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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 06 2021

BY MELISSA PEREZ
MELISSA PEREZ, DEPUTY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN BERNARDINO

10 LASHAWN WILLIAMS and LYNNEE
11 JAMES, as aggrieved employees pursuant
12 to the Private Attorneys General Act
13 ("PAGA"), on behalf of the State of
14 California and other aggrieved employees,

13 Plaintiffs,

14 vs.

15 RAINBOW USA INC. WHICH WILL DO
16 BUSINESS IN CALIFORNIA AS NEW
17 YORK RAINBOW USA INC., a New York
18 corporation; and DOES 1 through 10,
19 inclusive,

18 Defendants.

19 \$1425.00 Check paid 5/20/21

Case No.:

CIV SB 2113371

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

Plaintiffs LaShawn Williams and Lynnee James, as aggrieved employees and on behalf of the State of California and all other aggrieved employees, allege as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notices to the Labor and Workforce Development Agency (“LWDA”) in this case on February 25, 2021, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff James in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff LaShawn Williams is a resident of Los Angeles, in Los Angeles County, California. Defendants employed Plaintiff Williams as an hourly paid, non-exempt employee from approximately December 2018 to March 2020. Plaintiff Williams worked for Defendants as a Sales Associate and Cashier at their retail store in Los Angeles, California. During her employment, Plaintiff Williams typically worked four (4) to seven (7) hours or more per day, and four (4) to five (5) days per week. Plaintiff Williams's primary job duties included, without limitation, conducting transactions at the cash register, cleaning the store premises, surveying customers, tagging clothing, and locating store inventory for customers.

7. Plaintiff Lynnee James is a resident of Colton, in San Bernardino County, California. Defendants employed Plaintiff James as an hourly paid, non-exempt employee from approximately February 2019 to October 2020. Plaintiff James worked for Defendants as a Sales Associate and Junior Assistant Manager at their retail store in San Bernardino, California. During her employment, Plaintiff James typically worked six (6) to eight (8) hours or more per day, and five (5) to seven (7) days per week. Plaintiff James's primary job duties included, without limitation, greeting and surveying customers, processing shipments, conducting transactions at the cash register, completing payroll, submitting deposits, and counting and recording cash in the register.

8. RAINBOW USA INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA INC. was and is, upon information and belief, a New York corporation, and at all times hereinafter mentioned, an employer whose employees are engaged

1 throughout this county, the State of California, or the various states of the United States of
2 America.

3 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
4 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
5 the complaint and serve such fictitiously named Defendants once their names and capacities
6 become known.

7 10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
8 were the partners, agents, owners, or managers of RAINBOW USA INC. WHICH WILL DO
9 BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA INC. at all relevant times.

10 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
11 acts and omissions alleged herein was performed by, or is attributable to, RAINBOW USA INC.
12 WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA INC.
13 and/or DOES 1 through 10 (collectively, “Defendants” or “RAINBOW”), each acting as the
14 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other
15 co-Defendants and was acting within the course and scope of such agency, employment, joint
16 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
17 and all Defendants were in accordance with, and represent, the official policy of Defendants.

18 12. At all relevant times, Defendants, and each of them, ratified each and every act
19 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
20 and abetted the acts and omissions of each and all the other Defendants in proximately causing
21 the damages herein alleged.

22 13. Plaintiffs are informed and believe, and thereon allege, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 14. Defendants are a fashion retailer catering to teens and young women. Upon
27 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
28 department at their corporate headquarters in Brooklyn, New York, which is responsible for the

1 recruiting and hiring of new employees, and communicating and implementing Defendants'
2 company-wide policies, including timekeeping policies and meal and rest period policies, to
3 employees throughout California.

4 15. In particular, Plaintiffs and other non-party Aggrieved Employees, on
5 information and belief, received the same standardized documents and/or written policies.
6 Upon information and belief, the usage of standardized documents and/or written policies,
7 including new-hire documents, indicate that Defendants dictated policies at the corporate level
8 and implemented them company-wide, regardless of their employees' assigned locations or
9 positions. Upon information and belief, Defendants set forth uniform policies and procedures
10 in several documents provided at an employee's time of hire.

11 16. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in Brooklyn, New York, which processes payroll for
13 all non-exempt, hourly paid employees working for Defendants at their various locations and
14 jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based
15 upon information and belief, Defendants issue the same formatted wage statements to all non-
16 exempt, hourly paid employees in California, irrespective of their work locations. Upon
17 information and belief, Defendants process payroll for departing employees in the same manner
18 throughout the State of California, regardless of the manner in which each employee's
19 employment ends.

20 17. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

22 18. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
24 advisors knowledgeable about California labor and wage law, employment and personnel
25 practices, and about the requirements of California law.

26 19. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain wages
4 for overtime compensation.

5 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that other non-party Aggrieved Employees were entitled to be paid at a
7 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
8 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
9 compensation.

10 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
12 receive at least minimum wages for compensation and that they were not receiving at least
13 minimum wages for work that was required to be done off-the-clock. In violation of the
14 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
15 least minimum wages for work done off-the-clock.

16 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
18 meal periods in accordance with the California Labor Code or payment of one (1) additional
19 hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted,
20 thirty (30) minute meal periods and that Plaintiffs and other non-party Aggrieved Employees
21 were not provided with all meal periods or payment of one (1) additional hour of pay at their
22 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
23 period.

24 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
26 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
27 payment of one (1) additional hour of pay at their regular rates of pay when they were not
28 authorized and permitted to take a compliant rest period. In violation of the Labor Code,

1 Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take
2 compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved
3 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
4 they were not authorized and permitted to take a compliant rest period.

5 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 receive complete and accurate wage statements in accordance with California law. In violation
8 of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not
9 provided complete and accurate wage statements.

10 26. Plaintiffs are informed and believes, and thereon allege, that Defendants knew or
11 should have known that they had a duty to maintain accurate and complete payroll records in
12 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
13 knowingly, and intentionally failed to do so.

14 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
19 and rest period premiums, and/or reporting time pay, within permissible time periods.

20 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
22 timely payment of wages during their employment. In violation of the California Labor Code,
23 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
24 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
25 and/or reporting time pay, within permissible time periods.

26 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
28 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

1 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 payment of wages as designated by statute. In violation of the California Labor Code,
4 Defendants secretly paid Plaintiffs and other non-party Aggrieved Employees lower wages that
5 required by statute while purporting to pay them proper wages.

6 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiff James and other non-party Aggrieved Employees were entitled
8 to one day's rest in seven. In violation of the California Labor Code, Defendants required
9 Plaintiff James and other non-party Aggrieved Employees to work more than six consecutive
10 days without a day of rest, where the total hours worked exceeded 30 hours in any week or six
11 hours in any one day thereof.

12 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
15 duties and also have seats nearby to use during a lull in tasks that do require moving about or
16 standing.

17 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
19 be paid reporting time pay when they reported to work for their scheduled shift but were put to
20 work for less than half of the regular schedule. In violation of the California Labor Code,
21 Defendants did not pay Plaintiffs and other non-party Aggrieved Employees all reporting time
22 pay due.

23 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 receive reimbursement for all business-related expenses and costs they incurred during the
26 course and scope of their employment and that they did not receive reimbursement of applicable
27 business-related expenses and costs incurred.

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1 35. Plaintiffs are informed and believe, and thereon allege, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
4 of their employment with Defendants as required by the California Wage Theft Prevention Act,
5 but willfully, knowingly, and intentionally failed to do so.

6 36. Plaintiffs are informed and believe, and thereon allege, that at all times herein
7 mentioned, Defendants knew or should have known that they had a duty to compensate
8 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
9 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
10 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
11 that they were properly denied wages, all in order to increase Defendants' profits.

12 37. At all times herein set forth, PAGA provides that any provision of law under the
13 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
14 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
15 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
16 behalf of themselves and other current or former employees pursuant to procedures outlined in
17 California Labor Code section 2699.3.

18 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
19 person who was employed by the alleged violator and against whom one or more of the alleged
20 violations was committed."

21 39. Plaintiffs and other current and former employees of Defendants are "aggrieved
22 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
23 or former employees and one or more of the alleged violations were committed against them.

24 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
26 following requirements have been met:

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- 1 (a) The aggrieved employee shall give written notice by online filing
2 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
3 the employer of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support
5 the alleged violations.
- 6 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
7 2699.3(a) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
10 employer and the aggrieved employee by certified mail that it does not
11 intend to investigate the alleged violation within sixty (60) calendar days
12 of the postmark date of the Employee’s Notice. Upon receipt of the
13 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
14 (65) calendar days of the postmark date of the Employee’s Notice, the
15 aggrieved employee may commence a civil action pursuant to California
16 Labor Code section 2699 to recover civil penalties in addition to any other
17 penalties to which the employee may be entitled.

18 41. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
19 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision
20 other than those listed in Section 2699.5 after the following requirements have been met:

- 21 (a) The aggrieved employee or representative shall give written notice by
22 online filing to the LWDA and by certified mail to the employer of the
23 specific provisions of the California Labor Code alleged to have been
24 violated (other than those listed in Section 2699.5), including the facts
25 and theories to support the alleged violation.
- 26 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
27 2699.3(c) and any employer response to that notice shall be accompanied
28 by a filing fee of seventy-five dollars (\$75).

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice. The employer shall give
3 written notice by certified mail within that period of time to the aggrieved
4 employee or representative and the agency if the alleged violation is
5 cured, including a description of actions taken, and no civil action
6 pursuant to Section 2699 may commence. If the alleged violation is not
7 cured within the 33-day period, the employee may commence a civil
8 action pursuant to Section 2699.

9 42. On February 25, 2021, Plaintiff Williams provided written notice by online filing
10 to the LWDA and by certified mail to Defendants of the specific provisions of the California
11 Labor Code alleged to have been violated, including facts and theories to support the alleged
12 violations, in accordance with California Labor Code section 2699.3. Plaintiff Williams's
13 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
14 LWDA PAGA Administrator has confirmed receipt of Plaintiff Williams's written notice and
15 assigned Plaintiff Williams PAGA Case Number LWDA-CM-822781-21. A true and correct
16 copy of Plaintiff Williams's written notice to the LWDA and Defendants dated February 25,
17 2021, is attached hereto as "Exhibit 1."

18 43. On February 25, 2021, Plaintiff James provided written notice by online filing to
19 the LWDA and by certified mail to Defendants of the specific provisions of the California Labor
20 Code alleged to have been violated, including facts and theories to support the alleged
21 violations, in accordance with California Labor Code section 2699.3. Plaintiff James's written
22 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
23 PAGA Administrator has confirmed receipt of Plaintiff James's written notice and assigned
24 Plaintiff James PAGA Case Number LWDA-CM-822780-21. A true and correct copy of
25 Plaintiff James's written notice to the LWDA and Defendants dated February 25, 2021, is
26 attached hereto as "Exhibit 2."

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1 44. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
2 sent the LWDA Notices described above, and the LWDA has not responded that it intends to
3 investigate Plaintiffs' claims, and Defendants have not cured the violations.

4 45. Thus, Plaintiffs have satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7,
7 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

8 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare Commission
11 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
12 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
13 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
14 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
15 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
16 criminal penalty provided by law." Plaintiffs, acting in the public interest as private attorneys
17 general, seek assessment and collection of civil penalties under Labor Code section 558 for
18 themselves, all other non-party Aggrieved Employees, and the State of California against
19 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
20 IWC Wage Order. Plaintiffs, acting in the public interest as private attorneys general, do not
21 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
22 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

23 47. Defendants, at all times relevant to this complaint, were employers or persons
24 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
25 Employees' rights by violating various sections of the California Labor Code as set forth above.

