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*Attorneys for Plaintiff, on behalf of the
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

RAINBOW USA WAGE AND HOUR CASES

No. JCCP: 5232

**Alameda County Superior Court
Case No. RG20084739**

Assigned to Hon. Brad Seligman,
Coordination Motion Judge

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

Plaintiffs,

v.

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

Defendant.

**EXHIBIT A TO THE JOINT
STIPULATION AND
[PROPOSED] ORDER
APPROVING SETTLEMENT OF
PLAINTIFF DARRENIA
JAMES' INDIVIDUAL PAGA
CLAIMS**

**San Bernardino County Superior Court
Case No. CIVSB2113371**

LaShawn Williams and Lynne James, as
aggrieved employees to the Private Attorneys
General Act ("PAGA"), on behalf of the state of
California and other aggrieved employees,

Plaintiffs,

v.

Rainbow USA, Inc. Which Will Do business in
California as New York Rainbow USA Inc., a
New York corporation, and Does 1 through 10
inclusive,

Defendants.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter "Agreement") is entered into by and between Claimant Darrenia James ("James") and Respondent Rainbow USA, Inc. dba New York Rainbow USA Inc. ("Rainbow"). The term "Party" or "Parties" used herein shall refer to James and Rainbow, as appropriate.

RECITALS

WHEREAS, on December 24, 2020, James filed a lawsuit in the Superior Court of California, County of Alameda, Case Nos. RG20084739 and JCCP 5232, against Rainbow, pursuant to the Private Attorneys General Act ("PAGA"), whereby she seeks to represent a group of allegedly aggrieved employees who suffered wage and hour violations as a result of their employment with Rainbow (the PAGA Action);

WHEREAS, James filed a demand for arbitration on or about December 29, 2022 with National Arbitration and Mediation ("NAM"), Matter No. 1000265243, alleging claims against Rainbow for: (1) failure to pay for all hours worked; (2) failure to pay minimum wage and liquidated damages; (3) failure to provide timely and accurate itemized wage statements; (4) waiting time penalties; (5) unlawful business practices; (6) individual claim for violation of Private Attorneys General Act, Cal. Lab. Code § 2699(a); and (7) individual claim for violation of Private Attorneys General Act, Cal. Lab. Code § 2699(f) (the "Arbitration");

WHEREAS, Rainbow expressly denies each and every claim set forth in the Arbitration and in the PAGA Action, or that it engaged in any wrongful or actionable conduct toward James;

WHEREAS, the Parties, in order to avoid the delay and expense of time consuming litigation, agree to fully and finally settle the claims asserted in the Arbitration, and all other claims covered by the Release, *infra*, Section 3;

WHEREAS, the Parties hereby acknowledge, represent and warrant that the terms of this Agreement are in their mutual best interest, and the product of their joint negotiation through counsel; and

WHEREAS, the Parties acknowledge that they are waiving significant legal rights or claims by signing this Agreement and voluntarily enter into this Agreement after consultation with legal counsel, with a full and complete understanding of its terms and legal effect, and with the intent to be bound thereby.

NOW, THEREFORE, in consideration of the promises herein contained, it is agreed as follows:

1. SETTLEMENT IMPACT ON THE PAGA ACTION.

This Agreement releases and extinguishes the personal and PAGA claims asserted by James pertaining to Labor Code violations allegedly experienced by James as described below in Section 3. Except with respect to James, this Agreement does not affect any purported rights with respect to "aggrieved employees" in the PAGA Action. By way of this Agreement, James is not releasing or compromising any claims on behalf of the Aggrieved Employees. Once this settlement

has been approved by the Court in the PAGA Action and judgement rendered, the Court may in the future separately determine the impact of this settlement on James proceeding with the PAGA Action solely on behalf of other alleged “aggrieved employees.” This Agreement does not affect James’ purported rights with respect to representing “aggrieved employees” in the PAGA Action, nor does this Agreement waive Rainbow’s position that James lacks standing and may not proceed with the PAGA Action. It is the intent of the Parties that the disputed issue of whether James may proceed with the PAGA Action on behalf of other alleged “aggrieved employees,” be preserved for determination by the Court.

