

NO. _____

JEFFERSON CIRCUIT COURT
DIVISION _____

KRISTY WITAK

PLAINTIFF

v.

CLASS ACTION COMPLAINT

BRIDAL WAREHOUSE, INC.
723 Hawkins Drive
Elizabethtown, KY 42701

DEFENDANT

SERVE: BARBARA A. CRABTREE, Registered Agent
723 Hawkins Drive
Elizabethtown, KY 42701

Comes the Plaintiff, Kristy Witak, by counsel, individually and on behalf of all others similarly situated, upon personal knowledge as to her own acts and upon information and belief, and for her Complaint, states as follows:

STATEMENT OF FACTS

1. At all times relevant hereto, Plaintiff was a resident of Kentucky.
2. At all times relevant hereto, Defendant was a Kentucky corporation with principal place of business in Kentucky.
3. On October 15, 2013, Plaintiff entered into a contract to purchase a new wedding dress from Defendant for personal, family, or household purposes in exchange for \$938.08. *See* "Customer Sale/Special Order Agreement" at **Exhibit 1**.
4. Defendant promised to special order the dress from the dress's manufacturer. *See Exhibit 1*.
5. On or about November 15, 2013, Debbie Firth—a Bridal Warehouse employee and the Plaintiff's future mother-in-law—went to Bridal Warehouse pick up the dress.
6. Immediately upon inspection, Ms. Firth knew that this dress was not a new dress from the manufacturer. Instead, upon information and belief, the dress Defendant

delivered to Plaintiff was a used dress shipped from one of Defendant's other three locations.

7. Ms. Firth requested that Bridal Warehouse deliver a new dress from the manufacturer. The management of Bridal Warehouse refused to deliver a new dress.

CLASS ALLEGATIONS

8. Plaintiff brings this class action against the Defendants pursuant to CR 23.02(a) and (c), on behalf of all Kentucky residents who special ordered a new dress from Bridal Warehouse between January 1, 2003 to present to be delivered from the dress's manufacturer but to whom Defendant instead provided used dresses off the rack of Defendant's stores.
9. The members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, Plaintiff believes that Defendant has delivered thousands of used dresses to customers who ordered new dresses.
10. Despite the numerical size, the identities of the Class members can be ascertained. Defendant keeps records of each special order, as well as the name, address, and phone number of each customer. See **Exhibit 1**. The similarly situated persons are known to the Defendant and can be ascertained through discovery of Defendant's records.
11. Plaintiff will fairly and adequately represent the interests of the Class and subclasses. Plaintiff is committed to vigorously prosecuting this action and has retained competent counsel to prosecute this matter. Plaintiff is a member of the Class and has no interests antagonistic to or in conflict with other Class members. Plaintiff's attorneys will adequately represent the Class in this matter.
12. This action raises questions of law and fact which are common to the Class members, including, but not limited to the following:

- a. Whether Defendant engaged in a pattern or practice of providing used dresses to customers who contracted to have new dresses delivered from the manufacturer; and
 - b. Whether those customers suffered injury as a result of Defendant's conduct.
13. The claims or defenses of the represented party are typical of the claims or defenses of the Class. Plaintiff is a consumer asserting causes of action of fraud, violations of the Kentucky Consumer Protection Act, and breach of contract. Plaintiff has the same interests as the other Class members in prosecuting those claims against the Defendant. Plaintiff and all the members of the Class sustained damages as a result of the Defendant's conduct.
14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Common issues predominate. Furthermore, the expense and burden of individual litigation make it extraordinarily difficult for Class members to redress the wrongs done to them individually.
15. Defendants have or had access to address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

COUNT I: FRAUD

16. Plaintiff reiterates the allegations contained in the paragraphs above, as if fully set forth herein.
17. Defendant made material misrepresentations to Defendant, promising to order a new dress from the dress's manufacturer.
18. These material misrepresentations were false. Defendant delivered a used dress from another of its four Bridal Warehouse locations.
19. Defendant knew these statements were false at the time it made them.
20. Defendant never intended to order a dress from the manufacturer for Plaintiff.

21. Defendant made these statements with the intention of inducing the Plaintiff to act upon them.
22. Plaintiff relied upon these statements and suffered injury because of her reliance.

COUNT II: FRAUDULENT OMISSION

23. Defendant failed to disclose the fact that it intended to deliver to Plaintiff a used dress from one of its other three store locations instead of a new dress from the manufacturer.
24. Defendant had a duty to disclose the fact that it intended to provide Plaintiff with a used dress rather than a new dress from the manufacturer because its partial or ambiguous statements would mislead Plaintiff and because it is a fact basic to the transaction.
25. Had Defendant disclosed that it intended to provide Plaintiff with a used dress, Plaintiff would not have entered into a contract with Defendant to purchase the dress.
26. Defendant's fraudulent omissions have injured Plaintiff.