26 48. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

50. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

51. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

52. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other non-party Aggrieved Employees with at least

1 minimum wages for all hours worked, as set forth below;

2 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
3 applicable IWC Wage Order for Defendants' failure to provide Plaintiffs
4 and other non-party Aggrieved Employees with meal periods, as set forth
5 below;

6 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
7 IWC Wage Order for Defendants' failure to authorize and permit
8 Plaintiffs and other non-party Aggrieved Employees to take rest periods,
9 as set forth below;

10 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
11 Wage Order for failure to provide accurate and complete wage statements
12 to Plaintiffs and other non-party Aggrieved Employees, as set forth
13 below;

14 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
15 Wage Order for failure to maintain payroll records, as set forth below;

16 (g) Violation of Labor Code section 204 for failure to pay all earned wages
17 during employment, as set forth below;

18 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
19 earned wages upon termination, as set forth below;

20 (i) Violation of Labor Code sections 221 and 224 for unlawfully deducting
21 a portion of wages previously paid to Plaintiffs and other non-party
22 Aggrieved Employees, as set forth below;

23 (j) Violation of Labor Code section 223 for secretly paying Plaintiffs and
24 other non-party Aggrieved Employees lower wages than required by
25 statute, while purporting to pay the proper wages, as set forth below;

26 (k) Violation of Labor Code sections 551 and 552 for failure to provide one
27 day's rest in seven to Plaintiff James and other non-party Aggrieved
28 Employees, as set forth below;

- 1 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
2 Order for failing to provide suitable seating to Plaintiffs and other non-
3 party Aggrieved Employees, as set forth below;
- 4 (m) Violation of Labor Code section 1198 and the applicable IWC Wage
5 Order for failure to pay reporting time pay when Plaintiffs and other non-
6 party Aggrieved Employees were put to work for less than half of their
7 regular scheduled shifts, as set forth below;
- 8 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
9 and other non-party Aggrieved Employees for all business expenses
10 necessarily incurred, as set forth below; and
- 11 (o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
12 provide written notice of information material to Plaintiffs' and other
13 non-party Aggrieved Employees' employment with Defendants, as set
14 forth below.

15 **FAILURE TO PAY OVERTIME**

16 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

17 53. Labor Code section 1198 makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the applicable wage order. California Labor Code
19 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
20 be the . . . standard conditions of labor for employees. The employment of any employee . . .
21 under conditions of labor prohibited by the order is unlawful.”

22 54. California Labor Code section 1198 and the applicable IWC Wage Order provide
23 that it is unlawful to employ persons without compensating them at a rate of pay either time-
24 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
25 worked by the person on a daily or weekly basis.

26 55. Specifically, the applicable IWC Wage Order provides that Defendants are and
27 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
28 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and

1 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
2 hours in a workweek.

3 56. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve
5 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
6 An employee's regular rate of pay includes all remuneration for employment paid to, or on
7 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

8 57. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
11 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
12 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
13 the seventh (7th) day of work.

14 58. First, during the relevant period, Defendants had, and continue to have, a
15 company-wide policy of strictly staffing their retail store locations based on the labor hours
16 allocated by each location's labor or payroll budget set by corporate. This practice of labor
17 budgeting, combined with the assignment of heavy workloads, has resulted in, and continues to
18 result in, chronic understaffing and a lack of adequate meal period coverage, because there were
19 too few employees on duty to handle the workload. Moreover, Defendants have a practice of
20 failing to schedule meal periods, which further caused Plaintiffs and other non-party Aggrieved
21 Employees to not be relieved of their duties for compliant meal periods. As a result of this
22 inadequate meal period coverage, Plaintiffs and other non-party Aggrieved Employees were not
23 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
24 receive a meal period.

25 59. Moreover, on information and belief, because Defendants frowned upon
26 employees accruing meal period penalties, Defendants pressured Plaintiffs and other non-party
27 Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to
28 reflect compliant meal periods, regardless of whether they had received a compliant meal period

1 or not, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus,
2 Plaintiffs and other non-party Aggrieved Employees performed work during meal periods for
3 which they were not paid.

4 60. In conjunction with understaffing their retail store locations, on information and
5 belief, Defendants had a requirement that a managerial employee be present on the floor at all
6 times and prohibited managers from leaving the premises unless another manager was also on
7 duty, resulting in a lack of meal period coverage for managerial employees. At the same time,
8 the labor budgets Defendants implemented did not always allow for more than one manager to
9 be on the schedule at all times. As a result, Plaintiff James and other non-party Aggrieved
10 Employees were sometimes the only managers on duty, and were the only employees authorized
11 to grant or access certain permissions in Defendants' point-of-sale system. Because managerial
12 employees were effectively prohibited from leaving Defendants' premises for meal periods
13 without coverage, and because there were too few employees and other managers on duty to
14 handle the workload and attend to customers, Plaintiff James and other non-party Aggrieved
15 Employees were denied uninterrupted 30-minute meal periods, and were required to work
16 through and/or to return early from meal periods. For example, Plaintiff James missed her meal
17 periods 2-3 times per week due to the workload and lack of coverage, and her meal periods were
18 interrupted by 10-15 minutes in order to assist with returns.

19 61. Second, during the relevant period, Defendants had, and continue to have, a
20 company-wide policy and/or practice of requiring employees to complete work-related tasks
21 while off-the-clock. For example, 2-3 times per month, Plaintiff Williams had to wait several
22 minutes for a cash register to become available before she could clock in for her shift.
23 Furthermore, Plaintiff James and other non-party Aggrieved Employees were also required to
24 make deliveries to Defendants' other store locations or perform pre-shift opening tasks, such as
25 turning on all of the lights and disarming the store alarm, before being able to clock in for their
26 shifts. In addition, Plaintiff James and other non-party Aggrieved Employees were also required
27 to perform post-shift closing responsibilities after clocking out at the end of their shifts,
28 including turning off all of the lights and activating the store alarm.

1 62. Additionally, Defendants required Plaintiffs and other non-party Aggrieved
2 Employees to complete online training modules from home, on their off-days, or during their
3 unpaid meal periods, but did not compensate them for this time. For example, Plaintiffs each
4 spent several hours completing Defendants' requisite online training modules at home on their
5 personal cellular phones, but were not paid for this time. Furthermore, Defendants required
6 Plaintiff James and other non-party Aggrieved Employees to attend mandatory meetings held
7 at Defendants' other store locations, but did not compensate them for their time spent traveling
8 to and from these meetings. Moreover, Plaintiff James and other non-party Aggrieved
9 Employees spent time responding to phone calls and text messages from managers on a weekly
10 basis to discuss work-related matters. Thus, Defendants failed to track all of this time spent
11 working before clocking in or after clocking out, and Plaintiffs and other non-party Aggrieved
12 Employees received no compensation for this time.

13 63. Third, Defendants had a company-wide loss prevention policy requiring
14 employees to undergo mandatory security checks by a managerial employee before leaving the
15 store premises after clocking out at the end of a shift and/or after clocking out for a meal period.
16 For example, after clocking out at the end of their shifts, Plaintiffs and other non-party
17 Aggrieved Employees were required to wait up to two (2) minutes for a manager to check their
18 belongings. Although Defendants' requirement that Plaintiffs and other non-party Aggrieved
19 Employees undergo security checks was mandatory, Defendants did not compensate them for
20 the time it took them to wait and undergo these checks. Furthermore, Defendants also had a
21 company-wide security policy requiring employees to leave the store premises in pairs. After
22 clocking out at the end of their shifts, Plaintiffs and other non-party Aggrieved Employees were
23 required to wait for the manager on duty to complete his or her closing duties before they could
24 leave Defendants' premises. For example, Plaintiffs would clock out at the end of their shifts
25 and wait up to 10 minutes off-the-clock for their respective managers to finish closing their
26 stores and setting the alarms, before they were permitted to leave the store premises. As a result
27 of these loss prevention and security policies and/or practices, Plaintiffs and other non-party
28 Aggrieved Employees were subject to Defendants' control after they had clocked out for meal

1 periods and/or their shifts, but were not compensated for this time.

2 64. Fourth, during the relevant time period, Defendants had a company-wide “on-
3 call” policy, whereby they scheduled Plaintiffs and other non-party Aggrieved Employees to
4 work “on-call,” or on standby. During an “on-call” shift, Plaintiffs and other non-party
5 Aggrieved Employees had to be available and report to work upon receiving a call from
6 Defendants notifying them that they needed to come in and work. When scheduled to be “on-
7 call,” Plaintiffs and other non-party Aggrieved Employees were required to wait for the store to
8 call them within a certain window to see if they were required to come in and work. Plaintiffs
9 and other non-party Aggrieved Employees were, in essence, on controlled standby for
10 Defendants because they could not use that time freely for their own purposes and were forced
11 to put their lives on hold. For example, Plaintiffs refrained from making plans altogether while
12 “on-call” for standby shifts because they knew that they had to drop whatever they were doing
13 at a moment’s notice if they received a call from Defendants to report to work. However,
14 Defendants did not pay Plaintiffs and other non-party Aggrieved Employees for the time during
15 which they were waiting to receive a call from Defendants and unable to use their time for their
16 own purposes.

17 65. Because Plaintiffs and other non-party Aggrieved Employees regularly worked
18 shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-
19 clock work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
20 Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually
21 worked. Defendants’ failure to pay Plaintiffs and other non-party Aggrieved Employees the
22 balance of overtime compensation, as required by California law, violates the provisions of
23 California Labor Code sections 510 and 1198.

24 66. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
25 correct overtime rate for the recorded overtime hours that they generated. In addition to an
26 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
27 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
28 California Labor Code, Defendants failed to incorporate all compensation, including incentive

1 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
2 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
3 when other non-party Aggrieved Employees worked overtime and received these other forms
4 of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
5 required.

6 67. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
7 the balance of overtime compensation as required by California law, violates the provisions of
8 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
10 and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

13 68. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
15 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
16 Compensable work time is defined by IWC Wage Order 7-2001 as "the time during which an
17 employee is subject to the control of an employer, and includes all the time the employee is
18 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
19 § 11070(2)(G) (defining "Hours Worked").

20 69. As stated, due to Defendants' company-wide practice of utilizing labor budgets,
21 assignment of heavy workloads, subsequent lack of meal period coverage, and/or policy
22 requiring managerial employees to stay on or near the store premises during meal periods,
23 Plaintiffs and other non-party Aggrieved Employees were impeded from taking all
24 uninterrupted meal periods to which they were entitled and were required to work off-the-clock.
25 Moreover, as set forth above, in order to prevent employees from accruing meal period
26 penalties, upon information and belief, Defendants' management pressured employees to clock
27 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
28 but required them to continue working, time for which they were not paid.

1 70. As stated, Defendants discouraged and impeded Plaintiffs and other non-party
2 Aggrieved Employees from recording hours worked that were outside of their scheduled shifts.
3 Thus, Defendants required Plaintiffs and other non-party Aggrieved Employees to perform
4 work off-the-clock, including performing opening and closing shift duties, making deliveries to
5 Defendants' other store locations, submitting to off-the-clock security checks, waiting for
6 managers to complete closing duties to leave the store premises in pairs, completing required
7 online trainings, and/or attending mandatory meetings at other store locations.

8 71. Additionally, as stated, Defendants systematically, and on a company-wide basis,
9 required Plaintiffs and other non-party Aggrieved Employees to work "on-call" shifts during
10 which they had to put their lives on hold and were restricted from using that time freely for their
11 own purposes. Even though Plaintiffs and other non-party Aggrieved Employees were subject
12 to Defendants' control during an "on-call" shift, Defendants did not pay Plaintiffs and other
13 non-party Aggrieved Employees at least minimum wages for all hours that they were suffered
14 or permitted to work.

