

**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF NEW YORK**

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ELIZABETH MCWILLIAMS HERNANDEZ,

Case No.:

Plaintiff,

**VERIFIED COMPLAINT**

-against-

SPANISH DANCE ARTS COMPANY, INC.,  
*doing business as* FLAMENCO VIVO CARLOTA  
SANTANA, *and* HANA AH FRECHETTE BATES,  
*and* CARLOTA SANTANA, also known as  
CAROLEAH KOTCH, *individually,*

Defendants.

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Plaintiff, Elizabeth McWilliams Hernandez (herein, “Plaintiff”), by and through her undersigned attorneys, Cilenti & Cooper, PLLC and Baker, Braverman & Barbadoro, P.C., respectfully files this Complaint for wage theft, discrimination on the basis of her race and constructive termination against Defendants, Spanish Dance Arts Company, Inc., doing business as Flamenco Vivo Carlota Santana (herein, “Spanish Dance Arts”), and Hanaah Frechette Bates, and Carlota Santana, also known as Caroleah Kotch, individually (all defendants collectively referred to herein as the “Defendants”), and states as follows:

**INTRODUCTION**

1. Plaintiff, Elizabeth McWilliams Hernandez alleges that, pursuant to the New York Labor Law, she is entitled to recover from the Defendants: (1) unpaid wages, minimum wages, and overtime compensation; (2) unpaid “spread of hours” premiums for each day she worked in excess of ten (10) hours; (3) liquidated damages and statutory penalties pursuant to the New York Wage Theft Prevention Act; (4) pre-judgment and post-judgment interest; and (5) attorneys’ fees and costs.

2. In addition, Plaintiff alleges that that the Defendants, jointly and individually, discriminated against her in pay and in the terms, conditions and privileges of employment on the basis of her race, culminating in her constructive termination in violation of New York Labor Law §194; the New York City Administrative Code, Chapter 1, §8-107(1)(a)(3); and New York State Executive Law, Article 15, §296, and that she is entitled to recover compensatory and punitive damages thereunder.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this controversy pursuant to New York CPLR § 301 because Defendants conducted business and committed the alleged acts in New York State.

4. Venue is proper under New York CPLR § 503 as the circumstances giving rise to this action occurred in whole or in part in the county in which this Court sits.

### **PARTIES**

5. Spanish Dance Arts is a non-profit organized under the laws of the State of New York with a principal place of business located at 4 West 43<sup>rd</sup> Street, New York, New York 10036.

6. Plaintiff was employed by Spanish Dance Arts continuously from October, 2018 through May 28, 2023. At all times relevant hereto, Plaintiff worked for Defendants as an employee with the title of Program Manager.

7. Plaintiff worked out of Spanish Dance Arts' offices in Midtown Manhattan.

8. At all relevant times, the work performed by Plaintiff was directly essential to the mission of Spanish Dance Arts.

9. At all times relevant to this action, Plaintiff was employed by Defendants in New York, New York (New York County).

10. At all times relevant to this action, Defendants, jointly, were Plaintiff's employers within the meaning of the New York Labor Law.

11. Upon information and belief, at all times relevant to this action, Defendant Hanaah Frechette Bates has been an officer, director and/or managing agent of Spanish Dance Arts, whose residential address is 12 Fulton Avenue, Jersey City, New Jersey, 07305.

12. At all times relevant hereto, Defendant Hanaah Frechette Bates has been the Executive Director of Spanish Dance Arts.

13. Defendant Hanaah Frechette Bates is an individual who managed Spanish Dance Arts, and, together with Defendant Carlota Santana, controlled all business decisions at Spanish Dance Arts, including but not limited to, the decisions of what compensation the employees received and the number of hours the employees, including Plaintiff, were required to work.

14. At all relevant times herein, Defendant Hanaah Frechette Bates had authority to make, and in fact made, decisions as to hiring, firing, and as to wages, and acted as Plaintiff's employer as such term is used for purposes of the New York Labor Law.

15. Defendant Hanaah Frechette Bates exercised sufficient control over Spanish Dance Arts' day-to-day operations as to be considered an employer of Plaintiff under the New York Labor Law.

16. Defendant Hanaah Frechette Bates participated in the day-to-day operations of Spanish Dance Arts as Executive Director, and acted negligently and willfully, and was Plaintiff's "employer" pursuant to the New York Labor Law § 2 and the regulations thereunder, and is jointly and severally liable with Spanish Dance Arts and Defendant Carlota Sanatana.

