

ENDORSED
FILED
ALAMEDA COUNTY

DEC 24 2020

CLERK OF THE SUPERIOR COURT

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*Attorney for Plaintiff, on behalf of the
State of California and Aggrieved Employees*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Darrenia James, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

vs.

Rainbow USA, Inc. dba New York Rainbow
USA Inc.

Defendant.

Case No.: **RG20084739**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

DEC 24 2020

Filed By Fax

1 Plaintiff Darrenia James (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 4 **INTRODUCTION**

5 1. Plaintiff brings this enforcement action on behalf of the State of California against
6 Defendant Rainbow USA, Inc., dba New York Rainbow USA Inc. (“Defendant”) for its systematic
7 violations of California labor law with respect to Defendant’s non-exempt hourly employees in
8 California (the “Aggrieved Employees”).

9 2. Defendant maintains longstanding policy and practices which fail to properly
10 compensate non-exempt employees for work performed while “off-the-clock”. These policies deny
11 Plaintiff and Aggrieved Employees payment for all hours worked.

12 3. Defendant violates California law by knowingly and willfully requiring Plaintiff and
13 Aggrieved Employees to perform work and/or remain on duty for the benefit of Defendant while off-
14 the-clock. Defendant requires Aggrieved Employees to wait in security-check lines at the end of their
15 shifts while they are off-the-clock.

16 4. Plaintiff and Aggrieved Employees bring this claim to challenge Defendant’s policies
17 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (2)
18 failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (3) failing to pay all
19 wages owed upon separation of employment; and (4) failing to provide Plaintiff and Aggrieved
20 Employees accurate, itemized wage statements.

21 22 **PARTIES**

23 5. Plaintiff Darrenia James is an individual over the age of eighteen, and at all times
24 relevant to this Complaint has been a resident of the State of California, County of San Bernardino.
25 Plaintiff was employed as a Sales Associate for Defendant in Los Angeles, California beginning
26 approximately August 2020 and ending approximately September 2020.

27 6. Plaintiff is informed, believes, and thereon alleges that Defendant Rainbow USA, Inc.
28 is a New York corporation with its principal place of business in Brooklyn, NY and is registered to do

1 business in California. Defendant may be served with process by serving its registered agent, C T
2 Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

3 7. Plaintiff is informed, believes, and thereon alleges that Defendant owns, operates, an/or
4 manages retail stores throughout the United States, including in California. Plaintiff is informed,
5 believes, and thereon alleges that Defendant exercises control over Plaintiff and Aggrieved Employees
6 with respect to their employment.

7 8. As employer of Plaintiff and Aggrieved Employees throughout the relevant time
8 period, Defendant is liable for penalties for violating the Labor Code with respect to the employment
9 of Plaintiff and Aggrieved Employees.

10 9. Throughout this Complaint, any reference to “Defendant” is intended to refer to
11 Rainbow USA Inc.’s various retail groups collectively and jointly.

12 10. At all material times, Defendant has done business under the laws of California, has
13 had places of business in California, including in this County, and has employed Aggrieved Employees
14 in this County and elsewhere in California. Defendant is a “person” as defined in Labor Code § 18 and
15 “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours,
16 and working conditions.

17
18 **SUBJECT MATTER JURISDICTION AND VENUE**

19 11. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
20 The Court also has jurisdiction over Defendant because Defendant does business in the State of
21 California, is authorized to do business in California, and is registered with the California Secretary
22 of State.

23 12. Defendant operates multiple retail stores and employs aggrieved employees in
24 California.

25 13. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
26 and/or 395.5. Defendants conducts business in this County, employ Aggrieved Employees in this
27 County, have jobsites in this County, and therefore liability, as well as the cause, or some part of the
28 cause, arose in this County.

1 **FACTUAL ALLEGATIONS**

2 14. Defendant owns, operates, and manages various retail stores throughout the United
3 States and California, Defendant employs hundreds of hourly non-exempt workers similarly situated
4 to Plaintiff across these retail locations.

5 15. Plaintiff worked at the Rainbow retail store in located in Los Angeles, California as a
6 Sales Associate from August 2020 to September 2020. Plaintiff was paid at an hourly rate of \$13, and
7 was generally scheduled to work 24 hours per week.

8 16. During the approximately three weeks of Plaintiff's employment, Defendant did not
9 pay Plaintiff for her labor. Plaintiff's counsel sent Defendant correspondence on September 28, 2020
10 requesting payment of her wages. Ultimately, Plaintiff received payment of wages. Upon information
11 and belief, Defendant institutes a similar practice wherein Defendant promises employment to
12 Aggrieved Employees, extracts labor from these hourly workers while promising payment of wages,
13 and then refuses to pay these workers for the extended periods of time worked.

14 17. As a matter of course, Defendant routinely makes Plaintiff and Aggrieved Employees
15 wait in security-check lines at the end of their shifts while they are off-the-clock – after they have
16 already clocked out. Plaintiff and Aggrieved Employees are required to wait on average 5-to-10
17 minutes, and sometimes even longer after their shift ends. This time spent waiting in the security check
18 lines is compensable, but nevertheless goes unpaid.

19 18. As a result of these policies, Defendant denies Plaintiff and Aggrieved Employees
20 compensation which they are lawfully owed resulting from the additional off-the-clock post-shift
21 work.

22 19. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or
23 substantially similar timekeeping mechanism throughout all of their stores in California.