15 72. Thus, Defendants did not pay at least minimum wages for all hours worked by
16 Plaintiffs and other non-party Aggrieved Employees. Also, to the extent that these off-the-clock
17 hours did not qualify for overtime premium payment, Defendants did not pay at least minimum
18 wages for those hours worked off-the-clock in violation of California Labor Code sections
19 1182.12, 1194, 1197, and 1198.

20 73. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
22 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

26 74. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
27 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
28 other non-party Aggrieved Employees' employment by Defendants.

1 75. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is not
5 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
6 and the employee. Under California law, first meal periods must start after no more than five
7 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

8 76. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 77. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
12 and the applicable IWC Wage Order also require employers to provide a second meal period of
13 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 78. As stated, Defendants had, and continue to have, a company-wide policy and/or
18 practice of understaffing locations pursuant to their labor budget practices, which, combined
19 with heavy workloads and their failure to schedule meal periods, has resulted in a lack of meal
20 period coverage and prevented Plaintiffs and other non-party Aggrieved Employees from taking
21 all timely, uninterrupted meal periods to which they were entitled. In conjunction with
22 understaffing their store locations, as stated above, on information and belief, Defendants had
23 a requirement that a managerial employee be present on the store floor at all times, but
24 Defendants' labor budgets did not always allow for more than one manager to be on the schedule
25 at all times. As a result, Plaintiff James and other non-party Aggrieved Employees were
26 sometimes the only managers on duty, and were required to wait extended periods of time before
27 taking meal periods, would have their meal periods interrupted, or would work through meal
28 periods in order to assist their coworkers and customers.

1 79. Further, as stated, on information and belief, because Defendants frowned upon
2 employees accruing meal period penalties, on information and belief, Defendants pressured
3 Plaintiffs and other non-party Aggrieved Employees to clock out for meal periods and/or
4 adjusted employee time records to reflect compliant meal periods, regardless of whether they
5 had received a compliant meal period or not, in order to strictly limit meal penalties that
6 Defendants would otherwise owe.

7 80. As a result of Defendants' company-wide practices and/or policies, Plaintiffs and
8 other non-party Aggrieved Employees would be forced to work in excess of five (5) hours
9 before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo
10 their meal periods altogether. For example, 2-3 times per week, Plaintiff Williams would be
11 unable to take her meal period until more than five (5) hours into her shift, while Plaintiff James
12 would be unable to take her meal period until more than five (5) hours into her shift, because
13 their respective stores were busy and they did not have coverage. As a further example, Plaintiff
14 James missed her meal periods 2-3 times per week due to the workload and lack of coverage,
15 and would have her meal periods interrupted or cut short by 10-15 minutes at a time in order to
16 assist with transactions or returns at the cash register, due to a lack of coverage resulting from
17 being the only managerial employee scheduled to work. In addition, other non-party Aggrieved
18 Employees had their meal periods cut short due to mandatory security checks of their personal
19 belongings when they exited the store during their meal periods.

20 81. Moreover, Defendants did not provide other non-party Aggrieved Employees
21 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
22 day. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal period waivers
23 on days that they were entitled to meal periods and were not relieved of all duties.

24 82. Defendants knew or should have known that, as a result of their company-wide
25 policies and/or practices, Plaintiffs and other non-party Aggrieved Employees were not actually
26 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
27 should have known that they did not pay Plaintiffs and other non-party Aggrieved Employees
28 meal period premiums when meal periods were missed, late, short, and/or interrupted. For

1 example, as stated, Defendants’ supervisors instructed Plaintiff Williams to clock out for her
2 meal period before the fifth hour of her shift and permitted her to take her meal period later on
3 in her shift, once the store was less busy.

4 83. Furthermore, Defendants engaged in a company-wide practice and/or policy of
5 not paying all meal period premiums owed when compliant meal periods are not provided.
6 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
7 have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to
8 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
9 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
10 Employees at the correct rate of pay for premiums because Defendants systematically failed to
11 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
12 other forms of remuneration, in the regular rate of pay.

13 84. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
14 Employees compliant meal periods and failed to pay the full meal period premiums due.
15 Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code
16 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are
17 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
18 (f), and (g).

19 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

20 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

21 85. At all relevant times herein set forth, the applicable IWC Wage Order and
22 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs’ and other
23 non-party Aggrieved Employees’ employment by Defendants.

24 86. At all relevant times, the applicable IWC Wage Order provides that “[e]very
25 employer shall authorize and permit all employees to take rest periods, which insofar as
26 practicable shall be in the middle of each work period” and that the “rest period time shall be
27 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
28 hours or major fraction thereof” unless the total daily work time is less than three and one-half

1 (3 ½) hours.

2 87. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC. To comply with its obligation to authorize and permit rest periods
5 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
6 must “relinquish any control over how employees spend their break time, and relieve their
7 employees of all duties—including the obligation that an employee remain on call. A rest
8 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
9 257, 269-270 (2016).

10 88. Pursuant to the applicable IWC Wage Order and California Labor Code section
11 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
12 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
13 required rest period was not authorized and permitted.

14 89. During the relevant time period, Defendants regularly failed to authorize and
15 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period
16 per each four (4) hour period worked or major fraction thereof. As with meal periods,
17 Defendants’ company-wide labor budget policies and resultant understaffing, heavy workload,
18 and lack of coverage prevented Plaintiffs and other non-party Aggrieved Employees from being
19 relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule
20 rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage,
21 further led to Plaintiffs and other non-party Aggrieved Employees not being authorized and
22 permitted to take rest periods. Moreover, Plaintiff Williams and other non-party Aggrieved
23 Employees were erroneously informed by management that rest periods were “optional.”

24 90. Additionally, during the relevant time period, upon information and belief,
25 Defendants maintained a company-wide on-premises rest period policy, which mandated that
26 Plaintiffs and other non-party Aggrieved Employees remain on Defendants’ premises during
27 their rest periods. Because Plaintiffs and other non-party Aggrieved Employees were restricted
28 from leaving the work premises during rest periods, they were denied the ability to use their rest

1 periods freely for their own purposes, such as running personal errands. Thus, Defendants
2 effectively maintained control over Plaintiffs and other non-party Aggrieved Employees during
3 rest periods.

4 91. As a result of Defendants' practices and policies, Plaintiffs and other non-party
5 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
6 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
7 entitled. For example, during their employment, Plaintiff Williams missed at least two (2) rest
8 periods per week because management would not authorize rest periods when the store was
9 busy, while Plaintiff James missed her rest periods 5-6 days per week because the store was
10 busy and lacked coverage for managerial employees. And, when Plaintiff Williams was able to
11 take her rest periods, her rest periods were cut short once or twice per week because Defendants'
12 management asked her to return early to assist with customers.

13 92. Defendants also have engaged in a company-wide practice and/or policy of not
14 paying all rest period premiums owed when compliant rest periods are not authorized and
15 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
16 Employees have not received premium pay for all missed rest periods. Alternatively, to the
17 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
18 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
19 Employees at the correct rate of pay for premiums because Defendants failed to include all
20 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
21 remuneration, in the regular rate of pay.

22 93. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
24 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
25 2699(a), (f), and (g).

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1 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

2 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

3 94. At all relevant times herein, California Labor Code section 226(a) provides that
4 every employer shall furnish each of his or her employees an accurate and complete itemized
5 wage statement in writing, including, but not limited to, the name and address of the legal entity
6 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
7 rates of pay.

8 95. During the relevant time period, Defendants have knowingly and intentionally
9 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
10 inaccurate wage statements. For example, Defendants issued uniform wage statements to
11 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
12 earned; total hours worked; net wages earned; the name of the legal entity that is the employer;
13 and all applicable hourly rates in effect during the pay period, including overtime rates of pay,
14 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
15 violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

16 96. First, because Defendants did not record the time Plaintiffs and other non-party
17 Aggrieved Employees spent working off-the-clock and deducted time from their records for
18 meal periods that were interrupted and/or missed (and therefore time for which they should have
19 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
20 Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1) and
21 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
22 total number of hours worked by Plaintiffs and other non-party Aggrieved Employees, in
23 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during
24 the pay period and the corresponding accurate number of hours worked at each hourly rate, in
25 violation of section 226(a)(9).

26 97. Second, because Defendants did not calculate other non-party Aggrieved
27 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants
28 did not list the correct amount of gross wages earned by other non-party Aggrieved Employees

1 in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by
2 other non-party Aggrieved Employees in violation of section 226(a)(5). Defendants also failed
3 to correctly list all applicable hourly rates in effect during the pay period, namely, correct
4 overtime rates of pay, in violation of section 226(a)(9).

5 98. Third, and separate from these violations, Defendants issued uniform wage
6 statements to Plaintiffs and other non-party Aggrieved Employees that failed to correctly list
7 the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
8 section 226(a)(8) is to provide California employees with transparency as to the true identity of
9 their employer, to allow the employee to contact their employer during employment in the future
10 for various reasons, including filing an administrative claim, judicial claim, or other action to
11 seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff James's and
12 other non-party Aggrieved Employees' wage statements incorrectly list the entity the employer
13 as "Rainbow USA, Inc" but, according the California Secretary of State website, there is no
14 such entity by the name "Rainbow USA, Inc". Plaintiff James believes the correct employing
15 entity that should be listed on employees' wage statements is "RAINBOW USA, INC. WHICH
16 WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC."

17 99. The wage statement deficiencies also include, among other things, failing to list
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
19 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
20 the last four digits of his or her social security number or an employee identification number
21 other than a social security number; failing to list the address of the legal entity that is the
22 employer; failing to list the inclusive dates of the period for which employees were paid; and/or
23 failing to state all hours worked as a result of not recording or stating the hours they worked
24 off-the-clock.

25 100. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
27 forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment
28 of any employees for longer hours than those fixed by the order or under conditions of labor

1 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
2 are required to keep accurate time records showing when the employee begins and ends each
3 work period and meal period. During the relevant time period, Defendants failed, on a
4 company-wide basis, to keep accurate records of work period and meal period start and stop
5 times for Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198. As
6 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs’
7 and other non-party Aggrieved Employees’ time records by recording that compliant meal
8 periods were taken regardless of if or when meal periods were actually taken, and thereby failed
9 to keep accurate records of meal start and end times for Plaintiffs and other non-party Aggrieved
10 Employees. Furthermore, in light of Defendants’ failure to provide other non-party Aggrieved
11 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
12 no records of meal start and end times for second meal periods.

13 101. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[keep, at a central location in the state or at the plants
16 or establishments at which employees are employed, payroll records showing the hours worked
17 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
18 piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor
19 Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to
20 maintain accurate and complete records as required by section 1174(d). During the relevant
21 time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to
22 maintain accurate payroll records for Plaintiffs and other non-party Aggrieved Employees
23 showing the daily hours they worked and the wages paid thereto as a result of failing to record
24 the off-the-clock hours that they worked.

25 102. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d),
26 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover
27 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

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1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 103. At all relevant times herein set forth, California Labor Code section 204 requires
4 that all wages earned by any person in any employment between the 1st and the 15th days,
5 inclusive, of any calendar month, other than those wages due upon termination of an employee,
6 are due and payable between the 16th and the 26th day of the month during which the labor was
7 performed. Labor Code section 204 further provides that all wages earned by any person in any
8 employment between the 16th and the last day, inclusive, of any calendar month, other than
9 those wages due upon termination of an employee, are due and payable between the 1st and the
10 10th day of the following month.

11 104. At all relevant times herein, California Labor Code section 204 also requires that
12 all wages earned for labor in excess of the normal work period shall be paid no later than the
13 payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor
14 Code section 204 provides that the requirements of this section are deemed satisfied by the
15 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
16 than seven (7) calendar days following the close of the payroll period.

17 105. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
18 other non-party Aggrieved Employees all wages due to them within any time period specified
19 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
20 wages, meal and rest period premiums, and/or reporting time pay.