17. Upon information and belief, at all times relevant to this action, Defendant, Carlota Santana, also known as Caroleah Kotch, has been an officer, director and/or managing agent of Spanish Dance Arts, whose residential address is 105 Vista del Rio Drive, Bahama, North Carolina 27503.

18. Defendant Carlota Santana is Founder and Artistic Director of Spanish Dance Arts.

19. Defendant Carlota Santana is an individual who manages Spanish Dance Arts, and, together with Defendant Hanaah Frechette Bates, controlled all business decisions at Spanish Dance Arts, including but not limited to, the decisions of what compensation the employees received and the number of hours the employees, including Plaintiff, were required to work.

20. Defendant Carlota Santana participated in the day-to-day operations of Spanish Dance Arts, as Founder and Artistic Director, and acted negligently and willfully, and was Plaintiff's "employer" pursuant to the New York Labor Law § 2 and the regulations thereunder, and is jointly and severally liable with Spanish Dance Arts and Defendant Hanaah Frechette Bates.

21. At all relevant times herein, Defendant Carlota Santana, had authority to make, and in fact made, decisions as to hiring, firing, and as to wages, and acted as Plaintiff's employer as such term is used for purposes of the New York Labor Law.

22. Defendant Carlota Santana exercised sufficient control over Spanish Dance Arts' day-to-day operations as to be considered an employer of Plaintiff under the New York Labor Law.

23. At all relevant times herein, Plaintiff performed her work for Spanish Dance Arts under the direction and control of the Defendants Hanaah Frechette Bates and Carlota Santana.

24. Defendants Hanaah Frechette Bates and Carlota Santana possessed and exercised control over the terms and conditions of Plaintiff's employment in that they have and have had the power to: (i) hire and fire employees, (ii) determine rates and methods of pay, (iii) determine work schedules, (iv) supervise and control work of the employees, including Plaintiff, and (v) otherwise affect the quality of their employees' work.

25. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff lawfully earned wages, minimum wages, and overtime compensation, and failed to pay Plaintiff spread of hours premiums, all in contravention of the New York Labor Law.

26. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

27. At all times relevant to this action, Plaintiff's primary duties have been administrative in nature.

28. At all times relevant to this action, Plaintiff's title was Program Manager and her primary duties and responsibilities were to oversee and execute the organization's Arts Education programs. Beginning in the middle of 2021, Plaintiff also became responsible for overseeing the organization's New York City initiatives.

29. At all times relevant hereto, Plaintiff's job duties included overseeing the Arts Educations programs, including developing curricular materials, supervising a team of 25 teaching artists and their professional development, creating and implementing budgets and contracts, as well as grant writing and development, marketing and outreach, community relations, producing performances and special events. Additional responsibilities included supervising another Program Manager, conceptualizing and launching new programming initiatives to support the company's strategic goals, and serving as managing editor of the company's e-newsletter.

30. During Plaintiff's employment by Defendants, she worked well over forty (40) hours per week.

31. Upon her hiring, Plaintiff was told by Defendant Hanaah Frechette Bates that the job would require working thirty-five (35) to forty (40) hours per week.

32. However, it quickly became clear to Plaintiff that the job required fifty (50) or more hours per week on a regular basis.

33. Defendants knew significant overtime hours were required on a weekly basis and were deliberately misleading about the workload. A tactic that Defendants used on a routine basis to attract new employees.

34. In the form employment contract provided to Plaintiff and other employees, it stated that “you are aware your company responsibilities can at times require work before and after office hours, as well as weekends, resulting in a work-week that is more than 40 hours.” [A true copy of Plaintiff’s employment agreement is attached hereto as Exhibit 1].

35. Beginning in November, 2018, Plaintiff generally worked fifty (50) to sixty (60), or more, hours per week, each week.

36. Some weeks each year, Plaintiff worked in excess of seventy (70) hours per week.

37. Beginning in 2018, it was common for Plaintiff to work more than ten (10) hours per day.

38. Since November, 2018, Defendants have been aware that Plaintiff’s hours were consistently in excess of forty (40) hours per week; that Plaintiff often worked in excess of fifty (50) to sixty (60) hours per week; and that Plaintiff often worked more than ten (10) hours per day.

39. Plaintiff’s weekly working hours were not recorded by Defendants and were not itemized on her bi-monthly wage statement.