24 20. Defendant's common course of wage-and-hour abuse includes routinely failing to
25 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
26 Defendant has failed to record hours that Plaintiff and Aggrieved Employees worked off-the-clock.

27 21. Aggrieved Employees were and are employed by Defendant and performed work
28 materially similar to Plaintiff.

1 22. Aggrieved Employees report to facilities owned, operated, or managed by Defendant
2 to perform their jobs.

3 23. Aggrieved Employees perform their jobs under Defendant's supervision and using
4 materials and technology approved and supplied by Defendant.

5 24. Aggrieved Employees are required to follow and abide by common work, time, and
6 pay policies and procedures in the performance of their jobs, including the security check requirement.

7 25. At the end of each pay period, Aggrieved Employees receive wages from Defendant
8 that are determined by common systems and methods that Defendant selects and controls.

9 26. Defendant pays Aggrieved Employees on an hourly rate basis.

10 27. Defendant employs hundreds of people similarly situated to Plaintiff during the four-
11 year period prior to the filing of this Complaint.

12 28. Defendant's method of paying Plaintiff and Aggrieved Employees is willful and not
13 based on a good faith and reasonable belief that its conduct complied with California law.

14 29. Defendant's conduct is willful, is carried out in bad faith, and causes significant
15 damages to non-exempt hourly employees in an amount to be determined at trial.

16
17 **FIRST CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(a)

18 30. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 31. Labor Code § 2699(a) provides:

21 Notwithstanding any other provision of law, any provision of this code
22 that provides for a civil penalty to be assessed and collected by the Labor
23 and Workforce Development Agency or any of its departments, divisions,
24 commissions, boards, agencies or employees, for a violation of this code,
25 may, as an alternative, be recovered through a civil action brought by an
26 aggrieved employee on behalf of himself or herself and other current or
27 former employees.

28 32. Labor Code § 201 provides:

 If an employer discharges an employee, the wages earned and unpaid at
 the time of discharge are due and payable immediately.

1 33. Labor Code § 202 provides:

2 If an employee not having a written contract for a definite period quits
3 his or her employment, his or her wages shall become due and payable
4 not later than 72 hours thereafter, unless the employee has given 72
5 hours previous notice of his or her intention to quit, in which case the
employee is entitled to his or her wages at the time of quitting.

6 34. Labor Code § 203 provides, in relevant part:

7 If an employer willfully fails to pay, without abatement or reduction, in
8 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall
10 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefore is commenced; but the wages shall not continue
for more than 30 days.

11 35. Labor Code § 226(a) provides:

12 Every employer shall, semimonthly or at the time of each payment of
13 wages, furnish each of his or her employees, either as a detachable part of
14 the check, draft, or voucher paying the employee's wages, or separately
when wages are paid by personal check or cash, an accurate itemized
15 statement in writing showing (1) gross wages earned, (2) total hours worked
by the employee, except for any employee whose compensation is solely
16 based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial
17 Welfare Commission, (3) the number of piece-rate units earned and any
applicable piece rate if the employee is paid on a piece-rate basis, (4) all
18 deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned,
19 (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and his or her social security number, (8) the name
20 and address of the legal entity that is the employer, and (9) all applicable
hourly rates in effect during the pay period and the corresponding number
21 of hours worked at each hourly rate by the employee.
22

23 36. Labor Code § 226(e) provides:

24 An employee suffering injury as a result of a knowing and intentional failure
25 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
26 in which a violation occurs and one hundred dollars (\$100) per employee
for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of four thousand dollars (\$4,000), and is entitled to an award of
costs and reasonable attorney's fees.
28

1 37. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
2 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
3 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
4 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
5 herein.

6 38. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
7 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
8 statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).
9 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e),
10 as prayed for herein.

11 39. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the
12 California Labor Code.

13 40. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
14 Workforce Development Agency ("LWDA") with notice of her intention to file this claim. Sixty-five
15 calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
16 prerequisites to commence this civil action in compliance with § 2699.3(a).

17 41. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
18 Employees, and herself as set forth in Labor Code § 2699(g)(i).

19 42. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
20 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
21 of attorneys' fees and costs as set forth below.

22 43. Wherefore, Plaintiff requests relief as hereinafter provided.

23
24 **SECOND CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(f)

25 44. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
26 herein.

27 45. Labor Code § 2699(f) provides:

28 ///

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

46. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's violations of Labor Code §§ 351, 1194, 204, and 2802.

47. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of her intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

48. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

49. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

50. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

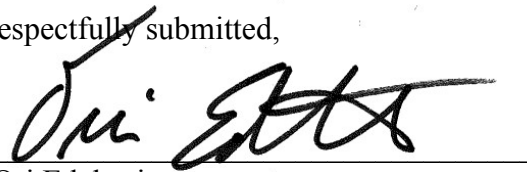
1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;

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3. For all costs of suit; and
4. For such other and further relief as this Court deems just and proper.

Date: December 24, 2020

Respectfully submitted,



Ori Edelstein
Carolyn H. Cottrell
Kristabel Sandoval
Kyle G. Bates
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorney for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

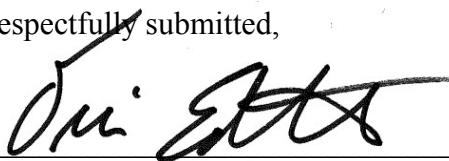
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Date: December 24, 2020

Respectfully submitted,



Ori Edelstein
Carolyn H. Cottrell
Kristabel Sandoval
Kyle G. Bates
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*