21 106. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

25 107. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two (72)

1 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
2 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
3 quitting.

4 108. Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved
5 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
6 above, including but not limited to, overtime wages, minimum wages, meal and rest period
7 premiums, and/or reporting time pay either at the time of discharge, or within seventy-two (72)
8 hours of their leaving Defendants' employ.

9 109. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
10 who are no longer employed by Defendants their wages earned and unpaid at the time of
11 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
12 California Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved
13 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256
14 and/or 2699(a), (f), and (g).

15 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

16 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

17 110. At all times relevant herein, California Labor Code section 221 provides that it
18 shall be unlawful for any employer to collect or receive from an employee any part of wages
19 theretofore paid by said employer to said employee. California Labor Code section 224 also
20 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
21 deduction is expressly authorized in writing by the employee."

22 111. During the relevant time period, Defendants unlawfully deducted a portion of
23 wages previously paid to Plaintiffs and other non-party Aggrieved Employees in violation of
24 California Labor Code section 221. Defendants systematically, and on a company-wide basis,
25 maintained a loss prevention "policy" that improperly deducted wages from Plaintiffs' and other
26 non-party Aggrieved Employees' pay. Specifically, Defendants required employees to pay cash
27 out-of-pocket to cover any shortages in the cash registers that arose at the close of business, on
28 threat of discipline, even though such shortages occurred in the usual course of business, as a

1 result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross
2 negligence.

3 112. For example, Plaintiff Williams was required to pay \$40 of her own money to
4 replace funds that were short in the cash register, amounting to an improper deduction of wages.
5 As a further example, Plaintiff James was also instructed by Defendants' management to chip
6 in and help cover cash register shortages of up to \$20 at least once per week. These deductions
7 were not expressly authorized in writing by Plaintiffs and other non-party Aggrieved
8 Employees. Thus, Defendants' policy of deducting these payments from Plaintiffs' and other
9 non-party Aggrieved Employees' wages constitutes an unlawful deduction of wages, in
10 violation of California Labor Code sections 221 and 224.

11 113. Defendants' conduct as alleged herein violates California Labor Code sections
12 221 and 224. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
13 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

14 **SECRET PAYMENT OF A LOWER WAGE**

15 **VIOLATION OF LABOR CODE SECTION 223**

16 114. At all times, California Labor Code section 223 makes it unlawful for an
17 employer to secretly pay wages lower than required by statute while purporting to pay legal
18 wages.

19 115. During the relevant time period, as stated, Defendants willfully and
20 systematically deducted wages from Plaintiffs and other non-party Aggrieved Employees
21 pursuant to their loss prevention policy. Defendants' scheme resulted in the payment of less
22 than statutorily required wages to Plaintiffs and other non-party Aggrieved Employees. In doing
23 so, Defendants acted with the intent to deprive Plaintiffs and other non-party Aggrieved
24 Employees of statutory wages, including, but not limited to, overtime wages and minimum
25 wages, to which they were entitled to under California law. Thus, Defendants paid Plaintiffs
26 and other non-party Aggrieved Employees lower wages than those they were entitled to while
27 purporting that Plaintiffs and other non-party Aggrieved Employees were properly paid.

28 ///

116. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN

VIOLATION OF LABOR CODE SECTIONS 551, 552, and 558

117. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

118. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

119. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

120. During the relevant time period, on information and belief, Defendants scheduled Plaintiff James and other non-party Aggrieved Employees to work eight (8) or more hours per day and more than six (6) consecutive days in a workweek. For example, Plaintiff James worked seven (7) consecutive days in a workweek on at least 2-3 occasions. Because Plaintiff James and other non-party Aggrieved Employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the

1 extent that Plaintiff James and other non-party Aggrieved Employees may have signed
2 purported waivers of their right to a day's rest in seven, such waivers are invalid.

3 121. Thus, during the relevant time period, and in violation of Labor Code sections
4 551 and 552, Defendants caused Plaintiff James and other non-party Aggrieved Employees to
5 work more than six days in seven. Plaintiff James and other non-party Aggrieved Employees
6 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE SUITABLE SEATING**
9 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
10 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

11 122. At all relevant times herein, California Labor Code section 1198 makes it illegal
12 to employ an employee under conditions of labor that are prohibited by the applicable wage
13 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
14 fixed by the commission shall be the . . . standard conditions of labor for employees. The
15 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

16 123. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll
17 working employees shall be provided with suitable seats when the nature of the work reasonably
18 permits the use of seats.”

19 124. Defendants' California retail stores are generally similar in their layout and
20 design and there was, and continues to be, space behind cash wraps to allow for the presence
21 and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees (with
22 reasonable or no modification to these work areas) during the performance of their work duties.
23 Defendants could provide Plaintiffs and other non-party Aggrieved Employees with a seat or
24 stool at their cash wraps, but instead deny employees seating and force Plaintiffs and other non-
25 party Aggrieved Employees to stand throughout the day.

26 125. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
27 of their day behind or at these cash wraps. The nature of the work of an employee performing
28 cashier duties can reasonably be accomplished from a seated position. However, as set forth

1 herein, Defendants systematically, and on a company-wide basis, do not provide seats or stools
2 at or near cash wraps, forcing Plaintiffs and other non-party Aggrieved Employees to stand
3 throughout their work shifts.

4 126. Defendants violated California Labor Code section 1198 and California Code of
5 Regulations, Title 8, section 11070(14)(A) because Plaintiffs and other non-party Aggrieved
6 Employees were not allowed to sit, even when it would not have interfered with the performance
7 of their duties, nor were they provided with suitable seats. Defendants' management did not
8 inform Plaintiffs and other non-party Aggrieved Employees that they were allowed to sit down,
9 provide any means for them to sit down, or mention any policy regarding sitting.

10 127. As a result of Defendants' company-wide policy and/or practice of prohibiting
11 employees from sitting during their shifts and company-wide failure to provide suitable seating,
12 Plaintiffs and other non-party Aggrieved Employees were forced to stand during shifts and
13 denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other non-party
14 Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order 7-
15 2001, subdivision 14(A).

16 128. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO PROVIDE SUITABLE SEATING**

19 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
20 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

21 129. At all relevant times herein, California Labor Code section 1198 makes it illegal
22 to employ an employee under conditions of labor that are prohibited by the applicable wage
23 order. California Labor Code section 1198 requires that “. . . the standard conditions of labor
24 fixed by the commission shall be the . . . standard conditions of labor for employees. The
25 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

26 130. California Code of Regulations, Title 8, section 11070(14)(B) provides that
27 “[w]hen employees are not engaged in the active duties of their employment and the nature of
28 the work requires standing, an adequate number of suitable seats shall be placed in reasonable

1 proximity to the work area and employees shall be permitted to use such seats when it does not
2 interfere with the performance of their duties.”

3 131. During the relevant time period, Defendants violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
5 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls
6 in their work duties, nor were they provided with suitable seats in reasonable proximity to their
7 work areas.

8 132. On information and belief, Defendants’ California retail stores are generally
9 similar in their layout and design and there was, and continues to be, space near their work areas
10 (with reasonable or no modification to these work areas) to allow for the presence and use of a
11 seat or stool by Plaintiffs and other non-party Aggrieved Employees during lulls in operation.
12 Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a
13 seat or stool in their work areas, but instead denied Plaintiffs and other non-party Aggrieved
14 Employees suitable seating altogether and effectively forced Plaintiffs and other non-party
15 Aggrieved Employees to stand throughout the day.

16 133. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees
17 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
18 it would not interfere with the performance of their duties for times when they were not engaged
19 in active duties that require standing. In other words, to the extent Plaintiffs and other non-
20 party Aggrieved Employees engaged in duties in which the nature of the work required standing,
21 Defendants denied them the use of suitable seats nearby during lulls in their work duties.
22 Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved Employees of
23 their rights to a seat or stool under California law.

24 134. As a result of Defendants’ company-wide policy and/or practice prohibiting
25 employees from sitting at any time, even when they were not engaged in active duties requiring
26 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
27 Plaintiffs and other non-party Aggrieved Employees were forced to stand during shifts and
28 denied seats. Defendants’ failure to provide suitable seating to Plaintiffs and other non-party

1 Aggrieved Employees violated and continues to violate California Labor Code section 1198 and
2 IWC Wage Order 7-2001, subdivision 14(B).

3 135. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **FAILURE TO PAY REPORTING TIME PAY**

6 **VIOLATION OF LABOR CODE SECTION 1198**

7 136. California Labor Code section 1198 makes it illegal to employ an employee under
8 conditions of labor that are prohibited by the applicable wage order. California Labor Code
9 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be
10 the . . . standard conditions of labor for employees. The employment of any employee . . . under
11 conditions of labor prohibited by the order is unlawful.”

12 137. California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach
13 workday an employee is required to report for work and does report, but is not put to work or is
14 furnished less than half said employee’s usual or scheduled day’s work, the employee shall be
15 paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor
16 more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the
17 minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least
18 partial compensation for employees who report to work expecting to work a specified number of
19 hours, and who are deprived of that amount because of inadequate scheduling or lack of proper
20 notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

21 138. Defendants violated California Labor Code section 1198 and California Code of
22 Regulations, Title 8, section 11070(5), because Defendants failed to pay Plaintiffs and/or other
23 non-party Aggrieved Employees reporting time pay when they reported to work for their
24 scheduled shift but were put to work for less than half of the regular schedule.

25 139. First, as stated above, Defendants failed to pay Plaintiffs and other non-party
26 Aggrieved Employees reporting time pay when they presented themselves ready for work by
27 waiting “on-call” and awaiting instructions on whether to they needed to show up, but ultimately
28 were not called. Defendants did not pay Plaintiffs and other non-party Aggrieved Employees

1 for at least half of their scheduled day's work when they were subject to Defendants' on-call
2 policy and were not called or told not to come into work. For example, Plaintiffs waited at their
3 respective homes during their scheduled "on-call" shifts as required by Defendants' on-call
4 policy, but were sometimes not called or told that Defendants did not need them to work. When
5 this occurred, Defendants did not pay them for at least half of their scheduled standby time or
6 the required minimum reporting time pay.

7 140. Second, Defendants had a company-wide practice of sending other non-party
8 Aggrieved Employees home early from their shifts, including before they had worked at least
9 half of their regular shift, but would not pay other non-party Aggrieved Employees for half of
10 their scheduled shift. Although other non-party Aggrieved Employees would report to work
11 based on the schedule that Defendants provided to them, Defendants would send them home
12 before they had worked at least half of their scheduled shifts without giving them reporting time
13 pay.

14 141. Accordingly, Plaintiffs and other non-party Aggrieved Employees were not
15 properly compensated with reporting time pay in violation of California Labor Code section
16 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
17 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

19 **VIOLATION OF LABOR CODE SECTION 2802**

20 142. At all times herein set forth, California Labor Code section 2802 provides that
21 an employer must reimburse employees for all necessary expenditures and losses incurred by
22 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
23 to prevent employers from passing off their cost of doing business and operating expenses on
24 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
25 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen the
26 employer requires the use of tools or equipment or they are necessary to the performance of a
27 job, such tools and equipment shall be provided and maintained by the employer, except that an
28 employee whose wages are at least two (2) times the minimum wage may provide and maintain

1 hand tools and equipment customarily required by the particular trade or craft.”

2 143. First, during the relevant time period, Defendants, on a company-wide basis,
3 required that Plaintiffs and other non-party Aggrieved Employees use their own personal
4 cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them
5 for the costs of their work-related cellular phone expenses. For example, Plaintiffs and other
6 non-party Aggrieved Employees were required to download applications onto their personal
7 cellular phones to conduct company business, such as to complete mandatory online trainings.
8 As a further example, Plaintiff James and other non-party Aggrieved Employees were required
9 to communicate with management regarding work-related matters on their personal cellular
10 phones. Although Defendants required Plaintiffs and other non-party Aggrieved Employees to
11 utilize their personal cellular phones to carry out their work-related responsibilities, Defendants
12 failed to fully reimburse them for this cost.