40. During Plaintiff’s employment she was paid by check. Work performed above forty (40) hours per week was not paid to Plaintiff at a rate of time and one-half her regular rate, as required by law.

41. Likewise, Plaintiff was not paid spread of hours premiums as required by law.

42. At all times relevant to this action, Plaintiff was paid two (2) times per month, regardless of hours worked, on a salary basis.

43. Plaintiff did not receive annual wage notices required by New York State wage and hour regulations.

44. At all times relevant hereto, Plaintiff was improperly classified by Defendants as an “exempt” employee.

45. In the employment agreement provided to Plaintiff and other employees, Defendants deliberately misled Plaintiff into thinking that she was exempt from overtime. The employment agreement stated in part: “Since this job is a professional one and not an hourly one, it is understood that you will at all times endeavor to do what the job requires, with the understanding that there is no “overtime” or “comp” pay.” [See Exhibit 1]

46. At all times relevant hereto, Defendants have failed to pay Plaintiff a salary at or above the threshold for exempt employees in New York.

47. Beginning November 1, 2018, Plaintiff was paid a salary of Forty Thousand Dollars (\$40,000.00) per year, or \$769.23 per week.

48. Beginning on or about January 1, 2019 Plaintiff’s annual salary was increased to Forty One Thousand Five Hundred Dollars (\$41,500.00) per year, or \$798.07 per week.

49. Beginning on or about July 1, 2020, Plaintiff’s annual salary was increased to Forty Eight Thousand Dollars (\$48,000.00) per year, or \$923.97 per week

50. Beginning on or about July 2021, Plaintiff’s annual salary was increased to Fifty Five Thousand Dollars (\$55,000.00) per year, or \$1,057.69 per week.

51. Beginning on or about July, 2022, Plaintiff’s annual salary was increased to fifty-seven thousand dollars (\$57,000) per year, or \$1,096.15 per week.

52. Plaintiff was, at all times relevant to this action, paid less than the New York City and State salary threshold for exempt employees.

53. At all times relevant to this action, Plaintiff was not paid hourly but instead paid a fixed salary, not based on her working hours, and she was not paid additional compensation for hours worked beyond forty (40), each week.

54. Plaintiff was, at times relevant to this action, paid less than the applicable New York State minimum wage.

55. Defendants never paid Plaintiff the spread of hours premium for days worked in excess of ten (10) hours.

56. Defendants knowingly and willfully operated their business with a policy of not paying the New York State spread of hours premium to Plaintiff.

57. Defendants knowingly and willfully operated their business with a policy of not paying wages to the Plaintiff for all hours worked, minimum wages, New York State overtime (of time and one-half) for work performed over forty (40) hours each work week and spread of hours premiums for each day she worked in excess of ten (10) hours.

58. At all relevant times, upon information and belief, during the course of Plaintiff's employment, the Defendants failed to maintain accurate and sufficient time records.

59. Moreover, Defendants have discriminated against Plaintiff based on her race.

60. Plaintiff is a Hispanic woman.

61. Throughout the course of her employment with Defendant Spanish Dance Arts, Plaintiff witnessed Defendant Carlota Santana, who is White, make discriminatory comments and take discriminatory actions towards employees of color, including Plaintiff.



62. Defendants collectively created an environment that censored employees of color within the organization. In front of the administrative staff, which consisted almost entirely of employees of color like Plaintiff, Defendant Carlota Santana would make racist comments and take discriminatory actions.

63. For example, in late September 2019, Plaintiff, who was the Program Manager for Arts Education, updated curriculum materials for public school students to be more inclusive and to accurately reflect the contributions of the diaspora of Black and Brown people to the art form. During this process, Defendant Carlota Santana continuously criticized Plaintiff and her work, insisting that the curriculum for public school students regarding flamenco's history needed to talk about the "good intentions" of Spain's White colonizers and the "benefits" of colonization to the indigenous Latin American and Caribbean people.

64. Furthermore, Defendant Carlota Santana stated that Plaintiff had included too many photos of Gitano/Roma artists in the lessons, even though the Roma people have been instrumental in the creation and preservation of the flamenco art form.

65. Plaintiff, whose family members continue to suffer the detrimental effects of such colonization, objected strongly to Defendant Carlota Santana's characterization of colonization, as she found it degrading and discriminatory.

66. Plaintiff was forced to endure multiple uncomfortable conversations with Defendant Carlota Santana regarding the impacts of racial discrimination and colonization during which Defendant Carlota Santana refused to relent and continued to target Plaintiff with unwarranted criticism.

