alleges that all times herein mentioned Defendants and Does 1 through 50 are and were corporations, business entities, individuals and partnerships, licensed to do business and actually doing business in the State of California, Los Angeles County. Defendants own and operate an industry, business and establishment within the State of California, including within Los Angeles County, for the purpose of selling The Walt Disney Company related merchandise. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code § 1194, *et seq.*, California Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act) and IWC Wage Order 7.

5.

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

6.

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

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

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.

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

1 and the other members of the class were improperly and illegally mis-classified by Defendants  
2 as "exempt" employees when, in fact, they were "non-exempt" employees according to  
3 California law. Representative Plaintiff and the class have the right to be compensated by  
4 Defendants at the appropriate compensatory wage rate for said work heretofore performed,  
5 consisting of the straight time rate plus the appropriate overtime premium as mandated by  
6 California law including interest, attorney fees and costs, and civil penalties thereon pursuant to  
7 Labor Code §§ 558 and 1197.1.

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9 **12.**

10 Plaintiff seeks to bring this lawsuit as a class action pursuant to Code of Civil Procedure  
11 § 382. The class that plaintiff seeks to represent is defined as follows:

12 All individuals who were employed by Defendants and paid on a salaried  
13 basis in Defendants' retail stores under the name "The Disney Store" in  
14 the State of California at any time during the period commencing on the  
15 date that is four years preceding the filing of the original complaint up to  
the time the case is certified as a class action.

16 The members of the class are so numerous that joinder of all members would be  
17 impractical, if not impossible. The members of the class are readily ascertainable by a review  
18 of Defendants' records. Further, the subject matter of this action both as to factual matters and  
19 as to matters of law, are such that there are questions of law and fact common to the class  
20 which predominate over questions affecting only individual members including, among other  
21 things, the following:

22 a. Statistically, one hundred percent of the class members were paid on a salary  
23 basis with no overtime compensation paid for work accomplished in excess of forty hours per  
24 week, or eight hours per day. Plaintiff is informed and believes and based thereon alleges that  
25 Defendants and each of them have failed to meet the requirements for establishing the  
26 exemption because all class members (1) regularly spent a majority of their time performing  
27 non-exempt work, (2) did not customarily and regularly exercise discretion and independent  
28 judgment, (3) did not have the authority to hire or fire or make meaningful recommendations

1 regarding same, and, (4) did not customarily and regularly supervise at least two employees or  
2 the equivalent. In primarily engaging in non-exempt work, Representative Plaintiff and the  
3 class, at all times relevant, met the realistic expectations of Defendants and each of them. Thus,  
4 Representative Plaintiff and the class members were not exempt from the overtime  
5 requirements of California law for these reasons.

6 b. Defendants have a uniform and consistent policy and practice concerning duties  
7 and responsibilities of the class members which required that the class members both work  
8 overtime without pay and regularly spend a majority of their time performing non-exempt  
9 tasks. Further, Defendants dispensed misinformation amongst the class members to the effect  
10 that salaried employees are not entitled to overtime compensation under Defendants' labor  
11 policies and practices and under California law.

12 c. Defendants have a uniform and consistent policy and practice concerning duties  
13 and responsibilities of the class members such that members do not regularly and customarily  
14 exercise discretion and independent judgment.

15 d. The duties and responsibilities of the salaried employees at Defendants' retail  
16 store locations were substantially similar from store to store, and, employee to employee.  
17 Further, any variations in job activities between the different individuals in these positions are  
18 legally insignificant to the issues presented by this action since the central facts remain, to wit,  
19 these employees performed non-exempt work in excess of 50% of the time in their workday,  
20 these employees did not regularly exercise discretion and independent judgment, these  
21 employees' work routinely included work in excess of 40 hours per week and/or 8 hours per  
22 day and they were not, and have never been, paid overtime compensation for their work.

23 e. Defendants have a uniform and consistent policy and practice regarding vacation  
24 time applicable to their salaried retail store employees. The legality of Defendants' uniform  
25 policy and practice regarding the payment of earned and unused vacation pay involves common  
26 questions of fact and law equally applicable to all members of the class.  
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1 f. Defendants have a uniform and consistent policy and practice for the payment of  
2 wages at time of termination. The legality of Defendants' uniform policy and practice  
3 regarding the payment of final wages involves common questions of fact and law equally  
4 applicable to all members of the class.

5 g. Defendants have a uniform and consistent policy and practice of denying their  
6 employees legally mandated meal and rest breaks. The legality of Defendants' uniform policy  
7 and practice regarding the denial of meal and rest breaks involves common questions of fact  
8 and law equally applicable to all members of the class.

9  
10 **13.**

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

19 **14.**

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

23 **15.**

24 The California Labor Code and Wage Order provisions upon which Plaintiff asserts  
25 these claims are broadly remedial in nature. These laws and labor standards serve an important  
26 public interest in establishing minimum working conditions and standards in California. These  
27 laws and labor standards protect the average working employee from exploitation by employers  
28 who may seek to take advantage of superior economic and bargaining power in setting onerous

1 terms and conditions of employment. The nature of this action and the format of laws available  
2 to Representative Plaintiff and members of the class identified herein make the class action  
3 format a particularly efficient and appropriate procedure to redress the wrongs alleged herein.  
4 If each employee were required to file an individual lawsuit, the corporate Defendants would  
5 necessarily gain an unconscionable advantage since they would be able to exploit and  
6 overwhelm the limited resources of each individual class member with their vastly superior  
7 financial and legal resources. Requiring each class member to pursue an individual remedy  
8 would also discourage the assertion of lawful claims by employees who would be disinclined to  
9 file an action against their current or former employer for real and justifiable fear of retaliation  
10 and permanent damage to their careers at subsequent employment.