13 144. Second, during the relevant time period, Defendants, on a company-wide basis,
14 forced Plaintiffs and other non-party Aggrieved Employees to purchase their own office
15 supplies that were necessary for completion of their work-related duties. For example, Plaintiff
16 Williams spent \$7.00 on pens for her store location and Plaintiff James was required to purchase
17 office printer paper for \$4.00. Although Defendants required Plaintiffs and other non-party
18 Aggrieved Employees to purchase their own supplies for use on the job, Defendants did not
19 fully reimburse them for these expenses.

20 145. Third, Defendants had a company-wide policy of requiring Plaintiff James and
21 other non-party Aggrieved Employees to utilize their own personal vehicles for work purposes,
22 but failed to reimburse them for all costs of travel, including mileage. For example, at least
23 once per month, Plaintiff James was required to drive to Defendants’ store locations in San
24 Bernardino and Rialto for company meetings. In addition, Plaintiff James was required to make
25 deliveries to other store locations. Although Defendants required Plaintiff James and other non-
26 party Aggrieved Employees to use their own vehicles or obtain alternate transportation to carry
27 out their work-related responsibilities, Defendants never reimbursed them for their travel
28 expenses.

1 146. Fourth, Defendants, on a company-wide basis, mandated that Plaintiff Williams
2 and other non-party Aggrieved Employees purchase headbands to wear as part of their work
3 attire. Plaintiff Williams and other non-party Aggrieved Employees purchased headband
4 accessories for their work attire, at a cost of approximately \$12.00, but were not reimbursed for
5 these costs.

6 147. Defendants could have provided Plaintiffs and other non-party Aggrieved
7 Employees with the actual tools for use on the job, such as company phones, company vehicles,
8 office supplies, and uniform accessories. Or, Defendants could have reimbursed employees for
9 the costs of their cellular phone usage, travel expenses, mileage, office supply expenses, and
10 uniform accessory expenses. Instead, Defendants passed these operating costs off onto
11 Plaintiffs and other non-party Aggrieved Employees. At all relevant times, Plaintiffs and other
12 non-party Aggrieved Employees did not earn at least two (2) times the minimum wage.

13 148. Defendants' company-wide policy and/or practice of passing on their operating
14 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
15 section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

17 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
18 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

19 149. California's Wage Theft Prevention Act was enacted to ensure that employers
20 provide employees with basic information material to their employment relationship at the time
21 of hiring, and to ensure that employees are given written and timely notice of any changes to
22 basic information material to their employment. Codified at California Labor Code section
23 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
24 provide written notice to employees containing basic and material payroll information,
25 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
26 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
27 regular payday designated by the employer, and any allowances claims as part of the minimum
28 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

150. Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. Defendants' failure to provide Plaintiffs and other non-party Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

151. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to provide suitable seating); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

1 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5, 226.3,
2 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201,
3 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194,
4 1197, 1198, 2802, and 2810.5;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551,
8 552, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

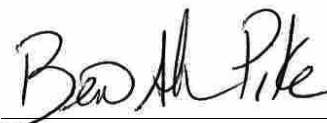
9 5. For pre-judgment and post-judgment interest as provided by law; and

10 6. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: May 5, 2021

Respectfully submitted,

14 Capstone Law APC

15
16 By: 

17 Bevin Allen Pike
18 Daniel Jonathan
19 Trisha K. Monesi

20 Attorneys for Plaintiffs LaShawn Williams
21 and Lynnee James
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28

EXHIBIT “1”



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February 25, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *LaShawn Williams v. Rainbow USA, Inc. Which Will Do Business in California as New York Rainbow USA, Inc.*

Dear PAGA Administrator:

This office represents LaShawn Williams in connection with her claims under the California Labor Code. Ms. Williams was an employee of RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC. ("RAINBOW USA").

The employer may be contacted directly at the address below:

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207

Ms. Williams intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Williams seeks relief on behalf of herself, the State of California, and other persons who are or were employed by RAINBOW USA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RAINBOW USA employed Ms. Williams as an hourly paid, non-exempt employee from approximately December 2018 to March 2020. Ms. Williams worked for RAINBOW USA as a Sales Associate and Cashier at its retail store in Los Angeles, California. During her employment, Ms. Williams typically worked four (4) to seven (7) hours or more per day, four (4) to five (5) days per week. At the time her employment ended, Ms. Williams was compensated approximately \$15.25 per hour. Her job duties included, without limitation, conducting transactions at the cash register, cleaning the store premises, surveying customers, tagging clothing, and locating store inventory for customers.

RAINBOW USA committed one or more of the following Labor Code violations against Ms. Williams, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

RAINBOW USA’s Company-Wide and Uniform Payroll and HR Practices

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC. is a New York corporation and a fashion retailer catering to teens and young women that operates over 1,000 locations in the United States. Upon information and belief, RAINBOW USA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Brooklyn, New York, for all non-exempt, hourly paid employees working for RAINBOW USA in California, including Ms. Williams and other aggrieved employees. At all relevant times, RAINBOW USA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Williams and other aggrieved employees, regardless of its location or position.

Upon information and belief, RAINBOW USA maintains a centralized Payroll department at its corporate headquarters in Brooklyn, New York, which processes payroll for all non-exempt, hourly paid employees working for RAINBOW USA in California, including Ms. Williams and other aggrieved employees. Further, RAINBOW USA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Williams and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, RAINBOW USA utilized the same methods and formulas when calculating wages due to Ms. Williams and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

RAINBOW USA willfully failed to pay all overtime wages owed to Ms. Williams and other aggrieved employees. During the relevant time period, Ms. Williams and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a

¹ These facts, theories, and claims are based on Ms. Williams’s experience and counsel’s review of those records currently available relating to Ms. Williams’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Williams reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, RAINBOW USA had, and continues to have, a company-wide policy of strictly staffing its retail locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting, combined with the assignment of heavy workloads, has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, RAINBOW USA has a practice of failing to schedule meal periods, which further caused Ms. Williams and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. Williams and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Further, on information and belief, because RAINBOW USA frowned upon employees accruing meal period penalties, RAINBOW USA's management would adjust Ms. Williams's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that RAINBOW USA would otherwise owe. Consequently, Ms. Williams and other aggrieved employees performed work during meal periods for which they were not paid.

In conjunction with understaffing its retail locations, on information and belief, RAINBOW USA had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets RAINBOW USA implemented did not always allow for more than one manager to be on the schedule at all times. As a result, other aggrieved employees were sometimes the only managers on duty, and were the only employees authorized to grant or access certain permissions in RAINBOW USA's point-of-sale system. Because managerial employees were effectively prohibited from leaving RAINBOW USA's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, other aggrieved employees missed meal periods 2-3 times per week due to the workload and lack of coverage, and their meal periods were interrupted by 10-15 minutes in order to assist with returns.

Second, during the relevant period, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, 2-3 times per month, Ms. Williams had to wait several minutes for a cash register to become available before she could clock in for her shift. Furthermore, other aggrieved employees were also required to make deliveries to RAINBOW USA's other store locations or perform pre-shift opening tasks, such as turning on all of the lights and disarming the store alarm, before being able to clock in for their shifts. In addition, other aggrieved employees were also required to perform post-shift closing responsibilities after clocking out at the end of their shifts, including turning off all of the lights and activating the store alarm.

Additionally, RAINBOW USA required Ms. Williams and other aggrieved employees to complete online training modules from home, on their off-days, or during their unpaid meal periods, but did

not compensate them for this time. For example, Ms. Williams spent three (3) hours completing RAINBOW USA's requisite online training modules at home on her personal cell phone, but was not paid for this time. Furthermore, RAINBOW USA required other aggrieved employees to attend mandatory meetings held at other RAINBOW USA store locations, but did not compensate them for their time spent traveling to and from these meetings. Moreover, other aggrieved employees responded to phone calls and texts from managers on a weekly basis to discuss work-related matters. Thus, RAINBOW USA failed to track all of this time spent working before clocking in or after clocking out, and Ms. Williams and other aggrieved employees received no compensation for this time.

Third, RAINBOW USA had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises after clocking out at the end of a shift and/or after clocking out for meal periods. For example, after clocking out at the end of their shifts, Ms. Williams and other aggrieved employees were required to wait up to two (2) minutes for a manager to check their belongings. Although RAINBOW USA's requirement that Ms. Williams and other aggrieved employees undergo security checks was mandatory, RAINBOW USA did not compensate them for the time it took them to wait and undergo these checks. Furthermore, RAINBOW USA also had a company-wide security policy requiring employees to leave the store premises in pairs. After clocking out at the end of their shifts, Ms. Williams and other aggrieved employees were required to wait for the manager on duty to complete his or her closing duties before they could leave RAINBOW USA's premises. For example, Ms. Williams would clock out at the end of her shift and wait for up to 10 minutes off-the-clock for her manager to finish closing the store and setting the alarm, before she was permitted to leave the premises. As a result of these loss prevention and security policies and/or practices, Ms. Williams and other aggrieved employees were subject to RAINBOW USA's control after they had clocked out for meal periods and/or their shifts, but were not compensated for this time.

Fourth, during the relevant time period, RAINBOW USA had a company-wide "on-call" policy, whereby it scheduled other aggrieved employees to work "on-call," or on standby. During an "on-call" shift, other aggrieved employees had to be available and report to work upon receiving a call from RAINBOW USA notifying them that they needed to come in and work. When scheduled to be "on-call," other aggrieved employees were required to wait for the store to call them within a four (4) hour window to see if they were required to come in and work. Other aggrieved employees were, in essence, controlled by RAINBOW USA because they could not use the standby time freely for their own purposes and were forced to put their lives on hold. For example, other aggrieved employees refrained from making plans altogether on days they were scheduled for a standby shift because they knew that they had to drop whatever they were doing at a moment's notice to report to the store within an hour upon being called by RAINBOW USA to report to work. However, RAINBOW USA did not pay other aggrieved employees for the time during which they were waiting to receive a call from RAINBOW USA and unable to use their time for their own purposes.

Because Ms. Williams and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Williams and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. RAINBOW USA's failure to pay Ms. Williams and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, RAINBOW USA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RAINBOW USA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RAINBOW USA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, RAINBOW USA failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

As set forth above, due to RAINBOW USA's company-wide practice of utilizing labor budgets, assignment of heavy workloads, subsequent lack of meal period coverage, and policy requiring managerial employees to stay on or near the store premises during meal periods, Ms. Williams and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, upon information and belief, RAINBOW USA's management adjusted employee time records to reflect compliant meal periods and/or pressured employees to clock out for meal periods, but required them to continue working, time for which they were not paid.

As stated, RAINBOW USA discouraged and impeded Ms. Williams and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Thus, RAINBOW USA required Ms. Williams and other aggrieved employees to perform work off-the-clock, including performing opening and closing shift duties, submitting to off-the-clock security checks, waiting for managers to complete closing duties to leave the store premises in pairs, completing required online trainings, and attending mandatory meetings at other store locations.

Additionally, RAINBOW USA systematically, and on a company-wide basis, required other aggrieved employees to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though other aggrieved employees were subject to RAINBOW USA's control during an “on-call” shift, RAINBOW USA did not pay other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the store.