67. Plaintiff appealed to Defendant Hanaah Frechette Bates, the Executive Director. Defendant Hanaah Frechette Bates told Plaintiff that the revised curriculum Plaintiff created was

“the best curriculum they ever had” and said she would talk to Defendant Carlota Santana about her discriminatory actions. However, no measures were taken by Defendant Hanaah Frechette Bates to address Defendant Carlota Santana’s behavior or to prevent future incidents of discrimination.

68. In November 2021, Plaintiff shared a new lesson plan with teaching artists. Defendant Carlota Santana, apparently upset that Plaintiff used the word “power” in the lesson plan, retaliated by sending out an email to all of the teaching artists that Plaintiff supervised as well as other administrative employees condemning Plaintiff’s use of the word “power” and setting forth why it should not be used. Defendant Santana deliberately left Plaintiff off of the email and she only found out about it from other employees.

69. Defendant Carlota Santana’s prohibition on the use of the word “power” (as well as other words she objected to such as “social justice” and “civil rights”) was only directed at Plaintiff, as the organization itself used these same words on its own website and White employees received no such supervision or censorship over their word choices.

70. Once again, Plaintiff reported this discrimination to the Executive Director, Defendant Hanaah Frechette Bates. In an email dated November 30, 2021, Plaintiff told Defendant Hanaah Frechette Bates that “the word ‘power’ is used in almost everything the company does – on our website, on our Instagram page, in Arts Ed materials, just about everywhere. It seems that it’s only when I use the word it becomes a problem.” [A true copy of Plaintiff’s email dated November 30, 2021 is attached hereto as Exhibit 2].

71. Defendant Hanaah Frechette Bates once again failed to investigate, respond, or put a stop to the discriminatory, racist abuse being suffered by Plaintiff and the other employees of color.

72. A clear pattern emerged at the organization – if an employee of color disagreed with or questioned Defendant Carlota Santana’s decisions, they would be labeled as “difficult” and subsequently suffer retaliation and bullying such as being cut out of conversations related to key decisions for their role, not being provided with information necessary to complete assignments, and the removal or threatened removal of funding for events they were organizing.

73. In addition to Plaintiff, Defendant Carlota Santana targeted this same pattern of retaliatory behavior toward Leslie Geraldles, a Mestiza woman of Hispanic and Native American descent who was the organization’s Program Director and toward Tariro Chinyanganya, an African American woman who was the organization’s Studio Manager.

74. In September 2022, Plaintiff stated to both Spanish Dance Art’s Human Resources Director, Leyda Mata (“Ms. Mata”) and the Executive Director, Defendant Hanaah Frechette Bates, that “has seen every single person of color who has worked in the office cry numerous times out of anger, frustration and exhaustion” as a result of Defendant Carlota Santana’s discriminatory treatment of employees of color.

75. Again and again, Plaintiff and other employees of color would report to Defendant Hanaah Bates that discriminatory acts and statements were being made by Defendant Carlota Santana. Yet, no actions were taken to remedy the discrimination and abuse being suffered by the employees of color.

76. The discriminatory abuse was even raised to the Defendants by outside facilitators. In a November 2022 employee survey, the words “racist” and “bullying” were two of the top themes used to describe the organization.

77. Following the survey, Plaintiff sent an email to Ms. Mata dated November 22, 2022, stating “all the issues that came up in the survey results are issues that I have been advocating for

the past 4 years and why I've been labeled "difficult" and denied a title that reflects my work... and that "there is plenty of evidence to support what I'm saying. Carlota needs to decide if she's willing to accept the evidence that has been presented. If not, what evidence does she need? If no evidence will suffice, then she needs to ask herself why." [A true copy of Plaintiff's email dated November 22, 2022 is attached hereto as Exhibit 3].

78. Ms. Mata replied to Plaintiff's email the same day, stating "Agreed 100 ...I always ask myself – what is better, uncomfortable truths or comfortable lies? I prefer the truths, uncomfortable or otherwise." [A true copy of Ms. Mata's email dated November 22, 2022 is attached hereto as Exhibit 3].

79. Defendants' pattern of conduct demonstrated discriminatory animus against employees of color, a bias which has resulted in significant negative repercussions for Plaintiff, who suffered multiple adverse employment actions including the denial of overtime pay, titles and advancement.