11  
12 **16.**

13 The prosecution of separate actions by the individual class members, even if possible,  
14 would create a substantial risk of (1) inconsistent or varying adjudications with respect to  
15 individual class members against the Defendants and which would establish potentially  
16 incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to  
17 individual class members which would, as a practical matter, be dispositive of the interests of  
18 the other class members not parties to the adjudications or which would substantially impair or  
19 impede the ability of the class members to protect their interests. Further, the claims of the  
20 individual members of the class are not sufficiently large to warrant vigorous individual  
21 prosecution considering all of the concomitant costs and expenses.

22 **17.**

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



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**18.**

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

**19.**

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

**20.**

Representative Plaintiff and members of the class identified herein as former employees were discharged by Defendants or voluntarily quit, and did not have a written contract for employment. The Defendants, in violation of California Labor Code §§ 201 and 202, *et seq.*, respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. The Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight time, overtime, vacation time, and other wages earned and remaining uncompensated according to amendment or proof. Representative Plaintiff and other members of the class did not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time penalties for the unpaid wages pursuant to California Labor Code § 203.

**21.**

As a pattern and practice, in violation of the aforementioned labor laws and wage orders, Defendants knowingly and intentionally did not maintain any records or furnish any records to the class pertaining to when Representative Plaintiff and the members of the class began and ended each work period, meal period, the total daily hours worked, and the total

1 hours worked per pay period and applicable rates of pay in violation of California Labor Code  
2 §§ 226 and 1174 thereby causing injury to the class. Defendants failed to keep these records at  
3 the place of employment or in a central location within the State of California in violation of  
4 California Labor Code §§ 226 and 1174 thereby causing injury to the class. Accordingly,  
5 Defendants and each of them are liable for civil penalties to Plaintiff and the class pursuant to  
6 Labor Code §§ 226, 226.3, 558, and 1174.5.

7  
8 **22.**

9 In violation of Labor Code § 226.7, Defendants failed to provide meal and rest period  
10 breaks in the number, length and manner as required. At no time have Plaintiff and the class  
11 entered into any written agreement with the Defendants expressly or impliedly waiving their  
12 right to their meal breaks. Plaintiff and the class have been injured by Defendants' failure to  
13 comply with Labor Code § 226.7 and are thus entitled to the wages set forth in Labor Code §  
14 226.7 and penalties per Labor Code § 558.

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

17 **SECOND CAUSE OF ACTION**

18 COMES NOW, Representative Plaintiff, individually and on behalf of the class and as a  
19 second, separate and distinct cause of action against Defendants, and each of them, alleges as  
20 follows:

21 **23.**

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

26 **24.**

27 At all times herein mentioned Defendants, and each of them, acting as the employer,  
28 individually or through officers, directors, agents or employees of another have (1) required or

1 caused Representative Plaintiff and the class to work for longer hours than those fixed or under  
2 conditions prohibited by Industrial Welfare Commission Wage Orders applicable to  
3 Defendants' business, (2) paid or caused to be paid to Plaintiffs and the class less than the  
4 minimum fixed by IWC Wage Order 7, and (3) violated, refused, or neglected to comply with  
5 any provision of Part 4, Chapter 1 of the Labor Code beginning at § 1171 or any order or  
6 ruling of the Industrial Welfare Commission. As a result of the foregoing and the acts  
7 complained of herein, Defendants, and each of them, are guilty of violating California Labor  
8 Code §§ 204, 216, 1198 and 1199. In addition to the other violations of the law set forth in the  
9 First Cause of Action, Defendants' violations of California Labor Code §§ 204, 216, 1198 and  
10 1199 serve as a further basis for Defendants' liability under California Business & Professions  
11 Code § 17200, *et seq.*

12  
13 **25.**

14 Defendants, and each of them, have engaged in unfair business practices in California  
15 by practicing, employing and utilizing the employment practices as outlined herein, to wit, by  
16 (1) requiring their salaried retail store employees to perform the labor services without  
17 overtime compensation, (2) failing to pay to their salaried retail employees all of their earned  
18 and unused vacation pay, (3) failing to properly and timely pay to their salaried retail  
19 employees all the wages at time of termination, and (4) failing to provide meal and rest breaks  
20 to their salaried retail employees. Defendants' utilization of such unfair business practices  
21 constitutes unfair competition and provides an unfair advantage over Defendants' competitors.  
22 Representative Plaintiff, and other similarly situated members of the class, seeks full restitution  
23 of monies, as necessary and according to proof, to restore any and all monies withheld,  
24 acquired and/or converted by the Defendants by means of the unfair practices complained of  
25 herein. Representative Plaintiff seeks, on her own behalf and on behalf of the class, the  
26 appointment of a receiver, as necessary.  
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**26.**

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

**27.**

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

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

1. For an order certifying the proposed class and sub-classes;
2. Upon the First Cause of Action, for consequential damages according to proof as set forth in California Labor Code § 1194, *et seq.* (and California Industrial Welfare Commission Wage Order 7) related to overtime wages due and owing;
3. Upon the First Cause of Action, for waiting time penalties according to proof pursuant to California Labor Code § 203;

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

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

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

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

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

23           9.       For pre-judgment interest as allowed by California Labor Code §§ 1194 and  
24 218.6;

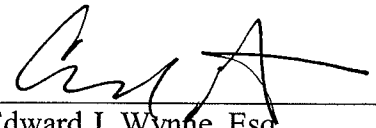
25           10.      For reasonable attorneys fees, expenses and costs as provided by California  
26 Labor Code §§ 218.5, 226, and 1194; and,  
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11. For such other and further relief the Court may deem just and proper.

DATED: July 6, 2006

**WYNNE LAW FIRM**

By:   
Edward J. Wynne, Esq.