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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.*

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 SDI	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			186.23	14467.88			
NET PAY			167.07	12068.27	TOTAL	19.16	2399.61

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, 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 1500

tone
LAW APC
ury 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)
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U.S. Postal Service™
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Certified Mail Fee

\$ 3.50

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

- ☒ Return Receipt (hardcopy) \$ 2.50
- ☐ 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

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

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