80. In or around September, 2019, Plaintiff requested that Defendants provide her with a higher salary and an opportunity to advance within the organization. No requirements or qualifications were given, only vague promises that they would get back to Plaintiff or would "revisit" the situation in a few months, which never occurred despite Plaintiff's repeated requests.

81. In February 2021, Plaintiff met with Defendants Hanaah Frechette Bates and Carlota Santana to request a promotion to a director title, presenting them with a detailed analysis of her accomplishments and support for her request. Defendant Hanaah Frechette Bates stated that she was so impressed by Plaintiff's presentation that she "wished [her] daughter could have seen it."

82. Nevertheless, Plaintiff's request was denied. Plaintiff then again asked for what benchmarks she needed to achieve to be promoted. Defendants responded that they did not know and would revisit the conversation again in a few months, which was their customary response to employees of color that advocated for advancement. As was also customary, no revisit ever occurred.

83. In June 2022, Plaintiff again met with the Defendants and requested a promotion, showcasing that she had tripled revenue for the Arts Education Department and that her responsibilities, experience and skill set warranted a director level title as she was already doing director level work.

84. Defendant Hanaah Frechette Bates told Plaintiff that she agreed that Plaintiff should have a director title, but that she "could not get Carlota to agree."

85. In contrast, White employees, such as Defendant Hanaah Frechette Bates herself, were given higher-paid positions and rapidly advanced within the organization despite limited prior experience. Defendant Carlota Santana made the decision to promote Defendant Hannah Frechette Bates nearly every three (3) years, even creating new positions for her to be able to advance. Defendant Hanaah Frechette Bates went from being a college intern to being the Company Manager, then the Managing Director and ultimately the Executive Director, all within six (6) years.

86. The discrimination is even more clearly evident in the discrepancies in pay rates. In March 2021, Defendants hired a White female administrative employee with significantly less experience than Plaintiff and paid her a higher salary than Plaintiff and other administrative employees of color who also had significantly more experience, more advanced duties and substantially more responsibilities.

87. In sharing the job posting for the new administrative role, Defendant Hanaah Frechette Bates sent an email to Plaintiff and other employees stating that the ideal candidate would have 3-4 years of experience working in arts/culture nonprofit specifically in the areas of marketing and/or development.

88. Plaintiff had over six (6) years of experience working in development and marketing for arts non-profits.

89. At the time of her hiring, the new White administrative employee had approximately four (4) years of experience in development and marketing for non-profits. Despite having less experience and being hired for a position at a level below Plaintiff, she was given a salary higher than Plaintiff.

90. Notably, the new employee was also paid higher than Ms. Geraldles, who as noted above was the organization's Program Director with over a decade of experience in programming, development, and marketing for the organization.

91. During all times material hereto, the Defendants' White employees (administrative and directors) were paid higher than Plaintiff, Ms. Geraldles and the other administrative employees of color, all of whom were paid under the exemption threshold and denied overtime pay due to them under the law.

92. In fact, the only administrative employees paid over the exemption threshold were White employees. All the administrative employees of color were paid salaries under the salary exemption threshold. Like Plaintiff, the other employees of color worked significant overtime hours and were all denied overtime compensation due to them under the law.

93. Two of the other employees of color, Ms. Geraldles and Ms. Chinyanganya, have also filed suit against the Defendants for violation of wage and hour laws and discrimination based on race. Their claims are pending in federal court.

94. After years of fighting against the discrimination and toxic work environment created by the Defendants, Plaintiff was constructively terminated in May, 2023.

95. In December 2022, Plaintiff again told Defendant Hanaaah Frechette Bates that she felt she was being bullied and retaliated against for bringing attention to discrimination and noncompliance with labor laws that the employees of color were enduring at the organization.

96. In the same conversation, Plaintiff told Defendant Hanaah Frechette Bates that she was being “pushed out” because that is the organization’s business model, to use up as much of an individual’s talent and then subject them to bullying and discrimination until they have no choice but to leave, a tactic that the organization also used to constructively terminate Ms. Chinyanganya and continues to use against Ms. Geraldles, who remains employed with the Defendants.

97. Defendant Hanaah Frechette Bates replied that it was “not a business model she supported” but she did not disagree. More importantly, she took no action to address the concerns raised by Plaintiff or to prevent them from recurring in the future.

98. Defendant Hanaah Frechette Bates was on maternity leave from December, 2022 until April, 2023. Upon her return, in April, 2023, Plaintiff presented Defendant Hanaah Frechette Bates with another opportunity to remedy the discrimination and lack of advancement she had endured, presenting options with new roles and titles that would enable Plaintiff to have more autonomy and advancement within the organization.