2. SETTLEMENT PAYMENT.

In consideration of the promises and consideration contained in this Agreement, within ten (10) business days of delivery to counsel for Rainbow of the fully executed Agreement, a completed W-9 form for James, and the Court’s approval of the individual PAGA claims portion of the settlement pursuant to Section 4 below, Rainbow shall pay the total sum of Nine Thousand Two Hundred and Fifty Dollars (\$9,250.00) (“Settlement Payment”), which shall be allocated and payable as follows:

- A. Counsel for James shall receive as attorneys’ fees and costs Seven Thousand Seven Hundred and Fifty Dollars (\$7,750.00), payment of which will be made by business check payable to Schneider Wallace Cottrell Konecky LLP and delivered to James’ counsel, for which Rainbow shall issue a 1099-Misc form in connection with the payment.
- B. The remaining \$1,500.00 Settlement Payment shall be made as follows: (1) twenty percent (20%), or \$300.00, shall be allocated to James’ claims for wage loss (the “Wage Allocation”), for which Rainbow will withhold appropriate payroll taxes based on James’ most recent W-4 form and for which Rainbow shall issue a W-2 in connection with the payment; (2) seventy-six point seven percent (76.7%), or \$1,150.00, will be allocated to interest and penalties (the “Non-Wage Allocation”), and Rainbow shall issue a 1099-Misc form in connection with that payment; and (3) three point three percent (3.3%), or \$50.00, will be allocated to James’ individual PAGA claims; 75% of this payment (\$37.50) will be paid to the LWDA, and the other 25% (\$12.50) will be paid to James for her share; Rainbow shall issue a 1099-Misc. form for this payment. Each of these checks shall be made by business check payable to “Darrenia James” and delivered to James’ counsel, except the payment to the LWDA.

James acknowledges and agrees that neither Rainbow, Rainbow’s Counsel, nor James’ counsel have made any representations or warranties regarding the tax consequences of any amounts paid by Rainbow to James pursuant to this Agreement. James agrees to indemnify and hold Rainbow harmless for any all taxes and penalties that may be owed on the Settlement Payment that would be James’ responsibility to pay.

3. RELEASE OF CLAIMS.

James hereby unconditionally releases and forever discharges Rainbow, and all of its affiliated and related business entities, including, but not limited to, parent and subsidiary entities, and each of their current and former employees, managers, officers, owners, directors, shareholders, members, insurers and reinsurers, attorneys, predecessors, agents, affiliated entities,

successors, and assigns (hereinafter "Released Parties") from any and all known and unknown claims, demands, actions or causes of action whatsoever that now exist or that may arise in the future, based upon acts, events or omissions occurring on or before the effective date of this Agreement, including, but not limited to: (1) any and all individual claims whatsoever arising out of or pertaining in any way to James' employment with Rainbow, the termination of her employment, or her compensation; (2) any and all individual claims that are or could have been alleged in the Arbitration, or otherwise; and (3) all claims under PAGA asserted in the Arbitration.

Notwithstanding anything herein to the contrary, this release does not apply to any claim which as a matter of law cannot be released, including but not limited to, claims for unemployment insurance benefits and workers' compensation claims.

This release of all claims is specifically intended to include, but shall not be limited to, any and all known and unknown claims for: (1) wrongful termination in violation of public policy; (2) discrimination based on disability, age, gender, sexual orientation, race, or national origin; (3) harassment based on disability, age, gender, sexual orientation, race, or national origin; (4) failure to prevent discrimination, retaliation and harassment; (5) retaliation; (6) violation of Labor Code section 1102.5; (7) violation of the California Family Rights Act; (8) violation of the Family Medical Leave Act; (9) violation of Title VII of the Civil Rights Act; (10) violation of the Americans with Disabilities Act; (11) unpaid wages, minimum wages, and penalties (including, but not limited to, waiting time, paystub, and individual PAGA penalties relating to Labor Code violations experienced by James); (12) unlawful business practices; (13) violation of the United States or California Constitutions; (14) violation of the Fair Employment and Housing Act; (15) any claims arising under Labor Code section 132a; and (16) damages of any nature, past, present or future, including compensatory, general, special or punitive.

Rainbow does hereby unconditionally releases and forever discharges James, from any and all known or unknown claims, demands, actions or causes of action whatsoever that now exist or that may arise in the future, based upon acts, events or omissions occurring on or before the effective date of this Agreement, including but not limited to: (1) any and all individual claims whatsoever arising out of or pertaining in any way to James' employment with Rainbow, the termination of her employment, or her compensation; and (2) any and all individual claims that are or could have been alleged in the Arbitration, or otherwise.