**COUNT III: VIOLATIONS OF
THE KENTUCKY CONSUMER PROTECTION ACT**

27. Plaintiff reiterates the allegations contained in the paragraphs above, as if fully set forth herein.
28. By engaging in the scheme and course of conduct alleged herein, Defendant engaged in unfair, false, misleading, and/or deceptive acts or practices in the conduct of its trade and/or commerce.
29. Plaintiff is a person that the Kentucky legislature intended to protect with the Kentucky Consumer Protection Act.
30. As a result of the foregoing deceptive acts and practices, the Defendant has proximately caused the damages incurred by the Plaintiff, thereby entitling the

Plaintiff to consequential and punitive damages, pre-judgment interest, and attorney fees under the Kentucky Consumer Protection Act, KRS 367.170, *et seq.*

COUNT IV: BREACH OF CONTRACT

31. Plaintiff reiterates the allegations contained in the paragraphs above, as if fully set forth herein.
32. Plaintiff and Defendant entered into a contract in which Plaintiff would pay \$938.08 and in exchange Defendant would special order a new dress from the manufacturer for Plaintiff.
33. Defendant breached its contract by failing to order a new dress from the manufacturer and instead providing Plaintiff with a used dress from one of its other store locations.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims to which she is entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for an Order and Judgment granting the following relief:

1. That the Plaintiff be awarded damages in an amount to be determined at trial;
2. That the Plaintiff be awarded treble damages in an amount to be determined at trial for Defendant's fraudulent conduct;
3. That the Plaintiff be awarded a judgment against the Defendant for punitive damages for the conduct of the Defendant alleged herein;
4. The Court award costs and attorneys fees against Defendant in accordance with the Kentucky Consumer Protection Act and KRS 190.310;
5. For pre- and post-judgment interest;
6. A jury trial;
7. Allow the Plaintiff to amend her Answer upon completion of discovery;

8. Award the Plaintiff such equitable relief as this Court deems proper; and

Any and all other relief to which the Plaintiff may be entitled.

Respectfully submitted,



Ben Carter
Ben Carter Law PLLC
312 South Fourth Street, Sixth Floor
Louisville, KY 40202

Brian Cook
John Bahe
Bahe Cook Cantley and Nefzger, PLC
Marion E. Taylor Building, 6th Floor
312 South Fourth Street
Louisville, KY 40202
Counsel for Kristy Witak



Customer Sale / Special Order Agreement

Thank You!

Sale Agreement: *The purchaser understands there will not be any exchanges for size, cancellations or refunds. All sales are final. Deposits on all merchandise are non-refundable. All merchandise is sold as is. Layaway deposits cannot be refunded or transferred to another department or customer for any reason. Bridal Warehouse is not responsible for any alterations or pressing of garments.*

Merchandise left unclaimed after ten (10) days of the designated pick-up date will be disposed of and all monies paid forfeited.

Special Order Agreement: *Delivery on most special orders is an estimated 2 - 16 weeks. There is a possibility that the manufacturer will have the correct size, color and style in their inventory. In this event, delivery time could be very short. Bridal Warehouse does not extend pick-up time to accommodate an early arrival. Bridal Warehouse is not responsible for delays beyond our control including, but not limited to delays from the manufacturer. Variations in dye lots can be expected and are not the responsibility of Bridal Warehouse. Bridesmaid orders will not be placed until all attendants have provided measurements and paid for their dress in-full. Rush shipments, if available must be paid for at the time of order. Selecting a rush shipment is the responsibility of the customer.*

Special orders are to be paid in full and picked up 30 days after arrival in the store. Pick-up date is anytime within these 30 days. You will be notified via a phone call of your merchandise arrival. Please be sure Bridal Warehouse has the correct address and contact phone number in their database. Merchandise left unclaimed after ten (10) days of the designated pick-up date will be disposed of and all monies paid forfeited.

Size Selection - *The purchaser has consulted the manufacturer's size chart and agrees to the size being ordered. The purchaser also agrees, that they have not in any way been influenced to order a particular size by an employee of Bridal Warehouse. Bridal Warehouse will not be held responsible for any measurement. The size selected is the total responsibility of the purchaser. The purchaser understands there will not be any exchanges for size, cancellations or refunds. Bridal manufacturers DO NOT offer custom sizing. Dresses are not custom made to customer's measurements and in most cases additional tailoring is necessary. Deposits on all merchandise is non refundable.*

I understand the special order agreement and accept all the terms of this contract. I have selected the following:

Style 133-2569 : Size 8 Color Ivory

PURCHASER INITIALS KW

I have read and accept all the terms of this contract. I understand that all sales are final, with no refunds, cancellations, or exchanges. Layaway deposits are not refundable or transferable.

Purchaser Signature Kristy Witak Date 10/15/2013

Merchandise Taken (Please initial) _____ Date / /

BRIDAL WAREHOUSE
 1848 S. HURSTBOURNE LANE
 LOUISVILLE, KY 40220
 WWW.USABRIDAL.COM

11/2/14
 est. delivery

Voice:502-499-7911 Fax:502-499-5576

DEBBIE COLMAN Firth
 4307 LAKELET WAY
 LOUISVILLE, KY 40299-
 (502)472-6279

TICKET #: 86930
 (X00)002-8814B TICKET DATE: 10/15/2013
 DEBBIE COLMAN Firth STORE LOC: 2
 WEAR DATE: 06/28/2014
 SALESPERSON: DH
 CLERK: BAC

PAGE: 1

DATE	QTY	STYLE	DESCRIPTION	SIZE	COLOR	PRICE	TOTAL	
10/15/2013	1	1232210569		08	IV/SI	1179.99	1179.99	O
10/15/2013		1232210569	ADJUST ITEM 3			-295.00	-295.00	O
10/15/2013	1	134197S-IV			IVORY	179.99	179.99	T
10/15/2013		134197S-IV	ADJUST ITEM 5			-36.00	-36.00	T
10/15/2013		PAYMENT	VISA/MASTERCARD			1090.72	1090.72	

SUBTOTAL.....\$ 1,028.98
 TAX.....\$ 61.74
 TOTAL.....\$ 1,090.72

AMOUNT PAID...\$ 1,090.72
 TOTAL ACCOUNT BALANCE...\$ 0.00

Bust: Waist: Hips: Height:
 ALL SALES ARE FINAL AT Bridal Warehouse