99. Defendant Hanaah Frechette Bates stated that Plaintiff's proposed new role was "exactly the role that the company needed" and that Plaintiff was the "perfect person" to fill that role.

100. However, a week later, Defendant Hanaah Frechette Bates came back to Plaintiff and said that the organization did not have the money to give Plaintiff the new role and asked if that meant Plaintiff was leaving the organization.

101. Plaintiff responded that she had not even asked for a specific salary and that she did not believe the excuses that she was being given. It was clear the organization, specifically Defendant Carlota Santana, wanted her to leave.

102. Without the possibility of advancement, Plaintiff knew that she could no longer endure the discriminatory work environment and Defendant Carlota Santana's incessant bullying and retaliation. Accordingly, she provided her resignation in May 2023, which was a reasonable, foreseeable constructive termination.

103. In her exit interview with Defendant Hanaah Frechette Bates and Ms. Mata, Plaintiff re-iterated that she has seen "every single employee of color who worked in the office cry numerous times out of anger, frustration and exhaustion." Plaintiff further stated that Defendants "have done nothing, have taken zero action to fight against the racism in this company" and that by choosing to do nothing, they "continue to support racism."

104. Plaintiff has been discriminated against and has suffered disparate treatment based on her race, she has received disparate pay and has been subjected to inferior terms, conditions and privileges of employment in the repeated denial of promotion or advancement and failure to pay overtime pay and she was constructively terminated by Defendants.

## STATEMENT OF CLAIM COUNT I



**[Violation of the New York Labor Law]**

105. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs “1” through “104” of this Complaint as if fully set forth herein.

106. At all relevant times, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

107. Defendants knowingly and willfully violated Plaintiff’s rights by failing to pay Plaintiff wages for all hours worked, minimum wages, overtime compensation at the rate of not less than one and one-half times her regular rate of pay (or the applicable minimum wage, when higher), for each hour worked in excess of forty (40) hours in a workweek and spread of hours premium for each day she worked in excess of ten (10) hours.

108. At all times relevant to this action, Defendants willfully disregarded and purposefully evaded overtime compensation requirements of the New York Labor Law by improperly paying a salary less than the New York City threshold required for an exempt employee.

109. Defendants knowingly and willfully violated Plaintiff’s rights by failing to pay spread of hours premiums for each day she worked more than ten (10) hours pursuant to New York State Department of Labor Regulations §§142-2.4.

110. Defendants willfully disregarded and purposefully evaded record keeping requirements of the New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

111. Defendants knowingly and falsely provided Plaintiff with a pay stub that failed to accurately account for her actual hours worked on a weekly basis.

112. Due to the Defendants’ violations of New York Labor Law, Plaintiff is entitled to recover from Defendants: (1) unpaid wages, minimum wages, and overtime compensation; (2),

unpaid spread of hours premiums for each day she worked in excess of ten (10) hours; (3) liquidated damages and statutory penalties pursuant to New York Labor Law § 663(1); (4) pre-judgment and post-judgment interest; and (5) reasonable attorneys' fees, and costs and disbursements of this action, pursuant to New York Labor Law § 663(1) *et al.* and § 198.

## COUNT II

### [Statutory Penalties Pursuant to the New York State Wage Theft Prevention Act]

113. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "112" of this Complaint as if fully set forth herein.

114. The New York State Wage Theft Prevention Act requires every employer, including Defendants, to notify its employees, in writing, among other things, of the employee's rate of pay and regular pay day. Defendants were also required to provide Plaintiff with accurate statement of wages with every payment of wages as required by New York Labor Law § 195(3).

115. The wage notice requirement of the New York Wage Theft Prevention Act was designed to prevent wage theft by informing employees of their pay rates.

116. At all times relevant hereto, Plaintiff was not provided with a proper wage notice or accurate wage statements as required by law.

117. As set forth previously, Defendants deliberately misled Plaintiff by providing a contract stating that she was not entitled to overtime despite being under the New York threshold for exemption from overtime laws.

118. As a result of the failure to comply with the provisions of the Wage Theft Prevention Act, Plaintiff was harmed by not receiving notice, over the course of several years, that the minimum wage and salary thresholds of the New York Labor Law were not met.

119. Defendants did not provide Plaintiff with an accurate written statement properly accounting for her actual hours worked, and setting forth her hourly rate of pay, regular wages, and/or overtime wages.