This Agreement also is intended to constitute a complete release by James of any and all unknown claims and by Rainbow of any and all unknown claims. Thus, in entering into this Agreement, the Parties knowingly extend this Agreement to claims of which they do not know or suspect to exist in their favor at the time of executing the release set forth in this Agreement, which if known by them would have materially affected this Agreement. Thus, in entering into this Agreement, the Parties also knowingly waive the provisions of Section 1542 of the Civil Code of the State of California, or any similar statute or law. Section 1542 of the Civil Code reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

James represents and warrants that she is currently unaware of any claims, rights, demands, debts, actions, obligations, liability or causes of action whatsoever by her against Rainbow and Released Parties that are unresolved, except for the PAGA Action. Section 1, *supra*, applies with full force and effect to this Section.

4. APPROVAL OF PAGA SETTLEMENT.

This settlement is materially conditioned on (1) the Alameda County Superior Court's review and approval of the settlement of James' individual PAGA claims that were asserted in the Arbitration and its entry of judgment on those PAGA claims; and (2) the LWDA's receipt of notice of the settlement by James and non-interference with the settlement.

5. NO OTHER FILINGS.

James warrants and represents that except for the Arbitration, and the PAGA case(s) entitled *James v. Rainbow USA, Inc., dba New York Rainbow USA Inc.*, Case Nos. RG20084739 and JCCP 5232, she has not filed or otherwise initiated any legal actions or pleadings against Rainbow or Released Parties with any federal, state or local governmental agency or in any court, based upon, arising out of, or related in any way to any events, acts or omissions occurring at or prior to her execution of this Agreement. James further agrees that she will not do so in the future, except as provided by this Agreement.

6. DISMISSAL OF ARBITRATION.

Following the full execution of this Agreement and full payment made by Rainbow, James will do all that is necessary to dismiss the Arbitration with prejudice. Dismissal of the Arbitration with prejudice is a material condition of this Agreement.

7. COVENANT NOT TO SUE.

The Parties intend that this be a complete release as to any and all matters which may have existed as of the date of execution of this Agreement, subject to Section 1 above. Accordingly, except as may be necessary to enforce the terms of this Agreement and the pending PAGA Action pursuant to Section 1, the Parties warrant that at no time in the future will they sue, bring or join in any type of claim, adversary action, class action, representative action, proceeding or investigation against the other for or concerning any acts, events, or omissions alleged to have occurred prior to the date of the full execution of this Agreement, unless otherwise permitted by law.

8. CONFIDENTIALITY.

The Parties warrant that neither they nor anyone acting on their behalf will communicate any information relating to the terms of this settlement ("Confidential Information") to anyone, including without limitation, all current or former applicants or employees of Rainbow or Released Parties, except as necessary to the Arbitrator and to the Court in the PAGA Action. If questioned arise about the status of the dispute underlying this Agreement, James and/or Rainbow shall respond that "the matter has been resolved" and say nothing else. This Agreement shall not prohibit

James from making disclosures of Confidential Information to her spouse, attorneys, accountants, governmental taxing authority, or as required by law or in the enforcement of this Agreement.

The Parties further agree that in the event of a breach of the confidentiality of this Agreement it would be impractical or extremely difficult to fix the actual damages, and, therefore, The Parties agree that upon any such breach, depending on who breached the confidentiality provision, James or Rainbow shall pay as liquidated damages, and not as a penalty, the sum of Nine Hundred and Twenty-Five Dollars (\$925.00) to the other for each breach. The Parties acknowledges that this sum represents reasonable compensation for the loss incurred because of such breach.

9. NON-DISPARAGEMENT AND INCITEMENT OF CLAIMS.

The Parties agree that they will not make or cause to be made any statements that disparage, are inimical to, or damage the reputation of the other Party. James also agrees that she will not encourage or incite other current or former employees of Rainbow or Released Parties to disparage or assert any complaint, claim or charge, or to initiate any legal proceeding, against Rainbow or Released Parties.

10. NO ADMISSIONS.

James agrees that this Agreement is entered into solely to avoid the expense and burden of time-consuming litigation. James acknowledges and agrees this Agreement: (1) is a compromise of disputed claims; (2) shall not be deemed to be or construed as an admission of any fact or act whatsoever or of any liability or wrongdoing of any kind whatsoever by Rainbow or Released Parties; and (3) that James shall not hereafter assert that this Agreement, the fact of this Agreement, or any provision herein is an admission by Rainbow or Released Parties as to any wrongful conduct, liability, or as to the merits of any claim or dispute settled herein, or otherwise. Further, James acknowledges that Rainbow and Released Parties expressly deny any allegations of unlawful or improper conduct.