Thus, RAINBOW USA did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for

overtime premium payment, RAINBOW USA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, RAINBOW USA regularly failed to pay at least minimum wages to Ms. Williams and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which, combined with heavy workloads and its failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Williams and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its store locations, as stated above, on information and belief, RAINBOW USA had a requirement that a managerial employee be present on the store floor at all times, but RAINBOW USA's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, other aggrieved employees were sometimes the only managers on duty, and were required to wait extended periods of time before taking meal periods, would have their meal periods interrupted, or would work through them in order to assist their coworkers and customers.

In addition, on information and belief, because RAINBOW USA frowned upon employees accruing meal period penalties, RAINBOW USA's management would adjust Ms. Williams's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by RAINBOW USA.

As a result, Ms. Williams and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted or cut short, and/or had to

forgo their meal periods altogether. For example, 2-3 times per week, Ms. Williams would be unable to take her meal period until more than five (5) hours into her shift because the store was busy and she didn't have coverage. As a further example, other aggrieved employees would have their meal periods interrupted or cut short in order to assist with transactions or returns at the cash register, due to a lack of coverage resulting from being the only managerial employee scheduled to work. In addition, other aggrieved employees had their meal periods cut short due to mandatory security checks of their personal belongings when they exited the store during their meal breaks.

Moreover, RAINBOW USA did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours or more per day, but were not provided an uninterrupted second 30-minute meal period. Ms. Williams and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

RAINBOW USA knew or should have known that as a result of its company-wide policies and/or practices, that Ms. Williams and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. RAINBOW USA further knew or should have known that it did not pay Ms. Williams and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted. For example, as stated, RAINBOW USA's supervisors instructed Ms. Williams to clock out for her meal period before the fifth hour of her shift and permitted her to take her meal period later on in her shift, once the store was less busy.

Furthermore, RAINBOW USA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Williams and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that RAINBOW USA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, RAINBOW USA did not pay other aggrieved employees at the correct rate of pay for premium wages because RAINBOW USA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RAINBOW USA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Williams and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, RAINBOW USA regularly failed to authorize and permit Ms. Williams and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RAINBOW USA’s company-wide labor budget policies and resultant understaffing, heavy workload, and lack of coverage prevented Ms. Williams and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RAINBOW USA also failed to schedule rest periods, which, coupled with RAINBOW USA’s failure to provide adequate rest period coverage, further led to Ms. Williams and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Ms. Williams and other aggrieved employees were informed by management that rest periods were “optional.”

Furthermore, RAINBOW USA maintained a company-wide on-premises rest period policy, which mandated that Ms. Williams and other aggrieved employees remain on RAINBOW USA’s premises during their rest periods. Because Ms. Williams and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, RAINBOW USA effectively maintained control over Ms. Williams and other aggrieved employees during rest periods.

As a result of RAINBOW USA’s practices and policies, Ms. Williams and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. Williams missed at least 2 rest periods per week because management would not authorize rest periods when the store was busy. When she was able to take her rest periods, Ms. Williams’s rest periods were cut short 1-2 times per week because RAINBOW USA’s management asked her to return early to assist with customers.

RAINBOW USA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Williams and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RAINBOW USA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RAINBOW USA did not pay other aggrieved employees at the correct rate of pay for premium wages because RAINBOW USA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RAINBOW USA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Williams and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. RAINBOW USA has not provided Ms. Williams and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RAINBOW USA has knowingly and intentionally provided Ms. Williams and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RAINBOW USA issued uniform wage statements to other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, RAINBOW USA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because RAINBOW USA did not record the time Ms. Williams and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), RAINBOW USA did not list the correct amount of gross wages and net wages earned by Ms. Williams and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RAINBOW USA failed to accurately list the total number of hours worked by Ms. Williams and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because RAINBOW USA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, RAINBOW USA did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). RAINBOW USA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, RAINBOW USA issued uniform wage statements to other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, RAINBOW USA systematically, and on a company-wide basis,

issued wage statements to other aggrieved employees that incorrectly list the employer as Rainbow USA, Inc” but, according the California Secretary of State website, there is no such entity by the name “Rainbow USA, Inc”. Ms. Williams believes the correct employing entity that should be listed on employees’ wage statements is “RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC.” *See example paystub below.*

Rainbow		Pay Period: 10/04/2020 - 10/10/2020		CHECK NUMBER [REDACTED]		EMPLOYEE NUMBER [REDACTED]	
WAGES	HOURS	RATE	AMOUNT	YTD AMOUNT	DEDUCTIONS	AMOUNT	YTD AMOUNT
REGULAR	14.04	13.250	186.03	13873.44	CA WHT		126.58
OVERTIME	.01	13.250	.13	331.94	CA SBI	1.86	144.68
OVERTIME	.01	6.625	.07		FED WHT	3.05	1021.56
RMDY PAY				222.75	MED WHT	2.70	209.78
SICK				39.75	SSA WHT	11.55	897.01
TOTAL	14.05		186.23	14467.88			
Sick Hours Available 40		TAXABLE GROSS	186.23	14467.88	TOTAL	19.16	2399.61
As of 10/10/20		NET PAY	167.07	12068.27			

Address: 1000 Pennsylvania Ave, Brooklyn, NY 11207 (718) 485-3000

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), RAINBOW USA willfully failed to maintain accurate payroll records for Ms. Williams and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period.

During the relevant time period, RAINBOW USA failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Williams and other aggrieved employees, in violation of section 1198. As stated, RAINBOW USA engaged in a company-wide practice and/or policy of falsifying Ms. Williams's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Williams and other aggrieved employees. Furthermore, in light of RAINBOW USA's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, RAINBOW USA kept no records of meal start and end times for second meal periods.

Because RAINBOW USA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Williams and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Williams and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RAINBOW USA failed to pay Ms. Williams and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due

and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) 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.

RAINBOW USA willfully failed to pay Ms. Williams and other aggrieved employees who are no longer employed by RAINBOW USA all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving RAINBOW USA's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, RAINBOW USA unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. RAINBOW USA systematically, and on a company-wide basis, maintained a loss prevention "policy" that improperly deducted wages from Ms. Williams's and other aggrieved employees' pay. Specifically, RAINBOW USA required employees to pay cash out-of-pocket to cover any shortages in the cash registers that arose at the close of business, on threat of discipline, even though such shortages occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. For example, Ms. Williams was required to pay \$40 of her own money to replace funds that were short in the cash register, amounting to an improper deduction of wages. Other aggrieved employees were also instructed by RAINBOW USA's management to chip in and help cover cash register shortages of up to \$20 at least once per week.

Thus, RAINBOW USA's policy of deducting cash from Ms. Williams's and other aggrieved employees' pay without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, RAINBOW USA willfully and systematically deducted wages from Ms. Williams and other aggrieved employees pursuant to its loss prevention policy. RAINBOW USA's scheme resulted in the payment of less than statutorily required wages to Ms. Williams and other aggrieved employees. In doing so, RAINBOW USA acted with the intent to deprive Ms. Williams and other aggrieved employees of statutory wages, including, but not limited

to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, RAINBOW USA paid Ms. Williams and other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, RAINBOW USA scheduled other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. Because other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, RAINBOW USA caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The

burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

RAINBOW USA’s California retail stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. Williams and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RAINBOW USA could provide Ms. Williams and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Williams and other aggrieved employees to stand throughout the day.

Ms. Williams and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier/sales duties can reasonably be accomplished from a seated position. However, as set forth herein, RAINBOW USA systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Ms. Williams and other aggrieved employees to stand throughout their work shifts.

RAINBOW USA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Williams and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. RAINBOW USA’s management did not inform Ms. Williams and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of RAINBOW USA’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Williams and other aggrieved employees were forced to stand during shifts and denied seats. RAINBOW USA’s failure to provide suitable seating to Ms. Williams and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring RAINBOW USA into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, RAINBOW USA’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near its work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Williams and other aggrieved employees during lulls in operation. RAINBOW USA could provide Ms. Williams and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Williams and other aggrieved employees to stand throughout the day.

RAINBOW USA did not provide Ms. Williams and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Williams and other aggrieved employees engaged in duties in which the nature of the work required standing, RAINBOW USA denied them the use of seats nearby during lulls in their work duties. Moreover, RAINBOW USA did not inform Ms. Williams and other aggrieved employees of their rights to a seat or stool under California law.

As a result of RAINBOW USA’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Ms. Williams and other aggrieved employees were forced to stand during shifts and denied seats. RAINBOW USA’s failure to provide suitable seating to Ms. Williams and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring RAINBOW USA into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The

“primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, RAINBOW USA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because RAINBOW USA failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day’s work.

RAINBOW USA had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees would report to work based on the schedule that RAINBOW USA provided to them, RAINBOW USA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, RAINBOW USA, on a company-wide basis, required that Ms. Williams and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Ms. Williams and other aggrieved employees were required to download and use an app in order to complete mandatory online trainings. In addition, other aggrieved employees were required to communicate with management regarding work-related matters on their personal cell phones. Although RAINBOW USA required Ms. Williams and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, RAINBOW USA failed to fully reimburse them for this cost.

Second, during the relevant time period, RAINBOW USA, on a company-wide basis, forced Ms. Williams and other aggrieved employees to purchase their own office supplies that were necessary for completion of their work-related duties. For example, Ms. Williams spent \$7.00 on pens for her store location and other aggrieved employees were required to purchase office printer paper. Although RAINBOW USA required Ms. Williams and other aggrieved employees to purchase their own supplies for use on the job, RAINBOW USA did not fully reimburse them for these expenses.

Third, RAINBOW USA had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, at least once per month, other aggrieved employees were required to drive to RAINBOW USA's store locations in San Bernardino and Rialto for company meetings. In addition, other aggrieved employees were required to make deliveries to other store locations. Although RAINBOW USA required other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, RAINBOW USA never reimbursed them for their travel expenses.

Fourth, RAINBOW USA, on a company-wide basis, mandated that Ms. Williams and other aggrieved employees purchase headbands to wear as part of their work attire. Ms. Williams and other aggrieved employees purchased headband accessories for their work attire, at a cost of approximately \$12.00, but were not reimbursed for these costs.

RAINBOW USA could have provided Ms. Williams and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, office supplies, and uniform accessories. Or, RAINBOW USA could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, office supply expenses, and uniform accessories. Instead, RAINBOW USA passed these operating costs off onto Ms. Williams and other aggrieved employees. At all relevant times, Ms. Williams and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Williams and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

RAINBOW USA failed to provide Ms. Williams and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. RAINBOW USA's failure to provide Ms. Williams and other aggrieved employees with written notice of basic information regarding their employment with RAINBOW USA is in violation of Labor Code section 2810.5.

Ms. Williams and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." RAINBOW USA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Williams's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Williams seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Williams, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against RAINBOW USA for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Williams seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Williams's reasonable attempt to settle her dispute with RAINBOW USA prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform RAINBOW USA of Ms. Williams's aforementioned grievances and the proposed remedies as detailed below, while affording RAINBOW USA a reasonable opportunity to satisfy Ms. Williams's demands.

Demand is hereby made that RAINBOW USA shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. RAINBOW USA shall pay Ms. Williams and all other aggrieved employees employed by RAINBOW USA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. RAINBOW USA shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.

3. RAINBOW USA shall conduct a survey or interview all current and former aggrieved employees in California who worked for RAINBOW USA in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, travel, office supply expenses, uniform expenditures, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. RAINBOW USA shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. RAINBOW USA also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. RAINBOW USA shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for RAINBOW USA's benefit, including, but not limited to, cellular phone expenses, travel, office supply expenses, uniform expenditures, or other expenditures, as required by Labor Code section 2802.
6. RAINBOW USA shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful loss prevention policy, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).
7. RAINBOW USA shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. RAINBOW USA shall provide Ms. Williams and all aggrieved employees employed by RAINBOW USA at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. RAINBOW USA shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. RAINBOW USA shall implement and provide suitable seating to all aggrieved employees.
11. RAINBOW USA shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. RAINBOW USA shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. RAINBOW USA shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections

2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

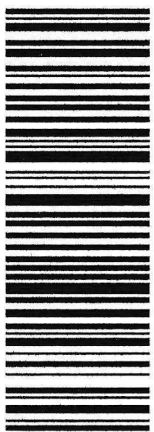
Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized, flowing script.