120. Upon information and belief, Defendants' record-keeping practices were intended to, and did in fact, disguise the actual number of hours Plaintiff worked, in order to avoid paying her for her full hours worked and overtime compensation due.

121. By not providing adequate and accurate notice of Plaintiff's hours and wages, Defendants' conduct directly led to concrete harm, *to wit*, the underpayment of wages, to Plaintiff.

122. Had Defendants been mindful of and complied with the notice requirements of the Wage Theft Prevention Act, it would have been readily apparent that their payroll practices were in violation thereof, and such violations could have been remedied earlier.

123. Defendants disregarded and purposefully evaded record-keeping requirements of the New York Labor Law by failing to maintain accurate timesheets and payroll records.

124. Defendants failed to comply with the notice and record-keeping requirements of the New York State Wage Theft Prevention Act and as such are liable for civil penalties, attorneys' fees, and costs.

**COUNT III**  
**[Violation of the New York Labor Law §194]**

125. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "124" of this Complaint as if fully set forth herein.

126. As a Hispanic woman, Plaintiff is a member of a protected class under the New York Labor Law §194(2)(b).

127. Plaintiff was paid less than similarly situated employees without protected class status for equal work on a job the performance of which requires equal skill, effort and

responsibility and which is performed under similar working conditions and/or substantially similar work, when viewed as a composite of skill, effort and responsibility and performed under similar working conditions.

128. Plaintiff received positive feedback for her work and was continuously tasked with increased duties and responsibilities to the benefit of Defendants.

129. Plaintiff was paid less than White employees for equal or substantially similar work performed under similar working conditions.

130. Plaintiff was denied the opportunity for promotion and advancement and was marginalized in status, while similarly situated White colleagues were advanced within the organization.

131. As previously set forth herein, Defendant Carlota Santana, the Founder and Artistic Director and key decision-maker of the organization, expressed discriminatory animus against employees of color, including Plaintiff.

132. Defendant Hanaah Frechette Bates, the Executive Director and key decision-maker of organization, had direct knowledge of the pay discrepancy and denial of promotions to Plaintiff and refused to investigate or to remedy the discrimination.

133. Defendant Hanaah Frechette Bates failed to take any action to address or rectify the hostile, discriminatory environment that Plaintiff suffered.

134. Plaintiff, faced with intolerable working conditions in which she was marginalized based on her race, had no choice but to resign as such she was constructively terminated.

135. By reason of the actions of the Defendants set forth herein, Plaintiff has been caused to sustain damages in the amount to be determined following a trial on the merits plus interest, costs and attorneys' fees.

**COUNT IV**  
**[Violation of the New York City Human Rights Law]**

136. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs “1” through “135” of this Complaint as if fully set forth herein.

137. At all times material hereto, Defendant Spanish Dance Arts has been an “employer” as defined by the New York City Administrative Code, Chapter 1, §8-102.

138. At all times material hereto, Defendants Hanaah Frechette Bates and Carlota Santana are “persons” as defined by the New York City Administrative Code, Chapter 1, §8-102.

139. At all times material hereto, Plaintiff is a “person aggrieved” as defined by the New York City Administrative Code, Chapter 1, §8-102.

140. As a Hispanic woman, Plaintiff is a member of a protected class under the New York City Administrative Code, Chapter 1, §8-102.

141. As set forth herein Plaintiff endured disparate treatment and a pattern of discriminatory conduct by Defendants, including but not limited to pay discrepancy and denial of promotion and advancement, directed at Plaintiff because of her race.

142. Plaintiff received positive feedback for her work and was continuously tasked with additional responsibilities to the benefit of the Defendants, yet Plaintiff was paid less than her White colleagues, was denied the opportunity for promotion and advancement, and was marginalized in status while similarly situated White colleagues were advanced within the organization.

143. As previously set forth herein, Defendant Carlota Santana, the Founder and Artistic Director and key decision-maker of the organization, expressed discriminatory animus against employees of color, including Plaintiff.

144. Defendant Hanaah Frechette Bates, the Executive Director and key decision-maker of organization, had direct knowledge of the pay discrepancy and denial of promotions to Plaintiff and refused to investigate or to remedy the discrimination.

145. Defendant Hanaah Frechette Bates failed to take any action to address or rectify the hostile, discriminatory environment that Plaintiff suffered.