11. NO REPRESENTATIONS.

Each Party warrants that, except as expressly set forth herein, no representations of any kind or character have been made to induce the Parties to execute this Agreement. James and Rainbow acknowledge that each have had an adequate opportunity to have this Agreement reviewed by their attorney, and that they fully understand the contents of this Agreement.

12. RESPONSE TO SOLICITATION FOR EMPLOYMENT REFERENCE.

If an employer seeks a reference from Rainbow for James, James agrees that it shall be her sole responsibility to instruct the prospective employer to contact Rainbow's Human Resources Department to obtain such reference. If any employer or prospective employer of James, or any other person or entity, contacts Rainbow's Human Resources Department to verify information regarding the employment of James or seek a reference regarding James, Rainbow shall provide only dates of employment and job classification. Nothing in this provision shall prohibit or restrict Rainbow from providing information responsive to a valid subpoena, other court order, or government agency requesting information regarding James' employment.

13. MISCELLANEOUS.

(a) This Agreement is intended to be, and shall be construed to be, an integrated Agreement. Each Party understands, acknowledges, and hereby represents and warrants that this Agreement supersedes any and all prior understandings, agreements, representations, promises or inducements, whether oral or written, which are not expressly set forth herein or expressly referred to, reserved or preserved in this Agreement relating to the subjects addressed in this Agreement. Each Party understands, acknowledges, and hereby represents and warrants that no understanding, agreement, representation, warranty, promise or inducement has been made concerning the subject matter of this Agreement other than as set forth in this Agreement, and that such Party enters into this Agreement and settlement without any reliance whatsoever upon any understanding, agreement, representation, warranty, promise or inducement not set forth herein.

(b) Each Party acknowledges and represents such Party: (1) has had an adequate opportunity to have this document reviewed by an attorney or representative of their choice acting on their behalf; (2) understands the terms of this Agreement in full; and (3) signs this Agreement freely and voluntarily with the intent to be fully bound thereby. Each Party acknowledges such Party has participated in the negotiation of this Agreement and the drafting and preparation of this Agreement, and that no provision of this Agreement shall be interpreted against any Party by reason of the fact that any particular Party or its counsel purportedly drafted or prepared such provision. The Parties represent and warrant that they have not been coerced into entering into this Agreement, nor has any person or entity exercised any pressure or undue influence on such Party to enter into this Agreement.

(c) Each Party agrees that this Agreement shall inure to the benefit of James, Rainbow, and Released Parties, and their respective officers, directors, partners, former partners, employees, servants, agents, insurers, representatives, attorneys, heirs, administrators, executors, trustees, predecessors, successors and assigns, and each of them and all other persons acting by, under or in concert with and each of them, and to all of their respective heirs, representatives, successors, and assigns.

(d) Each Party agrees this Agreement is entered into under, and shall be construed under and governed by, the procedural and substantive laws of the State of California existing as of the date of execution.

(e) The titles of the various paragraphs are intended solely for convenience of reference, and are not intended and shall not be deemed for any purpose whatsoever to modify, explain or place any construction upon any of the provisions of this Agreement and shall not affect the meaning or interpretation of this Agreement. This Agreement may not be changed orally, but only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(f) The Parties hereto agree that the Arbitrator shall have jurisdiction to enforce this Agreement pursuant to Code Civ. Proc. section 664.6. If any Party hereto should bring any action, suit, or other proceeding against any other Party, any of the Released Parties, or their related individuals or entities contesting the validity of this Agreement, or attempting to rescind, negate, or reform this Agreement or any of the terms or provisions thereof, or to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover the Party's or its attorneys' reasonable fees and costs (including, without

limitation, the costs of expert consultants and expert witnesses) incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions therefrom.

IN WITNESS WHEREOF, after having read and understood this entire Agreement, each of the undersigned parties has knowingly and voluntarily entered into this Agreement on the dates shown below.

07 / 03 / 2023
Dated: _____, 2023



Darrenia James

Dated June 29, 2023

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

Sign: 
Name: Adin C. Goldberg
Title: Senior Vice President & Chief HR Officer