Michelle Kennedy

Copy: RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK
RAINBOW USA, INC. (via U.S. Certified Mail)



7020 1290 0001 8879 1500

tone
LAW APC
ary Park East, Ste 1000
s, CA 90067

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RAINBOW USA, INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207



9590 9402 1512 5362 2719 02

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1500

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

RAINBOW USA, INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS

NEW YORK RAINBOW USA, INC.

1000 PENNSYLVANIA AVENUE

BROOKLYN NY 11207

Postmark

Here
Williams V. Rainbow
USA, Inc.

7020 1290 0001 8879 1500

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RAINBOW USA, INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207



9590 9402 1512 5362 2719 02

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1500

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|---|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Registered Mail Restricted Delivery (over \$500) | |

EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

MICHELLE KENNEDY
310.712.8146 Direct
Michelle.Kennedy@capstonelawyers.com

February 25, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Lynnee James v. Rainbow USA, Inc. Which Will Do Business in California as New York Rainbow USA, Inc.*

Dear PAGA Administrator:

This office represents Lynnee James in connection with her claims under the California Labor Code. Ms. James was an employee of RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC. ("RAINBOW USA").

The employer may be contacted directly at the address below:

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207

Ms. James intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. James seeks relief on behalf of herself, the State of California, and other persons who are or were employed by RAINBOW USA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

RAINBOW USA employed Ms. James as an hourly paid, non-exempt employee from approximately February 2019 to October 2020. Ms. James worked for RAINBOW USA as a Sales Associate and Junior Assistant Manager at its retail store in San Bernardino, California. During her employment, Ms. James typically worked six (6) to eight (8) hours or more per day, five (5) to seven (7) days per week. At the time her employment ended, Ms. James was compensated approximately \$13.25 per hour. Her job duties included, without limitation, greeting and surveying customers, processing shipments, conducting transactions at the cash register, completing payroll, submitting deposits, and counting and recording cash in the register.

RAINBOW USA committed one or more of the following Labor Code violations against Ms. James, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

RAINBOW USA’s Company-Wide and Uniform Payroll and HR Practices

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC. is a New York corporation and a fashion retailer catering to teens and young women that operates over 1,000 locations in the United States. Upon information and belief, RAINBOW USA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Brooklyn, New York, for all non-exempt, hourly paid employees working for RAINBOW USA in California, including Ms. James and other aggrieved employees. At all relevant times, RAINBOW USA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. James and other aggrieved employees, regardless of its location or position.

Upon information and belief, RAINBOW USA maintains a centralized Payroll department at its corporate headquarters in Brooklyn, New York, which processes payroll for all non-exempt, hourly paid employees working for RAINBOW USA in California, including Ms. James and other aggrieved employees. Further, RAINBOW USA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. James and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, RAINBOW USA utilized the same methods and formulas when calculating wages due to Ms. James and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

RAINBOW USA willfully failed to pay all overtime wages owed to Ms. James and other aggrieved employees. During the relevant time period, Ms. James and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Ms. James’s experience and counsel’s review of those records currently available relating to Ms. James’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. James reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, RAINBOW USA had, and continues to have, a company-wide policy of strictly staffing its retail locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting, combined with the assignment of heavy workloads, has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, RAINBOW USA has a practice of failing to schedule meal periods, which further caused Ms. James and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. James and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

Further, on information and belief, because RAINBOW USA frowned upon employees accruing meal period penalties, RAINBOW USA's management would adjust Ms. James's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that RAINBOW USA would otherwise owe. Consequently, Ms. James and other aggrieved employees performed work during meal periods for which they were not paid.

In conjunction with understaffing its retail locations, on information and belief, RAINBOW USA had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets RAINBOW USA implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. James and other aggrieved employees were sometimes the only managers on duty, and were the only employees authorized to grant or access certain permissions in RAINBOW USA's point-of-sale system. Because managerial employees were effectively prohibited from leaving RAINBOW USA's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. James and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, Ms. James missed meal periods 2-3 times per week due to the workload and lack of coverage, and her meal periods were interrupted by 10-15 minutes in order to assist with returns.

Second, during the relevant period, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, Ms. James and other aggrieved employees were also required to make deliveries to RAINBOW USA's other store locations or perform pre-shift opening tasks, such as turning on all of the lights and disarming the store alarm, before being able to clock in for their shifts. Furthermore, other aggrieved employees had to wait several minutes for a cash register to become available before they could clock in for their shifts. In addition, Ms. James and other aggrieved employees were also required to perform post-shift closing responsibilities after clocking out at the end of their shifts, including turning off all of the lights and activating the store alarm.

Additionally, RAINBOW USA required Ms. James and other aggrieved employees to complete online training modules from home, on their off-days, or during their unpaid meal periods, but did

not compensate them for this time. For example, Ms. James and other aggrieved employees spent several hours completing RAINBOW USA's requisite online training modules at home on their personal cell phones, but were not paid for this time. Furthermore, RAINBOW USA required Ms. James and other aggrieved employees to attend mandatory meetings held at other RAINBOW USA store locations, but did not compensate them for their time spent traveling to and from these meetings. Moreover, Ms. James and other aggrieved employees responded to phone calls and texts from managers on a weekly basis to discuss work-related matters. Thus, RAINBOW USA failed to track all of this time spent working before clocking in or after clocking out, and Ms. James and other aggrieved employees received no compensation for this time.

Third, RAINBOW USA had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises after clocking out at the end of a shift and/or after clocking out for meal periods. For example, after clocking out at the end of their shifts, Ms. James and other aggrieved employees were required to wait up to two (2) minutes for a manager to check their belongings. Although RAINBOW USA's requirement that Ms. James and other aggrieved employees undergo security checks was mandatory, RAINBOW USA did not compensate them for the time it took them to wait and undergo these checks. Furthermore, RAINBOW USA also had a company-wide security policy requiring employees to leave the store premises in pairs. After clocking out at the end of their shifts, Ms. James and other aggrieved employees were required to wait for the manager on duty to complete his or her closing duties before they could leave RAINBOW USA's premises. For example, Ms. James would clock out at the end of her shift and wait for up to 3-4 minutes off-the-clock for her manager to finish closing the store and setting the alarm, before she was permitted to leave the premises. As a result of these loss prevention and security policies and/or practices, Ms. James and other aggrieved employees were subject to RAINBOW USA's control after they had clocked out for meal periods and/or their shifts, but were not compensated for this time.

Fourth, during the relevant time period, RAINBOW USA had a company-wide "on-call" policy, whereby it scheduled Ms. James and other aggrieved employees to work "on-call," or on standby. During an "on-call" shift, Ms. James and other aggrieved employees had to be available and report to work upon receiving a call from RAINBOW USA notifying them that they needed to come in and work. When scheduled to be "on-call," Ms. James and other aggrieved employees were required to wait for the store to call them within a four (4) hour window to see if they were required to come in and work. Ms. James and other aggrieved employees were, in essence, controlled by RAINBOW USA because they could not use the standby time freely for their own purposes and were forced to put their lives on hold. For example, Ms. James refrained from making plans altogether on days she was scheduled for a standby shift because she knew that she had to drop whatever she was doing at a moment's notice to report to the store within an hour upon being called by RAINBOW USA to report to work. However, RAINBOW USA did not pay Ms. James and other aggrieved employees for the time during which they were waiting to receive a call from RAINBOW USA and unable to use their time for their own purposes.

Because Ms. James and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. James and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. RAINBOW USA's failure to pay Ms. James and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, RAINBOW USA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RAINBOW USA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RAINBOW USA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, RAINBOW USA failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. James and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

As set forth above, due to RAINBOW USA's company-wide practice of utilizing labor budgets, assignment of heavy workloads, subsequent lack of meal period coverage, and policy requiring managerial employees to stay on or near the store premises during meal periods, Ms. James and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, upon information and belief, RAINBOW USA's management adjusted employee time records to reflect compliant meal periods and/or pressured employees to clock out for meal periods, but required them to continue working, time for which they were not paid.

As stated, RAINBOW USA discouraged and impeded Ms. James and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Thus, RAINBOW USA required Ms. James and other aggrieved employees to perform work off-the-clock, including performing opening and closing shift duties, submitting to off-the-clock security checks, waiting for managers to complete closing duties to leave the store premises in pairs, completing required online trainings, and attending mandatory meetings at other store locations.

Additionally, RAINBOW USA systematically, and on a company-wide basis, required Ms. James and other aggrieved employees to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though Ms. James and other aggrieved employees were subject to RAINBOW USA's control during an “on-call” shift, RAINBOW USA did not pay Ms. James and other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the store.

Thus, RAINBOW USA did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for

overtime premium payment, RAINBOW USA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, RAINBOW USA regularly failed to pay at least minimum wages to Ms. James and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which, combined with heavy workloads and its failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. James and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its store locations, as stated above, on information and belief, RAINBOW USA had a requirement that a managerial employee be present on the store floor at all times, but RAINBOW USA's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. James and other aggrieved employees were sometimes the only managers on duty, and were required to wait extended periods of time before taking meal periods, would have their meal periods interrupted, or would work through them in order to assist their coworkers and customers.

In addition, on information and belief, because RAINBOW USA frowned upon employees accruing meal period penalties, RAINBOW USA's management would adjust Ms. James's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by RAINBOW USA.

As a result, Ms. James and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted or cut short, and/or had to forgo their meal periods altogether. For example, 3-4 times per month, Ms. James would be unable to take

her meal period until more than five (5) hours into her shift because the store was busy and she didn't have coverage. As a further example, Ms. James would have her meal periods interrupted or cut short in order to assist with transactions or returns at the cash register, due to a lack of coverage resulting from being the only managerial employee scheduled to work. For example, as noted above, Ms. James missed meal periods 2-3 times per week due to the workload and lack of coverage, and her meal periods were interrupted by 10-15 minutes in order to assist with returns. In addition, Ms. James and other aggrieved employees had their meal periods cut short due to mandatory security checks of their personal belongings when they exited the store during their meal breaks.

Moreover, RAINBOW USA did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours or more per day, but were not provided an uninterrupted second 30-minute meal period. Ms. James and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

RAINBOW USA knew or should have known that as a result of its company-wide policies and/or practices, that Ms. James and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. RAINBOW USA further knew or should have known that it did not pay Ms. James and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted. For example, as stated, RAINBOW USA's supervisors instructed other aggrieved employees to clock out for their meal periods before the fifth hour of their shifts and permitted them to take their meal periods later on in their shifts, once the store was less busy.

Furthermore, RAINBOW USA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. James and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that RAINBOW USA did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, RAINBOW USA did not pay other aggrieved employees at the correct rate of pay for premium wages because RAINBOW USA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RAINBOW USA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. James and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, RAINBOW USA regularly failed to authorize and permit Ms. James and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RAINBOW USA’s company-wide labor budget policies and resultant understaffing, heavy workload, and lack of coverage prevented Ms. James and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RAINBOW USA also failed to schedule rest periods, which, coupled with RAINBOW USA’s failure to provide adequate rest period coverage, further led to Ms. James and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, RAINBOW USA maintained a company-wide on-premises rest period policy, which mandated that Ms. James and other aggrieved employees remain on RAINBOW USA’s premises during their rest periods. Because Ms. James and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, RAINBOW USA effectively maintained control over Ms. James and other aggrieved employees during rest periods.