146. Plaintiff, faced with intolerable working conditions in which she was marginalized based on her race, had no choice but to resign as such she was constructively terminated.

147. The Defendants' conduct, individually and jointly, as described herein is a violation of New York City Administrative Code, Chapter 1, §8-107(1)(a)(3).

148. By reason of the actions of the Defendants set forth herein, Plaintiff has been caused to sustain damages in the amount to be determined following a trial on the merits plus interest, costs and attorney's fees.

#### **COUNT IV**

#### **[Violation of the New York State Human Rights Law]**

149. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "148" of this Complaint as if fully set forth herein.

150. At all times material hereto, Defendant Spanish Dance Arts has been an "employer" as defined by the New York State Executive Law, Article 15, §292(5).

151. At all times material hereto, Defendants Hanaah Frechette Bates and Carlota Santana are "persons" as defined by the New York State Executive Law, Article 15, §292(1)

152. At all times material hereto, Plaintiff was an "employee" as defined by the New York State Executive Law, Article 15, §292(6).

153. As a Hispanic woman, Plaintiff is a member of a protected class under the New York State Executive Law, Article 15, §296.

154. As set forth herein Plaintiff endured disparate treatment and a pattern of discriminatory conduct by Defendants, including but not limited to pay discrepancy and denial of promotion and advancement, directed at Plaintiff because of her race.

155. Plaintiff received positive feedback for her work and was continuously tasked with additional responsibilities to the benefit of the Defendants, yet Plaintiff was paid less than her White colleagues, was denied the opportunity for promotion and advancement, and was marginalized in status while similarly situated White colleagues were advanced within the organization.

156. As previously set forth herein, Defendant Carlota Santana, the Founder and Artistic Director and key decision-maker of the organization, expressed discriminatory animus against employees of color, including Plaintiff.

157. Defendant Hanaah Frechette Bates, the Executive Director and key decision-maker of organization, had direct knowledge of the pay discrepancy and denial of promotions to Plaintiff and refused to investigate or to remedy the discrimination.

158. The Defendants' conduct, individually and jointly, as described herein is a violation of New York State Executive Law, Article 15, §296.

159. By reason of the actions of the Defendants set forth herein, Plaintiff has been caused to sustain damages in the amount to be determined following a trial on the merits plus interest, costs and attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Elizabeth McWilliams Hernandez, respectfully requests that this Court grant the following relief:

- (a) A declaratory judgment that the practices complained of herein are unlawful under the New York Labor Law;

- (b) An award of unpaid wages, minimum wages, overtime wages and spread of hours premiums due under the New York Labor Law;
- (c) An award of liquidated damages and statutory penalties as a result of Defendants' failure to pay wages, minimum wages, overtime compensation and "spread of hours" premiums pursuant to the New York Labor Law;
- (d) An award of monetary damages in an amount to be determined following a trial on the merits as a result of Defendants' discriminatory conduct in violation of New York Labor Law §194.
- (e) An award of monetary damages in an amount to be determined following a trial on the merits as a result of Defendants' discriminatory conduct in violation of New York City Administrative Code, Chapter 1, §8-107(a)(3);
- (f) An award of monetary damages in an amount to be determined following a trial on the merits as a result of Defendants' discriminatory conduct in violation of New York State Executive Law, Article 15, §296(1)(a) and (h);
- (g) An award of compensatory damages and punitive damages as a result of Defendant's violation of New York City Administrative Code, Chapter 1, §8-107(1)(a)(3);
- (h) An award of prejudgment and post-judgment interest;
- (i) An award of costs and expenses of this action with reasonable attorneys' fees; and,
- (j) Such other and further relief as this Court determines to be just and proper under the circumstances.




Dated: New York, New York  
January 10, 2024

Respectfully submitted,

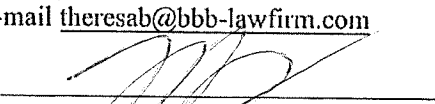
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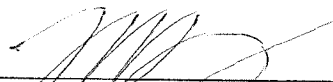
  
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**VERIFICATION**

I, the undersigned, an attorney admitted to practice in the Courts of New York State, state under penalty of perjury that I am one of the attorneys for the plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true. The reason this verification is made by me and not by my client, is that my client are not presently in the County where I maintain my offices. The grounds for my belief as to all matters not stated upon my own knowledge are the materials in my file and the investigation conducted by my office.

Dated: New York, New York  
January 10, 2024

  
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Theresa Barbadoro, Esq.