As a result of RAINBOW USA’s practices and policies, Ms. James and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. James missed rest periods 5-6 days per week because the store was busy and lacked coverage for managerial employees. As another example, other aggrieved employees’ rest periods were cut short 1-2 times per week because RAINBOW USA’s management asked them to return early to assist with customers.

RAINBOW USA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. James and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RAINBOW USA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RAINBOW USA did not pay other aggrieved employees at the correct rate of pay for premium wages because RAINBOW USA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RAINBOW USA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. James and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. RAINBOW USA has not provided Ms. James and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, RAINBOW USA has knowingly and intentionally provided Ms. James and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RAINBOW USA issued uniform wage statements to other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, RAINBOW USA violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because RAINBOW USA did not record the time Ms. James and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), RAINBOW USA did not list the correct amount of gross wages and net wages earned by Ms. James and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RAINBOW USA failed to accurately list the total number of hours worked by Ms. James and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because RAINBOW USA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, RAINBOW USA did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). RAINBOW USA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, RAINBOW USA issued uniform wage statements to Ms. James and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, RAINBOW USA systematically, and

on a company-wide basis, issued wage statements to Ms. James and other aggrieved employees that incorrectly list the employer as Rainbow USA, Inc” but, according the California Secretary of State website, there is no such entity by the name “Rainbow USA, Inc”. Ms. James believes the correct employing entity that should be listed on employees’ wage statements is “RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK RAINBOW USA, INC.” See example paystub below.

Rainbow		Pay Period: 10/04/2020 - 10/10/2020			CHECK NUMBER [REDACTED]	
Rainbow USA, Inc		SSN [REDACTED]			EMPLOYEE NUMBER [REDACTED]	
WAGES	HOURS	RATE	AMOUNT	YTD AMOUNT	DEDUCTIONS	YTD AMOUNT
REGULAR	14.04	13.250	186.03	13873.44	CA WHT	126.58
OVERTIME	.01	13.250	.13	331.94	CA SBI	144.68
OVERTIME	.01	6.625	.07		FED WHT	1021.36
RMDY PAY				222.75	MED WHT	209.78
SICK				39.75	SSA WHT	897.01
TOTAL	14.05		186.23	14467.88		
SICK HOURS Available 40	TAKABLE GROSS		186.23	14467.88		
As of 10/10/20	NET PAY		167.07	12068.27	TOTAL	2399.61

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The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), RAINBOW USA willfully failed to maintain accurate payroll records for Ms. James and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate

time records showing when the employee begins and ends each work period and meal period. During the relevant time period, RAINBOW USA failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. James and other aggrieved employees, in violation of section 1198. As stated, RAINBOW USA engaged in a company-wide practice and/or policy of falsifying Ms. James's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. James and other aggrieved employees. Furthermore, in light of RAINBOW USA's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, RAINBOW USA kept no records of meal start and end times for second meal periods.

Because RAINBOW USA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. James and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. James and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. James and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RAINBOW USA failed to pay Ms. James and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. James and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately,

and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) 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.

RAINBOW USA willfully failed to pay Ms. James and other aggrieved employees who are no longer employed by RAINBOW USA all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving RAINBOW USA's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. James and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, RAINBOW USA unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. RAINBOW USA systematically, and on a company-wide basis, maintained a loss prevention "policy" that improperly deducted wages from Ms. James's and other aggrieved employees' pay. Specifically, RAINBOW USA required employees to pay cash out-of-pocket to cover any shortages in the cash registers that arose at the close of business, on threat of discipline, even though such shortages occurred in the usual course of business, as a result of a mistake, accident, or simple negligence rather than dishonesty, willfulness, or gross negligence. For example, Ms. James was instructed by RAINBOW USA's management to chip in and help cover cash register shortages of up to \$20 at least once per week, amounting to an improper deduction of wages. Other aggrieved employees were also required to pay up to \$40 of their own money to replace funds that were short in the cash register.

Thus, RAINBOW USA's policy of deducting cash from Ms. James's and other aggrieved employees' pay without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, RAINBOW USA willfully and systematically deducted wages from Ms. James and other aggrieved employees pursuant to its loss prevention policy. RAINBOW USA's scheme resulted in the payment of less than statutorily required wages to Ms. James and other aggrieved employees. In doing so, RAINBOW USA acted with the intent to

deprive Ms. James and other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, RAINBOW USA paid Ms. James and other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, RAINBOW USA scheduled Ms. James and other aggrieved employees to work eight (8) or more hours per day and more than seven (7) consecutive days in a workweek. For example, Ms. James worked seven (7) consecutive days in a workweek on at least two (2) to three (3) occasions. Because Ms. James and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. James and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, RAINBOW USA caused Ms. James and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business

judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

RAINBOW USA's California retail stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. James and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RAINBOW USA could provide Ms. James and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. James and other aggrieved employees to stand throughout the day.

Ms. James and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier/sales duties can reasonably be accomplished from a seated position. However, as set forth herein, RAINBOW USA systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Ms. James and other aggrieved employees to stand throughout their work shifts.

RAINBOW USA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. James and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. RAINBOW USA's management did not inform Ms. James and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of RAINBOW USA's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. James and other aggrieved employees were forced to stand during shifts and denied seats. RAINBOW USA's failure to provide suitable seating to Ms. James and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RAINBOW USA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, RAINBOW USA’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near its work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. James and other aggrieved employees during lulls in operation. RAINBOW USA could provide Ms. James and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. James and other aggrieved employees to stand throughout the day.

RAINBOW USA did not provide Ms. James and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. James and other aggrieved employees engaged in duties in which the nature of the work required standing, RAINBOW USA denied them the use of seats nearby during lulls in their work duties. Moreover, RAINBOW USA did not inform Ms. James and other aggrieved employees of their rights to a seat or stool under California law.

As a result of RAINBOW USA’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Ms. James and other aggrieved employees were forced to stand during shifts and denied seats. RAINBOW USA’s failure to provide suitable seating to Ms. James and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring RAINBOW USA into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4)

hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, RAINBOW USA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because RAINBOW USA failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

RAINBOW USA had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. Although other aggrieved employees would report to work based on the schedule that RAINBOW USA provided to them, RAINBOW USA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, RAINBOW USA, on a company-wide basis, required that Ms. James and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Ms. James and other aggrieved employees were required to download and use an app in order to complete mandatory online trainings. In addition, Ms. James and other aggrieved employees were required to communicate with management regarding work-related matters on their personal cell phones. Although RAINBOW USA required Ms. James and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, RAINBOW USA failed to fully reimburse them for this cost.

Second, during the relevant time period, RAINBOW USA, on a company-wide basis, forced Ms. James and other aggrieved employees to purchase their own office supplies that were necessary for completion of their work-related duties. For example, Ms. James spent \$4.00 on office printer paper for her store location and other aggrieved employees spent \$7.00 on pens. Although RAINBOW USA required Ms. James and other aggrieved employees to purchase their own supplies for use on the job, RAINBOW USA did not fully reimburse them for these expenses.

Third, RAINBOW USA had a company-wide policy of requiring Ms. James and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. For example, at least once per month, Ms. James was required to drive to RAINBOW USA's store locations in San Bernardino and Rialto for company meetings. In addition, Ms. James was required to make deliveries to other store locations. Although RAINBOW USA required Ms. James and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, RAINBOW USA never reimbursed them for their travel expenses.

Fourth, RAINBOW USA, on a company-wide basis, mandated that other aggrieved employees purchase headbands to wear as part of their work attire. Other aggrieved employees purchased headband accessories for their work attire, at a cost of approximately \$12.00, but were not reimbursed for these costs.

RAINBOW USA could have provided Ms. James and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, office supplies, and uniform accessories. Or, RAINBOW USA could have reimbursed employees for the costs of their cellular phone usage, travel expenses, mileage, office supply expenses, and uniform accessories. Instead, RAINBOW USA passed these operating costs off onto Ms. James and other aggrieved employees. At all relevant times, Ms. James and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, RAINBOW USA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. James and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

RAINBOW USA failed to provide Ms. James and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis. RAINBOW USA's failure to provide Ms. James and other aggrieved employees with written

notice of basic information regarding their employment with RAINBOW USA is in violation of Labor Code section 2810.5.

Ms. James and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” RAINBOW USA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. James’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. James seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. James, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against RAINBOW USA for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. James seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. James’s reasonable attempt to settle her dispute with RAINBOW USA prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform RAINBOW USA of Ms. James’s aforementioned grievances and the proposed remedies as detailed below, while affording RAINBOW USA a reasonable opportunity to satisfy Ms. James’s demands.

Demand is hereby made that RAINBOW USA shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. RAINBOW USA shall pay Ms. James and all other aggrieved employees employed by RAINBOW USA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. RAINBOW USA shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.
3. RAINBOW USA shall conduct a survey or interview all current and former aggrieved employees in California who worked for RAINBOW USA in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, travel, office supply expenses, uniform expenditures, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. RAINBOW USA shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. RAINBOW USA also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. RAINBOW USA shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for RAINBOW USA's benefit, including, but not limited to, cellular phone expenses, travel, office supply expenses, uniform expenditures, or other expenditures, as required by Labor Code section 2802.
6. RAINBOW USA shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful loss prevention policy, including unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).
7. RAINBOW USA shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. RAINBOW USA shall provide Ms. James and all aggrieved employees employed by RAINBOW USA at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. RAINBOW USA shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. RAINBOW USA shall implement and provide suitable seating to all aggrieved employees.
11. RAINBOW USA shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. RAINBOW USA shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

13. RAINBOW USA shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Michelle Kennedy
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 712-8146

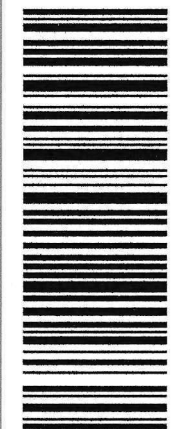
Best Regards,

A handwritten signature in black ink, appearing to read 'Michelle Kennedy', with a stylized, cursive script.

Michelle Kennedy

Copy: RAINBOW USA, INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS NEW YORK
RAINBOW USA, INC. (via U.S. Certified Mail)

CERTIFIED MAIL



7020 1290 0001 8879 1494

tone

LAW APC

1000 Park East, Ste 1000
s, CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RAINBOW USA, INC. WHICH WILL DO
BUSINESS IN CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207



9590 9402 1512 5362 2718 96

2. Article Number (Transfer from service label)

7020 1290 0001 8879 1494

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

RAINBOW USA, INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS
NEW YORK RAINBOW USA, INC.
1000 PENNSYLVANIA AVENUE
BROOKLYN NY 11207

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	
\$	3.50
Extra Services & Fees (check box, add fee as appropriate)	
☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$

Postage
\$ 1.63

Total Postage and Fees
\$ 7.93

Sent To

Street and Apt. No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

Postmark
Here

James V. Rainbow
USA, Inc.

RAINBOW USA, INC. WHICH WILL DO

BUSINESS IN CALIFORNIA AS

NEW YORK RAINBOW USA, INC.

1000 PENNSYLVANIA AVENUE

BROOKLYN NY 11207

See Reverse for Instructions

COMPLETE THIS SECTION

Items 1, 2, and 3.
 Name and address on the reverse
 can return the card to you.
 This card to the back of the mailpiece,
 the front if space permits.

1. Article Addressed to:

RAINBOW USA, INC. WHICH WILL DO
 BUSINESS IN CALIFORNIA AS
 NEW YORK RAINBOW USA, INC.
 1000 PENNSYLVANIA AVENUE
 BROOKLYN NY 11207



590 9402 1512 5362 2718 96

Number (Transfer from service label)

1290 0001 8879 1494

3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt